



**Testimony of Jeremy Cherson
Senior Manager of Government Affairs
February 1, 2022**

**Joint Legislative Public Hearing on SFY 2022-23 Executive Budget Proposal:
Environmental Conservation**

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

Riverkeeper protects and restores the Hudson River from source to sea and safeguards drinking water supplies, through advocacy rooted in community partnerships, science and law. We envision a future in which the Hudson River, its tributaries and watershed, and the New York City drinking watershed are: restored to ecological health and balance, free-flowing, resilient, and teeming with life, reliable sources of safe, clean drinking water, recovered from historic and inequitable environmental harms, safe and accessible for swimming, fishing, boating and other recreational activities and valued and stewarded by all.

Recent actions by the legislature have established New York State as a national leader on clean water and environmental protection including the passage of the historic Climate Leadership and Community Protection Act, a ban on single use plastic bags and polystyrene containers, and the billions appropriated to the Clean Water Infrastructure Act. The SFY2022-23 Executive Budget proposal includes sustained funding for programs that touch the lives of all New Yorkers. We support many of Governor Hochul's proposals as currently drafted and provide a few recommendations including increasing funding for the Hudson River Estuary Program within the Environmental Protection Fund.

1. Support Comprehensive Freshwater Wetlands: TED Article VII Part QQ

Riverkeeper strongly supports Governor Hochul's legislation to expand protections to New York's threatened freshwater wetlands. This legislation is particularly urgent to include this year's budget due to an upcoming case on the Supreme Court of the United States docket, *Sackett V. EPA*, which many experts perceive as a grave threat to the federal Clean Water Act and the federal regulatory wetlands program.¹ New York must be prepared to step into any new gaps created by changes in federal policy and has the opportunity to protect these fragile ecosystems that provide an array of benefits, contributing to drinking water sources, wildlife habitat and flood mitigation. New York's wetland's program is hamstrung by regulatory burdens and costs that prevent the program from protecting at least one million acres of wetlands over 12.4 acres and an untold number of wetlands of smaller size but of equal or greater importance due to their features. This legislation put forward by Governor Hochul would modernize New York's wetland law to recognize advances in digital observation for delineation and grant the DEC Commissioner the discretion to protect wetlands of all sizes.

¹ <https://www.eenews.net/articles/supreme-court-tees-up-wetlands-fight-that-could-cuff-epa/>

New York's wetlands are currently under threat as development pressures accelerate in exurban and rural communities. Protecting wetlands, marshes, bogs and fens are important to preserve community resilience in the face of climate change; mitigate the impacts of flooding; filter surface waters of some pollutants; protect quality drinking water supplies and provide habitat to fish, birds, insects, amphibians and mammals. Half of all species identified by the NYSDEC as threatened or endangered are wetland dependent, meaning conservation of these resources is essential to preserving biodiversity.²

Wetlands store 35% of the world's carbon - that's equivalent to the carbon emissions from roughly 189 million cars every year. But when disturbed or warmed, they release greenhouse gases that contribute to global warming. The CLCPA Draft Scoping Plan concurs with our position and makes several recommendations to that effect.³ Land Use Strategy LU4 and LU5 recommends identifying and protecting freshwater wetlands so they can contribute to carbon sequestration goals necessary to reach the State's net zero goal. Components of that strategy include:

- *The State should enact legislation to improve and expand regulation of all freshwater, non-tidal wetlands, and adjacent areas by fundamentally changing New York's statutory system.*
- *The State should enact legislation to ensure regulatory oversight for wetlands and waterbodies that were removed from federal protection under the Navigable Waters Protection Rule.*
- *The State Legislature, DEC, and DOS should increase investment in the protection, restoration, and monitoring of freshwater, non-tidal wetlands, and adjacent areas, including riparian areas, to maximize carbon sequestration potential (such as an Environmental Bond Act, the EPF, and grants programs like DEC Water Quality Improvement Program and New York State CPP).*
- *The State should fund research that will evaluate the methane emissions and carbon sequestration associated with freshwater impoundments and the impact of their specific water-level and salinity management strategies. These areas should be prioritized for any voluntary buyouts and restoration to wetland status.*

