Memorandum of Support

February 3, 2020

S.5612-A (Harckham)/A.8349 (Ryan)

Title: An act to amend the environmental conservation law, in relation to the protection of certain streams.

Purpose: This act will reclassify class C waterways as streams for the purpose of protection.

Statement in Support: In May 2015, under the direction of the Obama administration, the EPA released a new rule on the definition of "waters of the United States" (WOTUS), which clarified that, indeed, isolated wetlands and intermittent headwater streams are under the regulatory control of the federal government. On February 28, 2017 President Trump signed an executive order rolling back Obama's Clean Water Rule under the Clean Water Act, endangering thousands of miles of stream networks that were once protected in NY. Currently, EPA is holding public comment on the Trump Administration’s “Dirty Water Rule” and there is no better way for NYS to respond than enacting law that guarantees protection for all the state's headwater streams.

This legislation, S.5612-A/A.8349 will grant class C streams in New York the same protections given to Class A and B streams – and provide regulatory oversight for all intermittent and ephemeral streams that feed these water bodies. All waters of NY are provided a class and standard designation based on existing or expected best usage of each water or waterway segment. The classification A is assigned to waters used as a source of drinking water. Classification B indicates a best usage for swimming and other contact recreation, but not for drinking water. Classification C is for waters supporting fisheries and suitable for non-contact activities.

Waters with classifications A, B, and C may also have a standard of (T), indicating that it may support a trout population, or (TS), indicating that it may support trout spawning (TS). Special requirements apply to sustain these waters that support these valuable and sensitive fisheries along with drinking water resources. Headwater streams and small water bodies located in the course of these water bodies are collectively referred to as "protected streams," and are subject to the stream protection provisions of the “Protection of Waters regulations” and require a permit for any disturbance.

The NYSDEC regulates watercourse beds and banks as well as within 50 feet of the
banks for a stream with a classification and standard of C(T) or higher. Unfortunately, C streams receive neither permitting, buffer nor stream bank protections, even though they may provide similar ecological services as higher graded streams. Protection of headwater streams associated with Class C and lower streams was once the responsibility of the Army Corps of Engineers, but with the roll back of the Clean Water Rule, there is now a void in this essential oversight. More than 40 thousand miles of class C streams transect New York and provide valuable services in terms of groundwater recharge, recreational fishing and boating, flood control, and critical habitat. New York must not let protection of these irreplaceable waterways lapse with the Trump Administration’s abdication of responsibility at the federal level.

Sierra Club Atlantic Chapter urges your support of S.5612-A/A.8349