

KATHLEEN M. BENNETT, ESQ.
kbennett@bsk.com
P: 315.218.8631
F: 315.218.8741

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VIA HAND DELIVERY

Town of Riverhead
Town Board
4 West Second Street
Riverhead, New York, 11901

Re: *SCWA Comments for Town of Riverhead Hearing on Application of Monroe County Balancing Factors for SCWA's North Fork Main Project*

Dear Town Board Members:

Bond, Schoeneck & King, PLLC represents the Suffolk County Water Authority ("SCWA") concerning the Town of Riverhead's (the "Town") attempt to assert jurisdiction over SCWA's North Fork Main Project (the "Project"). This correspondence is submitted on behalf of SCWA to correct factual inaccuracies, resolve legal misrepresentations, and clarify the Project review process.

The Town's actions on this Project have been confounding. On Wednesday, August 13, 2025, the Town hosted a public forum concerning the Project. Yet, SCWA was not invited to attend or participate in the Town's forum. During that forum representatives of the Town discussed aspects of the "Project" from the Town's perspective, including environmental review, local approvals, Project need/impacts/benefits. As a result, the information presented at the forum was entirely one-sided, intended to paint the SCWA and the Project in the most negative light possible in advance of the Town's hearing on whether SCWA's Project would be immune from review by the Town pursuant to *Matter of the County of Monroe v. City of Rochester*, 72 N.Y.2d 338 (1988) ("Monroe") and its progeny.

SCWA has performed water supply projects in the Town in the past without the Town declaring itself as an Involved Agency. SCWA has performed water supply projects in the Town without the Town declaring that the SCWA was not immune from the Town's jurisdiction. SCWA has extended its water distribution system in the Town in partnership with the Town without protest. But now, and for this Project, which involves transmitting water from outside the Town, through underground mains, the Town declares it must approve it and SCWA is no longer immune from Town's review. SCWA respectfully maintains this is wrong.

The Town's actions have damaged SCWA in its attempt to provide a durable and environmentally sustainable response to the significant challenge facing SCWA in supplying

adequate water to the SCWA customers in Southold and those Southold residents facing contamination in private wells. We request it stop and work with SCWA as an interested agency in affording the Project the review it merits as the Town has done on all prior SCWA projects in the Town.

For the following reasons, SCWA is immune from the Town's zoning authority, SCWA's environmental review has been carefully calibrated to satisfy or exceed the regulatory requirements, and the Town cannot, no matter where it looks, find a basis to assert it is an involved agency that must provide a discretionary approval to any aspect of the Project.

First, the Town has no basis – legal or otherwise – to question the need for the Project. By statute, all SCWA projects “are in all respects for the benefit of the people of the county of Suffolk and the state of New York, for the improvement of their health, welfare and prosperity and that the said purposes are public purposes and that the authority is and will be performing an essential governmental function in the exercise of the powers conferred upon it by” statute. N.Y. Pub. Auth. L. §1077(3). Second, for that reason, together with the established County-wide jurisdiction of SCWA, the Town cannot assert jurisdiction over any SCWA project, let alone this Project which crosses multiple jurisdictional boundaries. Any attempt to do so is beyond the Town's legal authority. Third, the Town for the first time asserts of jurisdiction over a SCWA project passing through its Town in contrast to the Town's treatment of every other SCWA project within its boundaries. Fourth, the Town is not the proper entity to undertake an analysis of SCWA's immunity under *Monroe* as it is beyond the scope of the Town's jurisdiction to determine whether a regional authority is immune from local regulations. Fifth, the Town's representations with respect to the New York State Environmental Quality Review Act (“SEQRA”) are duplicitous and disingenuous at best – considering the Town has consistently acted as the SEQRA lead agency for its own projects following the same process as SCWA here. Finally, the *Monroe* balancing test clearly weighs in favor of immunity for SCWA. Any conclusion to the contrary by the Town would be arbitrary, unsupported and self-serving.

SCWA Background

SCWA is Long Island's largest public water provider serving potable water to 1.2 million Suffolk County residents. SCWA was established on March 29, 1937, by the Board of Supervisors of Suffolk County and in 1951 was established as a public authority by New York State. SCWA's powers are set forth in Title 4 of Article 5 of the New York Public Authorities Law. Pursuant to Title 4, SCWA is a “body corporate and politic, constituting a public benefit corporation.” N.Y. Pub. Auth. L. §1077(1). New York State has “determined and declared that the [SCWA] and the carrying out of its powers, purposes and duties are in all respects for the benefit of the people of the county of Suffolk and the state of New York, for the improvement of their health, welfare and prosperity and that the said purposes are public purposes and that the authority is and will be performing an essential governmental function in the exercise of the powers conferred” by the State. N.Y. Pub. Auth. L. §1077(3).

