Case No. S160211

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

VOICES OF THE WETLANDS,

Petitioner,

v.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD; CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD – CENTRAL COAST REGION; DUKE ENERGY MOSS LANDING LLC; and DUKE ENERGY NORTH AMERICA, LLC,

Respondents.

REPLY OF PETITIONER FOR REVIEW VOICES OF THE WETLANDS

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VOICES OF THE WETLANDS

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VOICES OF THE WETLANDS

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I. INTRODUCTION

As Voices of the Wetlands ("Voices") demonstrates in its petition for review, the appellate decision in this case creates a facial conflict of authority under both federal and state law. Respondents answer with a cascade of arguments that misstate the facts, mischaracterize the case law, and manufacture complexity where none actually exists. On the Clean Water Act issues, Respondents are simply wrong in arguing that the Regional Water Quality Control Board ("Regional Board") did not utilize a cost-benefit test to determine compliance with section 316(b) of the statute. The language of the Regional Board's permit decision is crystal clear, and even the lower court acknowledged that the agency employed a cost-benefit analysis, weighing technology costs against environmental benefits. In Riverkeeper, Inc. v. EPA ("Riverkeeper II"), 475 F.3d 83 (2d Cir. 2007), the Second Circuit was emphatic that such a cost-of-technology-versus-environmental-benefit test is not permitted by section 316(b), as a matter of statutory interpretation, under any circumstances. On the procedural issues, Respondents similarly bend the facts and the law to fit their desired outcome. The contortions in which Respondents must engage to "distinguish" this case from conflicting authority are themselves ample evidence that the Court should grant review and resolve the legal uncertainties created by the lower court's decision.

II. ARGUMENT

A. There Is A Clear And Facial Conflict Between The Second Circuit's Riverkeeper Decisions And The Lower Court's Clean Water Act Holdings In This Case.

Respondents advance four unavailing arguments to explain why the lower court's Clean Water Act interpretation does not conflict with Riverkeeper II and Riverkeeper, Inc. v. EPA ("Riverkeeper I"), 358 F.3d 174 (2d Cir. 2004). They contend, inaccurately, that the legal issues here are different from Riverkeeper, that the decision below is consistent with the Second Circuit's interpretation of Clean Water Act section 316(b), that Riverkeeper II should be disregarded because it is "unsettled," and that, in any event, the lower court's contrary interpretation here is not precedential because state and federal regulations are "in flux."[1] These arguments

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[1] Respondent Dynegy (formerly Duke Energy) additionally argues that the Second Circuit's Riverkeeper decisions are not controlling in the Ninth Circuit and should not be followed. Dynegy Answer at 4. This contention is simply wrong. Pursuant to 28 U.S.C. § 2112(a)(3), the Judicial Panel on Multidistrict Litigation consolidated both Riverkeeper cases from several different circuits, including the Ninth Circuit. Riverkeeper II was originally docketed in the Ninth Circuit, but eventually transferred to the Second Circuit Riverkeeper I panel, which heard consolidated petitions from the First, Second, Fourth, Fifth, Seventh, Ninth, and D.C. Circuits. See Attachment at 1-2 (Federal Court Pacer printout showing Ninth Circuit petition docketed by Second Circuit at time of transfer). The Second Circuit is thus the only forum in which the Riverkeeper issues could have been and were resolved. Dynegy does not cite any supporting authority for its preposterous suggestion that the same issues could be relitigated to a different outcome in the Ninth Circuit.

ignore the fundamental fact that the Riverkeeper decisions are, at their heart, exhaustive and unambiguous statutory interpretation cases that define what can and cannot be considered, consistent with the plain language of the Clean Water Act, in making section 316(b) compliance determinations. A state court decision expressly allowing consideration of factors prohibited by Riverkeeper, as was the case here, is thus patently in conflict with applicable federal precedent and worthy of this Court's further attention.

