UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. METROPOLITAN DISTRICT COMMISSION, et al., Defendants.	) CIVIL ACTION) No. 85-0489-RGS
CONSERVATION LAW FOUNDATION OF NEW ENGLAND, INC., Plaintiff, v. METROPOLITAN DISTRICT COMMISSION, et al., Defendants.	) CIVIL ACTION) No. 83-1614- RGS

CITY OF CAMBRIDGE'S MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN RESPONSE TO THE JOINT MOTION OF THE UNITED STATES AND THE MASSACHUSETTS WATER RESOURCES AUTHORITY TO AMEND SCHEDULE SIX WITH RESPECT TO THE CHARLES RIVER, ALEWIFE BROOK AND EAST BOSTON

The City of Cambridge hereby moves for leave to file a brief as *amicus curiae* a response to the Joint Motion of the United States of America and the Massachusetts Water Resources Authority ("MWRA" or "the Authority") to amend Schedule Six with respect to the Charles River, Alewife Brook, and East Boston. The conditional memorandum is attached herewith. The grounds in support of its motion are as follows:

1. Schedule Six requires MWRA to undertake various CSO Control Projects for the Charles River and Alewife Brook in the City of Cambridge.

2. Independently and through cooperative agreements with MWRA, the City voluntarily has expended and continues to expend tens of millions of dollars to help implement CSO Control Projects affecting the Charles River and Alewife Brook.

3. As reflected in the most recent federal Court Compliance Orders, these Cambridge CSO Control Projects are already slated to cost $72 million and are projected to increase to $102 million. [1]

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[1] See the following Court Compliance Orders, listed in reverse chronological order):

- U.S. v. Metropolitan Dist. Com'n, 2005 WL 2542921, *2 (D.Mass.,2005) (Cambridge Sewer Separation: "The MWRA reports that once a decision is rendered on the appeal [of a MA DEP Superseding Order of Conditions approving Contract 12 for the City's work in certain wetlands], it will reopen discussions with the City of Cambridge in an effort to reach an agreement on the [increased CSO] project cost and a cost sharing agreement.");

- U.S. v. Metropolitan Dist. Com'n, 2005 WL 1533107, *2 (D.Mass.,2005) (Cambridge Sewer Separation: "The MWRA reports that the City of Cambridge continues to finalize a Second Supplemental Preliminary Design Report for the recommended plan for the Alewife Brook and Upper Mystic River. In addition, the City continues design work on Contract 12. … The MWRA reports that it has yet to reach an agreement with the City regarding the increased project cost ($72 million to $102 million) and the negotiation of a new cost sharing arrangement. The MWRA will continue its discussions with the City.");

- U.S. v. Metropolitan Dist. Com'n, L 768498, *2 -3 (D.Mass.,2005) (Cambridge Sewer Separation: "Over the last quarter, the MWRA held meetings with the City of Cambridge in an effort to reach consensus on the elevated costs and a new cost sharing arrangement for what is now estimated to be a $94 million to $102 million project. … According to the MWRA, the City has made considerable progress in the final design of Contract 12, a crucial project that must be completed before the bulk of the remaining Alewife Brook plan can be implemented.");

- U.S. v. Metropolitan Dist. Com'n L 226170, *3 -4 (D.Mass.,2005) (Cambridge Sewer Separation: "The MWRA reports that it is gravely concerned by the preliminary cost information received from the City indicating that project costs now exceed by $25 million the $74 million estimate presented in the Final Variance Report. … The MWRA reports that the City is making design progress on Contract 12 involving the proposed storm drain outfall and stormwater wetland in the Alewife Brook Reservation. The new basin and outfall are necessary to accommodate future sewer separation in the upstream CAM004 area and the eventual closure of the CAM004 regulator.");

- U.S. v. Metropolitan Dist. Com'n, 2004 WL 2297875, *2 (D.Mass.,2004) (Cambridge Sewer Separation: "According to the Quarterly Report, the City of Cambridge is continuing final design work on the construction of the new storm drain outfall and stormwater wetland detention basin. Design work is now 75 percent complete, and the City has received an Order of Conditions from the Cambridge Conservation Commission. … The MWRA reports that DEP has issued a three year extension to the Alewife Brook/Upper Mystic River Basin variance after determining that no feasible means to eliminate CSO discharges has been identified. The MWRA will continue its water quality monitoring program and will review the assessment reports by the Cities of Somerville and Cambridge to determine if there are any feasible, cost effective alternatives for CSO control measures.")

