

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

CONSTITUTION PIPELINE :
COMPANY, LLC :
:
Plaintiff, :
:
v. :
:
NEW YORK STATE DEPARTMENT OF :
ENVIRONMENTAL CONSERVATION; :
BASIL SEGGOS, ACTING :
COMMISSIONER, NEW YORK STATE :
DEPARTMENT OF ENVIRONMENTAL :
CONSERVATION; JOHN FERGUSON, :
CHIEF PERMIT ADMINISTRATOR, NEW :
YORK STATE DEPARTMENT OF :
ENVIRONMENTAL CONSERVATION, :
:
Defendants. :
:

CIVIL ACTION
Case No. 1:16-CV-0568 (NAM/DJS)

Electronically Filed

COMPLAINT

Constitution Pipeline Company, LLC (“Constitution”) asserts the following claims seeking declaratory relief against the New York State Department of Environmental Conservation (“NYSDEC”); Basil Seggos, Acting Commissioner of NYSDEC, in his official capacity; and John Ferguson, Chief Permit Administrator of NYSDEC, in his official capacity (collectively, “Defendants”), and in support thereof, alleges as follows:

Introduction

1. Defendants issued on April 22, 2016 (Earth Day) an arbitrary and capricious denial of Constitution’s request for a water quality certification under Section 401 (“401 WQC”) of the federal Clean Water Act (“Denial Letter”). Defendants’ Denial Letter was *not* based on any actual and meaningful impacts to the waters of New York, but instead was intended to stop the development of Constitution’s federally-approved interstate natural gas pipeline to be located

in both Pennsylvania and New York. This project is designed to deliver clean burning, low cost natural gas from the Marcellus Shale Region in Pennsylvania to markets in the northeastern United States. On information and belief, Defendants' Denial Letter was orchestrated by Governor Andrew Cuomo and his executive staff ("Governor's Office") in an effort to appease anti-natural gas and anti-Marcellus Shale activists. Defendants' Denial Letter contravenes the clear mandates of the federal Natural Gas Act ("NGA") as particularly set forth in the Amendments to the NGA, which were part of the Energy Policy Act of 2005. One of the principal policy goals of the NGA is to provide for the development of a stronger national energy infrastructure, yet the Defendants, at the behest of the Governor's Office, have thus far thwarted these goals by making an arbitrary and capricious decision.

2. Consistent with the jurisdictional provisions of the NGA, Constitution has filed an appeal with the United States Court of Appeals for the Second Circuit seeking expedited relief and asserting that Defendants' Denial Letter is arbitrary and capricious and constitutes an abuse of discretion because, among other things, the Denial represents an improper collateral attack on the Certificate of Public Convenience and Necessity ("Certificate Order") issued by the Federal Energy Regulatory Commission ("FERC") on December 2, 2014. The Certificate Order, and the Order Denying Rehearing of the Certificate Order, are attached hereto as Exhibit A. The Denial Letter is attached hereto as Exhibit B.

3. Constitution separately brings this action seeking declaratory relief in this Court because Defendants not only denied the 401 WQC on April 22, 2016, but they also improperly preserved for themselves the "right" to later act on various New York state permits which are preempted by Second Circuit law under the decision of *National Fuel Gas Supply Corp. v. Public Service Comm'n of the State of New York*, 894 F.2d 571 (2d Cir. 1990), and exempted

under the Clean Water Act (“CWA”). On information and belief, Defendants’ wrongful assertion that the pending other permits are required is designed to give them later options to delay and stop Constitution’s interstate pipeline project, all in contravention of the express authorizations of FERC, the mandates of the NGA to avoid subjecting project applicants to “death by a thousand cuts” via multiple inconsistent approval review processes, and the Supremacy Clause of the United States Constitution.

Procedural Background

4. This action arises from attempts by Defendants to collaterally attack the Certificate Order of FERC approving the Constitution Pipeline Project (the “Interstate Project”) on December 2, 2014¹ through the wrongful denial of the 401 WQC and their wrongful assertion that certain state permits (the “State Permits”), referenced in footnote 3 of the Denial Letter, and coverage under the State Pollutant Discharge Elimination System (“SPDES”) General Permit, referenced on page 2 of the Denial Letter, are required for the Interstate Project.² Defendants’ actions expressly conflict with, and thwart, FERC’s certification process.

5. Long before the issuance of the Denial Letter, Defendant NYSDEC intervened as a party in the FERC proceedings for the Interstate Project. Certificate Order ¶ 17.

¹ *Constitution Pipeline Co.*, 149 FERC ¶ 61,199 (Dec. 2, 2014), available in FERC Docket No. CP13-499-000; *Constitution Pipeline Co.*, 154 FERC ¶ 61,046 (Jan. 28, 2016) (Order denying rehearing), available in FERC Docket No. CP13-499-000.

² Constitution submitted permit applications to NYSDEC related to: Freshwater Wetlands (Application ID: 0-9999-00181/00010), Water Withdrawal (Application ID: 0-9999-00181/00011), Excavation and Fill in Navigable Waters (Application ID: 0-9999-00181/00012), Stream Disturbance (Application ID: 0-9999-00181/00013). It also applied for coverage under the State Pollutant Discharge Elimination System Stormwater General Permit for Construction Activities by submitting a Notice of Intent and Stormwater Pollution Prevention Plan.

6. Defendant NYSDEC filed comments with FERC during the proceedings and advocated for an alternate route for the Interstate Project through New York State called “Alt. M.” FERC specifically rejected that alternate route.³ Significantly, Defendant NYSDEC never sought rehearing, nor appealed FERC’s denial of the Alt. M route.

7. NYSDEC also filed comments with FERC regarding wetlands mitigation, stream crossing methods, and water quality issues.

8. On Earth Day, April 22, 2016, over 15 months after Constitution received its FERC Certificate Order (which rejected Defendant NYSDEC’s “Alt. M,” and other alternate route proposals), NYSDEC denied Constitution’s application for a 401 WQC under the CWA for, among other reasons, an alleged failure to provide sufficient information about alternate routes already rejected by FERC, and stated in footnote 3 of the Denial Letter an intention to separately act later on the State Permits.