Pursuant to Sections 2800 (1) (b) and 2800 (2) (b) of Public Authorities Law, as amended by the Public Authorities Reform Act of 2009, all public authorities are required to have an official internet web site and to make certain information readily available on that site to the public. SCWA maintains such a website at SCWA.com where members of the public can find SCWA's bylaws, rules, regulations, board members, meeting minutes, project updates and information. In other words, SCWA is completely transparent in its public dealings and any accusations of not sharing or providing information are completely unfounded.

SCWA operates a large and sophisticated interconnected public water supply and distribution system with over 6,000 miles of water main that stretches from Huntington to Montauk and Babylon to Southold. Water is produced from 590 wells, treated at 24 pump stations, and stored in 73 tanks for a total storage capacity of 73.7 million gallons. The SCWA water system is highly decentralized, comprising numerous interconnected pressure zones. As a result, water produced and treated at a well field in one town may be distributed to customers in another town to ensure an adequate supply of potable water. SCWA has installed approximately 105 miles of mains since 2020, including some in the Towns of Riverhead and Southold. SCWA has approximately 7,000 feet of water main in Riverhead and approximately 216 miles in Southold. In fact, SCWA had an agreement with Riverhead pursuant to which it installed an additional 20,000± feet of main to provide SCWA services to Town residents because of contamination in their private wells. Until this Project, the Town has never subjected SCWA to its local land use regulations or required SCWA to obtain easements to locate mains in the road rights-of-way.

Project Need

SCWA operates 60 wells in Southold and uses these wells to provide water in Southold. The combined capacity of the wells is 11,900 gallons per minute (gpm). SCWA maintains a 300,000-gallon elevated tank at its Moore's Lane property, a 2,000,000-gallon reservoir at its Laurel Lake property, and a 500,000-gallon reservoir at its Rocky Point Road property, providing a total storage capacity of 2.8 million gallons.

As of 2025, SCWA has 10,934 service connections in Southold, which is more than half of the existing premises in Southold. According to a 2019 report prepared by the consulting firm H2M, there were still 3,210 residences in Southold on private wells. Reports from the Suffolk County Department of Health Services found that some of the highest levels of PFAs in private wells in the County have been detected in the Orient area and, as a result, the County has identified Orient as a priority area for public water.

Southold experiences a summer population surge as exemplified by the increase in water delivered from a winter average of 1,800 gallons per minute (gpm) to a peak range in the summer from 9,000 gpm to 12,000 gpm in the early morning. The highest pre-2024 recorded demand in Southold occurred on July 12, 2023, when SCWA provided 12,970 gpm of water to

its customers by producing 9,666 gpm from its wells and releasing 3,304 gpm of water from its storage facilities. The contribution from the storage facilities highlights the shortfall between pumping capacity and system demand. At times, the water levels in SCWA tank at Moore's Lane have fallen below 3 feet from its 30-foot maximum. Without a ready supply of water in the event of emergency, such as a large fire, a well failure, or detection of a regulated substance at a level requiring discontinuing the use of a well, it could be difficult for emergency responders to protect life and preserve property.

SCWA has explored alternatives for addressing the demand for public water in Southold. One such early alternative involved increasing the number of wells in Southold. However, the Southold aquifer system cannot support a significant increase in the number of wells or withdrawals. Southold wells have been a focal point of Department staff, as many of the wells operate within special parameters imposed on them due to their depth and the water table's unique configuration and the potential for salt-water intrusion. This creates a mismatch between the amount of water in the Southold system and water demand. SCWA developed the proposed Project to address these issues and concerns.

Project Overview

The Project has two components. One involves connecting SCWA's Southold system to the rest of its system by installing a water main through Riverhead to transmit water between the two systems. As proposed, the systems will connect at a SCWA facility in Hallockville located at the eastern end of Riverhead. From this connection point, water will be delivered through existing main into Southold. A booster pump will be installed at the SCWA Pier Avenue property to facilitate the transmission of water through Riverhead. The second phase, which is not anticipated to occur in the near term, involves exploring options for extending SCWA mains into the Orient hamlet. Nevertheless, this route will be analyzed among other alternative routes as part of the environmental review. The Project does not include providing water to Riverhead or to the Riverhead Water District.

When the first phase is completed, SCWA's Southold system will be operated as a unified whole with the rest of SCWA's system. This will allow SCWA to reduce reliance on its Southold wells while simultaneously increasing the amount of water available to existing Southold customers to meet the demand. While currently there is a peak well capacity of 12,750 gpm and 2.8 million gallons in storage in Southold, upon completion of the Project, this will be supplemented with water from the South Shore Low Zone.

Significantly, SCWA does not need to, and will not be, developing any new wells to supply water for the Project. SCWA sources of water for its Southold system will be from Southold wells or existing capacity in SCWA's South Shore Low system.

