

**IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO
Tenth Appellate District**

State of Ohio, *ex. rel.*)
Concerned Ohio River)
Residents,)
P.O. Box 135) Case No. _____
Bridgeport, Ohio 43912,)
)
FreshWater Accountability)
Project)
P.O. Box 473) Original Action in Mandamus
Grand Rapids, Ohio 43522,)
)
Buckeye Environmental) **ORAL ARGUMENT**
Network) **REQUESTED**
P.O. Box 824)
Athens, Ohio 43123,)
)
Ohio Valley Environmental)
Coalition)
P.O. Box 6753)
Huntington, West Virginia)
25773-6753,)
)
and)
)
Sierra Club)
503 S. Front St. Suite 210)
Columbus, Ohio 43215)
)
Relators,)
)
-vs-)

)
Mary Mertz, Director, in her)
official capacity)
Ohio Department of Natural)
Resources)
2045 Morse Rd.)
Columbus, OH 43229-6693)
)
and)
)
Eric Vendel, Chief, in his)
official capacity)
Ohio Department of Natural)
Resources, Division of Oil and)
Gas Resource Management)
2045 Morse Rd., Bldg F2)
Columbus, OH 43229-6693)
)
)
)
Respondents.)

VERIFIED PETITION FOR WRIT OF MANDAMUS

Relators Concerned Ohio River Residents, Buckeye Environmental
Network, FreshWater Accountability Project, Ohio Valley
Environmental Coalition, and Sierra Club (collectively “Relators”)

hereby submit, by and in the name of the State of Ohio, the following
Petition for Writ of Mandamus:

PRELIMINARY STATEMENT

1. Relators seek a writ of mandamus to compel Respondents, officers within the Ohio Department of Natural Resources (“ODNR”), to order a public notice, hold a public comment period, and prepare draft permits for three applications to drill new solution mining wells in Salem Township, Monroe County, Ohio (“Proposed Wells”) made by Powhatan Salt Company. Public notice, the issuance of draft permits, and the opportunity for public comment are required prior to the issuance of permits to drill the Proposed Wells by R.C. 1509.221 and Ohio Admin.Code Chapter 1501:9-7.
2. Relators further seek a writ of mandamus to compel Respondents to vacate, invalidate, or otherwise cancel the three drilling permits that Respondents issued for the Proposed Wells on July 20, 2020.
3. Relators, five nonprofit organizations with members and activities in Ohio, bring this action on behalf of their respective members, some of

whom are Ohio residents and taxpayers, who have a beneficial interest in ensuring the Department of Oil and Gas Resources Management (“DOGRM”) carries out its legal duties in permitting the Proposed Wells, including providing the opportunities for public input required pursuant to Ohio Admin.Code 1501:9-7-07(H).

JURISDICTION AND VENUE

4. Jurisdiction lies with this court pursuant to R.C. Chapter 2731, which governs mandamus proceedings and gives the court of appeals original jurisdiction over mandamus actions. This petition has been verified by affidavit in accordance with R.C. 2731.04.
5. The claims in this matter arise from Relators’ clear legal rights and the clear legal duty of the Chief of DOGRM, overseen by the Director of ODNR, to uphold and carry out the statutory and regulatory requirements in place for the permitting of solution mining wells.
6. Relators have no plain and adequate remedy at law to appeal to correct an abuse of discretion by DOGRM, overseen by ODNR, in the unlawful issuance of permits to drill the Proposed Wells, and their bringing of this petition for a writ of mandamus is thus appropriate.

7. Pursuant to Ohio Civ.R. 3, venue is proper because Respondents' principal offices are located in Franklin County.

THE PARTIES

8. Concerned Ohio River Residents (“CORR”) is a non-profit organization headquartered in Bridgeport, Ohio with a mission to protect the Ohio River basin and advocate for a healthy and sustainable Ohio Valley. CORR has approximately 1500 members, including members who live, work, recreate, and worship in Monroe County and Clarington, Ohio, nearby the Proposed Wells. CORR’s members are Ohio taxpayers who have a beneficial interest in DOGRM adhering to Ohio’s laws regarding solution mining wells and public involvement in permit decision-making. CORR relies on public notices and Ohio’s laws regarding permitting to keep its members and supporters informed of opportunities for public involvement in the permitting of projects that will impact the environment, economy, and health of the Ohio River Valley, including the Proposed Wells. Pursuant to R.C. 2731.02, CORR is a

party beneficially interested in this matter, and has standing to commence this action.

9. FreshWater Accountability Project (“FreshWater”) is a non-profit organization headquartered in Grand Rapids, Ohio with a mission to preserve and protect Ohio’s freshwater resources. FreshWater has members throughout the state of Ohio, including members who live, work, recreate, and worship in Monroe County and Clarington, Ohio, nearby the Proposed Wells. FreshWater has members who are Ohio taxpayers who have a beneficial interest in DOGRM following Ohio’s laws regarding the permitting of solution mining wells and public involvement in permit decision-making. Under R.C. 2731.02, FreshWater is a party beneficially interested in this matter, and has standing to commence this action.

