
No. 08-13652, 08-13653, 08-13657, 08-14921, & 08-16283 (consolidated)

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

FRIENDS OF THE EVERGLADES, FLORIDA WILDLIFE FEDERATION, SIERRA CLUB, ENVIRONMENTAL CONFEDERATION OF SOUTHWEST FLORIDA, MICCOSUKEE TRIBE OF INDIANS OF FLORIDA, STATES OF NEW YORK, CONNECTICUT, DELAWARE, ILLINOIS, MAINE, MICHIGAN, MINNESOTA, MISSOURI, WASHINGTON, and PROVINCE OF MANITOBA, CANADA,
Petitioners,

-v.-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
and its ADMINISTRATOR,
Respondents,
(*For Continuation of Caption See Reverse Side of Cover*)

**On Petition for Review from the U. S. Environmental
Protection Agency**

**MOTION OF THE CITY OF NEW YORK, NATIONAL LEAGUE OF CITIES,
NEW YORK CONFERENCE OF MAYORS, AMERICAN WATER WORKS
ASSOCIATION, ASSOCIATION OF METROPOLITAN WATER AGENCIES,
AND NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES FOR
LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT RESPONDENTS**

MICHAEL A. CARDOZO,
Corporation Counsel of the
City of New York
Attorney for *Amicus*
The City of New York
100 Church Street
New York, NY 10007
(212) 788-1585

Of Counsel

HILARY MELTZER*
AMY MCCAMPHILL
KATHLEEN SCHMID

*Counsel of Record

Dated November 3, 2011

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, its EXECUTIVE
DIRECTOR, and UNITED STATES SUGAR CORPORATION,
Intervenors-Respondents.

CAROLYN COLEMAN
Director, Federal Relations for *Amicus*
National League of Cities
1301 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 626-3023

J. WADE BELTRAMO
Deputy General Counsel for *Amicus*
New York Conference of Mayors
119 Washington Avenue
Albany, NY 12210
(518) 463-1185

KENNETH A. RUBIN
Counsel for *Amicus*
American Water Works Association
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-5140

KEITH J. JONES
General Counsel for *Amicus*
National Association of Clean
Water Agencies
1816 Jefferson Place, NW
Washington, DC 20036
(202) 533-1803

ROBERT J. SANER
Counsel for *Amicus*
Association of Metropolitan
Water Agencies
Powers, Pyles, Sutter & Verville, P.C.
1875 Eye Street N.W.
Washington, D.C. 20006
(202) 466-6550

RULE 26 CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE

The City of New York is municipal corporation organized under the laws of the State of New York. National League of Cities, New York Conference of Mayors, American Water Works Association, Association of Metropolitan Water Agencies, and National Association of Clean Water Agencies are not-for-profit organizations representing, and with memberships comprised of, local governments, public utilities, water suppliers, and local water management agencies. Pursuant to Eleventh Circuit Rules 26.1 and 26.1-3, *amici* certify that, in addition to the persons and entities who have an interest in the outcome of this case identified by Petitioners and Respondent, the following list of persons and entities also have an interest in the outcome of this case:

Anastasio, Julia

Beltramo, J. Wade

Coleman, Carolyn

Jones, Keith

Kleinman, Alan

McCamphill, Amy

National Association of Clean Water Agencies

Friends of the Everglades, et al. v. EPA, et al., Appeal Nos. 08-13652 and consolidated cases

New York Conference of Mayors

Schmid, Kathleen

Pursuant to Fed. R. App. P. 29(b) and 11th Cir. R. 29-1, the City of New York, the National League of Cities, the New York Conference of Mayors, the American Water Works Association, the Association of Metropolitan Water Agencies, and the National Association of Clean Water Agencies respectfully move for leave to file a brief as *amici curiae* in support of Respondent United States Environmental Protection Agency (“EPA”). Respondent, Intervenor United States Sugar and South Florida Water Management District, and State Petitioners have consented to the filing of this brief. *Amici* have requested consent but have not received the consent of Petitioners Friends of the Everglades and Miccosukee Indians. This motion is timely because Appellant’s Brief was filed on October 27, 2011. *See* Fed. R. App. 29(e).

