

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

In the Matter of the Application of

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.

ORAL ARGUMENT  
REQUESTED

NOTICE OF PETITION

Index No.

2402 / 19

**NO MOTION FEE  
FILED ON  
COMMENCEMENT**

PLEASE TAKE NOTICE that upon the accompanying verified petition of Sierra Club and Hudson River Fishermen's Association, dated April 18, 2019, Petitioners will move this court, at an I.A.S. Part to be held at the Queens County Court, located at 88-11 Sutphin Blvd., Jamaica, New York, on the 21<sup>st</sup> day of May, 2019 at \_\_\_:00 A.M., for an order and judgment pursuant to Article 78 of the Civil Practice Law and Rules for the relief demanded in the petition and for such other and further relief as this court may deem just and proper.

DATED: New York, New York  
April 18, 2019

Respectfully submitted,



JONATHAN GEBALLE  
11 Broadway, Suite 615  
New York, NY 10004  
Telephone: (212)732-0800  
Email: jg@jonathangeballe.com

RICHARD J. LIPPES  
Lippes & Lippes  
1109 Delaware Avenue  
Buffalo, NY 14209-1601  
Telephone: (716) 884-4800  
Email: rlippes@lippeslaw.com

RACHEL TREICHLER  
7988 Van Amburg Road  
Hammondsport, New York 14840  
Telephone: (607) 569-2114  
Email: treichlerlaw@frontiernet.net

*Attorneys for Petitioners*

To:

BASIL SEGGOS, COMMISSIONER  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
625 Broadway  
Albany, NY 12233-1011

LETITIA JAMES, ATTORNEY GENERAL OF NEW YORK STATE  
28 Liberty Street, 16th Floor  
New York, NY 10005

HELIX RAVENSWOOD LLC  
38-54 Vernon Blvd  
Long Island City, NY 11101

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

In the Matter of the Application of

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ASSOCIATION, NEW JERSEY CHAPTER INC.

ORAL ARGUMENT  
REQUESTED

Petitioners,

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

VERIFIED PETITION

—against—

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

Index No.

Respondents.

Petitioners, by their undersigned attorneys, respectfully allege as follows:

**I. INTRODUCTION**

1. This proceeding challenges the actions of Respondent New York State Department of Environmental Conservation (“Respondent DEC”) in issuing a water withdrawal permit to Respondent Helix Ravenswood LLC (“Respondent HRLLC”) on February 20, 2019 authorizing HRLLC’s Ravenswood Generating Station in Long Island City, Queens to withdraw up to 1,527,840,000 gallons of water per day from the East River in the New York Harbor Estuary for operation of the station’s once-through cooling system (the “2019 Ravenswood Permit”); and in making a determination on September 25, 2018, that the proposed action would have no significant impact on the environment (the “2018 Negative Declaration”).

2. Issuance of the 2019 Ravenswood Permit and the 2018 Negative Declaration are legally deficient because Respondent DEC failed to comply with the requirements of the state water withdrawal permitting law, Environmental Conservation Law (“ECL”), Article 15, Title

15, the water permitting regulations, 6 NYCRR Part 601, the State Environmental Quality Review Act, ECL Article 8 (“SEQRA”), and the SEQRA regulations, 6 NYCRR Part 617.

3. Petitioners seek a judgment and order pursuant to Sections 7803(3) and 7806 of the Civil Practice Law and Rules (“CPLR”) vacating and annulling the 2019 Ravenswood Permit, and the 2018 Negative Declaration on the ground that they were issued in violation of lawful procedures, were affected by errors of law, were arbitrary and capricious, and their issuance constituted an abuse of discretion.

