

January 25, 2020



Joint Legislative Public Hearing  
 2020-21 Executive Budget Proposal  
 Environmental Conservation  
 Legislative Office Building  
 181 State Street, Hearing Room B  
 Albany, NY 12247

Dear honorable Senators and Assembly members:

Thank you for your consideration of the Sierra Club Atlantic Chapter's budget testimony. We are a volunteer led environmental organization of 50,000 members statewide, dedicated to protecting New York's air, water and remaining wild places. Last year, the New York State Legislature and Governor Cuomo made history by passing the strongest climate change legislation in the country - putting the empire state on the path to a carbon neutral society by 2050. This ambitious vision of reaching 100% renewable energy by 2040, in a way that prioritizes and uplifts disadvantaged communities, now has to be met with the even more daunting task of implementation. The new progressive political dynamic in Albany has demonstrated that state government can act to solve some of our greatest challenges, even as the federal government under the influence of President Trump, had eroded the moral foundation of America's leadership on climate change and civil rights. These next few months and years will test whether we have the resolve to make transformative change out of our ambitious goals. The Sierra Club finds a lot to be optimistic about in the 2020-21 executive budget and have great confidence that the Senate and Assembly can build upon these commitments to methodically reduce greenhouse gas emission, build equity and resiliency into our communities, and clean up our environment. Here are some ways the Legislature can support New York's environment through the 2020-21 state budget process:

**Support Department of Environmental Conservation Funding and Staffing**

With the pull back of EPA and the Army Corps of Engineers from some of their regulatory and enforcement work in New York, our state environmental agencies are being asked to do more with less in the void created by Trump's regressive policies. If we add the new responsibility of administering the Climate Leadership and Community Protection Act, the new plastic bag ban, the mandate to recycle food waste and organics, the phase out of PFAS, 1,4 dioxane, and chlorpyriphos, paint stewardship laws, and more; it's clear that DEC will require more staffing and funding. Over the past 9 years of New York's economic recovery from the last recession, the Department of Environmental Conservation (DEC) has shouldered disproportionate cuts to staffing and funding when compared with other agencies that saw mere reductions to their rate of growth. We have lost nearly a quarter of the DEC's workforce since the 1990s which has meant fewer enforcement actions of polluters, increased spread of invasive species and less review of impending threats to our environment. Now that the Empire State has recovered economically and we anticipate losses in federal support, New Yorkers can no longer afford to keep our environmental agencies' spending at austerity levels. Governor Cuomo and the Legislature deserve credit for stemming the losses that began in 2008 but there is

little left to cut from this bare-bones agency that is increasingly asked to do more. We deeply appreciate the increase of 47 DEC staff to administer the Climate Leadership and Community Protection Act in the Executive Budget and ask that the legislature explore a longer-term solution to rebuilding our environmental agencies, like the incremental goal of having at least 200 new DEC staff by 2025.

There have also been calls for the governor and the legislature to provide \$1 billion dollars in this year's budget to finance initial climate justice programs. In Spirit, Sierra Club agrees with this appeal. But we feel the governor and legislature should view this funding request in the context of what New York State committed to in the passage of last year's climate legislation. The point of the 35% equity filter in CLCPA was to institutionalize investment in environmental justice communities so that we never have ask for separate funds or confront inequitable distributions of public money. At his budget address, Governor Cuomo outlined \$33 billion dollars of investment in climate mitigation and clean energy development over the next 5 years. But in following the legally enforceable mandate of CLCPA, \$11.55 billion out of the \$33 billion (\$2.3 billion a year) compiled clean energy money should be spent in environmental justice communities. We believe the real challenge for DEC, NYSERDA and the legislature is to figure out what impactful spending in these communities means and how to implement a detailed plan to ensure the spirit of the equity filter is being followed.

### **Continue Funding the Environmental Protection Fund at \$300 million**

For the fourth year in a row the Executive Budget proposal maintains historic \$300 million Environmental Protection Fund (EPF) funding levels. The EPF is NY's primary funding source for critical programs like land acquisition, farmland and habitat protection, drinking water infrastructure and waste reduction. The initiatives the EPF funds are proven economic generators and job creators. Increased funding to the EPF at a time of budget deficit can help revitalize tourism and make entire regions more attractive to businesses, secure clean water resources for wineries and breweries, and ensure that farm land is preserved and is affordable to new generations of farmers. Equally encouraging are promises to continue funding the EPF at the \$300 million mark in future budget cycles.

