



**Testimony of Jeremy Cherson  
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**Joint Legislative Public Hearing on FY2020 Executive Budget Proposal: Environmental Conservation**

Thank you to the chairs and members of the Senate and Assembly committees represented here for the opportunity to testify today.

Riverkeeper is a membership organization with nearly 55,000 members and constituents. Riverkeeper protects the environmental, recreational and commercial integrity of the Hudson River and its tributaries, and safeguards the drinking water of millions of New Yorkers.

Actions in recent years by Governor Andrew M. Cuomo and previous Legislatures have set the course for New York State to be a national clean water leader including the 2017 Clean Water Infrastructure Act and 2018 Drug Take Back Act. The FY2020 Executive Budget proposal represents a major step forward with \$2.5 billion more promised for water infrastructure and \$300 million Environmental Protection Fund is another example of New York bucking the national trend and taking a leadership role on protecting clean water. Riverkeeper urges the Legislature to augment the programs and legislation announced by Governor Andrew M. Cuomo.

**1. Department of Environmental Conservation Staff**

First, Riverkeeper must address critical issues with the attrition of staff at the Department of Environmental Conservation (DEC). Riverkeeper cannot overstate the importance of countering the assault on federal environmental protections, and the holes it will leave in New York's ability to protect its environment, including our water, particularly with the latest assaults on the Clean Water Act. For example, under President Trump, EPA criminal referrals to the U.S. Justice Department for environmental crimes are at a 30 year low.<sup>1</sup>

New York's own DEC is the best defense available to protect New York's air and water yet staff and funding has not kept pace with growing needs. The Legislature must ensure they have the resources necessary to implement the Governor's agenda and counteract federal assaults. For example, the DEC Division of Water has experienced the steepest decline over that 10-year period, with a loss of 59 positions, or 21%.<sup>2</sup> The Division of Fish, Wildlife and Marine Resources has seen a decline of 58 staff positions since 2008, a 13% drop in staff resources. Environmental Conservation Police Officers (ECOs) have experienced a loss of 44 positions as of October 2018 from a 2008 high of 333, also a 13% drop in staff resources.<sup>3</sup>

<sup>1</sup> Vox, How Trump's EPA is Letting Environmental Criminal Off the Hook, in on Chart, available at, <https://www.vox.com/2019/1/16/18183998/epa-andrew-wheeler-environmental-policy-enforcement>

<sup>2</sup> Riverkeeper analysis, Freedom of Information Law disclosure of NYSDEC staffing levels, 2018

<sup>3</sup> Personal communication with PBA New York State Representatives January 17, 2019

The consequences of this staffing shortage can be measured in a retreat on environmental quality. We can measure it in the state's position relative to other states: New York had, as of early 2017, among the nation's largest water pollution discharge permitting backlogs; it was among the last states to implement new Water Quality Standards for sewage-associated pathogens in marine waters, based on the EPA's 2012 Recreational Water Quality Criteria; and it is in the lagging half of states that have yet to adopt numeric criteria for nutrients or chlorophyll-a.<sup>4</sup> These are bedrock Clean Water Act implementation tasks. Failure means more water pollution.

**Riverkeeper calls on Governor Cuomo and the New York State Legislature to work together to restore staffing at the NYSDEC to pre-Great Recession levels.**

## 2. Clean Water Infrastructure Investments

The infrastructure investments made through the Water Infrastructure Improvement Act (WIIA) via the the Clean Water Infrastructure Act (CWIA) are the biggest New York State investment in this critical priority in a generation. The Governor's proposed doubling of the commitment to CWIA to \$5 billion marks a historic commitment to protect New York's waters. We urge the Legislature to ensure the Governor's commitment is real, and that the new \$2.5 billion committed in this budget both increases spending per year, extends the life of the program to a new five-year program beginning FY2020, and is reflected in the appropriations language. Riverkeeper also requests clarity on the breakdown of the new spending for specific program lines.

