

A Brief History of the John Smoke Commercial Water Extraction Project

[Note: these are abbreviated, and are roughly arranged in chronological order.]

- 1** - In 2000 Mr. Smoke bought a [15± acre Greig \(NY\) residential parcel](#), with springs on it. He subsequently bought other parcels of land so that he now owns 200+ acres. In that period he solicited the support of the then Town Supervisor (Donald Schneider) for a commercial water extraction business.
RESULT: Mr. Smoke succeeded in getting that support.
- 2** - Shortly after winning over the Supervisor, Mr. Smoke tried recruiting Greig Town Board members to support his venture.
RESULT: Smoke succeeded with only one Town Board member.
- 3** - During this period, Mr. Smoke apparently tried to keep his efforts to get Town approval of his business under the radar, while he capped multiple well-heads and did other construction work (apparently without permits).
RESULT: Smoke was initially successful in this, but in 2004 a petition was circulated, and an email list was started. Many local citizens then became alerted to what was happening. At two Greig [public hearings](#), essentially all of the 200± letters and statements by local property owners were opposed to the Project.
- 4** - Once the Project became public knowledge, Mr. Smoke played down environmental concerns, and focused his appeal on economics.
RESULT: Greig citizens successfully exposed the economics as being trivial, and the likely [environmental impacts](#) as substantial. Citizens were able to get the Town to pass a water extraction moratorium, while the Town developed an effective local ordinance.
- 5** - The Town paid for a [hydrological report](#): minimizing the Project's impacts. The main limitation of this study is that there were no actual tests done — e.g. there were no borings made. Since there were primary questions about how the aquifer would be affected, an “above ground” study that was almost entirely speculative, did not seem adequate. However, since the Town's leadership at that time was promoting this Project, such a report was not surprising.
RESULT: Local citizens paid independent hydrologist Dr. Beinkafner (Mid-Hudson Geosciences) to do a [critique](#) of the town's report. She concluded that there were serious unanswered environmental questions... For additional information, here is a local [aquifer report](#). Note that Lewis County has probably the [largest aquifers](#) in NY state!

- 6** - A contention of Mr. Smoke (and his allies), is that he “owns” the water he wants to remove and sell. It is the view of many that water is a community asset ([Public Trust](#)), and that no one “owns” the water that is flowing through their property. Read this [good report](#) about privatizing water.

RESULT: Greig citizens soon voted out the supporting supervisor, Mr. Schneider, who then tried to get reelected twice. He was defeated all three times by pro-citizen candidate, Marilyn Patterson.
- 7** - Smoke made a [financial pitch](#) to the Town of Turin, to get them onboard.

RESULT: The lure of a million± square foot trucking/bottling facility (just over the Greig line in Turin) succeeded in getting their support.
- 8** - Smoke made an economic pitch to the Lewis County Manager, to get him and his agencies to pressure Greig into going along with the project.

RESULT: Smoke’s pitch about the building and its possible employment was successful. The county did (inappropriately) exert pressure on the Town. Due to Greig citizens objecting to this interference, and a variety of other events, the County Manager was replaced. Here is our [List of Reasons](#) we are against such an extraction.
- 9** - All this time Mr. Smoke was proposing a commercial truck loading facility on a residentially zoned property in Greig. Smoke tried to make an end run around the zoning issue by getting the Greig Planning Board to approve him constructing a [commercial building](#) on his residential parcel.

RESULT: Greig citizens exposed this tactic for what it was (a poorly disguised attempt to get his foot in the door), and the Planning Board voted down the application for that building.
- 10**-Smoke appealed the Planning Board’s denial to the Greig ZBA.

RESULT: Greig citizens again exposed this maneuver for what it was, and the Town Zoning Board of Appeals (ZBA) also voted it down.
- 11**-Smoke [sued the Town](#) of Greig over the Planning Board and ZBA denials.

RESULT: The Court [ruled](#) that the Town acted within it’s rights.
- 12**-Smoke appealed the failed lawsuit result.

RESULT: The NYS Appeals Court also [determined](#) that the Town acted within it’s rights to deny the commercial building.
- 13**- Knowing that it needed a stronger position to successfully fight this assault (Mr. Smoke went through four lawyers), the Town extensively researched and then passed (July 2010) a modification of its [Zoning Law](#) (section 643) that specifically dealt with commercial water extraction.
- 14**-Starting early on in this extended process, there were local citizens who felt that the Town needed additional legal assistance. For example, Greig resident Rose Pettit hired an attorney ([Deanna Nelson](#), esq) to provide legal help. Deanna proved to be an invaluable ally, and other citizens also contributed to pay for her worthwhile counsel.

15-It was expected that the Brantingham Community Association (BCA) would also take an active role in protecting the community. The BCA [Bylaws](#) specifically authorize the organization: “To assist in the representation of its entire membership in governmental matters of general interest, e.g.: taxation, zoning...” Unfortunately the BCA has so far stood on the sidelines. We hope that this will soon be rectified.

16-Partly in response to BCA inaction, the Brantingham Preservation Group (BPG) was formed. During this protracted engagement, Rose Pettit passed away and Deanna Nelson was [promoted](#) to the state’s Attorney General’s office... The BPG then used financial contributions from local citizens to hire environmental attorney [Dan O’Brien](#) (Rochester) to periodically assist the Town... This good video came out about the [bottle water business](#).

