



July 16, 2012

**VIA EMAIL**

New York State Department of Environmental Conservation  
Division of Water, Bureau of Water Resource Management  
625 Broadway  
Albany, NY 12233

**Re: Comments on the Draft Order on Consent, DEC Case No. D0007-0001-11**

Dear Sir or Madam:

Riverkeeper, Inc. (Riverkeeper) submits these comments on the draft Consent Order and its appendices, including the Interim Ashokan Reservoir Release Protocol dated October 18, 2011 (“IRP”),<sup>1</sup> proposed by the New York State Department of Environmental Conservation (DEC) to resolve the February 14, 2011 enforcement action brought against Respondents New York City Department of Environmental Protection (DEP) and the City of New York (NYC) (collectively, the “City”), as published in the May 23, 2012, *Environmental Notice Bulletin* (referred to herein as “the Consent Order” or “the Order”).

Riverkeeper is a member-supported watchdog organization whose mission includes safeguarding the drinking water of nine million New York City and Hudson Valley residents. In fulfilling that mission, Riverkeeper is actively involved in ensuring that NYC’s operation of its drinking water reservoirs and infrastructure does not result in adverse impacts on local residents, such as the communities along the Lower Esopus Creek.

Riverkeeper commends DEC for its recognition that the City’s turbid discharges from the Ashokan Reservoir to the Lower Esopus Creek are a significant problem and is pleased that DEC is moving forward with a process to find the best strategy for all stakeholders to address those discharges and the impacts associated with them. However, the Consent Order, as currently drafted, contains a number of critical flaws. Below, we identify the most serious issues presented by the Order and propose modifications to the Order to resolve those issues.

**Background**

In October 2010, the City began releasing up to 600 million gallons per day (MGD) of

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<sup>1</sup> New York State Dep’t of Env’tl. Conservation, N.Y. City Dep’t of Env’tl. Prot. (DEC/DEP), Interim Ashokan Release Protocol (Oct. 18, 2011), *available at* [http://www.dec.ny.gov/docs/water\\_pdf/ashinterim.pdf](http://www.dec.ny.gov/docs/water_pdf/ashinterim.pdf) [hereinafter “IRP”].

turbid, sediment-laden water from the Ashokan Reservoir and discharging it into the Little Beaverkill, a tributary of the Lower Esopus Creek, via the Ashokan Reservoir Waste Channel (“Waste Channel,” also referred to by DEP as the “Release Channel”). These unprecedented muddy releases from the Waste Channel have adversely impacted the ecosystems of the Little Beaverkill and Lower Esopus Creek and have caused damage to property and impacted businesses and recreational opportunities along the Creek.

The City’s operation of the Ashokan Reservoir over the past one hundred years, during which time there were no intentional releases of water from the Reservoir to the Lower Esopus, resulted in the Lower Esopus becoming a stressed waterbody due to hydrologic deprivation. Because of the significantly reduced base flow of the stream, mapped floodplains saw little to no water for years at a time. Based on the observed dry conditions, towns along the Creek gradually allowed building of structures in the mapped floodplain, particularly in the upper reaches of the Lower Esopus.

The City’s modification of its reservoir operations in the Catskill System over the past three to five years based on decisions to use less Catskill watershed water, whether because of reduced demand, increased turbidity, or pressure from government regulators to limit aluminum sulfate (alum) use, combined with increased rainfall potentially linked to climate change, has resulted in increased amounts of sediment-laden water in the Ashokan Reservoir. This increase contributes to a heightened risk of flooding and has caused the City to make long duration, high-volume, turbid Waste Channel discharges to protect the quality of the water it sends down the Catskill Aqueduct.

