UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SOSCIA HOLDINGS, LLC	:	
	:	
VS.	:	**C.A. NO. 1-22-cv-00266-LM-AKJ**
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STATE OF RHODE ISLAND, STATE OF RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT and TERRENCE GRAY, IN HIS CAPACITY AS THE DIRECTOR OF THE RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT	:	

DEFENDANTS' OBJECTION
TO MOTION FOR PRELIMINARY INJUNCTION

Now come, Defendants State of Rhode Island Department of Environmental Management ("RIDEM"), Terrence Gray, in his capacity as the director of the Rhode Island Department of Environmental Management (the "Director") and the State of Rhode Island (collectively, the "Defendants" or the "State"), before this Honorable Court and hereby provide the following Objection to the Plaintiff, Soscia Holdings, LLC's ("Soscia" or "Plaintiff") Motion for Preliminary Injunction (the "Motion").

I. FACTS

In 1846 the Quidnick Reservoir Company ("Quidnick") was incorporated as a body politic by legislative action (the "1846 Act"). *See,* Verified Amended Complaint ("Compl.") at Exhibit 3. The 1846 Act gave Quidnick certain rights to erect, establish, and maintain dams and reservoirs on the Pawtuxet River and its branches for the benefit of promoting industrialization and the booming mill industries in Rhode Island. The 1846 Act was amended in 1867, 1975 and 1982.

The 1982 amendment (the "1982 Act") replaced the 1846 Act *in its entirety*. *See*, **Exhibit A** at Section 1. The 1982 Act lists the corporate purpose of Quidnick as: "to erect and establish dams and reservoirs for the retention and preservation of the waters of the Pawtuxet River and its branches for the benefit of its members; for establishment and operation of hydro sites for its members' uses and resale of power generated therefrom; and any other legal purposes." *See id.*, at Section 1 (Third). The 1982 amendment outlines corporate purposes and powers but does not establish any special franchise rights to be conveyed as part of any property. *See generally*, *id.* Moreover, any new uses of the properties of Quidnick post-1982 would be subject to, and not exempted from, all applicable laws. *See id.,* at Section 1 (THIRD). There is no mention of a franchise in the 1982 Act, and no language contained therein suggests a perpetual and exclusive franchise right as claimed by the Plaintiff. *See generally*, *id.* Additionally, the Plaintiff characterizes its franchise right as a separate contract between the State of Rhode Island and Quidnick, but provides no evidence showing that "franchise contract" was transferable or ran with the property purchased by the Plaintiff.

On or about March 2, 2020, the Plaintiff purchased certain assets of Quidnick via Quitclaim Deed (the "Quitclaim Deed"). A copy of the Quitclaim Deed is attached hereto as **Exhibit B**. Quidnick continues to exist and is registered as a utility. *See,* **Exhibit C**, Rhode Island Secretary of State, *Summary for: QUIDNICK RESERVOIR COMPANY*, Rhode Island Secretary of State Corporate Database, https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=000078319&SEARCH_TYPE=1 (last visited Aug. 29, 2022). Soscia is registered as a limited liability company that's stated purpose is "to acquire and manage real estate[.]" *See,* **Exhibit D**, Rhode Island Secretary of State, *Summary for: SOSCIA HOLDINGS, LLC*, Rhode Island Secretary of State Corporate

Database, https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=001011414&SEARCH_TYPE=1 (last visited Aug. 29, 2022). Of course, Soscia has not claimed to be a utility as a result of the subject sale, nor does it claim to have otherwise stepped into the corporate shoes of Quidnick. While the Plaintiff may be Quidnick's successor in ownership of certain property pursuant to the Quitclaim Deed, the Plaintiff is not a corporate successor. Furthermore, the Plaintiff has made no showing that it is a successor to any member of Quidnick. *See generally*, Compl.*; see also generally*, Motion. A quitclaim deed conveys only such interests as the original owner possessed at the time of conveyance. *See e.g.*, *Sakonnet Point Marina Ass'n, Inc. v. Bluff Head Corp.*, 798 A.2d 439, 442–43 (R.I. 2002) (citing *Wood v. City of East Providence*, 504 A.2d 441, 443 (R.I.1986); G.L.1956 § 34–4–11; G.L.1956 §§ 34–11–4, –17, –18, and –28; *Lapre v. Flanders*, 465 A.2d 214, 216 (R.I.1983); 14 Powell on Real Property § 81A.03[1] [c] at 81A–29 (Michael Allan Wolf ed.2000)). As such, no property, rights, or interests not held by Quidnick at the time of the sale could have been transferred to the Plaintiff.