17-Smoke tried to take some of the control of this issue out of the Town of Greig’s hands by getting NYS DEC to be the lead agency.

RESULT: We adamantly [opposed this](#), but the Town (unfortunately) went along with this tactic, and the state took over this process.

18-As expected, in 2009-2010 the NYS DEC oversaw an EIS ([environmental assessment](#)). During this process there were several excellent submissions, esp local Geologist/Hydrologist Judy Dain’s [report](#), the [comments & study](#) from the [Adirondack Council](#), and the [report](#) from [Adirondack Wild](#). The assistance provided by these and other environmental groups (for several years), has been invaluable.

RESULT: Despite substantial unresolved environmental questions, the DEC [concluded](#) that there would be no adverse environmental consequences to this Project! The worst thing is that (despite having good supporting reports) *no one officially objected to DEC’s conclusion!*

19-As an additional parallel effort, the State was approached by Greig citizens to enact a statewide *commercial water extraction law* (there was none). After considerable effort by a coalition of environmental [groups](#), this was accomplished in 2011. (See this [story](#), some [background](#), and some [commentary](#).) Unfortunately, due to political pressures, several substantial compromises were made with this bill. The bottom line is that it does **not** offer adequate protection for the situation in Greig.

20-Smoke [sued](#) the Town of Greig that their 2010 Water Law was illegal.

RESULT: the Court determined that the Town overstepped its rights.

21-Smoke then went back to the Town Planning Board, and proposed just one element of his Project: a mile-and-a-half pipeline from his Greig property, under other properties, then under the Black River, under more properties, out to the proposed bottling facility in Turin (on Burdicks Crossing Road), roughly across from the River Valley Inn.

RESULT: The Planning Board rightly turned down that application.

- 22-**Smoke then [sued](#) again, saying the Planning Board denial was improper.
RESULT: The judge didn't say that the Planning Board was wrong, but [directed](#) them to rehear the case.
- 23-**A public hearing was scheduled for April 3, 2014. There were numerous written comments submitted, with the vast majority opposing the Project. The Planning Board put off making a decision until their May meeting.
RESULT: At the May meeting the Planning Board dismissed the citizens complaints because most of their arguments were based on environmental concerns. The Planning Board stated that they were accepting the DEC's determination that there were no environmental issues (*although they were **not** required to do that*). As a result the Planning Board *approved* the Smoke project application for the mile-and-a-half± pipeline — subject to the Town granting the Smokes' permission to extract the water. [Note: the minutes of Planning Board meetings now appear on the [Town's website](#).]
- 24-**After this surprising decision, there should be a formal objection filed against it, for several reasons. For example, The Planning Board should not have even heard the case until Mr. Smoke has ALL of his permits in place. A required pipeline permit (from the Army Corp of Engineers) had expired. Unfortunately, no objection was filed against this decision during the 30 day time limit required to do so.
- 25-**On the other hand, the Smokes *did* file a timely [formal objection](#), opposing the Planning Board's specifying any conditions on their proposed water extraction pipeline. There was a court hearing about this on October 21, 2014. In later November, the court [ruled](#) in the town's favor, concluding that the Town does have a right to regulate commercial water extraction.
- 26-**Greig residents Chip and Lorrie Benzing (who own property next to the Smoke's) filed in early 2014 with the court to have "[Intervenor](#)" status. That would give them more of a platform for being an official party to this legal matter. This was initiated and financed by the BPG.
- 27-**The Smoke's lawyer [formally objected](#) to the Benzings' Intervenor application, stating that it was not timely *and* that the Benzings had no different grounds to object, other than what the Town already had. The Benzings were granted [Amicus](#) status, which is lesser than Intervenor.
- 28-**In early 2014, environmental attorneys hired by the *Adirondack Council* sent us a draft of a proposed [new ordinance](#). This would replace the Greig regulations which the court ruled were improper. The basic thrust of this proposed law is that the Town would define a list of prohibited uses. Those items would be uses that undermine the environment, devalue property, etc. This approach requires that the Town have a *Comprehensive Plan*. In early 2014 the Town had their first meeting to develop this *Plan*. One result was that a [Survey](#) was created, and sent to all property owners. There were 600+ responses and here are the [results](#).

29-Another ordinance option that should be considered is to follow the direction proposed by the [Community Environmental Legal Defense Fund](#) (CELDF). They take a different tack than the *Adirondack Council* lawyers, as their focus is on corporations and citizen rights. Here is a [sample](#) of a CELDF based law enacted in New Hampshire.

30-The Smokes filed an appeal to the ruling in the Town's favor (see item #25). In April of 2016, the Court again sided with the Town. See this [decision](#) — confirming that the Town does have the right to regulate this commercial water extraction project. *Hopefully this will end this protracted matter!*

Bottom Line —

By taking counter-measures, Greig citizens have been able to defeat some of the strategies put forth by Smoke and his backers (e.g. likely Nestle).

This effort has only succeeded to date due to the persistence of citizens and their elected representatives. Until the fat lady sings, we need to aggressively and intelligently fight this threat at *every* opportunity provided.

Volunteers are needed to assist with a variety of clerical and other matters. Please email us if you would like to contribute to the excellent efforts that have resulted in the community success we've had to date.

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Note: *We have tried to reconstruct an outline of what has transpired here to the best of our recollection. Since it covers a 10± year period, there well may be aspects we forgot to include, or others where there may be an error. Please email us the specifics about any of these and we will update this document.*