4. The City's track record of taking significant affirmative steps to implement significant CSO Control Projects in the City underlies the City's interest to be heard as *amicus curiae* in this proceeding to protect the City's economic interests, its environmental interests, its institutional interests (*i.e.* its infrastructure planning, design and construction), and its due process interests to be heard in a matter directly and substantially affecting its legal rights.

5. The Joint Motion proposes to terminate a 1987 Stipulation regarding MWRA's CSO control obligations, and to replace it with a new Second Stipulation. The MWRA's undertakings under the original 1987 Stipulation are broader than its undertakings under the Second Stipulation.

6. Under the 2006 Stipulation, with respect to all CSO outfalls owned or operated by MWRA, the Authority continues to accept "legal liability to undertake such future corrective action as may be necessary to meet the CSO control requirements of the Clean Water Act …." (2006 Stip. ¶ 4).

7. With respect to all of the CSO outfalls within or hydraulically connected to the Authority's sewer system listed in Exhibit B to the 2006 Stipulation (including eleven Cambridge outfalls designated CAM 001, 002, 004, 400, 401A, 401B, 005, 007, 009, 011, and 017), the Authority accepts legal liability "to undertake such corrective action as may be necessary to implement the CSO control requirements set forth in Schedule Six and related orders of the court in the above-captioned action, and to meet the levels of CSO control (including as to frequency of CSO activation and as to volume of CSO discharge) described in the Authority's Long-Term CSO Control Plan." (2006 Stip. ¶ 4).

8. Thus, the Joint Motion and Second Stipulation propose to incorporate the Authority's Long-Term CSO Control Plan into the Schedule Six Compliance Orders, and at the same time limit the Authority's legal liability for the outfalls listed on Exhibit B (including the eleven Cambridge outfalls inter-connected to the MWRA's system) to the CSO control requirements set forth in Schedule Six and related orders of the Court and described in the Authority's Long-Term CSO Control Plan.

9. Accordingly, the City's interests are directly affected by the Joint Motion and Second Stipulation. The City's proposed *amicus curiae* brief requests specific clarifications to ensure that the Authority's Long-Term CSO Control Plan and this Court's Orders are effectuated both fairly and in a manner that avoids the potential for (a) inconsistent governmental approaches to CSO Control for the Charles River and the Alewife Brook, (b) conflicting permit requirements; inconsistent variance extensions and water quality requirements, and (c) intractable conflicts between and among parties that have, for years, cooperated successfully to address these CSO concerns.

For the foregoing reasons, the City of Cambridge respectfully requests leave to appear and file a brief as *amicus curiae* in response to the Joint Motion to amend Schedule Six.

REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 7.1(B)(2)(D), the City of Cambridge respectfully requests to be heard at the oral argument on the Joint Motion.

The City of Cambridge, MA
Respectfully submitted,
By its attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a copy of the foregoing on all parties as set forth below on this 6th day of April, 2006.

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CV No. 85-0489
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[2] Mr. DeAngelo was deleted from the service process list because he has left public service with the Mass. Attorney General's Office and there is another representative from the AG's office on the service list. He was formerly with the Massachusetts Attorney General's Office at One Ashburton Place, Room 2019, Boston, MA 02108-1698. He is now in private practice at the Law Firm of Edward DeAngelo, 258 Harvard Avenue, #154, Brookline, MA 02446.

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