9. Constitution is challenging NYSDEC’s denial of the 401 WQC in the United States Court of Appeals for the Second Circuit in a petition for review that was filed on May 16, 2016.⁴ The NGA provides for expedited review of such actions, and Constitution expects to file imminently with the Second Circuit a motion for expedited consideration of its petition. *See* 15 U.S.C. § 717r(d)(5).

³ *See* Final Environmental Impact Statement at Section 3.4.1.2, available in FERC Docket No. CP13-499-000, excerpts attached hereto as Exhibit C; Certificate Order ¶¶ 108-10.

⁴ Section 19(d) of the NGA establishes “original and exclusive jurisdiction” in the United States Courts of Appeals over orders or actions of a “State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval . . . required under federal law, other than the Coastal Zone Management Act of 1972.” 15 U.S.C. § 717r(d)(1).

10. The NGA preempts state and local regulation of interstate natural gas pipelines, including the State Permits. *See, e.g., Islander E. Pipeline Co., LLC v. Connecticut Dep't of Env'tl. Prot.*, 482 F.3d 79, 84 (2d Cir. 2006); *Nat'l Fuel Gas Supply Corp.*, 894 F.2d at 579.

11. NYSDEC required Constitution to apply for the State Permits as a package with the 401 WQC. As with its insistence to seek to revisit the pipeline route long after it had been established by FERC (the federal agency with exclusive jurisdiction to establish such route), NYSDEC declared in a letter dated October 21, 2013 that it would not process the 401 WQC without also processing together the preempted State Permits. *See* NYSDEC Letter dated October 21, 2013, attached hereto as Exhibit D.

12. NYSDEC's October 21, 2013 letter admits that if "State permitting . . . thwarts the FERC licensing process," then it presents a "conflict with NGA licensing provisions."

13. NYSDEC is exceeding its authority under the CWA, ignoring express exemptions under the CWA, and contravening the NGA by requiring Constitution to obtain the State Permits and SPDES General Permit coverage before commencing construction of the Interstate Project.

14. On information and belief, NYSDEC not only denied the 401 WQC on Earth Day 2016, but also decided for the *first time* to separate and delay action on the State Permits, contrary to its approach throughout the permitting process.

15. Because Constitution's federally authorized Interstate Project is being subjected to preempted state permitting processes erected by Defendants, Constitution has suffered and continues to suffer justiciable harm. The State Permit process and the State Permits create an imminent risk of delay to the Interstate Project schedule.

16. The past, present, and future harms Constitution has suffered, continues to suffer, and will suffer as a result of Defendants' actions form the basis of a real case or controversy.

17. Constitution seeks from this Court equitable relief in the form of a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that the State Permits are preempted under the NGA and that they cannot be used as a barrier to construction of the Interstate Project, and that Constitution is exempt from NYSDEC's State Pollution Discharge Elimination System Permit under the CWA.

18. There is no administrative or other remedy under the NGA or CWA that Constitution may use to enjoin the unlawful executive action of the NYSDEC, and there is no bar to this action under the NGA.

The Parties

19. Plaintiff Constitution is a limited liability company formed under the laws of the State of Delaware, and is jointly owned by Williams Partners Operating, LLC, Cabot Pipeline Holdings, LLC, Piedmont Constitution Pipeline Company, LLC, and WGL Midstream CP, LLC. Williams Pipeline Services LLC will be the operator of the new proposed pipeline.

20. Defendant NYSDEC is an agency of the State of New York. Its central office is located at 625 Broadway, Albany, New York 12233.

21. Defendant Basil Seggos ("Seggos") is the Acting Commissioner of NYSDEC. On information and belief, Seggos maintains his main office at 625 Broadway, Albany, New York 12233. On information and belief, Seggos previously served as Deputy Secretary for the Environment and Assistant Secretary for the Environment in Governor Cuomo's administration before being appointed Acting Commissioner of NYSDEC in October 2015. On information and belief, Seggos is a citizen of the State of New York. Seggos is sued here in his official capacity.

22. Defendant John Ferguson ("Ferguson") is a Chief Permit Administrator, NYSDEC. On information and belief, Ferguson maintains his main office at 625 Broadway,

Albany, New York 12233. On information and belief, Ferguson is a citizen of the State of New York. Ferguson is sued here in his official capacity.

Jurisdiction and Venue

23. Jurisdiction over this action is founded upon 28 U.S.C. § 1331, as this dispute arises under the NGA, 15 U.S.C. §§ 717-717z, and the CWA, 33 U.S.C. § 402.

24. Venue is proper in the Northern District of New York under 28 U.S.C. § 1391(b), because the property affected is in, the acts complained of occurred in, and the majority of defendants are located in this district.

Factual Background

A. The Interstate Pipeline Project

25. Constitution received authorization from FERC on December 2, 2014 for the Interstate Project, which includes the construction of approximately 124 miles of 30-inch diameter natural gas pipeline and associated equipment and facilities in Pennsylvania and New York. Certificate Order ¶ 6.

26. The Interstate Project is designed to provide up to 650,000 dekatherms per day of clean-burning natural gas and is fully subscribed by Project shippers, as demonstrated by the binding contracts for firm transportation service Constitution has entered into with Cabot Oil & Gas Corporation and Southwestern Energy Services Company. Certificate Order ¶¶ 1, 8.

27. Constitution has made a substantial investment to date on the Interstate Project, expending more than \$396 million.

B. The FERC Review Process and Federal Authorizations

28. FERC is an independent federal agency that, among other things, regulates the construction and siting of interstate natural gas facilities and the interstate transmission of natural gas.

29. Under the NGA, FERC analyzes and determines whether an interstate natural gas pipeline project is in the “public convenience and necessity.” 15 U.S.C. § 717f(c). Additionally, under the National Environmental Policy Act, FERC, in its capacity as lead agency, analyzes each interstate natural gas project to determine whether the project is a “major Federal action[] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C)(i).

30. FERC requires preparation of an Environmental Impact Statement when it believes that a proposed action constitutes a major federal action significantly affecting the quality of the human environment. 18 C.F.R. § 380.6.

31. Here, FERC conducted a comprehensive and exhaustive review of the Interstate Project for over two years, beginning in May 2012, in a pre-filing proceeding (FERC Docket No. PF12-9-000) and a certificate application review process (FERC Docket No. CP13-499-000).

