

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

BASIL SEGGOS as COMMISSIONER OF THE NEW
YORK STATE DEPARTMENT OF ENVIRONMEN-
TAL CONSERVATION and THE NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION,

Plaintiffs,

JUDGMENT ON CONSENT

v.

Index No. 907588-18

JASON ROBERTS DEVELOPMENT CORP. GARY
SPINDLER, JAYSON ROBERTS OPERATING
CORP., ADAM SPINDLER, and
GEMILAS CHESED ACH TOV, INC.

Defendants.

Whereas, Basil Seggos as Commissioner of the New York State Department of Conserva-
tion (the "Commissioner") and the New York State Department of Environmental Conservation
("DEC" or the "Department" and, together with the Commissioner, "Plaintiffs"), commenced this
action by filing a verified complaint (the "Complaint") on December 18, 2018, alleging that Jason
Roberts Development Corp. ("Development Corp.") and Gary Spindler violated an administrative
order on consent (the "Consent Order") concerning the Rainbow Lake Dam (the "Dam"), a class
C high-hazard dam located on McCormick Road (tax parcel 65.020-2-20.110) in the Town of In-
dian Lake, Hamilton County;

Whereas, on November 22, 2019, plaintiffs amended their complaint (the "Amended
Complaint") to add Jayson Roberts Operating Corp. (Operating Corp.), Adam Spindler, and Gemi-
las Chesed Ach Tov., Inc. ("Gemilas") as defendants to the already-named defendants Gary Spin-
dler and Development Corp (together, "Defendants"). Plaintiffs also added claims for violations
of the Environmental Conservation Law and its regulations;

Whereas, the Department issued Development Corp. a permit authorizing the controlled

breach and removal of the Dam (the "Dam Removal Permit"), in accordance with the engineering plans submitted by Development Corp., and the terms and conditions specified in the Dam Removal Permit;

Whereas, in October 2019, the Dam Removal Permit expired and the Dam had not been breached or removed;

Whereas, as part of this settlement, within ten business days of the effective date of this Order, the Department will reinstate the Dam Removal Permit in the name of Operating Corp., with a new expiration date of June 30, 2022; and

Whereas, the parties have consented to the terms contained in and to the entry of this Judgment on Consent for the purpose of resolving all of Plaintiffs' causes of action, and Plaintiffs have determined that the terms of this Judgment on Consent are in the public interest:

IT IS HEREBY STIPULATED, ORDERED, AND ADJUDGED as follows:

1. Development Corp. admits liability for the First, Second, Third and Fourth Causes of Action asserted against it by Plaintiffs in the Amended Complaint. Operating Corp. admits liability for the Third and Fourth Causes of Action asserted against it by Plaintiffs in the Amended Complaint. Gemilas admits liability for the First and Fourth Causes of Action asserted against it in the Amended Complaint. Nothing herein shall be construed as an admission by any Defendant other than Development Corp., Operating Corp. and Gemilas.

2. It is the express understanding and agreement of the parties that, upon execution of this Judgment on Consent by their respective authorized counsel or officers, and when so ordered by this Court, the Judgment on Consent shall be and have the force of an order of the Court, and may be enforced as such.

A. Remedial Action

3. In resolution of all claims by Plaintiffs for remedial relief for the violations in the Complaint through the effective date of this Judgment on Consent, Defendants agree to accomplish the controlled breach and removal of the Dam (the "Remedial Action"). Although only Development Corp., Operating Corp. and Gemilas admit liability for the allegations in the Amended Complaint, all Defendants, including Gary Spindler and Adam Spindler, shall be responsible for completion of the Remedial Action, as described in the compliance schedule ("Compliance Schedule") attached as "Schedule A: Compliance Schedule," to this Judgment on Consent. Defendants will complete the Remedial Action no later than June 30, 2022. The Remedial Action is not complete until all construction, including satisfaction of all permit conditions has been completed.

4. The injunctive relief portion of the Compliance Schedule set forth in this Judgment on Consent may be enforced against all Defendants. In the event that Defendants fail to comply with the Compliance Schedule, and the Department takes over the work, the Department may seek from all Defendants any costs that exceed the financial assurances in ¶ 12, as contemplated in ECL § 15-0507. The penalties portion of this Judgment on Consent, contained in ¶¶ 10-11, may be enforced against Development Corp., Operating Corp., Gemilas, and Gary Spindler.

