



New York City Municipal Water Finance Authority

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NEW YORK CITY CONSIDERING NEXT STEPS AFTER NEW YORK COURT OF APPEALS DECISION THAT SITING OF CROTON FILTRATION PLANT IN VAN CORTLANDT PARK IS AN ALIENATION OF PARK LAND REQUIRING STATE LEGISLATION

The New York Court of Appeals ruled on Thursday, February 8, 2001 that the siting of the filtration plant for the Croton portion of the New York City water system at the Mosholu Golf Course in Van Cortlandt Park requires the approval of the State Legislature.

Although Croton water meets all current health-related water quality standards, the Federal Government, and the State, brought an action under the Safe Drinking Water Act seeking filtration. Pursuant to a 1998 Consent Decree, the City agreed to design and construct such a facility and have it operational by March 1, 2007. The City's 10-year Capital Improvement Program ("CIP") provides \$921 million for the Croton Filter Project.

In December 1998, the New York City Department of Environmental Protection ("DEP") identified the Mosholu Golf Course at Van Cortlandt Park in the Bronx as the City's preferred site for a water treatment facility to filter the Croton Water System. The Croton System, the oldest and smallest of the City's surface water supplies, is located east of the Hudson River and north of the City and supplies 10 to 30 percent of the City's water. The selected Mosholu Golf Course site lies within the boundaries of Van Cortlandt Park, a mapped public park. In September and November 1999, respectively, two actions were brought against the City by community organizations opposed to the siting of the Croton water treatment facility at the Mosholu Golf Course site. These organizations disputed the City's view that no alienation of parkland was occurring and argued that such alienation could not occur without prior state legislative approval. The Office of the New York State Attorney General expressed a similar view in papers filed by that office. The Federal District Court previously ruled for the City and found that the water treatment facility would not alienate parkland and did not require state legislative approval. In November, 2000, a three-judge panel of the United States Court of Appeals for the Second Circuit granted a motion by plaintiffs to certify the question of alienation to the New York Court of Appeals, the highest State court in the State of New York. On February 8 the Court of Appeals ruled in favor of the plaintiffs and against the City.

The City has stated that its options include further legal proceedings, alternative siting and legislative relief. The delay in siting the facility may result in financial penalties being assessed against the City under the Consent Decree. There is no connection between the siting of the filtration plant for the Croton portion of the City water supply system, which is under a filtration mandate, and the City's

ongoing implementation of its filtration avoidance program for the 90 percent of the system which is supplied by the Catskill and Delaware watersheds.