The City’s modification of its reservoir operations and Waste Channel releases are in part driven by the City’s reliance on its Operations Support Tool (OST)<sup>2</sup> and its Conditional Seasonal Storage Objective (CSSO).<sup>3</sup> The OST is a computer-driven modeling tool that predicts the probability of reservoir refill based on the historical record rather than forecasting future rain events. Because it is based on hindcasting, it does not consider the recent impacts of climate change, including the increased frequency of extreme weather events. These modeling estimates are driving releases of large volumes of highly turbid water. The model does not consider the impacts of such releases to the Lower Esopus Creek, nor was it developed to do so. The CSSO for the Ashokan Reservoir is a water supply guideline based on models developed for reservoirs in the Delaware Watershed, which have different hydrological conditions and less suspended sediment contributing to turbidity. The CSSO is based on assumptions about DEP’s ability, at any given time, to refill the Ashokan Reservoir by June 1 each year. To achieve the calculated storage objective when the available yield is above the CSSO, i.e. there is more water in the reservoir than required by the model, the City releases turbid water into the Lower Esopus Creek until it reaches the objective. The CSSO goals are based on operational priorities and have no apparent scientific justification.

Since January 2011, Riverkeeper has worked with partner organizations, citizens, and local officials in response to citizen outcry against the City’s unauthorized release of large

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<sup>2</sup> See NY City Dep’t Env’tl. Prot., Operations Support Tool, [http://www.nyc.gov/html/dep/html/drinking\\_water/forecasting\\_reservoir\\_levels\\_ost.shtml](http://www.nyc.gov/html/dep/html/drinking_water/forecasting_reservoir_levels_ost.shtml) (last visited July 16, 2012).

<sup>3</sup> See, e.g., Interim Protocol ¶ 2.

volumes of extremely turbid water through the Waste Channel and to the Lower Esopus Creek. Riverkeeper has also participated as a member of the Ashokan Release Working Group (ARWG) for the past 14 months. In December 2011, Riverkeeper and Ulster County Executive Mike Hein filed a joint petition (December 2011 Petition) calling on DEC to initiate a permitting process to bring the releases under its regulatory purview. In addition, in response to DEC's request for comments, we submitted, along with Ulster County, the Lower Esopus Watershed Partnership (LEWP), five Lower Esopus municipalities, and other partner stakeholders, joint comments and recommendations on the IRP which had been negotiated between DEC and DEP (December 2011 IRP Comments). Finally, in March 2012, Riverkeeper submitted comments on the Draft New York State 2012 Section 303(d) List of Impaired Waters (March 2012 303(d) List Comments), which set forth the basis for the State's legal requirement to include the Lower Esopus Creek on the list. The December 2011 Petition, attached as Exhibit B; the December 2011 IRP Comments, attached as Exhibit C; and the March 2012 303(d) List Comments, are incorporated herein by reference.

## **Discussion**

The most concerning problems presented by the Consent Order are:

- P1. The Order virtually guarantees that continued Waste Channel releases currently authorized by the IRP will be incorporated into a modified Catalum State Pollutant Discharge Elimination System (SPDES) Permit, with no required effluent limitations;
- P2. The Order determines that outcome before the required SEQR review has been conducted and all alternatives for turbidity reduction in the Catskill Aqueduct have been identified and fully evaluated;
- P3. By incorporating the current IRP, the Order allows the City to continue releasing large volumes of excessively turbid water to the Lower Esopus for at least the next 18 months in volumes similar to those discharged over the past 8 months, with all of the problems those releases have caused in the past;
- P4. The Order assesses insufficient financial penalties, which contain offsets that contradict DEC policy and provide little or no benefit to the communities along the Lower Esopus Creek; and
- P5. The Order severely limits the role of the ARWG and the public in determining appropriate interim strategies and in assisting with the development of a long-term solution.

