

# **U.S. Can Try to End New York Fracking Lawsuit, Judge Rules**

**Tiffany Kary, Bloomberg News Service, 8-11-11**

The U.S. government can argue to throw out a New York lawsuit seeking fuller regulation of natural-gas extraction through hydraulic fracturing, a judge ruled, as trade groups for gas producers asked to intervene in the case.

U.S. District Judge Nicholas G. Garaufis said today that the U.S. can move to dismiss the case, which pits arguments for environmental conservation against those for a domestic energy source and new jobs.

“There are constitutional issues,” Garaufis said. “It’s regulatory. It’s statutory. It’s quite a mix of arguments.”

New York Attorney General Eric T. Schneiderman sued federal agencies May 31, saying the Delaware River Basin Commission has proposed regulations that will allow hydraulic fracturing, known as fracking, at 15,000 to 18,000 gas wells without a full environmental review, affecting the drinking water of 9 million New Yorkers.

The lawsuit might shut down gas development in the Delaware River Basin “for many years to come,” according to court papers filed by trade groups representing oil and gas companies that hold natural gas leases in New York State. The Marcellus Shale, which lies beneath parts of New York, Pennsylvania, Ohio, Maryland, West Virginia and Virginia, has an estimated 400 trillion cubic feet of natural gas, one of the largest such formations in the world, the trade associations said.

## **Trade Associations**

Trade groups have standing to file briefs on the U.S. motion to dismiss the case while they seek more formal status to intervene, he said.

The U.S. said in court papers it plans to ask for dismissal of the case on the grounds that the state can’t prove injury and doesn’t have the right to sue federal agencies.

The American Petroleum Institute, the Independent Petroleum Association of America and the US Oil & Gas Association said they asked to intervene in the case to support that argument because their members -- pipeline operators, natural gas producers and other businesses -- could be economically affected.

“Very substantial natural-gas development activity is anticipated in the basin once new rules are issued by DRBC,” wrote Alex J. Kaplan, a lawyer with Sidley Austin LLP representing the trade associations.

Two of 10 federal agencies sued by New York State -- the National Park Service and the U.S. Fish and Wildlife Service -- have supported the state and urge a fuller review of fracking, making the trade groups participation even more important to protect companies and their investments, Kaplan said.

## **Lawsuit Aim**

Schneiderman’s suit seeks to halt the regulations until the commission complies with the National Environmental Policy Act’s requirement for a full review of all health and safety risks.

The Delaware River Basin covers 58 percent of the land area of New York City’s watershed west of the Hudson

River, according to Schneiderman. The region targeted for exploration is protected by a 50-year-old agreement among the U.S. government, New York, New Jersey and Delaware.

New York City has spent almost \$1.5 billion to protect the drinking water that flows from the watershed west of the Hudson, Schneiderman said in his complaint. The money has gone to buying land to serve as a buffer for pollutants, upgrading sewage plants and regulating human activity.

In Pennsylvania, natural gas and related industries have created 72,000 jobs, 3,143 well permits and more than \$1 billion in tax revenue since 2009, the trade associations said.

### **River Basin Commission**

The Delaware River Basin Commission, which oversees activities in the gas-rich area known as the Marcellus Shale, has a pending application from XTO Energy Inc., a unit of Exxon Mobil Corp., to explore in the area, and has refused to produce a full environmental impact assessment, according to Schneiderman's complaint.

Fracking is the process in which water, sand and chemicals are pumped underground to break apart rock formations and release natural gas.

More than 2,000 natural gas wells have been drilled in Pennsylvania, resulting in "hundreds of violations of water pollution laws," Schneiderman said in the complaint, citing an April 19 blowout of a natural-gas well owned by Chesapeake Energy Corp.

A separate case brought by the Delaware Riverkeeper Network that makes the same claims against U.S. federal agencies and the DRBC in Brooklyn court will be consolidated with New York State's case, the judge said today.

Damascus Citizens for Sustainability will file a similar lawsuit later today, said Jeff Zimmerman, a lawyer for the nonprofit formed in Damascus, PA, across the border from Cochection, N.Y.

The case is New York v. U.S. Army Corps of Engineers, 11- cv-2599, U.S. District Court, Eastern District of New York (Brooklyn).