

Faxed and Emailed

May 22, 2009

**Jeremy Rosenthal
NYSDEC
Division of Environmental Permits
625 Broadway, 4th Floor
Albany, New York 12233-1750**

Dear Mr. Rosenthal,

On behalf of the members of Food & Water Watch (FWW), I submit the following comments on the scoping of United Water New York's proposal to construct a desalination facility in the Town of Haverstraw, Rockland County.

FWW is a nonprofit consumer advocacy organization with national membership and offices across the country, including one in Manhattan. We promote the right to clean and affordable water, sustainable management of our water resources and the public control of water.

Pursuant to the State Environmental Quality Review Act (SEQRA),¹ FWW urges the New York Department of Environmental Conservation (NYSDEC) to take the following general approach, and study the following significant relevant environmental issues, and reasonable alternatives and mitigation measures, among others, for the Haverstraw Water Supply Project (HWSP).

NYSDEC's Draft EIS Should Be Broad in Scope.

As you are well aware, SEQRA, by its very nature, requires a broad scope environmental review. The act defines "environment," as the "physical conditions which will be affected . . ., including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character."² Accordingly, FWW urges the NYSDEC to analyze far more of the HWSP's potential ramifications, and in greater detail, than did United Water's preliminary draft environmental impact statement (EIS).

¹ 6 NYCRR § 617.8.

² NY CLS ECL § 8-0105.

NYSDEC should evaluate the impacts of the project on the entire Hudson watershed. As an initial matter, we question the impact area presently defined for the proposed desalination project.³ The Hudson River is a tidal water system up to Troy, New York. The company's plan to use the Hudson's water, desalinate it, and then return the treated waste into the Hudson has the potential to affect river communities from New York City to just north of Albany. We respectfully request that NYSDEC analyze all of the potential impacts to all of these areas and invite communities on both the east and west banks of the Hudson in the tidal area to participate in the scoping process as part of sustainable watershed planning.

NYSDEC should consider and evaluate the historic and aesthetic importance of the Hudson river. All 315 miles of the Hudson River are designated by the U.S. Environmental Protection Agency as an American Heritage Designated River. This designation was sought and achieved by the government and people of New York State, pledging to work cooperatively with local governments and nonprofit organizations to promote environmental and natural resource protection, historic and cultural preservation and economic development in the Hudson River Valley. It is very important to inform and invite the various commissions, local governments, state and federal agencies associated with this designation to participate in this scoping process.

Many individuals and organizations have worked tirelessly over decades to restore the Hudson to a greater level of health and ecosystem sustainability. We should not turn back the clock on all this good work, and we ask that NYSDEC take special heed of SEQRA mandate to evaluate the project's impacts on the historic and aesthetic qualities of the Hudson.

NYSDEC should consider and evaluate the environmental and social impacts that transgress state boundaries. According to the Columbia University, nine subwatersheds in Rockland County drain away from the Hudson, six of them extending beyond Rockland County borders into Bergen Count, New Jersey.⁴ All of these watersheds could be impacted by Rockland County's water use.

Further, the Rockland County water system owned by United Water New York contributes a substantial portion of its potable water to adjacent communities in New Jersey. And both United Water New York and United Water New Jersey – servicing immediately New York adjacent Bergen, Hudson, Passaic, and Sussex Counties in New Jersey– are subsidiaries of

³ See e.g., United Water New York. "Haverstraw Water Supply Project Draft Environmental Impact Statement." September 26, 2008 at p. 9-2

⁴http://superfund.ciesin.columbia.edu/Rocklandwater/supply_sources.html

United Water/Suez, a giant multinational French corporation that stands to profit from rate increases.⁵ Water decisions in Rockland County that affect United Water customers in New York are bound to affect its customers in these neighboring New Jersey counties.

We therefore urge NYSDEC to analyze the impacts of the project on communities outside of New York state boundaries and to invite people from these potentially impacted communities to participate in the scoping process.

