

LAW OFFICE OF:

ROBERT P. GING, JR., P.C.

COUNSELOR AND ATTORNEY AT LAW

2095 Humbert Road

Confluence, PA 15424-2371

(814) 395-3661

November 22, 2010

John Hanger, Secretary
PA DEP
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101


RE: BROCKWAY BOROUGH MUNICIPAL AUTHORITY VS.
FLATIRONS DEVELOPMENT, LLC ET AL.

Dear Secretary Hanger,

Pursuant to §601 of the Clean Streams Law enclosed please find a Complaint in Equity which has been filed in the Court of Common Pleas of Jefferson County.

Please be advised that the 60-day Notice required under Section 601 was not provided, as we relied upon §601(f) to file the lawsuit. We believe that the actions set forth in the Complaint constitute an imminent threat to health or safety and would immediately affect a legal interest of the Plaintiff.

I thank you for your courtesy and cooperation.


Bob Ging

BG/rae
c/Brockway Borough Water Authority

Enclosure

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(814) 395-3661

November 22, 2010

Tonya Geist, Prothonotary
Court of Common Pleas of Jefferson County
Courthouse
200 Main Street
Brookville, PA 15825

RE: BROCKWAY BOROUGH MUNICIPAL AUTHORITY VS. FLATIRONS
DEVELOPMENT, LLC; FORCE, INC., AND NEW GROWTH RESOURCES

Dear Ms. Geist,


Enclosed please find an original and three (3) copies of a Complaint in Equity which we would like to file with the Court. I have also enclosed a self-addressed, stamped envelope and additional cover sheet which we would appreciate you time stamping and returning.

I have also enclosed a check in the amount of \$124.00.

Once you have clocked the Complaints in, could you have them delivered to the Sheriff for service. A copy of the service directions to the Sheriff and checks are also enclosed.

Should you have any questions please don't hesitate to contact me.

BG/rae
c/Brockway Borough Municipal Authority



Bob Ging

Enclosures

LAW OFFICE OF:

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(814) 395-3661

November 22, 2010

Carl J. Gotwald, Sheriff
Jefferson County
Courthouse
200 Main Street
Brookville, PA 15825

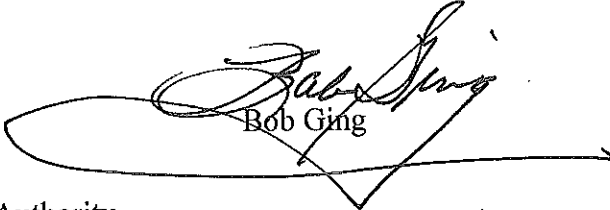
RE: BROCKWAY BOROUGH MUNICIPAL AUTHORITY VS.
FLATIRONS DEVELOPMENT, LLC ET AL.

Dear Sheriff Gotwald.

Kindly serve the enclosed Complaint and Writs on Flatirons Development, LLC, 910 Beaver Drive, Dubois, Pennsylvania 15801; Force, Inc., 1077 Route 119 Highway North, Indiana, Pennsylvania 15701; and New Growth Resources, P. O. Box 805, Kane, Pennsylvania 16735.

In the alternative, all parties can be found on the property of the Brockway Borough Municipal Authority in Snyder Township, Jefferson County, on Bundy Settlement Road.

Should you have any questions do not hesitate to contact me.


Bob Ging

BG/rae
c/Brockway Borough Municipal Authority

Enclosures

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

JEFFERSON County

For Prothonotary Use Only:

Docket No:

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint
 Writ of Summons
 Petition
 Notice of Appeal
 Transfer from Another Jurisdiction
 Declaration of Taking

Lead Plaintiff's Name:

Brockway Borough Municipal Auth.

Lead Defendant's Name:

Flatirons Development LLC

Check here if you are a Self-Represented (Pro Se) Litigant

Name of Plaintiff/Appellant's Attorney: Robert P. Ging, Jr.

Are money damages requested? : Yes No

Dollar Amount Requested: _____ within arbitration limits
(Check one) _____ outside arbitration limits

Is this a *Class Action Suit*? Yes No

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Label/Defamation
 Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other

 Employment Dispute: Discrimination
 Employment Dispute: Other

 Other: _____

CIVIL APPEALS

- Administrative Agencies**
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Zoning Board
 Statutory Appeal: Other

Judicial Appeals
 MDJ - Landlord/Tenant
 MDJ - Money Judgment
 Other: _____

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: _____

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure
 Partition
 Quiet Title
 Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other: _____

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional: _____

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY

BROCKWAY BOROUGH MUNICIPAL)
AUTHORITY,)
Plaintiff)

VS.)

FLATIRONS DEVELOPMENT, LLC.,)
FORCE, INC. and NEW GROWTH)
RESOURCES,)
Defendants)

CASE NO.)

