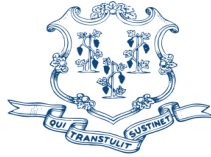


STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Manisha Juthani, MD
Commissioner



Ned Lamont
Governor
Susan Bysiewicz
Lt. Governor

Drinking Water Section

SOURCE ABANDONMENT PERMIT

DWS Project# 2023-068
Permit No# SA2023-02

The Metropolitan District ("MDC") has submitted to the Department of Public Health ("DPH") an application dated April 21, 2023 (the "application") to abandon its rights to use approximately 10 billion gallons of water stored between elevation 644 and 701 ("10 BG") within Colebrook River Lake (a/k/a Colebrook Reservoir), impounded behind the United States Army Corps of Engineers' ("USACE") Colebrook River Dam on the West Branch Farmington River. MDC has rights to use such water pursuant to a contract with the USACE dated February 11, 1965, as amended on October 28, 1975. MDC will continue to have rights to approximately 3.5 billion gallons of water impounded behind the Colebrook River Dam below elevation 641 ("3.5 BG"), and will continue to own approximately 3.0 billion gallons of water within the adjacent West Branch Reservoir, impounded behind MDC's Goodwin Dam ("3.0 BG"). (See figures attached hereto as Exhibit A). The application indicates that MDC has designated the 3.5 BG, 3.0 BG, and Lake McDonough¹ as emergency sources of supply. There is no physical change to Colebrook River Lake or to the release of water downstream proposed as part of this application.

In accordance with the provisions of [CGS § 25-33k](#), the Commissioner of Public Health has determined that the 10 BG is not needed by MDC, other water companies, or the state as a present, future, or emergency water supply, and is not a viable source of supply, as discussed herein. Therefore, the permit is granted subject to the conditions specified below.

DPH Review (by statutory component):

CGS § 25-33k(c) includes three subdivisions with criteria for evaluating source abandonment applications. CGS § 25-33k(c)(1) applies to all applications. CGS § 25-33k(c)(2) and (c)(3) provide different criteria for review depending upon whether the safe yield of the source is below or above 0.75 million gallons per day ("mgd"). As safe yield has never been calculated for

¹ Lake McDonough (a/k/a Compensating Reservoir) is an MDC-owned surface source of drinking water supply in the Town of Barkhamsted.



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Colebrook River Lake, DPH opted to be conservative and review the application under both sets of criteria.

In considering the water supply needs of MDC and the state, DPH reviewed relevant portions of the following plans and documents:

- Connecticut State Water Plan (2018)
- MDC Water Supply Plan (2020)
- MDC Water Supply Plan (2008)
- Central Corridor Water Utility Coordinating Committee Integrated Report (2018)
- Western Water Utility Coordinating Committee Integrated Report (2018)
- Plans of Conservation and Development for the Town of Colebrook and MDC member municipalities of Bloomfield, East Hartford, Hartford, Newington, Rocky Hill, West Hartford, Wethersfield, and Windsor
- Governor's Council on Climate Change Phase 1 Report (2021)
- PFAS Action Plan (2019)
- Public and state agency comments
- Conservation & Development Policies: The Plan for Connecticut 2018-2023
- Water supply plans of utilities interconnected and/or nearby to MDC's existing distribution system²
- Water supply plans of utilities that are proximal to Colebrook River Lake³

CGS § 25-33k(c)(1): "In determining whether to approve an application, the commissioner shall (A) consider water supply needs of the water company, the state and any comments submitted..."

Water supply needs of the water company:

The primary measurement of the adequacy of a company's water supply is based on an analysis of the system's available water compared to its existing and projected demand. This ratio of supply v. demand is referred to as a margin of safety. Based on MDC's approved Water Supply Plan (2020), its margins of safety for the maximum-month average day demand⁴ during the 5-year and 50-year planning periods are 1.11 and 1.08 respectively, which means that there is 11% and 8% more supply available than is needed for those respective planning periods. The margin of safety accounts for the maximum commitments under MDC's standard-use sale of water contracts with utilities who purchase water from MDC.

² Aquarion Water Company (Main and Simsbury systems), Berlin Water Control Commission, Bristol Water Department, City of New Britain Water Department, Connecticut Water Company (Farmington, Collinsville, and Unionville systems), Regional Water Authority, Southington Water Authority, and Town of Portland Water Department.