10. Buckeye Environmental Network (“BEN”) is a non-profit organization headquartered in Athens, Ohio with a mission of protecting communities and Ohio’s environment from economic and environmental exploitation. BEN has members throughout the state of Ohio, including members who frequent Monroe County and

Clarington, Ohio for work and recreation. BEN's members are Ohio taxpayers who have a beneficial interest in DOGRM following Ohio's laws regarding the permitting of solution mining wells and public involvement in permit decision-making. BEN and its staff rely on public notices and Ohio's laws regarding permitting to keep their members and supporters informed of opportunities for public involvement in the permitting of projects likely to impact the members' environment, economies, communities, and health. Under R.C. 2731.02, BEN is a party beneficially interested in this matter, and has standing to commence this action.

11. Ohio Valley Environmental Coalition ("OVEC") is a non-profit organization headquartered in Huntington, West Virginia dedicated to the improvement and preservation of the environment through education, grassroots organizing, coalition building, leadership development, legal advocacy, and media outreach. Part of OVEC's focus is the improvement and protection of the environment, particularly water quality, in the Ohio River Valley. OVEC has approximately 500 members, including members in Ohio, and

members who frequent Monroe County and Clarington, Ohio for work and recreation. OVEC has members who are Ohio taxpayers who have a beneficial interest in DOGRM following Ohio's laws regarding the permitting of solution mining wells and public involvement in permit decision-making. Under R.C. 2731.02, OVEC is a party beneficially interested in this matter, and has standing to commence this action.

12. Sierra Club is a national nonprofit organization of approximately 800,000 members nationwide dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment and to using all lawful means to carry out these objectives. The Ohio Chapter of the Sierra Club has a little over 23,000 members, including fifteen members who live and recreate in Monroe County. As part of its mission, Sierra Club advocates for a just transition to renewable energy. The Proposed Wells and associated storage caverns, by encouraging and

subsidizing the production of fracked gas, are at odds with this transition. The Sierra Club's members, especially those who live in Monroe County, would be endangered by the storage caverns potential explosiveness, and would be threatened by the air and water pollution from the Proposed Wells and storage caverns. Sierra Club has members who are Ohio taxpayers who have a beneficial interest in DOGRM following Ohio's laws regarding the permitting of solution mining wells and public involvement in permit decision-making and who desire to comment on the applications for the Proposed Wells. Under R.C. 2731.02, Sierra Club is a party beneficially interested in this matter, and has standing to commence this action.

13. Relators CORR, FreshWater, and Sierra Club bring this petition on behalf of their member Richard Dale Pawlaczyk, II who resides at 109 Pine St., Powhatan Point, Ohio 43942. Prior to the ongoing public health crisis caused by the COVID pandemic (the "Pandemic"), Mr. Pawlaczyk traveled through the site where the Proposed Wells are to be located every one to two days to run

errands, visit with friends and family, and to enjoy surrounding restaurants and gathering places. Mr. Pawlaczyk regularly enjoys meals with friends and family at a restaurant in Clarington, Ohio. Presently, under the Pandemic conditions, Mr. Pawlaczyk travels through the location of the Proposed Wells approximately every ten days. Once the Pandemic has subsided, Mr. Pawlaczyk intends to return to his normal activities and will frequently be within close proximity of the Proposed Wells as a result. Mr. Pawlaczyk's health and safety and environmental and social interests are threatened by the increased risks associated with the Proposed Wells. Mr. Pawlaczyk is an Ohio taxpayer and has a beneficial interest in ensuring that due diligence has been performed in the permitting of the Proposed Wells and all concerns, objections, and information have been thoroughly considered. Mr. Pawlaczyk has a beneficial interest in ensuring that the Proposed Wells and their associated infrastructure do not adversely affect his health and safety and the health and safety of his family members. Mr. Pawlaczyk has a beneficial interest in ensuring that the Proposed Wells and their

associated infrastructure do not adversely impact Clarington's drinking water supply and the Ohio River. Mr. Pawlaczyk desires to participate, and for CORR, FreshWater, and Sierra Club to participate, in a public comment period on the applications for the Proposed Wells to express his objections and concerns regarding the applications and the Proposed Wells. DOGRM's abdication of its legal duties under Ohio Admin.Code Chapter 1501:9-7 have deprived Mr. Pawlaczyk of that ability.

14. OVEC brings this petition on behalf of its member and employee Dustin White. Dustin White travels through the location of the Proposed Wells regularly for work in northern West Virginia and parts of eastern Ohio. During this travel, Mr. White stops in Clarington for refreshments and is concerned that the Proposed Wells may harm Clarington's public water supply. Mr. White is also concerned that spills related to the Proposed Wells may harm water quality in the Ohio River, which is the drinking water source for OVEC's office in Huntington, West Virginia. Mr. White stops to view the Ohio River along Route 7 near the site for pleasure during

his travel. The Proposed Wells and associated infrastructure are likely to reduce the aesthetic value of the area, which will negatively impact Mr. White. Mr. White is beneficially interested in ensuring due diligence has been performed in the permitting of the Proposed Wells and all concerns, objections, and information have been thoroughly considered. Mr. White has a beneficial interest in ensuring the wells do not negatively impact his health and safety. Mr. White desires to participate, and for OVEC to participate, in a public comment period on the applications for the Proposed Wells to express his objections and concerns regarding the applications and the Proposed Wells. DOGRM's abdication of its legal duties under Ohio Admin.Code Chapter 1501:9-7 have deprived Mr. White of that ability.