The investment, on top of existing disbursements helps address the nearly \$80 billion documented need for water infrastructure investment in New York, the largest in the nation. The lion's share of the \$4.8 billion in documented wastewater projects in the Hudson River Watershed are needed in and around New York Harbor. But we need nearly \$1.4 billion in our watershed upstream of New York City.<sup>5</sup> For example, the 44 municipally owned wastewater treatment plants that discharge directly to the Hudson River Estuary, rely on at least 1,500 miles of sewer pipe, half of which are over 60 years old.<sup>6</sup>

In the Hudson River Watershed, the Water Infrastructure Improvement Act and Clean Water Infrastructure Act have resulted in at least \$800 million in investments (total of state grant, federal/state loan and local contributions) in our wastewater infrastructure.<sup>7</sup>

The Sewage Pollution Right to Know Law has exposed the frequency of sewage overflows and leaks. Most sewage treatment infrastructure is built assuming a useful life of 30-40 years. Robust investment paired with asset management, water conservation and equitable pricing will best alleviate today's crisis and prevent its recurrence. Consider a few of the facts:

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<sup>4</sup> U.S. Environmental Protection Agency, "State Progress Toward Developing Numeric Nutrient Water Quality Criteria for Nitrogen and Phosphorus," as of January 31, 2018, available at

<https://www.epa.gov/nutrient-policy-data/state-progress-toward-developing-numeric-nutrient-water-quality-criteria>

<sup>5</sup> Riverkeeper, "Municipal Wastewater Infrastructure" 2018, available at

<https://www.riverkeeper.org/wp-content/uploads/2018/11/Wastewater-Handout.pdf>

<sup>6</sup> Hudson River Comprehensive Restoration Plan, 2018, "Storm and Wastewater Target Ecosystem Characteristic report," available at <http://thehudsonweshare.org/wp-content/uploads/2018/08/Storm-and-WasteWater.pdf>

<sup>7</sup> Riverkeeper, "How's the Water? Hudson River Water Quality and Water Infrastructure" 2017. Available at [https://www.riverkeeper.org/wp-content/uploads/2017/11/Riverkeeper\\_WQReport\\_2017\\_final-1.pdf](https://www.riverkeeper.org/wp-content/uploads/2017/11/Riverkeeper_WQReport_2017_final-1.pdf)

- 10% of wastewater treatment plants that discharge directly to the Hudson River are at or above 75% capacity, and roughly 1 in 4 is at risk of inundation from sea-level rise, storm surge or both.<sup>8</sup>
- Four in 10 communities that own sewage infrastructure in the 10-county Hudson River Estuary Watershed region have not identified a project in need of Clean Water State Revolving Fund support<sup>9</sup>; therefore, any needs in these communities are unquantified;
- Source water protection needs for public drinking water supplies have not been estimated;
- The cost of upgrades to remove nutrients, pharmaceuticals or other unregulated contaminants has not been estimated for most, and therefore is not included in the overall estimate of needs for the watershed, or the state as a whole.

New York has the greatest need of any state in the nation, and the federal government's once-robust funding for water infrastructure is a memory. Therefore, the state's investments are crucial and extending the time horizon of the CWIA with new spending will help communities across the state with planning infrastructure projects, as the new funding provides certainty that funds will be available in future grant cycles beyond the original lifespan of the five-year 2017 CWIA.

**Riverkeeper support the Governor's proposal for an addition \$2.5 billion but urges the Legislature to ensure language in the final budget reflects the new commitment.**

### 3. Source Water Protection

The Clean Water Infrastructure Act of 2017 included \$110 million for land acquisition for Source Water Protection statewide, and the Environmental Protection Fund includes \$5 million for Source Water Assessments. A portion of the additional \$2.5 billion CWIA should also be used to support the new Drinking Water Source Protection Program (DWSPP).

The new state DWSPP will also help prioritize the \$110 million available as part of the landmark 2017 CWIA for land conservation to protect drinking water supplies and help guide future allocations. In the Hudson Valley and Capital Region, projects to protect water supplies serving Newburgh, Middletown, Troy, Schenectady and other Hudson River Watershed communities have so far been funded. Riverkeeper is actively working with several communities, including the seven communities that share the Hudson River Estuary as a source of drinking water, on applications for the new DWSPP.

The new program will help municipalities update risk assessments to define the highest priority actions, and develop plans to reduce and eliminate high-priority risks to drinking water quality. In the first phase of the program, the state will pay the full costs for 30 communities to develop these plans collaboratively with local stakeholders.