³ Aquarion (Torrington Water Company), New Hartford Water Department, and Winsted Water Works.

⁴ Regulations of Connecticut State Agencies ("RCSA") §§ 25-32d-1a through 25-32d-4.

Water supply needs of the state:

None of the plans listed above prioritize new or increased water purchases from MDC as a solution to future water supply needs. Even if a water company in need of additional supply determined that purchasing water from MDC would be the most viable option, MDC could sell excess available water and still meet its own requirements for an adequate water supply, absent the 10 BG.

The following are examples of potential source development projects of other public water systems with future capacity needs or concerns that could provide additional supply to the region and may further obviate the need for the 10 BG:

- City of New Britain Water Department: received \$15.8 million to invest in wellfield development (Comprehensive Project List, 2020 Drinking Water State Revolving Fund Intended Use Plan)
- Town of Portland Water Department: received a state grant to investigate the development of in-town water supply wells
- Aquarion Water Company: potential reactivation of Housatonic wellfield

Note, however, that various planning documents (as listed above) and state agency comments project that within the 50-year planning period there will likely be stresses on surface water drinking water supplies due to climate change, as well as increased dam releases required to maintain compliance with minimum streamflow standards.⁵ Additionally, availability of high-quality drinking water in the future may be impacted by emerging contaminants that are difficult and expensive to treat. Despite these environmental stressors, the 10 BG is still not expected to be a future drinking water source used by the state when considering the factors described below.

Public comments received:

DPH staff considered comments received from Dan Ward (nearby resident), Hartland Land Trust, and the Colebrook Land Conservancy, Inc. and a joint letter from Save the Sound, Farmington River Watershed Association, Northwest Connecticut Land Conservancy (NCLC), Connecticut Land Conservation Council that provided, in part, the following considerations:

- “... the MDC, Save the Sound, and NCLC executed a Memorandum of Understanding (MOU) ... that commits the MDC to granting a conservation easement to NCLC on 5,500 acres of open space land that surrounds the Colebrook River Reservoir. This land includes 4,300 acres of Class I and II land in Connecticut and 1,200 acres of land in Massachusetts, and is part of a larger contiguous block of MDC, State, and land trust owned open space, providing incredible environmental and water quality protection value. The MDC will grant such an easement to NCLC upon the issuance of the abandonment permit to ensure the permanent conservation of the surrounding open space regardless of

⁵ RCSA §§ 26-141b-1—26-141b-8

any changes in drinking water supply or other operations.” This MOU is attached hereto as Exhibit B.

- “[I]f the abandonment permit is granted, the practical effect will be that any water within the 10 BG of storage will potentially become available without restriction for new flow to be released downriver to augment existing river flows, particularly during low flow conditions. This supplemented flow has the potential to improve aquatic life, river water quality, and ecological diversity within the downstream reaches of the Farmington River.”
- “...the Commenters support the issuance of the abandonment permit requested in the Application and ask DPH to consider the permanent benefits of assuring high quality raw water supply through the permanent protection of the MDC’s watershed forest lands.”

DPH received a joint letter from the Selectmen of the Towns of Barkhamsted, Colebrook, Hartland and New Hartford stating their support for the grant of the abandonment permit.

CGS § 25-33k(c)(1): “In determining whether to approve an application, the commissioner shall ... (B) consult with the Commissioner of Energy and Environmental Protection, the Secretary of the Office of Policy and Management, and the Public Utilities Regulatory Authority.”

Comments were received from the Office of Policy and Management (“OPM”), the Public Utilities Regulatory Authority (“PURA”),⁶ and the Department of Energy and Environmental Protection (“DEEP”). These comments were considered in the permit determination. None of the agencies took the position that the permit should be denied. Their comments suggested sources to be considered and alternative steps in the evaluation process as part of DPH’s determination which are not provided for in CGS § 25-33k. OPM and DEEP suggested DPH’s decision should direct the future uses and control of the 10 BG while recognizing that DPH must adhere to statutory framework governing the permit. The statute does not provide DPH with the ability to dictate the future use of the abandoned water. Connecticut caselaw is clear that an administrative body must act strictly within its statutory authority, within constitutional limitations, and in a lawful manner. It cannot modify, abridge or otherwise change the statutory provisions under which it acquires authority.⁷ DPH may not depart from nor exceed the authority or scope provided in the statutes governing the abandonment permit determination.

