14-1823(L),
14-1909 (con.), 14-1991 (con.), 14-1997 (con.), 14-2003 (con.)

In the United States Court of Appeals
for the Second Circuit

CATSKILL MOUNTAINS CHAPTER OF TROUT UNLIMITED, INC., *et al.*,

Plaintiffs-Appellees,

-v.-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Defendants-Appellants-Cross Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK,
NOS. 08-CV-5606 (KMK) & 08-CV-8430 (KMK)

MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT-APPELLANT-CROSS APPELLEE CITY OF NEW YORK

JESSICA M. ZETWICK
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5928

Counsel for American Water Works Association

ROBIN SHIFRIN
Application for Admission Pending
Counsellor-at-Law
1212 Fifth Avenue, 11th Floor
New York, NY 10029
(212) 228-1900

Counsel for The United States Conference of
Mayors, Association of Metropolitan Water Agencies,
National Association of Clean Water Agencies,
National Association of Water Companies,
and Water Environment Federation

CORPORATE DISCLOSURE STATEMENT

All movants appearing on this brief are non-profit organizations chartered under Internal Revenue Code 501(c)(3), 501(c)(4), or 501(c)(6) and, as such, have no parent corporation or publicly held corporation owning 10 percent or more of any of the movant's stock.

MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT-APPELLANT-CROSS APPELLEE CITY OF NEW YORK

The United States Conference of Mayors (USCM), American Water Works Association (AWWA), Association of Metropolitan Water Agencies (AMWA), National Association of Clean Water Agencies (NACWA), National Association of Water Companies (NAWC), and Water Environment Federation (WEF) (collectively, "the Movants") hereby move this Court for Leave to File an Amicus Curiae Brief in Support of Defendant-Appellant-Cross Appellee City of New York.

Counsel for AWWA sought consent from all parties for the Movants' participation as amici. Counsel for Intervenor Plaintiffs refused to grant his consent unless the Movants could assure him that their proposed brief would not introduce facts not already in the record and would advance legal arguments different than those already advanced by other amici. Understanding the Federal Rules of Appellate Procedure to not require such assurances, the Movants declined to provide those assurances and now move this Court for leave to file the Amicus Curiae Brief attached hereto as Exhibit A.

ARGUMENT

Movants meet the requirements of Federal Rule of Appellate Procedure 29 because they have timely filed this Motion and proposed Amicus Curiae Brief, they have significant interests at stake in this litigation, and their unique

perspective on the impact of the outcome of this litigation makes their participation desirable and relevant to the issues involved.

A. Federal Rule of Appellate Procedure 29

According to Federal Rule of Appellate Procedure 29(a), a political subdivision of a state or a private amicus may file an amicus brief if all parties consent to the filing of the brief or if the Court grants leave. When a party objects to filing by a private amicus and leave of court is sought, as here, Rule 29(b) provides that the motion for leave to file must be accompanied by the proposed brief and must state (1) the Movants' interest and (2) why an amicus brief is desirable and the matters asserted are relevant to the disposition of the case. As described below, the Movants meet these standards.

B. The Interests of the Movants

The Movants and their members all have significant interests at stake in this litigation. Countless water conveyance structures – including dams, aqueducts, reservoirs, canals, and tunnels – are used by federal, state, and local governments for the routine movement of municipal drinking water supplies and for closely related public services such as flood control and firefighting. These structures are essential to moving water from areas of relative abundance to areas of need. Many thousands of American communities depend for their existence on the routine

operation of these water conveyance structures.[1] The vast majority of these structures are both owned and operated by public agencies and instrumentalities of state or local government. Hundreds of communities dependent on these water transfers can be found in literally every state in the nation.

The Movants represent municipalities, municipal water suppliers, utility managers and plant operators, publicly-owned treatment works, water companies, and water quality professionals.[2] The Movants or their members are all engaged in activities that protect, treat, reclaim, improve, or otherwise respect water quality. Should this Court uphold the district court's decision that water transfers require NPDES permits, it would impose significant burdens on the Movants and their many members, in addition to the general public, and encumber routine water transfers that are necessary for the provision of safe and affordable water supplies and safe and effective stormwater and floodwater management. The Movants, therefore, have sufficient interests at stake to warrant their participation in this litigation as amici.