**Riverkeeper supports steady funding of \$5 million in the Environmental Protection Fund to support the new Drinking Water Source Protection Program, and continued funding for Clean Water Infrastructure Act programs that will help implement source water protection plans.**

Both the CWIA grants, and the state-led implementation of assessments via the Environmental Protection Fund will fuel important projects, including those to benefit City of Newburgh, where Riverkeeper highlighted the critical gaps in protection that allowed for the city's watershed to become over-developed,

<sup>8</sup> Riverkeeper, "How's the Water?" 2017; *ibid*

<sup>9</sup> *ibid*.

at risk, and ultimately contaminated. A city of 30,000 people lost its water supply, and will only regain it through tens of millions of investment in treatment, remediation and source water protection. The cost of protection would, no doubt, have been far less.

#### **4. Environmental Protection Fund**

**Riverkeeper is a member of the broad We Love New York coalition that supports maintaining the Environmental Protection Fund (EPF) at at least \$300 million.** Governor Cuomo and the Legislature have been champions of the EPF, and we urge you to maintain your commitment to this important source of funding. Within the EPF, Riverkeeper supports:

- Increased funding of the Hudson River Estuary Management Program to \$7 million (from \$6.5 million), inclusive of \$1 million for the Mohawk Basin Program;
- Maintain \$20.25 million funding for the Water Quality Improvement Program at current levels, above the Governor's requested \$18.25 million, including \$5 million for Source Water Assessments;
- Support the Governor's FY2020 request for \$15 million funding for Waterfront Revitalization, a \$1 million increase over the current year.

##### **A. Hudson River Estuary Program and Mohawk Basin Program**

**The Hudson River Estuary Program is the state's only program dedicated to protecting the Hudson River and its watershed.** Recognizing it as an indispensable source of technical advice, community grants and planning expertise, Governor Cuomo has proposed maintaining it's budget at \$6.5 million after increasing it by \$1 million in the FY2019 budget, and we are grateful for his commitment. We are seeking an increase of \$500,000 to \$7 million, inclusive of the \$1 million for the Mohawk Basin Program to support critical climate change response planning, public grants, education and water management planning.

The Estuary Program's celebrated accomplishments include investing in local watershed protection efforts and state-leading regional efforts in support of source water protection; creating new parks, boat launches and fishing piers; collaborating with over hundreds of nonprofit and regional partners; providing training to 7,000 local leaders, educational opportunities to 19,000 students, educators, and members of the public, \$2.6 million in projects in 83 communities, and helped communities access nearly \$7 million in grants since 2015.<sup>10</sup> This work has resulted in lasting benefits to communities from the Capital District to New York City, and helps to support the region's \$5.3 billion annual tourism economy.

**Riverkeeper calls on the Legislature to increase Hudson River Estuary Program funding by \$500,000 to \$7 million.**

##### **B. Water Quality Improvement Program**

The Water Quality Improvement Program should not face a \$2 million cut in proposed FY2020 Executive Budget. The program is, along with the Water Infrastructure Improvement Act, a key source of needed grants to support community investments in wastewater infrastructure. Significant Clean Water Infrastructure Act funds are spent via the Water Quality Improvement Program, but the terms of Water

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<sup>10</sup> NYSDEC, The 2018 Annual Hudson River Estuary Program Coordinators Report, available at, [https://www.dec.ny.gov/docs/remediation\\_hudson\\_pdf/hrep2018report.pdf](https://www.dec.ny.gov/docs/remediation_hudson_pdf/hrep2018report.pdf)

Quality Improvement Program grants are more favorable to communities, typically allowing for less local match and greater state investment per project. Additionally, we support the Governor's proposal to maintain Source Water Assessments at \$5 million.

**Riverkeeper implores the Legislature to increase the Water Quality Improvement Program funding above the Governor's proposed \$18.25 million to maintain at least at \$20.25 million, including continuing the \$5 million for Source Water Assessments.**

### **C. Waterfront Revitalization Program**

The Waterfront Revitalization Program is an important source of community-led watershed management funding for communities statewide, and Riverkeeper supports the Governor's proposed \$1 million increase over FY2019 to \$15 million in FY2020, but notes that the popular program warrants further growth. The Program funds community grants to plan for and implement both waterfront revitalization and watershed management projects.

**Riverkeeper supports the Governor's proposed \$1 million increase in funding for the Waterfront Revitalization Program at \$16 million.**

### **4. The Governor's Plastic Bag Ban Must Be Enhanced with a Fee on Paper**

Riverkeeper is encouraged that the Governor has embraced the fight against plastic pollution with his proposal to ban the single-use plastic bag. However, the proposal only gets the job half done. There are at least four issues identified thus far in the proposed program bill including:

- The lack of a key element to encourage New Yorkers to adopt the sustainable behavior of bringing their own reusable bags: a fee on paper and alternative bags;
- Preemption of local governments expanding the plastic bag ban beyond the proposed program bill. Communities should not be restricted from doing more to protect our water and environment from single use bags;
- Ambiguity in the language around retail establishments covered and the definition of "film plastic bag."