5. Defendants will accomplish the Remedial Action in full compliance with the terms and conditions set forth in the Dam Removal Permit and with ECL § 15-0507 (the "Dam Safety Law") and its regulations. In doing so, Defendants will follow the Compliance Schedule attached to this Order. Defendants will also submit an updated Emergency Action Plan (6 NYCRR Pt. 673) and an updated annual certification form (6 NYCRR 673.8) with this Judgment on Consent.

6. Before commencing the Remedial Action, Defendants will secure any other necessary permits, including from the Adirondack Park Agency and the U.S. Army Corps of Engineers,

to the extent the permits previously obtained from these agencies have expired, require modification, or are otherwise found lacking by the issuing entity. Failure to secure these permits is not a basis for defendants to request an extension. Development Corp., Operating Corp. and Gemilas have entered into and filed an owner agreement, attached hereto as Exhibit A, and within ten days of the effective date of this Judgment on Consent, those defendants will file the owner agreement (the "Owner Agreement") with the Clerk of Hamilton County against the Tax Parcel 65.020-2-20.110. The Owner Agreement establishes that Development Corp., Operating Corp. and Gemilas bear the responsibility to maintain the remnants of the Dam, if any, in compliance with the Dam Safety Law and its regulations upon and after completion of the Remedial Action. The Owner Agreement also provides the names, title, postal and email addresses, and telephone numbers for a corporate officer of Development Corp., Operating Corp. and Gemilas. That Owner Agreement is intended to run with the land and bind agents, successors and assigns, and shall establish Development Corp., Operating Corp. and Gemilas as having assumed responsibility as owners of the Rainbow Lake Dam pursuant to the Dam Safety Law (ECL §§ 15-0501 to 15-0517) and its regulations (6 NYCRR Pt. 673).

Force Majeure

7. Defendants shall not suffer any penalty under or be subject to any proceeding or action to enforce this Judgment on Consent if their timely compliance with any requirement in the Compliance Schedule hereof is rendered impossible due to a force majeure event, defined here as a natural event, war, terrorist attack, strike, riot, catastrophe, work stoppage, delays attributable to judicial injunction or to any governmental body other than the Department in issuing permits or approvals needed by Defendants and as to which negligence or willful misconduct on the part of any Defendant was not the proximate cause and which could not have been avoided by Defendants

through the exercise of due care. However, Defendants shall make their best efforts to comply nonetheless and shall, within five (5) business days, notify Plaintiffs in writing, pursuant to ¶ 21 of this Judgment on Consent, after obtaining knowledge of any such condition or event, and shall request an appropriate extension that is up to but no longer than the duration of the force majeure event. Failure to give such notice constitutes a waiver of any claim that timely compliance is a force majeure event. Inability to pay is not a force majeure event, and any failure to timely make a civil penalty installment payment as required by this Judgment on Consent is not subject to a force majeure defense (paragraphs 8-9 describe Defendants' obligations in the event of Covid-19-related issues).

8. Regarding the restrictions based on Covid-19, Defendants will be obligated to complete the Remedial Action as described in this Order's Compliance Schedule unless state or federal law, guidance (related to Covid-19), or executive order prohibits or delays the Remedial Action. If Defendants believe state or federal law, guidance, or executive order prohibits timely completion of the Remedial Action, the Department may clarify that it considers the Remedial Action described in this Judgment on Consent as essential to protect public safety.

9. Further with regard to Covid-19-related issues, Defendants shall take timely steps to apply for an exemption to allow the work to continue, and if such request is denied, shall request an extension of the Compliance Schedule from the Department. The Department will also grant a reasonable extension request for good cause shown. The Department will promptly consider such extension requests made by Defendants as a result of restrictions placed on businesses to combat Covid-19. For the Department to grant such a request for an extension, the business restrictions must apply to businesses that would perform work related to this Judgment on Consent. Addition-

ally, the Department will consent to a reasonable extension request made as a result of the Department not responding within sixty (60) days to an approvable submission or extension request by the Defendants. If the Department agrees to such an extension request, it also will consent to an application to the Court to modify this Judgment on Consent accordingly. Defendants shall have the burden of proving that an event is a defense to a claim of noncompliance with this Judgment on Consent pursuant to the terms of this paragraph and ¶ 8. Defendants must notify Plaintiffs in writing, pursuant to ¶ 21 of this Judgment on Consent, within five (5) business days after obtaining knowledge of any such Covid-19-related restriction, and shall request an appropriate extension. Failure to give such notice constitutes a waiver of any claim that a delay is not subject to penalties, actions, or proceedings.

