
APPENDIX C

Suffolk County Water Authority Monroe Analysis Determination

WHEREAS, Suffolk County Water Authority “SCWA” is public benefit corporation subject to Title 4, Article 5 of the New York Public Authorities Law.

WHEREAS, SCWA’s purpose is to supply water to domestic, commercial and public properties at retail and to individual consumers within Suffolk County, which is deemed to be an essential government function.

WHEREAS, SCWA is Long Island's largest public water provider serving potable water to 1.2 million Suffolk County residents and is one of the largest groundwater suppliers in the country.

WHEREAS, New York State “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).

WHEREAS, SCWA is proposing to undertake the North Fork Water Main Project (“Project”) because water demand on the North Fork continues to increase despite conservation efforts to increase the supply of public water to its customers in Southold. Excessive demand strains infrastructure and over-pumping existing wells risks saltwater entering the freshwater aquifer, limiting expansion. Water supply from existing wells is vulnerable to contamination.

WHEREAS, the Project will consist of installation of 8.15 miles of 24” ductile iron water main within existing street rights-of-way from Flanders to the Southold Town line, together with a booster station at Pier Avenue in the Town of Riverhead. No new wells will be installed. Phase 2 involves long-range planning for a possible future 3.79-mile water main extension consisting of a combination of 6, 8 and 12-inch diameter mains between East Marion and Orient in the Town of Southold.

WHEREAS, SCWA developed the proposed Project to provide a long-term solution to the limited supply of potable drinking water in SCWA’s Southold system by supplementing the existing SCWA system with water sources that will have minimal impacts on the salt water interface and replenish and rehabilitate the local aquifer system with the water conveyed to the area; to create a substantial interconnection between the Southold system and the SCWA distribution system to the west thereby increasing overall system reliability; to ensure water availability for consumption, residential and non-residential purposes, and firefighting uses; to provide a sufficient quantity of high-quality potable water to SCWA customers within the Town of Southold; and to reduce the environmental impact of maintaining numerous low-capacity wells that currently serve the Southold Low water supply system.

WHEREAS, SCWA designated itself as lead agency for the purpose of undertaking environmental review for the Project in accordance with the New York State Environmental Quality Review Act (“SEQRA”), a designation that was upheld by the New York State Department of Environmental Conservation following objections by the Towns of Riverhead and Southold.

WHEREAS, the Project is being undertaken in the Towns of Southampton, Riverhead and Southold and SCWA must consider whether its activities in furtherance of the Project are immune from local review in accordance with the decision rendered by the Court of Appeals in Matter of the County of Monroe v. City of Rochester, 72 N.Y.2d 338 (1988) ("Monroe").

WHEREAS, SCWA duly noticed and held public hearings on October 7, 8 and 9, 2025 concerning its immunity from local zoning under Monroe.

WHEREAS, comments were received from the Town Supervisor for the Town of Southold, the Town Supervisor for the Town of Riverhead, Town Board members from the Towns of Riverhead and Southold, and residents of the Towns of Riverhead and Southold.

WHEREAS, comments concerned the need for the Project, the environmental impacts associated with the Project, the potential for additional development that would result from the Project, the Town of Riverhead's own Monroe determination, the importance of local control.

NOW, THEREFORE, BE IT RESOLVED, the SCWA makes the following Findings and Determination:

- New York Courts have long held that when one governmental entity is conducting land use activities in another jurisdiction it may be entitled to a qualified immunity.
- 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. One factor could be more influential than another or may be so significant as to completely overshadow all others. Moreover, certain factors, such as the overriding public purpose, have more weight than others.
- Despite public comments to the contrary, the court decision in *Village of Munsey Park v. Manhasset-Lakeville Water District*, 150 A.D.3d 969 (2d Dept. 2017) held that the

application of the Monroe balancing test is not within the exclusive province of the host entity, and, as a result, it is appropriate for SCWA to undertake its own Monroe analysis.

- Analysis of the Monroe factors in this case show that SCWA's activities are undisputably immune from local municipal jurisdiction.

BE IT FURTHER RESOLVED that based on the forgoing, the statement and comments received at the public hearings and during the written comment period, the SCWA finds with respect to the nine (9) Monroe factors as follows:

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

SCWA is a 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”).

In fact, SCWA operates in ten (10) towns and approximately thirty-three (33) villages within Suffolk County. If SCWA is subject to local municipal zoning codes, then it would be subject to forty-three (43) different zoning codes. This would be untenable and would severely hamper SCWA's ability to carry out its purpose of providing drinking water to the residents of Suffolk County, which has been deemed to be an essential government function.

Therefore, the fact that SCWA is a public authority created and governed by enabling legislation adopted by New York State and that it operates throughout all of Suffolk County, results in this factor weighing in favor of immunity.

- ***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 to improve the capacity and quality of water supplied. This involves the construction of an underground pipeline primarily within existing road rights-of-way and the construction of a booster station in the Town of Riverhead.

