

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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In the Matter of the Petition of the

SIERRA CLUB and HUDSON RIVER FISHERMEN'S
ASSOCIATION, NEW JERSEY CHAPTER, INC.,

Petitioners,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

- against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, BASIL SEGGOS, COMMISSIONER, and
HELIX RAVENSWOOD, LLC,

Respondents.

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Respondents New York State Department of Environmental Conservation and Basil Seggos, Commissioner of the DEC (collectively "DEC" or "State Respondents"), by their attorney, the New York Office of the Attorney General, for their Verified Answer to the Verified Petition, dated April 18, 2019 (the "Petition") and submitted by Sierra Club and Hudson River Fishermen's Association, New Jersey Chapter, Inc. ("HRFA") (collectively "Petitioners"), aver as set forth below:

I. INTRODUCTION¹

1. Paragraph 1 of the Petition is a statement of the nature of this proceeding and requires no response. To the extent an answer is required, the allegations are denied.
2. DEC denies the allegations in Paragraph 2 of the Petition.

¹ State Respondents retain, to some extent, Petitioners' headings for the reader's convenience. State Respondents deny the contents of the headings to the extent they are factual or legal conclusions.

3. Paragraph 3 of the Petition is a statement of the relief sought by Petitioners and requires no response. To the extent that an answer is required, the allegations are denied.

II. PARTIES

4. DEC denies the allegations in Paragraph 4 of the Petition that the conservation, aesthetic, and recreational interests of members of Sierra Club are injured by environmental damage caused to the East River, the New York Harbor Estuary, the Hudson River, Long Island Sound and the New York Bight by the Ravenswood Generating Station's water usage for its cooling water intake structures. DEC denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4 and on that basis denies the allegations.

5. DEC denies the allegations in Paragraph 5 of the Petition that the conservation, aesthetic, and recreational interests of members of HRFA are injured by environmental damage caused to the East River, the New York Harbor Estuary, the Hudson River, Long Island Sound and the New York Bight by the Ravenswood Generating Station's water usage for its cooling water intake structures. DEC denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5, and on that basis denies the allegations.

6. DEC admits the allegations in Paragraph 6 of the Petition.

7. Responding to the allegations in Paragraph 7, DEC admits that Respondent Helix Ravenswood, LLC ("HRLLC") operates a facility in Long Island City, New York. The remaining allegations are conclusions of law to which no response is required, but to the extent that a response is required, deny knowledge or information sufficient to form a belief as to the truth of those allegations.

III. STATUTORY AND REGULATORY FRAMEWORK

8. As to the allegations set forth in Paragraph 8 of the Petition, DEC respectfully refers the Court to the Water Resources Protection Act of 2011 (“WRPA”) as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

9. The allegations in Paragraph 9 of the Petition are a characterization of the WRPA and other legal requirements regarding water withdrawal permits. DEC respectfully refers the Court to the WRPA and related legal requirements regarding water withdrawal permits as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

10. DEC denies knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 10 of the Petition. The remaining allegations in Paragraph 10 are a characterization of the WRPA the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “Compact”). DEC respectfully refers the Court to the WRPA and the Compact as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

11. Paragraph 11 of the Petition is a characterization of the contents of the WRPA and Compact. DEC respectfully refers the Court to the WRPA and Compact as the best evidence and most complete statement of their contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

12. Paragraph 12 of the Petition is a characterization and partial quote from a press release from the Governor regarding the enactment of the WRPA. DEC respectfully refers the

Court to the press release as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith. Further, to the extent the allegations in paragraph 12 are a characterization of the WRPA, DEC respectfully refers the Court to the WRPA as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

13. Responding to the allegations in Paragraph 13, DEC admits that it adopted regulations to implement the WRPA, which are codified at 6 NYCRR Part 601, and that the regulations became effective April 1, 2013. Insofar as the allegations purport to characterize DEC's regulations promulgated under the WRPA, DEC respectfully refers the Court to the regulations as the best evidence and most complete statement of their contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

14. The first two sentences of Paragraph 14 of the Petition are a characterization of DEC's regulations promulgated under the WRPA. DEC respectfully refers the Court to the regulations as the best evidence and most complete statement of their contents and denies the allegations to the extent they are incomplete or inconsistent therewith. DEC denies the third sentence of Paragraph 14.