32. FERC issued a 400-page Draft Environmental Impact Statement on February 12, 2014 (FERC Docket No. CP13-499-000).

33. NYSDEC was a party to the FERC proceedings, and sent at least nine detailed and extensive letters to FERC commenting on the Interstate Project. NYSDEC’s comment letters are attached hereto as Exhibit E.

34. NYSDEC commented to FERC on the Interstate Project during pre-filing by letters dated:

- November 7, 2012 (a six-page comment letter raising comments about the alternative route preferred by NYSDEC, potential impacts of “water quality resources, fisheries, and wetlands,” stream crossing issues and NYSDEC’s preferred stream crossing methodology, and cumulative impacts);
- March 29, 2013 (an eight-page comment letter); and
- May 28, 2013 (a three-page comment letter with a thirty-five page attachment on NYSDEC’s Best Management Practices for Gas Transmission Lines, which comments in detail on stream crossing approaches and potential impacts on wetlands and waters).

35. NYSDEC commented on the formal application for the Interstate Project by letters dated July 17, 2013 and September 25, 2013. NYSDEC’s July 17, 2013 letter, which spanned seven pages, commented about stream crossings, wetlands, stormwater runoff and erosion, and cumulative impacts. NYSDEC’s September 25, 2013 letter, which was two pages in length, expressly commented and advocated for further consideration of the I-88 routing for the Interstate Project (later referred to in NYSDEC’s Denial Letter as Alternative M).

36. Thereafter, and following FERC’s issuance of the Draft Environmental Impact Statement for the Interstate Project, NYSDEC commented on the Draft Environmental Impact Statement by letters dated:

- March 24, 2014 (a three-page letter urging FERC to conduct additional studies of impacts on water and resources of the State of New York as part of the Draft Environmental Impact Statement);

- April 7, 2014 (a ten-page letter with multiple attachments advocating for selection of the Alternative M route for the Interstate Project);
- April 30, 2014 (a two-page letter); and
- May 14, 2014 (a two-page letter).

37. At the time of NYSDEC's comments on the Draft Environmental Impact Statement, Constitution's application for the 401 WQC and the State Permits had been pending since on or about August 22, 2013.

38. Although Constitution's submissions to FERC included an Environmental Construction Plan that outlines specific best management practices and mitigation measures with respect to erosion and sediment control, wetlands, and surface waters, NYSDEC stated in its April 7, 2014 letter to FERC that NYSDEC staff did not have "sufficient time to conduct a thorough review of the State specific Environmental Construction Plans (ECPs); however, staff plans to submit supplemental comments to address any issues of concern in the ECP and to provide alternate recommendations for Best Management Practices (BMPs) if warranted." *See* Final Environmental Impact Statement, Volume 3, Appendix S Part 2 at S-110 to S-120 (containing state agency comments), available in FERC Docket No. CP13-499-000, excerpt attached hereto as Exhibit C. In its comments on the Draft Environmental Impact Statement, NYSDEC did not reference or incorporate its earlier comments on the ECP filed in the pre-filing process.

39. As set forth above, following its April 7, 2014 comment letter, NYSDEC subsequently submitted two additional comment letters to FERC (on April 30, 2014 and May 14, 2014). However, neither of these comment letters addressed the Environmental Construction Plan. *See* Final Environmental Impact Statement, Volume 3, Appendix S Part 2 (containing state

agency comments), available in FERC Docket No. CP13-499-000, excerpts attached hereto as Exhibit C.

40. On October 24, 2014, FERC staff issued a 450-page Final Environmental Impact Statement, which concluded that *any adverse environmental impacts that would result from the Interstate Project “would be reduced to less than significant levels with the implementation of Constitution’s . . . proposed mitigation and the additional measures recommended by staff in the final EIS.”* See Final Environmental Impact Statement at 1, available in FERC Docket No. CP13-499-000 (emphasis added).

41. The Final Environmental Impact Statement examined the Interstate Project’s anticipated impact on geology, *wetlands*, *vegetation*, *wildlife and aquatic resources*, special status species, land use, recreation, special interest areas, visual resources, socioeconomics, cultural resources, air quality, noise, reliability, safety and *cumulative impacts*. See generally Final Environmental Impact Statement, available in FERC Docket No. CP13-499-000 , excerpts attached hereto as Exhibit C. FERC’s Final Environmental Impact Statement also evaluated routing alternatives for the Interstate Project, including NYSDEC’s comments on alternative routes, as well as compliance and mitigation measures, and other permitting and approval requirements.

42. FERC issued the Certificate Order on December 2, 2014. Certificate Order at 1 (Exhibit A hereto).

43. In the Certificate Order, FERC agreed with the conclusion of the Final Environmental Impact Statement and found that “if constructed and operated in accordance with applicable laws and regulations, the projects will result in some adverse environmental impacts, but . . . *these impacts will be reduced to less-than-significant levels with the implementation of*

*Constitution's and Iroquois' proposed mitigation and staff's recommendations (now adopted as conditions in the attached Appendix A of the order)."*⁵ Certificate Order ¶ 3 (emphasis added) (Exhibit A hereto).

44. FERC also concluded that "the public convenience and necessity requires approval of Constitution's proposal, as conditioned in this order," and established an in-service deadline of December 2, 2016. Certificate Order ¶ 29; *id.* at ¶ 46 (Exhibit A hereto).

45. The Certificate Order is conditioned on, among other things, Constitution's Environmental Construction Plan, which comprehensively addresses "Agricultural Mitigation, ***Wetland / Waterbody Construction and Mitigation, Erosion and Sediment Controls, Stormwater Pollution Prevention***, and Revegetation and Post-Construction Monitoring." *See* Certificate Order, Appendix A, ¶ 1 *and* Environmental Construction Plan, Section 1.2 (emphasis added), available in FERC Docket No. CP13-499-000, and attached hereto as Exhibit A.

46. The Certificate Order ultimately makes the following finding:

We find that the benefits that the Constitution Pipeline Project will provide to the market outweigh any adverse effects on existing shippers, other pipelines and their captive customers, and on landowners and surrounding communities. Consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, we find that the public convenience and necessity requires approval of Constitution's proposal, as conditioned in this order.

Certificate Order ¶ 29 (Exhibit A hereto).

