

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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 :
 PAMELA MAHONEY; :
 MICHAEL MAHONEY; :
 LISA SOLOMON; and :
 MITCH SOLOMON, :
 :
 Plaintiffs, :
 :
 -vs- :
 :
 U.S. DEPARTMENT OF THE :
 INTERIOR; BUREAU OF OCEAN :
 ENERGY MANAGEMENT; U.S. :
 DEPARTMENT OF THE ARMY; and :
 U.S. ARMY CORPS OF ENGINEERS, :
 :
 Defendants. :
 :
 ----- X

Case No. 2:22-cv-1305

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs allege as follows:

INTRODUCTION

1. Plaintiffs are long-time residents of East Hampton, New York who seek to enjoy their homes without jeopardizing the health of themselves and their families. They support the renewable energy that will be generated by the South Fork Wind Farm project (“South Fork project”) off the eastern shore of Long Island. But as now configured, the onshore portion of that project — which will connect the generated electricity to the local power grid through a high-voltage cable — will cause serious environmental problems. In particular, the trenching required to install the cable under the roads of East Hampton will disturb and spread known contamination of the ground-water by so-called per- and polyfluoroalkyl substances (“PFAS”), which are health-endangering compounds in the eyes of federal and state authorities. That contamination will likely threaten public and private water wells, including those owned by Plaintiffs.

2. Defendants are federal agencies that were required by law to give thoughtful and serious consideration to known environmental concerns before granting their approvals and permits for the South Fork project. Yet as described below, Defendants abdicated their legal responsibility by failing to evaluate the risk of PFAS contamination in anything but the most perfunctory manner. In so failing, Defendants took final agency action that was arbitrary, capricious, and contrary to law. This Court has the authority and duty to set aside the unlawful approvals in relevant part. Moreover, because Plaintiffs will suffer irreparable harm during the pendency of this case, the Court may and should order an immediate halt to further PFAS-spreading construction activities in East Hampton.

JURISDICTION AND VENUE

3. This Court has original subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action and Plaintiffs' claims arise under federal law, namely, the Administrative Procedure Act ("APA"), 5 U.S.C. § 702; the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332(2)(C); the Clean Water Act, 33 U.S.C. § 1344(b)(1); and the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1337(p)(4)(B).

4. This Court has authority to grant the relief requested herein pursuant to the APA, 5 U.S.C. § 706(2); and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

5. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1)(B) because this is a civil action in which a defendant is an agency of the United States, and (i) a substantial part of the events or omissions giving rise to the claim occurred in this judicial district, or (ii) a substantial part of property that is the subject of the action is situated in this judicial district.

PARTIES

6. Plaintiffs Pamela and Michael Mahoney, wife and husband, are residents of Wain-scott, Town of East Hampton, Suffolk County, New York.

7. Plaintiffs Lisa and Mitch Solomon, wife and husband, are residents of Wainscott, Town of East Hampton, Suffolk County, New York.

8. Defendant U.S. Department of the Interior (“Interior”) is an “agency” within the meaning of the APA, 5 U.S.C. § 701(b)(1). Through its Secretary, Interior has the authority and duty to comply with NEPA, 42 U.S.C. § 4332(2)(C), and with OCSLA, 43 U.S.C. § 1337(p)(4)(B).

9. Defendant Bureau of Ocean Energy Management (“BOEM”) is a component of Interior and an “agency” within the meaning of the APA, 5 U.S.C. § 701(b)(1). Exercising authority delegated from Interior, BOEM took two of the final agency actions challenged herein.

10. Defendant U.S. Department of the Army (“Army”) is an “agency” within the meaning of the APA, 5 U.S.C. § 701(b)(1). Through its Secretary, the Army has the authority and duty to comply with NEPA and the Clean Water Act, 33 U.S.C. § 1344(b)(1).