In order to address these flaws, Riverkeeper urges DEC to modify the provisions of the proposed draft Consent Order so that it will accomplish the following:

- S1. The Consent Order should require the City to obtain coverage for any high-volume, turbid Lower Esopus discharges under a SPDES permit with specified effluent

limitations that ensure those discharges do not violate state water quality standards;

- S2. The Consent Order should require compliance with a SEQR process that is comprehensive, guarantees full transparency and public involvement, and the outcome of which is not pre-determined;
- S3. The Consent Order should establish an interim Ashokan Reservoir Release Strategy that will govern releases until the SEQR review and permit modification processes are complete and that does not guarantee a continuation of the turbid and destructive releases of the past two years as well as a process for revisiting the provisions of that release strategy on a regular basis with input from involved stakeholders and technical experts;
- S4. The Consent Order should impose equitable penalties and obligations to undertake environmental benefit projects (EBPs) that comply with DEC's own Civil Penalty and EBP policies that are commensurate with and address the violations and damages associated with DEP's unauthorized releases during the winter of 2010-11 which are the subject of DEC's February 2011 administrative complaint; and
- S5. The Consent Order should guarantee public involvement in key decision-making related to the SEQR and permit modification processes and periodic reassessment of any interim Ashokan Reservoir Release Strategy, and should require the creation of an on-going advisory body that will inform decision-making about the management of the Lower Esopus Creek into the future.

We discuss each of the identified areas of concern with the Consent Order and our recommended approach to addressing those concerns in detail below. For ease of reference, we have included specific line edit suggestions to implement each solution in Exhibit A to this letter.

1. The Consent Order should require DEP to obtain coverage for any high volume, turbid Lower Esopus discharges under a SPDES permit with specified effluent limitations that ensure that those discharges do not violate state water quality standards.

The Consent Order, as currently drafted, has two principal goals: to eliminate the use of alum in the Kensico by 2022 and to dredge all alum floc from the Kensico by 2024.<sup>4</sup> These goals, combined with the Order's basic assumption that a modified Catalum SPDES Permit will contain a "Revised Operating Protocol," guarantee ongoing and even increasing turbid discharges that the environmental review will not alter. Instead, the Consent Order should allow the environmental review process to determine whether continued Waste Channel discharges are necessary. If they are found to be necessary after all alternatives are evaluated, the Consent Order should require the City to obtain permit coverage for discharges of turbid water from the

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<sup>4</sup> See N.Y. State Dep't of Env'tl. Conservation, Draft Order On Consent In the Matter of the Alleged Violations of Articles 17 of the Environmental Conservation Law of the State of New York, Section 750 et seq. of the Official Compilation of Codes, Rules and Regulations of the State of New York, and SPDES Permit # NY 0264652, Whereas Section, Para. 21 and Schedule of Compliance, Appendix A, Para. VI.7 (May 23, 2012) [hereinafter "the Consent Order" or "the Order"].

Waste Channel, through a SPDES permit for these point source discharges of a pollutant to waters of the State, which includes specified effluent limitations that ensure the discharges comply with state water quality standards.

As we explained in our December 2011 petition, December 2011 IRP Comments, and our March 2011 303(d) List Comments, ongoing Waste Channel discharges will continue to be illegal until they are regulated under a SPDES Permit with effluent limitations stringent enough to ensure compliance with State water quality standards. The court in *Catskill Mountains Chapter of Trout Unlimited, Inc. v. Sheehan* held that DEC cannot issue a permit that exempts the permittee from complying with water quality-based effluent limitations.<sup>5</sup> Neither may DEC exempt the City from complying with water quality standards by including the IRP in the Consent Order. DEC should expeditiously require the City to obtain coverage under a SPDES permit that includes effluent limitations for its high-volume, turbid discharges from the Waste Channel.

With respect to community and flood mitigation releases, DEC should address these releases through its authority under Environmental Conservation Law (ECL) Article 15 and its implementing regulations at 6 New York Codes, Rules and Regulations (NYCRR) Part 672, which provide the legal framework for regulating reservoir releases. DEC should remove the “Community Release Protocol” from the proposed IRP and place a provision requiring those releases as a separate requirement in the Order or the Schedule of Compliance for the Order until those releases are required pursuant to a DEC-initiated modification of Part 672-2.3. Those releases should be prescribed by DEC with opportunity for public input to ensure they adequately protect and benefit the communities along the Lower Esopus. Riverkeeper agrees with and fully supports the recommendations for the volume, quality, and duration of community releases made by Ulster County in its July 13, 2012, comment letter,<sup>6</sup> as well as those that have been made by LEWP.<sup>7</sup>

The Consent Order should further require the City to acknowledge that the Ashokan Release Channel constitutes an operating release works under 6 NYCRR Part 672-2.3 and to agree not to object to or oppose DEC modification of Part 672 to authorize community releases from the Ashokan Reservoir as DEC deems necessary to implement New York’s policy to protect and enhance the recreational use of rivers and streams affected by reservoir releases while ensuring an adequate water supply from such reservoirs for drinking and other purposes.