⁵ At the same time that Constitution filed its application with FERC, Iroquois Gas Transmission System, L.P. ("Iroquois") filed an application with FERC in Docket No. CP13-502-000 for authorization to construct and operate compression facilities and modify existing facilities at its Wright Compressor Station in Schoharie County (the "Wright Interconnection Project"). Certificate Order ¶ 2 (Exhibit A hereto). Iroquois also sought authorization to abandon by lease to Constitution the incremental capacity associated with the project. *Id.* The Certificate Order applies to, and refers to, both the Constitution Pipeline Project and the Wright Interconnection Project.

47. Moreover, the Certificate Order provides:

*Any state or local permits issued with respect to the jurisdictional facilities authorized herein **must be consistent with the conditions of this certificate.** The Commission encourages cooperation between interstate pipelines and local authorities. However, **this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.***

Certificate Order ¶ 147 (emphasis added) (Exhibit A hereto).

48. The Certificate Order may be challenged only by the filing of a rehearing request with FERC. 15 U.S.C. § 717r(a).

49. Stop the Pipeline, Catskill Mountainkeeper, Clean Air Council, Delaware-Otsego Audubon Society, Delaware Riverkeeper Network, Riverkeeper, Inc., Sierra Club, Capital Region Board of Cooperative Educational Services, Allegheny Defense Project, Damascus Citizens for Sustainability, Henry S. Kernan Trust, Patricia Kernan, Bruce Kernan, and Catherine Kernan filed rehearing requests with FERC, which FERC denied. *Constitution Pipeline Co.*, 154 FERC ¶ 61,046 (Jan. 28, 2016).

50. Catskill Mountainkeeper, Inc., Clean Air Council, Delaware-Otsego Audubon Society, Inc., Riverkeeper, Inc., Sierra Club and Stop the Pipeline have challenged FERC's issuance of the Certificate Order in the United States Court of Appeals for the Second Circuit, which is pending at Docket Numbers 16-345 and 16-361.

51. *Neither New York State nor NYSDEC appealed or challenged the Certificate Order and neither filed a rehearing request.*

52. The Certificate Order remains valid and enforceable. *See* 15 U.S.C. § 717r.

53. The Certificate Order requires Constitution to obtain all applicable federal authorizations prior to commencing construction of facilities for the Interstate Project. Certificate Order ¶¶ 117, 121, Environmental Condition 8.

54. Among the federal authorizations required for the Interstate Project is a Section 404 permit under the Federal Water Pollution Prevention and Control Act (commonly known as the CWA) from the United States Army Corps of Engineers. A Section 404 permit authorizes the discharge of dredged or fill material into navigable waters. 33 U.S.C. § 1344(a).

55. Under Section 401 of the CWA, any applicant for a federal Section 404 permit to construct or operate a facility that may result in a discharge to navigable waters must provide the federal permitting agency with “a certification from the State in which the discharge originates . . . that any such discharge will comply with” applicable state water quality standards (a 401 WQC). 33 U.S.C. § 1341(a)(1).

56. The Pennsylvania Department of Environmental Protection issued a 401 WQC to Constitution for the Pennsylvania portion of the Interstate Project on September 5, 2014.

C. The NYSDEC Review Process and Permits

1. Initial August 2013 Application

57. Constitution had initial discussions with NYSDEC regarding its review of the Interstate Project beginning in 2012.

58. On November 7, 2012, NYSDEC stated in a letter to FERC that NYSDEC “expected” Constitution to apply for the State Permits. *See* Exhibit E.

59. On or about August 22, 2013, two years and eight months before NYSDEC issued its Denial Letter, Constitution filed its initial application for a 401 WQC. Constitution included in its 401 WQC application an application for State Permits under NYSDEC’s Protection of

Waters and Freshwater Wetlands programs with NYSDEC because NYSDEC advised Constitution that it would not process the Section 401 WQC application without also processing together the State Permits.

60. Constitution's application under NYSDEC's Water Withdrawal program was submitted in April 2014.

61. In the cover letter with its August 2013 application, Constitution stated that the application is being submitted:

subject to an express reservation of rights that the NGA preempts New York permitting and procedural requirements under the NYECL and/or its implementing regulations at Title 6 of the New York Code of Rules and Regulations (NYCRR). ***Nothing included in Constitution's Joint Application should be construed as an admission by Constitution, implicit or otherwise, that the proposed Project must obtain any state permits or approvals.***

Constitution Letter dated August 22, 2013, attached hereto as Exhibit F (emphasis added).

62. In its response letter dated October 21, 2013, NYSDEC confirmed its position to Constitution's counsel that it would not process the Section 401 WQC application without also processing the State Permits. NYSDEC Letter dated October 21, 2013, attached hereto as Exhibit D.

63. NYSDEC's position exceeds its limited authority and is inconsistent with the provisions of the NGA designed to avoid subjecting interstate natural gas pipeline applicants to "death by a thousand cuts" through multiple state review processes of a federally certificated project.

64. Without prejudice to its position that the State Permits were preempted by the NGA, Constitution nevertheless applied for the State Permits in good faith and cooperated with NYSDEC over the multi-year review process.

65. The State Permits are preempted by federal law, and Defendants' ongoing failure to recognize this creates an actionable case or controversy.

2. Constitution's Multiple Technical Submissions and the Notice of Complete Application

66. Over the nearly four-year review process with NYSDEC, Constitution made a multitude of detailed technical submissions to NYSDEC, including a comprehensive Responsiveness Summary that responded to public comments concerning Constitution's application for the 401 WQC and State Permits.

67. NYSDEC issued a Notice of Complete Application for the 401 WQC and State Permits on December 24, 2014.

68. NYSDEC instructed Constitution to resubmit its application for the 401 WQC in late April 2015. The basis for this request was revealed by NYSDEC in its April 29, 2015 press release, which said "[d]ue to the extended winter preventing necessary field work by staff, DEC requested additional time to complete its review of any potential impacts on wetlands and water quality." See NYSDEC Press Release, attached hereto as Exhibit G.

69. The April 29, 2015 press release further admitted that "*[a]s requested and to continue the substantial progress reviewing the application and supporting documents that has been made to date, the applicant withdrew and subsequently resubmitted its application with no changes or modifications.*" (emphasis added). NYSDEC Press Release, attached hereto as Exhibit G.