1. Riverkeeper II Held as a Matter of Law that Section 316(b) Prohibits All Forms of Cost-Benefit Analysis.

Respondents try to dismiss the federal-state law conflict created by the lower court here by pointing out that the Riverkeeper decisions challenged the U.S. Environmental Protection Agency's ("EPA") new section 316(b) implementing regulations, while this case involves the Regional Board's pre-regulation exercise of "best professional judgment." Dynegy's Answer at 5; State's Answer at 4. This postural distinction is of no consequence, however. In Riverkeeper II, the Second Circuit struck down and remanded the section 316(b) regulations as violative of Clean Water Act statutory directives because, among other things, EPA (1) improperly utilized cost-benefit analysis in setting national performance standards and (2) improperly allowed a site-specific cost-benefit exemption

from those standards. See Voices' Petition at 13-14. The Court's statutory interpretation – that permitting agencies may not, as a matter of law, rely on cost-benefit – is directly applicable to the Regional Board's permitting action here, regardless of when that action occurred. Put differently, the meaning of section 316(b) today is the same as the meaning of section 316(b) in 2000, when the still-operative Moss Landing permit was granted.[2]

The Second Circuit flatly rejected the use of any cost-of-technology-versus-environmental-benefit analysis under section 316(b) as a matter of statutory interpretation, holding that such an approach simply "cannot be justified in light of Congress' directive" to consider only the best technology available. Riverkeeper II, 475 F.3d at 99. Explaining that Congress intended section 316(b) to be a technology-driving provision and that "in establishing BTA [Congress] did not expressly permit the Agency to consider the relationship of a technology's cost to the level of reduction of adverse environmental impact it produces," the Court concluded that "the statute therefore precludes cost-benefit analysis because 'Congress itself defined the basic relationship between costs and benefits.'" Id. (citing Am. Textile Mfrs. Inst., Inc. v. Donovan, 452 U.S. 490, 509 (1981)). For

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[2] Dynegy notes that the permit expired in October 2005, Dynegy Answer at 8, but the plant continues to operate on an indefinite "administrative extension" of this permit pending the State's development of a new policy for implementing section 316(b).

this reason, EPA's reliance on a cost-of-technology-versus-environmental-benefit analysis to develop national performance standards was unlawful.

Equally important – and Respondents conveniently ignore this key aspect of Riverkeeper II – the Second Circuit also expressly held, for the same reason, that use of a cost-of-technology-versus-environmental-benefit analysis to determine site-specific facility compliance with section 316(b) is likewise "precluded" by the statute precisely because Congress has already concluded that the costs of "are worth the benefits of reducing adverse environmental impacts." Riverkeeper II, 475 F.3d at 114 (striking down provision allowing site-specific variances under section 316(b) where permitting agency finds costs of technology are significantly greater than environmental benefits). Obviously, this construction of the statute applies for all purposes, whether one is dealing with national standards promulgated by EPA or with the exercise of "best professional judgment" by a local permit agency. While the Regional Board can, in the absence of national standards, exercise its "best professional judgment" to determine a facility's compliance with section 316(b), as it did here, it cannot exercise that judgment in a way that contradicts the plain meaning of the statute – including the statute's prohibition on the use of a cost-of-technology-versus-environmental-benefit test. In arguing otherwise, Respondents ask this Court to accept the untenable proposition that local permit writers

exercising "best professional judgment" in the absence of national regulations can for some reason override the plain language and clear intent of Congress.

2. Insertion of the Words "Wholly Disproportionate" into the Regional Board's Cost-of-Technology-versus-Environmental-Benefit Test Does Not Transform Its Nature or Make It Lawful.