The primary and traditional source of revenue for the EPF is the state's Real Estate Transfer Tax (RETT), a tax that was designed in part to offset the environmental impacts that come with land development. In the recent economic downturn, RETT revenue dropped to less than \$400 million perhaps justifying some cuts to EFP spending. But now that New York's economy has rebounded, the annual RETT revenue is expected to grow back to historic levels of over \$1 billion annually. As the RETT has fully recovered, so should sustained investments in the EPF. One concerning element to the appropriation language for the EPF in the 2020-21 budget is the concluding phrase:

*Notwithstanding any other provision of law to the contrary, of the amounts appropriated herein, a portion may be used for the payment of personal service expenses incurred on or after April 1, 11 2020.*

While potentially well intended, this provision could allow unanticipated and unlimited offloads to the EPF, taking valuable resources from environmental programs for general fund relief. Approval of this language could set a dangerous precedent for the future. The Senate and Assembly rejected similar language last year, and we ask that you act again to protect the integrity of the EPF. The Sierra Club thanks the Governor for yet again proposing a fully funded EPF in 2020 and urges the legislature to approve the \$300 million allocation.

### **Continue Funding New York's Water Infrastructure Improvement Act**

The Sierra Club thanks the Legislature for their leadership in passing New York State's Water Infrastructure Improvement Act (WIIA) in 2017 and we enthusiastically support the continuation of the \$2.5 billion spending program over 5 years of which we will see a fourth-year installment of \$500 million this year. This

essential program repairs failing sewage and drinking water infrastructure, upgrades and replaces septic systems, remediates and replaces contaminated drinking water, funds source water protection through land acquisition projects, confronts harmful algal blooms in our waterways, addresses water pollution caused by agricultural run-off, replaces lead drinking water service lines, upgrades mapping technologies for water systems, and more.

Communities across NY will now be able to fix their most pressing water infrastructure needs and protect the quality of their drinking water. This significant investment will serve as a down-payment toward our state's massive wastewater and drinking water infrastructure needs, which are estimated at approximately \$80 billion over the next twenty years. New York State will need to identify additional resources to increase funding to meet these vast water infrastructure needs in the years to come. The Sierra Club looks forward to working with the Governor and the Legislature to meet those goals.

### **Advancing \$3 Billion “Restore Mother Nature” Bond Act (Part RR of the TED )**

The Sierra Club applauds the inclusion of the \$3 billion “Restore Mother Nature” Bond Act in the Governor's budget proposal. With the state now on the pathway to carbon neutrality we cannot lose sight of the ecological crisis that will continue to unfold and our obligation to reduce catastrophic flooding, protect drinking water, and make NY more resilient to the ravages of climate change. While the instinct will be to spend this bond money on every conceivable climate mitigation, the Sierra Club would like to keep the scope of spending narrowly focused on nature-based solutions. We can imagine that in the future there will be a state-wide carbon pricing scheme and other market mechanisms that will create new revenue streams for renewable energy development, energy efficiency programs, electric vehicles, worker transition and smart transmission. The importance of these investments is easier for the public to understand than the value of wetlands or natural infrastructure. Without a dedicated and exclusive funding source for critical habitat, wetlands restoration, flood prevention and drinking water protection – it's not certain that funding “mother nature” will compete well with other obligations in the climate mitigation sphere.

Page 308 of part RR of the TED includes in the scope of spending: “... *expand the use of renewable energy to mitigate climate change, including but not limited to clean energy or resiliency projects; and other such projects that preserve, enhance, and restore the quality of the State's Environment.*”... creating a broad opening to spend funds on non-nature based projects –that could just as easily be financed through a myriad of other revenue streams. The Sierra Club asks that the final bond act legislation narrow the scope to spending on just nature based solutions and be more explicit as to the types of projects that are funding eligible.