While all tidal wetlands are regulated under the Freshwater Wetlands Act, New York governs activity in only those freshwater wetlands greater than 12.4 acres in size mapped by DEC, unless designated as a wetland of "unusual local importance." Many of the DEC wetlands maps have not been updated in decades and therefore do not identify all wetlands that meet current regulatory thresholds. Wetlands tend to shift and change over time, especially with climate change, and methods of wetland delineation have improved. Thus, in order for existing wetlands to receive adequate protection, the law must be updated and strengthened

Part QQ of S.8008/A.9008 removes the requirement for costly and burdensome publication of wetland boundaries on outdated DEC maps as a prerequisite for the protection of large wetlands across New York. For example, under current regulations DEC has to notify by certified mail any landowner within 500 feet of a proposed wetland and a 100 foot buffer. This often costs over \$100,000 per watershed. The Governor's proposal eliminates the notice requirements, which will eliminate one of the major financial barriers to wetlands protection. A wide range of federal, state, local, academic, and conservation organizations' data would then become relevant to the DEC and communities seeking to protect wetlands

² <https://www.dec.ny.gov/animals/7494.html>

³ <https://climate.ny.gov/Our-Climature-Act/Draft-Scoping-Plan>

previously ineligible for protections due to New York’s antiquated regulations. All wetlands 12.4 acres and larger will be subject to permitting and wetlands that are 12.4 acres or less will be subject to permitting at the discretion of the DEC if they are of “unusual importance.” Maps will be retained for educational purposes and expanded upon using digital mapping tools and posted on DEC’s website. Additionally, positive amendments include increasing permit application fees in the the Marine Resources account of the Conservation Fund to help sustain the program into the future and allowing DEC greater flexibility to enforce wetland laws and regulations to prevent damage to these valuable resources. These changes among others will significantly improve New York’s ability to protect these valuable natural climate solutions. Over 75 organizations urged the Governor to include this legislation in her budget in a December 2021 letter.⁴

Riverkeeper strongly supports comprehensive freshwater wetlands reform proposed in Part QQ S.8008/A.9008.

2. \$400 million Environmental Protection Fund

Riverkeeper is a member of the broad Clean Water & Jobs coalition that supports the Governor’s proposed funding for the Environmental Protection Fund (EPF) at \$400 million as part of a multi-year goal to reach a \$500 million allocation. The legislature is a strong champion of the EPF, and we urge you to continue your commitment to this important source of funding.

A. Hudson River Estuary Program: \$2 million increase

The Department of Environmental Conservation’s 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, this executive budget proposal maintains FY2022 funding at \$6.5 million after increasing it by \$1 million in the FY2019 budget, and we are grateful for this ongoing commitment. **Given the \$100 million increase in funding for the Environmental Protection Fund Riverkeeper is calling on the legislature to increase the Estuary Program budget line by \$2 million for a total of \$8.5.**

The Estuary Program has created beloved projects like the Day in the Life of the Hudson and Trees for Tribes, introduced thousands of school children to the wonders of the American eel, and helped bring the concept of the “Big Night” for amphibian migration into the vocabulary of hundreds of volunteers who monitor and protect vernal pools. **It has made the Hudson Valley a leader in climate resilience and adaptation, through support of communities developing climate adaptation plans.** The program coordinates research needed to ensure the recovery of the Hudson’s signature fish from sturgeon to the economically important striped bass. It funds high-profile and high-impact projects, including Riverkeeper’s recent removal of dams to promote healthy free-flowing creeks.

A newsletter from the Estuary Program on February 1st, 2022 highlights some of the important work Riverkeeper is able to accomplish with the partnership of this outstanding program, “DEC grant funding helps communities assess and replace these barriers. In the fall of 2021, [Riverkeeper](#), in partnership with DEC, removed two obsolete dams on tributaries to the Hudson: the **Strooks Felt Dam on the Quassaick**

⁴ <https://save-nys-wetlands-audubon.hub.arcgis.com/pages/letter-to-the-governor>

Creek in Newburgh, and a dam on Furnace Brook in Oscawana Park in Cortlandt. The dams were the first barriers for fish movement upstream from the Hudson River. Removing the dams is improving water quality and habitat for resident and migratory fish, including river herring and American eel. DEC and partners are monitoring the streams to see how the dam removals may have benefited water quality and habitat. Free-flowing natural conditions now extend upstream at both locations. **Funding for the dam removals was provided by the NYS Environmental Protection Fund (EPF), administered by Hudson River Estuary Program with grants for [Tributary Restoration and Resilience](#).**⁵