Further, although the Plaintiff references the Milldam Act in supporting its contention that Soscia purchased a franchise right granted to Quidnick in the since-replaced 1846 Act, the Plaintiff has failed to establish the Flat River Reservoir Dam as an active milldam. *See*, Compl. ¶ 54. There is no allegation that Soscia owns or operates any mills, nor does it allege that a plan is in place to construct a mill. The 1982 Act, unlike its predecessor legislation, also has no mention of mills. Despite continual assertions of franchise rights and protections afforded milldam owners, the Plaintiff has failed to provide any evidence to establish the Flat River Reservoir Dam as an active milldam. It appears that the last hydropower station on the Pawtuxet was ceased operation in 2015. *See*, *Surrender Application FERC Project No. P-3011,* attached hereto as **Exhibit E**, at 20. The Plaintiff does not contend that it has a mill or hydroelectric business, or that any mills are served by

the subject dam. *See generally*, Compl. In fact, the only potential economic activities mentioned by the Plaintiff are a desire to potentially drain out the pond, *see e.g.* Compl. ¶¶ 28, 37, or to enter into leases that negotiate different water levels in the Flat River Reservoir, *Motion* at 15.

As a result of the March 2, 2020 sale consummated between Quidnick and the Plaintiff, the Plaintiff was also assigned interest as lessor in a lease between Quidnick and the Town of Coventry (the "Lease"). *See*, Compl.¶ 25, *see also* Compl. Exhibits 4 and 5. The Lease entitles the Plaintiff to rent in exchange for use of the Flat River Reservoir (also known as Johnson's Pond) and certain open space owned by the Plaintiff. *See*, Compl. Exhibit 4 at Sections 1 and 2. The Lease also provides the Town of Coventry with certain rights to determine who may access the property leased. *See*, Compl. Exhibit 4 at Section 3. Additionally, the Town of Coventry has certain maintenance obligations with respect to the Flat River Reservoir Dam. *See*, Compl. Exhibit 4 at Section 5. The parties additionally agreed that the lessor would use its best efforts to maintain certain water levels as set forth in the Lease. *See* Compl. Exhibit 4 at Section 6.

The Lease was predated by two leases between the Town of Coventry and Quidnick, with the most-recent having run from 1994 to 2009. *See*, Motion, 7. As noted by the Plaintiff in its Motion, RIDEM took certain actions prior to 1995 in asserting its jurisdiction over the Flat River Reservoir. *Id.*, 7-8. This resulted in a Consent Agreement, attached hereto as **Exhibit F**. In determining appropriate water levels to protect the Flat River Reservoir from environmental harms, RIDEM conducted a study in or around 1993 in which it reviewed at least 12 years of historical data to determine historic use of the Flat River Reservoir Dam. *See*, Affidavit of David Chopy, attached hereto as **Exhibit G** at ¶ 9.

On June 27, 2022, R.I. Gen. Laws § 46-19.1-1 (the "Dam Permitting Act") was signed into law. The Dam Permitting Act required that all owners of dams creating certain large reservoirs of

