

Our Water, Our Future

Croton Watershed Clean Water Coalition Newsletter

Issue #2, March/April 2001

Our Water, Our Future is the newsletter that keeps you, our valuable members, on the leading edge of watershed protection activities. Through the generosity of the Noyes Foundation, both this newsletter and our website, www.newyorkwater.org, have been made possible.

ALIENATION MUST BE DECLARED, SAYS N.Y. STATE COURT OF APPEALS

DEP to Play by Rules, Justices Insist

On February 8, 2001, The New York City Department of Environmental Protection (DEP) was handed a significant setback when it and its co-respondents were told in no uncertain terms by the New York State Court of Appeals that the DEP's proposed siting of the EPA-mandated chemical filtration plant at the Mosholu Golf Course in the Bronx's Van Cortlandt Park would require 'alienation' by the N.Y. State Assembly. Previously, the DEP et al had claimed that no such declaration was necessary, and that construction of the water filtration plant in the Park would begin this spring.

In a suit brought by Norwood Community Action, Fay Muir, Linda Burger, Friends of Van Cortlandt Park, and the N.Y. State Attorney General against the DEP, City of New York, and City Council, among others, the Court of Appeals was asked to decide if "any aspect of the proposed [water treatment plant] would require state legislative approval."

In a 7-0 ruling, the New York State Court of Appeals confirmed that the "use for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the State Legislature ..." The Court in its decision noted that it "... also need not resolve the interrelated question whether an underground installation that in no way intrudes on park use requires legislative approval. That an appreciable area of the park will be closed for more than five years, and that some future uses of the land will be inhibited by the presence of the underground structure, render that issue hypothetical." (*cont.*, page 2)

***Help Us Support
This Initiative***

CWCWC PRESENTS LETTER TO EPA

***More Than 23 Regional
Groups Co-Sign***

This February, CWCWC President, Marian Rose, authored a letter to Christine Todd Whitman, Administrator, US Environmental Protection Agency, asking that she reopen and reconsider the Consent Decree of 1998, with the hope that filtration may be avoided. More than 23 diverse, regional groups have co-signed Dr. Rose's letter.

Help us increase our voice: With your individual letters supporting that of CWCWC, you can help reinforce the importance of filtration avoidance and to consider the many viable methods to maintaining the Croton's healthful waters. (*cont.*, page 3)
**DEP FORCED TO PLAY
BY RULES, cont.**

Fay Muir, of the Norwood Community Action Group, the first organization to file suit against those

implementing the filtration plant, added, "As a resident close to the park, I am enormously relieved by the court's decision. I can state unequivocally that the construction of the plant and its subsequent operation would destroy our community. Contaminated air, toxic waste, explosive chemicals in storage all pose dangers to the health and well being of our community."

At this time, the N.Y. State Department of Health continues to support the implementation of the filtration plant, as does the office of the N.Y. State Attorney General. However, in January of 1999, the Attorney General stated that "in his view, legislative approval was necessary before parkland could be used for this [water filtration] project." The office stated its view again in July of the same year, when the City Council approved the application for plant construction at the Mosholu site without having sought legislative approval for the project.

Noted Marian Rose, President of CWCWC, "Had the decision gone the other way, every park held in the public trust by the state would be in jeopardy from non-park use intrusion."

CWCWC Board Member David Ferguson added, "The city now has to make a decision: appeal to the state legislature; find a different site; or forego the false notion that there is a real need to treat and filter already high-quality water."

What you can do to make a difference -

Take a moment to write your Assemblyperson, and let him or her know Van Cortlandt Park *should not* receive alienation status for the proposed Croton Watershed chemical/filtration project. To find out the name of your Assemblyperson, contact your County Board of Elections. For New York City, phone (212) 487-5300; for Putnam County, phone (845) 278-6970; for Westchester County, phone (914) 285-5700. The mailing address for all Assembly members is: The Honorable [name], New York State Assembly, Albany, N.Y. 12248. The salutation is: Dear Assemblyman/woman [name]:. The general phone number for the Assembly is (518) 455-4100.

Watershed Watchers, Please Note:

"The New York City Watershed in the 21st Century: Preserving a Vital Resource" is this year's topic for The Fordham Environmental Law Journal Annual Symposium. The timely subject will be presented March 28 at Fordham's School of Law, 140 W. 62nd Street, in Manhattan. Three panels are scheduled, from 1:00 to 8:00PM, encompassing the themes "Lessons from the Watershed Negotiations"; "Toward a New Filtration Avoidance Determination for EPA's Mandate"; and "Programs for Changes in the Federal Law and Regulations." Contact Sharron Williams Gelobter at: 212-636-6946 or williamsgelo @ fordham.edu.

WHAT THE PRESS IS REPORTING ABOUT THE FUTURE OF THE CROTON FILTRATION PLANT

The unanimous opinion by the seven judges of the NYS Court of Appeals that NYCDEP must seek park alienation before siting its chemical treatment-filtration plant in Van Cortlandt Park, has thrown a huge roadblock in the City's plans for filtration of the Croton.

The opinion, written by Chief Judge Judith Kaye, states: "...our law is well settled; dedicated park areas in New York are impressed with a public trust for the benefit of the people of the state."

