

Dear Assemblyman Sweeney:

We are writing regarding legislation under your consideration to safeguard New York State's surface and ground water resources for future generations.

As you know, despite significant progress since the passage of the 1972 Clean Water Act and other federal and state statutes, New York's water resources face continuing threats. We are increasingly concerned about new proposals for significant groundwater and/or surface water withdrawals for such uses as industrial gas drilling, commercial water bottling operations, large industrial users etc. Unfortunately, and in contrast to other jurisdictions, New York State does not have an effective permitting program or regulatory safeguards to insure that major withdrawals of ground or surface waters are consistent with the continuing protection and best long term interests of the state's water resources.

As members of New York's environmental community, we believe it is critical to close this legislative gap and to advance a comprehensive set of safeguards so that large withdrawals of ground or surface waters are protective of the state's priceless and irreplaceable water resources. And we appreciate your active commitment and leadership on this issue.

In the attached memo we identify major provisions we believe should be included in legislation that your office is now considering. Such provisions will help insure that legislation will lead to the adoption of a sensible water program for the 21st century.

We would welcome the opportunity to discuss our recommendations with you and your staff, and will be in touch to set up a meeting at a mutually convenient time. Meanwhile, we look forward to working with you on this important legislation and thank you in advance for your leadership in protecting New York State's irreplaceable water resources.

Very truly yours,

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In this memo, our organizations identify major provisions that we believe should be included in the “New York State Water Resources Protection Act” - legislation to safeguard New York’s ground and surface water resources.

1. A Strong Policy Statement

The legislation, the New York Water Resources Protection Act, should include an affirmative statement of intent that reflects the Legislature’s continued commitment to water resource protection and serves as a general directive to the Department of Environmental Conservation (DEC), to implement the program. This policy statement should reaffirm and build upon the general policy statement present in Article 15. The policy should clarify that this legislation grants the DEC the authority to regulate current and projected water uses (and associated activities) so that the agency may adequately prepare for future impacts and protect valuable water resources.

Specifically, we urge that the bill set forth legislative findings including:

- (a) the state’s obligation to hold both its ground and surface water resources in public trust and to protect them for the long-term benefit of its people;
- (b) the state’s obligation to preserve water for essential uses at a higher priority than non-essential uses. Essential uses include high quality drinking water sources, wetlands, wildlife habitat and other important ecological systems;
- (c) the right of every New Yorker to safe, clean, sufficient, and affordable water;
- (d) the need to maintain adequate water flows and levels to protect fish, wildlife and other natural resources;
- (e) the need to safeguard and enhance opportunities for recreational use of state waters;
- (f) the need to preserve aesthetic values;
- (g) the need to protect existing private water uses dependent upon surface water flows;
- (h) recognition that the state’s surface and ground waters are public trust resources and that water withdrawals will be governed based upon the concept of sustainable yield (as defined in the statute) and by DEC implementing regulations.

2. Require Large Users to Obtain Water Withdrawal Permits

The legislation should establish a permit application process that would apply to persons or corporations seeking to withdraw water greater than 50,000 gallons in any 24 hour period from one or more sources of surface or groundwater in New York State.

The DEC should be given explicit authority to lower the 50,000 gallons per day permitting threshold to appropriate, sustainable limits at its discretion, in watersheds that it deems stressed, or where the applicant cannot establish that the cumulative effect of multiple smaller water withdrawals does not have or will not soon have an adverse impact on the environment.

Such water withdrawal permits would initially be required only for persons or corporations seeking to undertake new or expanded water withdrawals. However, while allowing for a registration requirement for existing users at their current maximum annual and daily withdrawal rates, the legislation should also specify that within three years of enactment of this legislation all persons or corporations withdrawing water greater than 50,000 gallons in any 24 hour period (i.e., both new applicants and currently existing users) would be required to file for water withdrawal permits.

The bill should direct DEC to administer the water withdrawal permit program and to adopt such regulations as the Commissioner deems necessary to implement this statute. However, the legislation should not preclude municipalities from acting within their existing authority.