15. Relators FreshWater, CORR, and Sierra Club bring this petition of behalf of their members, including Robert Reed, who resides at 701 N. Lincoln Ave, Bridgeport, Ohio and is an Ohio taxpayer. Mr. Reed travels past the site of the Proposed Wells when conducting his work in appliance repairs. He also has work appointments in the area

surrounding the Proposed Wells. Mr. Reed is worried that the Proposed Wells and associated infrastructure will harm his safety and wellbeing as he works in the area, meets with people in the area, and travels through it. Mr. Reed is specifically worried about subsidence and explosions from the Proposed Wells and their associated infrastructure. Mr. Reed is also worried about spills that could harm the Ohio River and ground water in the surrounding communities to which he travels for work and occasionally dines in. Mr. Reed appreciates the environment of his community and is beneficially interested in ensuring it is protected and restored, and not subjected to further pollution from extractive industry. Mr. Reed is concerned about ensuring his community is a safe and healthy place for his children to live and believes the Proposed Wells jeopardize a safe and healthy future for his community. Mr. Reed has a beneficial interest in ensuring that due diligence has been performed in the permitting of the Proposed Wells and all concerns, objections, and information have been thoroughly considered. Mr. Reed desires for FreshWater, CORR, and Sierra Club to participate in a public

comment period on the applications for the Proposed Wells to express the objections and concerns he and other members have regarding the applications and the Proposed Wells. DOGRM's abdication of its legal duties under Ohio Admin.Code Chapter 1501:9-7 have deprived FreshWater, CORR, and Sierra Club of the ability to do that on behalf of Mr. Reed.

16. Relator Sierra Club brings this petition on behalf of its members, including member Tonya Shuler, who has lived in Paden City, West Virginia for the past twenty-six years. Mrs. Shuler lives just a couple of blocks off of the Ohio River, fifteen to twenty miles downriver of the Proposed Wells. She receives her drinking water from an alluvial well off of the Ohio River. Her drinking water has already been contaminated with the chemical Tetrachloroethylene, or PCE, as has been documented by the U.S. EPA. All of her children all suffer from different neurological conditions she believes are a consequence of drinking contaminated water. All of her children have asthma. Her oldest son has tremors and Dyspraxia—a disease characterized by difficulty with motor control. Her middle son has epilepsy, allergy

issues, and sinus issues. Her youngest son also has allergy issues, and sinus issues. Even her dog has epilepsy. Ms. Schuler knows the consequences of water pollution. She is extremely afraid that the Proposed Wells, or the Mountaineer Storage Hub planned after the wells are drilled, will rupture and send pollution down the Ohio River and into her drinking water. She is further worried that the air pollution caused by the Proposed Wells will negatively affect her health and the health of her children who have asthma. Mrs. Shuler has a beneficial interest in ensuring that due diligence has been performed in the permitting of the Proposed Wells and all concerns, objections, and information have been thoroughly considered. Mrs. Shuler desires to participate, and for Sierra Club to participate, in a public comment period on the applications for the Proposed Wells to express her objections and concerns regarding the applications and the Proposed Wells. DOGRM's abdication of its legal duties under Ohio Admin.Code Chapter 1501:9-7 have deprived Mrs. Shuler of that ability.

17. Relator BEN brings this petition on behalf of its members, including Tim Kettler of Coschocton, Ohio. Mr. Kettler has been impacted by the presence of underground injection wells in his community. He is concerned about environmental and public health risks associated with injection wells and the rise in injection wells being permitted in the state. Mr. Kettler is also concerned about the conversion of wells from one use to another, as has happened with wells in his community, and in ensuring proper oversight of this process. He is an Ohio taxpayer with a beneficial interest in ensuring he and BEN are able to receive public notice of applications for permits for wells for solution mining, including the applications for the Proposed Wells. Mr. Kettler also has a beneficial interest in ensuring due diligence is performed in the permitting of solution mining wells and that he and BEN are provided the opportunity to participate in the public comment period. As a taxpayer and Ohio citizen, Mr. Kettler is beneficially interested in compelling DOGRM to follow its legal duties, which are for the benefit of the public. Mr. Kettler desires to participate, and for BEN to participate, in a public comment period

on the applications for the Proposed Wells to express his objections and concerns regarding the applications and the Proposed Wells.

DOGRM's abdication of its legal duties under Ohio Admin.Code Chapter 1501:9-7 have deprived Mr. Kettler of that ability.

18. Relators all have members who are citizens of the State of Ohio and who are seeking to procure the enforcement of the public right to public involvement in the solution mining permitting process for the Proposed Wells. The public, including Relators' members, is entitled to this public right under Ohio Admin.Code Chapter 1501:9-7. As Ohio citizens, these members are interested in the execution of the laws of this state. DOGRM has created a rare and extraordinary case where an agency has failed to follow the clear public participation requirements set forth in its own regulations when permitting activities that carry immense risk to public health, safety, and welfare, and the environment. Accordingly, Relators, through their respective members who are Ohio citizens, have standing to bring this action pursuant to the public-right doctrine.

19. Respondent Mary Mertz is sued in her official capacity as the Director of the Ohio Department of Natural Resources. Respondent Mertz is required to ensure that all laws governing activities of the ODNR are faithfully executed.