70. NYSDEC also stated in the April 29, 2015 press release that "DEC maintains the authority to review applications for specific permits and approvals, including a Water Quality Certification, a Protection of Waters permit, a Water Withdrawal permit and a Freshwater

Wetlands permit for state-protected wetlands and adjacent areas.” NYSDEC Press Release, attached hereto as Exhibit G.

3. Public Hearings, Public Comments and Responsiveness Summary

71. NYSDEC held three public hearings on Constitution’s application for the 401 WQC and State Permits on January 12-14, 2015.

72. Following the two extended New York public comment periods on Constitution’s permit application, Constitution prepared and submitted to the NYSDEC a Responsiveness Summary that addressed all of the thousands of comments that were raised during the public comment period, including a significant number of comments that had already been submitted and addressed by FERC.

73. The Responsiveness Summary included responses to myriad comments concerning, among other things, water quality issues, wetlands, stream crossings, alternatives, cumulative impacts, burial depth, and blasting.

74. As part of this process, NYSDEC identified certain public comments that it wanted to ensure were included in the Responsiveness Summary, all of which Constitution addressed and specifically identified in the Responsiveness Summary.

75. On July 8, 2015, NYSDEC reported to Constitution that the agency had everything it needed to respond to the public comments it had received, and that NYSDEC did not need anything further relative to the Responsiveness Summary.

76. On information and belief, as of July 2015, the Responsiveness Summary was sufficient for NYSDEC’s permitting needs, fully addressed all comments raised during the three public hearings NYSDEC held for the Interstate Project, and was ready for issuance with final permits once the Governor’s Office gave NYSDEC the authority to do so.

4. Ongoing Dialogue Between NYSDEC and Constitution

77. NYSDEC instructed Constitution to take actions that involved changes to the Interstate Project plans and timing and submittal of information to NYSDEC. These actions were specified by NYSDEC during the course of an ongoing dialogue between Constitution and NYSDEC beginning in 2012 and continuing through August of 2015.

78. In 2014, Constitution and NYSDEC staff had almost bi-monthly calls to discuss the status of Constitution's application for the 401 WQC and State Permits

79. During the first half of 2015, Constitution and NYSDEC staff had weekly calls to discuss the status of Constitution's application for the 401 WQC and State Permits.

80. During this time, NYSDEC identified potential impediments to Constitution's obtaining the 401 WQC and State Permits and communicated to Constitution how each of these impediments could be remedied.

81. Constitution addressed each of these potential impediments in the manner recommended by NYSDEC.

82. Among other things, Constitution rerouted the Interstate Project around a forest and wetland area maintained by the Kernan family in Delaware County, New York (the "Kernan Reroute"), pursuant to requests made by NYSDEC in connection with its review of the application for the 401 WQC and State Permits.

83. In undertaking the Kernan Reroute and other changes to the Interstate Project as originally planned and approved by FERC, Constitution incurred significant monetary expenses.

84. Christopher Hogan ("Mr. Hogan"), Chief of the Major Project Management Unit in the Division of Environmental Permits at NYSDEC, advised representatives of Constitution

that the Kernan Reroute and Constitution's purchase of Canadargo Lake resolved the outstanding wetlands issues from NYSDEC's perspective.

85. During a conference call that occurred on June 10, 2015, Mr. Hogan informed representatives from Constitution that NYSDEC was pleased with Constitution's actions with respect to the Kernan Reroute, and that NYSDEC was striving for some time in July to get everything issued.

86. Additionally, Constitution amended its planned approach to trenchless crossings of streams pursuant to requests made by NYSDEC in connection with its review of the application for the 401 WQC and State Permits.

87. Following issuance of the Notice of Complete Application in December of 2014, NYSDEC expressed a preference for trenchless stream crossing methods and provided to Constitution a matrix of stream crossing issues they wished Constitution to address.

88. During the course of discussions with Constitution, NYSDEC provided Constitution a list of twenty stream crossings for which NYSDEC wished Constitution to cross using trenchless methods to the extent geotechnical and engineering testing and analysis showed trenchless crossings to be feasible.

89. NYSDEC later supplemented that list with six additional streams, resulting in a total of twenty-six stream crossings for which trenchless stream crossings were preferred to the extent feasible.

90. Thereafter, following field visits, NYSDEC agreed to remove four streams from its list of streams crossings that it wished Constitution to cross using trenchless methods, leaving a total of twenty-two stream crossings.

91. Constitution committed to use a trenchless stream crossing method at those twenty-two stream crossings to the extent feasible.

92. Pursuant to NYSDEC's requests, Constitution delivered an updated trenchless stream crossing matrix to NYSDEC on June 30, 2015.

93. Constitution addressed each of the concerns in the matrix provided by NYSDEC and added environmental, cost and safety concerns associated with the trenchless stream crossings.

94. During a weekly status conference call between NYSDEC and representatives of Constitution on July 8, 2015, NYSDEC represented that Constitution's updated trenchless stream crossing matrix was sufficient for review and that NYSDEC was busy working on the draft permits. This was the last weekly call held between Constitution and NYSDEC as all issues had been resolved and there was nothing further to discuss.

95. Constitution thereafter submitted a revised Wetland and Waterbody Impacts Table as part of the Joint Application to the Army Corps and NYSDEC, which summarizes the information contained in the Application for each wetland and each of the 268 waterbodies crossed by the Interstate Project. This Application provided survey information for all features. A copy of that Table is attached hereto as Exhibit H. Attached as Exhibit I is a sample of the information included in the Application for waterbody and wetland crossings. Waterbody crossing drawings include profiles showing the depth of pipe for each crossing.

96. After Constitution resolved each of the potential impediments raised by NYSDEC, NYSDEC staff communicated to Constitution that they would recommend issuance of the 401 WQC and State Permits to the Governor's Office and that the 401 WQC and State Permits would issue, subject to the Governor's Office approval.

97. In fact, Constitution already had seen the draft conditions for the 401 WQC on April 21, 2015, and had meetings, conference calls, and email exchanges thereafter with NYSDEC staff to discuss the draft conditions.

98. Iroquois also saw the draft conditions for Constitution's 401 WQC.

99. NYSDEC, through its representatives, made representations to Constitution that NYSDEC staff was recommending that the 401 WQC and State Permits be issued in July 2015 or August 2015.