The area of Environmental Justice impact is too narrow. The Environmental Justice analysis prepared by United Water New York in its preliminary draft EIS inappropriately constricts its analysis of the area where disproportionate adverse impacts on minority or low-income populations might exist. It only considers one town on one side of the Hudson River – Haverstraw – and further delineates the study area to a 1,000-foot land area in the immediate vicinity of the plant’s proposed location. By restricting the study area, the analysis neglects potential significant potential impacts of the project. For example, it fails to evaluate the effects of the plan on those the river fishermen, and the local economy to which they contribute, in the adjacent community of Stony Point that is very close to the proposed site. It also fails to evaluate the effects on other communities along the Hudson.

We note that the May 22, 2009 deadline for public comment is not well known outside of a small area of Rockland County and so many river communities are unaware of this proposal for the Hudson. A recent April 30, 2009 educational and outreach event held by the Rockland County Coalition for Sustainable Water attracted approximately 200 interested parties and was the first broad-based event of its kind to make the desalination proposal better known outside of policy and regulatory circles.

NYSDEC Must Consider The Global Warming Impacts Of The Project.

The Draft Environmental Impact Statement must include the evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence.⁶ SEQRA specifically identifies the potential impacts on the use and conservation of energy as an impact that should be studied for any potential project.⁷ We urge NYSDEC to consider the vast amount of energy

⁵

<http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=4973632>.

⁶ 6 NYCRR § 617.9 (b)(5)(iii)

⁷ Id. § 617.9 (b)(5)(iii)(e).

that would be used to implement this project, and its corresponding impacts on global warming.

Desalination is an energy intensive process that would increase the area's carbon footprint. United Water's Haverstraw Water Supply Project will use between 4,427 and 6,250 kilowatt-hours of electricity per million gallons of water produced (kWh/Mgal).⁸ Although water utilities in the United States vary in how much energy they use, most use between 250 and 3,500 kWh/Mgal⁹ – substantially less than the proposed desalination plant.

In considering the environmental impacts of this project, the draft EIS must fully analyze the potential of this increase in energy use. The preliminary draft EIS submitted by United Water does provide an estimate of how much energy and emissions the project would produce, estimating that it would emit an average of 9,074 metric tons per year. However, a thorough analysis would also require assessing the difference between the project's energy use and corresponding emission and conservation programs so that the public and decision-makers can compare alternatives.

Further, the emissions estimate that the preliminary draft EIS quotes is based on current conditions, but the draft also notes that climate changes may change the conditions of the treated water, which could result in higher salinity of the intake water. And, this "higher salinity, or more frequent or longer events of elevated salinity, would require the water treatment processes to use more electric power than would be required with the current conditions. Increased electricity use would result in additional GHG emissions."¹⁰ An analysis of the energy required by the project and likely emissions must therefore include the impact of the project in its scope if such changes in salinity occur.

The preliminary draft also notes that future emissions "may be lower" than estimated if New York develops new sources of alternative energy.¹¹ A thorough study of the emissions of the project should include an analysis of the available sources of energy in New York and any alternative energy sources that may have fewer emissions and how this may or may not influence the emissions of the project.

⁸ United Water New York. "Haverstraw Water Supply Project Draft Environmental Impact Statement." September 26, 2008 at 16-11.

⁹ Carlson, Steven and Adam Walburger. Awwa Research Foundation. "Energy Index Development for Benchmarking Water and Wastewater Utilities." 2007 at 14.

¹⁰ United Water New York. *supra* note 8, at 16-9.

¹¹ *Id.* at 16-11.

We ask NYSDEC to evaluate whether desalination is an appropriate technology to deliver potable water when it is likely to increase the area's carbon footprint and increase air pollution because of the increased energy use needed for the desalination process.

NYSDEC's Draft EIS Should Fully Evaluate the Impacts of Hazardous Materials Associated with the Project.