Nevertheless, the grant of the abandonment permit for the 10 BG in the Colebrook River Reservoir does not end DPH’s oversight of Colebrook River Lake or the watershed that supports it. DPH continues to have jurisdiction over the 3.5 BG in Colebrook River Lake retained by

⁶ PURA recommended that DPH request from MDC several items of information that were not set forth in MDC’s application. However, the relevant information was available in the plans and documents reviewed by DPH identified above.

⁷ Tilcon Connecticut, Inc. v. Comm’r of Env’t Prot., 317 Conn. 628, 648 (2015).

⁹ Data obtained from the [USGS National Water Information System](#).

depleted in a drought-related water supply emergency unless MDC's existing downstream riparian release obligations are modified to prioritize the conservation of water in Colebrook River Lake during dry periods (see additional detail in discussion of CGS § 25-33k(c)(3) below). Modifying downstream release requirements is predicated on extensive federal and state legislative and regulatory changes which lie outside of DPH's executive branch authority. In considering water supply threats and potential emergency uses other than drought, there is no current existing plan and there does not appear to be a likely scenario whereby the 10 BG would become crucial for use in a non-drought water supply emergency.

Because MDC has a sufficient margin of safety without the 10 BG, the proposed abandonment would not impair the ability of MDC to provide a pure, adequate, and reliable water supply for present and projected future customers.

CGS § 25-33k(c)(3): “[If more than 0.75 mgd safe yield, permit must be approved if the source] is of a size or condition that makes it unsuitable for present or future use as a drinking water supply by the water company, other entity or the state. In making a decision, the commissioner shall consider the general utility of the source and the viability for use to meet water supply needs...”

The 10 BG is of a condition that makes it unsuitable for a present or future drinking water supply because the general utility and viability of the source to meet water supply needs is limited due to numerous impediments that would make it costly and impractical to interconnect this source with existing water supply infrastructure, as outlined in more detail below.

CGS § 25-33k(c)(3): “The commissioner shall consider any public water supply plans filed and approved ... and any other water system plan approved by the commissioner, and the efficient and effective development of public water supply in the state...”

MDC's approved 2020 Water Supply Plan does not designate the 10 BG as a current, emergency, or future source and as explained with respect to (c)(2) above, it is not needed as an emergency source.

Neither the regional water utility coordinating committee (WUCC) integrated reports, nor individual water supply plans of other utilities in the region, identify the 10 BG as a potential future source of supply; instead, such plans generally recognize the ability of MDC's excess available water as an option to augment the future supply needs of regional systems.

Section 3.5.4 of the Central WUCC Integrated Report notes that regional drinking water demand from large water systems is expected to decline through 2060. Although such report also anticipates some systems in the region may have future deficits in available water, such deficits are likely to be addressed through alternative sources of supply that are more practical to develop than the 10 BG. For example, Section 7.2 of the report (Potential Surface Water Sources to Address Supply Deficits) references only the reactivation of the Portland Reservoir as a possible future surface water supply source.

Additionally, for the reasons discussed below, the 10 BG would not contribute to efficient and effective development of public water supply in the state.

CGS § 25-33k(c)(3): “In assessing the general utility of the source, the commissioner shall consider ... (A) the safe yield of the source...”

Safe yield is defined as “the maximum dependable quantity of water per unit of time that may flow or be pumped continuously from a source of supply during a critical dry period without consideration of available water limitations.” CGS § 25-33k(a)

MDC has not provided the safe yield of the 10 BG or Colebrook River Lake, and states it is impossible to calculate. See *Affidavit of D. Banker* attached hereto as Exhibit C. In lieu of a calculated safe yield, DPH considered the following factors:

