

Case No. 3:16-cv-0897

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

WAYNE LAND AND MINERAL GROUP LLC

Plaintiff

v.

DELAWARE RIVER BASIN COMMISSION

Defendant

and

DELAWARE RIVERKEEPER NETWORK AND
MAYA K. VAN ROSUM, THE DELAWARE RIVERKEEPER

Intervenor – Defendant

Motion for Leave to Submit an Amicus Curiae Brief
by Damascus Citizens for Sustainability, Inc.

This case was filed by the plaintiff, Wayne Land and Mineral Group (“WLMG”), in this Court in May, 2016. The defendant, Delaware River Basin Commission (DRBC), created by a Compact of the four basin states and the federal government, moved to dismiss the case and this Court granted that motion on March 23, 2017. WLMG filed an appeal with the U. S. Court of Appeals for the Third Circuit. Following briefing and oral

argument, the Third Circuit ruled that the word, "project" in section 3.8 of the Compact is ambiguous and requires review of the intent of the drafters of the Compact. The Third Circuit reversed the dismissal and remanded the case to this Court for further proceedings.

Damascus Citizens for Sustainability, Inc. ("DCS") has participated as an amicus curiae party at each step of the case, filing an amicus curiae brief in this Court and again in the Third Circuit Court of Appeals. As the case was proceeding to briefing, the world changed and a virus took over life around the globe. In March 2020, the chief judge of the Third Circuit issued a general order suspending all hearings and proceedings due to public health concerns. This order was extended through June 30, 2020. DCS is requesting leave to submit an amicus curiae brief in this case within 17 days of the expiration of the most recent general order on June 30, 2020. In other words, by Friday, July 17, 2020. DRBC and DRN have no objection to DCS filing an amicus brief in this case. WLMG opposes this motion.

The purpose of our amicus brief is to better inform this Court about the intent of the drafters of the Rules and Regulations of the DRBC and Compact to both clean up the existing pollution in the River but also to prevent future contamination. Additionally we want to explain the

extraordinary legal context, involving many exemptions to laws other industries must follow, within which the oil and gas drilling (exploration and production) industry is allowed to operate. It is this situation that would leave a largely unprotected river in a legal and regulatory vacuum if the authority of the DRBC in this case is not affirmed.

DCS is a non-profit 501(c)(3) grass roots citizens group focused on protection of public health and the environment from impacts and pollution caused by oil and gas development using hydraulic fracturing and horizontal drilling, including production and related activities and infrastructure (hereafter "fracking."). Many of DCS's nearly 5000 members live, work, have interests in, and recreate in the Delaware River Basin. Millions of others, such as residents of New York City, rely on water from the Basin for drinking and other potable water uses. DCS and its members rely on the Compact and its implementation by the Delaware River Basin Commission to review and regulate any and all projects that may have an adverse effect on the waters of the Basin and, by extension, public health and the environment of the Basin.

Since its inception in 2008 DCS has seen a growing number of cases where individuals and communities outside the Basin have suffered serious health impacts from pollution caused by fracking near their homes and communities or upstream from them. DCS and its members are very

concerned that similar types of fracking impacts would occur in the Basin if fracking activities are determined to be beyond the control of DRBC. To the best of our knowledge, no one who lives, works, or recreates within the Basin has experienced such health impacts as yet for one and perhaps only one reason. That reason is the DRBC moratorium on fracking projects and the protections built into the Compact and the regulatory controls established and enforced by DRBC. Our Amicus brief will discuss further why a development like WLMG's 'well pad' must be a 'project' under DRBC review, oversight and possible denial.

Respectfully submitted,

John J. Zimmerman
Pro hac vice D.C. Bar 186429
Zimmerman & Associates
13508 Maidstone Lane
Potomac, Maryland
zimmermanjj@verizon.net
(240) 912-6685
(301) 963-9664 (fax)
Attorney for
Damascus Citizens for Sustainability

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PROPOSED ORDER

AND NOW, this ____ day of July, the motion for leave to file an amicus brief by Damascus Citizens for Sustainability, Inc.(DCS) is hereby granted.

DCS may submit its amicus curiae brief by Friday, July 17, 2020.

By the Court, _____, Robert D. Mariani, Judge.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2020, the foregoing Motion for Leave to File an Amicus Curiae Brief by Damascus Citizens for Sustainability was electronically filed with the Clerk of the Court via the NextGen CM/ECF system, which will send notice of the electronic filing to all counsel of record.

Dated this 14th day of July, 2020

/s/ John Zimmerman