more than 1,400 normal storage acre feet of water (of which there are several) must apply to RIDEM for a permit, and without said permit the owners must not deviate from historic use of the dams. R.I. Gen. Laws § 46-19.1-1. On July 11, 2022, RIDEM issued a letter to the Plaintiff informing it of the new law and identifying RIDEM's determination of historic use at the Flat River Reservoir Dam, attached hereto as **Exhibit H**. The letter also provided an opportunity for the Plaintiff to offer any support for a change in RIDEM's determination. On July 11, RIDEM inspectors visited the Flat River Reservoir. *See*, July 13 Letter, attached hereto as **Exhibit I**, at 1. As a result, RIDEM determined that the Plaintiff was operating the dam in a manner inconsistent with historic use. *See*, *id.* The letter also recounts historic dry conditions that, when coupled with Soscia's non-historic use, endangered the environment **Exhibit I** at 2. As a result, RIDEM sent a second letter on July 13, 2022 ordering the Plaintiff to return the dam to historic use as required under Rhode Island Law. *See id.* To date, the Plaintiff has not responded to RIDEM with respect to either the July 11, 2022 or the July 13, 2022 letter and has not objected to RIDEM's assessment of historic use, nor has it provided any contrary evidence. USGS flow data recorded on the South Branch of the Pawtuxet River evidences that the Plaintiff continued its course of action at the Flat River Reservoir Dam and did not change its actions following receipt of the July 11 and July 13 Letters. *See* data, attached as **Exhibit J**.

Between July 13, 2022 and August 9, 2022, RIDEM continued to inspect the Flat River Reservoir as a result of several reports of excessively low water levels. *See*, **Exhibit G**, at, ¶ 17. On August 9, 2022, RIDEM issued an Immediate Compliance Order (the "ICO") pursuant to R.I. Gen. Laws § 42-17.1-2(21) based on the results of those inspections, attached hereto as **Exhibit K**. The ICO cited the Plaintiff's failure to comply with the Dam Permitting Act. **Exhibit K** at C. The ICO further cites serious environmental harms resulting from Plaintiff's failure to comply

with the Dam Permitting Act and the resulting abnormal lowering of water levels in the Flat River Reservoir. *See*, **Exhibit K**, at (B)(9), (11), (12). Specifically, on August 1 and 2, 2022, RIDEM's Division of Fish and Wildlife conducted inspections that found rare freshwater mussels were being adversely affected by the Plaintiff's actions, which were negatively affecting the mussels habitat. *See*, **Exhibit K** at B(6)-(12); *see also* Affidavit of Gabriel Betty at **Exhibit K**, Attachment B. The ICO was issued upon a determination by the Director that the Plaintiff's violation of the Dam Permitting Act required immediate action to protect the environment. *See*, **Exhibit K** at E. The ICO remains in effect for 45 days and may be extended for another 45 days. *See*, **Exhibit K** at D. To enforce the ICO, RIDEM must seek injunctive relief in state court. R.I. Gen. Laws § 42-17.1-2(21)(vi). As of August 17, 2022, the Plaintiff was in compliance with the with the ICO.

II. STANDARD OF REVIEW

"A preliminary injunction is an extraordinary and drastic remedy that is never awarded as of right." *Peoples Fed. Sav. Bank v. People's United Bank*, 672 F.3d 1, 8-9 (1st Cir. 2012) (quoting *Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 32 (1st Cir. 2011)). Such a drastic remedy should only be issued "to prevent a real threat of harm." *Matos ex rel. Matos v. Clinton Sch. Dist.*, 367 F.3d 68, 73 (1st Cir. 2004). The moving party seeking a preliminary injunction must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position. *Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997) (citing *Brown v. Amaral,* 460 A.2d 7, 10 (R.I.1983); *Rhode Island Turnpike & Bridge Authority v. Cohen,* 433 A.2d 179, 182 (R.I.1981); *Coolbeth v. Berberian,* 112 R.I. 558, 562, 313 A.2d 656, 659 (1974)).

Under this framework, the plaintiff-movant bears the burden of establishing:

> (1) that she has a substantial likelihood of success on the merits; (2) that she faces a significant potential for irreparable harm in the absence of immediate relief; (3) that the ebb and flow of possible hardships are in favorable juxtaposition (i.e., that the issuance of an injunction will not impose more of a burden on the nonmovant than its absence will impose on the movant); and (4) that the granting of prompt injunctive relief will promote (or, at least, not denigrate) the public interest.

