STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: SOSCIA HOLDINGS, LLC **File No.: OCI-FW-21-7**

IMMEDIATE COMPLIANCE ORDER

A. INTRODUCTION

Pursuant to § 42-17.1-2(21) of the Rhode Island General Laws, as amended, ("R.I. Gen. Laws") you are hereby notified that the Director of the Rhode Island Department of Environmental Management ("Director" of "RIDEM") has determined that the above named party ("Respondent") is ORDERED TO TAKE THE FOLLOWING IMMEDIATE ACTION to protect the environment in response to conditions that violate one or more of the following statutes and /or regulations as further detailed in this Immediate Compliance Order ("ICO").

B. FACTS

(1) Soscia Holdings purchased the Flat River Reservoir Dam in Coventry, Rhode Island, along with certain land and water rights commonly known as Johnson's Pond ("Johnson's Pond") from the Quidnick Reservoir Company ("Quidnick") in March 2020 by quitclaim deed.

(2) On June 27, 2022, Governor McKee signed a law titled *An Act Relating to Waters and Navigation - Dam Permits*, which became effective upon the Governor's signature. The law reads as follows:

> Any person who owns or operates a dam that has the capacity to store greater than one thousand four hundred (1,400) normal storage acre feet of water shall apply to the director of the department of environmental management for a permit to raise or lower the water level behind the dam. The owner or operator shall apply for a permit, and until such time as a permit is issued by the director, the owner or operator shall operate the dam in a manner that is consistent with historic use as determined by the director. The director may enforce this section in accordance with chapters 17.1 and 17.6 of title 42. This section shall not apply to dams that impound water for a public water supply system as defined in § 46-13-2. The department may promulgate rules and regulations to implement the provisions of this chapter.

(3) Analysis of the United States Geological Survey ("USGS") data from a stream flow monitoring station identified as South Branch Pawtuxet River at Washington County (Number 01116000) ("USGS Gauge"), which is near, and downstream from, the Flat River Reservoir Dam shows that Respondent is operating the Flat River Reservoir Dam in a manner that has directly resulted in water levels that are inconsistent with historic use at the Flat River Reservoir. *See* Affidavit of David E. Chopy, at Par. 19 and Par. 20 (attached hereto as **Attachment A**).

(4) As of the date of this ICO, Respondent has not applied for a permit from the Director of RIDEM, despite two prior letters informing Respondent of the requirement to comply with the law.

(5) In 2000, RIDEM's Division of Fish and Wildlife ("F&W") biologists observed the presence of five species of freshwater mussels in Johnson's Pond. *See* Affidavit of Gabriel Betty (attached hereto as **Attachment B**).

(6) On August 1-2, 2022, F&W investigated Johnson's Pond to determine if freshwater mussels still currently reside there and whether they are at risk for harm due to low water levels. *See id.*

(7) During that inspection, three live freshwater mussel species were identified. *Id.,* at Par. 14.

(8) Two of the species found in Johnson's Pond in 2000, and one found in 2022 are rare and of high conservation priority. *Id.*

(9) The abnormally low water levels are adversely affecting the physical, chemical, and biological integrity of the habitat and adversely altering the uses, processes and activities of fish and wildlife.

(10) Since June 27, 2022, Respondent has maintained an outflow rate from Johnson's Pond greater than 40 cubic feet per second ("cfs").

(11) The activity of Respondent, to wit, maintaining a rate of more than 40cfs, is contributing to the abnormally low water levels.

(12) Based on the science and biology of freshwater mussels, the abnormally low water levels in Johnson's Pond are harmful to the freshwater mussels that live there. *Id.*

C. VIOLATIONS

Based on the foregoing facts, RIDEM has determined that violations of the following statutes and/or regulations are present at Johnson's Pond:

(1) **R.I. Gen. Laws § 46-19.1-1 –** requiring the owner or operator to operate the dam in a manner that is consistent with historic use as determined by the director. *Supra.*

(2) **Rhode Island's *Water Quality Regulations (*250-RICR-150-05-1), Part 1.10(B)(1)(b) –** requiring that all waters be free . . . ***from anthropogenic activities*** subject to these regulations that adversely affect the physical, chemical, or biological integrity of the habitat.