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<sup>5</sup> *Catskill Mountains Chapter of Trout Unlimited, Inc. v. Sheehan*, 71 A.D.3d 235, 240 (3rd Dep’t 2010) (“there is no regulatory authority that allows for the inclusion of multiple exemptions from effluent limitations and state water quality standards in a SPDES permit”).

<sup>6</sup> Letter from Beatrice Havranek, Ulster County Attorney, to Mark Gerstman, Executive Deputy Commissioner, New York State Dep’t of Env’tl. Conservation (July 13, 2012), Re: In the Matter of Alleged Violations of Article 17 of the NYS Environmental Conservation Law of the State of New York, Section 750 et seq. of the Official Compilation of Codes, Rules and Regulations of the State of New York and SPDES Permit # NY 0264652 (Cat Alum SPDES Permit), Order on Consent, DEC Case No. D007-0001-11 [hereinafter Ulster County Letter].

<sup>7</sup> See Riverkeeper’s recommendations for community releases on pp. 1-2 of Exhibit A, attached hereto.

These regulations provide for releases from certain reservoirs to accomplish those purposes and, more specifically, to ensure constant minimum flows in those rivers and streams.<sup>8</sup> DEC has the ability to direct DEP to provide community releases on an interim basis pursuant to DEC's authority to request releases pursuant to 6 NYCRR Section 672-1.3(g)(1). In addition, Part 672 gives DEC the authority to require releases in emergency situations including, but not limited to, releases for flood mitigation purposes.

Finally, DEC should promptly meet its regulatory obligations under Part 672 to ensure that releases from the Ashokan meet constant minimum flow requirements and avoid adverse environmental impacts including, but not limited to, water quality degradation.<sup>9</sup>

2. The Consent Order should require compliance with a SEQR process that is comprehensive, guarantees full transparency and public involvement, and whose outcome is not pre-determined.

The Consent Order should allow the SEQR process to proceed prior to settling on any single turbidity reduction method and ensure the strategy moving forward complies with New York State law. In addition, the Order should clarify DEC's role as lead agency for the SEQR process and ensure that such process evaluates all reasonable turbidity reduction alternatives to Waste Channel releases.

In implementing its lead role in the SEQR process, DEC should postpone strategic choices concerning how to bring about turbidity reduction until the environmental review is complete. The Consent Order should specify the process for a comprehensive SEQR evaluation that includes a full consideration of all alternatives to reduce turbidity in the Catskill Water Supply System while protecting the ecosystem and communities of the Lower Esopus Creek. The SEQR review should examine the scientific basis for the CSSO and OST, as well as structural and non-structural alternatives to Waste Channel discharges. Only a full review of all such alternatives will ensure that DEC and the City identify and pursue the best solution for the environment. In order to allow the SEQR process to identify and analyze the most environmentally beneficial strategy for turbidity reduction, DEC should delete all provisions in the Consent Order dictating that alum use as a turbidity control mechanism will be eliminated and that Waste Channel releases will continue or replace those clauses with conditional language.

Riverkeeper appreciates that DEC has taken on the role as lead agency for the SEQR review, which we are hopeful will lead to a transparent and even-handed environmental review of all alternatives to turbid water discharges into the Lower Esopus Creek and alum use in the Catskill Aqueduct. However, the Consent Order fails to clearly designate roles for each agency in the process (*see* conditional language in footnote 1 to Section VI of the Consent Order Schedule of Compliance), and allows the City unnecessary discretion in identifying the alternatives that must be examined. DEC should modify the language of the Consent Order to unambiguously establish DEC's role as lead agency and to ensure objective analysis of all reasonable alternatives.