20. Respondent Eric Vendel is sued in his official capacity as the Director of the Division of Oil and Gas Resource Management of ODNR. Chief Vendel oversees DOGRM staff involved in the permitting of solution mining wells and is required to ensure that all laws governing DOGRM permitting of solution mining wells are faithfully executed.

STATUTORY AND REGULATORY FRAMEWORK

21. R.C. 1509.221(A) states that “no person, without first having obtained a permit from the division of oil and gas resource management, shall drill a well or inject a substance into a well . . . for the solution mining of minerals. . . . The permit shall be in addition to any permit required by section 1509.05 of the Revised Code.”

22. R.C. 1509.05 prohibits the drilling of any new well without having a permit to do so issued by the chief of DOGRM.

23. R.C. 1509.06 governs applications for permits to drill new wells generally.

24. The term well, as used throughout R.C. Chapter 1509 and Ohio Admin.Code 1501:9 is defined to mean “any borehole, whether drilled or bored, within the state for production, extraction, or injection of any gas or liquid mineral, excluding potable water to be used as such, but including natural or artificial brines and oil field waters.” R.C. 1509.01.

25. In addition to R.C. 1509.221 and R.C. 1509.06, Ohio Admin.Code Chapter 1501:9-7 governs solution mining projects.

26. Ohio Admin.Code 1501:9-7-07 applies to the permitting of wells to be used for the solution mining of minerals.

27. Ohio Admin.Code 1501:9-7-07(L) requires that drilling operations begin within twelve months after the issuance of the permit. If drilling operations have not started within twelve months, the permit shall expire.

28. Ohio Admin.Code 1501:9-7-07(A) provides that “[u]nless an appropriate application has been received by the chief and a permit

issued by the division, no person shall drill, reopen, deepen, plug, rework, or use a well for the solution mining of minerals...” “New applicants, permittees with expiring permits, and any person required to have a permit shall complete, sign, and submit an application to the chief as described in this rule [Ohio Admin.Code 1501:9-7-07]”.
Ohio Admin.Code 1501:9-7-07(D).

29. According to Ohio Administrative Code § 1501:9-7-07(H)(1), after DOGRM has notified the applicant that its application is complete the “applicant shall give notice of application for a permit for a solution mining project.” The applicant must give notice by publishing a legal notice in a newspaper of general circulation in the area of review in which the proposed project is situated, and must provide proof of this publication within forty days after the complete application was received by DOGRM.

30. Under Ohio Administrative Code § 1501:9-7-07(H)(4)(a), “[a]ny person desiring to comment or to make an objection with reference to an application for a permit for a solution mining project” must file written comments or objections with DOGRM within thirty calendar

days after the publication of the legal notice in a newspaper of general circulation in the area of review.

31. Once an application for a permit to drill a solution mining well is complete, “the chief shall tentatively decide whether to prepare a draft permit, or to deny the application.” Ohio Admin.Code 1501:9-7-07(H)(2). After making this tentative decision, the chief must either issue a notice of intent to deny, which is “a type of draft permit”, or “prepare a draft permit that contains all relevant information pertaining to permitting, operation, and monitoring of the proposed project.” Ohio Admin.Code 1501:9-7-07(H)(2)(b).
32. All draft permits must also be publicly noticed and made available for public comment. Ohio Admin.Code 1501:9-7-07(H)(2)(c).
33. For projects that the Chief finds are the subject of widespread public interest or that raise major issues, DOGRM must prepare a fact sheet briefly setting forth “the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit.” Ohio Admin.Code 1501:9-7-07(H)(3)(a). The fact sheet must be sent to any person upon request. *Id.*

34. The fact sheet must include, among other information, “a description of the procedures for reaching a final decision on the draft permit,” including, the beginning and ending dates of any public comment period, procedures for requesting a hearing and the nature of that hearing, and any other procedures by which the public may participate in the final decision. Ohio Admin.Code 1501:9-7-07(H)(3)(b).

35. If no objections are received within the thirty-day comment period, “the chief shall issue a permit unless he finds that the application does not comply with the requirements of Chapter 1501:9-7 of the Administrative Code, or is in violation of law, or jeopardizes public health or safety.” Ohio Admin.Code. 1501:9-7-07(H)(4)(b).

36. Ohio Administrative Code § 1509.36 states that “[a]ny person adversely affected by an order by the chief of the division of oil and gas resources management may appeal to the oil and gas commission for an order vacating or modifying the order.” However, Ohio Administrative Code § 1509.06(F) states that the issuance of a permit under section 1509.06 “shall not be considered an order of the chief.”

Therefore, the issuance of a permit under section 1509.06 cannot be appealed to the Oil and Gas Commission.

37. Under R.C. Chapter 119, generally, any party adversely affected by any order of an agency issued pursuant to an adjudication may appeal to the court of common pleas of Franklin County. R.C. 119.12(B).

38. Generally, “[e]very order issuing, denying, or modifying a permit under [Chapter 1509] and described as such shall be considered an adjudication order for purposes of Chapter 119.” R.C. 1509.03(B)(1).

However, R.C. 1509.03(B)(1) “does not apply to a permit issued under section 1509.06 of the Revised Code.” *Id.* Therefore, a permit issued under R.C. 1509.06 is not considered an adjudication order for purposes of Chapter 119. R.C. 1509.03(B)(1).