## II. PARTIES

4. Petitioner Sierra Club is a national grassroots nonprofit conservation organization formed in 1892. Its purposes include practicing and promoting the responsible use of earth’s ecosystems and resources, and protecting and restoring the quality of the natural and human environment. The protection of water resources is a key aspect of the Sierra Club’s work. Sierra Club has approximately 800,000 members nationwide, including approximately 50,000 members in New York and approximately 21,000 members in New Jersey, including members whose conservation, aesthetic, and recreational interests are injured by the environmental damage caused to the East River, the New York Harbor Estuary, the Hudson River, Long Island Sound and the New York Bight by Ravenswood’s water usage for its cooling water intake structures.

5. Petitioner Hudson River Fishermen’s Association (“HRFA”) is a regional nonprofit conservation organization founded in 1966. HRFA’s mission is to encourage the responsible use of aquatic resources and protection of habitat. HRFA has approximately 300 members. HRFA’s members are recreational fishermen who make active use of the Hudson River and its watershed, including the East River and the New York Harbor Estuary. The

conservation, aesthetic, and recreational interests of HRFA's members are injured by the environmental damage caused to the East River, the New York Harbor Estuary, the Hudson River, Long Island Sound and the New York Bight by Ravenswood's water usage for its cooling water intake structures.

6. Respondent New York State Department of Environmental Conservation ("Respondent DEC") is an administrative agency of the State of New York. DEC is the governmental body responsible for environmental protection in the State of New York and for the protection of New York's natural resources, including New York's waters. DEC was established by chapter 140 of the Laws of 1970, and administers the water supply permit program pursuant to ECL Article 15, Title 15. Respondent DEC's Region 2 Office is located at 1 Hunter's Point Plaza, 47-40 21st Street, Long Island City, New York.

7. Respondent Helix Ravenswood LLC ("Respondent HRLLC") is a corporation authorized to do business in New York with offices and facilities at 38-54 Vernon Boulevard, Long Island City, New York. Respondent HRLLC is a necessary party in this matter because the determinations challenged in this Petition may affect the operations of its Ravenswood Generating Station.

### **III. STATUTORY AND REGULATORY FRAMEWORK**

8. The Water Resources Protection Act of 2011 ("WRPA") was signed into law by Governor Cuomo on August 15, 2011. The Act amended ECL Article 15, Title 15, the Water Supply Law ("WSL"), to require that any person taking 100,000 gallons or more per day from any of the state's waters obtain a withdrawal permit, with certain exceptions.

9. The amended WSL is the first statutory provision in New York law to require that users other than public water supply systems obtain water withdrawal permits. Water withdrawal permits have been required for public water supply systems since 1905.

10. A major impetus for passage of WRPA was to implement the requirements of the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “Compact”), ECL 21-1001. A key provision of the Compact requires that water withdrawals in the basin “incorporate environmentally sound and economically feasible water conservation measures” and “result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources and the applicable Source Watershed.” *Id.*, Section 4.11.

11. WRPA incorporated the Compact’s decision-making standards as a series of determinations that Respondent DEC is required to make before issuing a water withdrawal permit. WRPA applied these decision-making standards to water withdrawal permits issued throughout the New York State, not just to permits issued in the Great Lakes basin.

12. The Governor’s press release announcing his signing of WRPA into law stated that “[t]his law will ensure that New York upholds its commitments under the Compact and will protect NY’s water resources.”

13. Respondent DEC promulgated regulations implementing the new permitting requirements in November 2012. 6 NYCRR Part 601. The regulations became effective April 1, 2013.

14. The schedule for submitting permit applications contained in 6 NYCRR 601.7(b)(2) gave the state’s largest water users the first opportunity to apply for a permit. Existing users withdrawing 100 million GPD or more were eligible to apply for a permit in 2013.

The only users eligible to apply in 2013 (and not otherwise exempt from the permitting requirements) were 16 large power plants.

#### **IV. THE RAVENSWOOD PERMITS**

##### **A. 2013 Ravenswood Water Withdrawal Permit**

15. On August 7, 2013, Respondent DEC announced its plans to issue the first non-public water withdrawal permit under the new water withdrawal permitting law to TransCanada for the operation of the Ravenswood Generating Station in Long Island City, Queens. Notice of the proposed issuance of the permit appeared in DEC's Environmental Notice Bulletin ("ENB").

