

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

-----X  
CONSERVATION ALLIANCE OF NEW YORK, :  
:  
and :  
:  
NEW YORK STATE RIFLE AND PISTOL :  
ASSOCIATION, INC. :  
:  
Plaintiffs, :  
:  
vs. :  
:  
DAVID A. PATERSON :  
as Governor of the State of New York :  
:  
and :  
:  
ALEXANDER B. GRANNIS :  
as Commissioner of the New York State :  
Department of Environmental Conservation :  
:  
Defendants. :  
-----X

**COMPLAINT**

Index No. \_\_\_\_\_

Date of Filing: \_\_\_\_\_

Plaintiffs Conservation Alliance of New York and New York State Rifle & Pistol Association, by and through their attorneys, Robert P. Firriolo of Duane Morris, LLP, state as follows:

**NATURE OF ACTION**

1. This is a civil action for declaratory and injunctive relief instituted by Plaintiffs against Defendants Governor David A. Paterson and the Alexander B. Grannis as Commissioner of the New York State Department of Environmental Conservation to prevent closure of the Reynolds Game Farm, enjoin the destruction of game birds on the farm, and declare that the farm, its operations and its assets, must be maintained for benefit of the people of the State of New York.

## THE PARTIES

2. Plaintiff Conservation Alliance of New York (“CANY”) is a non-profit association incorporated under the laws of the State of New York. CANY’s mailing address is 217 Sherder Rd, Endicott, New York, 13760. CANY is a membership organization that exists to serve its members. The purposes of CANY include securing hunting, fishing, trapping and other sustainable activities which use New York’s renewable natural resources. CANY members have purchased hunting, fishing and trapping licenses in New York. CANY brings this action on behalf of itself and its members.

3. Plaintiff New York State Rifle and Pistol Association, Inc. (“NYSRPA”) is a non-profit association formed in 1871 under the laws of the State of New York and existing continuously thereafter under the laws of the State of New York, with its principal place of business in Troy, New York. NYSRPA’s address is P.O. Box 1023, Troy, NY 12181. NYSRPA’s membership consists of individuals, many of whom reside in and/or hunt in New York State, as well as sportsmen’s organizations with members that reside in and/or hunt in New York State. The purposes of NYSRPA include firearm safety, education and training, and fostering and protecting the shooting sports, including hunting. NYSRPA members have purchased hunting, fishing and trapping licenses in New York. NYSRPA brings this action on behalf of itself and its members.

4. Defendant David A. Paterson is the Governor of the State of New York. Pursuant to Article IV, § 1 of the New York State Constitution, the executive power is vested in the Governor. The Governor therefore is the highest authority in charge of state executive agencies, including the New York State Department of Environmental Conservation (“NYSDEC”).

5. Defendant Alexander B. Grannis is the Commissioner of NYSDEC. NYSDEC was established by the New York State Environmental Conservation Law (“ECL”). The ECL provides authorization for the programs and operations of NYSDEC, including the administration of wildlife laws, the implementation of sound wildlife management practices, and wildlife research. NYSDEC’s Division of Operations for Fish, Wildlife and Marine is responsible for Field Operations that include the maintenance of wildlife management areas and game farms.

### **JURISDICTION AND VENUE**

6. This declaratory judgment action is brought pursuant to C.P.L.R. § 3001.

7. Venue is proper pursuant to CPLR §§ 506 (b) and 6311 (1). Defendants NYSDEC and Governor Patterson have their principle offices in Albany, New York, and Plaintiffs seek, in part, a preliminary injunction to restrain a public officer.

### **REYNOLDS GAME FARM**

8. NYSDEC’s Bureau of Wildlife owns and operates the Richard E. Reynolds Game Farm (“Reynolds”), located in the Town of Dryden, in Tompkins County, New York. Reynolds has been in operation since 1927 and is New York’s only pheasant production facility. All pheasant production in New York was shifted to Reynolds in 1999. Reynolds thus contains stock transferred from predecessor New York game farms, and/or propagated from that stock.