FACTUAL BACKGROUND

39. The Proposed Wells include three solution mining wells, Salt-1; Salt-2; and Salt-3, to be located between Route 7 and the Ohio River on the site of a former coal washing operation and coal mine. The City of Clarington’s public drinking water wells are located approximately one mile south of the site of the Proposed Wells.

40. Once in operation, the Proposed Wells will require 1,728,000 gallons of fresh water per well per day to create salt caverns in the Salina Formation. Once a cavern reaches a size of 500,000 barrels, the cavern will be transferred to Mountaineer NGL Storage LLC (“Mountaineer”). Mountaineer will then use the caverns to store natural gas liquids (“NGLs”), including ethane, butane, and propane.
41. The storage of NGLs in the caverns created using the Proposed Wells will also require a reservoir for the storage of recycled salt water and the construction of a dam to create that reservoir. The reservoir poses a risk to underground sources of drinking water and the Ohio River.
42. A pipeline will transport salt water that is solution mined from the Proposed Wells to a facility in Natrium, West Virginia, where it will be used to make chlorine-based products. The pipeline will extend from the Proposed Wells southward along the Ohio River and under the Ohio River, ultimately ending in Natrium, West Virginia.
43. The City of Clarington’s water supply relies on shallow groundwater wells that are hydrologically connected to the Ohio River. Ohio Environmental Protection Agency (“Ohio EPA”) has stated that the

operation proposed by Powhatan Salt Company and Mountaineer has the potential to adversely impact a public water supply, and that “spills and other releases of saltwater have the potential to have longterm impact on ground water quality.” *See* Exhibit 10, attached and incorporated herein.

44. Ohio EPA, Ohio Department of Transportation, and ODNR have also expressed concern that there is potential for the caverns created by the Proposed Wells to interact with existing solution mining taking place in West Virginia. *See* Exhibit 11, attached and incorporated herein.

45. The site of the Proposed Wells is in an area within the range of multiple threatened or endangered species and may adversely impact those species. These species include, without limitation, Indiana Bat, the Ohio lamprey, the channel darter, the Tippecanoe darter, the river darter, the hellbender salamander, and the sparse-lobed grape fern. SunFish Creek State Forest is also located within a mile radius of the site. *See* Exhibit 12, attached and incorporated herein.

46. The site of the Proposed Wells appears to be located in the floodplain of the Ohio River in a Special Flood Hazard Area. *Id.*

47. DOGRM first received an application from Powhatan Salt Company for a permit for the Salt-1 solution mining well on November 21, 2016. DOGRM's first application is attached as Exhibit 6 and incorporated herein.

48. On August 3, 2017, DOGRM received a copy of the public notice that Powhatan Salt Company published in the Monroe County Beacon on June 29, 2017 ("June 29, 2017 Public Notice") noticing its application for a permit for Salt-1. A copy of this public notice is attached as Exhibit 7 and incorporated herein.

49. The June 29, 2017 public notice only stated that Powhatan Salt Company was applying for a permit for a single injection well. The notice included no language regarding a solution mining project that would include multiple wells.

50. The language of the June 29, 2017 public notice read as follows:

Powhatan Salt Company, LLC 6295 Greenwood Plaza Blvd.,
Greenwood Village Co. 80111, (607) 239-1560 is applying to
permit a well for the injection of water into the Salina salt

beds to create brine for the manufacture of salt products. The location of the proposed injection well is the Salt-1 SMP #1, Section 15, Salem Township, Monroe County, Ohio. The proposed well will inject into the Salina Formation at a depth of 6,600 to 6,740 feet. The average injection is estimated to be 40,000 barrels per day. The maximum injection pressure is estimated to be 1200 psi. Further information can be obtained by contacting Powhatan Salt Company, LLC or the Division of Oil and Gas Resources Management. The address of the Division is: Ohio Department of Natural Resources, Division of Oil and Gas Resources Management, 2045 Morse Road, Building F-2, Columbus, Ohio 43229-6693, (614) 265-6922. For full consideration, all comments and objects [sic] must be received by the Division, in writing, within thirty calendar days of the date of this published legal notice: **June 29, 2017.**

51. On March 5, 2018, DOGRM issued a permit to Powhatan Salt Company to drill Salt-1 (“First Salt-1 Permit”). The First Salt-1 Permit is attached as Exhibit 5 and incorporated herein.

52. Under Ohio Admin.Code 1501:9-7-07(L), the First Salt-1 Permit expired March 5, 2019 because Powhatan Salt had not begun drilling operations within 12-months of the permit’s issuance.

53. On December 13, 2019, DOGRM received an application from Powhatan Salt Company for a permit for Salt-2. A copy of the application for Salt-2 is attached as Exhibit 3 and incorporated herein.

54. On December 16, 2019, DOGRM received an application from Powhatan Salt Company for a permit for Salt-3. A copy of the application for Salt-3 is attached as Exhibit 4 and incorporated herein.

55. On March 10, 2020, DOGRM received a new application from Powhatan Salt Company for a permit for Salt-1. A copy of the application for Salt-1 is attached as Exhibit 2 and incorporated herein.

56. The March 10, 2020 application contained different specifications and information regarding Salt-1 than the specifications and information set forth in the Salt-1 application received by DOGRM on November 21, 2016.