The New York State Environmental Quality Review Act Process

The New York State Environmental Quality Review Act (“SEQRA”) was enacted in 1975 to ensure that “[social], economic and environmental factors shall be considered together in reaching decisions on proposed activities,” and so that public agencies will give “due consideration . . . to preventing environmental damage.” N.Y. Env’tl. Conserv. L. § 8-0103(7) & (9). The primary purpose of SEQRA is “to inject environmental considerations directly into governmental decision making” at the earliest possible time. See Matter of Coca-Cola Bottling, Inc. v. Board of Estimate, 72 N.Y.2d 674, 679, 536 N.Y.S.2d 33, 35 (1988). According to the New York State Department of Environmental Conservation’s (“NYSDEC”) SEQRA Handbook, “[r]eview under SEQR[A] should be started . . .[a]s early as possible in an agency’s planning of an action it is proposing. SEQR[A] review should begin as soon as the principal features of a proposed action and its environmental impacts can be reasonably identified.” NYSDEC, SEQRA Handbook, p. 13. “By incorporating environmental review early in the planning stages, projects can be modified as needed to avoid adverse impacts on the environment.” *Id.*, p. 3.

Accordingly, the Town’s comments that details concerning the Project are not specific enough, “and to put it in the draft impact statement is a little late” and that SCWA “should not have entered the environmental review process, that it appears that they are trying to build the plane while they’re flying it” are contrary to the specific mandate in SEQRA that the environmental review process should start as early in the process as possible. As such, the Town’s opinion that this is “never a good option,” is the antithesis of the intention of SEQRA. In fact, considering project impacts and alternatives early in the review process provides more opportunities to modify a project to avoid any significant adverse impacts.

Involved v. Interested Agency

In general, SEQRA applies to discretionary determinations made by agencies. Decisions are discretionary when the decision-maker has to weigh the facts and make a determination. In other words, there are choices to be made by the decision maker that determine whether and how an action may be taken.

A non-discretionary decision on the other hand is a ministerial decision that does not involve the use of judgment or choice on the part of the agency making the decision. In other words, a ministerial decision is one where the decision maker has no choice but to issue the permit if all the conditions are met. Ministerial decisions are not subject to SEQRA review. An example of a ministerial decision is the issuance of a building permit, a certificate of occupancy, a highway work permit or road opening permit.

The nature of an agency’s decision-making authority is important because it determines whether an agency will be an involved agency or an interested agency for purposes of the SEQRA review. An involved agency has the jurisdiction to fund, approve or undertake an

action. In other words, an agency that has a discretionary approval or decision to make with respect to a project is an involved agency.

An interested agency, on the other hand, has no jurisdiction over the action, but may wish to comment on it. Interested agencies include those agencies from whom a ministerial decision, such as a building permit or road opening permit, is required.

NYSDEC Selection of Lead Agency

SEQRA requires that the process to review impacts associated with larger projects that meet or exceed the regulatory threshold to be classified as a Type 1 action be “coordinated.” According to The SEQRA Handbook, “[c]oordinated review is the process by which all *involved* agencies cooperate in one integrated environmental review.” NYSDEC, SEQRA Handbook, p. 56 (emphasis supplied). For purposes of undertaking a coordinated review of the environmental impacts, a lead agency must be established. The lead agency is the involved agency principally responsible for funding, approving or undertaking an action. The lead agency ***must*** be an involved agency. In other words, an agency with no discretionary approvals cannot serve as the lead agency for purposes of undertaking the SEQRA review.

SCWA is the agency that is principally responsible for funding, approving or undertaking the Project. Therefore, SCWA commenced the SEQRA process by sending letters to all involved and interested agencies declaring its intent to serve as the lead agency. The Town of Riverhead and the Town of Southold objected to SCWA’s lead agency status. As a result, in accordance with the SEQRA regulations, SCWA submitted a lead agency determination request to NYSDEC.

NYSDEC considers three criteria when settling a lead agency dispute: (1) are the impacts statewide, regional or local; (2) which agency has the broadest powers to investigate and address potential impacts; and (3) which agency has the greatest capability to provide a thorough review. While noting local construction impacts, NYSDEC concluded that the impacts were regional because the Project crosses multiple Town and jurisdictional boundaries. As such SCWA, as a regional agency, is in the best position to address local and regional impacts in a holistic manner considering it has control over project design, implementation and operation. NYSDEC also found that SCWA, as the Project sponsor, was “best equipped to investigate the direct impacts of the project through its role as designer, its control over financing, construction and administration of the project . . . possesses a greater ability to amend its plans to avoid or reduce the project’s impacts through its authority over the entire project.”