100. On or about July 28, 2015, Edward McTiernan ("Mr. McTiernan"), NYSDEC's then-Deputy Commissioner and General Counsel, advised Constitution's representatives that subject to approval from the Governor's Office, he anticipated the 401 WQC and State Permits would issue on August 7, 2015.

101. On or about July 29, 2015, Mr. Hogan informed Constitution's representatives that NYSDEC then-Acting Commissioner Marc Gertsman had approved a draft 401 WQC and that the expected issuance date of the final version was July 31, 2015.

102. On information and belief, on or about July 30, 2015, NYSDEC's staff completed the draft 401 WQC and State Permits and forwarded same to Mr. McTiernan for final review and approval.

103. On or about July 30, 2015, Mr. Hogan represented to Constitution that NYSDEC's Executive Staff was slated to brief Governor Cuomo's office regarding the draft 401 WQC and State Permits the following week.

104. On August 3, 2015, Mr. Hogan advised Constitution's representatives that NYSDEC had no remaining issues with Constitution's application for a 401 WQC, and that Mr. McTiernan had signed off on the draft 401 WQC.

105. On or about August 4, 2015, Mr. Hogan advised Constitution's representatives that Mr. McTiernan had alerted the Governor's Office that Constitution's 401 WQC was ready to issue.

106. On or about August 7, 2015, Mr. Hogan represented that although NYSDEC was ready to issue the 401 WQC and State Permits, Governor Cuomo's office was not.

107. On August 11, 2015, Mr. McTiernan advised that NYSDEC was continuing to work on the 401 WQC and State Permits but no further information was needed from Constitution.

108. Due to the foregoing representations made by NYSDEC, Constitution reasonably believed that it had provided NYSDEC with all information necessary for the 401 WQC and State Permits to issue and, accordingly, took no further action with respect to its application.

109. In October 2015, Governor Cuomo appointed Defendant Seggos as Acting Commissioner of NYSDEC. On information and belief, Seggos previously served as Deputy Secretary for the Environment and Assistant Secretary for the Environment in New York Governor Andrew Cuomo's administration.

110. Despite numerous phone calls to NYSDEC to inquire about the status of its application and whether NYSDEC required any additional information, Constitution heard nothing further from NYSDEC or Governor Cuomo's office until NYSDEC's Denial Letter decision, which occurred approximately nine months later.

111. NYSDEC based its denial decision on Constitution's alleged failure to provide necessary information in connection with its application for a 401 WQC.

112. Despite the fact that Constitution routinely called to inquire if NYSDEC needed any additional information, NYSDEC never asked for additional information during the nine-month period from August 2015 to April 2016.

113. By limiting its denial to the 401 WQC application, NYSDEC has signaled an intent to act separately on the State Permits, which could further delay and interfere with construction of the federally-authorized Interstate Project.

D. The Time Sensitivity of the Interstate Project

114. NYSDEC is well aware that the Certificate Order intended that the Interstate Project be completed and placed in-service by December 2, 2016. Certificate Order at 46.

115. Constitution has obtained all federal authorizations necessary to begin construction of the Interstate Project with the exception of the Section 404 permit from the Army Corps, which cannot issue until a 401 WQC is issued or waived. On information and belief, Constitution believes that either issuance of a 401 WQC or a determination that New York's "right" to do so has been waived is the only item preventing issuance of a Section 404 permit from the Army Corps.

116. In response to the Denial Letter, on May 11, 2016, the Army Corps issued a denial of the Section 404 permit without prejudice, indicating that the application for the Section 404 permit would be in suspension for a period of twelve months, or until May 11, 2017.

117. In order to move forward with the Interstate Project in a timely way to provide the public benefits from the Project, Constitution will have to seek an extension from FERC of the December 2, 2016 date for the Interstate Project completion, since the Denial Letter has caused Constitution to miss important time windows for construction during 2016.

118. If Constitution can resolve the Denial Letter issues through the appeal filed with the United States Court of Appeals for the Second Circuit by the fall of 2016, and is not subjected to further delay and litigation by the State's improper imposition of the State Permits and SPDES General Permit, Constitution could finish the tree clearing necessary for the Interstate Project in compliance with environmental restrictions and could complete construction by December 2017.

119. When coupled with NYSDEC's denial of Constitution's Section 401 Certification, the uncertainty surrounding the State Permits and SPDES General Permit creates a strong likelihood of further damaging delay.

120. A strong likelihood of further delay and an expectation of further delay constitute an imminent harm to Constitution. *See Volvo N. Am. Corp. v. Men's Int'l Prof'l Tennis Council*, 857 F.2d 55, 63 (2d Cir. 1988) ("In some instances, the prospect or fear of future events may have a real impact on present affairs . . . such that a preemptive challenge is ripe.") (internal quotations omitted).

COUNT I
DECLARATORY RELIEF – NATURAL GAS ACT

121. The foregoing paragraphs are incorporated herein by reference.

122. FERC's Certificate Order for the Interstate Project "encourages cooperation between interstate pipelines and local authorities," but does not permit "state and local agencies, through application of state or local laws" to "prohibit or unreasonably delay the construction or operation of facilities approved by" FERC. Certificate Order ¶ 147 (Exhibit A hereto).

123. Constitution submitted permit applications to NYSDEC related to: Freshwater Wetlands (Application ID: 0-9999-00181/00010), Water Withdrawal (Application ID: 0-9999-

00181/00011), Excavation and Fill in Navigable Waters (Application ID: 0-9999-00181/00012), Stream Disturbance (Application ID: 0-9999-00181/00013).

124. FERC's regulations require submittal of Resource Reports, including Resource Report 1, which includes in its first section a description of the project purpose and need. FERC also requires submittal of environmental reports related to, among other things, water use and quality, fish, wildlife and vegetation, cultural resources, socioeconomics, geological resources, soils, land use, recreation and aesthetics, air and noise quality, cumulative impacts, alternatives, and reliability and safety. These reports comprehensively addressed the issues that NYSDEC attempts to raise through its state regulations and permitting scheme. *Compare* 18 CFR §§ 380.12 and Appendix A to 18 CFR Part 380 with Environmental Conservation Law (ECL) Article 3, Title 3; ECL Article 15; ECL Article 24; 6 NYCRR Parts 601 (Water Withdrawal Permitting), 608 (Protection of Waters), 621 (Uniform Procedures), and 663 (Freshwater Wetlands).

