Testimony

of

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New York State Legislature Hearing on

Water Quality and Contamination in New York

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On behalf of Riverkeeper, Inc., its dues paying members and its constitutents, we thank thank you for calling attention to the very critical issue of Water Quality and Contamination in New York State.

We especially thank Chairman Hannon, Chairman O'Mara of the State Senate and Chairman Englebright and Chairman Gottfried of the State Assembly for holding these Joint Hearings. We also thank Assembly Speaker Heastie and Senate President Pro Tempore John Flanagan and Senate Coalition Co-Leader Jeffrey Klein for bringing thed issues forward.

We offer our testimony to the Legislature and ask that our Legislature leaders work together to review our testimony, our White Paper, "Contamination of the Drinking Water Reservoir and Watershed of the City of Newburgh: A Case Study and a Call for Comprehensive Source Water Protection." and related correspondence between Riverkeeper and various state and federal officials, to determine what State monies can be be made available to provide the necessary funding, staffing and direction to proactively protect drinking water supplies across New York State. □

What is clear is that a successful strategy must be well funded, must take the long view, and emergency environmental health concerns must be effectively addressed as they are discovered.

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When we turn on the tap, we trust that the water flowing from it is safe. Simple acts like a mother mixing formula of a young child mixing formula, or a pregnant woman pouring herself a glass of water, should never endanger the health of a child.

Ensuring the quality of that tap water takes a sustained commitment.

Clean Water - one of New York's most important environmental and economic resources - can no longer be taken for granted as thousands of impacted residents in a number of communities in New York State can attest.

Folks here have attested to the challenges facing the clean water their families need to survive and thrive.

Our testimony today will focus on a comprehensive approach to responding to contamination and -- importantly -- preventing future contamination. Our suggestions are based entirely on existing legal authorities and precedents in New York State. The water crises in the City of Newburgh, and of Hoosick Falls and Petersburgh, will not be the last ones in this State.

**The City of Newburgh: Another Case Study with Important Lessons.**

We, of all states, know how to protect drinking water supplies. The example of New York City is held up around the world for protecting drinking water. And yet, as our analysis of the crisis in the City of Newburgh plainly shows, we have not applied the lessons learned by preserving New York City's drinking water uniformly across our state.

The City of Newburgh is an important case study in what can happen when we fail to use the tools available to protect drinking water. Instead of high quality water provided naturally by a well-managed watershed, we have a toxic chemical in its reservoir and numerous additional threats to its watershed.

Preventing the next crisis in Newburgh will take long-term sustained attention to watershed restoration, even as we focus rightly on emergency response -- investigating and removing pollution, and responding comprehensively to the health needs of the city. These efforts involve different divisions and agencies of state government, and should happen in parallel.

Preventing the next crisis in the next community will take widespread enforcement of our clean water laws, and support for the agencies tasked with implementing them. It will take making politically courageous decisions that focus on the future health and sustainability of

communities, sometimes over short-term economic or political gain. It will take a commitment by the Governor and Legislature to funding the effort.

In Newburgh, the presence of a toxic chemical, PFOS, a sister chemical of the PFOA that impacted Hoosick Falls, has been found at high levels in the city's primary reservoir, Lake Washington, and in the streams that feed it. For years, and possibly decades, 29,000 city residents were exposed to this chemical, including those most acutely at risk: developing fetuses and newborn babies. Its presence became widely known in May 2016 when the city manager declared a state of emergency in response to test results taken by the state.

**What is Known?**

The chemical is present in the drinking water supply, Lake Washington, at levels in excess of the EPA drinking water health advisory.

The source identified by New York officials is the Stewart Air National Guard Base, and possibly the Stewart International Airport, because of the use of firefighting foam containing the chemical. It reached the reservoir through discharges of stormwater to streams that lie just upstream of the reservoir, and possibly through other routes.

**What is Not Known?**

The actual exposure levels of city residents. Comprehensive health screening, consisting of blood testing, and bio-monitoring, has not been made available to city residents. This is not how the crises in Hoosick Falls and in Petersburgh have been handled. *It is unconscionable and unjustifiable to treat these impacted communities differently.*

The city residents need to be given the testing necessary to make the proper health decisions for their families. The Department of Health has not responded to numerous requests for blood testing by elected officials, local residents, and by advocates, like Riverkeeper. Blood testing

alone is not a sufficient health response, but it is an essential component of any long-term response to real health concerns that this exposed community has and will have.

**What has Been Done?**

Department of Environmental Conservation emergency action resulted in the temporary substitution of the source of the city's drinking water to its backup reservoir, Browns Pond, and -- at significant cost -- to the New York City reservoir system. Thus, PFOS, is no longer reaching taps. The state has also committed to filtering the city's drinking water. But filtration of drinking water supply, and remediation of contamination will come at great expense, and the city's primary reservoir remains contaminated. In August, DEC declared the site an imminent threat to public health and listed the site for New York's Superfund program. The use of the State's program of last resort - Superfund - is not a way to deal with drinking water or source water protection. Simply, it is too expensive, too slow, and addresses environmental and public health after people have been exposed to dangerous levels of chemical contamination.