- Flow into Colebrook River Lake is partially regulated and limited by management of Otis Reservoir 7 miles upstream on Fall River in Massachusetts.
- USGS Station #01185500 near New Boston, MA (Town of Sandisfield, MA) is the nearest stream flow monitoring station upstream of Colebrook River Lake. This station is located on the West Branch Farmington River approximately 5.3 miles north of the Colebrook River Dam and passes water from approximately 78% of Colebrook River Lake’s drainage basin. The historic low flow of 2.4 cubic feet per second (cfs) occurred in August 1957. Approximately 170 months (13%) of the station’s 110-year period of record had mean monthly flows less than 50 cfs, which is MDC’s required minimum release from West Branch Reservoir’s Goodwin Dam downstream.
- MDC is obligated to:
 - Release at least 50 cfs from Goodwin Dam at all times, regardless of inflow
 - Release all natural inflow received by Colebrook River Lake and West Branch Reservoir, capped at 150 cfs
 - Pass through any releases from Otis Reservoir (Otis Reservoir releases are not allowed to be stored)
 - Release a riparian flow commitment to Farmington River Power Company (subsidiary of Stanley Black and Decker):
 - No less than 21.7 billion gallons annually (not obligation to provide more than 17.4 billion gallons between May 15 and October 31, and no obligation between March 16 and May 14 of any given year)
 - Releases are capped at 2.0 billion gallons per week and 400 million gallons (or ~743 cfs) per day
 - Release additional water when the water elevation in Colebrook River Lake rises above 708 feet.
 - Release up to 3.26 billion gallons per year as requested by DEEP.
- If safe yield were to be calculated based upon the statistics of USGS Station #01185500, using the dry period of record at this station and considering the downstream riparian release requirements listed above, safe yield for Colebrook River Lake could be

negligible, as outflow would be significantly greater than inflow. Further analysis is necessary for a definitive determination of safe yield.

CGS § 25-33k(c)(3): “In assessing the general utility of the source, the commissioner shall consider ... (B) the location of the source relative to other public water supply systems...”

Based on the assessments below, the 10 BG is currently not interconnected for use by any public water system, and its location is at least 2,000 feet from the nearest public water system infrastructure, making the 10 BG of little utility due to the distance between it and other water supply systems.

The following is a summary of DPH’s analysis of potential interconnections of the 10 BG with MDC’s existing system and other public drinking water supply systems that could reasonably use this source:

Connection to MDC’s existing sources:

- West Branch Farmington River at Black Bridge Road to Lake McDonough via pipeline. This path is approximately 2,000 feet and contains a mixture of property types and mainly forested terrain.
- Goodwin Dam to Sawmill Brook (nearest tributary to Barkhamsted Reservoir) via pipeline. This path is approximately 1.9 miles and entails forested land with moderate elevation change.
- The length along Connecticut State Highway CT-20 from its intersection with Hogback Road to Junction CT-181 is 2.8 miles. Use of the Connecticut Department of Transportation’s established CT-20 right-of-way for an interconnection line between the Farmington River and Barkhamsted Reservoir would present fewer obstacles (such as land ownership and difficult terrain), making this potentially viable despite the longer distance compared to the routes listed above.

Connection to Other Public Water Systems:

- Winsted Water Works – the nearest drinking water surface supply source is located approximately 6 miles to the southwest with significant topographical (elevation gain of approximately 500’) and land use/land ownership impediments.
- Aquarion Water Company Norfolk System – the nearest drinking water surface source is located approximately 12 miles to the west with significant topographical and land use/land ownership impediments.
- Aquarion Water Company Torrington Water Company System – the nearest drinking water surface supply source is located approximately 11 miles to the southwest.
- New Hartford Water Department (“NHWD”) – NHWD infrastructure abuts the West Branch of the Farmington River, downstream of the 10 BG.

Developing any of the above interconnections would require substantial investment in, among other things, new infrastructure, property acquisitions/easements, and regulatory permitting. Lake McDonough is owned by MDC and, as discussed above, MDC does not need the 10 BG as a source of supply. Despite the relative proximity and ease of connection of NHWD infrastructure to the 10 BG, NHWD could not use the 10 BG without the construction of a surface water treatment plant as required by state drinking water laws. Additionally, NHWD's water supply plan does not include the possible future use of the 10 BG.

CGS § 25-33k(c)(3): “In assessing the general utility of the source, the commissioner shall consider ... (C) the water quality of the source and the potential for treatment...”