\$3 Billion dollars can finance a lot of transformative resiliency projects, but some well intended environmental or recreational enhancements can sometimes do more harm than good. The Sierra Club would like to see spending restrictions placed on regressive, in-water development that hardens shorelines, or alters or destroys existing, naturally occurring, productive habitats in rivers, wetlands and coastal waters. We understand that a premium will be put on flood control, but we want careful consideration given to the value of natural systems over sea gates and bulkheads. We believe the vision presented by the governor is consistent with our own, but the more specific we can get on design values and principles the better.

### **Reform and Strengthen Wetland Protections in New York (Part TT of the TED)**

Perhaps the most understated yet significant environmental offering in the 2020-21 Executive Budget is the Governor's proposal to change how wetlands in New York are regulated. For the past two decades, New York has been entangled in the federal legal debate over what constitutes a wetland and who has the authority to protect them. Recent efforts by the Trump Administration to roll back Obama era clean water rules has only intensified the need to for New York to clarify how we as a state regulate freshwater wetlands,

one of our most valuable and misunderstood resources. New Yorkers rely on swamps, fens, bogs, and wet meadows to filter pollutants from our waterways, recharge our aquifers, and absorb catastrophic floods. Yet there often appears to be little public awareness that we are filling, dredging and draining wetlands at an alarming rate – at least until we find our neighborhoods underwater or our public water supplies contaminated.

Currently, for a wetland to be subject to regulation under NY state law, it must be delineated on existing freshwater wetlands maps prepared by DEC after lengthy public comment. But most of these maps have not been updated in over 20 years, making them woefully incomplete, and the amendment process can be time consuming and overly burdensome in administrative costs. There are hundreds of thousands of acres of wetlands in high development areas of New York that are not on official maps but desperately require protection. Governor Cuomo's proposal would remove the jurisdictional barriers that these maps have created, and allow DEC to immediately protect and regulate wetlands if they meet the basic scientific definition of these critical habitat areas – featuring hydrophilic plants and hydric soils. **We estimate that if Part TT is enshrined in law it will be the equivalent of adding 1 million acres of wetland under the state's protection.** That number just represents wetlands that are 12.4 acres and larger that were never officially mapped by the state. Existing state law will also allow DEC to identify and protect smaller wetlands of unusual importance that were once encumbered by the state's regressive mapping protocol and never officially recognized. For years, the Sierra Club has campaigned to pass the Clean Water Protection/Flood Prevention Act (A3658/ S7366) legislation that would both remove mapping barriers to wetlands protection and bring DEC jurisdiction over all wetlands from 12.4 acres down to 1 acre. Currently, New York is the only state in the Northeast not to assume regulatory authority over its own wetlands.

This proposal to repeal regressive burdens on wetlands regulation dovetails nicely with the goals of the \$3 billion Bond Act to restore habitat, protect drinking water and prevent catastrophic flooding. Combined, they are a powerful antidote to Trump's assault on the Clean Water Rule. If we are going to spend billions on restoring degraded wetlands without doing all we can to prevent existing wetlands from becoming degraded, then we will not be getting a very good return on our investment. Clean water and healthy ecosystems are a cornerstone of any thriving economy and we applaud his inclusion of this essential reform to wetlands regulation in the budget.

#### **Address the Scourge of polystyrene in the 2020-21 Budget**

The Sierra Club enthusiastically supports the governor's proposal to ban polystyrene food containers and packing materials in New York State. Polystyrene or Styrofoam is a light weight petroleum based material commonly used to make disposable containers, and packing materials. It cannot be easily recycled or reconstituted to make new products. Because it has little reuse value, Styrofoam products typically end up in landfills or worse clogging our waterways and endangering wildlife. Styrofoam breaks down into styrene, a known carcinogen. Chronic exposure to Styrofoam can also cause headaches, fatigue, and affect kidney function. Americans throw away 25,000,000 Styrofoam cups a year, which translates into 1,369 tons of Styrofoam products discarded every day. A single Styrofoam cup takes up to 500 years to fully disintegrate. With many viable, recyclable alternatives it makes both environmental and economic sense to ban polystyrene sale and distribution in NY.

