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GREAT SACANDAGA LAKE

Lake group ruled a party in lawsuit
Organization formed to fight challenges to permit system

BY JASON SUBIK Gazette Reporter

A federal judge Thursday ruled the Sacandaga Protection Committee can intervene in a lawsuit threatening the legality of the Hudson River Black River Regulating District's access-permit system for the Great Sacandaga Lake.

U.S. District Judge Norman Mordue ruled the SPC can intervene in the suit filed by Niagara Mohawk Power Corp., doing business as National Grid, against the HRBRRD. Mordue ruled the members of SPC have a legal interest in the fate of the permit system because it materially affects the value of SPC members' land next to the state-owned shoreline of the lake. The permit system grants exclusive access to the shoreline by permit holders.

"Many constituents of SPC are permit holders. SPC was well organized and well funded to launch a legal and political fight to ensure the current permit access system remained unchanged," wrote Mordue in his decision.

National Grid's lawsuit claims it has been forced to pay fees to HRBRRD that underwrite the cost of implementing what it argues is an unlawful access permit system for the Great Sacandaga Lake.

National Grid spokesman Patrick Stella said the suit is part of a series of legal actions filed against HRBRRD seeking repayment of assessment fees levied against vacant strips of lands his company owns. The lands were broken off from parcels containing power plants National Grid sold when it acquired the distribution network of the Niagara Mohawk Power Corp.

Mordue's ruling legitimizes the fledgling SPC as a legal advocate for the interests of property owners around the Great Sacandaga Lake. The group was founded in May 2009 in reaction to rules changes to the permit system proposed by the state Department of Environmental Conservation. The changes would have ended the decades-old permit system and transformed the land into a free public park, while restricting any grooming of the land.

SPC didn't get a chance to battle DEC's proposed rules changes in court. Gov. David Paterson ordered the permit system reforms withdrawn in June 2009 to "... consider the implications such changes would have on the region's environment and economy."

SPC Co-chairman Joe Sullivan said his organization has about 2,000 members and has raised \$160,000 for the defense of the permit system on any legal front. He said the fight against National Grid's lawsuit is the same as the fight against DEC's proposed rules changes because both would effectively end the permit system.

"If the permit system were abolished it would be detrimental to the whole community. It would be unmanageable. You'd have a 129-mile public beach," Sullivan said. "If the homeowners around the lake don't have use of the land in front of the lake their property values could fall, in some estimates as much as 40 percent. The rest of the taxpayers of Fulton County would have to make up that difference."

One argument SPC made for intervention in the lawsuit was the uncertainty surrounding whether HRBRRD will have enough money for its own legal defense.

The regulating district lost its ability to assess fees to hydroelectric plants licensed by the Federal Energy Regulatory Commission in 2008, which wiped out about 80 percent of the district's Hudson River-area operating budget. The ruling also eliminated the fees going forward for the lands National Grid argues should never have been assessed in prior years.

HRBRRD Executive Director Glenn LaFave said the regulating district is in a funding crisis and is trying to address it by levying flood control fees on county governments while also lobbying the state Legislature to pass a law enabling HRBRRD to borrow against the value of its Black River-area reserves to pay for its Hudson Riverarea operations, including defense of National Grid's lawsuit. He said HRBRRD will defend the lawsuit as long as it is able to.

"We have to defend it as long as we can. The regulating district does not feel that we can give up on the permit system. We feel we have the authority to operate a permit system and I think most permit holders would want us to continue to operate a permit system," LaFave said.

The court has given the SPC 15 days starting from last Thursday to file legal briefs in the case.