Next, Respondents argue that the "wholly disproportionate" test employed by the Regional Board in this case is not the kind of cost-of-technology-versus-environmental-benefit test rejected by the Second Circuit. Dynegy Answer at 6; State Answer at 5. But as the Sixth Appellate District itself recognized, the Regional Board's permit decision here expressly turned on "whether the costs of a technology are wholly disproportionate to the benefits to be gained." Slip Op. at 92 (emphasis added). See also Voices' Petition at 8 (quoting Regional Board permit finding that "the costs of alternatives to minimize entrainment are wholly disproportionate to the environmental benefits"). The section 316(b) determination was thus plainly based on a cost-of-technology-versus-environmental-benefit test, and insertion of the words "wholly disproportionate" between "costs" and "benefits" does not change that fact. The Regional Board could have used any number of different balancing standards to operationalize the cost-benefit equation – "wholly

disproportionate," "significantly greater than," "outweighed by," etc. – but the end result is still a cost-of-technology-versus-environmental-benefit analysis. And the Second Circuit unequivocally held that such an analysis may not, under any circumstances, be employed to satisfy section 316(b)'s BTA requirements.

Respondents' tortured attempt to distinguish the Regional Board's balancing test in this case affirmatively mischaracterizes the Second Circuit's ruling. Playing fast and loose with the very distinct concepts of cost-cost analysis and cost-benefit analysis, Respondents argue that "[i]n Riverkeeper II, the Second Circuit referred to the 'wholly disproportionate' test in the context of its discussion of alternative grounds upon which a facility could seek a site-specific variance from national performance standards (the so-called 'cost-cost' and 'cost-benefit' compliance alternatives), without any suggestion the 'wholly disproportionate' test was inappropriate under the Act." Dynegy Answer at 7.[3] This statement is both

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[3] The State makes a similarly misleading and irrelevant argument when it contends that Riverkeeper I upheld a "site-specific variance" from national standards for new facilities based on environmental and energy impacts. State Answer at 6. Riverkeeper I did allow a variance where the costs of compliance are found to be wholly out of proportion to the costs EPA considered in setting national standards (i.e., the cost-cost test) or where the permitting agency can show that compliance would result in "significant adverse impacts" on the environment or energy markets. Riverkeeper I, 358 F.3d at 192. In this case, there was no determination that the costs of closed-cycle technology were extraordinary or that their use would cause a

affirmatively misleading and false. The only place where Riverkeeper II even mentions the "wholly disproportionate" standard is in footnote 25, where, as Voices previously explained, the Second Circuit leaves open the door for site-specific cost-cost variances and the possibility that such variances might be effectuated with a "wholly disproportionate" balancing standard. Riverkeeper II, 475 F.3d at 113, fn.25.[4] The Second Circuit never discussed the "wholly disproportionate" balancing standard in connection with cost-benefit analysis because the Court loudly slammed the door on any kind of cost-benefit analysis whatsoever: "Cost-benefit analysis . . . is not permitted under the statute because, as noted, Congress has already specified the relationship between cost and benefits in requiring that the technology designated by the EPA be the best available" (id. at 99);

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significant adverse impact of any kind. To the contrary, the only finding of significance was the Energy Commission's determination, based on expert input, that the once-through cooling system employed at Moss Landing would have a significant adverse impact on biological productivity in Elkhorn Slough which could be mitigated through alternative cooling systems. See Voices' Petition at 7-8.

[4] As explained in the petition for review, a cost-cost analysis is conceptually very different from a cost-benefit analysis and was never an issue in this case because the Regional Board did not evaluate the costs of compliance vis-a-vis the larger industry, the facility's own revenue stream, or any other economic parameter. See Voices' Petition at 14-16. Indeed, in response to Voices repeated requests for information about the plant's revenues, Regional Board staff took the position that costs were "unreasonable" only vis-a-vis environmental benefits and that any other cost considerations were irrelevant.