McGuire v. Reilly, 260 F.3d 36, 42 (1st Cir. 2001). "A failure by the plaintiff to meet any one of the four requirements requires a denial of the motion." *Lopez v. Wall*, No. C.A. 09-578 S, 2010 WL 4118091, at *1 (D.R.I. Sept. 22, 2010), report and recommendation adopted, No. CA 09-578 S, 2010 WL 4118112 (D.R.I. Oct. 19, 2010) (citing *Figueroa v. Wall*, No. 05–415, 2006 WL 898166, *2 (D.R.I. Mar. 14, 2006)).

At the same time, the four factors are not weighted equally; "likelihood of success is the main bearing wall of this framework." *W Holding Co. v. AIG Ins. Co.–P.R.*, 748 F.3d 377, 383 (1st Cir. 2014) (alteration and internal quotation marks omitted); *Flores v. Wall*, No. CA 11-69 M, 2012 WL 4471103, at *3 (D.R.I. Sept. 5, 2012); *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 16 (1st Cir. 1996) ("[l]ikelihood of success is the main bearing wall…."). "[I]f the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity." *Esso Standard Oil Co. (P.R.) v. Monroig-Zayas*, 445 F.3d 13, 18 (1st Cir. 2006). Moreover, irreparable harm is measured on "a sliding scale, working in conjunction with a moving party's likelihood of success on the merits, such that the strength of the showing necessary on irreparable harm depends in part on the degree of likelihood of success shown." *Braintree Labs., Inc. v. Citigroup Glob. Markets Inc.*, 622 F.3d 36, 42-43 (1st Cir. 2010) (alteration, citation and internal quotation marks omitted). "To demonstrate likelihood of success on the merits, plaintiffs must show 'more than mere possibility' of success—rather, they must establish a 'strong likelihood' that they will ultimately prevail." *Sindicato Puertorriqueno de*

Trabajadores v. Fortuno, 699 F.3d 1, 10 (1st Cir. 2012). Moreover, where, as here, a petitioner is seeking a mandatory preliminary injunction that alters rather than preserves the status quo, such an injunction should not issue unless the facts and the law *clearly* favor the moving party." *Harris v. Wall*, 217 F. Supp. 3d 541, 553 (D.R.I. 2016) (emphasis added).

III. ARGUMENT: PLAINTIFF HAS FAILED TO MEET ITS BURDEN AS TO EACH OF THE FOUR CRITERIA IT MUST MEET FOR A PRELIMINARY INJUNCTION AND THE PLAINTIFF'S MOTION MUST BE DENIED.

As noted above, a plaintiff must meet its burden of showing each of the four factors to be considered by the Court, or the motion seeking a preliminary injunction must be denied. *See*, *Lopez*, supra at *1. As explained in greater detail below, and as is evident from the Plaintiff's own motion, the Plaintiff has failed to meet its burden as to any of the four criteria required to justify the extreme remedy it seeks.

A. PLAINTIFF DOES NOT HAVE A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS OF ITS CASE.

In the present matter, the Plaintiff has failed to show a likelihood of success on the merits of its case. "To demonstrate likelihood of success on the merits, plaintiffs must show 'more than mere possibility' of success—rather, they must establish a 'strong likelihood' that they will ultimately prevail." *Sterman v. Brown Univ.*, 513 F. Supp. 3d 243, 251 (D.R.I. 2021) (quoting *Sindicato Puertorriqueno de Trabajadores v. Fortuno*, 699 F.3d 1, 10 (1st Cir. 2012)(internal citation omitted)). All six of the Plaintiff's claims should be dismissed by this Court for a variety of reasons explained more thoroughly in the Defendants' Motion to Dismiss, which is incorporated herein in its entirety by reference.

Bringing evidence into the consideration does not help matters for Soscia. Plaintiff consistently relies on unsubstantiated franchise rights, which it claims are also exclusive and perpetual, which Soscia alleges it received from Quidnick via the 2020 Quitclaim Deed. The

Plaintiff bases this claim on reliance upon language in an 1846 statute that was replaced in its entirety by a 1982 Act. Additionally, the Plaintiff claims exemption from modern law pursuant to the 1800s Milldam Act, despite the fact that Quidnick had abandoned any mill operations prior to its sale of the subject property to the Plaintiff. Moreover, although likely irrelevant, there is no evidence to suggest that Quidnick had any intention to conduct mill business in the future either. Thus, at the time of the sale, even Quidnick had no protections afforded to it under the Milldam Act. Likewise, the Plaintiff is a limited liability company created to "acquire and manage real estate" and it has alleged no future plans to operate any mills.