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<sup>8</sup> 6 NYCRR § 672-1.1.

<sup>9</sup> *See* ECL § 15-0801(2) and 6 NYCRR §§ 672-1.4(a) and (b)(2).

3. The Consent Order should establish an interim Ashokan Reservoir Release Strategy that will govern releases until the SEQR review and permit modification processes are complete that does not guarantee a continuation of the turbid and destructive releases of the past two years, as well as a process for re-visiting the provisions of that Release Strategy on a regular basis with input from involved stakeholders and technical experts.

As drafted, the IRP, incorporated as Appendix B to the Consent Order, authorizes discharges of turbid water into waters of the State throughout the duration of the environmental review process by allowing operational and discharge mitigation releases. The Protocol does not include effluent limits enforceable through a SPDES permit regarding quality or duration of such discharges. DEC cannot relieve the City of its duty to comply with New York State water quality standards through a protocol. The releases should be subject to the terms and conditions of a SPDES permit containing effluent limitations. DEC should remove IRP from the Consent Order, require the City to continue community and flood mitigation releases under its Article 15 authority, and order the City to obtain a permit for discharges of turbid water from the Waste Channel.

In the interim, until all turbid discharges are addressed by a SPDES permit, Riverkeeper recommends creating a new document titled, “Ashokan Reservoir Release Strategy” (ARRS) that would be focused solely on flood mitigation releases, based on knowledge and input obtained from regulatory agencies, stakeholders and technical experts.<sup>10</sup> This Release Strategy would become effective on the effective date of the Consent Order, and would contain appropriate turbidity limits that would guarantee compliance with NYS water quality standards requiring no increase in turbidity “that will cause a substantial visible contrast to natural conditions.”<sup>11</sup> A specific differential limit might be required similar to that which governs the City’s Shandaken Tunnel releases under DEC’s SPDES permit for those releases.<sup>12</sup>

The Consent Order must also provide that this interim ARRS remains adaptable to new information and changing conditions as they arise. It should provide a role for agencies and stakeholders to provide input for modifications with DEC retaining ultimate responsibility to make any and all changes. The Strategy should be reviewed by DEC at regular intervals of no less than twice a year, with input from members of the ARWG and other stakeholders. All such stakeholders and the public should have an opportunity to comment on any final long-term release strategy.

The December 2011 IRP Comments, which Riverkeeper and several partners submitted in response to DEC’s request, offered carefully thought-out recommendations for modification of the October 2011 IRP to mitigate impacts to the Lower Esopus. We never received a response from DEC and now are being faced with the same IRP in a near-final Consent Order. Upon reflection and based on discussion with certain experts since December 2011, we have determined that it is appropriate to modify some of the recommendations that were made in our December 2011 IRP Comments. These modifications include: (1) changes to the recommended timing and quantity of community/conservation releases (set forth in the table on p. 2 of Exhibit

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<sup>10</sup> As discussed in Section 2, community releases should be incorporated directly into the Consent Order, until these releases can be mandated through a DEC-initiated modification of Part 672-2.3.

<sup>11</sup> 6 NYCRR § 703.2.

<sup>12</sup> See our comments on an interim release strategy at pp. 11-13 of Exhibit A attached hereto.

A); (2) a different approach to controlling the turbidity of flood mitigation releases than the much too high 300 NTU turbidity cap (see recommended turbidity control language on pp.11-12 of Exhibit A); and (3) removal of the request for clear water releases following excessively turbid discharges until there is some scientific proof of their benefit.

Prior to implementation of any such release strategy, whether it be the IRP, or a revised release strategy as Riverkeeper strongly suggests, Riverkeeper urges DEC to give serious consideration to the technical comments and recommendations attached in Exhibit A on pp. 11-13 hereto, as well as to the balance of the recommendations made in our December 2011 IRP Comments that we have not modified.

