

New York State Department of Environmental Conservation  
LEAD AGENCY DISPUTE DETERMINATION UNDER ARTICLE 8 OF THE  
ENVIRONMENTAL CONSERVATION LAW:  
SUFFOLK COUNTY WATER AUTHORITY  
V.  
TOWN OF RIVERHEAD

**Project**

Proposal by Suffolk County Water Authority to extend water mains ("North Fork Water Main Extension Project" or "project") in the towns of Southampton, Riverhead, and Southold, Suffolk County, New York.

**Disputing Agencies**

The disputing agencies include the Suffolk County Water Authority (SCWA) and the Town of Riverhead (Riverhead).<sup>1</sup>

I have been asked to designate a lead agency to conduct an environmental review of the water main extension project under the New York State Environmental Quality Review Act (SEQRA; Article 8 of the New York State Environmental Conservation Law [ECL], with implementing regulations at Part 617 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York [6 NYCRR Part 617]). This designation of SCWA to serve as lead agency for the action is based on my finding that impacts of the project are both local and regional and SCWA has the broadest governmental powers for investigation of the impacts of the action, as discussed below.

**Action and Site**

SWCA's North Fork Water Main Extension Project has two phases. It proposes to construct phase 1 between the hamlets of Riverside-Flanders in Southampton and Northville, in Riverhead, and phase 2 between East Marion and Orient in Southold. Phase 1 includes installation of approximately 35,520+/- linear feet of 24-inch diameter water main, and construction of an approximate 405 square-foot pump/booster station on a 1.5-acre property owned by SCWA. Phase 2 involves long-range planning for a possible future 20,000± linear-foot (3.79-mile) water main extension consisting of a combination of 6, 8 and 12-inch diameter mains. The proposed water main installations will be located primarily within the street rights-of-way along the identified route

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<sup>1</sup> The Town of Riverhead Supervisor asks, in his letter dated September 27, 2024, that I designate Riverhead's boards, collectively, as lead agency. The Town of Southold Supervisor's letter to SCWA also asks for a designation of co-lead agencies between the boards of the town. There is, however, no precedent for appointing all the boards of a town as co-lead agencies. Generally, my predecessor Commissioners have disfavored the designation of co-lead agencies.

consisting primarily of County roads with directional drill crossings beneath the Peconic River, Hubbard Avenue, LIRR and Main Road for the Riverside-Flanders to Northville route.

According to SCWA, the North Fork Water Main Extension Project has several purposes, which are (1) to address the limited supply of potable drinking water in SCWA's Southold system by supplementing the existing system with alternative water sources to minimize impacts on the saltwater interface while also replenishing and rehabilitating the local aquifer system with the conveyed water; (2) create a substantial interconnection between the Southold system and the SCWA distribution system to the west, thereby increasing overall system reliability; (3) ensure water availability for consumption, residential and non-residential purposes, and firefighting uses; (4) provide enough high-quality potable water to SCWA customers within Southold; and (5) reduce the environmental impact of maintaining numerous low-capacity wells that currently serve the Southold low water supply system.

### **Regulatory Setting**

SCWA has the authority to plan, fund, approve, build, operate, and maintain the project. Riverhead has identified its jurisdiction over the action to include the authority for issuance of a special permit for installation of the booster pump station, the granting of utility easements on town highways and rights-of-way, authority to issue road opening permits, and authority to issue tidal and freshwater wetlands permits. While Southold objected to SCWA acting as lead agency during the coordinated review of the action (letter dated September 4, 2024), it did not submit a response to SCWA's letter (dated October 2, 2024) requesting I designate a lead agency in accordance with NYCRR 617.6(b)(5). Nonetheless, I take notice of Southold's substantive concerns stated in its letter to SCWA regarding alternatives and impacts on agriculture. They should be considered in the determination on whether to prepare an environmental impact statement for the project.

### **Discussion**

In resolving a lead agency dispute under 6 NYCRR 617.6(b)(5)(v), I am guided by the following three criteria, listed in order of importance:

1. whether the anticipated impacts of the action being considered are primarily of statewide, regional or local significance (*i.e.*, if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be lead agency);
2. which agency has the broadest governmental powers for investigation of the impacts of the proposed action; and
3. which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

My designation of a lead agency must be based on applying these criteria to the facts of each individual case.