IV. THE RAVENSWOOD PERMITS

A. 2013 Ravenswood Water Withdrawal Permit

15. The allegations set forth in Paragraph 15 are Petitioners' characterizations regarding the contents of a 2013 DEC Environmental Notice Bulletin ("ENB") posting regarding the Ravenswood facility. DEC respectfully refers the Court to the 2013 ENB posting as the best

evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

16. The allegations in Paragraph 16 are more of Petitioners' characterizations regarding the contents of the 2013 ENB posting referenced in Paragraph 15. DEC respectfully refers the Court to the 2013 ENB as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

17. Responding to the allegations in Paragraph 17, DEC admits that Petitioner Sierra Club submitted comments in response to the 2013 ENB posting but denies the remaining allegations.

18. Responding to the allegations in Paragraph 18, DEC admits that in November, 2013, it issued a water withdrawal permit to TransCanada for the Ravenswood facility in Long Island City.

19. The allegations in Paragraph 19 are legal conclusions for which no response is required. To the extent that the allegations require responses, they are denied.

20. Responding to the allegations in Paragraph 20, DEC admits that Petitioners filed an Article 78 proceeding in Queens County Supreme Court in December 2013. DEC denies that the case was refiled on February 18, 2019 but states affirmatively that the case was refiled on or about February 18, 2014.

21. The allegations set forth in Paragraph 21 are Petitioners' characterizations regarding the contents of the 2013 Ravenswood water withdrawal permit and a 2014 modification to the permit. DEC respectfully refers the Court to the 2013 Ravenswood water withdrawal permit and 2014 modification to that permit as the best evidence and most complete

evidence of their own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

22. Responding to the allegations in Paragraph 22, DEC admits that the Queens County Supreme Court ruled in its favor in the trial court proceedings.

B. 2018 Appeals Court Decision

23. Responding to the allegations in Paragraph 23, DEC admits that the appellate court issued a decision reported at *Sierra Club v. Martens*, 158 A.D.3d 169 (2d Dep't 2018), and that the appellate court annulled the Ravenswood permit. The remaining allegations are the Petitioners' characterizations of the appellate court opinion. DEC respectfully refers the Court to the referenced appellate decision as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

24. The allegations in Paragraph 24 are more of Petitioners' characterizations of the appellate court opinion referenced in Paragraph 23. DEC respectfully refers the Court to the referenced appellate decision as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

C. 2019 Ravenswood Water Withdrawal Permit

25. Responding to the allegations in Paragraph 25, DEC admits that on or about August 2, 2017, Respondent HRLLC submitted an application for transfer of the water withdrawal permit that DEC had previously issued to TransCanada.

26. The allegations in Paragraph 26 are Petitioners' characterizations regarding the contents of an April 2018 letter from DEC to HRLLC. DEC respectfully refers the Court to the

April 2018 letter as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith. On information and belief, the letter referred to by Petitioners in Paragraph 26 is dated April 13, 2018.

27. The allegations in Paragraph 27 are more of Petitioners' characterizations regarding the contents of the April 2018 letter from DEC to HRLLC referenced in Paragraph 26. DEC respectfully refers the Court to the April 2018 letter as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

28. The allegations in Paragraph 28 are more of Petitioners' characterizations regarding the contents of the April 2018 letter from DEC to HRLLC referenced in Paragraphs 26 and 27. DEC respectfully refers the Court to the April 2018 letter as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

29. Responding to the allegations in Paragraph 29, DEC admits that on or about September 25, 2018, DEC issued a Negative Declaration, but denies that DEC accepted HRLLC's transfer application as sufficient on the date stated. DEC states affirmatively that it issued a water withdrawal permit dated September 29, 2017 for the transfer after having determined that the transfer application was sufficient. The remaining allegations are Petitioners' characterizations regarding the contents of the September 25, 2018 Negative Declaration. DEC respectfully refers the Court to the September 25, 2018 Negative Declaration as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

30. Responding to the allegations in Paragraph 30, DEC admits that on or about October 3, 2018, DEC published a notice in the ENB regarding the proposed Ravenswood water withdrawal permit. The remaining allegations are Petitioners' characterizations regarding the contents of the publication in the ENB. DEC respectfully refers the Court to the notice that DEC published in the ENB as the best evidence and most complete evidence of its own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

31. Responding to the allegations in Paragraph 31, DEC denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the allegations.