125. By requiring the State Permits, NYSDEC is attempting to regulate the same issues directly and exclusively regulated by FERC, and those State Permits are preempted as applied to the Interstate Project. *See Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 308 (1988); *National Fuel Gas Supply Corp.*, 894 F.2d at 579 (determining that FERC's direct consideration of issues sought to be regulated by the states is "more than enough to preempt state regulation").

126. FERC expressly considered the environmental data set forth in Constitution's environmental resource reports before issuing a certificate of public convenience and necessity. Certificate Order, Appendix A, ¶ 1.

127. NYSDEC did not object to FERC's conclusions and approval, nor did it seek rehearing.

128. Defendant NYSDEC's failure to seek rehearing of the Certificate Order despite its party status constitutes a waiver of its right to object to this federally certificated Interstate Project, and NYSDEC may not artificially impose additional hurdles by requiring the State Permits in order for Constitution to proceed with the Interstate Project.

129. The NGA preempts state and local regulation of interstate natural gas pipelines. *See, e.g., Islander E. Pipeline Co., LLC*, 482 F.3d at 84; *Nat'l Fuel Gas Supply Corp.*, 894 F.2d at 579.

130. A state's site-specific environmental review is field preempted by FERC's approval of a natural gas pipeline project. *National Fuel Gas Supply Corp.* 894 F.2d at 576.

131. Field preemption applies when a "federal regulatory scheme is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *NE Hub Partners, L.P. v. CNG Transmission Corp.*, 239 F.3d 333, 348 (3d Cir. 2001).

132. Congress intended to preempt the states from maintaining their own environmental supervision of FERC-authorized projects. *National Fuel Gas Supply Corp.*, 894 F.2d at 575; *see also Northern Natural Gas Co. v. Iowa Utilities Board*, 377 F.3d 817, 823 (8th Cir. 2004); *Colorado Interstate Gas Co. v. Wright*, 707 F. Supp. 2d 1169, 1171 (D. Kan. 2010).

133. A state cannot apply its regulations in a piecemeal fashion in each case to substantive areas it deems unregulated by the federal government. *National Fuel Gas Supply Corp.*, 894 F.2d at 578; *Islander East Pipeline Co., LLC v. Blumenthal*, 478 F. Supp. 2d 289, 295 (D. Conn. 2007).

134. FERC's direct consideration of issues sought to be regulated by the states is "more than enough to preempt state regulation." *National Fuel Gas Supply Corp.*, 894 F.2d at 579; *see Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 308 (1988).

135. A state's environmental review of a FERC-approved pipeline is an attempt to regulate in a field exclusively occupied by federal law. *Northern Natural Gas Co. v. Iowa Utilities Board*, 377 F.3d 817, 821 (8th Cir. 2004); *Colorado Interstate Gas Co.*, 707 F. Supp. 2d at 1178; see *Schneidewind*, 485 U.S. at 306-07.

136. Even state-specific regulations that do not actually conflict with a FERC-approved project are preempted. *Northern Natural Gas Co.*, 377 F.3d at 822-23 (noting that *Schneidewind* did not rely on an actual conflict between federal and state regulations); *Colorado Interstate Gas Co.*, 707 F. Supp. 2d at 1188; *Islander East Pipeline Co., LLC v. Blumenthal*, 478 F. Supp. 2d at 294-95.

137. FERC's encouragement, and even express direction, for interstate pipelines to cooperate with state permitting authorities and apply for state-specific permits does not incidentally confer upon the states a legal authority to regulate interstate pipelines. *Colorado Interstate Gas Co.*, 707 F. Supp. 2d at 1187 n.15; *Rockies Express Pipeline v. Indiana State Natural Resources Commission*, 2010 WL 3882513 at *4 (S.D. Ind. Sept. 28, 2010).

138. It is immaterial that the ultimate review of a state's permitting requirements may result in a determination that the State Permits do not conflict with the federal regulatory scheme. *NE Hub Partners, L.P. v. CNG Transmission Corp.*, 239 F.3d 333, 342 (3d Cir. 2001).

139. Although Constitution has attempted to cooperate with NYSDEC by applying for the State Permits, Constitution's permit applications have now been pending for over two and a half years, and NYSDEC has indicated a specific intent to take action on those State Permits in the Denial Letter.

140. NYSDEC's requirements relating to the State Permits harm Constitution to the extent that they are (1) preempted by federal law and (2) delay the Interstate Project.

141. Constitution asks the Court for a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that NYSDEC's permitting requirements related to Freshwater Wetlands, Water Withdrawal, Excavation and Fill in Navigable Waters, Stream Disturbance are preempted under the NGA.

COUNT II
DECLARATORY RELIEF – CLEAN WATER ACT

142. The foregoing paragraphs are incorporated herein by reference.

143. The CWA creates a statutory exemption from National Pollutant Discharge Elimination System (“NPDES”) permitting requirements for uncontaminated discharges of stormwater runoff from all field activities or operations associated with natural gas transmission facilities. 33 U.S.C. § 1342(l)(2); 33 U.S.C. § 1362(24).

144. In New York, NYSDEC is the agency responsible for issuing NPDES permits through the SPDES program.

145. NYSDEC required Constitution to apply for coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-15-002 (“SPDES General Permit”), and to prepare a Stormwater Pollution Prevention Plan (“SWPPP”).

146. The SPDES General Permit, although labeled as a *state* permit, is administered as a NPDES permit under Federal law. *See* 40 CFR § 122.28(a)(1) (authorizing issuance of state general permits); ECL § 70-0117(6) (same); *Matter of Natural Resources Defense Council, Inc. v. New York State Dep’t of Env’tl Conservation*, 25 N.Y.3d 373, 402 (N.Y. 2015) (NYSDEC has authority to issue NPDES general permits under SPDES program).

