

Judge halts Painted Post water sales

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Posted Mar 25, 2013 at 10:26 PM

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What's this?

Painted Post, N.Y. — A state Supreme Court judge has halted the Village of Painted Post's bulk water sale operation.

Judge Kenneth Fisher, based in Rochester, ruled Monday that Painted Post officials improperly conducted the project's review under state law.

He voided both the water sale agreement and the lease deal for the property upon which the water loading station was built.

Fisher also issued an injunction blocking any more water withdrawals until the village complies with the state's Environmental Quality Review Act (SEQRA).

That means that in order to restart the operation, the village would have to do the SEQRA process over again and negotiate a new water sale contract and lease deal.

First, however, the village and the other respondents in the case have the right to appeal Judge Fisher's ruling to a higher court.

The Leader was informed of the ruling late Monday afternoon. Painted Post Mayor Roz Crozier could not be reached for comment; neither could the village's law firm, Rochester-based Harris Beach.

It was unclear whether an appeal was planned.

The lawsuit was filed in June 2012 against the Village of Painted Post, which signed a five-year contract to sell up to one million gallons of water per day; SWEPI LP, a Shell subsidiary which was buying the water for shale gas drilling in Pennsylvania; and the Wellsboro and Corning Railroad, which leased land from the village at the old foundry site in Painted Post, built the loading station and was transporting the water.

The lawsuit was filed by local environmental groups Sierra Club, People for a Healthy Environment and the Coalition to Protect New York, along with five local residents. The petitioners were represented by Richard Lippes, a Buffalo-based attorney who specializes in environmental litigation.

The petitioners were concerned about the impact of large-scale water withdrawals on the quality and quantity of water supplies in the Corning aquifer. They were also concerned about the impact of increased train traffic in the village.

Judge Fisher halted the operation not based on those concerns, but because village officials improperly classified the water sale contract as a Type II action under SEQRA, deciding an environmental review was not necessary, Lippes explained.

The judge also cited the fact that the village improperly segmented the water contract and the lease deal by conducting separate reviews for each under SEQRA instead of considering them together as part of the same project. Rachel Treichler - a local Sierra Club member and attorney who assisted with the case - said she was very pleased with the ruling.

"I hope this will spur people to understand what we have in this area in the way of groundwater and that we're all dependent on these sources, and for some large users to take it without regard for other users is just not right," Treichler said.

The water deal guaranteed the village \$3.2 million and could be worth up to \$4 million annually if the maximum one million gallons per day was sold. However, very little water had actually been sold since operations began last year, possibly because of a slowdown in gas drilling in Pennsylvania.

Village officials and other opponents of a recent attempt to dissolve Painted Post and merge with the Town of Erwin pointed water deal as a source of revenue that could help solve the village's long-running financial problems.

The dissolution attempt, led by the group of residents seeking relief from high taxes, was rejected by Painted Post voters in referendum.