16. The ENB notice stated that the determinations required by ECL 15-1503(2) did not need to be made for permits to existing users and announced that permits issued to existing users were exempt from review under the State Environmental Quality Review Act (SEQRA) on the ground that Respondent DEC had no discretion in issuing such permits.

17. The Sierra Club and other environmental organizations filed comments on September 11, 2013 objecting to Respondent DEC's failure to make the determinations required by ECL 15-1503(2), its failure to set appropriate terms and conditions in the Ravenswood permit and its failure to subject the issuance of the Ravenswood permit to review under SEQRA.

18. On November 15, 2013, Respondent DEC issued a permit to TransCanada for the Ravenswood Station (the "2013 Ravenswood Permit").

19. Respondent DEC did not make the determinations required by ECL 15-1503(2), set appropriate conditions, or conduct a SEQRA review before issuing the 2013 Ravenswood Permit.

20. On December 5, 2013, Sierra Club and HRFA brought an Article 78 proceeding in Queens County Supreme Court alleging that Respondent DEC's issuance of the 2013

Ravenswood Permit violated ECL Article 15, Title 15, SEQRA, the coastal zone laws and Respondent DEC's public trust responsibilities. By agreement of the parties, the case was refiled February 18, 2019. *Sierra Club v. Martens*, Index. No. 2949/14.

21. The 2013 Ravenswood Permit was modified on March 7, 2014, to increase the maximum permitted withdrawal from 1,390,000,000 to 1,527,840,000 gallons of water per day.

22. The Queens County Supreme Court issued two decisions in favor of Respondent DEC on October 1 and 2, 2014.

### **B. 2018 Appeals Court Decision Invalidating 2013 Ravenswood Permit**

23. Sierra Club and HRFA appealed the trial court's decisions to the Appellate Division Second Department in Brooklyn. On January 10, 2018, the Appellate Division issued its decision in *Sierra Club v. Martens*, 158 A.D.3d 169 (2nd Dep't 2018). The court invalidated the 2013 Ravenswood Permit on the ground that Respondent DEC does have discretion under ECL Article 15, Title 15 in setting the terms and conditions of water withdrawal permits issued to existing users and therefore determined that the issuance of the 2013 Ravenswood Permit was not exempt from SEQRA review.

24. The appeals court stated that whether 'the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures' will almost certainly vary from operator to operator, or from water source to water source. . . . Whether a condition is 'appropriate' for a given operator is a matter that falls within the DEC's expertise and involves the exercise of judgment, and, therefore, implicates matters of discretion." *Id.* at 177.

### C. 2019 Ravenswood Water Withdrawal Permit

25. Five months before the appeals court invalidated the Ravenswood permit, on August 2, 2017, Respondent HRLLC, having purchased the Ravenswood Generating Station, submitted its application for a transfer of the permit previously issued to TransCanada.

26. On April 28, 2018, Respondent DEC notified Respondent HRLLC that “[d]ue to the outcome of recent litigation, the water withdrawal permit issued for the Ravenswood Generating Station on November 15, 2013 has been annulled and remitted back to the department for further action on the application in accordance with SEQR.”

27. Respondent DEC’s letter of April 28, 2018, stated that “[t]he Department is using information presented in the initial water withdrawal permit application dated May 31, 2013 as well as the information presented in the permit renewal application dated August 2, 2017 as the basis for our review. Because the facility has the capacity to withdraw 1,527.84 million gallons per day of water, the project must be considered a Type I action under the State Environmental Quality Review Act.”

28. The only additional information Respondent DEC asked Respondent HRLLC to submit was a completed and signed Part 1 of a Full Environmental Assessment Form, in place of the short form EAF originally submitted, together with a letter signed by the owner or owner's representative indicating what, if any, changes to the water withdrawal system have been made since August 2, 2017.