During the forum, the Town and several commenters suggested that the SCWA acting as the lead agency for its own Project was unusual or a conflict of interest. However, as noted by the NYSDEC Commissioner, the statutory language provides that “[w]hen an action is to be carried out or approved by two or more agencies, the determination of whether the action may

have a significant effect on the environmental shall be made by the lead agency having principal responsibility for carrying out or approving such action.” ECL Section 8-0111(6). SCWA has the principal responsibility for carrying out the Project.

Municipalities, school districts, and public authorities almost always act as lead agency when undertaking environmental reviews for their own projects. For example, the Town itself acted as the lead agency in connection with its Enterprise Park at Calverton redevelopment project. Likewise, the Town acted as lead agency and issued a determination that no further environmental review was required with respect to the construction of a new 2.5 MG ground storage tank at East Winds Drive and with respect to the Riverhead Water Elevated Storage Tank. Therefore, the Town suggesting that it is inappropriate for SCWA to undertake its own environmental review is disingenuous at best.

The Town also blatantly mischaracterizes the findings made by the NYSDEC Commissioner in its lead agency determination. Specifically, the Town asserts that NYSDEC named it an involved agency, but that is not an accurate characterization of NYSDEC’s lead agency determination. Instead, NYSDEC’s determination simply notes that it does not diminish the jurisdiction of the Town or other involved agencies “with jurisdiction over the Project.” Accordingly, whether the Town is an involved or interested agency depends on the nature of the approvals, if any, the SCWA must obtain from the Town for the Project. If SCWA is immune from the Town’s jurisdiction after application of the *Monroe* factors, it follows that Riverhead cannot be an involved agency, because an involved agency has “jurisdiction by law to fund, approve or directly undertake an action.” (6 NYCRR 617.2(t)). Riverhead does not meet the definition of an involved agency as it is not funding, approving, or directly undertaking the Project. Without authority to issue any discretionary approvals with respect to the Project due to SCWA’s immunity, Riverhead’s alleged basis to be an involved agency evaporates and the NYSDEC’s letter does not change that outcome. SCWA’s application, if any, for ministerial road opening permits will not require discretionary decisions by the Town and cannot support a Town claim for involved agency status.

It is noteworthy, the Town has never required SCWA to obtain local approvals in connection with any other SCWA projects that are within the Town’s boundaries. Indeed, the Town’s position is inconsistent with its recent partnership with SCWA and with SCWA’s long-standing practices. Specifically, this past summer, SCWA helped the Town serve Town residents public water in the Manorville area. For that project, Riverhead and SCWA were united for the purpose of extending public water to Town residents south of the Town’s EPCAL facility. SCWA completed the work at the Town’s behest, which included an extension of 20,309 feet of SCWA main and making SCWA service available to Town residences and businesses. During our joint efforts to provide public water to the Town’s residents and business in the Manorville area, the Town never required SCWA to obtain easements or to submit to its land use review processes.

The Town's current jurisdictional assertions were not made historically either. For example, in 1992, SCWA installed an interconnection between the SCWA system and Riverhead Water District's system. Likewise, the Town did not demand that SCWA appear before the Town prior to SCWA's development of its wellfield and pump station on Herricks Lane, which commenced in 2012 and was placed into service in July 2013. That project included construction of several buildings on an SCWA owned site in the Town and the installation of 5,585 feet of main on Herricks Lane and Sound Avenue. Before the current Project, the Town never required SCWA to submit to site plan review or obtain an easement from the Town for installation of a main under Sound Avenue. Nor did the Town assert that it must conduct a hearing to determine whether the SCWA's prior projects were immune under the *Monroe* factors. Thus, the complete about face in connection with the Project is arbitrary and an abuse of power on behalf of the Town.

Scoping the Environmental Impact Statement

"Scoping is a process that develops a written document (scope) that outlines the topics and analyses of potential environmental impacts of an action that will be addressed in a draft environmental impact statement (draft EIS)." NYSDEC, SEQRA Handbook, p. 100. Scoping narrows issues and ensures that the draft EIS will be a concise, accurate and complete document that is adequate for public review. "Scoping is intended to: • Ensure public participation in the EIS development process; • Allow open discussion of issues of public concern; and • Permit inclusion of relevant, substantive public issues in the final written scope." *Id.*

In accordance with the spirit and intent of SEQRA, SCWA designed its review of the Project to ensure meaningful public and intergovernmental participation. To date, SCWA has held three public scoping sessions on the Project. More than 100 people, including numerous Town employees, and its consultant, have attended one or more of the hearings. The issues raised by the Town and by others will be appropriately addressed in the final scope and in more detail in the DEIS. After the DEIS is complete, SCWA will hold more public hearings. By the conclusion of the environmental review, at least six public hearings will have occurred on the Project and at least three will afford public scrutiny of SCWA's analysis of the *Monroe* factors in the DEIS.

