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ATLANTIC CHAPTER

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January 29th, 2014

Joint Legislative Public Hearing  
2014-15 Executive Budget Proposal  
Environmental Conservation  
Legislative Office Building  
181 State Street, Hearing Room B  
Albany, NY 12247

Dear honorable Senators and Assembly members:

My name is Roger Downs. I am the Conservation Program Manager for the Sierra Club Atlantic Chapter. We are volunteer led environmental organization of 38,000 members statewide dedicated to protecting New York's air, land, water and remaining wild places. Thank you for giving us the opportunity to comment on the 2014-2015 Executive Budget Proposal.

New York State is in an apparent economic resurgence and projections of a surplus within the next few years, as contemplated in the 2014-15 budget, should give the Governor and the legislature much to celebrate. But over the past six years of New York's economic recovery, 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. The loss of nearly a quarter of the DEC's workforce since 2008 has meant fewer enforcement actions of polluters, increased spread of invasive species and less review of impending threats to our environment. Now that the Governor is projecting a budget surplus, New York can no longer afford to keep environmental spending at austerity levels - not when our true prosperity relies upon the protection of our air, the purity of our drinking water and the health of our communities.

As part of the formula to achieve annual surpluses outlined in the executive budget proposal, there is a 2% prescribed limit to agency growth and State spending until 2018. But during this four year period, agency costs will go up as well, with guaranteed union pay increases, along with a projected rise in inflation - meaning that this cap on agency spending will translate into actual reductions in DEC funding. While the promise of surplus is a message of hope that every New Yorker wants to hear, it should not be based upon continued deficits to key areas of public health and safety.

The Sierra Club remains gravely concerned that past severe staffing and funding cuts have impaired the Department of Environmental Conservation to the point that this agency cannot live up to its federal mandate to uphold the Clean Water Act, Clean Air Act and other basic

environmental protection responsibilities. Governor Cuomo and the Legislature deserve credit for stemming the losses that began in 2008 when the DEC lost nearly 800 staff positions, but there is little left to cut from this bare-bones agency. Again, while we can appreciate the more equitable, across the board cuts to all agency spending that has occurred over the past three years, we have deep concerns about the cumulative impacts that the disproportionately deep cuts, through multiple budget cycles, have had on NY's environmental agencies. Even if we have stopped the bleeding in terms of staffing losses this year, funding cuts have "chained" DEC employees to their desks as there is not enough money to finance travel, inspections, emergency response, toxic clean-ups, testing equipment and public outreach.

We also are concerned that because of funding and staffing shortfalls, DEC is abdicating its responsibility to properly conduct Environmental Impact Statements (EIS) under the State Environmental Quality Review Act by issuing "negative declarations of significance" when clearly the proposals before them present substantive impacts. The Department of Environmental Conservation often finds itself in the position of lead agency and one would assume it would follow a standard of erring on the side of caution. But in 2013, the DEC issued a string of unfortunate "neg decs" that have shielded questionable projects from review and public participation. In 2013, DEC:

- Permitted an additional billion gallons of fracked Bakken shale oil from North Dakota to pass through the Port of Albany annually. Determination: no environmental significance.
- Permitted the withdrawal of 1.5 billion gallons of water a day for a power plant cooling system in a sensitive fisheries area. Determination: no environmental significance.
- Changed CAFO regulations by increasing the number of cows on a factory farm by 100 before manure management plans need to comply with water protection laws. Determination: no environmental significance.
- Overhauled 40 years of legislative precaution over the storage and transport of liquefied natural gas (LNG) with lax new regulations. Determination: no environmental significance.
- Made fundamental regulatory changes to how the actual SEQRA law is implemented. Determination: no environment significance.

We believe that with adequate staffing and funding the DEC would have made different determinations if it had the resources to conduct adequate reviews. The Sierra Club calls upon the legislature to take into account the past sacrifices and disproportionate cuts already sustained by the DEC and commit to funding restorations and common sense measures that can help revive this agency in crisis.

### **Environmental Protection Fund**

The Executive Budget proposal allocates \$157 million to the Environmental Protection Fund (EPF), NY's primary funding source for critical programs like land acquisition, farmland and habitat protection, drinking water infrastructure and waste reduction. Even though the \$157 million amount is \$4 million more than what was approved by the legislature in 2013, (from Bottle Bill revenue) it still does not address the growing demand for environmental needs across the state. Over the past 5 years the EPF has languished in allocations even though the programs it funds are proven economic generators and job creators. Increased funding to the EPF in a time of budget surplus 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.

The primary 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. During the recent economic downturn, RETT revenue dropped to less than \$400 million compared with previous levels that surpass one billion dollars. But now that New York's economy has rebounded the annual RETT revenue is expected to grow back to more than \$800 million annually. Over the span of the Fiscal Year 2014-15 outlook, the annual RETT revenue is projected to grow to more than \$1 billion a year. As the RETT recovers, so should investments in the EPF and there is little reason not to augment environmental funding using this dedicated source.

Another use of RETT revenue is to pay down the debt on environmental bonds, such as the 1996 Clean Water / Clean Air Bond Act. After 18 years of success, funds from that Bond Act have been depleted; annual debt service payments from the RETT are now decreasing by approximately \$10 million annually. In 2011 the RETT was responsible for paying nearly \$106 million of the Bond Act debt service – this year that number is approaching less than \$68 million. Instead of the annual savings on payment going back into the general fund- the legislature should rededicate this money to the environment through the EPF. **Sierra Club calls upon the Governor and the Legislature to increase money flowing from the RETT to ensure that we have an EPF funded at no less that \$200 Million.**

### **Campaign Finance Reform in the Budget**

The Sierra Club Atlantic Chapter enthusiastically supports the public financing of elections in the 2014-15 Executive Budget because we know that without a legislature committed to doing the "peoples business" it is extremely difficult to implement needed environmental protections and initiatives. For years the environmental community has watched key legislative priorities die in Albany because the millions of dollars in industry lobbying and campaign contributions have insulated decision makers from doing the right thing. We understand that most legislators are committed to serving their constituents first – but with so much special interest money flooding campaigns, elected officials almost have no choice but to concentrate on those that fill their coffers with a single check.

