



Atlantic Chapter
Finger Lakes Group

MEDIA RELEASE

April 2, 2013

FOR IMMEDIATE RELEASE

Contact: Jack Ossont, Coalition to Protect New York, sandhill1@frontiernet.net, 607-243-7262

Citizens' Challenge to Painted Post Municipal Water Sale Upheld

NYS Supreme Court Judge rules that Village skipped necessary reviews.

Citizens across New York cheered last week when a New York State Supreme Court judge annulled the bulk water sale agreement between the Village of Painted Post in Steuben County and a Shell Oil affiliate, SWEPI, LP.

On March 25, Monroe County Justice Kenneth R. Fisher issued his decision voiding the agreement and enjoining any further shipments because the Village had not done the required environmental review under the State Environmental Quality Review Act (SEQRA).

Five individual petitioners, along with the Sierra Club, whose local members were active in the suit, and two grassroots groups, People for a Healthy Environment, Inc. and the Coalition to Protect New York, brought the Article 78 proceeding, *Sierra Club et al. v. Painted Post et al.*, in June 2012.

“We’ve been concerned about impacts on local drinking water supplies since we first heard about the plans of the Village Board to sell water,” said Virginia Hauff from Painted Post, one of the individual petitioners. “We urged the Board to look into the environmental impacts of the withdrawals before signing the sale agreement. We’re glad the judge determined that the law requires such a review.”

“This decision has an impact beyond Painted Post,” pointed out Kate Bartholomew of Montour Falls, chair of the Finger Lakes Group of the Sierra Club. “The decision puts other New York municipalities on notice that bulk water sales are not exempt from review under SEQRA.

Bartholomew, a certified science teacher and member of the Southern Tier Central Regional Planning Board, said she was baffled that the Village decided to engage in bulk water sales without a thorough, long-term study of the impact large exports would have on the relatively shallow glacial-till-filled Corning aquifer.

“Now that Painted Post has been ordered to do a proper environmental review,” she said, “our next steps are to work with the Village Board to help them consider the cumulative impacts on the aquifer.”

Under the now-voided agreement, the Village had made a deal to sell up to 1.5 million gallons of water per day from the public water supply system operated by the Village to SWEPI for use in hydraulic

fracturing operations in Tioga County, Pennsylvania.

The judge also annulled the lease agreement whereby the Village leased the former Ingersoll Rand foundry site to the Wellsboro & Corning Railroad for a rail-loading facility to ship the water to Pennsylvania.

The judge determined that the Village had improperly segmented its environmental review of the bulk water sale agreement and the lease agreement.

“The neighbors of the rail loading facility are particularly concerned about noise and traffic impacts from the rail shipments,” said John Marvin of Painted Post, another individual petitioner. “I live within half a block of the rail-loading facility, and the noise of midnight shipments kept waking me up last fall.”

Marvin and others are also concerned that the drinking water well the Village used for the water shipments is so close to the rail loading facility and that vibrations from the rail cars could cause toxic contaminants in the old foundry site to move into the groundwater drawn by the well.

"The long-term costs of this project could easily outweigh the money the Village might make from the water sales in the short term," Marvin said. "We need to come up with a more sustainable plan to put the Village on a solid financial footing."

The Village had claimed a Type II exemption from SEQRA for the water sale, declaring that the water being sold was surplus property. Judge Fisher said the surplus property exemption did not apply. His decision noted: “[A] large volume daily withdrawal of a resource vital to the well being of our state is not a mere surplus sale of Village property akin to selling a bus or fire engine no longer needed by the Village.”

“This decision shows that citizens can make a difference if we are willing to speak out,” said Michael Finneran of Painted Post, who was an individual petitioner along with his mother, Therese Finneran. “I hope our success in this case inspires citizens in other communities to take action to protect their water supplies and stand up for what they think is right.”

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Note to Editors: *Sierra Club et al. v. Painted Post et al.*, Index No. 2012/0810, was filed in June 2012.