57. Each of the three applications, submitted December 13 and December 16, 2019, and March 10, 2020, for the Proposed Wells, included a form entitled “Supplement to Application, Permit for a Solution Mining Project.” This form contained the following language:

Public notice of an application for a solution mining project is required by rule . . . After submitting the application, and after a determination by the Division that it is complete as required by the rules of the Division, a legal notice must be published by the applicant in a newspaper of general circulation in the area of review. The legal notice must contain the information described in Rule 1501:9-5-05(E)(1) of the Ohio Administrative Code. . . . Proof of publication, publication date . . . must be filed with the Division within forty days after the Division determines that the application is complete.

58. Since at least March 2020, CORR founder Bev Reed has reviewed the Monroe County Beacon for notice of the applications for the Proposed Wells. Ms. Reed conducts this review to gather information regarding public participation processes in which CORR members would participate and in pursuit of CORR's mission to protect the Ohio River basin and advocate for a healthy and sustainable Ohio Valley. CORR and its members have objections and concerns regarding the permitting of the Proposed Wells. CORR and its members intended to express these objections and concerns during the legally-required public comment period to ensure they would be considered by DOGRM in reviewing the applications, as is the

legally-required process set forth in Ohio Admin.Code 1501:9-7-07(H).

59. Since at least January 15, 2020, Teresa Mills, Executive Director of BEN, has emailed DOGRM regularly requesting updated information regarding permitting status for a list of wells that includes the Proposed Wells. Ms. Mills requests this information regularly to enable her to keep BEN's members and supporters up to date regarding opportunities for public involvement in well permitting. This work is part of BEN's mission to mobilize and support Ohio's communities in creating healthy environments and economies that are not reliant upon environmental and economic exploitation. Email updates provided by DOGRM to Ms. Mills as a part of these regular requests are attached as Exhibit 8 and incorporated herein. BEN and its members have objections and concerns regarding the permitting of the Proposed Wells. BEN and its members intended to express these objections and concerns during the legally-required public comment period to ensure they would be considered by DOGRM in

reviewing the applications, as is the legally-required process set forth in Ohio Admin.Code 1501:9-7-07(H).

60. In the course of this correspondence, in an email dated January 23, 2020, Adam Schroeder, Public Information Officer with DOGRM, stated:

The public notice for Salt-1 ran on June 29, 2017 in the Monroe County Beacon. The Division has not yet approved the number 2 or 3 running public notice. The solution mining rules are OAC 1501:9-7

This email exchange is attached as Exhibit 14 and incorporated fully herein.

61. In addition to her regular requests on agency action regarding a list of permits, Ms. Mills asked specifically whether public notices had been run for the permits for Salt-2 and Salt-3 on February 12, 2020 and February 28, 2020. Mr. Schroeder responded to both of these requests by stating as follows:

The Division is still reviewing the applications, and no such timeline for public notice has been established yet. Please feel free to check in at any time for an update.

Exhibit 14.

62. In an email sent July 9, 2020, Ms. Mills requested updates on the permitting status of the list of wells, which included the Proposed Wells. DOGMR's response to this request, sent on July 10, 2020, indicated that DOGRM had taken no action on the applications for the Proposed Wells. Exhibit 8 at p.1-3
63. On July 20, 2020 Respondents issued final permits to drill Salt-1, Salt-2, and Salt-3 ("the Proposed Well Permits"). The Proposed Well Permits are attached and incorporated herein as Exhibit 1.
64. In an email dated July 22, 2020, Ms. Mills asked DOGRM, "[h]as the agency issued Mountaineers Powhatten [sic] Class III injection well notice to the company to public notice?" Mr. Schroeder stated in email that "the public notice ran for the original Mountaineer NGL Storage LLC No. Salt-1 on 6-29-2017. . . Mountaineer was not required to run another public notice for the three applications the Division received." This email exchange is attached as Exhibit 13 and incorporated herein.

65. In an email dated July 22, 2020, Ms. Mills asked DOGRM “So has the agency issued the permit for any of the three wells? Will the requirement to hold a public hearing still be required?” On July 23, 2020 Mr. Schroeder responded that the permits had been issued and provided copies of the permits and stated that a hearing was not required. *See* Exhibit 13.

66. The permit issued on July 20, 2020 for Salt-1 contains different specifications and conditions than those included in the First Salt-1 Permit.

67. In an email to Ms. Mills, DOGRM represented that it issued permits to drill Salt-1, Salt-2, and Salt-3 under R.C. 1509.06. This email is attached as Exhibit 9 and incorporated herein.

68. DOGRM never received documentation demonstrating that Powhatan Salt Company noticed the March 10, 2020 Salt-1 application, the Salt-2 application, and the Salt-3 application for permits by publication in a newspaper of general circulation for the area of review where the Proposed Wells are to be located, as required by Ohio Admin.Code 1501:9-7-07(H).

69. As of the date of this filing DOGRM has held no public comment period for the applications for the Proposed Wells that were received by DOGRM on December 13, 2019, December 16, 2019, and March 10, 2020.

70. DOGRM has not prepared draft permits for the Proposed Wells or required public notice and held a public comment period on draft permits for the Proposed Wells.