9. Reynolds propagates and distributes pheasants statewide for three distinct programs, including two cooperative rearing and release programs. All pheasants distributed through NYSDEC programs are released on land open to the public for pheasant hunting. Private landowners allow pheasant hunting on thousands of acres through these programs.

10. The pheasant population in New York has declined nearly 90 percent since 1970. Reynolds is the major source of ensuring the availability of pheasants for small game hunting in New York and an indispensable part of New York's wildlife management and conservation plan.

11. The game farm currently has four full-time permanent staff and employs up to ten additional temporary staff during the peak of propagation activities (March-November).

12. In a press release dated December 13, 2008, Defendant Paterson announced the planned closure of Reynolds and authorized the NYSDEC to transfer nearly 8,000 of the farm's pheasants to a food bank. The alleged purpose of the closure was "part of the State's ongoing cost containment efforts and will save up to \$750,000 in annual operation costs. These savings will be reflected in the 2009-2010 Executive Budget, which the Governor will release on Tuesday, December 16."

13. The press release further stated that the "State has made arrangements for the pheasants to be transported to a New York farm for processing and packaging. After that, the pheasants will be donated to a food bank in the Southern Tier for distribution to hungry families in the region."

14. The processing of pheasants from Reynolds is scheduled to begin on or about January 19, 2009, which date corresponds to the closure of the farm.

#### **FUNDING OF REYNOLDS' OPERATIONS AND STOCK**

15. Reynolds and its predecessors have been funded largely, if not exclusively, by state and federal funds reserved solely for use in fish and game management programs.

16. The annual operating budget for Reynolds is approximately \$750,000, including pheasant propagation, program administration, annual facility maintenance, and most of the pheasant distribution costs.

### **The Conservation Fund**

17. Funding for operation of Reynolds, and the propagation of its stock, has come primarily from the state Conservation Fund. Funding for the predecessor pheasant production facilities also came at least in part from the state Conservation Fund.

18. The Conservation Fund was created in 1925 under New York State Finance Law [Article 6, § 83]. The Conservation Fund consists of all monies collected from the sale of licenses for hunting, trapping, and fishing, monies received for certain violations of the ECL, and other revenues related to fish and wildlife management in New York.

19. The Conservation Fund is available for use by NYSDEC solely for the care, management, protection and enlargement of the fish, game and shellfish resources of the state and for the promotion of public fishing and shooting.

20. Monies from the Conservation Fund must be devoted to the purchase or acquisition of lands, lands under water, waters, or rights therein as required, to payment for personal service, for maintenance and operation, and for new construction and permanent betterments, and to all other proper expenses of NYSDEC in the administration and enforcement of the provisions of articles eleven and thirteen of the ECL.

**The Pittman-Robertson Act.**

21. Funding for operation of Reynolds, and the propagation of its stock, also comes at least in part from federal aid, including funds authorized by 16 U.S.C. § 669 *et seq.*, the Federal Aid in Wildlife Restoration Act, commonly known as the Pittman-Robertson (“P-R”) Act. The P-R Act imposes a 10 percent federal excise tax on ammunition and firearms. P-R funds are earmarked for distribution to the States only for the administration of wildlife restoration.

22. Funding for the predecessor pheasant production facilities also came at least in part from such federal aid. New York began receiving P-R Act funds, and applying them to pheasant development programs, by no later than 1939. Since all formerly existing New York pheasant game farms have been merged into Reynolds, P-R Act funding for the predecessor farms is directly traceable to the present operations and assets of Reynolds.

23. When pheasant numbers drastically declined in the 1970s, New York’s hunters and NYSDEC staff agreed that a management plan was necessary to identify the reasons for the decline and to develop management strategies. As a result, the Long Range Management Plan for Ring-necked Pheasants in New York was adopted in 1979. To support the plan’s objectives, a research project was developed that included 27 new and ongoing studies. Most of these studies were supported by Federal Aid in Wildlife Restoration (P-R Act) funds.

24. States that accept P-R Act funding are required to enact laws for the conservation of wildlife which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of the state’s fish and game department. [16 U.S.C. § 669; 50 C.F.R. § 80.4]. As set forth above, The Conservation Fund is New York’s repository for such license fees.

