

**ANACOSTIA RIVERKEEPER, INC.  
and FRIENDS OF THE EARTH**

**V.**

**LISA JACKSON, Administrator,  
United States Environmental  
Protection Agency**

**Defendant.**

Pursuant to this Court’s Order dated April 17, 2009, the District of Columbia Water and Sewer Authority (“WASA”), by counsel, hereby submits this Reply to Plaintiffs’ Response to Motion to Intervene of the District of Columbia Water and Sewer Authority.

Plaintiffs advance two arguments in support of their position. First, Plaintiffs assert that WASA's economic interest in controlling costs associated with its combined sewer overflow control obligations is "simply irrelevant." Plaintiffs' assertion is without merit and ignores the

numerous decisions cited in WASA's memorandum in support of its motion to intervene. These decisions hold that such economic interests are broader than the narrowly focused interest of a regulatory agency, and, therefore, support WASA's position that EPA does not adequately represent its interest in this case. *See* Memo Supp. Mot. Int. at 14-15. Further, whether WASA's economic interests are relevant to the ultimate issue of whether EPA acted arbitrarily in approving the TMDLs at issue does not change the fact that this interest is not shared by EPA, and leaves WASA's particularized interests and objectives inadequately represented in this case.

Second, Plaintiffs' contend that the consent decree in *Anacostia Watershed Society, et al. v. District of Columbia Water and Sewer Authority* undermines WASA's motion to intervene. This contention is also without merit. Contrary to Plaintiffs' assertion, WASA's Long-Term CSO Control Plan ("LTCP") was not developed pursuant to the consent decree. Rather, the LTCP was developed and accepted by EPA before the consent decree was entered. The consent decree simply established the schedule for implementing the selected controls in the LTCP. Moreover, whether the LTCP does or does not provide for compliance with water quality standards has nothing to do with WASA's right to intervene in this case. As WASA stated in the memorandum supporting its motion to intervene, WASA's LTCP and the TMDLs challenged in this case "are based in large part, on the same factual, regulatory and legal analysis and conclusions." *See* Memo Supp. Mot. Int. at 2. Consequently, WASA's interest in the outcome of this case stems from the potential impact of Plaintiffs' challenge to the TMDLs to its LTCP. Thus, whether or not the LTCP ultimately results in compliance with water quality standards does not change the immediate impact of this case on implementation of the LTCP, and puts significant investments in the LTCP at risk. In short, Plaintiffs' arguments discussed above fail to recognize that intervention under Rule 24 relates to whether the outcome of the litigation will

impair the movant's interest, not whether such interest directly relates to the legal issues which will determine the outcome of the matter.

Lastly, Plaintiffs argue that WASA will have sufficient opportunity to protect its interests following remand if it is not granted intervention. However, any such later proceedings would be constrained by this Court's ruling in this matter, and thus WASA's interests would be irreparably impaired. *See Sierra Club v. EPA*, 995 F.2d 1478, 1485 (9th Cir. 1993) (rejecting a similar argument and allowing intervention); *see also Natural Resources Defense Council v. Costle*, 561 F.2d 904, 909-10 (D.C. Cir. 1977) (finding that intereviewer's ability to vindicate its interest in later regulatory proceedings was not sufficient cause to deny intervention from critical proceedings). Thus, WASA's ability to participate in later rulemakings should the TMDLs be invalidated is not a sufficient basis to deny WASA's motion where it meets all the requirements for intervention as of right.

Although WASA maintains that it is entitled to intervention as of right, and full participation as a party in this matter, WASA is committed to working with the parties and the Court to ensure that this matter proceeds in an efficient manner, including the application of appropriate briefing limitations.

Respectfully submitted,

DISTRICT OF COLUMBIA WATER AND  
SEWER AUTHORITY

By Counsel

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/s/ David E. Evans

David E. Evans (DC Bar No. PA0017)  
Darin K. Waylett  
McGuireWoods LLP  
901 East Cary Street  
Richmond, Virginia 23219  
Telephone: (804) 775-1000  
Facsimile: (804) 225-5410

Avis Marie Russell  
General Counsel  
District of Columbia  
Water and Sewer Authority  
5000 Overlook Avenue, SW  
Washington, D.C. 20032

*Counsel for the District of Columbia  
Water and Sewer Authority*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of April, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jennifer C. Chavez  
Earthjustice  
1625 Massachusetts Ave., NW, Suite 702  
Washington, DC 20036-2212  
(202) 667-4500  
*Counsel for Plaintiffs*

David Gunter  
United States Department of Justice  
Environmental & Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(202) 514-8865  
*Counsel for Defendants*

/s/ David E. Evans