71. Because there was no public notice for the applications and no public comment period for the applications for the Proposed Wells, Relators and their members have not been given the opportunity to raise their concerns and objections to the Proposed Wells and to have those concerns considered by DOGRM prior to DOGRM issuing permits to drill the Proposed Wells. Relators had been preparing to participate in the public comment period and awaiting the public notice indicating it would be begin. Without the public comment period and additional opportunities for public involvement required by Ohio Admin.Code 1501:9-7-07(H), Relators and their members have no means of providing input that the Chief must consider

regarding the likely adverse impact to their health, safety, environment, recreational and social interests, property values, and quality of life from the Proposed Wells prior to their construction.

COUNT I

Relators request that this Court issue a Writ of Mandamus directed to Respondents ordering them to publicly notice applications for the Proposed Wells

72. The Relators restate and reiterate all proceeding paragraphs of this petition as if fully rewritten herein and additionally allege the following:

73. A writ of mandamus will issue when a relator has a clear legal right to the relief requested, the respondent has a clear legal duty to perform the requested act, and the relator has no plain and adequate remedy in the ordinary course of the law.

74. A writ of mandamus will also issue to correct an abuse of discretion by an agency when there is no statutory right of appeal and to vacate an improper order by an agency.

75. Respondents failed to perform their clear legal duty when they did not require Powhatan Salt Company to publish public notices for its applications for the Proposed Wells in accordance with Ohio Admin.Code 1501:9-7-07(H)(1) prior to issuing the Proposed Well Permits.

76. The public notice ran by Powhatan Salt Company on June 29, 2017 does not satisfy the public notice requirements in Ohio Admin.Code 1501:9-7-07(H)(1) as applied to the application for Salt-1 submitted on March 10, 2020, the application submitted for Salt-2, the application submitted for Salt-3, or any forthcoming applications to drill or operate Salt-1, Salt-2, Salt-3, or altogether, any additional solution mining wells proposed by Powhatan Salt Company.

77. Pursuant to Ohio Admin.Code 1501:9-7-07(H)(1), Relators have a legal right to public notice of the applications for permits for the Proposed Wells.

78. Respondents' failure to require Powhatan Salt Company to publicly notice the applications for permits for the Proposed Wells in accordance with the law has resulted in Relators and their members

never being informed of Powhatan Salt Company's submittal of complete applications for permits to drill the Proposed Wells.

COUNT 2

Relators request that this Court issue a Writ of Mandamus directed to Respondents ordering them to hold public comment on the applications for permits for the Proposed Wells

79. The Relators restate and reiterate all proceeding paragraphs of this petition as if fully rewritten herein and additionally allege the following:

80. Respondents failed to perform their clear legal duty when they did not hold a public comment period on the applications for the Proposed Wells in accordance with Ohio Admin.Code 1501:9-7-07(H)(4) prior to issuing the Proposed Well Permits.

81. The public comment period held immediately following the June 29, 2017 publication regarding the First Salt 1 Permit does not satisfy the public comment requirements in Ohio Admin.Code 1501:9-7-07(H)(4) as applied to the application for Salt-1 submitted on March 10, 2020, the application submitted for Salt-2, the application

submitted for Salt-3, or any forthcoming applications to drill or operate Salt-1, Salt-2, Salt-3, or any additional solution mining wells proposed by Powhatan Salt Company.

82. The public comment period immediately following the June 29, 2017 publication regarding the First Salt 1 Permit also does not satisfy the comment period requirement in Ohio Admin.Code 1501:9-7-07(H)(4) should the Proposed Wells be considered a single solution mining project.

83. Pursuant to Ohio Admin.Code 1501:9-7-07(H)(4) Relators have a legal right to a public comment period on the applications for permits for the Proposed Wells.

84. Because Respondents did not carry out their legal duty to hold a public comment period, Relators and their members have been deprived of their opportunity to raise their concerns and objections regarding the applications for permits for the Proposed Wells to DOGRM, to which they are entitled under Ohio Admin.Code 1501:9-7-07(H)(4).

COUNT 3

Relators request that this court issue a Writ of Mandamus directed to Respondents ordering them to prepare draft permits for the Proposed Wells prior to issuing final permits to drill the Proposed Wells

85. The Relators restate and reiterate all proceeding paragraphs of this petition as if fully rewritten herein and additionally allege the following:

86. Respondents failed to perform their clear legal duty when they did not prepare draft permits for the Proposed Wells upon DOGRM's receipt of complete applications for the Proposed Wells, as required by Ohio Admin.Code 1501:9-7-07(H)(2). They further failed to perform their clear legal duty when they did not provide public notice and comment on draft permits for the Proposed Wells, as required by Ohio Admin.Code 1501:9-7-07(H)(2)(c).

87. Relators have a legal right to DOGRM completing the due diligence of preparing a draft permit for the Proposed Wells in accordance with Ohio Admin.Code 1501:9-7-07.

88. Pursuant to Ohio Admin.Code 1501:9-7-07(H)(2)(c), Relators have a legal right to public notice of the draft permit, a public comment period for the proposed project, and notification of opportunities for public involvement in the final permitting decision for the Proposed Wells.