The proposed brief has been submitted with this motion. In support of its motion, *amici* state:

1. *Amicus* City of New York (“City”), a political subdivision of the State of New York, owns and operates a water supply system that provides drinking water to over eight million City residents and an additional million people in upstate communities. For decades, the City’s water supply system has depended upon transfers of natural, untreated water through a series of reservoirs. The transfers send the water from each reservoir downstream to the next. The instant

challenge to EPA's Water Transfers Rule jeopardizes the City's ability to supply sufficient water through this system to fulfill demand.

2. *Amicus* National League of Cities ("NLC") is the oldest and largest national organization representing municipal governments throughout the United States. In partnership with the 49 state municipal leagues, NLC serves as a national resource and advocate on behalf of the 19,000 cities, towns, and villages across the country it represents. The specific interest of the NLC in this case lies in the fact that municipal governments have historic authority and responsibilities to protect public safety and the health of their citizens in the management of their resources. NLC is particularly concerned that the conflict over the Water Transfers Rule leaves cities and other water management agencies in such a position of uncertainty that it is impossible to move forward with planning for vital water management programs.

3. *Amicus* New York Conference of Mayors ("NYCOM") is a not-for-profit voluntary membership association whose members include 60 of the State's 62 cities and 526 of the State's 555 villages, thereby representing an overwhelming majority of such municipalities. NYCOM's mission is to improve the administration of municipal affairs in New York State through training for municipal officials, and to provide its members with legislative advocacy at both the state and federal levels on issues of concern to local government. This case is

of significant concern to all of NYCOM members as they each have a direct role in ensuring clean and safe water, and an interest in ensuring that suitable laws and regulations apply to their activities.

4. *Amicus* American Water Works Association (“AWWA”) is the largest and oldest association of water professionals in the world. With over 60,000 members, it represents the full spectrum of the water community, including utilities, individual members, consulting firms, manufacturers, academics, and environmental advocates. Its utility members represent both public and private utilities, from the nation’s largest to the very smallest. Collectively, AWWA’s utility members serve drinking water to about 80 percent of the American population.

5. *Amicus* Association of Metropolitan Water Agencies (“AMWA”) is an organization representing 189 of the nation’s largest publicly-owned municipal drinking water suppliers. AMWA’s members include agencies and divisions of city governments and special purpose commissions, districts, agencies, and authorities created under state law to supply drinking water to the public. AMWA’s members provide drinking water to over 125 million people throughout the country. Many AMWA member agencies own or operate lakes, reservoirs, dams, aqueducts, tunnels, pipelines and other conveyances in and through which source waters are collected, stored, moved and otherwise managed as part of their

mission to supply adequate supplies of drinking water to the populations they serve. Water management activities in the facilities of many AMWA members involve transfers from one water source or body to another. AMWA is concerned that the Petitioners' challenge, if successful, would have a particularly devastating effect in western states, whose water supply networks often rely on engineered transfers among various natural water bodies.

6. *Amicus* National Association of Clean Water Agencies ("NACWA") represents the nation's publicly owned treatment works ("POTWs") and municipal stormwater utilities. NACWA's nearly 300 member agencies provide the majority of the U.S. population with reliable sewer service and collectively treat and reclaim over 18 billion gallons of wastewater each day. NACWA members operate their POTWs and municipal stormwater utilities under the CWA's NPDES permitting program. NACWA members are concerned, however, that a successful challenge to EPA's Water Transfers Rule will unnecessarily subject certain aspects of their operations to NPDES permitting for the first time.

7. *Amici* support the EPA's challenged Water Transfers Rule, 40 C.F.R. § 122.3(i), which clarifies that transfers of untreated water are not subject to Clean Water Act ("CWA" or "Act") National Pollutant Discharge Elimination System ("NPDES") permits, as the correct interpretation of the Act.

