

RESOLUTION AUTHORIZING (1) TO REQUEST AMICUS CURIAE STATUS IN THE MATTER OF RIVERKEEPER, INC.; CORTLAND-ONONDAGA FEDERATION OF KETTLE LAKE ASSOCIATIONS, INC.; SIERRA CLUB; THEODORE GORDON FLYFISHERS, INC.; and WATERKEEPER ALLIANCE, INC., V. BASIL SEGGOS, in his capacity as Commissioner of the New York State Department of Environmental Conservation, and NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION; and (2) ENTERING INTO A RETAINER AGREEMENT FOR THIS PURPOSE WITH LEGAL COUNSEL

WHEREAS, the City of Ithaca Common Council is concerned about the impacts on its community of the recently adopted New York State Department of Environmental Conservation (“DEC”) Clean Water Act General Permit (“General Permit”) for Concentrated Animal Feeding Operations (“CAFOs”); and

WHEREAS, CAFO is the legal term for large animal factories, where at least hundreds of animals – in New York, mostly dairy cows – are maintained in confined areas for at least part of the year with food being brought in, and General Permits apply to operations with 300 or more mature dairy cows and/or operations that discharge pollutants into the waters of the State; and

WHEREAS, an average dairy cow produces over 120 pounds of manure per day, as compared to an average household of four people which produces about one pound of sewage waste per day, waste from just one of the smallest CAFOs covered by the General Permit (with 200 cows) is comparable to the amount of sewage produced by a city of 96,000 which is similar in size to the City of Albany (98,000 people in 2016); and

WHEREAS, human waste generated in cities is treated in wastewater treatment plants that operate year-round, whereas dairy cow sewage is usually held in lagoons until it is spread on fields which poses a significant risk to the environment, a risk that is heightened by the fact that many lagoons are un-lined and, thus, can leach pollutants into the groundwater; and

WHEREAS, if not properly managed, stored, and disposed of, waste generated by CAFOs has the potential to cause significant harm to human health and the environment, as improper management of waste from dairy CAFOs is associated with the release of nitrogen, phosphorus, ammonia, and human pathogens, and such releases can contaminate ground and surface water, impact drinking water supplies, and cause algal blooms, fish kills and human illness; and

WHEREAS, the Federal Clean Water Act sets out requirements for dairies and other industrial animal operations for managing animal waste, including: developing and implementing nutrient management plans (“NMPs”), enforceable safeguards against water pollution, review and approval by impartial state experts, and availability of NMPs for public review **and comment**, and while the New York State DEC is responsible for issuing a General Permit that complies with and implements the Federal Clean Water Act, the General Permit does not satisfy these rules; and

WHEREAS, the City of Ithaca Common Council recognizes the importance of appropriate stewardship over Cayuga Lake, its creeks, streams, waterfalls and watershed, not only as a foundation of natural

beauty, ecological diversity, and personal well-being, but also as a source of clean drinking water and as an economic driver of the community; and

WHEREAS, if the General Permit met the rules set forward by the Federal Clean Water Act requiring disclosure of MNPs for public review and comment, the City of Ithaca is likely to review MNPs to determine their impacts on the Six Mile Creek, Fall Creek, and Cayuga Lake Watersheds, impacts on municipal water sources and water treatment systems, and impacts on environmental and water quality management plans, and the City of Ithaca is likely to provide comments to the DEC as appropriate, and

WHEREAS, Earthjustice has filed a petition challenging the aforementioned General Permit<sup>1</sup>; now therefore be it

RESOLVED, that the City of Ithaca will seek amicus curiae status in the matter of Riverkeeper, Inc. et al. v. Basil Seggos and New York Department of Conservation, Index No. 902103-17<sup>2</sup> and seek consent of the court to submit an amicus curiae brief; and be it further

RESOLVED, that the Mayor of the City of Ithaca is hereby authorized to sign the retainer letter with the Columbia Environmental Law Clinic for such legal representation and services.

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<sup>1</sup> <http://earthjustice.org/news/press/2017/environmental-groups-fight-department-of-environmental-conservation-s-toothless-industrial-animal-facility-0>

<sup>2</sup> RIVERKEEPER, INC.; CORTLAND-ONONDAGA FEDERATION OF KETTLE LAKE ASSOCIATIONS, INC.; SIERRA CLUB; THEODORE GORDON FLYFISHERS, INC.; and WATERKEEPER ALLIANCE, INC., V. BASIL SEGGOS, in his capacity as Commissioner of the New York State Department of Environmental Conservation, and NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION <http://www.courthousenews.com/wp-content/uploads/2017/03/Cows.pdf>