D. IMMEDIATE COMPLIANCE ORDER

Pursuant to R.I. Gen. Laws §§42-17.1-2(21)(ii)(A), Respondent is hereby ORDERED to reduce the water release from Flat River Reservoir Dam to 40cfs as measured at the USGS Gauge or such other rate sufficient to restore the Flat River Reservoir to the spillway level, but not less than 14cfs as measured at the USGS Gauge. This Immediate Compliance Order will be effective for 45 days after issuance and may be renewed for one additional period of 45 days.

E. NO RIGHT TO ADMINISTRATIVE HEARING

(1) Pursuant to R.I. Gen. Laws §§42-17.1-2(21)(ii)(A), Respondent has NO RIGHT TO AN ADMINISTRATIVE HEARING regarding the ICO in that RIDEM has determined that the actions specified herein are immediately necessary to protect prevent harm to the environment.

(2) The ICO is a final Compliance Order and is enforceable in Superior Court. See R.I. Gen. Laws §§42-17.1-2(21)(vi).

(3) Failure to comply with the ICO may subject each Respondent to additional civil and/or criminal penalties as possible by law.

(4) The ICO does not preclude RIDEM from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Susan Forcier of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772305 or at susan.forcier@dem.ri.gov. All other inquiries should be directed to David E. Chopy of RIDEM's Office of Compliance and Inspection at (401) 222-1360, ext. 2777400 or at david.chopy@dem.ri.gov.

Terrence Gray, Director
RIDEM

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____ the within Notice of Violation was forwarded to:

SOSCIA HOLDINGS, LLC
c/o Richard E. Fleury, Resident Agent
33 College Hill Road
Building 20
Warwick, RI 02886

by Certified Mail.

_____

Affidavit of Gabriel Betty

I, Gabriel Betty, being duly sworn, do hereby depose and state the following under oath:

1. I am over 18 years of age and otherwise competent to make this Affidavit. The statements in this Affidavit are based on my personal knowledge. Since Sept. of 2021, I have served as a fisheries biologist for the Division of Fish and Wildlife ("F&W") for the Department of Environmental Management ("DEM"). I first started to work for DEM F&W in 2018 as a Student Researcher and progressed to a full-time position as Fish Culturist II in 2019.
2. F&W is the primary office responsible for investigating complaints and overseeing permitting and compliance with statutes and regulations relating to fish and wildlife under DEM's authority. F&W is also responsible for performing compliance monitoring inspections of properties and facilities related to impacts on fish and wildlife. As a fisheries biologist for F&W, I am responsible for performing professional biological field and/or laboratory work; to engage in a variety of technical research projects; to prepare and analyze statistical data gathered in research investigations; to present research findings to state and local management bodies; to prepare scientific reports of such biological research findings; and to assist in public information inquiries.
3. Prior to my employment at DEM, from April 2010-Oct. 2019, I was employed by Matunuck Oyster Bar and Farm as a Farmers Market Coordinator, Oyster/ Vegetable Farmer, and Restaurant Staff. During that 9 years, my responsibilities included assisting with the operations of the restaurant and promotion by representing the business at public events. Additionally, From May through December of 2014, I was employed as an intern by the Coastal Resources Center's Rhode Island Shellfish Management Plan ("RISMP").

The RISMP to provides comprehensive policy guidance regarding state management and protection measures for shellfish resources throughout the state. The collaborative planning process involves multiple governmental and non-governmental stake holders including CRMC, DEM, academia and user groups. Responsibilities included field work, data collection and analysis, basic computer operations, organizing and assisting with public shellfishing education classes and development of shellfish documents for public use.

7. I received a Bachelor of Science in Aquaculture/Fisheries Sciences in 2012 and a Master of Science in 2015 in from the University of Rhode Island.

8. I am familiar with the Flat River Reservoir (a.k.a. Johnson's Pond) in Coventry, Rhode Island through the course of my responsibilities with the State of Rhode Island.