"If the EPA construed the statute to permit cost-benefit analysis, its action was not 'based on a permissible construction of the statute'" (id. at 104); "Just as the Agency cannot determine BTA on the basis of cost-benefit analysis, it cannot authorize site-specific determinations of BTA based on cost-benefit analysis" (id. at 114).[5]

In a last ditch effort to undermine the relevance of Riverkeeper II, Respondents argue that the California courts should instead follow the thirty-year-old First Circuit Court of Appeals decision in Seacoast Anti-Pollution League v. Costle, 597 F.2d 306 (1st Cir. 1979). This suggestion is ridiculous, for many reasons. To start, as explained in footnote 1 above, Riverkeeper II was a consolidated case, covering petitions originally filed in several circuits around the country, including a petition from the First Circuit Court of Appeals, and it established applicable nationwide

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[5] Respondents' bald assertion that the "wholly disproportionate" cost-benefit test utilized here has been used "in hundreds of other permit proceedings conducted over a period of thirty-plus years," Dynegy Answer at 7, is wholly unsupported by any facts. Tellingly, Respondents cite only one case that even refers to this test, the three-decade-old First Circuit decision in Seacoast which, as discussed below, mentions the test only in passing dicta. Voices are not aware of other published federal or state cases that employ the test. In any event, improper past interpretations, even assuming they occurred, are wholly irrelevant to the question at issue here. If the Clean Water Act prohibits the use of cost-of-technology-versus-environmental-benefit analysis as a matter of statutory construction, as Riverkeeper II held, then it makes no difference what local permit writers have historically done.

precedent. See Attachment at 3-4 (Federal Court Pacer Docket printout showing First Circuit petition docketed by Second Circuit at time of transfer). Thus, Seacoast appears to have been abrogated by Riverkeeper II. In any event, the challengers in Seacoast did not dispute the use of cost-benefit analysis (only the way it was applied), and thus any holding on that issue is purely dicta. Moreover, in contrast to Riverkeeper II's thorough – indeed, exhaustive – analysis of the statutory language, structure and history of section 316(b), the Seacoast court dismissed the subject is a single, unilluminating paragraph:

> Petitioners' final substantive challenge, to the Administrator's approval of the intake location and design, is not a model of clarity. The Administrator decided that moving the intake further offshore might further minimize the entrainment of some plankton, but only slightly, and that the costs would be "wholly disproportionate to any environmental benefit." Remand Opinion at 49-50. Apparently petitioners read the cost figure considered by the Administrator, $20 million, as including the estimated costs of delay and reengineering as well as additional tunnelling. They suggest that the cost of delay is an improper consideration. The record is clear, however, that $20 million is the cost of the tunnelling alone. Petitioners, wisely, do not argue that the cost may not be considered, and no harm is done by noting that there would be other costs. The legislative history clearly makes cost an acceptable consideration in determining whether the intake design "reflect(s) the best technology available."

Seacoast, 597 F.2d at 311 (emphasis added). At the very least, this Court should accept review in order to provide lower courts, permitting agencies, regulated industries, and concerned citizen with an intelligible treatment of this important issue.

3. Respondents' Argument that Riverkeeper II Is Not "Final" Is Wrong as a Matter of Law and Should Have No Bearing on this Court's Consideration of the Petition.

Respondents next suggest that the Riverkeeper II decision is "not final" because certain industry litigants – but notably not defendant agency EPA – have petitioned the U.S. Supreme Court for certiorari. State Answer at 8; Dynegy Answer at 4. The is no question, however, that the appellate court decision in Riverkeeper II is final; after petitions for rehearing were denied, a final judgment was entered on July 17, 2007. See Attachment at 5. Riverkeeper II is thus binding precedent unless and until the Supreme Court accepts review. The mere existence of a certiorari petition does not provide compelling grounds for anything, let alone denial of Voices' petition for review. The high Court hears only one to two percent of the 7,500 petitions that it receives every year and, of course, often affirms the lower court. In all likelihood, then, the U.S. Supreme Court will deny certiorari, while the conflict between the Second Circuit's holding in Riverkeeper II and the appellate court's holding here persists and festers.