29. On September 25, 2018, Respondent DEC accepted HRLLC’s transfer application as sufficient and issued the 2018 Negative Declaration, stating that issuance of a water withdrawal permit for the Ravenswood Station “will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared.”

30. Respondent DEC announced its ‘tentative decision’ to issue a water withdrawal permit to Respondent HRLLC on October 3, 2018, and announced that it had determined that issuance of the permit was a Type I action that would not have a significant effect on the environment and that it had issued a negative declaration.

31. Respondent DEC informed correspondents who requested a copy of the proposed permit that it planned to reissue the 2013 Ravenswood Permit.

32. On or before November 16, 2018, Petitioner Sierra Club and many Club members, among others, submitted comments objecting to Respondent DEC’s plan to reissue the same permit that had been invalidated by the appeals court in *Sierra Club v. Martens* and Respondent DEC’s failure to require an EIS.

33. On February 20, 2019, Respondent DEC issued the 2019 Ravenswood Permit to Respondent HRLLC.

34. The 2019 Ravenswood Permit contains ten “non-public” conditions captioned: (1) Approval of Completed Works from NYS P.E., (2) Permit Expiration and Renewal, (3) Transfer of Ownership of Water Withdrawal Systems, (4) Cooling Water Withdrawals Regulated by SPDES, (5) Incorporation of the SPDES Water Conservation and Fisheries Protection Measures Required, (6) Meter All Sources, (7) Source Meter Calibration, (8) Permittee Must Maintain Records, (9) Conduct Water Audits, and (10) Annual Water Withdrawal Reports.

35. Eight of the ten “non-public” conditions of the 2019 Ravenswood Permit are identical to the terms and conditions of the permit invalidated by the appeals court in January 2018. The two conditions added in the 2019 Ravenswood Permit are condition (8) Permittee Must Maintain Records and condition (9) Conduct Water Audits.

36. Condition 5 of the 2019 Ravenswood Permit, like condition 5 of the 2013 Ravenswood Permit, incorporates the biological monitoring conditions (“BMCs”) contained in the Ravenswood SPDES permit. There are six BMCs in the Ravenswood SPDES permit. The first BMC requires “Best Available Technology” and lists various measures such as variable speed pumps, improvements to intake screens, planned outage scheduling and low stress fish return lines. The second BMC requires “Performance Standards” and states that the plant must achieve a reduction in impingement mortality of 90% for all fish species combined and 90% for winter flounder alone from the calculation baseline.” The third BMC requires submission of a “Supplemental Technology and Operation Review/Plan.” The fourth BMC requires a “Verification Monitoring Plan” to confirm that the performance standards are being achieved. The fifth BMC requires that data be maintained and status reports issued in 2014 and 2017. The sixth BMC provides that no changes to the cooling intake system may be made without DEC approval.

**V. FIRST CAUSE OF ACTION:  
VIOLATION OF THE WATER SUPPLY LAW**

37. Petitioners repeat and reallege the allegations in paragraphs 1 through 36 as though fully set forth herein.

38. In processing Respondent HRLLC’s application for a water withdrawal permit, Respondent DEC failed to perform a number of actions required by the WSL, ECL Article 15, Title 15, and the water withdrawal permitting regulations, 6 NYCRR Part 601.

39. Respondent DEC violated the requirements of 6 NYCRR 601.10(k) when it accepted an application without requiring the necessary data and analysis in the application

materials to enable it to make the determinations required by ECL 15-1503(2) and 6 NYCRR Section 601.11(a).

40. Respondent DEC violated the requirements of 6 NYCRR 601.10(k) when it accepted a project justification section that did not show: (1) that any alternatives to the plant's existing once-through cooling system were evaluated; (2) that alternatives such as closed-cycle cooling could not reduce the size of the plant's water withdrawals; (3) why once-through cooling is reasonable given the dramatic reductions in water use that would result from closed-cycle cooling; (4) why once-through cooling is environmentally sound and economically feasible; or (5) that the plant's tremendous water withdrawals will result in no significant individual or cumulative adverse environmental impacts.