25. A diversion of license fee revenues occurs when any portion of license revenues is used for any purpose other than the administration of the state fish and wildlife agency. [50 C.F.R. § 80.4 (c)].

26. Any state may apply to the Secretary of the Interior of the United States for a grant to fund a wildlife conservation and restoration program or reimbursement for the development of a conservation plan. [16 U.S.C. §§ 669c (e), 2905 (a)]. New York received such grant money for operation of Reynolds, and the propagation of its stock.

27. States that receive P-R Act funding for wildlife restoration projects are responsible for maintenance of the project, including the maintenance of any completed projects. [16 U.S.C. § 669g (a)]. P-R Act funds can also be used for capital investment in facilities, use of which obligates the state to maintain funded programming and plans.

28. States receiving P-R Act funds are required to annually certify in writing to the Secretary of the Interior that the funds were expended by the state in accordance with the requirements of the P-R Act. [16 U.S.C. § 669k (d)]. States are also required to keep records required by the Secretary of the Interior necessary and appropriate for fully disclosing the amount and purposes of costs incurred by the state for which reimbursement under 16 U.S.C. § 2905 was sought. [16 U.S.C. § 2906 (1)].

29. For fiscal year 2008, New York received \$8,645,429 in P-R Act funds, including \$6,794,912 for wildlife restoration.

30. NYSDEC manages the state's game farms, including Reynolds, through the Field Operations of the Division of Operations for Fish, Wildlife and Marine. In State fiscal year 2005-06, direct support funding for Operations amounted to \$2,133,279, of which \$2,323,685 came from the Conservation Fund, and \$65,230 came from federal aid. Not only were no General Fund

monies spent on Operations, the state's other operating funds took a credit of \$255,636 from the Operations budget that year. Similarly, in State fiscal year 2006-07, direct support funding for operations amounted to \$1,899,570, of which \$1,777,317 came from the Conservation Fund, and \$12,416 came from federal aid. In that year, a mere \$109,837 in the entire Operations budget came from other state operating funds.

### **CONSERVATION FUND ADVISORY BOARD**

31. Pursuant to ECL § 11-0327, The Conservation Fund Advisory Board ("CFAB") is charged with the responsibility of making recommendations to state agencies, including NYSDEC, on state government plans, policies and programs affecting fish and wildlife. CFAB is the official representative of individual and organized sportsmen's interests throughout the state.

32. CFAB is comprised of eleven voting members including a member designated by the state Fish and Wildlife Management Board, a member designated by the New York State Conservation Council, three members appointed by the Governor, two members appointed by the Temporary President of the Senate, one member appointed by the Minority Leader of the Senate, two members appointed by the Speaker of the Assembly, and one member appointed by the Minority Leader of the Assembly. In addition to these voting members, the Commissioner and the Chairmen of the Senate Finance Committee, the Senate Environmental Conservation Committee, the Assembly Ways and Means Committee and the Assembly Committee on Environmental Conservation or their designees, serve as ex officio, non-voting members of CFAB.

33. CFAB has the power and duty to review the allocations and expenditures of NYSDEC for fish and wildlife purposes as provided in ECL § 11-0303 and report to NYSDEC's commissioner by November fifteenth of each year. To assist CFAB in its review, the NYSDEC



is required by September first of each year to make available to CFAB, the Governor and the Legislature current and anticipated income and expenditures for the fish and wildlife programs, including planned expenditures by time and activity code for the next fiscal year. Such report shall include the findings of CFAB regarding such allocations and expenditures, including expenditures and appropriations from the Conservation Fund and the extent to which such expenditures and appropriations are consistent with the requirements of state law. The report shall also include recommended maximum annual fees for the licenses and stamps identified in ECL § 11-0715 (3). In recommending such fees, the board must consider economic indicators, the status of the conservation fund, and such program indicators as it may deem appropriate. NYSDEC's commissioner must submit such report, in its entirety, to the Governor and the Legislature.