11. Defendant U.S. Army Corps of Engineers (“Army Corps”) is a component of the Army and an “agency” within the meaning of the APA, 5 U.S.C. § 701(b)(1). Exercising authority delegated from the Army, the Army Corps took one of the final agency actions challenged herein.

GENERAL ALLEGATIONS

A. Plaintiffs and their homes in the hamlet of Wainscott

12. Plaintiffs Pamela and Michael Mahoney own real property on Beach Lane in Wainscott (“Mahoney Property”).

13. Wainscott is a hamlet within the Town of East Hampton, New York. Pamela and Michael are both registered to vote in East Hampton.

14. The Mahoney Property has been owned by Pamela Mahoney’s family since at least the 1940’s. In 2013, Pamela became the owner of the Mahoney Property.

15. Pamela grew up in the cottage located on the Mahoney Property. Now, Pamela and Michael live in the cottage and (since 2020) have lived there most of the time.

16. Pamela's and Michael's three young grandchildren enjoy visiting the cottage and would like to live in it themselves in the future.

17. Pamela and Michael intend to make the cottage a long-term year-round home. As such, the Mahoneys have made significant investments in the cottage, including hiring an architect and a builder to construct a foundation for the cottage.

18. Up until 2018, the Mahoneys had relied on a private well located on their property for drinking water. But in that year, the Mahoneys learned that the water in their well was contaminated with PFAS. Thus, the Mahoneys no longer rely on the well for drinking water, but they do use water from the well for other purposes such as irrigation.

19. PFAS are hazardous substances known to cause a variety of health problems. PFAS do not readily decompose and accordingly persist in the environment for long periods. PFAS can also travel long distances through the flow of groundwater.

20. Plaintiffs Lisa and Mitch Solomon also own real property in Wainscott, located on Wainscott Northwest Road ("Solomon Property"). They are registered to vote in East Hampton.

21. Lisa Solomon is the owner of the Solomon Property, which has been the principal residence for the Solomons for the past six years.

22. The Solomons also have a well on their property. The Solomons likewise do not rely on the well for drinking water, but use water from the well for other purposes such as irrigation.

23. As on the Mahoney Property, PFAS is present on the Solomon Property.

B. The South Fork Wind Farm project, its onshore cable, and the adverse environmental impacts to Plaintiffs and the Wainscott community

24. The South Fork project involves constructing an offshore windfarm off the eastern point of Long Island. The project developer is South Fork Wind, LLC ("South Fork"), formerly known as Deepwater Wind South Fork, LLC.

25. The South Fork project plans to bring electricity onshore through a high-voltage transmission cable. The cable will make landfall on Beach Lane in Wainscott, beginning underground at the buried sea-to-shore vault near the south end of Beach Lane and extending northwest along Beach Lane (adjacent to the Mahoney Property). On its way to a so-called “interconnection facility” that will connect the cable to the local electrical power grid, the cable will follow Wainscott Northwest Road (adjacent to the Solomon Property).

26. Burying the cable and placing the six vaults on Beach Lane and other roads in East Hampton will require excavation. This excavation will extend to eleven feet below ground.

27. The cable and the trench in which it is placed will intersect with groundwater that is contaminated with PFAS. Moreover, the cable trench will become a preferential pathway for the movement of PFAS and, as such, will transport PFAS contaminants to locations that otherwise would not be impacted.

28. As a preferential pathway for PFAS, this cable trench will harm Plaintiffs because it will facilitate the movement of higher concentrations of PFAS onto the Mahoney Property and the Solomon Property. This movement of PFAS will more likely than not contaminate or further contaminate the water supply in the wells located on the Mahoney Property, the Solomon Property, and other property in the area.

29. This contamination will jeopardize private and public drinking wells in the area.

30. The South Fork cable will also pass through or near other known PFAS plumes in East Hampton and, as such, will potentially be in contact with groundwater.

31. All of the risks to groundwater, private wells, and public wells in the vicinity of the cable corridor will not be fully known until additional groundwater monitoring wells are installed within the corridor and additional studies are conducted.

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