Moreover, the factual record establishes that RIDEM acted under its emergency powers to address an immediate threat to the environment. If RIDEM had not acted, in the context of an historic drought, *see* **Exhibit F**, at (E)(1), the habitat for freshwater mussels and other species that inhabit the pond would be threatened. To protect this habitat, RIDEM merely required Soscia to govern its outflow from the pond to ensure levels consistent with historic use. *See* **Exhibit F**, at Attachment A, ¶¶ 19-20. These factual developments further demonstrate that RIDEM's actions under the new statute were well-supported and temporary in accordance with actual conditions at the pond.

B. PLAINTIFF WILL NOT SUFFER IRREPARABLE HARM WITHOUT THE REQUESTED INJUNCTIVE RELIEF AND ANY ALLEGED HARMS ARE SPECULATIVE AND READILY COMPENSABLE WITH MONETARY DAMAGES

The Plaintiff's argument for irreparable harm rests on a single claim that Soscia is being denied a constitutional right. As noted above, the Plaintiff has failed to establish any likelihood of success with respect to its constitutional claims. The burden to show irreparable harm is connected to the ability of the Plaintiff to show a likelihood of success in its claims. *See*, *Braintree Labs., Inc.*, 622 F.3d at 42-43. Even if the Court were to determine that the Plaintiff had some

likelihood of success, which Defendants assert it does not, the Plaintiff should be required to make a strong showing of irreparable injury, which it cannot. However, "[w]hatever the likelihood of success, an injunction may not issue without a showing of irreparable injury." *McKenna v. Reilly*, 419 F. Supp. 1179, 1187 (D.R.I. 1976) (citing *Allee v. Medrano*, 416 U.S. 802, 94 S.Ct. 2191, 40 L.Ed.2d 566 (1974). "A finding of irreparable harm must be grounded on something more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store." *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004)(citing *Regan v. Vinick & Young* (*In re Rare Coin Galleries of Am., Inc.*), 862 F.2d 896, 902 (1st Cir.1988). Additionally, the Plaintiff must show that "remedies available at law, such as monetary damages, are inadequate to compensate for [its] injury." *See e.g., eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S. Ct. 1837, 1839, 164 L. Ed. 2d 641 (2006) (citing *Weinberger v. Romero—Barcelo*, 456 U.S. 305, 311–313, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982); *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987)).

Alleged constitutional harm does not automatically create irreparable harm as suggested by the Plaintiffs. Rather, factual consideration is necessary to determine whether an irreparable harm will result. In the first case cited by the Plaintiff to support its position, *Pure Wafer, Inc. v. City of Prescott*, a wastewater discharger and a local municipality were parties to a private contract whereby the municipality had agreed to accept wastewater from the discharger. Then, in response to state environmental regulations that increased costs for the municipality, the municipality passed targeted regulations disallowing discharge of wastewater unless the discharger agreed to alter the terms of the private contract without any additional bargaining or additional compensation. *See*, *Pure Wafer, Inc. v. City of Prescott*, 14 F. Supp. 3d 1279, 1283–84 (D. Ariz. 2014), *aff'd in part, rev'd in part and*

remanded sub nom. Pure Wafer Inc. v. Prescott, City of, 845 F.3d 943 (9th Cir. 2017).[1] In the only other case cited by the Plaintiff in its irreparable harm argument, *Philip Morris, Inc. v. Harshbarger*, the cigarette companies sought injunctive relief stopping the State of Massachusetts from implementing "novel ingredient-reporting requirements" that threatened to destroy valuable trade secrets. 159 F.3d 670, 671, 673 (1st Cir. 1998).