Sometimes, by sheer organizing power, average citizens can best the influence of big money. New York's Bigger Better Bottle Law, which finally passed in 2009 over the opposition of beverage industry giants, is one example. The law expanded the state's successful five-cent deposit law to include bottled water, and it forced the beverage industry to turn over unclaimed deposits to the state. But it took years of grassroots organizing to overcome these roadblocks. No sensible policy should be that hard to implement. Public financing would help solve these problems by amplifying the impact of small donations and allowing candidates to build viable campaigns without succumbing to the temptations of large donations—like those offered by the oil and gas and beverage industries.

That's what's begun to happen in New York City: participating candidates are relying more heavily on financing from small donors, thanks to a six-to-one match on donations of \$175 or

less. As a result, we're seeing greater and more diverse participation, with more donors and candidates from low- and moderate-income backgrounds. With the passage of a publicly financed campaign system, good candidates can spend more time worrying about the issues that matter to their constituents, not fundraising.

Using New York City's system as a model, nonpartisan experts from the Campaign Finance Institute estimate the price at \$25 million to \$30 million a year for a four-year cycle. That's \$2.50 per New Yorker per year. The alternative? The Sierra Club fears it will be contaminated air and drinking water, and a growing reliance on dirty energy sources—not to mention a government that caters more to industry lobbyists than to the public. Sierra Club urges you to pass meaningful campaign finance reform through the 2014-15 budget.

### **Addressing Crude Oil Transport Safety Issues in the Budget.**

Beginning in 2011, NY State has become a transport hub for rail shipments of Bakken crude oil from North Dakota, via rail lines that pass from Buffalo to the east (through Rochester and Syracuse) and from the Canadian border to the south following the west side of Lake Champlain and the upper Hudson River. The destination for this light crude is the Port of Albany, where the oil is transferred to ships that travel south down the Hudson River to East Coast refineries. Projections indicate that by 2015 as much as a quarter of the shale oil being produced in North Dakota could be transported by rail through the Port of Albany.

In 2013, 1.2 billion gallons of Bakken crude moved through the Port of Albany, in thousands of rail tankers, (compared to 18 million gallons in 2011). The majority of the rail cars used to transport this crude, "111 tank cars", have been deemed by experts for years to be at risk for puncture and prone to derailment. Crude shipments from Albany are expected to grow, as state permits allow terminals operated by Global Partners LLC, and another company at the port, Houston-based Buckeye Partners, to handle up to 2.8 billion gallons annually. Each day, as many as 120 railroad tanker cars arrive at the port to pump crude into Global storage tanks, where it is later pumped into double-hulled barges to go downriver. Global says it has the capability to offload two 120-car trains in a 24-hour period. In December 2012, one of the first ships to haul crude wrecked only a few miles downriver from the port, but the tear in the hull did not pierce the inner skin of the vessel.

More oil has spilled nationally in 2013 from train derailments than in the previous 40 years combined. The tragic and catastrophic accidents in Lac Megantic, Quebec (where 47 people died and 30 homes were incinerated) and Casselton, ND illustrate the public safety risks presented by the rail transport of fracked shale oil. In the Casselton, ND disaster, emergency responders evacuated a 5-mile radius around the crash site to minimize human exposure to the toxic smoke from the burning rail cars. Even a half mile evacuation from the port of Albany or any point along the city's rail corridor would involve the displacement of tens of thousands of people including the State legislature, City Hall, Federal Court buildings, schools and extensive neighborhood and housing developments. Additionally, there are also significant risks presented to the extensive waterways (Lake Champlain, Mohawk River, Hudson River) that could be easily and directly impacted by a spill or explosion. In each of the 4 major rail oil accidents this year the responsible parties have shifted the load of responsibility on subsidiaries

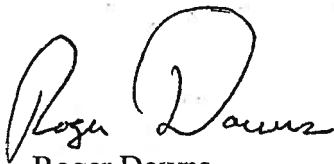
and declared bankruptcy to avoid clean up and liability cost.

The Sierra Club Atlantic Chapter is pleased with Governor Cuomo's executive order "Directing DEC, DOT, DHSES, DOH, and NYSERDA to Strengthen the State's Oversight of Shipments of Petroleum Products" and hopes that it will lead to greater enforcement and accident prevention – while now, New York is absorbing all the risk and seeing very little economic gain in return. But it should be noted that this multi-agency review of the "big picture" should not get in the way of the DEC demanding a full environmental impact statement for the crude oil off loading activities at the Port of Albany. Cuomo's executive order starkly contradicts the DEC's previous determinations that such activity at the port does not present significant environmental impact - even though the history of spills and explosions, nationwide, told a different story.

The 2014-15 Executive Budget provides funding available for five additional freight rail safety inspectors, doubling DOT's current inspection capability on the State's equipment and 3,500 miles of track, encompassing freight rail and Amtrak. **The Sierra Club Atlantic Chapter asks the legislature to approve this appropriation and to join the Governor in addressing the public safety risks presented by crude oil transport through New York.**

Again, we appreciate the contributions that the Legislature has made in bringing back New York's economy from financial crisis. With greater resources on the horizon, we look forward to working with Governor Cuomo and legislature in rebuilding New York's environmental agencies and strengthening our long-term environmental legacy.

Thank you,



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