## First Criterion

SCWA has identified the anticipated potential impacts as regional because the project involves conveying water through their county-wide integrated system into Southold. SCWA makes this point in concrete terms, "[e]very day, SCWA operates a well in one town, treats the water from the well and then distributes the water to a customer in a different town to ensure a suitable supply of potable water."

SCWA also recognizes construction related impacts that are local only (e.g., impacts from installation of utilities, traffic control measures, and directional drill impacts). Riverhead likewise identified local impacts related to construction during installation of the water mains, including those to traffic, other existing utilities, drainage, and scenic vistas along Sound Avenue, designated as a scenic and historic corridor. Riverhead also noted the potential for regional growth inducing impacts because of bringing public water to areas currently lacking public water supply — an impact that should be considered in whether to prepare an environmental impact statement. Here I find that the potential impacts identified by the parties include those of local and regional importance. Accordingly, as the project crosses multiple towns and jurisdictional boundaries I find that SCWA, as a regional agency, is in a better position to address both the local and regional issues in a holistic manner given it has control over project design, implementation, and operation for the entire geographic extent of the project.

## Second Criterion

The second criterion favors SCWA. As project sponsor, the SCWA is 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 from its inception through its completion, including operation and maintenance of its water distribution system. SCWA possesses a greater ability to amend its plans to avoid or reduce the project's impacts through its authority over the entire project. As a regional agency, SCWA is also best equipped to evaluate potential secondary and growth inducing impacts of the project. While Riverhead is empowered to investigate potential environmental impacts through land use authority, it does not possess the same oversight ability as the SCWA in this matter and Riverhead's jurisdiction is limited to the town's territorial limits. This analysis is consistent with my determinations in *Long Island Power Authority v. Board of Trustees of the Village of Greenport* (November 10, 2016), *Tallman Fire District v. Village of Airmont Planning Board* (September 13, 2016) and *Beekman Fire District v. Town of Beekman Planning Board* (June 27, 2017).<sup>2</sup>

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<sup>2</sup> DEC publishes the Commissioner's lead agency determinations on its [website](#). They are also available on Westlaw.

### **Third Criterion**

In accordance with the judicial doctrine of not deciding issues that are unnecessary to a decision, I need not decide whether the third criterion favors SCWA or Riverhead since the first and second criteria favor SCWA. Even if the third criterion favored Riverhead, I would designate SCWA as lead agency for the North Fork Water Main Extension Project.

### **Finding**

I conclude that SCWA should be designated as lead agency for the SEQR review associated with the North Fork Water Main Extension Project based on the first and second criterion. The project's impacts are both regional and local. SCWA's broad range of powers, as the project sponsor, to oversee and investigate any environmental concerns and to fund, design, and construct the project, as well as operate and maintain the facility, allow SCWA the level of control required for a lead agency. My determination is in keeping with the statutory direction under ECL Section 8-0111.6 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 environment shall be made by the lead agency having principal responsibility for carrying out or approving such action..." Here, SCWA has the principal responsibility for carrying out the action.

This designation does not change or diminish the responsibilities or authority of Riverhead or other involved agencies with jurisdiction over the project. In making its determination of significance under SEQR (i.e., whether to prepare an environmental impact statement), I encourage SCWA to solicit and fully consider Southold's and Riverhead's recommendations, as it indicated it would do, as well as that of other involved and interested agencies.



Sean Mahar, Interim Commissioner  
Dated: November 14, 2024  
Albany, New York

### **Distribution of Copies**

#### **Disputing Agencies/Applicant:**

Jeffrey Szabo, CEO, Suffolk County Water Authority  
Timothy Hubbard, Supervisor, Town of Riverhead  
Albert Krupski Jr., Supervisor, Town of Southold

**New York State Department of Environmental Conservation:**  
Lawrence H. Weintraub, Office of General Counsel, Central Office (e-copy)

Papers considered:

1. SCWA letter to DEC, October 2, 2024
2. Riverhead letter to SCWA, August 29, 2024,
3. Riverhead letter to Commissioner, September 3, 2024
4. Riverhead letter to Commissioner, September 27, 2024
5. Southold letter to SCWA, September 4, 2024
6. DEC letter to Riverhead, September 26, 2024