

Resolution No. 171 June 19, 2012

Initial Comments Of The Ulster County Legislature To The New York State Department Of Environmental Conservation (DEC) On The Draft Consent Order With The City Of New York

Referred to: The Laws and Rules, Governmental Services Committee
(Chairman Roberts and Legislators Fabiano, Maio, Ronk, Donaldson,
Loughran and Robert Parete)

Legislators Terry Bernardo, Carl Belfiglio, Tracey Bartels, Donald Gregorius,
Wayne Harris, Craig Lopez, James Maloney, Kenneth Ronk, Kenneth
Wishnick offers the following:

WHEREAS, the New York State Department of Environmental
Conservation (NYS DEC) has issued a Draft Consent Order between the NYS
DEC and the City of New York, known as DEC CASE NO: D007-0001-11;
and

WHEREAS, the Draft Consent Order imposes certain conditions upon
the City of New York in relation to discharges from the New York City Water
Supply System including, but not limited to the Ashokan Reservoir, and in
response to releases of turbid water in Ulster County into the lower Esopus
Creek by the New York City Department of Environmental Protection (NYC
DEP); and

WHEREAS, the Draft Consent Order provides for a protocol for
releases into the lower Esopus Creek, and creates a framework for decision-
making and required capital investments that are likely to lead to require the
continued releases of water; and

WHEREAS, such releases to the lower Esopus Creek have significant
impacts on the environment, are injurious to properties along it, deprive
residents of the use of a significant recreational resource and impact businesses
that rely on the lower Esopus Creek as part of their success; and

WHEREAS, such releases are improper and without required
environmental review;

WHEREAS, within the watershed, the NYC DEP is required to examine
the impacts of its actions and regulations that considers all aspects of the
environment and provide for public input, a policy which NYC DEP holds up

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as a world-wide model of environmental stewardship for watersheds that includes integration of community concerns; and

WHEREAS, increased awareness of environmental and public health threats requires a changing regulatory environment notwithstanding past practices or rules; and

WHEREAS, the culture of the NYC DEP has been to focus on its operational needs and costs at the expense of the residents and environment of Ulster County; and

WHEREAS, the Draft Consent Order continues an improper and unlawful practice that will have significant adverse impacts to the lower Esopus Creek, and permits by consent, what is a violation of NYS Water Quality Standards; and

WHEREAS, more than sixteen (16) months have passed since the NYS DEC commenced proceedings against the City of New York, during which time the City of New York and the NYS DEC have been negotiating the Draft Consent Order without the participation, input or inclusion of the County of Ulster; and

WHEREAS, the proposed consent order amounts to employees from New York State engaging in settlement discussions and planning releases with employees from New York City, all without the consent or substantive involvement, despite claims to the contrary, of the people of Ulster County by and through its elected officials; and

WHEREAS, the Ulster County Legislature has considered the proposed Consent Order, for which there is a public comment period open until July 2, 2012; now, therefore, be it

RESOLVED, that the Ulster County Legislature hereby opposes the Draft Consent Order in its present form including, but not limited to the following reasons:

- a. The Interim Release Protocol, with the exception of Conservation Releases, should be separated from the Draft Consent Order as it

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removes it from the State Environmental Quality Review Act (SEQRA) process and permits turbid releases which exceed New York State Water Quality Standards by creating a visual contrast, and

- b. The civil penalty of \$1.5 Million in the Draft Consent Order, is woefully inadequate as to amount and purpose, as it does not address, compensate for or provide for the damages forced upon the environment, the residents of Ulster County, the private and public properties in Ulster County, the recreational resources in Ulster County, and the economy of Ulster County by the NYC DEP, and further permits the NYC DEP to receive a “refundable deposit” of one third of that amount as a suspended penalty, and
- c. The fine appears to be little more than the “cost of doing business” and not a meaningful fine which deters future improper actions by the City of New York against the watershed area residents; and
- d. The City of New York should agree that it will not object to Filtration Avoidance Determination (FAD) programs being extended to affected downstream properties and communities along the lower Esopus that are not currently included in the FAD but are impacted by the actions of the NYC DEP, and
- e. The Draft Consent Order does not guarantee that impacts along the lower Esopus will cease; and it should guarantee that any operations of the Ashokan Reservoir by NYC DEP shall not cause nor increase the risk of flooding in the lower Esopus Creek, and further guarantee that the NYC DEP shall make low flow conservation releases to the Esopus Creek, and
- f. The Draft Consent Order is not in full compliance with SEQRA in that it assumes an outcome: the continuation of releases and the elimination of Alum use at the Kensico reservoir, and lacks a comprehensive alternative analysis, and
- g. The Draft Consent Order does not provide relief to individual landowners, both public and private, along the lower Esopus Creek

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in the form of monetary damages incurred as a result of the actions by the NYC DEP as well as restoration funding for the purpose of debris removal, dock replacement, stream bank stabilization,, channel restoration and other damage mitigation; and be it further

RESOLVED, the Draft Consent Order should provide that copies of any and all documents related to this Consent Order, provided to the NYS DEC, now or in the future, shall be provided to the County of Ulster for public dissemination within five (5) business days of receipt by the NYS DEC and should further provide that such documents should be placed publicly on the internet with substantive and regular updates which allow the public meaningful opportunity to review the documents; and be it further

RESOLVED that Members of the County Legislature request the DEC listen carefully to the comments and concerns of the people of Ulster County regarding this critical issue,

and moves its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES: 22 NOES: 0
(LEGISLATOR AIELLO ABSENT)

Passed Committee: Laws & Rules, Government Services on June 18, 2012

FINANCIAL IMPACT:
NONE

STATE OF NEW YORK
COUNTY OF ULSTER

This is to certify that I, the undersigned Deputy Clerk of the Legislature of the County of Ulster have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 19^h day of June, 2012, and that the same is a true and correct transcript of said resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the County of Ulster this 20th Day of June in the year Two Thousand and Twelve.

Fawn A. Tantillo, Deputy Clerk
Ulster County Legislature

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