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[1] As EPA explained, "numerous States, localities, and residents are dependent upon water transfers, and these transfers are an integral component of U.S. infrastructure." 73 Fed. Reg. 33,697, 33,699 (June 13, 2008).

[2] For brevity, we incorporate by reference the lengthier descriptions of each of the Movant's interests set out in the proposed Amicus Curiae Brief attached as Exhibit A.

C. The Proposed Amicus Curiae Brief of the Movants is Desirable and Relevant to the Disposition of the Case.

The Movants' participation as amici is both desirable and relevant to the disposition of the case for several reasons. First, given the nature of the Movant organizations and their members, the Movants' participation will inform the Court about the consequences that applying the NPDES permitting program to water transfers will have on the general public, municipalities, local governments, water suppliers, and water companies. The Movants' participation, therefore, is desirable, given their unique position as representatives of so many affected parties.

Second, the Movants can offer perspective on the context in which Congress enacted the Clean Water Act. They can also explain the several other provisions of federal and state law that already regulate water conveyance structures, including the Safe Drinking Water Act, 42 U.S.C. § 300 et seq., and its implementing regulations, the so-called Surface Water Treatment Rule, 40 C.F.R. § 141.70 et seq.

Third, several of the Movants have participated over several years as amici in similar litigation, lending their perspective to other courts who have considered water transfer issues. Those cases include *Friends of the Everglades v. South Florida Water Management District*, 570 F.3d 1210 (11th Cir. 2009) and *Los*

Angeles County Flood Control District v. Natural Resources Defense Council, 133 S. Ct. 23 (2012). Just as they have in previous litigation, the Movants can provide this Court with their unique perspective on the effect of applying the NPDES permit program to water transfers.

CONCLUSION

For the reasons stated above, the Movants respectfully request that this Court grant the Motion for Leave to File and Amicus Curiae Brief in Support of Defendant-Appellant-Cross Appellee City of New York.

Respectfully submitted,

September 22, 2014

/s/ Jessica M. Zetwick

JESSICA M. ZETWICK
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5928

Counsel for American Water Works Association

/s/ Robin Shifrin

ROBIN SHIFRIN
Application for Admission Pending
Counsellor-at-Law
1212 Fifth Avenue, 11th Floor
New York, NY 10029
(212) 228-1900

Counsel for The United States Conference of Mayors, Association of Metropolitan Water Agencies, National Association of Clean Water Agencies, National Association of Water Companies, and Water Environment Federation

CERTIFICATE OF SERVICE

I, Jessica M. Zetwick, hereby certify that I have caused the foregoing "Motion for Leave to File an Amicus Curiae Brief in Support of Defendant-Appellant-Cross Appellee City of New York" and Attachment to be served electronically on all counsel of record this 22nd day of September, 2014 via the Court's CM/ECF system.

/s/ Jessica M. Zetwick

JESSICA M. ZETWICK
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5928

EXHIBIT A

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JESSICA M. ZETWICK
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
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1212 Fifth Avenue, 11th Floor
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NATIONAL ASSOCIATION OF WATER COMPANIES
WATER ENVIRONMENT FEDERATION

IN SUPPORT OF DEFENDANT-APPELLANT-CROSS APPELLEE CITY OF NEW YORK[1]

INTERESTS OF THE AMICI

The undersigned amici curiae represent a broad spectrum of local governments, public utilities, water suppliers, and local water management agencies. Amici all have direct roles in ensuring clean and safe water in our country. However, amici also have an interest in ensuring that suitable laws and regulations apply to their activities. The district court's ruling – overturning the Environmental Protection Agency (EPA)'s 2008 Water Transfers Rule[2] – needlessly burdens local water management decisions with an entirely new overlay of federal permitting that was never intended to reach these activities.

Transfers of natural, untreated water play a key role in the design and operation of municipal water supply and flood control systems, as well as in

[1] Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, *amici* represent that counsel for amici authored this brief in its entirety and that no person or entity other than *amici* and their representatives made any monetary contribution to the preparation or submission of this brief.

[2] 73 Fed. Reg. 33,697 (June 13, 2008) (codified at 40 C.F.R. § 122.3(j)).

structures designed to assist in inland navigation. Countless water management systems throughout the country transfer water, either to areas in need of water, or away from areas in danger of flooding. The design and operation of reservoirs, canals, locks, and other structures involves the movement of water from one body – whether natural or constructed – to others. As the EPA recognized regarding its 2008 Water Transfers Rule, "[m]any large cities . . . would not have adequate sources of water for their citizens were it not for the continuous redirection of water from outside basins." 73 Fed. Reg. 33,697, 33,698 (June 13, 2008).