41. Respondent DEC failed to make the determinations required by ECL 15-1503(2) and 6 NYCRR Section 601.11(a). Although Respondent DEC prepared a list of the required determinations followed by yes or no answers, preparing such a listing does not constitute making the required determinations. Information necessary to making the determinations must be collected and evaluated. Making the determinations requires making reasoned determinations, and the conclusory determinations made by Respondent DEC were not reasoned.

42. Among the determinations DEC is failed to make before issuing the 2019 Ravenswood Permit are the determinations incorporating the requirements of the Great Lakes Compact, namely the determination required by ECL 15-1503(2)(g) as to whether the withdrawal "will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures," and the determination required by ECL 15-1503(2)(f) as to whether the withdrawal "will be implemented in a manner to ensure it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the water

source and water dependent natural resources.” Making these determinations requires the collection and evaluation of substantial amounts of information. The necessary information is not contained in HRLLC’s application materials.

43. To make the determination required in ECL 15-1503(2)(g), Respondent DEC needed to evaluate the feasibility of various water conservation measures including closed-cycle cooling that were not currently in use at Ravenswood Station and it did not do so. Closed-cycle cooling is a proven technology that reduces power plant water intake by up to 98 percent, thereby reducing the damage to aquatic life by up to 98 percent, but Respondent DEC did not evaluate the benefits of requiring closed-cycle cooling at the Ravenswood Station.

44. To make the determination required in ECL 15-1503(2)(f), Respondent DEC needed to examine the cumulative impacts of all the power plants and other large water users operating in the Hudson River estuary and it did not do so.

45. The fact that Respondent DEC reissued virtually the same permit invalidated by the appeals court in 2018, a permit for which Respondent DEC conceded it had not made the determinations required by ECL 15-1503(2), is clear evidence that, whatever determinations Respondent DEC may or may not have made with respect to the issuance of the 2019 Ravenswood Permit, those determinations were not used to set appropriate terms and conditions for the 2019 Ravenswood Permit as required by ECL 15-1503(4).

46. Respondent DEC’s inclusion of a condition in the 2019 Ravenswood Permit incorporating the biological monitoring requirements of Ravenswood’s SPDES permit is not a substitute for making the determinations required by ECL 15-1503(2).

47. WSL and the SPDES law, ECL Article 17, have different objectives and different requirements. The standards to be applied in issuing a SPDES permit are not the same as the standards that apply under the WSL.

48. Almost every major water user in the state already has a SPDES permit. If water withdrawals could be adequately regulated under the SPDES program, the legislature would not have seen a need for a new water withdrawal permitting program imposing significant water conservation requirements that are not contained in the SPDES law.

49. For these reasons, Respondent DEC's determination to issue a permit with the same terms and conditions as the permit invalidated in *Sierra Club v. Martens* was made in violation of lawful procedures, affected by errors of fact and law, arbitrary and capricious, and an abuse of discretion.

## **VI. SECOND CAUSE OF ACTION: FAILURE TO COMPLY WITH SEQRA**

50. Petitioners repeat and reallege the allegations in paragraphs 1 through 49 as though fully set forth herein.

51. Respondent DEC failed to comply with its responsibilities as the "lead agency" under SEQRA and the SEQRA regulations when it determined that issuance of the 2019 Ravenswood Permit "will result in no significant adverse impacts on the environment."

52. The SEQRA regulations list "a project or action that would use ground or surface water in excess of 2,000,000 gallons per day," as a category of Type I actions that, because of their size, are likely to have a significant adverse impact. 6 NYCRR 617.4(b)(6)(ii). The 2019 Ravenswood Permit authorizing the withdrawal of up to 1,527,840,000 gallons per day, involves withdrawals that are up to 764 times the Type I threshold provided in Section 617.4(b)(6)(ii).