The SCWA is now working on preparing the final scope. The final scope must: (1) Provide a description of the proposed action; (2) Provide a description of all potentially significant adverse environmental impacts identified in the positive declaration and during agency and public review of the draft scope; (3) Define the extent and quality of information needed to adequately address identified impacts; (4) Identify methods to be used to assess the project's impacts; (5) Provide a list of potential mitigation measures; (6) Provide a list of reasonable alternatives for avoiding or reducing identified impacts; (7) Include a list of any prominent issues raised during agency and public scoping review which will not be included.

Although the Town is not an involved agency, SCWA will analyze the concerns it identified during the scoping sessions. This process is consistent with the direction provided by the NYSDEC in its lead agency determination letter and is consistent with the findings required in a *Monroe* balancing test.

The DEIS Process/Public Involvement/Alternatives

SEQRA requires an EIS to be prepared for any action proposed or approved by an agency or municipality which may have a significant effect on the environment. See N.Y. Env'tl. Conserv. L. § 8-0109(2). The fundamental purpose of the EIS is to analyze the full range of potential significant adverse environmental impacts of a proposed action and identify alternatives or mitigation measures to avoid or minimize those impacts. Thus, the EIS is an "environmental 'alarm bell' whose purpose is to alert responsible public officials to environmental changes before they have reached ecological points of no return." Town of Henrietta v. DEC, 76 A.D.2d 215, 220 (4th Dept. 1980).

Specifically, an EIS must assess "the environmental impact of the proposed action including short-term and long-term effects," "any adverse environmental effects," "any irreversible and irretrievable commitments of resources," and "growth inducing aspects of the proposed action." N.Y. Env'tl. Conserv. L. §8-0109(2). An EIS must also contain an evaluation of "alternatives to the proposed action" and any mitigation measures proposed to minimize the environmental impact" of the action. N.Y. Env'tl. Conserv. L. §8-0109(2); 6 N.Y.C.R.R. §617.7(b)(5). According to the SEQRA Handbook,

The draft EIS is the primary source of environmental information to help involved agencies consider environmental concerns in making decisions about a proposed action. The draft also provides a basis for public review of, and comment on, an action's potential environmental effects as identified in the final scope. The draft EIS accomplishes those goals by examining the nature and extent of identified potential environmental impacts of an action, as well as steps that could be taken to avoid or minimize adverse impacts.

NYSDEC, SEQRA Handbook, p. 112.

Accordingly, the Town's comments that details concerning the Project are not specific enough, "and to put it in the draft impact statement is a little late" and that SCWA "should not have entered the environmental review process, that it appears that they are trying to build the plane while they're flying it" demonstrate a fundamental lack of knowledge with respect to the EIS process. While the draft EIS needs to contain enough detail of the proposed action and its setting to provide appropriate context for a reader to understand the analyses of impacts, alternatives, and mitigation, it should not be an encyclopedic or overly technical document.

Instead, the draft EIS should focus on the potential adverse environmental impacts of the proposed action, comparing alternatives and mitigation to minimize the identified adverse impacts that cannot be avoided.

The Monroe Balancing Test

New York Courts have long held that when one municipality is conducting land use activities in another municipality that it may be entitled to a qualified immunity. Prior to the *Monroe* case, the determination was made primarily on the basis of whether the agency performing the land use activity was performing a “governmental” or a “proprietary” function. The distinctions between governmental and proprietary functions became blurred and this standard over time seemed less precise. In the *Monroe* case, the court developed a new test for determining these issues. That court required a balancing test using nine factors. Those nine factors are:

- a. the nature and scope of the instrumentality seeking immunity;
- b. the kind of function or land use involved;
- c. the extent of the public interest to be served by the function or use;
- d. the effect local land use regulation would have upon the enterprise;
- e. the impact upon legitimate local interests;
- f. the applicant's legislative grant of authority;
- g. alternative locations for the facility in less restrictive zoning areas;
- h. alternative methods of providing the needed improvement; and
- i. the degree of intergovernmental participation in the project development process; and an opportunity to be heard.

In applying these tests, it is not necessary that all nine factors favor immunity. Indeed, one factor in the calculus could be more influential than another or may be so significant as to completely overshadow all others. In *Town of Ellery v. New York State Dept. of Environmental Conservation*, 54 Misc. 3d, 482 (Sup.Ct. Chautauqua County 2016), the court found in favor of immunity where most, although not all of the factors were in favor of it. While no one factor might be controlling, certain factors have more weight than others. See *Westhab, Inc. v. Village of Elmsford*, 151 Misc.2d, 1071 (Sup.Ct. Westchester County 1991). There are a number of cases where the overriding public purpose outweighed other factors in determining immunity. See *Town of Hempstead v. State*, 42 A.D.3d, 527 (2d Dept. 2007). *Matter of Kind v. County of Saratoga Industrial Development Agency*, 208 A.D.2d, 194 (3d Dept. 1995); *Town of Queensbury v. Glens Falls*, 217 A.D.2d, 789 (3d Dept. 1995). See also *Village of Munsey Park v. Manhasset-Lakeville Water District*, 150 A.D.3d 969 (2d Dept. 2017).