DPH has no information on the water quality of Colebrook River Lake as it is not an active source of supply. Based on known information about the health and land use of the watershed, the water quality of Colebrook River Lake is presumed to be suitable for drinking water. However, to be considered usable, the 10 BG would need to comply with surface filtration requirements. Treatment could occur via interconnection to an existing MDC treatment facility and/or through an existing surface water treatment plant (such as Winsted Water Works or Aquarion's Torrington Water Company system). Use by NHWD would require the construction of a new conventional surface water treatment facility.

CGS § 25-33k(c)(3): “In assessing the general utility of the source, the commissioner shall consider ... (D) water quality compatibility between systems and interconnections...”

The overall water quality of the 10 BG is unknown, so a compatibility analysis cannot be performed. However, there is information demonstrating that at least one potential interconnection could be challenging. Specifically, New Britain Water Dept. (“NBWD”) maintains a pH of approximately 8-9 in its system as a strategy to mitigate lead and copper corrosion. This is a higher pH than is maintained by most public water systems, making NBWD's use of its existing interconnections and any potential new interconnection with the 10 BG (or any external source) more complicated than a typical interconnection as the water chemistry would need to be analyzed and more heavily modified for compatibility.

CGS § 25-33k(c)(3): “In assessing the general utility of the source, the commissioner shall consider ... (E) extent of water company-owned lands for source protection of the supply...”

MDC owns approximately 4,300 acres of land (across all or part of at least 3 parcels) in the CT portion of Colebrook River Lake's watershed, with an additional 1,200 acres in MA (across all or part of at least 14 parcels). The total of 5,500 acres of land is approximately 5.7% of the estimated 96,000-acre Colebrook River Lake watershed. MDC's land owned in Connecticut within the Colebrook River Lake and Goodwin Dam watershed is considered Class I or Class II water company owned land as defined per CGS § 25-37c. This preservation and protection of Class I and Class II lands in the watershed enhances the viability of the 10 BG as a source of supply.

CGS § 25-33k(c)(3): “In assessing the general utility of the source, the commissioner shall consider ... (F) types of land uses and land use controls in the aquifer protection area or watershed and their potential impact on water quality of the source...”

The land within the Colebrook River Lake watershed is primarily forested. Very limited development exists. In addition to MDC, other agencies including USACE, DEEP, Massachusetts Department of Conservation and Recreation, and nonprofit conservation organizations also hold a considerable portion of land in the watershed, thereby further protecting the watershed from land uses that could adversely impact water quality. Additionally, the entirety of Colebrook River Lake’s riparian shoreline and approximately one mile of the West Branch Farmington River’s shoreline upstream of the impoundment is owned by MDC or USACE. Although the current land use profile in the watershed is suitable for a source of public drinking water supply, the privately held land in the watershed’s northern extent, particularly those parcels within the floodplains of the West Branch Farmington River and its tributaries, could be developed in a manner that might negatively impact the quality of Colebrook River Lake.

CGS § 25-33k(c)(3): “In assessing the general utility of the source, the commissioner shall consider ... (G) physical limitations to water service, system hydraulics and topography.”

There are numerous physical and logistical impediments limiting the utility of the 10 BG. Presently, the 10 BG can be used in only two ways: (1) released downstream into the West Branch Reservoir for treatment at a new surface water treatment facility upstream of the New Hartford wastewater treatment facility,¹⁰ or (2) channeled over land via pipes to supplement other raw water inflow to an existing surface water reservoir and/or treatment plant.

Regarding item (1), it is not known if NHWD has an appropriate location to construct a treatment plant, nor if NHWD would be able to acquire the numerous permits necessary to construct and operate a treatment plant. Additionally, there would be numerous costs associated with the design, construction and operation of a surface water treatment plant for drinking water purposes. Regarding item (2), the length of distances between the 10 BG and other systems that could potentially interconnect would present impediments such as topography, pumping, land acquisition, and circuitous piping.

Determination and Conditions:

Based on the information above, the following factors support the denial of an abandonment permit for the 10 BG:

¹⁰ CGA § 22a-417 states: “(a) No person or municipality shall discharge any sewage into any waters of the state which are tributary to an existing water supply impoundment or any proposed water supply impoundment identified in the long-range plan for management of water resources prepared and adopted pursuant to section 22a-352.”