53. The 2019 Ravenswood Permit authorizes the largest withdrawals Respondent DEC has permitted to date under the WSL.

54. In addition to being 764 times as large as a type of action included on the list of Type I actions, the Ravenswood withdrawals meet the criteria set forth in 6 NYCRR 617.7(c) for determining whether unlisted and Type I actions have a significant adverse impact on the environment. These criteria include “the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources.” 6 NYCRR 617.7(c)(ii).

55. As documented in the Ravenswood Station’s own impingement and entrainment studies, the plant’s massive water withdrawals through its cooling water intake structures remove and destroy large quantities of fish and other aquatic life from the estuary. These massive withdrawals substantially interfere with the movement of resident and migratory fish in the estuary. Among the many species impacted, the withdrawals have substantial adverse impacts on Atlantic sturgeon, which is an endangered species. Thus it is clear that the destruction of aquatic life by the cooling water intake structures of the Ravenswood plant has a significant adverse impact on the East River, the New York Harbor Estuary, the Hudson River, Long Island Sound and the New York Bight.

56. The 2018 Negative Declaration states that “[t]he current water withdrawal regime [at the Ravenswood Generating Station] was established by a Department initiated modification to the Facilities SPDES permit in 2006. As part of that review process the Department issued a Negative Declaration of Significance.”

57. This statement ignores the fact that the state legislature enacted WRPA in 2011 to comply with the Great Lakes Compact and establish new, more stringent standards for water withdrawals in New York to better protect New York's water resources. The requirements of ECL Article 15, Title 15, as amended by WRPA, do not mirror the requirements of the State SPDES Law, ECL Article 17, but establish new, more stringent standards for compliance. For example, the SPDES law and regulations do not require the implementation of water conservation measures or mandate the consideration of cumulative impacts required by ECL Article 15, Title 15.

58. The 2018 Negative Declaration states that "the facility employs a fish-friendly return system to increase the survivability of fish that become impinged on the intake screen," but does not explain why the plant's system is "fish-friendly." The Negative Declaration also states that the plant's "current SPDES permit also required the installation of variable speed pumps on each unit. Variable speed pumps allow for the reduction in cooling water used during reduced power demand and colder source water conditions. In addition, the traveling screens on all the units were required to be upgraded." These statements are identical to statements contained in the negative declaration issued for the renewal of the plant's SPDES permit on December 11, 2006. The 2018 Negative Declaration repeats the assertion in the 2006 negative declaration for the SPDES permit that "[a]ll of the above measures [i.e. the variable speed pumps and the screen upgrades] will result in the reduction of impingement mortality by 90% and entrainment mortality by 65% over baseline conditions," and states that "these reductions will result in positive environmental benefits to the aquatic resources of the East River."

59. The 2018 Negative Declaration does not evaluate whether the projected reductions in fish impingement and entrainment have been achieved. The results of the

verification monitoring that has been conducted at Ravenswood Station since the installation of the equipment required in 2006 are not described in the 2018 Negative Declaration.

60. The 2018 Negative Declaration does not offer any data on what the plant's actual fish entrainment and impingement amounts are estimated to be or consider alternative technologies that might further minimize fish entrainment and impingement such as closed cycle cooling.

61. Nor does the 2018 Negative Declaration consider the cumulative impacts of the Ravenswood cooling water intake system and the other water withdrawals from the estuary.

62. In these circumstances, it is clear that Respondent DEC did not identify the relevant areas of environmental concern, take a "hard look" at them or make a "reasoned elaboration" of the basis for the 2018 Negative Declaration as required by 6 NYCRR 617.7(b) of the SEQRA regulations and the many court decisions interpreting the "hard look" standard.

63. For these reasons, Respondent DEC's issuance of the 2018 Negative Declaration was made in violation of lawful procedures, affected by errors of fact and law, arbitrary and capricious, and an abuse of discretion.