4. The State's Efforts to Develop Guiding Regulations Provide a Strong Reason to Grant Voices' Petition, Not Deny It.

Last, and certainly least, Respondents argue that the State Water Resources Control Board's ongoing effort to develop statewide policy for section 316(b) implementation militates in favor of denying Voices'

petition, on the theory that once the State Board sets policy, the Moss Landing appellate decision will become irrelevant. But precisely the opposite is true. As it develops policy consistent with the Clean Water Act, the State Board is looking to both Riverkeeper and now Voices of the Wetlands to determine what the Clean Water Act allows and requires. Because the appellate court upheld the use of a cost-of-technology-versus-environmental benefit test and a mitigation plan to satisfy section 316(b)'s best technology requirements, the State Board may well write these exemptions into its statewide guidance, thereby precipitating new rounds of litigation over both general policy and its application at individual facilities. Moreover, because the State Board is not under any mandate to issue statewide guidance, the Regional Boards must continue, for now, grappling with section 316(b) implementation on a facility-by-facility basis under the "best professional judgment" standard – the very approach used here. See Dynegy Answer at 5, fn.4 (quoting EPA directive to this effect). Therefore, this case has enduring relevance and the Court should accept review to clarify the legal sideboards for future permit decisions and state policymaking consistent with Riverkeeper.[6]

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[6] EPA also is presumably working on new national standards, but the last time section 316(b) regulations were invalidated, in Appalachian Power Co. v. EPA, 566 F.2d 451 (4th Cir. 1977), the agency took 25 years to promulgate replacement regulations. With no EPA action on the

B. The Lower Court's Holding That Trial Judges Have "Inherent Authority" To Override California's Writ Statute Also Warrants Review.

As Voices' petition explains, and as the lower court itself conceded, a number of appellate decisions have rejected the notion of an interlocutory remand during or after trial except in strict conformance with the "narrow" exception of California Code of Civil section 1094.5(e). To avoid this conflict, Respondents again mischaracterize the facts below, rely on utterly inapposite cases, and wrongly suggest that an entirely different statute somehow overrides section 1094.5. Their arguments do not, however, refute the existence of conflicting authority in need of this Court's review.

1. Contrary to Respondents' Claim, the Regional Board Did Not Reopen or Reconsider the Illegal Section 316(b) Determination Upon Remand.

Respondents claim that interlocutory remand was proper because, although the trial court did not set aside the defective permit finding, the Regional Board "reopened and reconsidered" its section 316(b) determination on remand. Dynegy Answer at 10. The record demonstrates otherwise. In the public notice announcing the remand hearing, the Regional Board explained that it would accept new information "to determine whether the weight of the evidence supports Finding 48 as it

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foreseeable horizon, the State Board is moving forward to fill the federal regulatory vacuum.

currently appears in the NPDES permit, or whether to consider amendment of the NPDES permit." RAR 15-16. Voices specifically asked the Board to reopen the permit, RAR 23-24, but it declined to do so. RAR 32-33. Staff recommended that rather than reopen the permit, the Regional Board should merely determine that "the weight of the evidence supports Finding No. 48 of the NPDES permit." Slip Op. at 59 (quoting RAR 36). At the hearing itself, the Board followed this advice, voting only to affirm that the challenged finding was supported by the weight of the evidence. RAR 1203-04. Thus, Respondents' assertion that the challenged permit findings were "reopened and reconsidered" is incorrect, as Dynegy later concedes. Dynegy Answer at 11 (noting that "at the conclusion of the hearing, four of the five Regional Board members voted to adhere to Finding No. 48, while the fifth member voted no").

Had the Regional Board truly "reopened and reconsidered" its prior section 316(b) determination, the parties might not be before this Court today. Its failure to do deprived Voices and others of the opportunity to make appropriate legal arguments to Board decisionmakers in light of the applicable science and newly admitted technical documents. These legal arguments are precisely the ones that later prevailed in Riverkeeper I and Riverkeeper II, but were, over Voices' strenuous objections, expressly excluded as "beyond the scope" of the remand hearing. See RAR 828 and

SAR 75 (excluding Voices' written comments); RAR 1054-55 (excluding testimony of Voices' witness). Thus, Board decisionmakers could not possibly conduct the "thorough and comprehensive analysis" that the trial court initially found wanting.