While the focus has been on providing residents with clean drinking water, the contaminated stormwater continues to pollute streams and creeks in the Hudson River watershed, which could put both wildlife and people who consume fish at risk of toxic exposure, now or in the future. Riverkeeper has called on the Department of Environmental Conservation to implement an interim remedial measure to filter the largest source of polluted stormwater emanating from Stewart Air National Guard Base.

**What Has Not Been Done?**

The long-term protection of drinking water quality requires a long-term commitment to protecting source waters – rivers, streams, reservoirs and groundwater. Protection of water supplies has wide public support, and can typically be achieved at a cost far less than the cost of remediation of contaminated supplies.

In Newburgh, water protection laws have not been effectively enforced or implemented, and the lands and waters that supply Lake Washington and Brown's Pond in the Quassaick and Moodna Creek watersheds have not been adequately protected. The present contamination is the result.

**The Path Forward**

A comprehensive approach to Newburgh points the way to a comprehensive approach to protecting drinking water supplies across the state. The following actions are key to such an approach:

1. **Emergency Response in Newburgh**

   While the Department of Environmental Conservation's response to the PFOS contamination has been largely exemplary, there are two outstanding issues of most concern that require immediate attention: Blood testing, as part of a comprehensive medical monitoring program; and the treating of polluted discharges from the Stewart Air National Guard Base that have been identified as the major source of contamination - a so-called interim remedial action.

   Blood testing is a critical first step in the comprehensive medical monitoring that is needed to adequately respond to the exposure of thousands of New York State residents to levels of a toxic chemical in excess of thresholds identified as cause for concern.

2. **Source Water Protection**

   With our testimony today, we are including a copy of our July 2016 report, "Contamination of the Drinking Water Reservoir and Watershed of the City of Newburgh: A Case Study and a Call for Comprehensive Source Water Protection." This document demonstrates that New York State has a comprehensive legal framework for protecting source waters, but its implementation is both incomplete and uncoordinated. While additional legal authorities may be needed, there are many tools available now that

should be utilized immediately to protect and restore source waters, even while emergency response measures are in effect.

Key elements of comprehensive source water protection include:

**Safe Drinking Water Act** - We must ensure that communities have accurate maps and assessments of potential risks, under the Safe Drinking Water Act, to watersheds that naturally filter and supply drinking water. Where assessments are inadequate, they must be updated. Where accurate and complete assessments identify risks, Source Water Protection Programs must be developed, funded and implemented to alleviate those risks.

**Clean Water Act** - Streams in the watersheds that naturally supply and filter drinking water supplies -- source waters -- must be accurately classified ("Class A") and permits allowing discharges of pollution must be written and enforced to maintain the highest of water quality standards. Where classifications or permits are not adequately protecting water quality to drinking water standards, they must be aggressively updated and enforced.

**Environmental Conservation Law -** Preservation of natural infrastructure -- wetlands, forests and other open spaces -- is provided for in state law, with special provision for drinking water supplies. These provisions must be implemented fully as part of freshwater wetlands and open space protection programs.

**Public Health Law -** Source Water Protection Rules provide a framework for protecting drinking water supplies, including the ability for communities to take certain actions outside of their municipal boundaries in order to preserve drinking water supplies.

**Coordination and Oversight** - Environmental Conservation Law mandates the creation of a Water Resources Planning Council that could coordinate and prioritize efforts to protect drinking water supplies and other water resources. The precedent of a watershed

inspector general for New York City's drinking water could be used to fill a vacuum in third-party oversight elsewhere in the state.

3. **Water Resources Management**

New York State's water management policy needs to catch up to its energy policy, which is going through a fundamental reinvention known as "REV: Reforming the Energy Vision". We need the same sort of fundamental reform, when it comes to water resources management.

In an era of increasing stress on New York's drinking water reservoirs, lakes, aquifers and rivers, any truly sustainable strategy for water resources management must maximize the use of cost-effective water conservation and efficiency projects, reduce water losses, and employ pricing policies that create incentives for water conservation.

In addition to conservation, efficiency and pricing reform, we need to make the efficient use of water central to our policies for economic advancement, land use, ecological integrity, etc.

The Public Service Commission can do its part by ensuring that municipalities and other water suppliers regulated by the Commission are fully incorporating water sustainability considerations in partnership with local water advocacy groups and community representatives. DEC can use its own water withdrawal permitting jurisdiction to assure the same result on a much broader level.

4. **Water Infrastructure Investment**

The New York State Water Infrastructure Improvement Act of 2015 established a new and valuable grants program that has effectively leveraged roughly five times its value in investments in drinking water and wastewater projects. This essential program must be renewed past its legislative expiration in 2017, and its funding increased -- to $800

million -- to clear the backlog in projects that had built up over decades of inadequate investment by all levels of government. The successful program is essential to providing clean drinking water, as well as high quality water for wildlife, recreation and business.

**5. Budget and Staffing**

Implementing a coordinated approach to source water protection and water resources management will require adequate funding and staffing for key state agencies, particularly the Department of Environmental Conservation. The DEC, and particularly its Division of Water, has suffered disproportionate cuts over many years, relative to other aspects of state government, even as the demands on the agency, and the state's population, have increased. No response to the drinking water crises in New York State can be considered adequate without a new and sustained commitment to budget and staffing necessary for state agencies to implement key programs outlined here.