- Future environmental stressors, population growth, economic development, or regulatory requirements (e.g., streamflow release requirements) may create the need for additional high quality drinking water supply sources above current projections. Future statewide and regional impacts of climate change, and/or chemical contamination on Connecticut's drinking water quality and quantity are unpredictable and unable to be quantified at this time. Further, the plans that were reviewed quantify future water demands based on population and growth projections that may change and cannot be fully relied upon with certainty.
- As a result of the lack of development and amount of forested and protected land in the Colebrook River Lake watershed, the water contained within the impoundments on the West Branch Farmington River is less susceptible to potential contamination or negative impacts.

Based on the information above, the following factors support the approval of an abandonment permit for the 10 BG:

- No specific need for the 10 BG was identified during the DPH analysis or in any planning document for MDC or any other public water system that could reasonably use it.
- Use of the 10BG by anyone for drinking water supply purposes is likely impractical and costly compared to developing alternative sources of supply.
- DPH analysis indicates that in a time of regional water supply shortage due to drought, the 10 BG would be unavailable.
- An agreement has been reached formalizing the protection of 5,500 acres of MDC land in the watershed of the 10 BG should the permit be granted. See Exhibit B.
- Because approximately 6.5 billion gallons (3.5 BG in Colebrook River Lake plus 3.0 BG in West Branch Reservoir) will be retained by MDC to serve as an emergency source, MDC must preserve the water company land owned within the West Branch Reservoir and Colebrook River Lake watersheds, as recognized in MDC's 2020 water supply plan. In addition, the public water supply requirements that apply to the 3.5 BG in Colebrook River Lake will support the potential use of the 10 BG as a drinking water supply.

In weighing these considerations as described in detail above, the Commissioner of Public Health has determined that, on balance, the factors support granting the permit for abandonment.

The Commissioner hereby approves a permit for MDC's application to abandon its rights to the 10 BG stored within Colebrook River Lake, subject to the following conditions:

1) MDC shall retain West Branch Reservoir, Lake McDonough, and 3.5 billion gallons in Colebrook River Lake as emergency drinking water supplies.

2) MDC shall revise its 2020 Water Supply Plan, pursuant to CGS § 25-32d(a), within 12 months to:

- a) Explicitly document how the West Branch Reservoir, Lake McDonough, and 3.5 billion gallons in Colebrook River Lake will be used as future and/or emergency source of supply;
- b) Update MDC's Water Supply Emergency Contingency Plan and Sabotage Plan to incorporate the information related to a) above.
- c) Include analyses of the impacts of climate change and minimum streamflow standards in accordance with Regulations of Connecticut State Agencies § 26-141b-1 et seq. on MDC active sources of supply, and recalculate the safe yield in accordance with such analyses; and
- d) Update drought triggers in MDC's water conservation plan to adjust for any changes due to climate change or other impacts.

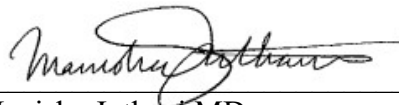
3) MDC shall submit an application for a permit pursuant to Conn. Gen. Stat. § 25-32(d)(2) to grant to Save the Sound and the Northwest Connecticut Land Conservancy the easement as set forth in the agreement included in the joint letter dated June 16, 2023 from Save the Sound, et al. and within 12 months from the issuance of this permit, amend the water supply plan accordingly.

4) MDC shall, within 12 months from the issuance of this permit, conduct baseline raw water quality monitoring of Colebrook River Lake and West Branch Reservoir to prepare for emergency use of the 3.5 BG and 3.0 BG respectively, and provide the data to DPH.

The classification of land owned by the MDC pursuant to CGS § 25-37c and related regulations is neither affected nor altered in any manner as a result of the issuance of this permit.