4. The Consent Order should impose equitable penalties and obligations to undertake environmental benefit projects that comply with DEC's own EBP and Civil Penalty policies that are commensurate with and address the violations and damages associated with DEP's unauthorized releases during the winter of 2010-11 which are the subject of DEC's February 2011 administrative complaint.

DEC should increase the penalty assessed against the City and offset that penalty only with EBPs which the City did not already intend to undertake and which directly benefit the Lower Esopus communities and ecosystems. The proposed \$1.55 million penalty assessed against the City in the Consent Order seems inappropriately low when compared with the damages caused by those releases, as well as the operational expenses the City avoided by making them. DEC should quantify the benefit the City received by violating water quality standards in the Lower Esopus Creek and by violating its Catalum SPDES Permit and the damages caused to communities and increase the assessed penalty accordingly.

With respect to the proposed penalty, only a very small portion of that penalty actually addresses the violations related to the Waste Channel releases or compensates the community for damages that have occurred. Five hundred thousand dollars (\$500,000) of the \$1.55 million penalty will be returned to the City, with interest, if it complies with deadlines for accomplishing capital projects, completing the Shaft 4 Connection and fixing the Delaware Aqueduct leak, as well as dredging the Kensico Reservoir, which have little to do with discharges to the Lower Esopus. The \$500,000 that the proposed Order allocates to a Recoverable Escrow Account to guarantee DEP's performance of these unrelated infrastructure projects and compliance with its Kensico Catalum permit requirements should instead be dedicated to additional EBPs that do benefit the creek and its communities. DEC should not grant any penalty offset for these projects and instead require the City to post bonds to ensure that they are carried out.

In addition, of the \$950,000 designated for EBPs, only \$540,000 are directed toward projects that even comply with DEC's own EBP Policy:<sup>13</sup> \$530,000 in stream management plan development and implementation and \$10,000 for fish stocking, which will fund only one or two years of stocking. DEC should require that all EBPs be tied directly to the ongoing damages caused by the City's illegal discharges to the Lower Esopus and its violations of the Catalum SPDES Permit.

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<sup>13</sup> N.Y. State Dep't Env'tl. Conservation, CP-37 / Environmental Benefit Projects (EBP) Policy, *available at* <http://www.dec.ny.gov/regulations/64596.html> (last visited July 16, 2012) [hereinafter EBP Policy].

As written, the Consent Order allows penalty offsets for projects DEP has already agreed to undertake in direct contradiction of DEC's EBP policy, which excludes "[p]rojects that the respondent already intended to perform."<sup>14</sup> The Civil Penalty Policy states: "[t]he project must not be a project which the respondent would have undertaken anyway within the next five years."<sup>15</sup> The stream gauges and technical review consultant, constituting a total of \$410,000 in penalty offset, are "unacceptable projects" under the Civil Penalty Policy and the EBP Policy.<sup>16</sup> DEP has already separately committed to fund a technical consultant for the Ashokan Release Working Group, and planned to do so within the next five years. DEP has also gone on record stating that it would fund the USGS stream gauges described in the Order. Since the City already intended to undertake these activities, it is not entitled to receive a penalty offset for the cost of implementing these projects under DEC's EBP Policy. Instead, the \$410,000 penalty that was to be offset by these projects should be re-dedicated to other projects that the City has not previously committed to undertake that will benefit the Creek and its communities. The Order should require that these stream gauge and technical consultant projects be undertaken and that the City fund them as it has already committed to do.

To remedy the damages already caused to property owners along the Lower Esopus Creek, the Consent Order should require the City Comptroller to agree to extend the statute of limitations for damage claims against the City related to previous releases from the Waste Channel until 90 days after the final EIS is completed. The City previously agreed to study impacts of such releases and moved forward with that study by sending out survey forms and performing follow-up inspections. By doing so, the City led property owners to believe they could and should wait until that impact assessment was complete before filing any claim. The City should not now be allowed to avoid liability because its 90-day statute of limitations has expired.