TYPE OF PLEADING:
COMPLAINT IN EQUITY)

FILED ON BEHALF OF:
Brockway Borough Municipal Authority)

COUNSEL OF RECORD:)

ROBERT P. GING, JR., ESQUIRE)
PA Id. No. 25459)
2095 Humbert Road)
Confluence, PA 15424-2371)
(814) 395-3661)

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY

BROCKWAY BOROUGH MUNICIPAL)	
AUTHORITY,)	
Plaintiff)	
)	
VS.)	CASE NO.
)	
)	
FLATIRONS DEVELOPMENT, LLC.,)	
FORCE, INC. and NEW GROWTH)	
RESOURCES,)	
Defendants)	

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Laurel Legal Services, Inc.
18 Western Avenue, Suite 1
Brookville, PA 15825
(814) 849-3044

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY

BROCKWAY BOROUGH MUNICIPAL AUTHORITY,)	
)	
Plaintiff)	
)	
VS.)	CASE NO.
)	
)	
FLATIRONS DEVELOPMENT, LLC., FORCE, INC. and NEW GROWTH RESOURCES,)	
)	
Defendants)	

COMPLAINT IN EQUITY

AND NOW comes the Plaintiff by its attorney, Robert P. Ging, Jr. and sets forth the following Complaint in Equity.

PARTIES

1. Brockway Borough Municipal Authority, (hereinafter "the Authority") is an authority incorporated under the laws of the Commonwealth of Pennsylvania, and an instrumentality of the Commonwealth.

2. Flatirons Development, LLC (hereinafter "Flatirons") is a Delaware Limited Liability company having a business address of 910 Beaver Drive, Dubois, Pennsylvania 15801, and is the Permittee under DEP Sedimentation & Erosion Control Permit ESX10-065-0014.

3. Force, Inc. has its principal place of business a 1077 Rt. 119 Highway North, Indiana, Pennsylvania 15701, and is the contractor who will be constructing the impoundment.

4. New Growth Resources is a timber contractor, and is the entity which will be conducting the timber harvest in preparation for the impoundment. New Growth Resources' principal place of business is P. O. Box 805, Kane, Pennsylvania 16735.

BACKGROUND

5. On or about August 4, 2010 Brockway Borough Municipal Authority (hereinafter "the Municipal Authority") entered into a surface use and damage agreement with Flatirons Development, LLC. A copy of that agreement is attached hereto and incorporated herein by reference as Exhibit 1. That agreement involved only one parcel of land in Snyder Township, Jefferson County, Pennsylvania, Tax Map Parcel No. 33-27-111.

6. The Authority currently owns over 4,000 acres of forested watershed land in Elk County and Jefferson County, Pennsylvania.

7. Surface water is withdrawn at two points, one on the Whetstone branch in Horton Township, and one on Rattlesnake Creek in Snyder Township, Jefferson County.

8. The Whetstone branch is classified as a cold water fishery, and Rattlesnake Creek is classified as a high quality cold water fishery in 25 Pa. Code §93.9(r).

9. In addition to using surface waters the Authority has drilled three wells, two in the Whetstone watershed and one in the Rattlesnake watershed from which it obtains water.

10. The Authority has available to it 1,500,000 gallons per day of surface water, subject to reduction for pass by flow compliance. The Authority has available to it 1.08 million gallons a day of groundwater.

11. The Authority has approximately 2,000 customers, both residential and commercial who

rely on the Authority to provide both potable and high quality water suitable for commercial use.

12. Brockway's water system also serves two glass container factories.

13. The average daily demand on the Water Authority is approximately one half million gallons a day.

14. All flows of water through the Authority's system are treated at either the Whetstone filter plant or Rattlesnake filter plant. Both plants use slow sand, low load filtration technology, with chlorine, fluoride and corrosion inhibitor added after filtration.

15. These systems are currently economical to operate due to the pristine nature of the water in the surface and groundwater sources.

16. The Authority currently lacks sufficient revenue to pay for significant capital projects, such as replacing the slow sand filters in the event that pollution occurs to either the surface or groundwater sources.

17. There is no other source of public water available to the Authority's 2,000 customers, and no other potential sources of water in the event that these supplies become polluted.

THE MARCELLUS PLAY

18. The Marcellus shale is a black shale of middle Devonian age that underlies parts of Pennsylvania including the watersheds owned by the Authority.

19. As a result of advances in the technologies of hydrofracking and horizontal drilling, wells currently being drilled in the Marcellus formation are some of the most productive wells in the eastern United States.

20. In order to extract gas from the Marcellus formation, large drilling pads are constructed

on four to ten acres of property.