B. Penalty

10. In full satisfaction of all stipulated and other penalties incurred under the Consent Order (a true and accurate copy of which is attached hereto as **Exhibit B**), and in resolution of all claims by Plaintiffs for penalties for the violations alleged in the Amended Complaint through the effective date of this Judgment on Consent, all Defendants agree to pay the State a total of One-Hundred-Fifty Thousand Dollars (\$150,000.00) (the "Penalty Amount") as follows:

a. A lump sum payment of One Hundred-Ten Thousand Dollars (\$110,000.00) by bank check made payable to the New York State Department of Environmental Conservation is due upon the signing of this Judgment on Consent. Business checks are not acceptable. The check shall be mailed to Assistant Attorney General Nicholas Buttino, New York State Department of Law, Environmental Protection Bureau, The Capitol, Albany, New York 12224. Defendants shall remit this bank check to Assistant Attorney General Buttino in the amount of One Hundred-Ten Thousand Dollars

(\$110,000.00) together with an executed copy of this Judgment on Consent and as an essential precondition to this settlement.

b. The balance of Forty Thousand Dollars (\$40,000.00) shall be paid in four (4) equal monthly installment payments of Ten Thousand Dollars (\$10,000.00) by bank check made payable to the New York State Department of Environmental Conservation on or before June 30, 2021, September 30, 2021, December 31, 2021 and January 31, 2022. The checks shall be mailed to Assistant Attorney General Nicholas Buttino, New York State Department of Law, Environmental Protection Bureau, The Capitol, Albany, New York 12224. Business checks are not acceptable.

Stipulated Penalties for Late Compliance

11. Defendants agree to pay a stipulated daily penalty for unexcused late compliance or noncompliance with any requirement of this Judgment on Consent; the amount of the daily stipulated penalty will increase every 30 days. For days 1-30 that any Defendant is late in completing an item on the Compliance Schedule, Defendants collectively agree to pay a penalty to the State of \$250 per day; for days 31-60 that any Defendant is late in completing an item on the Compliance Schedule, Defendants agree to pay a penalty to the State of \$500 per day. After day 60, for any day that any Defendant is late in completing an item on the Compliance Schedule, Defendants will pay a penalty to the State of \$1,000 per day. These sums are cumulative and binding on all Defendants without regard to which of them triggered the penalty. If more than one item on the Compliance Schedule is late, more than one stipulated penalty may accrue. It is understood and agreed that a stipulated penalty or combination of stipulated penalties is due and payable from Defendants within ten business days after receipt of a written demand and justification from the State. Any stipulated penalty continues to accrue until the Compliance Schedule item has been

completed.

Financial Assurances for Late Compliance

12. In addition to the Penalty Amount, Defendants shall submit and have established unencumbered financial assurances (the "Financial Assurances") in a form acceptable to Plaintiffs of Two-Hundred Sixty-Two Thousand Five Hundred Dollars (\$262,500.00). The Department has agreed to the specific financial assurance instrument of a letter of credit, which is attached as Exhibit C. Defendants will provide notice of any extension or alteration to the Compliance Schedule to the issuer of the letter of credit and are responsible for ensuring the letter of credit is extended or changed to provide coverage for all extensions or alterations where: (a) any automatic renewal of the letter of credit for one year periods is insufficient to cover any extension or alteration to the Compliance Schedule; or (b) if the issuer of the letter of credit provides notice that the letter of credit will not be automatically renewed. Defendants must provide plaintiffs with copies of the notice documents and modified letter of credit, as specified in ¶ 21. Failure to demonstrate an extension of the letter of credit that runs with any extension or alteration to the Compliance Schedule will trigger the Department's rights to payment under the letter of credit. The Financial Assurances must be payable to the Department. Defendants must provide proof of this Financial Assurance at the time that they sign this Judgment on Consent. The Financial Assurances may be used as follows:

- a. If Defendants fail to make any of the monthly installment payments set forth in paragraph 10(b), the State may draw upon the Financial Assurances in the amount of the missed payment(s).
- b. If Defendants fail to adhere to the Compliance Schedule, the parties agree that the State may draw upon the Financial Assurances up to \$22,500 to cover the stipulated

penalty for late compliance that continues for up to sixty days for a violation of the Compliance Schedule, or an equivalent shorter violation of multiple requirements of the Compliance Schedule.

c. If a Defendant is more than 60 days late in completing an item in the Compliance Schedule, or if a Defendant submits a document or materials that do not comply with the New York State Dam Safety Law (ECL 15-0507 et seq.), its regulations (6 NY-CRR Pt. 673), or guidance, as provided in ¶ 12(d) below, within 60 days of the corresponding dates listed in the Compliance Schedule, the Department may use the remaining Financial Assurances to complete the Remedial Action up to the amount of \$200,000, subject to the provisions in ¶ 12(d) below.

d. Prior to the Department's use of the Financial Assurances for any purpose, the Department will provide notice by overnight mail and email to Defendants of its intent to use the Financial Assurances and Defendants will have fourteen calendar days (14) days from the date the notice is received to cure any alleged deficiencies before the Department uses the Financial Assurances.

e. If Defendants fail to cure the alleged deficiencies in complying with the Remedial Action, and the Department takes over the work, Defendants will dismiss their consultant and demobilize any contractors. The Department's use of the Financial Assurances to complete the Remedial Action does not relieve Defendants of the obligation to pay stipulated penalties. Additionally, Defendants are still liable for any stipulated penalties in excess of the financial assurances. Any funds from the financial assurances expended by the Department toward completing the Remedial Action, including, by way of example only, planning, surveying, and engineering, shall be forfeit.

f. In the event that Defendants give a notice of impossibility due to a force majeure event (described in ¶ 7), the Department may still take over the work itself and access the Financial Assurances using the procedures described in this paragraph.

13. The Department will release any claim to the Financial Assurances after the Defendants complete the Remedial Action and receive the Department's written approval thereof if (a) no outstanding site work, document submittal or document approval is required to bring the Dam into compliance, (b) Defendants have paid any stipulated penalty assessed during the pendency of this Judgment on Consent, and (c) the Dam (or its remnants, if any), is in compliance with or is exempt from all statutory and regulatory requirements.

14. Throughout the term of this Judgment on Consent, defendants shall maintain compliance with the provisions of 6 NYCRR 673.6 (inspection, operation and maintenance), 6 NYCRR 673.7 (emergency action plans), and 6 NYCRR 673.8 (annual certification) until the Remedial Action is complete.

C. Duration of this Judgment on Consent

15. The terms of this Judgment on Consent shall remain in force and effect until Plaintiffs provide written confirmation that Defendants have completed the Remedial Action and paid the Penalty Amount and any stipulated penalty owed, pursuant to ¶ 21, of this Judgment on Consent. Such confirmation shall not be unreasonably withheld. The Court retains jurisdiction of this matter during the duration of the Judgment on Consent.

D. Release

16. Upon completion of the Remedial Action and payment of the Penalty Amount and, if applicable, any stipulated penalty owed, Plaintiffs agree to release Defendants from any and all liability with respect to the causes of action set forth in the Amended Complaint. This release does

not absolve Defendants of their obligation to complete the Remedial Action or from liability arising out of problems with the Remedial Action. Such release shall not be unreasonably withheld.

E. General Provisions

17. Defendants acknowledge that Plaintiffs may, as provided by law and this Judgment on Consent, access the Dam and surrounding real property to perform inspections and ensure compliance with the Dam Removal Permit for the Remedial Action, the Dam Safety Law and its regulations, and the terms of this Judgment on Consent. Defendants acknowledge and agree that each Defendant, its representatives, consultants, agents, contractors, engineers, successors and assigns, has legal access to the Dam and surrounding real property, including Tax Parcel 65.020-2-20.110 to carry out any and all requirements of this Judgment on Consent and to otherwise comply with the Dam Safety Law and its regulations with respect to the Rainbow Lake Dam as set forth fully in the Owner Agreement, the terms of which are incorporated herein by reference.

18. Nothing contained in this Judgment on Consent shall constitute or be deemed or construed to constitute any admission of liability in any civil or criminal proceeding, except as set forth in ¶ 1, *supra*. Neither anything contained in this Judgment on Consent nor any civil enforcement of the terms of this Judgment on Consent shall constitute a waiver of the Attorney General's or any other prosecuting authority's rights to obtain criminal sanctions for any conduct that violates the terms of this Judgment on Consent subsequent to its entry. Nothing contained in this Judgment on Consent shall be deemed to exempt any Defendants from complying with the terms of this Judgment on Consent.