#### **Codify New York's Historic Fracking Ban**

Five years ago, Governor Cuomo sent shock waves across the globe by banning fracking in New York. This line in the sand, reinforced by years of legislative intervention on the fracking issue, changed the trajectory of our state's energy policy and led to more ambitious goals, including making New York carbon neutral by 2050. The prohibition on high-volume hydraulic fracking was based upon findings that the gas extraction process was an unmitigatable danger to public health and has since been reaffirmed in more than a thousand additional peer-reviewed scientific studies that document respiratory illnesses, water contamination,

birth defects, cancers and other health problems. While the ban has withstood court challenges and regulatory end-arounds, like recent attempts to get well drilling permits to frack with gelled propane instead of water, it is hard to ignore the powerful interests still keen on reversing this historic prohibition. Enshrining the fracking ban in law will ensure that the state can continue to move forward in protecting our air, water and public health, while we build a better renewable energy future.

While in general we support the approach taken by the Governor to codify the fracking ban in the budget (Part WW of the TED) we ask that the language be amended to ban high volume hydraulic fracturing for **oil bearing** formations as well. New York State still has oil fields in the Southern Tier that potentially could receive the same fracking treatment that has been instrumental to the development of the North Dakotan Bakken fields. We would also like to see language included that would ban propane fracking, which presents many of the same unacceptable environmental impacts – but has not been expressly banned by the DEC. We codified the State’s ambitious climate goals in the Climate Leadership and Community Protection Act – it’s now time make New York’s fracking ban permanent as well.

### **Invest in Electrifying New York’s Transportation Infrastructure**

New York is now operating with the strongest climate goals in the country – with mandates to reduce GHG emissions by at least 40% economy wide by 2030 and achieve 100% net zero emission by 2050. Most of our emission reductions to date have been focused on the electric sector. Far less attention has been paid to transportation, which represents our largest emitting sector at more than 36% of the State’s GHG emissions. With 80% of transportation emissions coming from cars and trucks, New York has to double efforts get more electric vehicles on the road. Financial mechanisms to reduce the cost of electric vehicle have been the most effective ways to sway consumer behavior.

In New York, under the 2017 Drive Clean Rebate program, more than 20,000 rebates have been approved, amounting to up to \$2,000 per rebate in state incentives. Combined with the \$7,500 federal tax credit – the electric rebate program has seen the growth of NY’s EV fleet by tens of thousands. But with the Trump administration’s unwillingness to renew federal rebates after reaching the consumer cap for the most popular EV models – going electric will be unattainable again for many New Yorkers. Modeling and analysis demonstrates that reducing the upfront cost of electric vehicles as compared to internal combustion engine vehicles is the single most important factor influencing an EV purchasing decision and increasing EV adoption. In places like California and Georgia, we’ve seen that when rebates and incentives are larger, EV sales increase, and the cessation of incentives can devastate positive EV growth. Electric vehicle technology has progressed since the Drive Clean Rebate was established, and there are now numerous battery electric models available. New York needs to transition the state’s transportation system off of fossil fuels entirely, and should be offering incentives and rebates that help consumers purchase EVs to ensure this transition is happening as quickly as possible. **Increasing rebate values by \$1,000 to \$3,000 dollars** would have a significant and necessary impact on EV sales in NY.

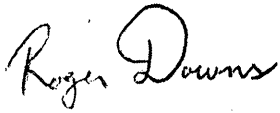
In addition, The Sierra Club envisions that the legislature can further incentivize EVs in the budget by:

- Providing Rebates for low to moderate income buyers of up to at least \$5,000
- Requiring that by 2030 all state fleet vehicles shall be electric or zero emission vehicles
- Establishing State Sales tax exemptions for a battery, electric, or plug-in hybrid electric vehicle on the first \$35,000

It is critical that electric vehicle sales continue to rapidly increase, uninterrupted, so that we can drive down harmful pollutants and emissions and meet our climate goals.

Again, the Sierra Club commends Governor Cuomo and the legislature for their continued commitment to combatting the climate crisis through the budget process. We know there will be greater challenges on the horizon, but we are committed to working together to rebuild New York's environmental agencies, make our state more resilient and strengthen our long-term environmental legacy.

Thank you,

A handwritten signature in cursive script that reads "Roger Downs". The signature is written in black ink and is positioned below the "Thank you," text.

Roger Downs, Conservation Director  
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