

COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of

Village of Woodbury, Town of Woodbury,
Village of Cornwall-on-Hudson, Town of Cornwall,
Black Rock Fish and Game Club of Cornwall, Inc.,
Henry N. Christensen, Jr., Susan Webber Christensen
and Sevinch Bridges,

Petitioners-Plaintiffs,

- against -

Basil Seggos as Acting Commissioner of the New York
State Department of Environmental Conservation,
The New York State Department of Environmental
Conservation, The Village of Kiryas Joel Board of
Trustees, and the Village of Kiryas Joel,

Respondents-Defendants.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
In the Matter of

Black Rock Forest Consortium, Open Space Institute, Inc.,
Storm King Art Center and Orange County Land Trust,

Petitioners,

-against-

The New York State Department Of Environmental
Conservation, Basil Seggos as Acting Commissioner
Of The New York State Department of Environmental
Conservation, and the Village Of Kiryas Joel,

Respondents,

-----X
STATE OF NEW YORK)
) s.s.:
COUNTY OF ORANGE)

Hon. Henry F. Zwack

AFFIDAVIT

Action No. 1

Index No. 5580-15

Hon. Henry F. Zwack

Action No. 2

Index No. 5602-15

RICHARD RANDAZZO, being duly sworn, deposes and says:

1. I am the duly elected Town Supervisor of the Town of Cornwall, New York. I make this affidavit of my own personal knowledge in support of the petition herein.

2. The Town of Cornwall has the following three main objections to the Water Withdrawal Permit issued by the New York State Department of Environmental Conservation ("DEC") to the Village for Kiryas Joel ("KJ") for use of the Mountainville Well located in the Town of Cornwall:

- (1) Throughout the permitting process KJ represented that the Mountainville Well was to be used merely a back-up water source for KJ's new principal source of water – the Catskill Aqueduct, and would be drawn upon only at such times as the Catskill Aqueduct was shut down for repairs, cleaning or similar circumstances. However, there do not appear to be any plans for KJ to connect to the Catskill Aqueduct at any time in the reasonably foreseeable future and the permit issued to KJ by the DEC imposes no conditions limiting use of the Mountainville Well to such "secondary source" status and, instead, allows use of it as the primary source of water for KJ.
- (2) The DEC has acknowledged that use of the Mountainville Well – particularly consistent use of it as KJ's primary water source – may cause private wells of local residents to be "significantly diminished" or "rendered non-productive." In addressing this situation, the permit issued to KJ by the DEC imposes only the vaguely worded condition that KJ "shall make provision to provide an adequate supply of water" to local residents whose wells are damaged by KJ's use of the Mountainville Well, leaving local residents to work out for themselves how to obtain relief from KJ when their wells run dry and leaving to KJ the terms upon which "an adequate supply of water" will be provided; and
- (3) The DEC has acknowledged that use of the Mountainville Well – particularly consistent use of it as KJ's primary water source – may have significant adverse impacts on the Woodbury Creek (which is an important natural resource of the Town of Cornwall). However, rather than studying the potential detrimental impacts of use of the Mountainville Well and imposing limitations on the permitted draw on the well in order to prevent such detrimental impacts from occurring in the first place, the permit issued to KJ by the DEC allows ongoing use of the well at maximum draw while requiring only ongoing "monitoring" of the impacts that such draw is having on the Woodbury Creek and attempting to remedy or mitigate the adverse impacts caused by KJ's use of the well.

3. Even a cursory examination of the facts regarding the Town's three objection leads inexorably to the conclusion that the Water Withdrawal Permit issued to KJ by the DEC must be annulled and the matter remanded to the DEC for further proceeding including, without limitation, holding an administrative hearing.

I. THE DEC SHOULD NOT HAVE GRANTED WATER WITHDRAWAL PERMIT TO KJ FOR USE OF THE MOUNTAINVILLE WELL AS A PRIMARY WATER SOURCE.

4. KJ has repeatedly represented that it intends to use the Mountainville Well only to meet its needs for water until KJ can connect to the Catskill Aqueduct and, thereafter, the Mountainville Well be used as a "back-up" or secondary source drawn upon only when the Catskill Aqueduct is out of service. While this may be KJ's stated "intent" there is absolute no condition or binding commitment to require KJ to make such use of the Mountainville Well. Instead, KJ is free to continuously use it as its primary water source.

5. It should be noted that there are monetary incentives for KJ to use the Mountainville Well as its primary water source. Quite obviously, it will cost a great deal of money for KJ to complete construction of the portion of the proposed pipeline running from the Mountainville Well to the proposed connection to connect to the Catskill Aqueduct in New Windsor. If KJ has an adequate water source in the Mountainville Well, why should it incur the expense of completing the pipeline?

6. Even if KJ completes the connection to the Catskill Aqueduct, there is nothing in the water withdrawal permit issued by the DEC that requires KJ to the Mountainville Well as a back-up source for the Catskill Aqueduct. In fact, since KJ will have to pay New York City the established rate per gallon of water drawn from the Catskill Aqueduct – whereas water drawn from the Mountainville Well is to be had simply for the cost of pumping it – KJ has a monetary

incentive to use the Catskill Aqueduct as a back-up source for the Mountainville Well. That is, KJ may continue to draw water from the Mountainville Well even if it eventually connects to the Catskill Aqueduct simply because it is a less expensive water source.