2. The Case Law on which Respondents Rely Does Not Support Their Arguments.

Respondents do not dispute the plain language of section 1094.5, nor could they. Instead, they regurgitate the appellate court's conclusion that a trial judge has "inherent authority" to override section 1094.5's directive that a court "shall enter judgment . . . [and] set aside" an unlawful agency action upon adjudication of the merits, claiming that interlocutory remand for new evidence is proper even where the narrow exception of section 1094.5(e) does not apply. None of the cases Respondents cite support this proposition, however.

Most prominently, Respondents point to Rapid Transit Advocates, Inc. v. Southern California Rapid Transit District, 185 Cal. App. 3d 996 (1986), where the trial court held its proceedings in abeyance to remand the agency's findings for clarification after the agency had unsuccessfully attempted to incorporate an Environmental Impact Report into its decision. At mid-trial, the court granted a continuance and remanded for the sole purpose of allowing the agency to explicitly incorporate the EIR by

reference into its findings so that the court could then proceed to adjudicate the merits. Id. at 1003 (explaining also that the trial court invoked section 1094.5(e)). The agency in Rapid Transit had clearly considered the EIR, and the remand was merely to correct a drafting error in the findings. In sharp contrast here, the court concluded a trial on the merits and found the evidence insufficient to support the agency's determination. Thus, the only purpose for the remand here was to adduce new evidence for a retrial, not to clarify findings on which to try the case in the first instance.

Respondents point to several other equally inapposite cases. Keeler v. Superior Court, 46 Cal. 2d 596, 600-01 (1956), upheld a remand for appropriate findings on the agency's affirmative defense precisely because the mandamus petition did not fall within section 1094.5: "the cause is not one in which the superior court is acting to review an administrative decision after a hearing and no reason appears why the court cannot, in the exercise of its inherent power, remand the case for further proceedings before undertaking to decide the petitioner's application." The remaining cases cited by Respondents either allowed remand before adjudication where the findings were so ambiguous or conflicting so as to preclude effective judicial review[7] or granted a writ setting aside the offending

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[7] See No Oil, Inc. v. Los Angeles, 13 Cal. 3d 68, 81 (1974) (remanding for explanation of why agency decided to forgo EIR); Garcia v. Cal.

action[8] – exactly the relief Voices sought and was denied. The Regional Board's findings here were not ambiguous; remand was ordered after trial not to clarify findings, but to correct the substantive defect in the Board's decision. Respondents' cases are thus inapplicable.

3. Public Resources Code 25531(c) Does Not Prohibit Issuance of a Writ in this Case.

Finally, relying on Public Resources Code section 25531(c), Respondents imply that the trial court could not issue a writ because it lacked jurisdiction to do anything that would stop or delay operation of the facility. Dynegy Answer at 17; State Answer at 12. However, as the appellate court properly found after a lengthy analysis, section 25531 does not apply to the Regional Board's issuance of a federal NPDES permit. Slip Op. at 17-29. Respondents offer no legitimate reason for the Court to revisit this novel theory, which has never been raised or addressed in any other case and is clearly contrary to the State's delegated NPDES permit program. See 40 C.F.R. § 123.30 (requiring that state-administered NPDES programs must offer availability of judicial review of permits in a similar

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Employment Stabilization Comm'n, 71 Cal. App. 2d 107, 110 (1945) (remanding "with reluctance" ambiguous and conflicting findings of state personnel board to enable later effective judicial review).

[8] See County of Inyo v. City of Los Angeles, 78 Cal. App. 3d 82, 85 (1978); Helene Curtis, Inc. v. Los Angeles County Assessment Appeals Board, 121 Cal. App. 4th 29, 48 (2004).

manner to that afforded by federally administered programs, and that is "sufficient to provide for, encourage, and assist public participation."). Moreover, Respondents concede that had the court set aside the section 316(b) determination, the Moss Landing plant could have continued operating under an administrative extension of its prior permit, albeit at slightly diminished capacity. Dynegy Answer at 15, fn.9. Because Respondents' argument would render the courts powerless to set aside unlawfully issued NPDES permits and thereby jeopardize delegation of the California's Clean Water Act authority, this Court should not give it further consideration or credence.