3. Require that Applicants for Water Withdrawal Permits Provide Specific Information to DEC

The legislation should require that, in filing an application for a water withdrawal permit, each applicant for a DEC water withdrawal permit must submit the following information to the Commissioner:

- (a) purpose of the proposed water withdrawal;
- (b) whether the water to be withdrawn is necessary and to the extent that it is, whether such water can be derived from other alternatives including but not limited to conservation;
- (c) location and source of the proposed water withdrawal;
- (d) the capacity of the proposed project and the planned mean and peak daily, monthly and annual withdrawal volumes;
- (e) location of the applicant's proposed return water flows, if any;
- (f) estimate of the amount of water that will not be returned to the watershed or basin where the proposed withdrawal is located;
- (g) location, demand on and yield of existing sources of ground and surface waters already being utilized (or applied for) by the applicant across the state;
- (h) comprehensive hydrogeological test results(including borings) that assess the impact on the aquifer of the proposed amount of water extraction. These should include results that indicate the amount of water contained within the aquifer and aquifer's recharge rate;
- (i) any other likely effect that this extraction might have on the area;
- (j) the results of any binding public referendum in the community where the extraction takes place as to the support of the citizens in that community for said proposed extraction;
- (k) conservation measures instituted by the applicant prior to the application and the applicant's long-range water conservation plan to be implemented or continued after the issuance of a permit; and

(l) in the case of a proposed interbasin transfer, which would include the transfer of water in small containers or tanker trucks, an environmental impact report on the transfer that (A) considers the affect of the transfer on present and future water uses in the proposed donor basin; (B) includes a plan for meeting water supply needs and demands in the donor basin for a minimum of 25 years; and (C) analyzes the alternative solutions to the water supply or wastewater problem including conservation and comparative cost analysis of the proposed transfer relative to alternative measures (D) analyzes water composition to ensure that invasive species exist at levels less than one hundred times the International Convention for the Control and Management of Ships' Ballast Water and Sediments standard (E) analyzes water composition to ensure that any water being transferred will not negatively impact the quality of the receiving waterbody.

4. Establish Criteria for Issuance of Water Withdrawal Permits

The legislation should specify that water withdrawal permits will only be granted following DEC determinations that proposed withdrawals are consistent with DEC regulations and that the applicant can establish that such withdrawals:

- (a) will not exceed the natural replenishment or safe yield of the water resources to be utilized. The legislation should define safe yield in a way that recognizes the interconnectedness of surface water and groundwater supplies and recharge times and limits;
- (b) will not adversely impact public or private drinking water supplies; including existing and projected uses, safe yield of reservoir systems and reservoir and groundwater development
- (c) will not adversely impact the state's natural resources, including wetlands, rivers, streams, and aquifers nor adversely impact the protection, propagation and management of fish and other aquatic life, wildlife and the preservation of endangered species;
- (e) will not adversely affect wastewater treatment needs, flood management, water-based recreation, waste assimilation, agriculture, fish and wildlife and low flow and thermal requirements;
- (f) will not adversely affect existing ground or surface water users;
- (g) will not violate state water quality standards;
- (h) will not violate any other condition the Commissioner deems necessary for the conservation and protection of ground or surface waters of the state; and
- (i) will be fully compliant with provisions of all other federal, state and local environmental laws.
- (j) will not adversely impact the health or safety of the community or surrounding communities where the water will be extracted.
- (K) will not adversely affect existing and planned water uses in the area such as public water supplies, relative density of private wells, hydropower, flood management, water-based recreation, wetland habitats, waste assimilation and agriculture;
- (l) will be compatible with the policies and programs of the state of New York, as adopted or amended, dealing with long-range planning, management, allocation and use of the water resources of the state; and
- (m) be consistent with the streamflow protection standards as described below.

The legislation should direct the Commissioner to establish quantitative streamflow protection standards for the state's rivers and streams to be used as criteria for determining whether a proposed water withdrawal can be made without significant adverse impacts on the State's surface water resources. These standards shall be protective of natural aquatic life, be based on the natural variation of water flows and levels, and be developed using the best available scientific information and approaches, as well as ensure the chemical, biological and physical integrity of state waters.

The legislation should also direct the Commissioner to formally consult with federal, tribal, state, and town agencies when developing a draft water withdrawal permit regarding proposed withdrawals in specially protected areas (such as, but not limited to, the Adirondack Park, the Catskill Park, and others which may need additional over site due to there increased value related to special habitat, species, or public benefit).

5. Mandate Water Conservation Efforts in Connection with All Large Water Withdrawals

The legislation should mandate that all permit applicants prepare, and submit, as part of the application process, a water conservation program for their business operation. The conservation program should include, among other things, the following requirements:

- (a) application of best management practices to detect and repair water leaks;
- (b) identification and installation of state-of-the-art water-conserving fixtures;
- (c) employee training regarding appropriate water conservation techniques;
- (d) public education regarding water conservation in connection with the use of water for which the applicant's permit is granted;
- (e) other water-conservation measures and goals as proscribed including pricing, conservation measures, drought protection measures, limiting unaccounted for water, etc; and
- (f) the legislation should incorporate the requirements for water conservation and efficiency programs set forth in section 4.2 of the Great Lakes – St. Lawrence River Basin Water Resources Compact regarding the installation of new groundwater wells.

