

January 26, 2010

Honorable Senator Edwin B. Erickson
Chairman, Senate Majority Policy Committee
281 Main Capitol
Harrisburg, PA 17120

Dear Senator Erickson,

I represent The Brockway Area Clean Water Alliance (BACWA). We are a pro-water, pro-business organization that supports the efforts of the Brockway Area Municipal Authority in providing three communities clean water. BACWA views rampant Marcellus drilling activity on the Brockway municipal watershed as a public and an economic threat.

For many years, the Brockway Area Municipal Authority (Authority) has managed a 4,000-acre undeveloped wilderness tract in Elk and Jefferson counties to safeguard the water sources of its three reservoirs. The Authority has carefully managed its timber resources as a primary means for protecting the aquifers that feed those reservoirs. This certified timber, which garners a premium return, has also been a source of income for the Authority.

Over the past two years, the Authority has helplessly watched its property, as well as adjoining properties within the municipal watershed, become fragmented by gas lines and well pads. What started out as a few shallow wells near existing pipelines on the perimeter of the property, has multiplied to the destruction of acre-upon-acre of timberland for the construction of vast Marcellus pads, as well as for a web-work of connecting pipeline right-aways, compressor stations, and water impoundment ponds. This development, as well as transportation of chemicals across watershed property, poses the direct risk of a hazardous spill of flowback or production waters (*such as has occurred already), which could affect underground aquifers and render Brockway's water supply unusable.

Further, well pads and water impoundments require excavation and importation of fill that can introduce harmful substances onto a watershed that has been managed in its natural state to avoid just that. The surface disturbance of the resultant clear-cuts can lead to erosion and reduced natural ground filtering which may introduce solids into water sources and cause turbidity to the water supply. Add to that the loss of the inherent quality and value of a landscape that not only protected aquifers, but produced a renewable resource.

A great irony of this story is that this watershed is being aggressively exploited *because* it is a watershed. Gas developers favor the property because it is bisected by a large-volume gas line, and it is entirely undeveloped. This eliminates the burden of right ways, easements, and pipeline detours around homes or other improvements.

The Authority's situation is a microcosmic study of the partiality of our antiquated gas and oil laws, which make no exceptions for municipal water supplies. Though the Authority owns its land, it does not own the oil and gas rights beneath it. This allows a developer to tell the Authority what it will do, and to what scale it will do it, within the vaguely termed "reasonable necessity." Remuneration for timber and access is paltry--as perpetual pipelines and well pads

are bulldozed, nominal, one-time fees are paid for 100% extraction of an *otherwise renewable* resource, akin to buying a farmer's field for the value of one year's crop.

The situation also illuminates the bizarre disparity of environmental regulations, which are meager for gas drillers, even on public water drainages--surface property they don't own. On the other hand, many of the same activities a municipal water provider might conduct *on its own land*, such as excavation, road building, and even drilling water wells, require numerous permits that can take months to procure. On our watershed, developers have already drilled water wells for frac fluid, without even the need for permits. Ironically, extracting water for hydraulic fracturing from the Authority's aquifers could reduce the water supply to its reservoirs, and state mandates for low water tables could require water restrictions to the community.

On November 22, the Brockway Borough Municipal Authority took the groundbreaking step of filing suit for a preliminary injunction against Flatirons Development LLC. Only several cases against oil and gas have been filed in Pennsylvania in the last hundred years. The only firm precedent is a Department of Conservation and Natural Resources case, which defined that gas companies must be reasonable in their dealings with landowners. The Authority's case begs the question of how far "reasonable" might be stretched for a company standing to profit from extracting a portion of the trillions of cubic feet of natural gas spread across the Marcellus region.

Our municipality of several thousand people was forced to sue a \$4-billion company. Of course the municipality ultimately had no choice but to settle for contingencies to avoid bankrupting itself, contingencies requiring the same entity who damages an irreplaceable water supply to somehow repair the water supply if disaster happens. Contingencies are far too late for a water source.

We believe Marcellus or other deep hydro fracturing drilling is not the equivalent of conventional drilling as has been argued. Deep drilling in our geological formations is only several years old, with too many unknowns with respect to impacts on water aquifers.

BACWA respects the rights of property owners. However, our situation shows clearly that our legal and regulatory systems are not representative of the needs of the larger community's most essential resource. We believe that the only safeguard for our water source is an immediate executive order prohibiting any surface disturbance in watersheds; water extraction wells in watersheds or in watershed aquifers; drilling and fracking of any wells (including shallow) in the aquifers serving watersheds. We ask the legislature to encourage the executive order, and follow it with comprehensive legislation to control any threats to watersheds and aquifers

Sincerely,

Bruce Miller
Brockway Area Clean Water Alliance

*DEP violation number 590581