9. On August 1 and 2, 2022, I was tasked with inspecting the pond to determine the presence or absence of freshwater mussels. Given the urgent need to document the presence or absence of freshwater mussels in Johnson Pond and to expedite the process, I only inspected locations with public access. On August 1, I inspected these locations on my own and returned with additional help the following day and brought hip boots to inspect into deeper water along with a view box to see deeper into the water.

10. I personally reviewed historical data regarding the presence of freshwater mussels in Johnson's Pond, and my research revealed that in 2000, F&W biologists observed the presence of the following five species of freshwater mussels in Johnson's Pond:

Eastern floater, *Pyganodon cataracta*
Eastern elliptio, *Elliptio complanata*
Triangle Floater, *Alasmidonta undulata*
Eastern Lampmussel, *Lampsilis radiata radiata*
Creeper, *Stronphitus undulatus*

(See publication The Status of Freshwater Mussels in Rhode Island by Christopher Raithel and Raymond Hartenstine; Northeastern Naturalist 2006, 13(1): 103-116. Attached as Exhibit 1.)

11. My research also revealed that during a survey of invasive aquatic vegetation in 2015, a DEM biologist from the Office of Water Resources observed an unidentified species of freshwater mussel.

12. Pictures taken on Aug. 1st and 2nd 2022.


13. Pictures taken by Katie DeGoosh, OWR in 2015.


14. During my inspection of Johnson's Pond on August 1 and 2, 2022, I personally observed and identified both shells and live freshwater mussels of the following three species:

Eastern floater, *Pyganodon cataracta*

Eastern elliptio, *Elliptio complanata*
Eastern Lampmussel, *Lampsilis radiata radiata*

These shells and live mussels were observed in two locations in Johnson's Pond at approximately fifty (50) cm depth: off F.H. Sherman Memorial Park and off Isle of Capri Road. No live mussels were found on shore.

15. Freshwater mussels of the species observed in Johnson's Pond, as aquatic organisms, obtain oxygen from the waters in which they live, and require water to survive. They are unable to move from dry shoreline areas to water covered areas and are subject to desiccation and predation from various mammal and bird species.

16. Two of the species found in Johnson's Pond in 2000, and one found in 2022 are considered to be rare and of high conservation priority (*Lampsilis radiata* and *Stronphitus undulatus*), and two species are listed as Species of Greatest Conservation Need by DEM (*Lampsilis radiata* and *Alasmidonta undulata*). (See Publication 2015 Rhode Island Wildlife Action Plan, Chapter 1, Rhode Island's Fish and Wildlife, p. 35 and Table 1-10. Attached as Exhibit 2.)

17. The DEM Water Quality Regulations, at 250-150-1.10(B)(1)(a-d), require:

> At a minimum, all waters shall be free of pollutants in concentrations or combinations or from anthropogenic activities subject to these regulations that:
>
> a. Adversely affect the composition of fish and wildlife;
> b. Adversely affect the physical, chemical, or biological integrity of the habitat;
> c. Interfere with the propagation of fish and wildlife;
> d. Adversely alter the life cycle functions, uses, processes and activities of fish and wildlife; or
> e. Adversely affect human health.

Based on my inspection of Johnson's Pond on August 1 and 2, 2022, the anthropogenic activity of lowering of the water level to abnormally low levels is adversely affecting the

physical, chemical and biological integrity of the habitat and adversely altering the uses, processes and activities of fish and wildlife.

18. Based on the science and biology of freshwater mussels, the abnormally low water levels in Johnson's Pond are more likely than not to be harmful to the freshwater mussels that live there.

_____

Gabriel Betty
Fisheries Biologist, Division of Fish and Wildlife
R.I. Department of Environmental Management

Subscribed and sworn this ____day of August, 2022.

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this _____ day of August, 2022, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged that they signed it voluntarily for its stated purpose.