In 2021 the program supported projects at 165 locations, with over 39 Estuary Grants (77 percent in environmental justice communities), and 24 curriculum modules for watershed education in the classroom. In total, this funding helped bring in more than \$10 million in grants and funds from other sources. 43 percent of the Estuary Program’s environmental education takes place in environmental justice communities. The Estuary Program is at the front lines of preparing the Hudson River Estuary communities for the impacts of climate change.

The needs of the Hudson Valley region served by the Estuary Program are considerable and increasing. They include planning and implementing programs such as drinking water source protection and harmful algal bloom prevention; advancing dam removal and culvert right-sizing initiatives; promoting climate resiliency planning and implementation locally and regionally. The Estuary Program has released its next five year action agenda, setting an ambitious agenda for the next decade supported by a wide variety of stakeholders.⁶

The Hudson River Estuary Program is currently funded at \$6.5 million annually. I urge you to increase the funding by \$2 million, to help leverage funding opportunities from the Bipartisan Infrastructure and Jobs Act and a future New York State environmental bond act. The Estuary Program provides critical expertise and funding to local projects across the Hudson River watershed. I ask you to seize the opportunity this year to build on this success while additional resources for the EPF are under consideration.

Riverkeeper urges the legislature to increase the Hudson River Estuary Program funding to \$8.5 million to leverage new federal opportunities and a future bond act.

B. New Line Item: Hudson River Estuary Salt Front Advancement Study \$300,000

Climate change and sea level rise pose a significant threat to communities that rely on the Hudson River to supply drinking water to their communities. Already, the salt line, the point at which salty water blends with freshwater, is moving northward towards water intakes north of Poughkeepsie. **We are calling on the legislature to add a \$300,000 sub-line to the Environmental Protection Fund for New York State to contract a study with the United States Geological Service to better understand impending threats from a salt line moving increasingly northward, toward critical drinking water intakes.**

Municipal leaders from “The Hudson 7” the seven communities that draw drinking water from the Hudson River – have a formal agreement that formed the “Hudson River Drinking Water Intermunicipal Council. Five intakes along the mid-Hudson supply more than 106,000 people in the Towns of Esopus, Lloyd, Hyde Park, City and Town of Poughkeepsie and the Village and Town of Rhinebeck with drinking

⁵ <https://content.govdelivery.com/accounts/NYSDEC/bulletins/307ac26>

⁶ https://www.dec.ny.gov/docs/remediation_hudson_pdf/hreaa2021.pdf

water. The communities that form the Hudson 7 work together to foster cooperative management of their primary drinking water source in addition to applying for grants together awarded through New York's Clean Water Infrastructure Act under their Intermunicipal Grant Program.

In the Hudson River, the salt front is where the chloride reaches 100 mg/L, far less than 19,000 mg/L in saltwater. The Department of Health recommends sodium concentrations of less than 20 mg/L for very low sodium diets and 270 mg/L for moderately restricted diets. Poughkeepsie and the City's Chelsea Pumping Station have already exceeded the Department of Health (DOH) recommended standards for people with low sodium diets during low river flows.

According to the National Oceanic and Atmospheric Administration, sea level could rise by two feet by 2045 and six and a half feet by 2100. Water utilities on the Delaware and Savannah Rivers have already performed these evaluations to keep their water supplies safe. For the Delaware River, the Delaware River Basin Commission has determined that if the sea level rises 3 feet, the salt front will move 28 miles upstream. **If this happens in the Hudson River, all five water treatment plants operated by Hudson 7 would have salinity problems by 2045, which is less than 25 years away.**

Create a \$300,000 line item in the Environmental Protection Fund to support a salt front study for the Hudson 7.

C. Water Quality Improvement Program: Increase to \$25 million

WQIP 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 Quality Improvement Program grants are more favorable to communities, typically allowing for less local match and greater state investment per project. The funds should be allocated to the greatest degree possible based on statewide needs, to ensure all communities have access to this important funding source.