These water conservation plans, as well as other conditions the Commissioner may include, should be mandatory for of all persons or corporations that obtain a water withdrawal permit from the DEC.

6. Specify Monitoring, Reporting and Conservation Requirements for All Water Permit Holders

The legislation should direct that, in addition to such other requirements as the Commissioner may direct, each permit contain the following:

- (a) continuous on-site monitoring requirements and regular course-of-business record keeping of water withdrawals;

- (b) monthly reports which describe the amount of water withdrawn per each 24 hour period in the preceding month; and
- (c) a requirement to implement the approved water conservation program of the permit-holder.

The DEC should also be given discretion to require an applicant pay the expenses of third party monitor (selected by the agency) to ensure compliance with all permit conditions throughout the life of the permit.

All reports should be submitted to DEC in an electronic format and should be posted on the DEC website.

Further, the legislation should include provisions for private rights of action, including the right to seek attorney's fees, should it become necessary for citizens to enforce permit requirements and limits.

7. Provide an Opportunity for Public Comment on Draft Permits

The legislation should provide that, following the submission of a water withdrawal permit application and a preliminary determination by DEC that the proposed permit application is complete and satisfied the applicable statutory and regulatory requirements, the agency will post the application online for 60 days to allow for public comment. The legislation should stipulate that following this 60-day comment period, the Commissioner will issue a draft water withdrawal permit and provide an additional public comment period of no less than 60 days. Legislation should then direct the Commissioner to hold a legislative public hearing or hearings on the draft permit and to hold an adjudicatory public hearing (if needed) consistent with the requirements of 6 NYCRR Part 624.4.

8. Set Forth Permit Term of Years and Requirements Permit Renewals

The legislation should provide that water withdrawal permits issued by DEC will be valid for five years. However, the Commissioner should have authority to periodically investigate and review those withdrawals which are taking place pursuant to a permit. If s/he determines that there is any change in conditions under which the original permit was issued and/or any violation of the terms, limitations or conditions of the permit, the legislation should authorize the Commissioner to suspend or revoke the permit or request that the Attorney General bring an action to enjoin any violation.

The legislation should also direct the Commissioner to promulgate rules setting forth procedures for the renewal of water withdrawal permits by permit-holders. Among other things, rules should specify that permit renewals will only be granted to applicants whose water withdrawal operations are in full compliance with all current permit conditions.

9. Establish Permit Application Fees and Penalties at a Level Sufficient to Ensure Comprehensive DEC Oversight and Enforcement

The legislation should direct the Commissioner to establish a registration fee, an application fee, and a schedule of fees for water withdrawal permits at rates sufficient to ensure that the agency has the staffing and other resources necessary to fully implement, oversee and enforce full compliance with the provisions of this statute. In addition, the legislation should direct the Commissioner to establish strict penalties—including permit revocation and monetary penalties—should a registrant or permittee violate permit or registration requirements and/or limits.

10. Require Existing Large Water Users to Register with DEC

The legislation should specify that the permit requirements, set forth in section 2 above, shall apply initially only to persons or corporations intending to obtain permits for new withdrawals of ground or surface waters in New York State.

The legislation should direct anyone withdrawing ground or surface waters in New York State in amounts greater than 50,000 gallons in any 24-hour period during the year of the bill's enactment register current use with DEC by July 1 of the following year.

The registration form, should among other things, require all registrants to specify the location or locations of their existing withdrawals, the location of any surface waters within the area of influence of the withdrawals, the capacity, frequency and rate of withdrawals or discharges of said withdrawal, and a description of the water use(s) and water system.

The legislation should require that after the initial registration period—no more than three years after the effective date of the legislation—all users withdrawing water above 50,000 gallons in any 24 hour period in New York must apply for a permit. Additionally, any registrant seeking to increase the volume of the withdrawals, adding additional withdrawal points to existing operations or transferring ownership of the operation should be required to apply for a permit.

11. Direct both New and Existing Large Water Users to File Monthly Reports that Track Water Withdrawal Volumes

The legislation should direct that, within 18 months after the effective date of the bill, all persons or corporations withdrawing ground or surface waters in New York State in amounts greater than 50,000 gallons in any 24-hour period during the preceding 12 months must install meters to measure their 24-hour water withdrawals, keep and preserve records of such withdrawals in their regular course of business and file monthly electronic reports with the Commissioner detailing daily water withdrawals over the preceding 12 month period.

12. Require the Permit Program to Be Consistent with State Water Resources Management Strategy

The legislation should require that each water quality permit will be consistent with a state water resources management strategy, established pursuant to ECL 15-2901.

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