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Marcellus Watch: Judge's ruling protects Corning aquifer

By Peter Mantius

Corning Leader

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Earlier last month, a judge in Livingston County rejected an industry challenge to the Town of Avon's moratorium on gas drilling. That ruling dovetailed with previous state court rulings upholding drilling bans in Dryden and Middlefield.

In each case, industry lawyers claimed that a 1981 state law grants the state Department of Environmental Conservation unchallenged power to site gas wells throughout the state. That flimsy argument ignores the fact that local governments have zoning powers that are guaranteed under the state constitution.

The bottom line in the Avon, Dryden and Middlefield cases: the courts say DEC can regulate the "how" of gas drilling, but localities still get to say "where" it is allowed or banned. That's not enough for the gas industry. It still insists that constitutionally protected zoning rights were somehow quietly expunged, even though the DEC itself disagrees.

The issue continues to rattle around in the court's appeals system because the state Legislature -- specifically, the state Senate -- is paralyzed.

Two years ago the state Assembly passed a bill that would have rendered the industry's strained reasoning moot. But the Senate refused to do its part in clarifying the fact that no constitutionally guaranteed rights had been erased.

The Assembly's activism and the Senate's reluctance follow a distinct pattern. The Democrat-controlled Assembly has passed numerous bills -- including a two-year statewide moratorium on fracking -- that address concerns of those who want strict regulation of fracking, while the Republican-controlled Senate has blocked any legislation that doesn't have the express blessing of gas drillers.

That partisan divide has rendered the Legislature dangerously impotent -- not to mention out of touch. A Quinnipiac poll in March showed sharp declines in support for fracking across virtually all demographic categories, with anti-fracking forces pulling ahead 46 percent to 39 percent statewide.

While the craven New York State Legislature has been AWOL on vital gas drilling issues for years, state court judges, fortunately, have been quietly doing their job.

Last week a state Supreme Court judge in Rochester smacked down efforts by a subsidiary of Royal Dutch Shell to purchase fresh water to frack its Pennsylvania gas wells from the financially down-and-out Village of Painted Post.

At the behest of the thirsty energy giant, Painted Post had attempted to "short-circuit" New York State's environmental review process, Supreme Court Justice Kenneth R. Fisher wrote March 25.

The village draws its water from the Corning aquifer, a relatively shallow, rain-dependent source that also supports several other communities. It has been selling water to Shell subsidiary Swepi LP under a contract that could provide it a reported \$2.6 million a year for supplying up to 1 million gallons of water a day.

Fisher granted an injunction to halt the sale and rail shipment of the water to Wellsboro, Pa., about 40 miles south.

Painted Post had tried to duck out of an environmental review of the shady cross-border deal by arguing that the water from the aquifer is "surplus property."

Fisher poured cold water on that idea, writing: "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 a fire engine no longer needed by the village."

Now Painted Post must comply with the State Environmental Quality Review Act before its sells any more water to Pennsylvania frackers. That's just common sense, and it's the law.

This is neither the first nor the most far-reaching case in which state courts have blocked efforts by the oil and gas industry to Bigfoot its way into New York after stepping over the law.

The reactionary Senate leaves Gov. Andrew Cuomo with two options: Allow fracking in New York under a totally inadequate regulatory regime or stall for time in hopes the tide will keep turning against fracking.

Meanwhile, Shell will have to scramble for other water sources to serve its Pennsylvania fracking operations. In 2010, the company paid \$4.7 billion to acquire East Resources, a gas driller with hundreds of thousands of acres under lease in that state, much of it around Wellsboro and Mansfield in Tioga County.

Why did Shell need to buy all that water from a New York aquifer only 40 miles away?

Because Tioga County has run so short of water that it's living in fear of droughts and limiting withdrawals, according to a December 2012 report in the Williamsport (PA) Sun-Gazette.

"We don't want to keep issuing tap-ins and then go into a drought and have no water for existing customers," Barry Cleveland, chief water operator in Mansfield, told the newspaper.

Corning may not be booming at the moment, but several new water-needy projects are already on the drawing boards in anticipation of the day when Interstates 86 and 99 intersect just south of Painted Post.

And when the Susquehanna River Basin Commission recently identified eight "potentially stressed areas" based on development patterns and aquifer yields, it named only one in New York State: Corning.

Shell convinced Painted Post to cash in without giving any consideration to competing claims on the aquifer it shares. Suppose every community did that. Good thing there's a law against it.

• Peter Mantius is a freelance journalist from Schuylers County who follows shale gas drilling issues. He is a former reporter at the Atlanta Journal-Constitution and editor of two business weeklies in the Northeast. Marcellus Watch is an opinion column.

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smallbusinessowner

21 hours ago

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Peter Mantius is and always has been a tool...bottom line! he is exactly what fuels the problems of this country by telling only part of the truth and try and scare people. I think he went to the same journalist school as Josh Fox, same mold, same story telling.

eprzy

18 hours ago

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I thought the 'Pool Rules' are to stay on topic. The topic is the sale of water from a New York State primary aquifer without going through the lawful approval process for such a sale. The Village of Painted Post did not follow the procedure. Aside from that what right does one village on an aquifer that serves the corridor of Cochocton, Corning and Elmira have to sell water that all these communities use in common to an out-of-state business that is paying taxes in Pennsylvania. Common business sense says there is something wrong with this picture.

Jack Black

3 hours ago

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