Recognizing the essential role of water transfers in our nation's infrastructure, and the unsuitability of the Clean Water Act (CWA)'s National Pollutant Discharge Elimination System (NPDES) permit regime for these activities, EPA clarified in its Water Transfers Rule that such activities do not constitute "discharges" requiring NPDES permits. 73 Fed. Reg. 33,708 (2008) (codified at 40 C.F.R. § 122.3(j)). The district court's recent decision invalidating that EPA rule now threatens the operation of all such systems, and is inconsistent with the language and intent of the CWA.

Indeed, the district court's decision would radically change the existing regulatory structure for local governments and other water management authorities by subjecting inter-basin transfers of untreated water to the NPDES permit program. Because the NPDES program is premised on building wastewater

treatment plants to treat contaminants in industrial and other wastewater, it is not well suited to the routine transfer of untreated water. Inter-basin transfers often occur in settings where there is simply no room to construct treatment plants, and where doing so would degrade scenic public resources such as parks, forests, and canals. Today, virtually none of the tens of thousands of dams, levees, aqueducts, canals, and other structures used by the federal, state, and local governments and public utilities for ordinary management of water, for public water supply, flood control, navigation, and other governmental and public purposes, operates pursuant to an NPDES permit.

As EPA explained in issuing its Water Transfers Rule:

> Although there have been a few isolated instances where entities responsible for water transfers have been issued NPDES permits, Pennsylvania is the only NPDES permitting authority that regularly issues NPDES permits for water transfers. Pennsylvania began issuing permits for water transfers in 1986, in response to a State court decision mandating the issuance of such permits. . . . In addition, some Courts of Appeals have required NPDES permits for specific water transfers associated with the expansion of a ski resort and the supply of drinking water. . . . Otherwise, however, water transfers have not been regulated under section 402 of the Clean Water Act.

73 Fed. Reg. at 33,699 (emphasis supplied, citations omitted).[3]

Nothing in the language or history of the CWA suggest that Congress intended that law to apply to, or to interfere with, these structures. Accordingly,

[3] Not only do other State environmental agencies not regularly issue NPDES permits for these water transfers, they also discourage the submittal of NPDES permit applications for water transfers.

amici respectfully urge this Court to reverse the judgment of the district court. At a minimum, this Court should recognize and affirm EPA's authority to avoid imposing burdensome permitting requirements on a myriad of long-standing beneficial public uses.

The United States Conference of Mayors (USCM) is the official non-partisan organization of nearly 1,300 United States cities with populations of 30,000 or more. Each member city is represented in USCM by its chief elected official, the mayor. In addition to being responsible for economic development and job creation in cities, local governments are also responsible for spending over $115 billion annually on the operation of and capital expenditures for safe drinking water and wastewater treatment in their communities.

The American Water Works Association (AWWA) is an international nonprofit scientific and educational society dedicated to the improvement of drinking water quality and supply. AWWA's 50,000-plus members represent the full spectrum of the water community, including utility managers, plant operators, environmental advocates, state and federal regulators, scientists, academicians, and others who hold a genuine interest in water supply and public health. AWWA's membership includes approximately 4,800 local or regional drinking water utilities, which collectively provide safe drinking water to more than 80 percent of the American people. These members are concerned that the District Court's

ruling will significantly burden the provision of water and wastewater services to tens of millions of Americans.

The Association of Metropolitan Water Agencies (AMWA) is an organization representing 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 130 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 provide adequate supplies of drinking water to the populations they serve. AMWA is concerned that the district court's ruling, if upheld, will subject many of these facilities to very costly, and in some cases unattainable, permit requirements that will undermine their ability to fulfill this critical mission.

The National Association of Clean Water Agencies (NACWA) represents the nation's publicly-owned treatment works (POTWs) that treat wastewater, along with municipal separate storm sewer system (MS4) utilities that manage urban stormwater. 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 MS4s under the CWA's NPDES permitting program. NACWA members are concerned, however, that the district court's decision will unnecessarily subject aspects of their operations to NPDES permitting for the first time.

