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By ECF

April 2, 2018

Hon. Edward R. Korman
United States District Judge
Eastern District of New York
United States Courthouse
Room 918
Cadman Plaza East
Brooklyn, NY 11201

Re: **Rosado v. Pruitt, Case No. 17-cv-04843 (ERK)(RLM)**

Dear Judge Korman:

Non-parties, the Connecticut Port Authority, the Electric Boat Corporation, the Connecticut Marine Trades Association, Cross-Sound Ferry Services, Inc., the Southeastern Connecticut Council of Governments, the Lower Connecticut River Valley Council of Governments, the South Central Regional Council of Governments, and the Western Connecticut Council of Governments (collectively, the “Connecticut Amici”) respectfully submit this joint letter motion, on consent of all parties to this action (except that Intervenor Plaintiff Town of Southold and the EPA Defendants take no position),¹ for leave to:

1. Allow the Connecticut Amici to appear as *amici curiae* in support of the Defendants, United States Environmental Protection Agency (“EPA”), E. Scott Pruitt, Deborah Szaro, and the Connecticut Department of Energy and Environmental Protection (“DEEP”) (collectively, the “EPA Defendants”), in this administrative appeal.
2. Submit a joint *amici curiae* brief in connection with the EPA Defendants’ forthcoming motion and cross-motion for judgment on the pleadings.

¹ Amicus Town of Riverhead does not object to the Seven Connecticut Amici’s request. The other NY Amici have taken no position on this request.

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3. Allow that the joint *amici curiae* brief be due seven days after the due date of the EPA Defendants' opening brief.²

Nature of the Litigation

This case is a challenge by the State of New York to a final rule of the Environmental Protection Agency ("EPA") designating an area in Eastern Long Island Sound as a permanent dredged material disposal site. The Connecticut Amici include a quasi-public agency, intergovernmental organizations, a marine trades association, and businesses that contribute to and rely upon commercial maritime activity in Long Island Sound. The disposal of dredged material in Long Island Sound and the location of disposal sites carries the potential to affect maritime economic activity in Long Island Sound. Consequently, such disposal is likely to affect the interests of the Connecticut Amici.

The Proposed Amici and Their Interests

The Connecticut Amici consist of the following entities.

The **Connecticut Port Authority** is a quasi-public agency that is responsible for marketing and coordinating the development of the state's ports and maritime economy. Among other duties, the Authority coordinates port development, focusing on private and public investments; pursues state and federal funds for dredging and other infrastructure improvements to maintain the navigability of all ports and harbors; works with state, local, and private entities to maximize the economic potential of Connecticut's ports and harbors; supports and enhances the overall development of maritime commerce and industries; and coordinates the state's maritime policy and serves as the governor's principal maritime policy advisor.

The **Electric Boat Corporation** ("EB") is one of the nation's premier submarine builders. Established in 1899, EB delivered the first submarine to the U.S. Navy in 1900, beginning a century-long history of accomplishment. EB has designed and delivered 15 of the U.S. Navy's 19 classes of nuclear submarines. Now in its second centennial of submarine building, EB is the design yard and prime contractor for the Virginia-class submarine program and is developing the next-generation of ballistic-missile submarines. EB has more than 16,500 employees, with major locations in Groton and New London, Connecticut and Quonset Point, Rhode Island. The

² By stipulation of the parties, the EPA Defendants' opening brief regarding the motion and cross-motion for judgment on the pleadings is currently due on October 31, 2018. *See* ECF No. 25.

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company's Groton shipyard is located on the Thames River, four miles south of the Naval Submarine Base New London. Because of its long relationship with the Navy, the concentration of past and current submariners and submarine-related design and construction, Groton is often referred to as the "Submarine Capital of the World."

The **Connecticut Marine Trades Association** ("CMTA") is a trade association representing 350 members across Connecticut that are active in the marine and boating industry from marina and boatyard owners and operators to boat brokers and dealers, subcontractors and professional service providers, including boat financing, insurance, and product distribution and fabrication. CMTA was formed to enhance public awareness of the marine industries and to encourage high standards therein; to follow policies and promote activities that will protect or improve marine ecology and the marine environment; to encourage, promote, and participate in programs concerned with safety, education, and the marine business, and programs designed to enhance boating, the marine industries, marine ecology or marine life; to work with and provide assistance to governmental authorities with respect to laws and legislation pertaining to recreational boating and the marine industries; to offer guidance, instruction and general assistance to boat owners, particularly newcomers; and to sponsor annual functions to display developments in the marine trades and to educate the public about the marine industries.

Cross Sound Ferry Services, Inc. ("Cross Sound") provides daily, year-round, vehicular, passenger and high-speed passenger service between New London, Connecticut and Orient Point, Long Island, New York. Each year, Cross Sound transports over 500,000 vehicles including tractor-trailer trucks and 1.3 million passengers. Cross Sound's fleet of nine vessels makes over 14,000 one way crossings annually. The service is recognized as part of the America's Marine Highway by the U.S. Maritime Administration (MARAD) and the U.S. Department of Transportation. MARAD has determined that Cross Sound provides "features of the ferry service that contribute significant benefits to the region and nation. The service is of regional importance, providing both resiliency and redundancy to the regional transportation system while reducing landside congestion." The service is estimated to save approximately 60 million vehicle miles annually, accounting for more than \$3.5 million in greenhouse gas benefits to the New York and Connecticut regions each year.