In addition, the preliminary draft EIS submitted by United Water New York identifies many potential hazardous materials that could have off-site environmental impacts, but does not adequately analyze their potential impacts. It states that "although the Proposed Project would use a variety of chemicals and petroleum products and would generate residual solids and liquids as part of the water treatment process, the storage, use and disposal of these are subject to strict regulation and, as such, would not be expected to present the potential for significant adverse impacts during operation of the Proposed project."¹² This cursory examination fails to examine the present system's efficacy in minimizing adverse effects from the project's production of additional hazardous materials.

Further, special care should be taken to study the impacts of the brine concentrate from the reverse osmosis process, which is six to seven times saltier than the Hudson River at the intake,¹³ and may include other toxic components. For example, more analysis is needed on whether the diffuser's dilution rates are sufficient and whether all of the non-saline components will disperse adequately. Brine behavior is highly variable depending on local conditions. And while the preliminary draft EIS obliquely reference modeling results supposedly indicating the limited environmental impacts from brine discharges, it provides scant detail.

Further the toxicity of some persistent toxic elements, including some subject to bioaccumulation such as heavy metals, is not effectively minimized by dilution. Therefore, NYSDEC's analysis should examine the possible impacts from these types of pollutants.

Similarly, a thorough draft EIS should also elaborate on the potential impacts of the concentrate on aquatic life. The preliminary draft concludes that the "discharge of RO concentrate into the treated effluent... would not result in

¹² *Id.* at 10-12.

¹³ *Id.* at 9-33.

significant adverse impacts to water quality of the Hudson River and would not, therefore, have the potential to result in significant adverse impacts to aquatic biota.”¹⁴ This conclusion does not necessarily follow, given that different aquatic species may have different tolerances for increases in salinity. A thorough draft EIS should study the potential impacts of increased salinity on specific species of aquatic life in the area, especially those that are threatened or endangered. The preliminary draft EIS does include potential impacts of the construction on various species,¹⁵ but must consider the cumulative effects of construction activities and exposure to concentrate on individual species in order to fully evaluate the potential effects on aquatic life.

NYSDEC’s Draft EIS Should Evaluate Water Conservation As An Alternative.

Under SEQRA, the agency is to describe mitigation measures and evaluate and describe the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor, and including a no action alternative. Such a description and evaluation should be detailed enough to permit a comparative assessment of the alternatives. The range of alternatives must include the no action alternative. Examples of appropriate alternatives include technologies, scales or magnitudes, uses and types of action.¹⁶ Falling well within this type of alternatives are measures designed to increase water conservation.

We ask the NYSDEC to consider if there truly is a need for this desalination plant, both as part of its no-action alternative, as well as with its consideration of water conservation measures that would fulfill the same objectives of United Water: to ensure that Rockland County has sufficient water resources.

Water conservation is a long-term alternative to Rockland’s water woes. United Water New York states that it cannot rely on conservation because, as a private company, it can not regulate citizen behavior.¹⁷ Consequently, its preliminary draft solely discusses educational measures it has employed to increase conservation, and fails to examine any measures that it could employ to encourage and incentivize residents to lower their demand for water. A thorough evaluation of the project should include a study of all feasible alternatives, including conservation, however. If United Water New York

¹⁴ *Id.* at 9-36.

¹⁵ *Id.* at 9-38.

¹⁶ 6 NYCRR § 617.9.

¹⁷ United Water New York. *supra* note 8, at 18-6.

seeks to require ratepayers to foot the bill for a desalination plant (at an estimated \$80 million) and its associated energy, waste management and processing costs, NYSDEC should explore the benefits of investments in common sense water conservation and infrastructure measures such as establishing a toilet replacement program (a type of program that was used very successfully in New York City) and other water reduction tools. These might yield the same benefits to the citizens without the proposed industrial desalination project's negative environmental and socioeconomic impacts on one of our nation's most historic rivers.

Government agencies reviewing the project also should consider additional regulations and incentives that could be offered to encourage conservation as well as standards for water efficiency among utilities.