_____

Notary Public

My Commission expires: _____

Affidavit of David E. Chopy

I, David E. Chopy, being duly sworn, do hereby depose and state the following under oath:

1. I am over 18 years of age and otherwise competent to make this Affidavit. The statements in this Affidavit are based on my personal knowledge. Since September of 2008, I have served as Chief - now Administrator - of the Office of Compliance and Inspection ("OC&I") of the Department of Environmental Management ("DEM"). I have worked in OC&I since the office was created in October 1996.
2. OC&I was created to be the primary office responsible for investigating complaints of alleged regulatory violations and enforcing regulatory violations under DEM's authority. OC&I is also responsible for performing compliance monitoring inspections of properties and facilities related to dam safety, hazardous waste, and underground storage tanks. As Administrator of OC&I, I am responsible for managing staff involved in water pollution, freshwater wetlands, dam safety, septic systems, air pollution, hazardous waste, solid waste, and underground storage tanks.
3. I have been employed by DEM since March 1985. First, I worked in DEM's Division of Water Resources as a Sanitary Engineer responsible for managing a water pollution monitoring program.
4. In or around 1987, I was promoted to Senior Sanitary Engineer responsible for managing staff for the following programs: operation and maintenance of wastewater treatment facilities, water pollution monitoring, sludge management, and water pollution complaint response. In managing these programs, I was responsible for enforcement of the rules involving these programs.

5. In or around 1991, I was promoted to Supervising Sanitary Engineer responsible for managing staff for the following programs: shellfish management, operation and maintenance of wastewater treatment facilities, water pollution monitoring, sludge management, water quality permitting and water pollution complaint response. I was responsible for enforcement of the rules of these programs.

6. In all the positions I have held since 1987, I have been involved in enforcing the regulations set forth for the programs under my responsibility.

7. I received a Bachelor of Science degree in Chemical Engineering from the University of Rhode Island in 1984, and I became a registered professional engineer in the State of Rhode Island in 1990.

8. I am familiar with the Flat River Reservoir (a.k.a. Johnson's Pond) in Coventry, Rhode Island through the course of my responsibilities with the State of Rhode Island.

9. In or around September 1993 I was tasked with determining historic water levels at the Flat River Reservoir for the purpose of guiding the drafting of a Consent Agreement between DEM and the Quidnick Reservoir Company. At that time, I used 12 years of historical data of the water levels and gate settings at the Flat River Reservoir Dam and 12 years of United States Geological Survey ("USGS") data from a stream flow monitoring station identified as South Branch Pawtuxet River at Washington County (Number 01116000) ("USGS Gauge"), which is near, and downstream from, the Flat River Reservoir Dam.

10. I personally reviewed the historical data, and my research and analysis were recorded in a letter to Steven Rosenbaum, Esq. dated April 27, 1994, a true and accurate copy of which is attached hereto as Exhibit 1.

11. My research and analysis allowed me to determine historic water levels in, and water releases from, the Flat River Reservoir, which were incorporated into the standards set forth in the 1995 Consent Agreement. A true and accurate copy of the 1995 Consent Agreement is attached hereto as Exhibit 2.

12. The standards set forth in the 1995 Consent Agreement were also memorialized in a lease between the Town of Coventry and Quidnick Reservoir Company in 1994.

13. Upon information and belief, from 1995 through March 2020, Quidnick Reservoir Company operated the Flat River Reservoir Dam in compliance with the standards set in the 1995 Consent Agreement and the 1994 lease and a subsequent lease entered in 2009.

14. The Flat River Reservoir Dam has historically been operated and used in the following manner:

April 1 – April 30

Maintain a minimum streamflow of 215 cubic feet per second ("cfs") and gradually raise the water level in the pond to 12 inches below spillway level. If the streamflow cannot be maintained at 215 cfs, lower the water level in the pond until 215 cfs is attained. If the water level in the pond falls below 24 inches below spillway level (that is, 25 inches, 26 inches, etc.), reduce the streamflow to 100 cfs until the water level in the pond reaches 24 inches below spillway level. Once the water level in the pond reaches 24 inches below spillway level, maintain the water level in the pond at 24 inches below spillway level provided that a minimum streamflow of 100 cfs is maintained. Raise the water level in the pond above 24 inches below spillway level (that is, 23 inches, 22 inches, etc.) provided that a minimum streamflow of 215 cfs is maintained.

