

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Application for a Protection  
of Waters Permit Pursuant to Article 15, Title 5 of  
the Environmental Conservation Law and Part  
608 of Title 6 of the Official Compilation of  
Codes, Rules and Regulations of the State of New  
York,

**ORDER OF  
DISPOSITION**

DEC Application No.  
4-1936-00001/00001

- by -

**SHANTY HOLLOW CORPORATION,**

Applicant.

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**PROCEEDINGS**

Shanty Hollow Corporation (“Shanty Hollow” or “applicant”) owns and operates Hunter Mountain ski resort located in the Town and Village of Hunter, Greene County, New York. By application dated August 25, 2006, Shanty Hollow applied to the Department of Environmental Conservation (“DEC” or “Department”) for a stream disturbance permit under article 15 of the Environmental Conservation Law (“ECL”) and part 608 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”). Applicant proposes to: make improvements to and continue maintenance and upkeep of the diversion weir in Schoharie Creek and inlet channel to Dolan’s Lake; construct a second water intake structure on Schoharie Creek at Deming Road; and construct a new water storage reservoir south of Deming Road with a capacity of 20 million gallons, all of which are being done to continue withdrawing water from the Schoharie Creek for snowmaking purposes.

On July 6, 2007, Department staff referred this matter to the Office of Hearings and Mediation Services to schedule a legislative hearing and issues conference. The matter was assigned to Administrative Law Judges (“ALJs”) Richard A. Sherman and Maria E. Villa. Additional background information and details of prior proceedings in this matter are provided in the ALJs’ Ruling on Issues and Party Status (“issues ruling”), dated November 19, 2007.

The ALJs presided over the legislative hearing on August 22, 2007, at the base lodge of the Hunter Mountain ski resort, in Hunter, New York. Approximately 70 people attended, including representatives of the applicant and Department. The ALJs also presided over the issues conference which was held at the ski resort on the following day, August 23, 2007. Participants at the issues conference were: the New York City

Department of Environmental Protection ("DEP"), applicant, and Department staff (collectively, the "issues conference participants").

As noted in the issues ruling, no issues were proposed for adjudication (see issues ruling at 14). However, the issues conference participants identified stormwater runoff as a potential adjudicable issue and entered a stipulation on the record to address this potential issue. Among other things, the stipulation required that applicant prepare supplemental documents concerning stormwater runoff. Applicant prepared and submitted the supplemental documents to the Department and to DEP. Pursuant to the Notice of Public Comment Period on Supplemental Filings, published in the Department's Environmental Notice Bulletin on September 9, 2009, and in the Windham Journal on September 17, 2009, the public was invited to comment on the supplemental documents. The comment period closed on October 19, 2009, and no comments were received.

By the issues ruling, the ALJs denied the petition for party status filed by Theodore Gordon Flyfishers, Inc. ("TGF") (see issues ruling at 13).<sup>1</sup> The ALJs directed that any appeals of the issues ruling be held in abeyance because the stipulation of the issues conference participants did not foreclose the possibility of additional proceedings. After the issues conference participants advised this office that they had resolved the stormwater runoff issue, ALJ Sherman directed, by letter dated February 25, 2010, and addressed to TGF and the issues conference participants, that any appeals to the issues ruling be filed with the Department on or before March 11, 2010. The time to file appeals to the issues ruling has passed and no appeals were filed. Accordingly, the denial of TGF's petition for party status is final.

Under cover letter dated April 9, [2010], Department staff filed a statement with this office advising that the issues conference participants had resolved all of their outstanding issues. The statement was signed by each of the issues conference participants and, therefore, no issues remain for further consideration in the hearing (see 6 NYCRR 624.13[d]). In accordance with DEC Organization and Delegation Memorandum 94-13 ("Effect of Stipulations on Decision-Making in Permit and Enforcement Hearings," May 5, 1994), upon receipt of such a statement from the parties, the assigned ALJ will issue a brief written summary of the proceedings and remand the matter to Department staff to finalize the environmental impact statement and complete the processing of the application.

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<sup>1</sup> Although TGF filed a petition for party status, it did not participate in or appear at the issues conference.

## ORDER OF DISPOSITION

The issues conference participants have resolved all outstanding issues concerning the application. Accordingly, there are no issues for adjudication and no further proceedings before this office are required. The matter is remanded to Department staff to finalize the environmental impact statement and to issue a permit. The hearing record in this matter is closed.

/s/

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Richard A. Sherman  
Administrative Law Judge

/s/

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Maria E. Villa  
Administrative Law Judge

Dated: April 16, 2010  
Albany, New York