The proposed penalty also provides little or no compensation to the Lower Esopus communities for on-going damages caused by turbid water discharges, as long as they are allowed to continue. The City should clarify that all claims for damages may be brought within 90 days of finalization of the proposed EIS, and within 90 days of incurring damages from operations thereafter. Finally, the Order should require the City to set up an escrow account for to ensure compensation for damages caused to local communities and individuals.

5. The Consent Order should guarantee public involvement in key decision-making related to the SEQR and permit modification processes and periodic reassessment of any interim Ashokan Reservoir Release Strategy, and should require the creation of an on-going advisory body that will inform decision-making about the management of the Lower Esopus Creek into the future.

In the Consent Order, DEC should clarify the future role of the public and specifically of

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<sup>14</sup> EBP Policy at § III.E.2.

<sup>15</sup> N.Y. State Dep't Env'tl. Conservation, DEE-1: Civil Penalty Policy at (1990) *available at* <http://www.dec.ny.gov/regulations/25227.html> (last visited July 16, 2012) [hereinafter Civil Penalty Policy] at § V.B. *See also* EBP Policy §§ III.E.1-2. (stating EBPs may not include "(1) Projects that a respondent is otherwise legally required to perform, for example, by . . . permit . . . [or] (2) Projects that the respondent already intended to perform).

<sup>16</sup> Civil Penalty Policy § V.B.; EBP Policy §§ III.E.1-2.

the stakeholders in the ARWG, to ensure transparent, accountable SEQR and decision-making processes. In a number of key provisions in the Order that address the SEQR process, the current IRP and the modification of the Catalum permit, among others, decision-making appears to be relegated exclusively to the City and/or DEC. Riverkeeper strongly recommends that the ARWG's ongoing role in developing both a short-term and long-term strategy for turbidity reduction in the Catskill Aqueduct be clearly defined and stipulated in the Consent Order. Specifically, the Consent Order should provide the ARWG the opportunity to give input on any interim release strategy before DEC implements the strategy for the duration of the environmental review process. DEC should also provide for continued public involvement in modifying any interim strategy throughout the environmental review.

Riverkeeper is pleased that the Consent Order includes a provision for a Technical Consultant, as previously agreed to by DEP. However, in order to provide the ARWG the support that it needs to fulfill its role with respect to the SEQR review, DEC should also remove from the Consent Order any limitations the Order now places on its ability to use the Technical Review Consultant's work, as that work product will be limited to review of the DEIS scope and the DEIS itself and assistance with the ARWG's preparation of comments on both documents. In addition, Riverkeeper strongly supports the recommendations made by Ulster County in its July 13, 2012 letter, requesting that the funding for the Technical Review Consultant required by the Order be administered by an entity independent of the DEP and the City of New York, to whom DEP would pay the funds that it has committed for that consultant.<sup>17</sup>

Finally, Riverkeeper urges DEC to require in its Order that the ARWG be maintained or some similar advisory body be established to continue to engage in an active role in providing advice and support to decision-makers regarding Ashokan Reservoir operations after completion of the SEQR process and after whatever permitting actions may be taken based on its findings, going forward into the future.

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Thank you for your consideration of these comments. Riverkeeper pledges to continue to engage in a problem-solving approach to resolve the impacts that Ashokan Reservoir operations have had on the Lower Esopus and its communities, an approach in which we hope the City and the State will join us. We look forward to working with you to forge a lasting solution that will stop the damaging releases and restore the degraded habitat and quality of life for those living near this invaluable natural resource.

Sincerely,



Kate Hudson  
Watershed Program Director

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<sup>17</sup> Ulster County Letter at 4.

cc: Mark Gerstman, Executive Deputy Commissioner, NYSDEC  
James Tierney, Assistant Commissioner, Water and Watershed, NYSDEC  
Mark Klotz, Director, Division of Water, NYSDEC  
Ken Kosinski, NYC Watershed Section Chief, Division of Water, NYSDEC  
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