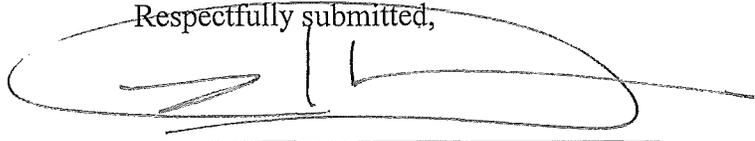
## **VII. RELIEF REQUESTED**

**WHEREFORE**, Petitioners respectfully request that the Court enter an Order in this proceeding:

- (1) Annuling the 2019 Ravenswood Permit;
- (2) Annuling Respondent DEC's Negative Declaration;
- (3) Allowing costs and disbursements; and
- (4) Granting such other and further relief as the Court may deem just, proper and equitable.

DATED: New York, New York  
April 18, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JG', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

JONATHAN GEBALLE  
11 Broadway, Suite 615  
New York, NY 10004  
Telephone: (212)732-0800  
Email: [jg@jonathangeballe.com](mailto:jg@jonathangeballe.com)

RICHARD J. LIPPES  
Lippes & Lippes  
1109 Delaware Avenue  
Buffalo, NY 14209-1601  
Telephone: (716) 884-4800  
Email: [rlippes@lippeslaw.com](mailto:rlippes@lippeslaw.com)

RACHEL TREICHLER  
7988 Van Amburg Road  
Hammondsport, New York 14840  
Telephone: (607) 569-2114  
Email: [treichlerlaw@frontiernet.net](mailto:treichlerlaw@frontiernet.net)

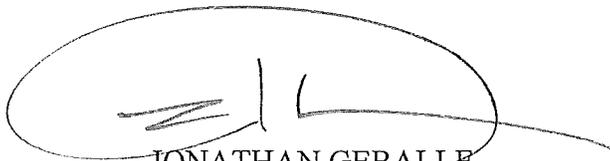
*Attorneys for Petitioners*

## VERIFICATION

I, Jonathan Geballe, an attorney admitted to the practice of law before the courts of the State of New York, and not a party to the above-captioned proceeding, affirm the following to be true under the penalties of perjury pursuant to CPLR 2106, that I am an attorney for the Petitioners in this proceeding and that the foregoing petition is true to my own knowledge, and upon my review of the pertinent documents.

I am signing this verification pursuant to Rule 3020(d)(3) of the CPLR because all the material allegations of the petition are within my personal knowledge.

Dated: April 18, 2019  
New York, New York

A handwritten signature in black ink, consisting of stylized initials and a surname, enclosed within a hand-drawn oval. The signature is positioned above the printed name and contact information.

JONATHAN GEBALLE  
11 Broadway, Suite 615  
New York, NY 10004  
Telephone: (212)732-0800  
Email: [jg@jonathangeballe.com](mailto:jg@jonathangeballe.com)

SUPREME COURT OF THE STATE OF NEW YORK  
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**NOTICE OF PETITION and PETITION**

**Jonathan L. Geballe, Esq.**  
**Attorney for Petitioners SIERRA CLUB and HUDSON RIVER FISHERMAN'S**  
**ASSOCIATION, NEW JERSEY CHAPTER INC.,**  
**11 Broadway, Suite 615**  
**New York NY 10004**  
**(212) 732-0800**

TO:

STATE OF NEW YORK, COUNTY OF NEW YORK: ss.:

being duly sworn says: I am not a party to the action, am over 18 years of age and reside at  
. On , I served a true copy of the annexed by mailing the  
same in a sealed envelope, with postage prepaid affixed thereon, in an office depository of the U.S. Postal Service  
within the State of New York, addressed to the last known addressee(s) as indicated below:

Attorney for

*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney  
admitted to practice in the courts of New York State, certifies that,  
upon information and belief and reasonable inquiry, the contentions  
contained in the annexed document are not frivolous.*

Dated: \_\_\_\_\_  
*Print signer's name*

Sworn to before me this  
day of , 200 .

\_\_\_\_\_  
Notary Public