Both cases cited by the Plaintiff are factually distinguishable from the case at hand. While selective cases have decided that "alleging a deprivation of constitutional right" was sufficient to establish irreparable harm, "[c]ases so holding, [ ] are almost entirely restricted to cases involving alleged infringements of free speech, association, privacy or other rights as to which temporary deprivation is viewed of such qualitative importance as to be irremediable by any subsequent relief." *Pub. Serv. Co. of New Hampshire v. Town of W. Newbury*, 835 F.2d 380, 382 (1st Cir. 1987). The First Circuit has made well-known that "'[i]rreparable harm' in the takings context cannot simply mean the risk that the means the government has chosen to implement a public policy will have undesirable consequences." *Fideicomiso De La Tierra Del Cano Martin Pena v. Fortuno*, 604 F.3d 7, 19 (1st Cir. 2010). Even assertion that a First Amendment right has been violated does not necessarily require a finding of irreparable injury. *Pub. Serv. Co. of New Hampshire*, 835 F.2d at 382 (citing *Rushia v. Town of Ashburnham*, 701 F.2d 7, 10 (1st Cir.1983)). In *Pure Wafer*, the plaintiff's immediate ability to discharge wastewater into the municipal sewer system was restricted, threatening its very existence. Similarly, *Philip Morris* alleged that the subject law would result in the divulgence of trade secrets that could not be protected once the

[1] Although not noted in the Motion, it is of interest that the decision cited by the Plaintiff in *Pure Wafer* was ultimately overturned in part upon a finding by the 9th Circuit that the Contracts Clause had not actually been violated, even by this extreme and targeted action.

company complied with Massachusetts' reporting requirements. These factual scenarios are entirely dissimilar from the case at hand.

In this case, the Plaintiff has failed to explain what harm might befall it, aside from allegedly suffering economic damages readily ascertainable at trial. Moreover, any alleged potential damages are purely speculative. If the State is allowed to enforce the Dam Permitting Statute, the Plaintiff is merely required to continue use of the dam in accordance with historic use or secure a permit from RIDEM. This historic use is consistent with operations when Quidnick was able to secure the benefits of the Lease, which remains in effect until 2024 (subject to an unknowable decision in an unrelated litigation in state court).

In the Complaint, the Plaintiff claims a right to completely drain the Flat River Reservoir for some unidentified financial gain. Compl. at ¶ 28. The State disputes the Plaintiff's right to do this under numerous environmental laws, but that issue need not even be addressed at this early stage, as this is mere speculation and the Plaintiff has not provided any plans for development of the land under the subject reservoir, nor does it allege to have sought any necessary approvals. In its Motion, the Plaintiff also argues that if the State is allowed to enforce the Dam Permitting Act, "Soscia will no longer be able to realize profit from the lease of its rights." *Motion* at 19. Again, this is speculative and unsubstantiated. Currently, Soscia enjoys a lease for providing use of its land and the Flat River Reservoir. There is nothing to suggest that, absent an ability to drastically shift water levels in a manner contrary to dam operations since at least 1982, use of the Flat River Reservoir and the other lease rights granted to the Town of Coventry would be any less valuable. *See generally*, ICO (establishing historic use determination by the Director). Additionally, any *potential* fines would only be assessed if the Plaintiff were to violate the Dam Permitting Act. In addition to being readily calculated as monetary damages, the Plaintiff has shown no reason why

compliance would be unacceptable during the pendency of its case and, it has been in compliance with the ICO, at least as of August 17, 2022.

Thus, in addition to failing to show a likelihood of success on the merits of its claims, the Plaintiff has failed to meet its burden to show irreparable injury. Mere allegations of constitutional harms such as those alleged here are insufficient. What is more, no injury has actually been evidenced beyond mere speculation, and any alleged potential harms are monetary damages properly assessed at trial.

C. WHILE THE PLAINTIFF WILL SUFFER LITTLE-TO-NO HARM IF THE PRELIMINARY INJUNCTION IS DENIED, IF THE PRELIMINARY INJUNCTION IS GRANTED, THE STATE WILL SUFFER GREAT HARDSHIP AND THE PUBLIC INTEREST WILL BE THWARTED. ADDITIONALLY, ISSUANCE OF THE PRELIMINARY INJUNCTION WILL DO NOTHING TO PRESERVE THE STATUS QUO.