The National Association of Water Companies was established in 1895 as a non-profit membership association representing investor- and privately-owned water companies. Its 130 member companies provide service throughout the nation and range in size from large companies owning, operating or partnering with hundreds of utilities in multiple states to individual utilities serving a few hundred customers. Private drinking water and wastewater utilities and companies operating public-private partnerships serve nearly 75 million Americans every day and are subject to all drinking water standards and Clean Water Act environmental requirements to exactly the same extent as public water and wastewater agencies. In addition, NAWC member companies are subject to rate regulation by state utility commissions. As such, they are concerned that the district court ruling will subject them to unreasonable or unattainable permitting burdens.

Founded in 1928, the Water Environment Federation (WEF) is a not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code whose mission is to preserve and enhance the global water environment. WEF has more

than 36,000 individual members and 75 affiliated Member Associations representing water quality professionals around the world. WEF members, Member Associations, and staff work to achieve its mission to provide bold leadership, champion innovation, connect and educate water professionals, and leverage knowledge to support clean and safe water worldwide. Many WEF members are employed by drinking, wastewater and municipal stormwater utilities. They are concerned that the district court's ruling is unnecessary and unreasonably burdensome.

STATEMENT OF THE CASE

Amici adopt the statement of the case contained in the Brief for Defendant-Appellant-Cross Appellee United States Environmental Protection Agency.

ARGUMENT

Countless water conveyance structures – including dams, aqueducts, reservoirs, canals, and tunnels – are used by federal, state, and local governments for the routine movement of municipal drinking water supplies and for closely related public services such as flood control and firefighting. These structures are essential to moving water from areas of relative abundance to areas of need. Many thousands of American communities depend for their existence on the routine

operation of these water conveyance structures.[4] The vast majority of these structures are both owned and operated by public agencies or instrumentalities of state or local government.

For these communities, such water conveyance structures represent the only way to assure an adequate water supply for human consumption, fire protection, the economy, and the local quality of life. They also represent the only way to augment other water supplies so as to ensure an adequate margin of supply for emergencies (drought conditions, firefighting, etc.). Hundreds of communities dependent on these water transfers can be found in literally every state in the nation.

Many thousands of such water conveyance structures have been in operation for decades, and in many cases for a hundred years or more. They were obvious, open, and well known to Congress, to federal agency officials, and to citizens when Congress enacted the Federal Water Pollution Control Act in 1972 (now the CWA) and later amended it.

The framework established by Congress for the NPDES Program focused on construction of treatment plants for discharges of industrial and municipal wastewater. Subjecting essential water conveyance structures to this rigid legal

[4] As EPA explained, "numerous States, localities, and residents are dependent upon water transfers, and these transfers are an integral component of U.S. infrastructure." 73 Fed. Reg. 33,697, 33,699 (June 13, 2008).

framework would do great harm to the many municipalities that depend on water transfers. It is neither a hypothetical nor an exaggeration to predict that many American cities would be deprived of affordable water supplies if their essential water supply transfers are subject to NPDES requirements. That is the harsh reality that EPA sought to avoid when it issued the Water Transfers Rule. 73 Fed. Reg. 33,697 (June 13, 2008) (codified at 40 C.F.R. § 122.3(j)).

If affirmed, the district court's decision striking down EPA's Water Transfers Rule would burden many water authorities and municipal water departments and agencies with unnecessary, inappropriate, and perhaps unattainable, regulatory requirements. Just the cost of the permitting process alone would be quite onerous, inasmuch as some states assess NPDES permit fees of $25,000 per year or more from all permit applicants. Moreover, the administrative burdens of submitting and processing those permit applications would be substantial for both the applicants and the regulators, and would divert public resources from far more pressing tasks. Finally, as noted above, many water transfers occur in settings where construction of treatment plants would be infeasible due to physical constraints or would severely degrade scenic public resources such as parks, forests, or canals. Due to the unsuitability of the NPDES program to these water management activities, the district court's ruling jeopardizes the ability of local water management agencies to continue meeting

many public health and safety needs, including flood control; ensuring a reliable supply of water for domestic, commercial, and industrial uses; and fire suppression.