8. *Amici* are or represent local governments, public utilities, water suppliers, and local water management agencies. *Amici* all have direct roles in ensuring that the water in our country is clean and safe for a variety of uses including consumption and recreational use. *Amici* also have an interest in ensuring that their activities are regulated with suitable laws. *Amici* seek to provide a counterpoint to the briefs submitted by Petitioners by offering a perspective from municipal water managers on the policy implications of requiring NPSDES permits for transfers of untreated water.

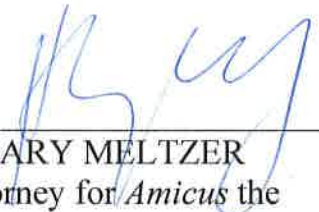
9. Invalidation of the Water Transfer Rule would impose significant burdens on local governments, public utilities, water suppliers, and local water management agencies, exposing them to expensive litigation and burdensome and unnecessary regulation. The general public will suffer because of the extensive resources these entities will expend seeking permits, defending against litigation, and investing in unnecessary infrastructure. This is of grave concern to *amici* and to the municipalities and water management agencies that they represent.

For these reasons, *amici* respectfully request that the Court grant their motion for leave to file their brief as *amici curiae*.

Dated: November 3, 2011

Respectfully submitted,

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Amicus Curiae
The City of New York
100 Church Street
New York, New York 10007
(212) 788-1585

By: 
HILARY MELTZER
Attorney for *Amicus* the
City of New York

AMY McCAMPHILL,
KATHLEEN SCHMID,
of Counsel.

CAROLYN COLEMAN
Director, Federal Relations for *Amicus*
National League of Cities
1301 Pennsylvania Avenue, NW
Washington, DC 2004
(202) 626-3023

J. WADE BELTRAMO
Deputy General Counsel for *Amicus*
New York Conference of Mayors
119 Washington Avenue
Albany, NY 12210
(518) 463-1185

(Additional Counsel listed on next page)

KENNETH A. RUBIN

Counsel for *Amicus*

American Water Works Association

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW

Washington, DC 20004

(202) 739-5140

KEITH J. JONES

General Counsel for *Amicus*

National Association of Clean

Water Agencies

1816 Jefferson Place, NW

Washington, DC 20036

(202) 533-1803

ROBERT J. SANER

Counsel for *Amicus*

Association of Metropolitan

Water Agencies

Powers, Pyles, Sutter & Verville, P.C.

1875 Eye Street N.W.

Washington, D.C. 20006

(202) 466-6550

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7), I certify that the Attached *Amicus* Brief of the City of New York in Support of Respondent United States Protection Agency complies with the type-volume limitations set forth in FRAP 32(a)(7)(B) and contains 6,778 words (excluding the Certificate of Interested Persons and Corporate Disclosure, Table of Contents, Table of Authorities, Certificate of Compliance, Appendix A, and Declaration of Service). This motion for leave to file the amicus brief also complies with the rules. The motion contains 1,043 words.

By: 

Hilary Meltzer

Attorney for *Amicus* the
City of New York

DECLARATION OF SERVICE

I, Hilary Meltzer, declare pursuant to 28 U.S.C. § 1746, under penalty of perjury, that I caused copies of the foregoing Motion for Leave to File Brief *Amicus Curiae* in Support of Respondents to be served upon counsel this 3rd day of November, 2011, by Electronic Mail and United States Mail addressed to:

Philip Bein, Esq.

Assistant Attorney General
Office of the Attorney General of the State of New York
The Capitol
Albany, NY 12224

David Guest, Esq.

Monica K. Reimer, Esq.

EarthJustice
111 Martin Luther King, Jr. Boulevard
Tallahassee, Florida 32301

Bernardo Roman III, Esq.

Legal Department for the Miccosukee Tribe
P.O. Box 440021, Tamiami Station
Miami, FL 33144

Andrew J. Doyle, Esq.

United State Department of Justice
Environment and Natural Resources Division
P.O. Box 23986
Washington, DC 20026-3986

Timothy S. Bishop, Esq.

Mayer, Brown, Rowe & Maw
71 S. Wacker Drive
Chicago, IL 60606

James Nutt, Esq.
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

November 3, 2011



HILARY MELTZER