

**UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF PENNSYLVANIA**

SENECA RESOURCES CORPORATION,)	Case No. 1:15-cv-00060
)	
Plaintiff,)	Magistrate Judge
)	Susan Paradise Baxter
)	
v.)	
)	
HIGHLAND TOWNSHIP, ELK COUNTY, et al.)	MOTION FOR
)	RECONSIDERATION OF
Defendants.)	FINAL JUDGMENT
)	
)	

**CRYSTAL SPRING ECOSYSTEM, HIGHLAND TOWNSHIP MUNICIPAL
AUTHORITY, AND CITIZENS ADVOCATING A CLEAN HEALTHY ENVIRONMENT,
INC.'S MOTION FOR RECONSIDERATION OF FINAL JUDGMENT**

Proposed Intervenor Crystal Spring Ecosystem, Highland Township Municipal Authority, and Citizens Advocating a Clean Healthy Environment, Inc. (collectively “Proposed Intervenor”), file this Motion for Reconsideration in light of the Court’s Friday, August 12, approval and adoption of Seneca and Highland Township’s Stipulation and Consent Decree. (ECF Nos. 82, 84.)

1. On March 29, 2016, this Court ruled that Proposed Intervenor had shown all the elements necessary to have a right to intervene in this case, except the adequate representation element. (ECF No. 44.)
2. Proposed Intervenor timely moved for reconsideration on April 26, 2016, as the composition of the Highland Township Board of Supervisors had changed and a majority opposed the Ordinance that protected the Proposed Intervenor’s interests. (ECF No. 57.)
3. On August 1, 2016, in response to newspaper reports that Highland Township planned to repeal the Ordinance on August 10, Proposed Intervenor filed a supplemental brief to their Motion for Reconsideration. (ECF. No. 81.)
4. It is without dispute that Proposed Intervenor’s interests are not adequately represented by

Highland Township, and have not been for most of this year. Proposed intervenors seek to protect their rights to clean water, and Seneca's plans to inject toxic and radioactive frack waste into the top of the hill out of which the Highland Township Municipal Authority gets its water is incompatible with Proposed Intervenor's interests. As demonstrated by the questions asked by members of Proposed Intervenor's boards at the August 10 Highland Township Board of Supervisors meeting, the Township is ostensibly looking after its short-term financial interests over the people's long-term health. As reported by the Bradford Era:

Township water authority [one of the Proposed Intervenor's] vice-chairman Bryan Punk asked what would happen if "something happens" to the water after the township rescinds the ordinance. Detsch [Highland Township Supervisor] told Punk "Seneca would take care of it," to which half the room erupted with laughter in response.

Punk asked township solicitor Tim Bevevino of Swanson, Bevevino and Gilford of Warren whether or not he was told what was going to be injected into the well, to which the solicitor replied he did not. Punk told Bevevino the well will be filled with brine wastewater, in spite of what he called the "Seneca propaganda" which was released in local media prior to the meeting.¹

These concerns expressed by the Proposed Intervenor's are obviously absent from Seneca and Highland Township's Consent Decree. There is no compensation measure for Seneca's poisoning the people of Highland Township, nor for the people to even know what chemicals they should be monitoring their water supply for.

5. Proposed Intervenor's have met all the elements for intervention of right under Federal Rule of Civil Procedure 24(a)(2). (ECF Nos. 32, 33, 37, 40, 44, 57, 61, 81.) They have a right to be parties in this case. They've had this right since at least late April.
6. As parties, they would have participated in settlement negotiations and the crafting of a Consent Decree.

¹ Chuck Abraham, "Highland Twp. Rescinds 'bill of rights' ordinance" The Bradford Era (Aug. 11, 2016), available at www.bradfordera.com/news/highland-twp-rescinds-bill-of-rights-ordinance/article_bc658a3a-5f6d-11e6-bb86-672f0a970d3f.html.

7. However, rather than grant Proposed Intervenor party status, the Court approved the Stipulation and Consent Decree filed by Seneca and Highland Township. (ECF Nos. 82, 84.)
8. Proposed Intervenor had no opportunity to participate in the settlement negotiations that lead to the Consent Decree, nor were Proposed Intervenor interests were not represented at those negotiations.
9. The conclusions of law that Seneca and Highland Township proposed in their Stipulation and Consent Decree (paragraphs 13(a) to 13(h)) were contrary to the interests of Proposed Intervenor. While Seneca and Highland Township claimed those conclusions of law represent the state of the law following this Court's ruling in *Pennsylvania General Energy Company v. Grant Township*, they actually go far beyond what this Court held in that other case.
10. That “stipulation” and “consent” – which paints the law as Seneca and Highland Township want to see it – is the natural result when the existing parties in a case do not disagree, which is why the federal courts only have jurisdiction over “cases” and “controversies,” meaning an actual dispute between the parties is required to retain jurisdiction. *E.g., Flast v. Cohen*, 392 U.S. 83, 95 (1968) (holding the words “Cases” and “Controversies” in U.S. Constitution Article III, Section 2’s limitation on the Judicial Power “limit the business of federal courts to questions presented in an adversary context”).
11. Thus, by failing to grant Proposed Intervenor party status, yet continuing to retain jurisdiction and agreeing with the conclusions of law proffered by the existing parties, the Court's finding of law in ECF No. 82, paragraphs 13(a) through 13(h), violates Article III of the United States Constitution.
12. In addition, by failing to grant Proposed Intervenor party status, after clear evidence that

there interests are not represented at all, the Court performed a grave injustice.

13. The Court should grant Proposed Intervenor status in the case, and strike its order approving and adopting the Stipulation and Consent Decree (ECF No. 84). Proposed Intervenor have a right to participate in the settlement agreement, and this court has a constitutional obligation to not adopt conclusions of law when it lacks jurisdiction.

14. Alternatively, the Court should strike its order in ECF No. 84, and simply dismiss the case as unjusticiable following the Ordinance repeal on August 10, with costs borne by the respective parties.

15. A proposed order is attached.

Respectfully submitted August 15, 2016.



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Certificate of Service

I certify that I electronically filed a true and correct copy of the foregoing document on August 15, 2016, using the Court's CM/ECF system, which will automatically serve a copy upon the following:

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THE WESTERN DISTRICT OF PENNSYLVANIA**

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)	Magistrate Judge
Plaintiff,)	Susan Paradise Baxter
)	
v.)	
)	[PROPOSED]
HIGHLAND TOWNSHIP, ELK COUNTY, et al.)	ORDER
)	
Defendants.)	
_____)	

This Court has reviewed Proposed Intervenor Crystal Spring Ecosystem, Highland Township Municipal Authority, and Citizens Advocating a Clean Healthy Environment, Inc.'s Motion for Reconsideration of the Court's August 12, 2016 final judgment (ECF No. 84). Upon due consideration of this Motion, and (if any) in opposition of the Motion, the Court HEREBY FINDS that:

(1) in addition to previously satisfying the first three elements for intervention as of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure, Proposed Intervenor now also satisfy the fourth and final element: Highland Township does not adequately represent Proposed Intervenor's interests. The Court reverses its March 29, 2016 Order denying Proposed Intervenor's Motion to intervene as of right. That motion is now GRANTED to all claims and all stages in the above captioned matter. For the same reason, the Court also grants

Proposed Intervenor's Motion for permissive intervention.

(2) the Court strikes its approval and adoption of Seneca and Highland Township's Stipulation and Consent Decree (ECF No. 84).

IT IS SO ORDERED.

Dated:

Susan Paradise Baxter
Magistrate Judge