7. Further, there do not appear to be any plans, approvals or financing for construction of KJ's proposed connection to the Catskill Aqueduct. It will take *years* for completion of connection to the Catskill Aqueduct, if it ever occurs at all. During that time the Mountainville Well will be in continuous use. Even if the connection could be quickly constructed, the New York City Department of Environmental Protection has announced that the Catskill Aqueduct will be closed for long periods over upcoming years for repair work. The DEC ignored or overlooked the fact that in granting KJ's request for a permit to use the Mountainville Well "only until the Catskill Aqueduct connection is completed" it was actually granting a permit for extensive, prolonged use of the well for an indefinite number of years.

8. Lastly, KJ has existing wells (i.e., the "Village Well Field" and the "Brenner Well Field") from it which it may draw all, or nearly all, of its present average daily needs. There is no indication in the proceedings before the DEC that KJ's existing wells are located in environmentally sensitive areas, whereas the record was replete with proof that the Mountainville well is in an extremely environmentally sensitive area. Accordingly, at a minimum, in granting a water withdrawal permit to KJ the DEC should have required that the Mountainville Well be drawn on solely to provide water in times when the demand on the Village's central water system exceeds the production of the Village's existing wells.

II. THE DEC SHOULD NOT HAVE GRANTED A PERMIT TO KJ WITHOUT ESTABLISHING A DETAILED PROGRAM TO PROTECT THE PRIVATE WELLS OF LOCAL RESIDENTS.

9. KJ contends that the results of the 72-hour pump test that it conducted demonstrates that its proposed use of the Mountainville Well will not have detrimental impacts on the private wells of local residents. However, the validity of KJ's test is highly debatable and, in any event, the conclusions that can be drawn from it in regard to long-term extensive use of the Mountainville Well are uncertain. There is an obvious need to protect local residents against the possibility that KJ's use of the Mountainville Well will cause their private wells to run dry. It is a matter of basic fairness.

10. The water withdrawal permit issued to KJ by the DEC attempts to deal with this issue by imposing the following condition on KJ's use of the Mountainville Well:

"Diminished Private Drinking Water Wells. The permittee shall make provisions to provide an adequate supply of water to those residents whose private drinking wells are significantly diminished or rendered non-productive by the permittee's use of the sources of water supply approved by this permit."

This condition is inadequate because, although it acknowledges KJ's obligation to provide water to local residents whose wells run dry, it provides absolutely not details or information as to how local residents are to seek redress or the terms upon which KJ must provide water.

11. The above-quoted condition gives local residents no clue as to who to contact in the event that their well runs dry. It leaves the terms "significantly diminished" and "rendered non-productive" undefined and provides no guidance as to who determines whether or not the difficulties experienced with the private well were caused by KJ's use of the Mountainville well. Perhaps worst of all, even if a local resident can establish that his well ran dry due to KJ's use of the Mountainville well the condition leaves it uncertain as to what KJ must do in order to fulfill

its obligation to "provide an adequate supply of water" to the local resident. In theory, KJ could simply advise the local resident that he may lay a water line at his own expense connecting to KJ's main and that, thereafter, KJ will charge for water service. In short, the condition imposed by the DEC to protect property owners does little more than allow them to sue KJ in order to seek relief and, as such, it is wholly inadequate and unreasonable.

III. THE DEC SHOULD NOT HAVE GRANTED A PERMIT TO KJ WITHOUT FIRST ESTABLISHING THE DRAW ON THE MOUNTAINVILLE WELL THAT MAY BE TAKEN WITHOUT HAVING ADVERSE IMPACTS ON THE WOODBURY CREEK.

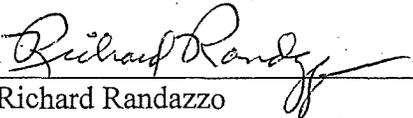
12. There is no question that prolonged draw on the Mountainville Well may have adverse impacts on the Woodbury Creek. The DEC has acknowledged as much by imposing a condition on the water withdrawal permit issued to KJ requiring ongoing monitoring of the Woodbury Creek.

13. The problem with the DEC's condition is that is backwards. That is, the DEC should have required additional testing and investigation to determine how much of a draw can be made on the Mountainville Well without having adverse impacts on the Woodbury Creek, and then imposed those draw limitations on KJ's permit. Instead, the DEC granted KJ a permit allowing an extensive draw and proposes to subsequently reduce the draw in proportion to the damage that is done the Woodbury Creek. This condition, if not wholly irrational, at the very least will not prevent the harm that is purportedly established to avoid.

14. There is no guaranty that merely reducing the draw on the Mountainville Well will prevent or in any way remediate the ecological harm that was done by the excessive draw in the first place. Dry stream beds, dead fish, marine life and plant life will not be replaced or restored merely because KJ had belatedly ceased taking the water. We are talking about far reaching, irreversible ecological damage on a wide scale in the Moodna Creek watershed, and

the DEC's attempt to remedy the property after the damage has been done is simply not an acceptable solution.

15. For the above-stated reasons, the Town of Cornwall respectfully requests that the Court annul the water taking permit issued to KJ and/or remand the matter to the DEC for further proceedings including an adjudicatory hearing.


Richard Randazzo

Sworn to before me this
21st day of January, 2016.



Notary

LINDA M. MARASCO
Notary Public, State of New York
Qualified in Orange County
Registration No. 4954785
Term Expires August 14, 20 17