Riverkeeper supports increasing the Water Quality Improvement Program funding to \$25 million

D. Source Water Assessments: \$5 million

The EPF is a critical funding source for implementing the Drinking Water Source Protection Program (DWSP2) and subsequent Source Water Assessments.⁷ Communities across the state will benefit both from new Source Water Assessments, which should clearly identify risks to their water supplies, and a robust planning process to prioritize and identify actions to address those risks. For decades, New York and its communities have been under-invested in the planning and implementation of source water protection, and we have unfortunately seen the consequences as communities face drinking water pollution and health concerns as a result. **Outside of New York City's watershed, Source Water Protection costs have not been assessed statewide.** Our assumption is that most communities do not have costs estimated, and a survey could, at this stage, highlight the need to inventory at the local level so the state can plan its investments over the coming years.

⁷ <https://www.dec.ny.gov/chemical/115250.html>

The cost of treating or replacing public drinking water supplies, and of treating illnesses that result from drinking contaminated water far outweigh the cost of protecting drinking water at its source. Riverkeeper urges the legislature to champion this essential new state program.

Riverkeeper supports \$5 million for Source Water Assessments and encourages additional funding to allow more communities to participate in the program.

3. \$4 Billion “Clean Air, Clean Water, and Green Jobs Bond Act”

Riverkeeper strongly supports the proposal for renaming the \$3 billion “Restore Mother Nature Environmental Bond Act” and adding an additional \$1 billion to create a landmark \$4 billion “Clean Air, Clean Water, and Green Jobs Bond Act.” While the Hudson River Estuary has undoubtedly become cleaner in the past several decades, at the same time the Hudson’s most iconic fish species have experienced dramatic declines. Of nineteen species examined, one species has left the Hudson completely, two are on the verge of extirpation, one shows a slight uptick, and the rest show significant to severe declines. These include species that have supported commercial fisheries in the past and species that support robust popular sports fisheries today. Most recently, declines have been reflected in the striped bass populations, which had made a previous comeback, but their recent negative trend has the Atlantic States Marine Fisheries Commission and anglers all along the coast concerned. The bond act presents an opportunity to make investments that will benefit New York’s environment for generations to come.

A. New York City Plans Needs Bond Act Funds

Facing a staggering 20 billion gallons of annual combined sewer and stormwater overflow to the Hudson River, New York City has developed multiple action plans to improve water quality, manage stormwater, and protect residents from flooding due to extreme weather events and usual annual precipitation events. With underinvestment and lack of appropriate funding, however, the city is falling short of targets laid out in the New York State-approved Long Term Control Plans (LTCPs) and the state-approved green infrastructure program. In addition to the LTCPs, the city has created multiple other critical action plans to address urgent stormwater management needs, NYC waterfront access, and Hudson River resilience. These plans include the NYC Parks Department’s Wetlands Management Framework⁸ for New York City, The Mayor’s Office of Resiliency’s New York City Stormwater Resiliency Plan⁹ and Combating Storm-Related Extreme Weather in New York City¹⁰ and New York City Department of City Planning’s Comprehensive Waterfront Plan.¹¹ Each of these plans requires state investment to execute. The bond act could help make these visions a reality.

B. Green Infrastructure Installations for Urban Landscapes

The bond act would provide needed resources to urban areas to install large-scale green infrastructure, or vegetated practices designed to infiltrate, absorb and filter polluted stormwater. Such installations would have tremendous benefits for local waterways and local economies. In many cities in the Hudson River

⁸ https://naturalareasnyc.org/media/pages/wetlands/cf007d5e6f-1621282492/nac_wmf_final_20200317-singles-1-1.pdf

⁹ <https://www1.nyc.gov/assets/orr/pdf/publications/stormwater-resiliency-plan.pdf>

¹⁰ <https://www1.nyc.gov/assets/orr/pdf/publications/WeatherReport.pdf>

¹¹ <https://www.waterfrontplan.nyc/>

watershed, such stormwater runs off impervious surfaces like sidewalks and streets and mixes with sanitary sewage from homes and businesses to overflow sewer systems. In New York City alone, these discharges happen on roughly one out of every three days, causing a total of 21 billion gallons of polluted combined sewer overflows to discharge without treatment to surface waters every year.