34. CFAB did not receive notice of NYSDEC's plans with respect to Reynolds in sufficient time to study the plans and alternatives to closure and destruction of the flock.

35. NYSDEC could have provided CFAB with the closure plans for Reynolds, including destruction of its stock, and supporting financial data, in time for CFAB's meeting on December 8, but NYSDEC failed to do so.

36. NYSDEC failed to disclose its plans to close Reynolds in its annual report to CFAB, which is required pursuant to ECL § 11-0327 (3)(a).

37. CFAB, and the individual and organized sportsmen throughout the state whom it represents—including Plaintiffs—have been prejudiced by NYSDEC's failure to timely notify CFAB of the Reynolds closure plan, and to inform CFAB about the income and expenditures related to Reynolds in NYSDEC's annual report. CFAB was unable to properly fulfill its

statutory role and advise NYSDEC on the closure of Reynolds and the disposition of its stock, and review the closure plan for compliance with the requirements of state law.

**COUNT ONE – INJUNCTION FOR VIOLATION OF FINANCE LAW § 83**

38. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1 through 37 above and reassert them here in connection with Count One of this Complaint.

39. Reynolds is owned by NYSDEC in trust for the people of New York, and has been paid for by monies from the Conservation Fund. Closure of Reynolds violates Finance Law § 83 through the waste, misapplication, conversion and misappropriation of Conservation Fund monies.

40. Because the stock of pheasants at Reynolds has been propagated using monies from the Conservation fund, destruction of the stock violates Finance Law § 83 through the waste, misapplication, conversion and misappropriation of Conservation Fund monies.

41. NYSDEC's plan to give away the processed stock to a private party (a food bank) violates Finance Law § 83 by impermissibly transferring state wildlife assets obtained with Conservation Fund monies for a purpose other than the care, management, protection and enlargement of the fish, game and shellfish resources of the state and for the promotion of public fishing and shooting.

42. An injunction is necessary to prohibit the waste, misapplication, conversion, and misappropriation of Conservation Funds and the waste and impermissible transfer of state wildlife assets.

43. Plaintiffs have a direct interest in the continued operation of Reynolds and will be harmed by its closure and the destruction of its stock. Plaintiffs' members include pheasant

hunters and conservationists who will be harmed by Reynolds' closure. Plaintiffs' members are sportsmen who have paid license fees and other monies that have been deposited in the Conservation Fund. Conservation Fund monies have been used for Reynolds' operations, and for propagation of the stock to be destroyed by Defendants and given to private parties.

**WHEREFORE**, Plaintiffs seek an injunction from the Court:

- a. Preventing the sale or disposal of Reynolds' property, equipment, structures, improvements, fixtures and any related assets;
- b. Preventing the destruction of Reynolds' stock of pheasants;
- c. Assessing litigation costs and attorneys' fees against Defendants; and
- d. For such other relief which Plaintiffs are entitled, or which the Court deems just and proper.

**COUNT TWO – DECLARATORY JUDGMENT**  
**FOR VIOLATION OF FINANCE LAW § 83**

44. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1 through 43 above and reassert them here in connection with Count Two of this Complaint.

45. An actual controversy exists between Plaintiffs on the one hand and Defendants on the other regarding their respective rights and obligations, if any, with respect to the planned closure of Reynolds and the disposition of its assets and stock, and the manner in which Conservation Fund monies were expended to establish, operate, and maintain the farm, and propagate its stock.

46. Declaratory relief from this Court will terminate all or some of the disputes between Plaintiffs and Defendants with respect NYSDEC's authority to close Reynolds and

dispose of its assets and stock held in trust for the people of New York, including the sportsmen and conservationists represented by Plaintiffs.

47. A judicial declaration is necessary to establish Plaintiffs' rights and Defendants' obligations and duties regarding the maintenance and continued operation of Reynolds, and the preservation of its stock, for the people of New York, including the sportsmen and conservationists represented by Plaintiffs.