19. Any proceeding to enforce the terms of this Judgment on Consent shall be brought in Albany County Supreme Court.

20. The failure to enforce any alleged violation of any term of this Judgment on Consent by any party shall not constitute or be deemed or construed to constitute any waiver of such violation or any other violation. No amendment to, change of, suspension of, or waiver of, this Judgment on Consent shall be binding or of any force or effect unless and until signed by all parties or their authorized counsel and so ordered by the Court.

21. Defendants shall direct any notices required above, or any other correspondence and technical submittals, to:

Alon Dominitz
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-0001
518-402-8185
alon.dominitz@dec.ny.gov

and:

Nicholas C. Buttino
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
The Capitol
Albany, NY 12224
(518) 776-2406
nicholas.buttino@ag.ny.gov

Plaintiffs will direct any notices required above, or any other correspondence to:

Gary Spindler
250 W 26th Street, Floor 4
New York, NY 10001
(212) 929-9404
gary@parkitny.com

and:

Lauren Seiter, Esq.
Harris Beach PLLC
333 West Washington Street, Suite 200
Syracuse, New York 13202

(315) 214-2016
lseiter@harrisbeach.com

22. This Judgment on Consent shall be binding upon the parties and their respective principals, employees, agents, heirs, successors, and assigns.

23. Nothing in this Judgment on Consent shall prevent Plaintiffs from seeking to enforce the law in the case of future violations.


24. There are no other agreements related to settlement between Plaintiffs and Defendants other than this Judgment on Consent.

25. This Judgment on Consent may be executed in counterparts.

26. The effective date of this Judgment on Consent shall be the date it is so ordered by the Court.


CONSENTED AND AGREED TO BY:

LETITIA JAMES
Attorney General
State of New York
Attorney for Plaintiffs


By: 
NICHOLAS C. BUTTINO
Assistant Attorney General
Environmental Protection Bureau
The Capitol
Albany, NY 12224
(518) 776-2456

Dated: 6/16/2021

JASON ROBERTS DEVELOPMENT CORP.

By: 
GARY SPINDLER, PRESIDENT
250 W 26th Street, Floor 4
New York, NY 10001
(212) 929-9404

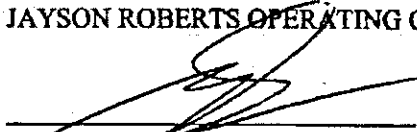
Dated: 5/26/2021



 GARY SPINDLER
 250 W 26th Street, Floor 4
 New York, NY 10001
 (212) 929-9404


Dated: 5/26/2021

JAYSON ROBERTS OPERATING CORP.

By: 

 GARY SPINDLER
 250 W 26th Street, Floor 4
 New York, NY 10001
 (212) 929-9404


Dated: 5/26/2021



 ADAM SPINDLER
 250 W 26th Street, Floor 4
 New York, NY 10001
 (212) 929-9404

Dated: _____


GEMILAS CHESED ACH TOV, INC.

By: 

 JOSEPH HORNSTEIN
 Executive Director
 1431 44th Street
 Brooklyn, New York 11219
 (718) 437-7437

Dated: 5/25/2021

SO ORDERED.



 HON. CHRISTINA L. RYBA, J.S.C.

Dated: June 16, 2021

**Rainbow Lake Dam
NYS DAM ID 186-0849
Schedule A: Compliance Schedule**

TASK	DATE
Defendants shall notify the Department of the name, address and telephone number of the professional engineer who has been retained to oversee and direct the remedial work.	6/1/21
Defendants shall commence the remedial work.	1/31/22
Defendants shall complete all remedial work to correct all identified deficiencies to the satisfaction of the Department.	4/30/22
Defendants shall notify the Department in writing by certified mail (return receipt requested) of the completion of the remedial work, which shall include a notarized statement from the design/construction engineer that the project has been completely constructed under his/her care and supervision, and was completed in accordance with the plans and specifications approved by the Department.	5/31/22
Defendants shall provide to the Department one complete set of as-built record drawings. The record drawings shall be signed and sealed by the design/construction engineer and shall include identification of all changes from the approved plans.	6/30/22