We will not engage in an extensive discussion of law in this brief. But we wish to re-emphasize that these vast numbers of essential water transfers as discussed above were well known and obvious at the time Congress enacted the CWA. Had Congress intended to subject these transfers to the Act's NPDES provisions, it would have made that intention clear in the express language of the Act.

"Congress, we have held, does not . . . hide elephants in mouseholes." *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457, 468 (2001). Subjecting the routine water transfers essential for municipal water supply in a great many American communities to NPDES requirements would indeed be an elephant, and a very big elephant at that. And even if this Court finds that one or more "mouseholes" of the statute are not clear on their face, then all the more reason the District Court should have deferred to EPA's judgment in interpreting the act.

Municipal and regional water management systems operated in the United States for decades before the 1972 enactment of the CWA. These systems are designed to move water from one body to another, or to change the flow of water.

During the 40-plus years since its enactment, the CWA has never, until recently, been interpreted to regulate such transfers and diversions of water. Moreover, the U.S. EPA has never required that such transfers and diversions operate pursuant to CWA NPDES permits. The NPDES permit program is plainly the wrong tool to regulate water transfers and diversions, and the consequences of requiring NPDES permits for such activities will be devastating to water suppliers, local governmental water managers, and the citizens they serve every day across the nation.

Amici wish to emphasize that our fundamental interest is in protecting our nation's waters and providing safe drinking water to our citizens. We and our member organizations, governments, and utilities recognize our nation's dependence on a clean and safe supply of water. Amici are all engaged in activities that protect, treat, reclaim, improve, or otherwise respect water quality. Indeed, many of amici's members already operate under the stringent NPDES system to carry out their municipal wastewater treatment and stormwater management functions. Given the familiarity of these utilities with the requirements of the permit system, they are even more cognizant of the unnecessary and inappropriate application of the NPDES program to water transfers of the kind exempted in EPA's rule.

In arguing that the NPDES program is not the appropriate mechanism for regulating transfers and diversions of untreated water, we do not suggest that such transfers and diversions should be unregulated, or that their water quality impacts should go unaddressed. However, as discussed below, there are other provisions in both federal and state law that were designed to ensure that water transfers and diversions are managed responsibly. In most cases, these other provisions can regulate transfers and diversions more appropriately and effectively than the ill-suited NPDES program.[5]

Indeed, in promulgating the CWA itself, Congress established a separate provision – independent of the NPDES program – that specifically addresses water transfers and diversions. Congress directed U.S. EPA to develop "processes, procedures, and methods to control pollution resulting from … changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities." CWA § 304(f)(2)(F), 33 U.S.C. §

[5] As EPA pointed out in the rule, this Court has previously adopted an approach contrary to the rule, though the Court did not apply *Chevron* deference in that ruling. 73 Fed. Reg. 33,697 n. 4. As the court below found here, however, *Catskill I* and *Catskill II* do not foreclose EPA's interpretation because this Court "did not clearly hold in either case that the statute unambiguously forecloses EPA's interpretation" and this Court "explicitly left open the door to *Chevron* analysis." *Catskill Mountains Chapter of Trout Unlimited, Inc., et al. v. United States Environmental Protection Agency, et al.*, 7:08-cv-05606-KMK, at 36 (S.D.N.Y. Mar. 28, 2014).

1314(f)(2)(F). This provision makes it clear that Congress recognized that water management facilities should be treated differently from other sources, so as to ensure that water management for such public purposes as water supply, flood control, and navigation is not unreasonably restricted.

Moreover, several other provisions of federal and state law already provide robust regulatory controls and mechanisms that are far better suited to addressing the vast array of water conveyance structures upon which so many vital public services depend.[6] Among them are:

State Laws and Regulations

Separate and apart from federal requirements, a number of state laws and regulations address and control pollutants in the context of municipal water management and water transfers. These state rules illustrate the type of state water allocation system — balancing the competing interests of public water supply needs, recreational uses and environmental protection — that Congress intended to protect under section 101(g) of the CWA, also known as the "Wallop Amendment."

That provision, added to the CWA in 1977, provides that:

[6] As EPA concluded in 2005, "Congress generally expected water transfers would be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the [NPDES] permitting program under section 402 of the CWA." 73 Fed. Reg. 33,697, 33,699 (June 13, 2008).