Further, United Water's estimate of the county's needs is not based on how much water current residents use, but rather how much water the country will use assuming that there will be 15, 540 new connections to the system between 2008-2025. This is a growth-inducing impact that should not be casually dismissed as it was in United Water's preliminary draft.

Rockland County has been trying to understand and protect its natural resources by partnering with the NYSDEC and United Water to fund a study by the United States Geological Survey to assess how much water exists in Rockland County's aquifer. United Water, in pressing to move the desalination proposal forward before the results of the study are published, is offering a premature proposal that does not include all the relevant data. An adequate draft EIS would incorporate such data.

Moreover, a desalination plant operated by United Water or any other corporate entity does not guarantee that the processed Hudson River water will benefit only Rockland County residents. The existing water system already diverts a portion of the water to New Jersey communities. More water in the system might just mean more water out of the system in Rockland County. There is no local control under private management. We respectfully request that the NYSDEC investigate and analyze New York and New Jersey state laws and water release regulations that might apply to this proposed project.

**NYSDEC Should Evaluate The Desalination Project
In Light Of The Fact that It is A Private Corporation's Proposal.**

Water is a public resource to be managed in the public interest. Water is a public resource, shared by all species that dwell within the associated

watersheds. Public ownership means that the government has a responsibility to manage the environmental resources in the public interest. The proposed desalination plant, on the other hand, would further entrust the tidal Hudson River waters to a company that exists to increase the profit margin for shareholders. While it may appear that the environmental risks and impacts and the possible alternatives might be the same regardless of who is the owner, the private ownership of the project, poses at least two problems.

First, as described above, the company has marketed the desalination plant as essential to the water needs of Rockland County residents by saying that it has no regulatory authority to implement comprehensive conservation programs. But this neglects viable alternatives that could be voluntarily imposed by the company or implemented by local government, such as incentives for water conservation, enhanced groundwater supply mapping and improved long-range planning and managed growth. While some of these alternatives may not be as enticing because they do not justify rate increases, this is not the same as saying that they are not viable alternatives that NYSDEC should evaluate.

Likewise, while United Water says that it is bound by PSC order to increase long-term supply, the heart of the PSC order is ensuring enough supply exists to meet the needs of the communities it serves. Reducing demand through conservation measures and planning would equally accomplish these goals, thus reducing the need for an expensive supply option such as a desalination facility.

Given this shortcoming in United Water's overall approach, we urge NYSDEC to consider a far broader set of possible alternatives than analyzed by United Water. The agency should also thoroughly review and verify all of United Water's data and conclusions about the project's potential environmental impacts.

Second, the private control of the proposed desalination facility limits public transparency and accountability. The public has already been limited in its ability to access the scientific data, such as the modeling runs, that support the company's conclusions in its preliminary EIS. Down the road, this may limit the ability of the public to hold the company accountable for environmental damage. The agency should consider these implications in assessing the project. For example, NYSDEC should not rely on the company's proposal to implement the project in stages as the sole measure to ensure mitigation of environmental damage, and instead spell out concrete mitigation measures ahead of time and reserve the right to review the project as the project changes. This is especially important because companies can be

bought and sold, with new owners possibly taking over state permits. This was the experience with Florida's Tampa Bay desalination plant that changed hands three times before the public water agency bought it back.

As another example of the potential for limited accountability, international trade agreements may impact regulation of environmental issues with a multinational corporation such as United Water/Suez. International trade rules are often written quite broadly and permit international investors to challenge government actions in trade tribunals that might expose the state to unanticipated expense. It needs to be asked whether having a multinational corporation at the helm of this project would limit the public's abilities to negotiate a buy-out under eminent domain to bring it back under public control if it did not perform satisfactorily? We ask the state to explore this aspect very carefully, as trade agreements such as the World Trade Organization represent an area of emerging international law and the effect on state sovereignty and regulatory processes is still being defined.

Thank you for your consideration of our comments.