For example, in *Munsey Park*, the court considered the immunity of a water district from local zoning. Specifically, the water district sought to replace a storage tank located on district property in the Village. However, the Village zoning code prohibited building heights in excess of 30-feet. The water district concluded that construction of the water tank was immune from

the Village's jurisdiction based on the *Monroe* balancing test. The court agreed finding that the following factors weighed in favor of the water district: (a) the nature and scope of the instrumentality seeking immunity; (b) the kind of function or land use involved; (c) the extent of the public interest to be served thereby; (d) the effect local land use regulation would have upon the enterprise concerned; and (e) the impact upon legitimate local interests. Moreover, the court also noted that application of the *Monroe* balancing test is not within the exclusive province of the host entity.

At its forum, the Town suggested that the host entity not the Project sponsor is the appropriate party to evaluate the *Monroe* factors. However, as noted above the case law does not support that statement. Rather, there is case law on both sides of that issue and no definitive answer from the Court of Appeals has been handed down. Moreover, for the Town to suggest that SCWA would be more biased in its analysis of the *Monroe* factors than the Town is wholly hypocritical. Clearly, as evidenced by its rhetoric with respect to involved versus interested agency status, the Town has just as much, if not more, incentive to find that SCWA is not immune than the SCWA has to find that it is immune.

Nevertheless, a review of the *Monroe* factors in this case shows that SCWA's activities are undisputably immune from Town jurisdiction.

- ***The Nature and Scope of the Instrumentality Seeking Immunity***

SCWA is an independent public benefit corporation operating under the authority of the New York State Public Authorities Law. The purpose of SCWA is to supply water for domestic, commercial, and public purposes at retail to individual consumers within Suffolk County. See N.Y. Pub. Auth. L. Section §1078(4)(a). Furthermore, the SCWA and “the carrying out of its powers, purposes and duties are in all respects for the benefit of the people of the county of Suffolk and the state of New York, for the improvement of their health, welfare and prosperity and that the said purposes are public purposes and that [SCWA] will be performing an essential governmental function in the exercise of the powers conferred upon it by this title.” N.Y. Pub. Auth. L. §1077(3).

Accordingly, the Project, which seeks to provide water to individual consumers in Suffolk County is an essential governmental function and the SCWA as a regional authority has legal supremacy over local municipalities in connection with the provision of water to the individual consumers in Suffolk County. See *County of Herkimer v. Village of Herkimer*, 51 Misc. 3d 516, 536, 25 N.Y.S.3d 839, 854 (Sup. Ct. Herkimer Cty. 2016) (“it would be anomalous to allow a small village to impede the County in the performance of an essential governmental duty for the benefit of the health and welfare of residents of the entire County”). The Town has no legal basis to conclude otherwise.

- ***The Kind of Function or Land Use Involved***

As noted above, the Project is an essential government function. Specifically, the State has given the SCWA authority to provide water to the people of Suffolk County. The Project involves connecting SCWA's Southold system to the rest of its system and the construction of associated infrastructure (underground water mains/booster pump) to improve the capacity and quality of water supplied.

SCWA has previously installed approximately 7,000 feet of water main Riverhead and is installing approximately 20,000 feet of main in Riverhead under an agreement with the Town. The Town has never asserted regulatory or land use jurisdiction over SCWA in connection with any of these prior projects – other than requiring a ministerial road opening permit. Likewise, the Town has never before required SCWA to obtain an easement to locate any mains in a road right-of-way.

Accordingly, the only rational conclusion is that this factor weighs in favor of immunity for SCWA.

- ***The Extent of the Public Interest to be Served by the Function or Use***

This is often the most important factor to be considered. *See County of Herkimer, supra*. By statute, the Project is undisputably “for the benefit of the people of the county of Suffolk and the state of New York, for the improvement of their health, welfare and prosperity” and serves a “public purpose.” N.Y. Pub. Auth. L. §1077(3). The Town cannot rationally conclude otherwise. In fact, “[w]here a project serves an overriding public purpose, courts have not hesitated to find the project exempt from the host municipality’s land use regulation.” *See id.* The Project would serve a “quintessential governmental function” authorized by state statute and would promote the public health of County residents.