Under the final two prongs of the Court's analysis, Court must weigh the relative hardships suffered by the parties upon grant or denial of the injunctive relief, and must also consider the effect of any decision on the public interest. *McGuire v. Reilly*, 260 F.3d 36, 42 (1st Cir. 2001). Here, the evidence weighs heavily in favor of denial of the preliminary injunction. As addressed above, the Plaintiff has not shown a likelihood of success on the merits of its claims, nor has it shown any irreparable injury. As also discussed above, the Plaintiff cannot rely on alleged constitutional harm to support the extreme injunctive relief sought here.

The Plaintiff asks this Court to enjoin RIDEM from performing its obligations to enforce the State of Rhode Island's environmental laws. These obligations include, among other things, the duty to "supervise and control the protection, development, planning, and utilization of the natural resources of the state, such resources, including, but not limited to: water, plants, trees, soil, clay, sand, gravel, rocks and other minerals, air, mammals, birds, reptiles, amphibians, fish, shellfish, and other forms of aquatic, insect, and animal life" and to "enforce, by such means as

provided by law, the standards for the quality of air, and water [. . . .]" RI Gen Laws § 42-17.1-2 (1), (13). This also includes a duty to enforce the newly enacted Dam Permitting Act, which is designed to protect the environment in certain large dam-controlled ecosystems, such as the Flat River Reservoir. Similarly, an injunction preventing RIDEM from fining may embolden the Plaintiff to cease compliance with the Dam Permitting Act. As evidenced by the ICO, absent protections afforded under this new law, the habitats of important and threatened wildlife could be destroyed. *See*, **Exhibit K**. This loss, unlike Plaintiff's potentially claimed damages, is not readily converted into a monetary figure.

The public has a clear interest in protecting its wetlands and wildlife. It also has an interest in ensuring the legislature's ability to implement and enact laws to protect that environment that can in turn be enforced by appointed agencies. It is not in the public's interest to disallow enforcement of the laws designed to protect the environment. The Plaintiff must not be allowed to act as though it is exempted from applicability of all laws contrary to its preferred course of conduct (which remains unknown).

Moreover, denial of the Motion ensures that the status quo will be maintained. The Dam Permitting Act requires only that the Plaintiff continue to operate its dam in a manner consistent with historic use. Again, this means that the Plaintiff would be required to continue operating the dam in the same manner the dam has been operating since at least 1982 while continuing to enjoy any economic advantage it currently receives, including rents for use of the Flat River Reservoir and adjoining property pursuant to the Lease. Nothing in the Dam Permitting Act prevents the Plaintiff from leasing any use or recreational rights. Additionally, although the validity of the Lease is currently being reviewed by state courts, the Director's determined historic use of the subject dam is not inconsistent with the Lease.

It also remains unclear to what extent the Plaintiff is seeking an injunction, whether just with respect to Plaintiff's operation of its dam, or all dams that fall under jurisdiction of the Dam Permitting Act. However, to the extent that a complete injunction against enforcement of the Dam Permitting Act by RIDEM, against any dam owner, is sought, the potential harm to the Defendants and the public is only magnified.

IV. CONCLUSION

For the reasons set forth above, the Plaintiff has failed to meet its burden. Plaintiff has not presented evidence that it has a substantial likelihood of success on the merits or that it will suffer irreparable injury absent injunctive relief. At the same time, denial of the Plaintiff's Motion would ensure continuation of the status quo and protect the public's interest in defending the environment against sudden changes to established ecosystems. As such, the Plaintiff's Motion for Preliminary Injunction must be denied.

Respectfully submitted,

DEFENDANTS,
State of Rhode Island, State of Rhode Island Department of Environmental Management and Terrence Gray, in his capacity as the Director of the Rhode Island Department of Environmental Management

By:
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CERTIFICATE OF SERVICE

I hereby certify that I filed and served the within Objection through the ECF filing system on this 29th day of August 2022 and that it is available for viewing and downloading.

/s/ Nicholas M. Vaz