21. The process of hydrofracking involves the injection of water and chemicals, some of which are hazardous, into the earth, at high pressure, to release the gas deposited in the dense Marcellus shale formation.

22. The water used in hydrofracking must not only be brought to the site, but the fracking fluid must be taken from the site to an approved treatment facility.

23. The process of hydrofracking one well will involve thousands of truck trips to and from the site of the proposed well.

24. In drilling for gas in the Marcellus formation the operator of the gas well builds substantial impoundments, some of which store fresh water and others of which may store fracking water. These impoundments are a convenience and not a necessity. Flatirons has advised the Authority it is building a 10 million gallon impoundment and clear cutting 23 acres of certified sustainable yield timber on November 22, 2010.

25. Building roads, impoundments, transmission lines and well pads disturb a tremendous amount of earth, with the potential to substantially impact the Authority's water supplies.

26. Gas production from the Marcellus shale in Pennsylvania has polluted water supplies, allowed the migration of methane gas into water supplies, and otherwise impacted water supplies.

PERMITTING AND ENFORCEMENT

27. Permitting is primarily authorized by the Pennsylvania Oil & Gas Act, 58 P.S. §101 et seq.

28. Permit applications are de minimus, do not involve environmental assessments, resource

protection, or alternatives analysis. Two permit applications submitted to the DEP by Flatirons Development, LLC are attached hereto and incorporated herein by reference as if fully set forth as Exhibits 2 and 3.

29. Operators of gas wells are also required to obtain a permit from the Department of Environmental Protection pursuant to 25 Pa. Code §102.5.

30. The Department currently regulates earth moving activities involved with Marcellus shale drilling by general permit. A copy of the general permit issued to Flatirons Development, LLC is attached hereto as Exhibit 4. The general permit as approved is not site specific and does not address potential pollution of the Authority's surface and groundwater sources.

31. General permit applications typically contain a minimal amount of information, and are infrequently inspected, if inspected at all by the Pennsylvania DEP.

32. The general permit imposes conditions on Flatirons including a condition that if the Erosion & Sediment Control and Stormwater Management Plans practices fail to achieve their intended purpose that the Permittee shall investigate the reason for failure and take necessary corrective actions which may include modification of existing BMPs or the design and construction of additional BMPs.

33. In the event of a failure of an impoundment or other Erosion & Sedimentation Controls, the Authority would be immediately and irrevocably harmed, and its customers could be without water.

THERE IS NO AGREEMENT OR EASEMENT FOR THE PROPERTY WHERE FLATIRONS WILL CONSTRUCT A 10 MILLION GALLON IMPOUNDMENT.

34. The surface use and damage agreement and easement dated July 14, 2010 covered only the property on Tax Map Parcel No. 33-271-111.

35. The proposed impoundment is being constructed on another portion of the Authority's property not covered by that agreement.

36. The timber on the Authority's property is currently managed under a timber management plan.

37. Forced clearing of 23 acres to create the impoundment will reduce the future value of the timber currently being managed under the Timber Management Plan. The Authority will not be compensated for the loss of value to its timber.

POTENTIAL WATER POLLUTION

38. The Flatirons' drilling project is called the Dannie No. 4 Project and involves installing approximately 10,014 feet of gas lines (two separate lines) to lay multiple existing well pad sites together; constructing a ten million gallon fresh water impoundment and constructing in an approximate 230 by 290-foot water truck loading site and operations staging area.

39. The project is in Horton Township, Elk County and Snyder Township, Jefferson County.

40. The project will commence with the clear cutting of a 23-acre area of the Authority's property, and the approved Sedimentation & Erosion Control Plan does not contain any information suggesting that sedimentation and erosion controls would be in place when the original clear cut is conducted. Flatirons has advised the Authority that it will revise its Sedimentation & Erosion

Control Plan in the field on November 22nd and lessen the already diminished protection of the water supply.

41. Although the approved Sedimentation & Erosion Control Plan (“E & S”) indicates that E & S controls will be installed prior to activities such as tree cutting and excavation, the Authority has been advised that tree cutting will commence on November 22nd, and there are no sediment and erosion controls currently installed.

42. At other locations on the Authority’s property where Flatirons required timber removal, the E & S controls were not installed until after the tree cutting and excavation began, contrary to the provisions of the approved E & S Plan.

POTENTIAL POLLUTION FROM FRACKING FLUID

43. The hydrofracking of any of the wells in the Dannic Project will require millions of gallons of water and create millions of gallons of frac fluid for each well.

44. Despite environmental regulations, on June 3, 2010 EOG Resources spilled more than 35,000 gallons of hydraulic fracturing fluids into the air and onto the surrounding landscape in a forested area in Clearfield County, Pennsylvania.

