



NEW YORK CITY LAW DEPARTMENT  
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**Press Release**

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*For Immediate Release*

**NEW YORK CITY WATER BOARD WINS CASE  
UPHOLDING ITS CALCULATION OF THE QUANTITY OF WATER  
UPSTATE CUSTOMERS ARE ENTITLED TO TAKE**

***WATER BOARD COULD RECOVER OVER \$17 MILLION IN UNPAID WATER BILLS***

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New York, Aug. 9, 2003 – The Westchester County Supreme Court ruled in favor of the New York City Water Board in a case that challenged the Board's method of calculating the quantity of water upstate customers are entitled to take from the New York City water supply system pursuant to statute. As a result, the New York City Water Board could recover over \$17 million in unpaid water bills from Westchester. The case was decided in June, but the judge officially entered the case in late July.

The Village of Scarsdale and several other upstate entities challenged the Water Board's calculation of the "daily quantity of water which may be taken" (water allowances) from the New York City water supply system under the Water Supply Act of 1905, arguing that upstate entities were entitled to take far more water than the amount allowed by the Water Board. The upstate entities argued that the Water Board should be required to measure water allowances based on annual, rather than daily or monthly comparisons, and that the Water Board should be required to measure water allowances for the County of Westchester as a whole, rather than for each individual municipality, such as the Village of Scarsdale.

In the decision, Justice Francis A. Nicolai justified the Board's water allowance methodology. With respect to a countywide measure of water allowances, the Court stated that Westchester County, as a county, as opposed to the individual municipalities and water districts within the county, "has not been taking water from the City system...The Water Board has not been dealing with Westchester County and has not been billing the County for water. There is no basis, therefore, for computing water allowances on a county-wide basis, and there is nothing arbitrary, capricious or unreasonable in the Water Board's not doing so."

With respect to an annual rather than a daily or monthly computation of water allowances, the Court stated that the Water Board "is bound by the statute in issue to calculate the daily usage of water by individual municipality or water district. Petitioners have not persuaded this Court that the Water Board has acted arbitrarily, capriciously, or unreasonably in this regard. This Court cannot compel the Water Board to do differently on the ground that, in the water supply industry as a whole and for planning purposes, some calculations of water usage are made on a yearly basis." The Court also held that the Water Board's methodology for calculating water allowances had already been upheld in prior litigation, affirmed by the New York Court of Appeals.

"This case upholds the Water Board's right to protect the water system from overuse by encouraging all of our customers to conserve water. We will now be able to identify the upstate communities consuming excess amounts of water and work with them to encourage conservation, particularly during the high

usage summer months,” said Department of Environmental Protection Commissioner Christopher O. Ward.

The victory also allows the Water Board to proceed with its claim to recover up to \$17 million in excess water charges accumulated by the communities over the past decade. The petitioners in this litigation have refused to pay excess charges for water used over and above their entitlement amounts.

“We are pleased with the decision and feel that the Court articulated a fair and reasonable reading of the governing statute,” said Gail Rubin, Chief of the Affirmative Litigation Division of the New York City Law Department. “This clarification of the law will enable the parties to focus their attention on the critical question of how best to make use of the limited water resources of the New York City water supply system.”

The petitioners also were unsuccessful in their challenge to the Water Board’s right to require the Westchester Joint Water Works to enter into an updated water supply agreement before receiving the Water Board’s consent to take even more water through an expanded pumping station at Rye Lake. The Court reiterated the holding of the Court of Appeals in the prior case, requiring petitioners to seek a permit from the New York State Department of Environmental Conservation before taking any water in excess of the entitlement amount.

“This is a very important victory for the Water Board,” said the City’s Corporation Counsel Michael A. Cardozo. “It reaffirms the ability of the Water Board to reasonably regulate water usage, not only for in-City customers but for upstate customers as well.”

The matter was handled for the Water Board by Gail Rubin, Chief of the Affirmative Litigation Division of the New York City Law Department, and former Senior Counsel Florence Hutner, now General Counsel of New York City Department of Correction, with substantial assistance from Roberta Pedersen, Special Counsel to the Board.

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