**WHEREFORE**, Plaintiffs seek a declaratory judgment from the Court:

- a. Declaring that Defendants may not sell or otherwise dispose of Reynolds' property, equipment, structures, improvements, fixtures and any related assets;
- b. Declaring that Reynolds' stock of pheasants are a wildlife resource that belongs to the people of New York for conservation purposes;
- c. Declaring that Reynolds' stock of pheasants may only be used for the benefit of sound game and wildlife management purposes;
- d. Declaring that Reynolds' stock of pheasants may not be destroyed;
- e. Declaring that Reynolds' stock of pheasants may not be transferred to a private party except as part of a wildlife management or conservation plan;
- f. Ordering Defendants to provide an accounting of all funding used to operate and maintain Reynolds;
- g. Assessing litigation costs and attorneys' fees against Defendants; and
- h. For such other relief which Plaintiffs are entitled, or which the Court deems just and proper.

**COUNT THREE – INJUNCTION FOR VIOLATION OF THE P-R ACT**

48. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1 through 47 above and reassert them here in connection with Count Three of this Complaint.

49. Reynolds' and its predecessors' operations and maintenance have been paid for by federal monies provided under the P-R Act. Closure of Reynolds violates the P-R Act through the waste, misapplication and misappropriation of P-R monies.

50. Closure of Reynolds also violates 16 U.S.C. § 669 *et seq.* and 50 C.F.R. § 80.4, prohibiting the diversion of license fees paid by hunters for any other purpose than the administration of the state's fish and game department.

51. Because the stock of pheasants at Reynolds has been propagated using P-R Act monies, destruction of the stock the P-R Act constitutes the waste, misapplication, conversion and misappropriation of P-R Act monies.

52. NYSDEC's plan to give away the processed stock to a private party (a food bank) violates the P-R Act by impermissibly transferring state wildlife assets obtained with P-R Act monies for a purpose other than the administration of the state's fish and game department.

53. An injunction is necessary to prohibit the waste, misapplication, conversion and misappropriation of P-R Act funds and the waste and impermissible transfer of state wildlife assets obtained through the expenditure of P-R Act funds.

54. Plaintiffs have a direct interest in the continued operation of Reynolds and will be harmed by its closure and the destruction of its stock. Plaintiffs' members include pheasant hunters and conservationists who will be harmed by Reynolds' closure. Plaintiff's members are purchasers of sporting equipment from which federal P-R Act taxes have been collected. New York has been the recipient of federal P-R Act tax dollars for over 70 years, which monies have

been paid to New York for wildlife conservation and wildlife-associated recreation purposes, including Reynolds' operations and propagation of the stock to be destroyed by Defendants and given to private parties.

**WHEREFORE**, Plaintiffs seek an injunction from the Court:

- a. Preventing the sale or disposal of Reynolds' property, equipment, structures, improvements, fixtures and any related assets;
- b. Preventing the destruction of Reynolds' stock of pheasants;
- c. Assessing litigation costs and attorneys' fees against Defendants; and
- d. For such other relief which Plaintiffs are entitled, or which the Court deems just and proper.

**COUNT FOUR – DECLARATORY JUDGMENT FOR VIOLATION OF THE P-R ACT**

55. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1 through 54 above and reassert them here in connection with Count Four of this Complaint.

56. An actual controversy exists between Plaintiffs on the one hand and Defendants on the other regarding their respective rights and obligations, if any, with respect to the closure of Reynolds, the disposition of its assets and stock, and the manner in which P-R Act funds were expended to establish, operate, and maintain the farm, and propagate its stock.

57. Declaratory relief from this Court will terminate all or some of the disputes between Plaintiffs and Defendants with respect to NYSDEC's authority to close Reynolds and dispose of its assets and stock held in trust for the people of New York, including the sportsmen and conservationists represented by Plaintiffs.

58. A judicial declaration is necessary to establish Plaintiffs' rights and Defendants' obligations and duties regarding the maintenance and continued operation of Reynolds, and the

preservation of its stock, for the people of New York, including the sportsmen and conservationists represented by Plaintiffs.

