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June 16, 2021

Hon. Basil Seggos, Commissioner  
New York Department of Environmental Conservation  
Division of Environmental Permits  
625 Broadway, 4th Floor  
Albany, New York 12233-1750

Attention: Kristen Cady-Poulin, Environmental Analyst

**Re: Ulster County Comments on CatAlum SPDES permit DEIS**

Dear Ms. Cady-Poulin,

In addition to my statement submitted in February, I am submitting these additional comments on behalf of Ulster County regarding the Draft Environmental Impact Statement for the CatAlum SPDES permit and more specifically the use of the Lower Esopus creek as a means for New York City DEP to manage turbidity in their drinking water supply.

First, I wish to relay my thanks to the NYS DEC for extending the public comment period on this matter. This extended comment period has been important to the community and stakeholders as this is a highly technical issue and the additional time has been important to public understanding of the current proposal.

As we noted previously, in Ulster County, we have great pride in our natural environment. The Catskill Park, the Hudson River and the New York City reservoir system are natural resources of regional and perhaps global significance. Among these better-known resources is the Esopus Creek, which on its own is an environmental treasure—its character and natural resources have been linked to our history and our livelihoods for generations.

The NYC DEP has stated their mission is to be a good neighbor and partner to Ulster County and other upstate communities from which it draws water. We have always viewed this relationship as a partnership in which Ulster County helps to maintain high water quality.

However, the issue at hand challenges many of these historic working relationships between Ulster County and the NYC DEP. The impacts to Ulster County and the Esopus Creek of the current proposal are untenable. We believe the NYS DEC must hold the NYC DEP to far greater accountability and transparency on the proposed action as well as call them to solutions

which do not create such an ongoing, detrimental situation for the Esopus Creek and the communities that depend on the creek.

Under the current Interim Release Protocol, the West Basin of the Ashokan Reservoir concentrates incoming muddy water that is then released to the Lower Esopus over long periods of time, under the guise of maintaining a void in the reservoir to decrease flood risk. Because turbidity takes months to settle in the West Basin, these muddy releases impair the Lower Esopus for weeks or months at a time. Our downstream communities have been told that they must choose between “mud or flood”. **We can and must do better.**

Throughout the current review period for the DEIS, Ulster County has participated closely in the work of the Ashokan Release Working Group, and we support its letter of comment, which details many of the broad technical issues with the DEIS and deficiencies of concern. This letter highlights topics of particular importance to Ulster County:

**The Draft Environmental Impact Statement fundamentally misrepresents the frequency of turbid releases to the Lower Esopus Creek. As such, all its estimates of natural, economic, cultural, and social impacts are deeply flawed.** Nor do the estimates take into account the impacts of climate change, which will make turbid release events like that experienced this spring even more common.

At the heart of the DEIS is a calculation which estimates the frequency of turbid releases occurring in any given year. The results of this model, contained in Table 7.1-2 of the DEIS, serve as the assumption framework through which all other impacts (social, economic, and environmental) are predicted and interpreted. **This table states that the average number of days per year with turbidity levels greater than 100 NTU will be zero.**

However, only days after the completed DEIS was released for public comment, the Catskills experienced a large storm event of a magnitude which was later calculated to have a probability of an 11-year reoccurrence interval. Hours after the Ashokan Reservoir received the large influx of turbid water from this storm, the NYC DEP began releasing turbid water from the West Basin to the Lower Esopus and into the Hudson River Estuary. These releases continued for months and reached turbidity levels as high as 400 NTU. An analysis of DEP weekly release data and USGS Lomontville Gage data shows that so far in 2021, contrary to the DEP’s model, the Lower Esopus has experienced 32 days of turbidity higher than 100 NTU, with several more weeks above 50 NTU.

Yet the DEIS is based on the assumption that an event like the one we have just experienced will essentially never happen. A Supplemental EIS is necessary to correct this obviously erroneous assumption and make accurate estimates of the impacts of the proposed action, taking into account the expectation that severe weather will become more frequent, not less, in the coming decades.

**The DEIS also fails to take into account the documented impacts of the turbid releases on the Hudson River.** Excess turbidity was documented at the drinking water intakes of all of the Ulster and Dutchess County communities that take their water from the Hudson.

DEC should not allow our communities' drinking water to be compromised for the sake of New York City's water supply management.

**Immediate Changes to the Interim Release Protocol are needed, and alternatives must be more thoroughly evaluated.** The default release protocol through the Ashokan Release Channel should be clean, non-turbid water. Turbid releases should not be permitted given the Lower Esopus's turbidity-impaired status under Section 303d of the Federal Clean Water Act. Additionally, the minimum flow level should be set at a level that meets water quality standards, maximizes habitat for aquatic species and supports economic, agricultural, and recreational use needs for the stream. **The release protocol should call for the cleanest water available, and capital investments should be considered to increase the range of operating alternatives available to meet those requirements.**

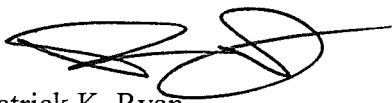
The DEIS superficially evaluates and dismisses a handful of alternatives. While we understand that DEP would prefer a zero-capital cost alternative, the untenability of the current situation means that a more in-depth assessment of alternatives is required. In particular, we would like DEP to evaluate a bypass tunnel to carry water directly from the Upper Esopus to the Lower Esopus, sized to the maximum rate of release of flow under the release protocol (currently 600 MGD).

Following an event like this year's Christmas storm, such a structure would permit the waters of the Upper Esopus, which typically clear within a few days of a storm event, to be released directly to the Lower Esopus, giving our downstream communities the water quality naturally available to the Esopus, while the West Basin takes weeks-to-months to settle.

**Above all, we must renew our historic partnership, with an ongoing commitment by the DEP to monitoring and investment in the Lower Esopus Watershed.** The existing release protocol has created severe, negative impacts to County residents, businesses, and ecosystems. The DEP and DEC should make a stewardship commitment to our residents and communities and be responsible for ongoing monitoring and investment in the Lower Esopus watershed. This commitment should include long term data gathering, community partnerships, and support programs. We envision a program similar to the comprehensive work currently being done in the Upper Esopus watershed by the DEP's Ashokan Watershed Stream Management Program.

The DEP should continue its ongoing commitment to reduce flooding in the Lower Esopus while maintaining appropriate and safe reservoir levels. We don't believe we must choose between flooding and muddy water when alternatives exist. The Lower Esopus Creek and the residents of Ulster County deserve the cleanest water available. If this requires generational improvements to the Ashokan Reservoir, we believe now is the time.

Sincerely,



Patrick K. Ryan  
Ulster County Executive