32. Responding to the allegations in Paragraph 32, DEC admits that Petitioner Sierra Club and others submitted comments to DEC the ENB notice referenced in Paragraph 30, but denies all other allegations in Paragraph 32.

33. Responding to the allegations in Paragraph 33, DEC admits that it issued a water withdrawal permit to HRLLC on or about February 20, 2019.

34. The allegations in Paragraph 34 of the Petition are Petitioners' characterizations and contentions regarding the contents of the 2019 water withdrawal permit that DEC issued to HRLLC in February 2019. DEC respectfully refers the Court to the full permit as the best evidence and most complete statement of its contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

35. The allegations in Paragraph 35 of the Petition are Petitioners' characterizations and contentions regarding the contents of both the 2019 and 2013 water withdrawal permits for the Ravenswood facility. DEC respectfully refers the Court to the full 2019 and 2013 water

withdrawal permits as the best evidence and most complete statement of their own contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

36. The allegations in Paragraph 36 of the Petition are Petitioners' characterizations and contentions regarding the contents of both the 2019 and 2013 water withdrawal permits for the Ravenswood facility, as well as the Ravenswood SPDES permit. DEC respectfully refers the Court to the full 2019 and 2013 water withdrawal permits and the full SPDES permit as the best evidence and most complete statement of their own contents, and denies the allegations to the extent they are incomplete or inconsistent therewith.

V. FIRST CAUSE OF ACTION

37. In response to Paragraph 37 of the Petition, DEC repeats and realleges Paragraphs 1 through 36 of this Verified Answer as though fully set forth herein.

38. DEC denies the allegations in Paragraph 38 of the Petition.

39. DEC denies the allegations in Paragraph 39 of the Petition.

40. DEC denies the allegations in Paragraph 40 of the Petition.

41. DEC denies the allegations in Paragraph 41 of the Petition.

42. DEC denies the allegations contained in the first and third sentences in Paragraph 42 of the Petition. The allegations in the second sentence of Paragraph 42 are Petitioners' characterization of the requirements of ECL-1503(2)(f) and (g). DEC respectfully refers the Court to those regulations as the best evidence and most complete statement of their contents, and denies the allegations to the extent that they are incomplete or inconsistent therewith.

43. DEC denies the allegations in Paragraph 43 of the Petition.

44. DEC denies the allegations in Paragraph 44 of the Petition.
45. DEC denies the allegations in Paragraph 45 of the Petition.
46. The allegations contained in Paragraph 46 of the Petition state a legal conclusion for which no response is required.
47. The allegations contained in Paragraph 47 of the Petition state a legal conclusion for which no response is required.
48. DEC denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the Petition and on that basis denies the allegations.
49. DEC denies the allegations in Paragraph 49 of the Petition.

VI. SECOND CAUSE OF ACTION

50. In response to Paragraph 50 of the Petition, DEC repeats and realleges the responses in paragraphs 1 through 49 of this Verified Answer as though fully set forth herein.
51. DEC denies the allegations in Paragraph 51 of the Petition.
52. The allegations in Paragraph 52 are Petitioners' characterization of the requirements of 6 NYCRR 617.4(b)(6)(ii) and the 2019 Ravenswood Permit. DEC respectfully refers the Court to the regulation and permit as the best evidence and most complete statement of their own contents, and denies the allegations to the extent that they are incomplete or inconsistent therewith.
53. Responding to the allegations in paragraph 53, DEC admits the withdrawal capacity authorized for the Ravenswood plant is the largest capacity amount DEC has permitted to date in a water withdrawal permit but also states affirmatively that that the withdrawal

authorized by the 2019 Ravenswood Permit is for once through cooling and other processes related to electrical generation which result in almost all of the water that is withdrawn being returned to its source.