Water main installation will be accomplished through open-cut installation and directional drilling. Trenching will only be opened for each day's work, typically 300-400 feet each day. All impacted roads will be fully restored. In consideration of the community, SCWA will avoid road openings and traffic interruptions during the busy fall season and will ensure the road work does not hinder emergency services response. Where appropriate, SCWA will work during night hours to reduce the impacts on traffic.

In fact, SCWA has previously installed approximately 7,000 feet of water main in 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 Riverhead road right-of-way.

Accordingly, because the Project is for an essential government function of providing safe and adequate drinking water, 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. 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). Here, the Town of Riverhead claims that the Project does not serve a public interest because there is no benefit to the residents of the Town of Riverhead. However, the fact that the Project does not benefit the Town of Riverhead has no bearing on the analysis.

Here, the Project will serve a “quintessential governmental function” authorized by state statute and will promote the public health of County residents by providing safe and adequate potable water to an area where demand sometimes exceeds supply and where wells sometimes have specific parameters imposed on them because of contamination concerns or salt-water intrusion concerns. In such situations, “[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 County of Herkimer*, 51 Misc. 3d at 536.

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.

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 Conservation 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.

With less reliance on shallow Southold wells, SCWA will be able to cutback on the use and possibly retire wells impacted by saltwater intrusion or emerging contaminants thereby avoiding the cost of treatment systems.

Importing water from outside the Southold hydrogeologic cycle will provide additional recharge to help restore the thin aquifer.

With SCWA pumping less water from Southold, the agriculture industry may pump water for irrigation with less risk of saltwater intrusion.

The Southold community relies on water supplied by SCWA for fire protection and emergency response. In order to provide adequate pressure for fire flow, SCWA needs its water storage tanks to have adequate supply. During peak summer demand, storage tanks on the North Fork can run dangerously low, particularly the Moore's Lane tank in Greenport. This has led to customers experience low pressure in the early morning hours when the demand is at its highest. Fire fighters may not have enough water and pressure to respond to an emergency if a major fire were to breakout.

Accordingly, the public interest in clean and sufficient supply of water is of the utmost public importance and weighs heavily in favor of immunity for SCWA.

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

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 if SCWA is required to submit to local municipal reviews of the Project. Such a result would then subject SCWA projects to approximately 43 different municipal jurisdictions and codes – an outcome that would be significantly detrimental to SCWA's essential governmental purposes.

Moreover, SCWA has standardized system facilities to compress review time by Suffolk County Department of Health Services 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 will 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 the forty-three (43) different municipalities were allowed to regulate SCWA's operations, this would put up borders at town/village boundaries and would effectively defeat the advantages of the pressure zone approach to operating a water system employed 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 SCWA's ability to deploy its 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 and every future project so as not to be constrained by forty-three different sets of regulations and approvals.

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

The Project will result in temporary impacts associated with construction of the water line under local municipal roads. However, SCWA has constructed and is constructing additional mains under roads in the local municipalities in connection with other projects. As a result, SCWA is fully aware of the potential local impacts and managing construction to minimize those local impacts on the municipalities and their residents. In fact, SCWA will minimize traffic impacts as follows: Trenching will only be opened for each day's work, typically 300-400 feet each day. All impacted roads will be fully restored. In consideration of the community, SCWA will avoid road openings and traffic interruptions during the busy fall season and will ensure there is no impact on emergency response services. Where appropriate, SCWA will work during night hours to reduce the impacts on traffic.

Town of Southold officials expressed concerns about the increase in water resulting in additional development in the Town. However, the Project will have no bearing on development as development within the Town of Southold will continue to be subject to Town of Southold zoning regulations.

Accordingly, while there are legitimate local interests for the municipalities, SCWA is fully aware of how to manage and minimize those impacts.

- ***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 and weighs heavily in favor of immunity. *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 of Riverhead to get to the Town of 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, the water main will have to travel through the Town of Riverhead to get to the Town of Southold.

SCWA cannot solve the current problem by constructing additional tanks in Southold because SCWA's Southold system does not have the extra capacity that would be required to fill them. This is demonstrated by SCWA's difficulty in maintaining adequate water levels in the Moores Lane tank.

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.

In addition, SCWA held three public hearings on the Monroe factor analysis in the Towns of Southampton, Southold and Riverhead on October 7, 8 and 9, 2025 respectively. Officials from the local municipalities participated in the hearings as well as some local residents.

By the conclusion of the environmental review, at least nine public hearings will have occurred on the Project and the analysis of the *Monroe* factors in the DEIS.

Although the Towns are not involved agencies, they are still an interested agencies in the SEQRA process. An interested agency is provided with information and given the opportunity to provide comments and express concerns. SCWA will analyze the concerns raised by the Towns 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.

ACCORDINGLY BE IT FURTHER RESOLVED that SCWA is immune from zoning and land use regulations, including, but not limited to the Towns of Southampton, Riverhead and Southold in connection with the Project.