

Public water supplies in eastern Ohio threatened by mining

Clean water is essential to all of us. Any time there is a threat to the continued use of one of the cleanest sources of water in the state, such as the reservoirs around Barnesville in eastern Ohio, it should get the protection of our state officials. Under former Gov. Taft the Ohio Department of Natural Resources fell short in its responsibility to adequately protect Ohio's residents from the harmful impacts of coal mining in the Barnesville area.

In 2001, the Village of Barnesville and Warren Township Trustees filed a Lands Unsuitable Petition with the Ohio Division of Mineral Resources Management for an area roughly one mile around the corporate limits of Barnesville, with exceptions for existing mining. This would make certain that no new mining could occur near sensitive areas near the Village's public water supply. The Barnesville water supply system provides potable water to over 2,000 village residents, and additionally supplies the Villages of Bethesda, Quaker City, Beallsville, Jerusalem, Miltonsburg and Wilson, Ohio. Barnesville and the local citizens have been trying to create a buffer around the village to protect the current and future reservoir valleys since the 1970s.

The goal was not to stop coal mining - for mining is an economic lynchpin for this area of the state - but to protect an even more important resource - a supply of clean, drinkable water. According to experts testifying before ODNR on this issue, "IF Barnesville is to continue to survive for another 100 years, the community must be able to secure and ensure a safe public water supply for themselves and their less fortunate neighbors."

The petition was denied by the Chief of the Division of Mineral Resources Management under the Taft Administration, and an appeal to the Ohio Reclamation Commission later affirmed his decision. The case currently is in the Seventh District Court of Appeals for Belmont County.

A Lands Unsuitable for Coal Mining Petition, under Ohio Revised Code §1513.073, can be granted for any of several reasons. OEC's Law Clinic analysis of this case has determined that Barnesville's petition meets three of these. First, mining in the area is incompatible with existing plans from the Southeast Water Plan, ODNR-Division of Water, 1978; Water Inventory of Muskingum River Basin, ODNR-Division of Water, 1968; and Village of Greenbelt Plan, Barnesville Planning Commission, 1973. All of these plans



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are opposed to mining in the area in question. Second, various historic, cultural, aesthetic, and natural systems will be harmed by mining in the area in question. Finally, and of utmost significance, the mining will affect land in which operations could result in a **substantial loss or reduction to water supplies.**

The State of Ohio has noted in its legal briefs on this case that it is afraid to grant a Lands Unsuitable Petition after a devastating ruling in a recent Ohio Supreme Court case cost the state over \$5 million. That case, *State ex rel. R.T.G. v. State of Ohio*, held that granting such petitions *could* result in an unconstitutional taking of minable coal by the State such that compensation was required. However, if that is the lone rationale, the Lands Unsuitable for Coal Mining Petition law is meaningless - and so perhaps are many current water Supplies in eastern Ohio.

The ideal solution would be for the Strickland administration and ODNR's Division of Mineral Resources Management to reconsider its predecessor's denial of the Lands Unsuitable Petition. Barring this, we hope the Seventh District Court of Appeals for Belmont County will hold that the petition was not given fair consideration by the Chief and should either be granted or re-examined. However, this case will undoubtedly be decided at the Ohio Supreme Court - where a precedent (good or bad) may be set for the entire state for generations to follow. In the end it may take action by the Ohio General Assembly to ultimately fully protect our natural drinking reservoirs.