54. The allegations in the first sentence in Paragraph 54 state legal conclusions for which no response is required. The allegations in the second sentence in Paragraph 54 are Petitioners' characterizations regarding the contents of 6 NYCRR 617.7(c). DEC respectfully refers the Court to 6 NYCRR 617.7(c) as the best evidence and most complete statement of its contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

55. DEC denies the allegations in Paragraph 55 of the Petition.

56. The allegations in Paragraph 56 are Petitioners' characterizations regarding the contents of the 2018 Negative Declaration. DEC respectfully refers the Court to the 2018 Negative Declaration as the best evidence and most complete statement of its contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

57. DEC denies the allegations in the first sentence of Paragraph 57. The remaining allegations state legal conclusions for which no response is required. To the extent that a response is required, DEC denies the allegations.

58. The allegations in Paragraph 58 are Petitioners' characterizations regarding the contents of the 2018 Negative Declaration and a 2006 Negative Declaration for the facility SPDES permit. DEC respectfully refers the Court to the 2018 and 2006 Negative Declarations as the best evidence and most complete statement of their own contents and denies the allegations to the extent they are incomplete or inconsistent therewith.

59. The allegations in Paragraph 59 of the Petition are Petitioners' characterization of the contents of 2018 Negative Declaration. DEC respectfully refers the Court to the 2018 Negative Declaration as the best evidence and most complete statement of its contents, and denies the allegations to the extent that they are incomplete or inconsistent therewith.

60. DEC denies the allegations in Paragraph 60 of the Petition.

61. DEC denies the allegations in Paragraph 61 of the Petition.

62. DEC denies the allegations in Paragraph 62 of the Petition.

63. DEC denies the allegations in Paragraph 63 of the Petition.

VII. RELIEF REQUESTED

The remainder of the Petition presents Petitioners' statement of relief requested to which no response is required. To the extent a response is required, DEC denies that Petitioners are entitled to any relief.

RESPONDENT DEC'S STATEMENT OF MATERIAL FACTS

64. DEC's statement of material facts is contained in the affidavit of Erik Schmitt sworn to August 12, 2019 and Affirmation of Lawrence H. Weintraub, sworn to August 9, 2019, and submitted herewith.

AFFIRMATIVE DEFENSES

65. DEC's determinations challenged in this proceeding are reasonable and rational and are fully consistent with law, as is more fully set forth in the agency's memorandum of law submitted herewith.

66. DEC refers to the Memorandum of Law attached in support of this Verified Answer and incorporates in this Verified Answer any other affirmative defenses listed therein.

67. DEC will rely on any and all additional defenses that become available or appear during this action and specifically reserves the right to amend this Answer for the purpose of asserting additional defenses.

68. WHEREFORE, DEC respectfully requests judgment against Petitioners as follows:

(a) dismissing and denying the claims in the Verified Petition against State Respondents in their entirety;

(b) and for such other and further relief as this Court deems appropriate.

Dated: New York, New York

August 12, 2019

Respectfully Submitted,

LETITIA JAMES

Attorney General of the State of New York

Attorney for Respondents Basil Seggos and DEC

By:



GAVIN G. McCABE

Assistant Attorney General

NYS Office of the Attorney General

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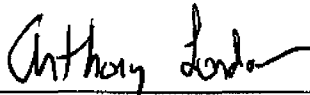
Gavin.McCabe@ag.ny.gov

State of New York State)
 :
County of Albany)

ANTHONY LONDON, being duly sworn, deposes and says:

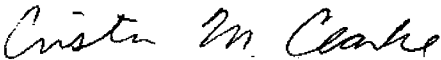
I am a Senior Attorney in the Office of General Counsel of the New York State Department of Environmental Conservation. I have reviewed the annexed Verified Answer and know its contents. The Verified Answer is true to my knowledge, information, and belief. The sources of my knowledge, information and belief are my personal knowledge, DEC's files, my discussions with DEC technical and legal staff, and relevant portions of the New York Environmental Conservation Law, the State Environmental Quality Review Act, and applicable regulations.

Dated: August 12, 2019



Anthony London

Sworn to before me on this 12th day of August, 2019.

Notary: 

CRISTIN M. CLARKE, ESQ.
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02CL6056390
QUALIFIED IN SARATOGA COUNTY
COMMISSION EXPIRES MARCH 19, 2023