COUNT 4

This Court should issue Writ of Mandamus directed to Respondents ordering them to vacate the permits to drill Salt-1, Salt-2, and Salt-3

89. The Relators restate and reiterate all proceeding paragraphs of this petition as if fully rewritten herein and additionally allege the following:

90. Mandamus is the appropriate remedy where no statutory right of appeal is available to correct an abuse of discretion by an administrative agency.

91. Respondents lacked the legal authority to issue the final permits without completing the public notice, comment, and draft permitting required pursuant to Ohio Admin.Code 1501:9-7-07.

92. Respondents abused their discretion when they allowed the issuance of final permits for the proposed wells without requiring public notice of the applications for permits for the Proposed wells, without holding public comment on the applications for permits for the Proposed wells, without preparing a draft permit, and without publicly noticing and holding comment on the draft permit, all of which is required under Ohio Admin.Code 1501:9-7-07.

WHEREFORE, Relators pray the Court issue a writ of mandamus under R.C. Chapter 2731 ordering DOGRM to

- (i) Require that the applications for permits for Salt-1, Salt-2, and Salt-3 be publicly noticed by publication in a newspaper of general circulation in the area of review for the locations of the Proposed Wells prior to the issuance of final permits to drill Salt-1, Salt-2, and Salt-3.
- (ii) Hold a public comment period on the applications for permits for Salt-1, Salt-2, and Salt-3 prior to the issuance of final permits to drill Salt-1, Salt-2, and Salt-3.

- (iii) Prepare a draft permit for Salt-1, Salt-2, and Salt-3 prior to the issuance of final permits to drill Salt-1, Salt-2, and Salt-3, and publicly notice and provide a public comment period for the draft permits.
- (iv) Vacate the final permits to drill Salt-1, Salt-2, and Salt 3 issued on July 20, 2020.

Relators request to be awarded their costs and such other relief at law or in equity as the Court may deem necessary and proper.

/s/ Megan M. Hunter

Megan M. Hunter (Ohio Bar No. 96035)
Earthjustice
311 South Wacker Drive, Suite 1400
Chicago, IL 60606
T: 910.200.6130
E: mhunter@earthjustice.org

Counsel for Relators

VERIFICATION

I, Teresa Mills, am Executive Director of Buckeye Environmental Network (“BEN”) and am empowered to bring the foregoing Verified Complaint for a Writ of Mandamus on behalf of BEN’s members. I have reviewed the allegations in the Verified Complaint and believe them to be true to the best of my knowledge, information, and belief.

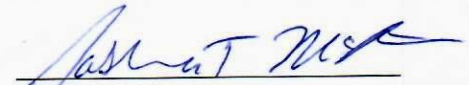

Teresa Mills

State of Ohio)
)
County of Athens) ss:

Sworn to before me and subscribed in my presence this 17 day of August, 2020.



JOSHUA T MCKEE
Notary Public, State of Ohio
My Comm. Expires 11/08/2023
Recorded in Franklin County


Notary Public

VERIFICATION

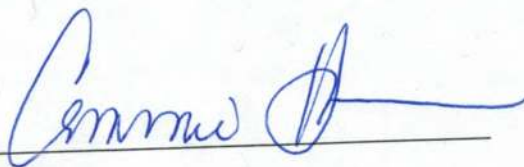
I, Bev Reed, am the founder of Concerned Ohio River Residents ("CORR") and am empowered to bring the foregoing Verified Petition for a Writ of Mandamus on behalf of CORR's members. I have reviewed the allegations in the Verified Petition and believe them to be true to the best of my knowledge, information, and belief.



Bev Reed

State of Ohio)
)
County of Belmont) ss:

Sworn to before me and subscribed in my presence this 18 day of August, 2020.



Notary Public



Cammie Hanson
Notary Public
In and for the State of Ohio
My Commission Expires
9-23-24

VERIFICATION

I, Leatra Harper, am Managing Director of Fresh Water
Accountability Project (“FreshWater”) and am empowered to bring the
foregoing Verified Petition for a Writ of Mandamus on behalf of
FreshWater’s members. I have reviewed the allegations in the Verified
Petition and believe them to be true to the best of my knowledge,
information, and belief.

Leatra Harper

Leatra Harper

State of Ohio)
)
County of Wood) ss:

Sworn to before me and subscribed in my presence this 18 day
of August, 2020.

Thomas W. Lueck

Notary Public



THOMAS W. LUECK
Notary Public, State of Ohio
My Commission Expires
April 1, 2023

VERIFICATION

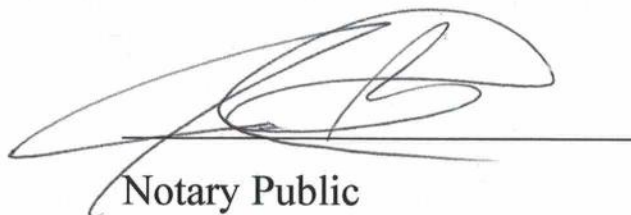
I, Ankit Jain, am an Associate Attorney for the Sierra Club and am empowered to bring the foregoing Verified Petition for a Writ of Mandamus on behalf of Sierra Club's members. I have reviewed the allegations in the Verified Petition and believe them to be true to the best of my knowledge, information, and belief.



Ankit Jain

District of Columbia)
)
) ss:

Sworn to before me and subscribed in my presence this 18th day of August, 2020.



Notary Public





NOTAR

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