**WHEREFORE**, Plaintiffs seek a declaratory judgment from the Court:

- a. Declaring that Defendants may not sell or otherwise dispose of Reynolds' property, equipment, structures, improvements, fixtures and any related assets;
- b. Declaring that Reynolds' stock of pheasants are a wildlife resource that belongs to the people of New York for conservation purposes;
- c. Declaring that Reynolds' stock of pheasants may only be used for the benefit of sound game and wildlife management purposes;
- d. Declaring that Reynolds' stock of pheasants may not be destroyed;
- e. Declaring that Reynolds' stock of pheasants may not be transferred to a private party except as part of a wildlife management or conservation plan;
- f. Ordering Defendants to provide an accounting of all funding used to operate and maintain Reynolds;
- g. Assessing litigation costs and attorneys' fees against Defendants; and
- h. For such other relief which Plaintiffs are entitled, or which the Court deems just and proper.

**COUNT FIVE – INJUNCTION FOR VIOLATION OF ECL § 11-0327**

59. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1 through 58 above and reassert them here in connection with Count Five of this Complaint.

60. NYSDEC's failure to timely and fully disclose its plans for Reynolds' closure to CFAB, and to allow CFAB to fulfill its statutory role in the review of those plans, are violations

of ECL § 11-0327. Defendants prevented CFAB from rendering its findings regarding allocations and expenditures relevant to the closure or continued operation of Reynolds, including expenditures and appropriations from the Conservation Fund and the extent to which such expenditures and appropriations are consistent with the requirements of state law.

61. NYSDEC's failure to timely notify CFAB of the Reynolds closure plan has prevented CFAB from fulfilling its statutory role and advising NYSDEC on the closure of Reynolds and the disposition of its stock. Plaintiffs require an injunction to halt closure of Reynolds and destruction of its stock in order to enable CFAB to obtain sufficient information from NYSDEC for CFAB to review the closure plan for compliance with the requirements of state law.

**WHEREFORE**, Plaintiffs seek an injunction from the Court:

- a. Preventing the sale or disposal of Reynolds' property, equipment, structures, improvements, fixtures and any related assets so that CFAB can properly complete its statutory role in evaluating the operations and funding for Reynolds;
- b. Preventing the destruction of Reynolds' stock of pheasants;
- c. Assessing litigation costs and attorneys' fees against Defendants; and
- d. For such other relief which Plaintiffs are entitled, or which the Court deems just and proper.

**COUNT SIX – DECLARATORY JUDGMENT FOR VIOLATION OF ECL § 11-0327**

62. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1 through 61 above and reassert them here in connection with Count Six of this Complaint.



63. An actual controversy exists between Plaintiffs on the one hand and Defendants on the other regarding their respective rights and obligations, if any, with respect to the inability of the CFAB to properly represent the interests of Plaintiffs by reviewing the proposed closure of Reynolds, and the disposition of its assets and stock, for compliance with the requirements of state law, and making recommendations to Defendants about same.

64. Declaratory relief from this Court will terminate all or some of the disputes between Plaintiffs and Defendants with respect to NYSDEC's authority to close Reynolds and dispose of its assets and stock held in trust for the people of New York, including the sportsmen and conservationists represented by Plaintiffs and CFAB.

65. A judicial declaration is necessary to establish Plaintiffs' rights and Defendants' obligations and duties regarding the maintenance and continued operation of Reynolds, and the preservation of its stock, for the people of New York, including the sportsmen and conservationists represented by Plaintiffs and by CFAB.

**WHEREFORE**, Plaintiffs seek a declaratory judgment from the Court:

- a. Declaring that Defendants may not sell or otherwise dispose of Reynolds' property, equipment, structures, improvements, fixtures and any related assets so that CFAB can properly complete its statutory role in evaluating the operations and funding for Reynolds;
- b. Declaring that Reynolds' stock of pheasants may not be destroyed;
- c. Assessing litigation costs and attorneys' fees against Defendants; and
- h. For such other relief which Plaintiffs are entitled, or which the Court deems just and proper.


**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues so triable.

Dated: January 15, 2009

Respectfully submitted,

**DUANE MORRIS LLP**



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