The fee on paper is a crucial incentive for customers to remember to bring their own bags — and prevent a wholesale switch from plastic to paper. Consider one key environmental impacts of paper bags highlighted in the New York State Plastic Bag Task Force report: they are much more water-intensive to produce.<sup>11</sup> Also, DEC surveyed 13 communities with plastic bag laws on the books in New York and found that those policies that did not include a fee on paper bags saw an increase in their use. Paper bags are also heavier to transport and the switch may lead to an increase in greenhouse gas emissions<sup>12</sup>

Consider the experiences of Chicago and Honolulu. Both cities passed bans on plastic bags and later repealed their bans and replaced them with fees on paper and plastic. Chicago had a ban in effect for 16 months before replacing their ban with a 7-cent fee on paper and plastic. Their initial ban on plastic bags

<sup>11</sup> New York State Plastic Bag Task Force Report, "An Analysis of the Use of Single-Use Plastic Bags," 2018, available at [https://www.dec.ny.gov/docs/materials\\_minerals\\_pdf/dplasticbagreport2017.pdf](https://www.dec.ny.gov/docs/materials_minerals_pdf/dplasticbagreport2017.pdf)

<sup>12</sup> Life Cycle Assessment of Supermarket Carrier Bags: a review of bags available in 2006, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/291023/scho0711buan-e-e.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/291023/scho0711buan-e-e.pdf)

of a certain thickness simply led stores to use thicker bags and did not lead to any discernible decrease in single-use bag use since customers simply used the new thicker bags provided to them. Honolulu faced the same issues. California, the only state with a statewide single-use bag policy, ultimately adopted a ban on plastic bags with a 10-cent fee on paper bags. In San Jose, after they adopted a ban with a fee on paper their reusable bag use increased from a meager 3% percent to 46%.<sup>13</sup>

The ban on single-use plastic bags with a fee on paper approach taken in the New York State BYOBag Act (S95) first introduced by Senator Krueger last session and now sponsored by Senator Kaminsky. Nearly 100 environmental groups also support this approach.<sup>14</sup> The NYS BYOBag Act contains a provision to exempt customers on SNAP and WIC assistance and would dedicate a portion of the collected fee to the state Environmental Protection Fund.

**Riverkeeper urges the Legislature to strengthen the Governor’s proposal to ensure that New York pursues a policy eliminate single-use plastic bags and encourage customers to bring and use their reusable bags.**

## **5. Riverkeeper Supports the Governor’s Proposal to create a \$70 Property Tax Compensation Fund**

Riverkeeper supports the Governor’s proposal for a \$70 million property tax compensation fund for communities facing retirement of electric power plants and to help those communities transition to a clean energy economy. In particular, the closure of the Indian Point Nuclear Plant means that the tax revenues the communities that have been receiving from Entergy will decline rapidly. However, the communities will not be able to derive any tax revenue from new activity on the power plant site because the power plant must undergo a decommissioning process, which could take up to 60 years. Even after decommissioning, nuclear waste will remain on the site for the foreseeable future because there is no repository for final disposal of the waste.

**Riverkeeper supports the Governor’s proposal in principle and look forward to reviewing more details and hope to achieve the best possible outcome for affected communities.**

## **Conclusion**

New York State’s actions in recent years to support water infrastructure, drinking water quality and source water protection represent national leadership at a time when the Trump administration is eliminating safeguards.

Governor Cuomo’s proposed budget is a great step and we encourage the Legislature to support the clean water spending outlined by the governor, and go even further to protect clean water and our environment. Thank you for your consideration, and for the opportunity to present this testimony.

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<sup>13</sup> Bring Your Own Bag Ordinance, available at <https://www.sanjoseca.gov/index.aspx?NID=1526&PREVIEW=YES>

<sup>14</sup> Riverkeeper, “Nearly 100 Organizations Urge Governor Cuomo to Include Plastic Bag Hybrid Legislation in the State Budget, 2018, available at <http://bit.do/100plasticbagandfee>