III. CONCLUSION

Because this case raises conflicts of law on important state regulatory issues, Voices respectfully requests that the Court grant its petition for review.

Dated: February 22, 2008

Respectfully submitted,

ENVIRONMENTAL LAW CLINIC

By: _____
Deborah A. Sivas

Attorneys for VOICES OF THE WETLANDS

CERTIFICATE OF WORD COUNT

Pursuant to California Rule of Court 8.204(c), I certify that the text of this brief consists of 4,198 words, not including tables, certifications, or attachments, as counted by the WordPerfect 12 word processing program used to generate it.

Dated: February 22, 2008

Deborah A. Sivas

PROOF OF SERVICE

DEBORAH A. SIVAS declares:

I am over the age of eighteen years and not a party to this action. My business address is 559 Nathan Abbott Way, Stanford, California 94305-8610.

On February 23, 2008, I served the foregoing **REPLY OF PETITIONER FOR REVIEW VOICES OF THE WETLANDS** on all persons named below by placing true and correct copies thereof

☐ in a sealed envelope, with postage fully prepaid, in the United States Mail at Palo Alto, California, addressed as follows:

☐ for facsimile transmission to each recipient identified below to the facsimile number appearing after such recipient's name and mailing address.

☒ for Federal Express next-day delivery service, addressed as follows:

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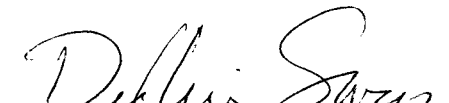
I declare under penalty of perjury (under the laws of the State of California) that the foregoing is true and correct, and that this declaration was executed February 23, 2008 at Palo Alto, California.



DEBORAH A. SIVAS

Attachment

General Docket
US Court of Appeals for the Second Circuit

Second Circuit Court of Appeals

LEAD

DISPOSED

Court of Appeals Docket #: 04-6692-ag
Nsuit :

Riverkeeper, Inc. v. EPA Filed 12/28/04

Appeal from: Environmental Protection Agency

Case type information:

Agency

Petition for Review

None

Lower court information:

District: ow-02-0049

Trial Judge:

MagJudge:

Date Filed:

Date order/judgement:

Date NOA filed: 12/28/2004

Fee status: Paid

Panel Assignment:

Panel: CJS SS PWH 40 Foley Sq.

Date of decision: 1/25/07

Prior cases: NONE

Current cases NONE

Official Caption 1/
□

LEAD

DISPOSED

Docket Nos : 04-6692 -ag LEAD, 04-6693-ag CON, 04-6694-ag CON, 04-6695-ag CON, 04-6696-ag CON, 04-6697-ag CON, 04-6698-ag CON, 04-6699-ag CON

DISPOSED

12/28/04 Case Docketed: Petition for review of agency order on behalf of PETITIONER Surfrider Foundation, filed. [Entry date Jan 20 2005] [SM]

12/28/04 Copy of EPA decision and order, dated 7/9/04, filed. [Entry date Jan 21 2005] [SM]

12/28/04 Papers from the Ninth Circuit Court Appeals, received. [Entry date Jan 21 2005] [SM]

12/28/04 Certified copy of the Court of Appeals for the Ninth Circuit docket entries FILED. [Entry date Jan 21 2005] [SM]

1/21/05 Served copy of petition under cover letter on respondent. [Entry date Jan 21 2005] [SM]

2/8/05 PETITIONER State of Rhode Island, Form C/A filed, with proof of service. [Entry date Feb 14 2005] [SM]

2/8/05 Non-Binding Statement of Issues, received. [Entry date Feb 14 2005] [SM]

2/14/05 Scheduling order #1 filed. Record or certified list due 7/18/2005. [Entry date Feb 14 2005] [SM]

2/14/05 Notice to counsel re: Scheduling Order #1, dated 2/14/05. [Entry date Feb 14 2005] [SM]