> It is the policy of Congress that the authority of each State to allocate water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. It is the further policy of Congress that nothing in this Act shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall cooperate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

33 U.S.C. § 1251 (g).

The significance of this Congressional statement of policy is clear. As EPA explained in an interpretative memo shortly after the enactment of section 101(g): "It is important to recognize . . . that §101(g) reinforces §510(2)'s general proscription against unnecessary Federal interference with State water rights. EPA should therefore impose requirements which affect water usage only where they are clearly necessary to meet the Act's requirements."[7]

The Safe Drinking Water Act and the Surface Water Treatment Rule

Municipal water supply systems are closely regulated under the federal Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f et seq., and its implementing regulations, the so-called Surface Water Treatment Rule (SWTR), 40 C.F.R. § 141.70 et seq. The SDWA and SWTR, among other things, set the maximum level

[7] Memorandum from Thomas C. Jorling, Assistant Administrator for Water, and Joan Z. Bernstein, General Counsel, re "State Authority to Allocate Water Quantities – Section 101(g) of the Clean Water Act" (1979), available at: http://water.epa.gov/scitech/swguidance/standards/upload/1999_11_03_standards_waterquantities.pdf

of contaminants that are allowed in public water systems, and set forth the criteria that must be met for a public water system to avoid filtration. *See* 40 C.F.R §§ 141.70 and 141.71.

This regulatory framework helps ensure that water transfers are appropriately reviewed, managed, and regulated without invoking the NPDES permit regime. For example, because New York City's Catskill system supplies unfiltered water to the City of New York, it operates under a Filtration Avoidance Determination (FAD) issued by the U.S. EPA under 40 C.F.R. §§ 141.71 and 141.171. The FAD contains several provisions that require the City to address and control pollution entering the City's Catskill and Delaware water supply systems from both point and nonpoint sources. It specifically requires the City to address suspended solids and turbidity.

CWA Total Maximum Daily Loads & Water Quality Management Plans

The Clean Water Act itself also contains detailed provisions aimed at addressing situations where water bodies are not achieving applicable water quality standards due, in whole or in part, to pollution from sources not subject to permitting under section 402 of the CWA. CWA § 303 33 U.S.C. § 1313. Water quality standards are issued by the States to protect water bodies for designated uses, such as wildlife, recreation, public water supply, etc. CWA § 303(c), 33 U.S.C. § 1313(c). One set of CWA provisions calls for the development of total

maximum daily loads (TMDLs) for the receiving water body, while a second set of CWA provisions requires the States to develop Water Quality Management (WQM) plans for such water bodies. We address them both below.

In most cases, a receiving water that fails to meet applicable water quality standards for a particular pollutant will be placed on a state's impaired waters list under the CWA and will therefore be subject to the development of total maximum daily loads (TMDLs). CWA § 303(d), 33 U.S.C. § 1313(d). TMDLs are a management tool for identifying sources of pollutants of concern and for allocating those pollutants to their various contributors. TMDLs are implemented for point sources via NPDES permits, and for nonpoint sources through state best management practices.

The TMDL program, in contrast to the NPDES permitting program, is an appropriate planning tool to assess pollutant loadings and select the mechanisms that will regulate and control pollutants in the water bodies affected by water transfers. Among other things, the TMDL program, unlike the NPDES program, considers the relative contributions of both point and nonpoint sources of pollution.

In addition to the TMDL program, states must establish Water Quality Management (WQM) Plans to address water bodies for which water quality standards cannot be attained or maintained without the control of nonpoint sources. CWA § 319(a)(1)(A), 33 U.S.C. § 1329(a)(1)(A). A WQM Plan "identifies those

categories and subcategories of nonpoint sources, or, where appropriate, particular nonpoint sources which add significant pollution . . . in amounts which contribute" to the failure to meet water quality standards. CWA § 319(a)(1)(B), 33 U.S.C. § 1329(a)(1)(B). A WQM Plan includes a process for identifying best management practices to reduce pollution from the significant individual nonpoint sources or categories of sources, and describes the programs that have been implemented to control pollution from those sources. CWA § 319(a)(1)(C) and (D), 33 U.S.C. §§ 1329(a)(1)(C) and (D). A WQM Plan includes both regulatory and non-regulatory means to control nonpoint source pollution. 40 C.F.R. §§ 130.6(c)(4)(i) and (ii). Once approved, TMDLs are incorporated into a state's WQM Plan. 40 C.F.R. § 130.7(a).