Specifically, SCWA operates 60 wells in Southold and uses these wells to provide water in Southold. (There is an emergency interconnection with the Riverhead Water District on the southwest part of the system). As of 2025, the combined capacity of the wells is 12,750 gallons per minute (gpm). SCWA has one elevated tank and two ground level reservoirs in the Town providing 2.8 million gallons of capacity. SCWA has 10,934 service connections in Southold, which is more than half of the existing premises in the Town. According to a 2019 report prepared by the consulting firm H2M, there were still 3,210 residences in Southold on private wells. According to reports from the Suffolk County Department of Health Services, some of the highest levels of PFAs in private wells in the County have been detected in the Orient area. The County has identified Orient as a priority area for public water.

Southold experiences a summer population surge as exemplified by the increase in water delivered in the Town from a winter average of 1,800 gallons per minute (gpm) to a peak range in the summer from 9,000 gpm to 12,000 gpm in the early morning. The highest pre-2024 recorded demand in Southold occurred on July 12, 2023, when SCWA provided 12,970 gpm of water to its customers by producing 9,666 gpm from its wells and releasing 3,304 gpm of water from its storage facilities in the Town. The contribution from the storage facilities highlights the shortfall between pumping capacity and system demand. At times, the water levels in SCWA tank at Moore's Lane have fallen below 3 feet from its 30-foot maximum. Without a ready supply of water in the event of emergency, such as a large fire, a well failure, or detection of a regulated substance at a level requiring discontinuing the use of a well, it would be a significant challenge to meet demand.

SCWA has explored increasing the number of wells in Southold but the aquifer system in the Town cannot support a significant increase in the number of wells or withdrawals. Southold wells have been a focal point of Department of Environmental Staff, as many of the wells operate within special parameters imposed on them due to their depth and the water table's unique configuration and the potential for salt-water intrusion. This creates a mismatch between the amount of water in the Southold system and water demand.

Upon completion of the first phase, SCWA's Southold water supply system will be integrated and operated as a unified component of the broader SCWA water supply system. This will allow SCWA to reduce reliance on its Southold wells while simultaneously increasing the amount of water available to existing Southold customers to meet the demand. Accordingly, the public interest in clean and sufficient supply of water is of the utmost public importance.

- ***The Effect Local Land Use Regulation Would Have upon the Enterprise***

The Project crosses multiple municipal and jurisdictional boundaries. As a result, the application of local zoning could allow one municipality to stop or significantly alter the Project in a manner that would be detrimental to the residents of the neighboring municipality. The Court of Appeals has discouraged “parochial regulation[s] which ‘could otherwise foil the fulfillment of the greater public purpose of promoting’” an adequate supply of public water. *See County of Herkimer, supra*.

While local governments have home rule jurisdiction over many things, their jurisdiction is not without limitations. Pursuant to Section 10 of the General

Municipal Law, the rights of the Town are not meant to infringe upon SCWA's ability to conduct its essential governmental function. It would be inconsistent with *Monroe*, and detrimental to the regional nature of the Project, the Public Authorities Law and the General Municipal Law if SCWA is required to submit to a Town review of the Project.

Moreover, SCWA has standardized system facilities to compress review time by Suffolk County DHS and to maximize efficiency and productivity and to speed procurement of materials. If SCWA needed a different set of specifications for each site, then design lags would take place in trying to obtain the local approvals as well as procuring materials for the systems/buildings. Delays of up to one year would also be experienced on the vendor and SCWA sides in the review process as the number of engineering submittals would dramatically increase. Currently, bidders are not faced with a learning curve on every project and manufacturers know what is expected. However, unknown items create risk to bidders and manufacturers and result in higher costs and sometimes in longer time needed as submittals may have to go back and forth numerous times.

SCWA systems are maintained and operated by a limited number of employees that include generalized trades such as field operators, and specialized trades such as electricians and mechanics. Specialized trades must be capable of deploying to any site when needed and generalized trades must be familiar with as large a number of sites as practicable to allow for succession, union bidding, and absences of other field operators.

If different towns were allowed to control the operations, this would effectively put up borders at town/village boundaries. This would effectively defeat the advantages of the pressure zone approach to operating a water system employed by SCWA where hydraulics and water quality govern. One of the chief benefits for SCWA's de-centralized system (with hundreds of wells and well fields) is that the zones are capable of backing up individual wells or even well fields by automatically responding to demands in the system. Adding constraints to this system would decrease system reliability and flexibility. For instance, during a main break or pump failure or water quality issue, SCWA's system can rely on other sites and treatment systems to overcome that lack of supply. Constraining our ability to deploy our vast assets limits reliability and could also result in decreased fire protection.

Accordingly, SCWA must be immune from local control in connection with the Project.

- ***The Impact upon Legitimate Local Interests***

The Project will result in temporary impacts associated with construction under the Town roadways. However, SCWA has constructed and is constructing additional mains under Town roads. As a result, SCWA is fully aware of managing the construction to minimize local impacts on the Town.