147. The CWA provides that:

The Administrator *shall not require a permit* under this section, *nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff*

from mining operations or *oil and gas* exploration, production, processing, or treatment operations or *transmission facilities, composed entirely of flows* which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

33 U.S.C. § 1342(l)(2) (emphasis added).

148. The CWA defines the term “oil and gas exploration and production” as follows:

[A]ll field activities or operations associated with exploration, production, processing, or treatment operations, or *transmission facilities*, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.

33 U.S.C. § 1362(24) (emphasis added).

149. Section 1342(l)(2) reflects Congress’s conclusion “*that operators that use good management practices and make expenditures to prevent contamination must not be burdened with the requirement to obtain a permit.*” (emphasis added).

150. “Section 402(l)(2) creates a statutory exemption from storm water permitting requirements for uncontaminated runoff from these facilities.” *See NRDC v. United States EPA*, 526 F.3d 591, 596 (9th Cir. 2008) (quoting 55 Fed. Reg. 47990, 48029 (Nov. 16, 1990)) (emphasis added).

151. The NGA establishes a very specific procedure for environmental review. 15 U.S.C. § 717n(b).

152. FERC has promulgated detailed regulations concerning environmental review as part of applications for certificates of public convenience and necessity. *See* 18 CFR Pt. 157 and Pt. 380.

153. FERC's regulations require an applicant to prepare a number of reports for FERC consideration before a certificate is issued. Among other reports, an applicant must prepare an environmental report that addresses thirteen separate categories. These categories expressly include and address erosion and sediment control. 18 CFR § 380.12(i).

154. Constitution submitted a 360-page Environmental Construction Plan to FERC, together with 21 separate attachments, totaling over 1,700 pages, that outlines specific mitigation measures with respect to Constitution's Project-specific plans in order to avoid or adequately minimize environmental impacts, including the avoidance or minimization of impacts to surface water resources in New York. Certificate Order ¶ 77 and Appendix A, ¶ 1.

155. NYSDEC was a party to the FERC proceedings, and indicated an intention to comment on the Environmental Construction Plan for New York in its comments to the Draft Environmental Impact Statement, but did not submit any such comments or objections to the Draft Environmental Impact Statement.

156. The FERC Certificate Order conditions FERC's authorization upon Constitution's compliance with the construction procedures and mitigation measures identified in its application and supplements to FERC and as identified in the Final Environmental Impact Statement. Certificate Order, Appendix A (Environmental Conditions), ¶ 1.

157. Employing the specific mitigation measures required by the Certificate Order ensures that Constitution will employ "good management practices and make expenditures to prevent contamination," and therefore "must not be burdened with the requirement to obtain a permit." *See NRDC v. United States EPA*, 526 F.3d at 596 (quoting 55 Fed. Reg. 47990, 48029 (Nov. 16, 1990)) (emphasis added).

158. At the time of the Final Environmental Impact Statement and Certificate Order, differences existed between Constitution's Environmental Construction Plan and NYSDEC's standards for erosion and sediment control.

159. FERC reviewed and considered those deviations from New York's requirements and approved them without comment or objection from NYSDEC.

160. NYSDEC did not seek rehearing of the Certificate Order.

161. Thereafter, Constitution prepared a SWPPP as part of its application for coverage under New York's SPDES General Permit.

162. Following extensive dialogue with NYSDEC and modification to its FERC-approved Environmental Construction Plan to satisfy NYSDEC's requests, Constitution submitted a final SWPPP in conformance with New York's current Standards for Erosion and Sediment Control (a/k/a "Blue Book").

163. An owner or operator that has prepared a final SWPPP in conformance with the Blue Book and Design Manual qualifies for coverage under the SPDES General Permit and will be entitled to coverage five (5) business days from the date a complete Notice of Intent ("NOI") (electronic or paper version) is filed with the NYSDEC. SPDES General Permit, Part II.B.3.

164. On December 11, 2015, Constitution submitted a completed electronic Notice of Intent ("eNOI") for coverage under the SPDES General Permit. On December 11, 2015, Constitution received an email notification that the eNOI was successfully submitted.

165. Based on NYSDEC's review and comments to Constitution regarding Constitution's eNOI, Constitution submitted a revised eNOI on December 16, 2015. On December 16, 2015, Constitution received an email notification that its revised eNOI was successfully submitted.

166. Over four months have passed since Constitution submitted the revised eNOI.

167. To the extent that Constitution is not exempt from a requirement to obtain the SPDES General Permit under the CWA, Constitution is eligible for coverage under the SPDES General Permit. SPDES General Permit, Part I.E.

168. In the alternative, since the SPDES General Permit is exempted pursuant to Section 402(l)(2) of the CWA, 33 U.S.C. § 1342(l)(2), any demand from NYSDEC that Constitution must obtain the SPDES permit must, as a result, be based on state law, and is thus preempted.

169. NYSDEC's SPDES permit requirement harms Constitution to the extent that it is (1) exempted by federal law and (2) preempted as based on state law and (3) delays the Interstate Project.

170. Constitution asks the Court for a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that Constitution is exempt from NYSDEC's SPDES General Permit requirement, as the permit is not required under Section 402 of the CWA, or in the alternative that NYSDEC's requirement that Constitution obtain coverage under the SPDES permit be preempted as a requirement based on state law, or in the alternative, and to the extent Constitution is not exempt from NYSDEC's SPDES General Permit requirement or that the requirement is not preempted, Constitution is eligible for coverage under the SPDES General Permit.

RELIEF REQUESTED

WHEREFORE, Constitution respectfully requests judgment in its favor and an order:

- (a) declaring that that the State Permits are preempted by federal law;
- (b) declaring that Constitution is not required to obtain the State Permits in order to proceed with construction of the Interstate Project;

(c) enjoining Defendants from seeking to enforce compliance with State Permit requirements;

(d) declaring that Constitution is exempt from NYSDEC's State Pollutant Discharge Elimination System (SPDES) General Permit pursuant to Section 402(l)(2) of the Clean Water Act, 33 U.S.C. § 1342(l)(2); or in the alternative, to the extent Constitution is not exempt from NYSDEC's SPDES General Permit requirement or that the requirement is not preempted, Constitution is eligible for coverage under the SPDES General Permit;

(e) maintaining jurisdiction over this action to address any future actions by Defendants inconsistent with the Court's orders; and

(f) awarding damages, attorneys' fees, costs, and such further relief as the Court deems appropriate and just.

Respectfully submitted,

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