May 1 – May 31

Maintain a minimum streamflow of 150 cfs and raise the water level in the pond to spillway level. If the streamflow cannot be maintained at 150 cfs, lower the water level in the pond until 150 cfs is attained. If the water level in the pond falls below 12 inches below spillway level (that is, 13 inches, 14 inches, etc.), reduce the streamflow to 60 cfs until the water level in the pond reaches 12 inches below spillway level. Once the water level in the pond reaches 12 inches below spillway level, maintain the water level in the pond at 12 inches below spillway level provided that a minimum streamflow of 60 cfs is maintained. Raise the water level in the pond above 12 inches below spillway (that is, 11 inches, 10 inches, etc.) provided that a minimum streamflow of 150 cfs is maintained.

June 1 – September 30

Maintain the water level in the pond at spillway level. If the water level in the pond is below spillway level, reduce the streamflow to 40 cfs.

October 1 – October 31

Maintain a minimum streamflow of 64 cfs and maintain the water level in the pond between the spillway level and 12 inches below the spillway level. If the streamflow cannot be maintained at 64 cfs, lower the water level in the pond until 64 cfs is attained. If the water level in the pond falls below 36 inches below spillway level (that is, 37 inches, 38 inches, etc.), reduce the streamflow to 40 cfs until the water level in the pond reaches 36 inches below spillway level. Once the water level in the pond reaches 36 inches below spillway level, maintain the water level in the pond at 36 inches below spillway level provided that a minimum streamflow of 40 cfs is maintained. Raise the water level in the pond above 36

inches below spillway level (that is, 35 inches, 34 inches, etc.) provided that 64 cfs is maintained.

November 1 – November 31

Maintain the water level in the pond between 30 inches to 36 inches below spillway level. If the water level in the pond falls below 36 inches below spillway level (that is, 37 inches, 38 inches, etc.), reduce the streamflow to 64 cfs until the water level in the pond reaches 36 inches below spillway level.

December 1 – March 31

Maintain the water level in the pond between spillway level and 42 inches below spillway level (except for a maximum period of 2 weeks when the water level in the pond can be 50 inches below spillway level) provided that a minimum streamflow of 32 cfs is maintained. If the water level in the pond falls below 42 inches below spillway level (that is, 43 inches, 44 inches, etc.), limit the streamflow to 32 cfs until the water level in the pond reaches 42 inches below spillway level.

15. During the historic period under consideration, DEM and Quidnick Reservoir Company acknowledged that certain weather events may not allow strict compliance with the levels described above at all times. However, to DEM's knowledge, Quidnick Reservoir Company maintained levels, even under dry conditions, as close to those described in paragraph 15 above as within Quidnick Reservoir Company's control with respect to both pond level and stream flow.

17. To DEM's knowledge, from at least July 1995 through September 2019, the Flat River Reservoir water levels were kept at full pond at the spillway each year from June 1-Sept 30. The only exception to this was one period in 2004 where the water level was below

spillway; however, stream flows were compliant with the historic operation as listed in paragraph 15 above.

17. I have directly overseen a team of DEM staff who inspected the Flat River Reservoir on July 11, July 25, and July 28, 2022 ("Inspections").

18. I have also reviewed the USGS Gauge data for June and July in 2022, which is available for historical review and appears in near-real time on the USGS website.

19. My review of the reports of the Inspections and my review of the current USGS Gauge data shows that Soscia Holdings, LLC is operating the Flat River Reservoir Dam in a manner that has directly resulted in water levels that are inconsistent with historic water levels at the Flat River Reservoir. Moreover, Soscia would have been able to either maintain or more closely approximate historic pond levels, even during a recognized dry weather event, by reducing stream flow (which remains well above historic minimum levels); and reducing those flows now can improve the current conditions.

20. My review of the reports of the Inspections and my review of the current USGS Gauge data shows that Soscia Holdings, LLC is operating the Flat River Reservoir Dam in a manner that is inconsistent with its historic use.

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_____
David E. Chopy
Administrator, Office of Compliance and Inspection
R.I. Department of Environmental Management.

Subscribed and sworn this _____ day of August, 2022.

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this _____ day of August, 2022, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged that they signed it voluntarily for its stated purpose.

_____
Notary Public

My Commission expires: _____