



DAMASCUS CITIZENS FOR SUSTAINABILITY

CLEAN WATER, AIR AND LAND ARE BASIC HUMAN RIGHTS

FEDERAL COURT CONFIRMS RIGHT OF NEW YORK ATTORNEY GENERAL AND ENVIRONMENTAL GROUPS TO COMPEL COMPLIANCE WITH NEPA BUT DISMISSES CASE AS PREMATURE WHILE AFFIRMING FUTURE RIGHT TO REVIEW

Damascus Citizens for Sustainability has received the September 24, 2012, opinion from the U.S. District Court for the Eastern District of New York in **The State of New York, et al. v. The U.S. Army Corps of Engineers** and is analyzing it now. DCS is pleased that the court confirmed its standing to bring this environmental impact statement case under the National Environmental Policy Act (NEPA) against the Delaware River Basin Commission (DRBC) and the other federal agencies led by the U.S. Army Corps of Engineers. However, the court dismissed the case as not being ripe for judicial review because the DRBC had not adopted final regulations allowing unconventional gas development to proceed.

Noting that NEPA requires preparation of an EIS at the earliest possible stage in a federal agency's consideration of a proposal, Barbara Arrindell, director of DCS, asked, "How can the EIS inform the agency and the public if the document isn't available to everyone during the consideration of a proposal?" Cliff Westfall, legal coordinator of DCS, added, "The whole idea of NEPA is to make environmental impact analysis the first thing rather than the last thing the federal government thinks about."

Jeff Zimmerman, legal counsel to DCS, continued, "It is for precisely this reason – the environmental review mandate of NEPA – that we will be discussing with the New York Attorney General and the other environmental group plaintiffs whether to appeal this case now or wait for further actions by DRBC and the other federal agencies." Observing that the district court had dismissed the case "without prejudice," meaning that the case can be filed again, DCS board member Joe Levine said, "If we do decide to wait for further DRBC action, we will continue to pursue full compliance with the environmental review requirements of NEPA as part of any action to allow unconventional gas development in the Delaware Basin. Hydraulic fracturing gas development will cause irreparable harm to water resources that are essential to the ecosystem and to millions of people."

Damascus Citizens for Sustainability is a grass roots citizens organization dedicated to the protection of individuals and communities from the adverse impacts of unconventional gas development in the Delaware River Basin and beyond. In December 2010 the DRBC issued proposed regulations that would allow unconventional natural gas development across the Delaware River Basin. However, DRBC did not provide any environmental impact analysis or draft environmental impact statement to provide information to the public or the DRBC commissioners to use in evaluating the proposed rules. Both DRBC and the Army Corps of Engineers made it clear that they were rejecting the repeated admonitions by DCS and others that they must comply with NEPA in conjunction with the proposed rules. In 2011 DCS joined with the New York Attorney General, The Delaware Riverkeeper Network, Riverkeeper and the National Parks Conservation Association in filing suit in federal court in Brooklyn to challenge the failure to comply with NEPA.

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