Following Hurricane Ida, it is clear that green infrastructure interventions are necessary to relieve the burden on the region's sewer systems and reduce the risk of devastating loss of life and damage from flooding. The current capacity for the City's combined sewer system is overwhelmed when it rains 1.75 inches per hour, with some portions of the system overwhelmed by as little as one tenth of an inch of rain per hour. Rainfall data from Hurricane Ida indicated that New York City saw a catastrophic 3.15 inches of rain per hour.

By retaining stormwater where it lands, green infrastructure reduces the burden on municipal sewer systems, mitigates neighborhood flooding, and decreases polluted discharges. Vegetated green infrastructure also improves local air quality, provides habitat for wildlife, mitigates heat island effect, creates recreational spaces, and serves as recreational areas. Just as important, installation and maintenance of green infrastructure creates livable-wage jobs. If approved by voters, the bond act will be an important source of funding for green infrastructure.

Riverkeeper supports a proportional allocation of the additional \$1 billion to existing categories of the bond act.

4. Clean Water Infrastructure Act: Increase to \$1 billion

The infrastructure investments made through the Water Infrastructure Improvement Act (WIIA) via the Clean Water Infrastructure Act (CWIA) are the biggest New York State investment in this critical priority in a generation. The legislature's strong support for this program is greatly appreciated. We are supportive of the executive proposal for an additional \$500 million investment in New York's clean water, however urge the legislature to go bigger and fund the program at \$1 billion annually. Supersized funding for the CWIA will position New York to take advantage of federal infrastructure dollars with plenty of funding for required local match contributions.

The investment, on top of existing investments, 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. Excluding New York City, the Hudson River watershed wastewater infrastructure needs (based on 2022 IUP) have increased consistently since 2017, and are now at \$941m in documented needs.¹² This figure based on a 2022 analysis is 60 percent greater than the 2017 need. As many legislators know, communities outside of New York City face aging and crumbling wastewater infrastructure. 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.¹³

¹² <https://efc.ny.gov/cw-iup>

¹³ 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>

Riverkeeper Analysis of Wastewater Infrastructure Need of the Hudson River Watershed¹⁴

Upper Hudson River (North of the Federal Dam at Troy, NY) - \$181 million

Mohawk River - \$304 million

Hudson River Estuary tributaries - \$144 million

Hudson River Estuary main stem (South of the Federal Dam at Troy, NY) - \$311 million

Riverkeeper supports the Governor's proposal for an additional \$500 million appropriation to the CWIA but urges the legislature to support \$1 billion in annual funding.

5. Support Agency Staffing Increases

Riverkeeper strongly supports the executive proposal to increase in staff numbers several vital agencies: Department of Environmental Conservation (94), State Parks (53), and Agriculture and Markets (31). The staff deficiencies at our state agencies mean New York's agencies charged with protecting water, soil, air, wildlife and human health struggles to implement and enforce federal and state law while being asked to shoulder ever greater responsibility each year. The recent lifting of the agency hiring freeze is another positive development that will yield benefits to New Yorkers and the environment for years to come.

Riverkeeper strongly supports Governor Hochul's proposal for additional state agency staff.

6. Oppose Tax Exemptions for Tugboats and Towboats for Petroleum: Part T Revenue Article VII

Riverkeeper opposes creating new tax exemptions for the use of petroleum products as proposed in Part T of the Article VII Revenue Bill (page 96). To meet our ambitious climate goals as required in the CLCPA the state should not continue to give tax breaks to support the use of fossil fuels. These exemptions should be eliminated. Please do not include this fossil fuel give away in the final budget agreement.

Riverkeeper urges the rejection of tax breaks for fossil fuels in the budget.

Conclusion

New York State's actions in recent years to support water infrastructure, drinking water quality and source water protection have made tremendous progress over the last few years. Governor Hochul's proposed budget expands environmental spending in unprecedented ways that will help New York protect water resources and communities from the effects of climate change. We encourage the legislature to support these proposals and incorporate our recommendations into a final budget agreement. Thank you for your consideration and for the opportunity to submit this testimony.

¹⁴ Riverkeeper analysis of Environmental Facilities Corporation Final Intended Use Plan 2022