Thus, the CWA provides an elaborate regulatory framework for addressing water quality issues associated with water transfers, which are typically affected by nonpoint sources. The means to address them are the CWA's nonpoint source programs, including the TMDL program and state WQM plans.

Interstate Authorities

Finally, numerous water transfers are conditioned or controlled by interstate river basin authorities such as the Delaware River Basin Commission and its

counterparts around the nation.[8] These interstate commissions, which must be established by states and ratified by Congress, condition and control important aspects of water transfers within major US river basins.

CONCLUSION

For all of these reasons, amici respectfully urge this Court to reverse the judgment of the district court. At a minimum, this Court should recognize and affirm EPA's authority to avoid imposing burdensome permitting requirements on tens of thousands of long-standing beneficial public uses.

[8] The Delaware River Basin Commission was created by the Delaware River Basin Compact, effectuated by Congress pursuant to U.S. Public Law 87-328, 75 Stat. 668, 87th Congr. – 1st Sess. (1961).

Respectfully submitted,

/s/ Jessica M. Zetwick
JESSICA M. ZETWICK
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5928

Counsel for American Water Works Association

/s/ Robin Shifrin
ROBIN SHIFRIN
Application for Admission Pending
Counsellor-at-Law
1212 Fifth Avenue, 11th Floor
New York, NY 10029
(212) 228-1900

Counsel for United States Conference of Mayors, Association of Metropolitan Water Agencies, National Association of Clean Water Agencies, National Association of Water Companies, and Water Environment Federation

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7), I certify that the foregoing Brief of Amici Curiae complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,807 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and applying Fed. R. App. P. 29(d).

/s/ Jessica M. Zetwick
Jessica M. Zetwick

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-1823

Caption [use short title]: Catskill Mountains Chapter v. United States Environmental Protection Agency

Motion for: Leave to File an Amicus Curiae Brief

Set forth below precise, complete statement of relief sought:

Leave to file an amicus brief after counsel for several Plaintiff-Appellees/Intervenors refused consent

National Association of Clean Water Agencies, Association of Metropolitan Water Agencies, Water Environment Federation, National Association of Water Companies,

MOVING PARTY: The United States Conference of Mayors (Amici Curiae)

- ☐ Plaintiff ☐ Defendant
- ☐ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY:

MOVING ATTORNEY: Robin Shifrin

OPPOSING ATTORNEY:

[name of attorney, with firm, address, phone number and e-mail]

Counsellor-at-Law

1212 Fifth Avenue, 11th Floor

New York, NY 10029

Court-Judge/Agency appealed from: N/A

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain): Specifically, co-movant sought consent to file the brief and was refused consent by counsel for several Plaintiff-Appellees, necessitating this motion.

Opposing counsel's position on motion:
☐ Unopposed ☐ Opposed ☑ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney: Robin Shifrin **Date:** 9/24/2014

Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: Catskill Mountains Chapter of Trout Unllimited v. U.S. EPA Docket No.: 14-1823(L)

14-1909 (con.), 14-1991 (con.), 14-1997 (con.), 14-2003 (con.)

Substitute, Additional, or Amicus Counsel's Contact Information is as follows:

Name: Robin Shifrin

Firm: Counsellor-at-Law

Address: 1212 Fifth Avenue, 11th Floor, New York, NY 10029

Telephone: 212.228.1900 Fax: 212.228.1901

E-mail: 212.228.1902

Appearance for: National Association of Clean Water Agencies, Association of Metropolitan Water Agencies, Water Environment Federation, National Association of Water Companies, The United States Conference of Mayors (party/designation), as Amici Curiae

Select One:

☐ Substitute counsel (replacing lead counsel:) (name/firm)

☐ Substitute counsel (replacing other counsel:) (name/firm)

☐ Additional counsel (co-counsel with:) (name/firm)

☑ Amicus (in support of: City of New York, Defendant-Appellant-Cross Appellee) (party/designation)

CERTIFICATION

I certify that:

☐ I am admitted to practice in this Court and, if required by Interim Local Rule 46.1(a)(2), have renewed my admission on _____ OR

☑ I applied for admission on September 22, 2014 Application for Admission Pending.

Signature of Counsel: Robin Shifrin

Type or Print Name: Robin Shifrin