Councils of Governments in Connecticut are public agencies created pursuant to state law to provide a basis for intergovernmental cooperation in dealing with a wide range of issues facing their member municipalities, including transportation, emergency management, housing, economic development, human service delivery, and land use planning. The board for each COG of comprised of the chief elected officials of its member municipalities.



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The **Southeastern Connecticut Council of Governments** (“SCCOG”) represents 22 towns, cities and boroughs: Bozrah, Colchester, East Lyme, Franklin, Griswold, City of Groton, Town of Groton, Jewett City, Lebanon, Ledyard, Lisbon, Montville, New London, North Stonington, Norwich, Preston, Salem, Sprague, Stonington, Stonington Borough, Waterford, and Windham. Its members include every town that borders Long Island Sound from the Rhode Island border to East Lyme and the towns that border the Thames River. SCCOG counts as affiliate non-voting members the state’s only two federally recognized Native American Tribes, the Mashantucket Pequot Tribal Nation and the Mohegan Tribe, and affords liaison representation on its board to the Commanding Officer of the U.S. Naval Submarine Base in Groton and the Superintendent of the U.S. Coast Guard Academy in New London.

The **Lower Connecticut River Valley Council of Governments** (“RiverCOG”) has 17 member towns: Chester, Clinton, Cromwell, Deep River, Durham, East Haddam, East Hampton, Essex, Haddam, Killingworth, Lyme, Middlefield, Middletown, Old Lyme, Old Saybrook, Portland, and Westbrook. RiverCOG includes four members that border Long Island Sound and 12 that border the Connecticut River, the largest and longest navigable river in New England.

The **South Central Regional Council of Governments** (“SCRCOG”), as its name suggests, covers the south central region of Connecticut and is comprised of 15 municipalities: Bethany, Branford, East Haven, Guilford, Hamden, Madison, Meriden, Milford, New Haven, North Branford, North Haven, Orange, Wallingford, West Haven, and Woodbridge. The SCRCOG region covers approximately 570,000 people, or 1/6th of the state’s population, and seven of its members are located on Long Island Sound, covering approximately 45 miles of shoreline. The Housatonic, Quinnipiac, East and Hammonasset Rivers are also within its members’ boundaries.

The **Western Connecticut Council of Governments** (“WestCOG”) covers a region that contains approximately 610,000 residents, which makes it the second most populous of Connecticut’s nine COGs. WestCOG serves 18 member municipalities: Bethel, Bridgewater, Brookfield, Danbury, Darien, Greenwich, New Canaan, New Fairfield, New Milford, Newtown, Norwalk, Redding, Ridgefield, Sherman, Stamford, Weston, Westport, and Wilton. With five coastal municipalities, WestCOG accounts for approximately one-fifth of Connecticut’s Long Island Sound frontage, ranging from the New York border to Westport.

The Court Should Grant the Connecticut Amici Leave to Submit a Joint Amici Brief

“A district court has broad discretion to grant or deny an appearance as amicus curiae in a given case.” *Citizens Against Casino Gambling in Erie County v. Kempthorne*, 471 F. Supp. 2d 295,

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311 (W.D.N.Y. 2007) (citing *United States v. Ahmed*, 788 F. Supp. 796, 798 n.1 (S.D.N.Y. 1992), *aff'd* 980 F.2d 161 (2d Cir. 1992)). An *amicus curiae* brief “should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Citizens Against Casino*, 471 F. Supp. 2d at 311 (quoting *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J.)).

Here, an *amici curiae* brief from the Connecticut Amici would satisfy this standard. The outcome of this case is likely to affect the interests of the Connecticut Amici in a manner distinct from the effect on the interests of the parties and the information provided by these amici is likely to assist the Court. The Connecticut Amici can offer governmental and business perspectives on the impact of the proposed disposal location authorized by the EPA final rule on the economy of Connecticut and its businesses and residents. Because none of the original named parties is based in Connecticut, the outcome of the case is likely to affect the Connecticut Amici differently than it will those parties. While the Connecticut DEEP intervened as a defendant, the Connecticut Amici will provide the additional perspective of Connecticut businesses and local governments.

Additionally, accepting the joint *amici curiae* brief from the Connecticut Amici would allow presentation of this information in a streamlined, efficient manner. The Connecticut Amici seek leave to present their arguments in one joint brief.

Additionally, they request leave to file their brief seven days after the filing of the opening brief of those parties the Connecticut Amici support, the EPA Defendants. Submission of an amicus brief seven days after the submission of the brief of the party the amicus supports is the standard timing in the Courts of Appeal. *See Fed. R. App. P. 29(a)(6)*. In this case, permitting the Connecticut Amici to file their joint brief at that time will streamline the briefing by permitting the amici to avoid duplicating arguments advanced by the parties that the amici support.

Conclusion

For these reasons, the Connecticut Amici respectfully request that leave be granted allowing the Connecticut Amici to appear as *amici curiae* in support of the EPA Defendants and to submit a

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joint *amici curiae* brief regarding the forthcoming motion and cross-motion for judgment on the pleadings, due seven days after the due date of the EPA Defendants' opening brief.

Thank you for your consideration of this request.

Respectfully submitted,

/s/ Nuala E. Droney

Nuala E. Droney

cc: Counsel of Record (via ECF)