- ***The Applicant's Legislative Grant of Authority***

SCWA is authorized by the New York State legislature pursuant to the Public Authorities Law to supply water to the people of Suffolk County. Accordingly, its grant of authority takes priority over local land use regulations that could impede the supply of water. *See County of Herkimer, supra.*

- ***Alternative Locations for the Facility in Less Restrictive Zoning Areas***

SCWA plans on, and, in fact, is required to explore alternatives in the DEIS. However, regardless of the availability of alternative routes, the water main will have to travel through the Town to get to Southold.

- ***Alternative Methods of Providing the Needed Improvement***

SCWA plans on, and, in fact, is required to explore alternatives in the DEIS. However, regardless of the availability of alternative methods, it is likely the water main will have to travel through the Town to get to Southold.

SCWA has committed to maintaining and protecting current Southold supply infrastructure to maintain/improve water quality in our aquifers by allowing those wells to rest more often, thus mitigating chloride intrusion, but to do so requires the Project.

- ***The Degree of Intergovernmental Participation in the Project Development Process/Opportunity to be Heard.***

SCWA designed its review of the Project to ensure meaningful public and intergovernmental participation. To date, SCWA has held three public scoping sessions on the Project. More than 100 people, including numerous Town employees, and its consultant, have attended one or more of the hearings. The issues raised by the Town and by others will be appropriately addressed in the final scope and in more detail in the DEIS. After the DEIS is complete, SCWA will hold more public hearings. By the conclusion of the environmental review, at

least six public hearings will have occurred on the Project and at least three will afford public scrutiny of SCWA's analysis of the *Monroe* factors in the DEIS.

Although the Town is not an involved agency, SCWA will analyze the concerns it identified during the scoping sessions. This process is consistent with the direction provided by the NYSDEC in its lead agency determination letter and weighs in favor of immunity for SCWA.

Town's Past Practices

Moreover, on a practical matter, the Town's instant position is inconsistent with both the recent partnership and long-standing practices between SCWA and the Town. For example, this past summer, SCWA helped the Town provide its residents in the Manorville area public water. In the Manorville project, Riverhead and SCWA were united in the purpose in extending public water to Town residents south of the Town's EPCAL facility. SCWA was able to complete the work at the Town's behest. It required an extension of 20,309 feet of SCWA main (which is more main than is required for the Project) and making SCWA service available to 64 premises. Owners of some of these have already become SCWA customers. During this endeavor, the Town did not require SCWA to obtain easements or to submit to its land use review.

SCWA completed a SEQRA review on the Manorville project and received Town issued road opening permits notably, however, the Town did not require that SCWA appear before it for a *Monroe* hearing or does appear that the Town claimed to be an Involved Agency in SCWA's review.

The Town's current demands were not made historically either. For example, in or around November 1992, SCWA installed two interconnections between the SCWA system and Riverhead Water District's system. And each time, the Town did not demand to hold a *Monroe* hearing before SCWA did work in the Town or to obtain their local land use approval.

Likewise, when SCWA constructed a wellfield and pump station with multiple structures on Sound Avenue in Jamesport in 2009, the Town did not demand an appearance by SCWA before the Town Board to determine SCWA's immunity under *Monroe* or did it participate in the SEQRA review of the project.

Lastly, the Town also did not demand that SCWA appear before the Town prior to SCWA's development of its wellfield and pump station on Herricks Lane, which commenced in 2012 and was placed into service in July 2013. SCWA has several buildings on the site. In that instance, the Town did not demand SCWA submit to site plan review as it does now. SCWA installed 5,585 feet of main on Herricks Lane and Sound Avenue as part of the Herricks Lane project. None of the main required an easement from the Town, even though some of it was installed along Sound Avenue, as proposed by the Project. The Town did not assert that it had to

conduct a hearing to determine whether the Herricks Lane project was immune under *Monroe* or did it participate in the SEQRA review.

Conclusion

For the foregoing reasons, the Town has not and cannot provide persuasive support for its positions that it must conduct the Monroe hearing, it must determine SCWA's immunity under the Monroe factors, or that is an Involved Agency with jurisdiction to approve the North Fork Pipeline Project.

Hopefully the Town will recognize its position as an interested agency and participate in the process as such. SCWA, as the Project sponsor and lead agency, will continue its science-based analysis of its Project under the provisions of SEQRA, including an analysis of reasonable alternatives and minimization of impacts. Once the EIS process is complete, SCWA's Board will decide whether the potential adverse impacts, which to Riverhead are no different than when a new gas main is installed in a Town road, are outweighed by supplying water to Southold residents, just as SEQRA provides.

Please contact me with any questions.

Sincerely,

BOND, SCHOENECK & KING, PLLC



Kathleen M. Bennett

KB/kb