45. Chemicals which can be used in the fracturing fluid include but are not limited to kerosene, benzene, toluene, xylene, and formaldehyde.

46. Any of these chemicals which would find their way into the Authority’s water supply, and/or increased total dissolved solids associated with brine, could upset the operation of the treatment facilities and destroy the Authority’s ability to provide potable water.

47. The Field Preparedness, Prevention & Contingency Plan (PPC) prepared by Flatirons

Development, LLC contains no provisions for notifying the Authority in the event of a spill.

48. The PPC also classifies certain spills of hazardous material as “incidental”.

49. The PPC contains no site specific provisions relating to threats to the Authority’s water supplies.

50. The PPC suggests that drill cuttings, approximately 5,000 cubic feet of cuttings, will be handled at the location of the drilling in manners including solidification and encapsulation, in situ. This has a potential for groundwater contamination.

THE PROJECT, AS OPERATED, IS A PUBLIC NUISANCE.

51. Flatirons’ use of the Authority’s property is unreasonable and a public nuisance.

52. Section 401 of the Clean Streams Law, 35 P.S. §691.401, prohibits discharges into the waters of the Commonwealth and declares such discharges to be a nuisance.

53. Section 402 of the Clean Streams Law, 35 P.S. §691.402 makes the operation of the Flatirons project, in violation of its Sedimentation & Erosion Control Permits, a nuisance.

54. Section 503 of the Clean Streams Law, 35 P.S. §503, makes violations of any regulation adopted by the DEP a nuisance abatable in the manner provided by the Act.

55. 35 P.S. §691.601 allows the commencement of a suit in the Court of Common Pleas having jurisdiction of such actions.

56. Although a 60-day notice is typically required to commence an action pursuant to the Clean Streams Law, §601(f) of the Clean Streams Law provides that an action may be initiated immediately in a case where there is an immediate threat to health or safety or where the activity would immediately affect the legal interests of the plaintiff. The operation of the Flatirons project

in violation of its Sedimentation & Erosion Control Permit constitutes a threat to health or safety and affects the legal interest of the Plaintiff.

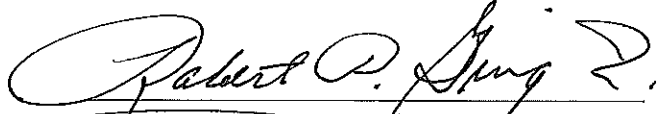
For the reasons set forth herein, the Authority respectfully requests this Honorable Court to enjoin any further activity on the Authority property until such time as an agreement has been entered into by and between the Authority and Flatirons, that the Authority will not suffer any additional monetary damages as a result of forced cut timbering, and that the water supply operated and maintained by the Authority will remain free from pollution, and potable.

For the reasons set forth herein, in addition, the Authority respectfully requests the following relief:

1. That an injunction be issued prohibiting the construction of any impoundments, wells, pads, electric or pipelines until Flatirons demonstrates to the Court that the Brockway water supply will be protected.
2. That Flatirons be required to conduct a groundwater study to assure that the Authority's water supply will not be polluted.
3. That Flatirons be required to prepare and implement a site specific Sedimentation & Erosion Control Plan, and Stormwater Management Plan, so as to assure that there will be no pollution to the Authority's water supplies.
4. That Flatirons be required to provide the Authority with 120 days' notice of any construction activity conducted on the Authority's property.
5. That Flatirons be required to submit copies of applications for any permits to the Brockway Municipal Authority at the time they are submitted to any regulatory authority.

6. That Flatirons is prohibited from cutting any trees on the property.
7. That Flatirons is prohibited from engaging in any construction activities within 2,500 linear feet of any Authority well or surface impoundment.
8. That Flatirons be required to remove from the Authority's property any and all drill cuttings, frac material, or any waste material including brine generated by its gas drilling operation.
9. That Flatirons develops a contingency plan for addressing pollution of any Borough water supply, for the approval of the Authority.
10. That Flatirons conducts water quality monitoring immediately, and thereafter on a monthly basis, to assure there is no contamination to the Authority's water supplies. Flatirons shall sample the Borough wells, and Borough reservoirs, for all oil and gas parameters, and for total dissolved and total suspended solids. Prior to developing any other areas of the Authority's property Flatirons shall conduct a comprehensive hydrologic investigation of the Authority's surface water collection system.

Respectfully submitted,

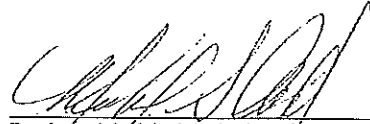


Robert P. Ging, Jr., Esquire

VERIFICATION AFFIDAVIT

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief.

I understand that statements herein are made subject to the penalties of 18 Pa. C.S., §4904, relating to unsworn falsifications to authorities.



Brockway Municipal Authority