

Memorandum in Strong Opposition S.4179 / A.3381

April 17, 2007

S.4176 (Griffo) / A.3381 (Destito) - AN ACT to amend the canal law, in relation to the acquisition of property for the canal system

The Independent Power Producers of New York, Inc. (IPPNY) is a trade association representing companies involved in the development of electric generating facilities, the generation, sale, and marketing of electric power, and the development of natural gas facilities in the State of New York. IPPNY represents almost 75 percent of the electric generating capacity in New York.

IPPNY strongly opposes S.4176 / A.3381. This legislation would pre-empt a pending Supreme Court decision, circumvent water permit requirements, hinder renewable energy, contradict contractual agreements, and fail to account for impacts on property owners and other water users.

This legislation would provide the Upper Mohawk Valley Regional Water Authority (MVWA) Board with unfettered rights to withdraw 100 cubic feet of water per second (cfs) from West Canada Creek and, as a result, from the Hinckley Reservoir. This bill is unnecessary and premature since the Supreme Court is currently addressing whether MVWA has contractual or other rights to withdraw water from the Hinckley Reservoir. The legislation attempts to short-circuit the existing litigation that would result in a judicial remedy. Also, this unfettered water use circumvents current New York State Department of Environmental Conservation Water Supply Permit conditions and requirements.

In addition, this legislation is inconsistent with provisions of the State Energy Law because it negatively impacts the operation of renewable energy facilities. The decreased water flow from the diversion of water under the bill would result in a loss of hydroelectric energy that powers approximately 700 homes annually.

Finally, this bill would contradict standing contractual agreements, in that it increases the Water Board's withdrawal of water from a conditional 75 cfs to 100 cfs and ignores the MVWA's contractual obligations to provide upstream storage of water and compensating water flows. The legislation also would allow the Board to withdraw up to 92 percent of the total storage capacity of the Hinckley Reservoir on an annual basis without addressing impacts to the upstream and downstream property owners and users who rely on the existing water flow for business, recreational and personal use.

For the reasons stated above, IPPNY respectfully opposes the passage of **S.4176 / A.3381**.