At the moment, it seems highly unlikely that the New York State legislature will allow such an obvious non-park use for a park. It would mean that every park in NYS would be made vulnerable to a broad range of harmful intrusions.

Assemblyman Jeffrey Dinowitz, a leading representative from the Van Cortlandt Park area of the Bronx, has been adamant in his opposition to the plant. He has asked the Giuliani administration to scrap the filtration plant proposal, and concentrate its resources on protecting the watershed. "I don't think anybody is saying this water is undrinkable

WHAT THE PRESS IS REPORTING, cont.

or is likely to be undrinkable. This is excellent water and in order to keep it drinkable, we have to prevent pollution of the watershed." (The Journal News, 2/9/2001)

The City is desperately seeking solutions, even the non-filtration alternative that CWCWC has long been advocating. Mayor Giuliani expressed "shock" at the ruling. "We're going to ask for reconsideration by the court." (Daily News, 2/9/2001) The Mayor also expressed the possibility of going to the US Supreme Court. Seeking another site in Westchester County was also mentioned as a possibility. Sites in Greenburgh, Mount Pleasant and Yorktown, all on DEP's original list, may now be under reconsideration.

On a more hopeful note, "City officials ... said that given the change in presidential administrations, they would consider asking the EPA's new administrator, former Gov. Christie Whitman of New Jersey, for permission to forego filtration in favor of protecting the watershed at its source." (The New York Times, *ibid*)

The Journal News' lead editorial on February 12, 2001, makes a similar point: "Giuliani's best bet would be to convince the Bush administration that the city's effort under the 1996 (sic) landmark watershed agreement should make water treatment unnecessary ... Croton water still meets federal health standards."

On the other hand, EPA is remaining steadfast to its order to filter the Croton. "Our bottom line is that the Croton watershed must be filtered in order to protect public health," said the spokeswoman Mary Mears. "It's a matter of federal law, a matter of federal regulation." (The New York Times Metro section, 2/10/2001)

EPA must be persuaded to change this rigid mindset. Conditions in the Croton watershed have been evolving towards far more protection (see our January/February 2001 Newsletter). Water quality not only fulfills all federal health standards but is improving. With some of the regulators, previously pro-filtration, now talking of watershed protection rather than filtration, it is time for the residents to take a proactive part in protecting the open spaces of Westchester and Putnam Counties, which are home to the Croton reservoirs.

<p>CONTACT INFORMATION AND USEFUL ADDRESSES CWCWC: Web site: www.newyorkwater.org; phone: (914) 234-6470; mail: 9 Old Corner Rd., Bedford, NY 10506. The Environmental Protection Agency: Web site: www.epa.gov; phone: 202-564-4700; mail: Ariel Rios Bldg., 1200 Pennsylvania Ave., NW, Washington, DC 20460 Mayor Giuliani's office: Mayor's Office, 51 Chambers St., New York, NY 10007 Governor Pataki's office: N.Y. State Executive Chamber, State Capitol, Albany, NY 12224</p>

HELP WHITMAN, cont.

Following is a sample letter. Please take a moment to edit it to reflect your views and mail today. *Thanks!*

Dear Administrator Whitman: I am a resident of.....I depend on New York City water because I live/work/visit in the watershed/ New York City.

I am writing to ask you to consider renegotiating EPA's Consent Order that forces New York City to filter its Croton System, which supplies it with 10% and 30% of its drinking water. Instead, I hope that the EPA and the City will decide on far less costly, more effective ways to provide us with safe, affordable water.

Croton water fulfills all federal health standards and is improving, according to DEP Commissioner Joel Miele. Moreover, Croton water is likely to do so in the future since EPA has been unable to find any scientific justification for stricter standards.

As well, the City can ill afford a costly \$1 billion plant, one that is not even needed.

Please consider alternatives to chemical treatment and filtration such as source water protection through land acquisition; enforceable stream and reservoir protection from polluted runoff; and limiting impervious surface in the watershed. Thank you. (Finish with signature and mail copies to: Mayor Rudolph Giuliani; Gov. George E. Pataki.)

PLEASE JOIN US, the Croton Watershed Clean Water Coalition, which, through regional action, is dedicated to protecting and improving the naturally filtered, high-quality waters of the Croton Watershed for today and for generations to come.

SEND IN YOUR membership and receive membership mailings, a free copy of the multi-award winning video, *The Fight for the Croton Watershed*, and most importantly, a chance to preserve one of our most precious resources, our water.

Croton Watershed Clean Water Coalition Membership Application

Name _____

Address/City/State/ZIP _____

Phone _____ E-mail _____

Voting Group Membership \$25/year

Non-voting individual membership \$10/year

Make checks payable to Croton Watershed Clean Water Coalition and mail, along with your membership form, to Ms. Fay Muir, 286 Reservoir Place, Bronx, NY 10467. Thank you for joining CWCWC!

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VISIT OUR WEB SITE: WWW.NEWYORKWATER.ORG *This newsletter and web site have been made possible through a generous grant by the Noyes Foundation.*

Our Water, Our Future

Please send articles for submission to editor David Ferguson, 411 W. 22nd Street, #4-F, New York, N.Y. 10011; (212) 989-0519. Deadlines for materials are 5/1, 7/1, 9/1 and 11/1.

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Coalition Newsletter**

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