2/16/05 Order vacating scheduling order # 1, filed. [Entry date Feb 16 2005] [SM]

2/16/05 Notice to counsel re: Vacted scheduling order #1. [Entry date Feb 16 2005] [SM]

2/24/05 Letter, dated 2/23/05 received from Elise N. Zoli informing the Court that he is the lead attorney for Entergy Corporation and for all documentation to be sent to the attention of Elise Zoli. [Entry date Feb 28 2005]

Docket as of February 19, 2008 8:06 pm Page 15

□ LEAD

DISPOSED

[SM]

3/1/05 PETITIONER Surfrider Foundation, Form C/A received, with proof of service. [Entry date Mar 2 2005] [SM]

3/1/05 Notice of appeal acknowledgment letter from Reed Super received. [Entry date Mar 2 2005] [SM]

4/1/05 Scheduling order #1 filed. Record or certified list due 5/6/2005. Petitioners

General Docket
US Court of Appeals for the Second Circuit

Second Circuit Court of Appeals

CON

CLOSED

Court of Appeals Docket #: 04-6693-ag
Nsuit :

State of Rhode Is., v. EPA Filed 12/28/04

Appeal from: Environmental Protection Agency

Case type information:

Agency

Petition for Review

None

Lower court information:

District: ow-02-00-49

Trial Judge:

MagJudge:

Date Filed:

Date order/judgement:

Date NOA filed: 12/28/2004

Fee status: Paid

Panel Assignment:

Panel: CJS SS PWH 40 Foley Sq.

Date of decision: 1/25/07

Prior cases: NONE

Current cases NONE

Official Caption 1/
□ CON

CLOSED

Docket No. [s] : 04-6693 -ag CON

FOR THE CAPTION AND A COMPLETE SET OF ATTORNEY LISTINGS

102 W. Water Street
Dover , DE , 19904

302-739-4636

□ CON

CLOSED

12/28/04 Case Docketed: Petition for review of agency order on behalf of PETITIONER Commonwealth of Massachusetts, State of Connecticut, State of Delaware, State of New Jersey, ET AL , filed. [Entry date Jan 21 2005] [SM]

12/28/04 Copy of EPA decision and order, dated 7/9/04, filed. [Entry date Jan 21 2005] [SM]

12/28/04 Papers from the First Circuit Court of Appeals, received. [Entry date Jan 21 2005] [SM]

12/28/04 Certified copy of the Court of Appeals for the First Circuit docket entries FILED. [Entry date Jan 21 2005] [SM]

1/21/05 Served copy of petition under cover letter on respondent. [Entry date Jan 21 2005] [SM]

2/4/05 Notice of appeal acknowledgment letter from FILERS State of Delaware received. [Entry date Feb 9 2005] [SM]

2/8/05 Notice of appeal acknowledgment letter from FILERS State of Rhode Island received. [Entry date Feb 14 2005] [SM]

2/8/05 Notice of appeal acknowledgment letter from FILERS Commonwealth of Massachusetts received. [Entry date Feb 14 2005] [SM]

2/8/05 Notice of appeal acknowledgment letter from FILERS The State of Connecticut received. [Entry date Feb 14 2005] [SM]

2/8/05 Notice of appeal acknowledgment letter from FILERS The State of New Jersey received. [Entry date Feb 14 2005] [SM]

6/8/06 Case heard before: STRAUB, SOTOMAYOR, HALL, C.JJ. [Entry date Feb 13 2007] [SC]

1/25/07 Notice to counsel in re: Opinion filed. [Entry date Jan 25 2007] [YS]

□ CON

CLOSED

1/25/07 Judgment filed. [Entry date Jan 31 2007] [YS]

1/25/07	Petitions are GRANTED in part and DENIED in part and DISMISSED as to one aspect of the petitions for lack of jurisdiction because their is no final agency action to review, by published signed opinion filed. (SS) [Entry date Jul 25 2007] [LY]
7/17/07	Judgment MANDATE ISSUED. CLOSED [Entry date Jul 17 2007] [YS]

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