7-20-2023

Date



Manisha Juthani MD

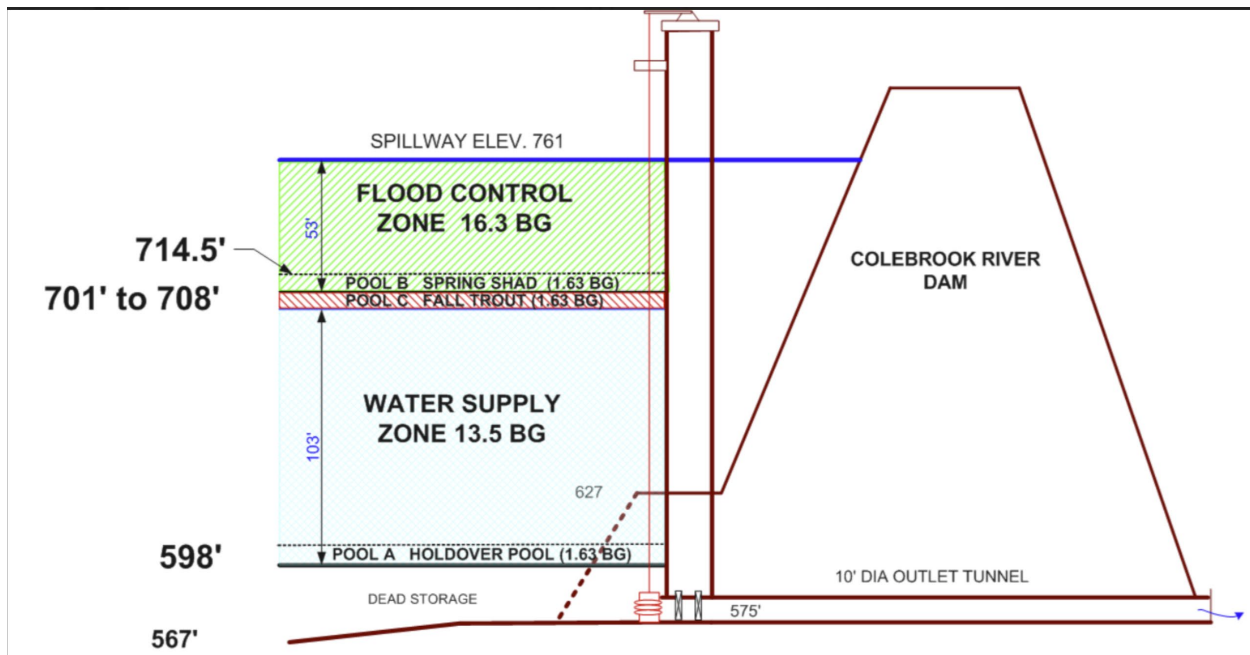
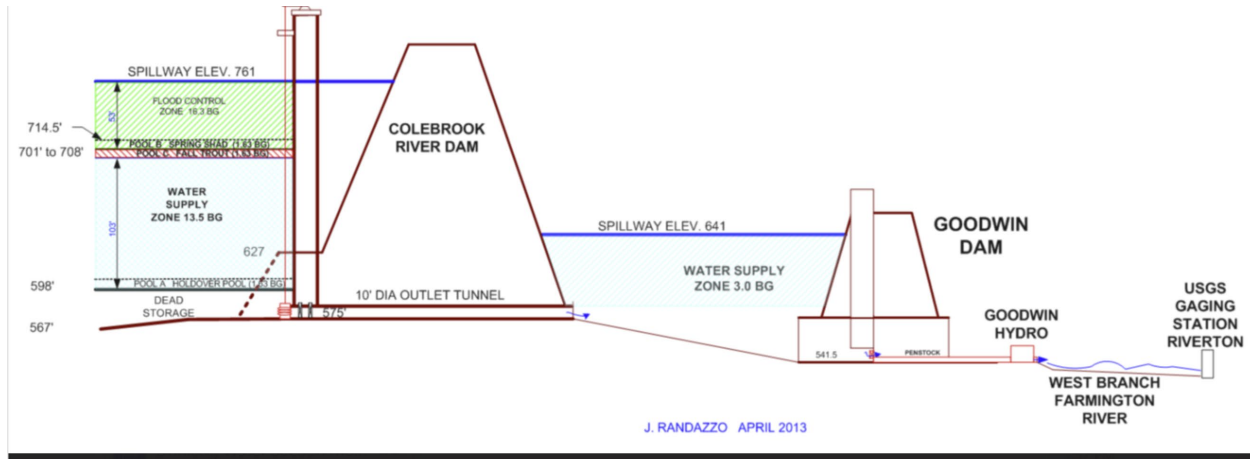
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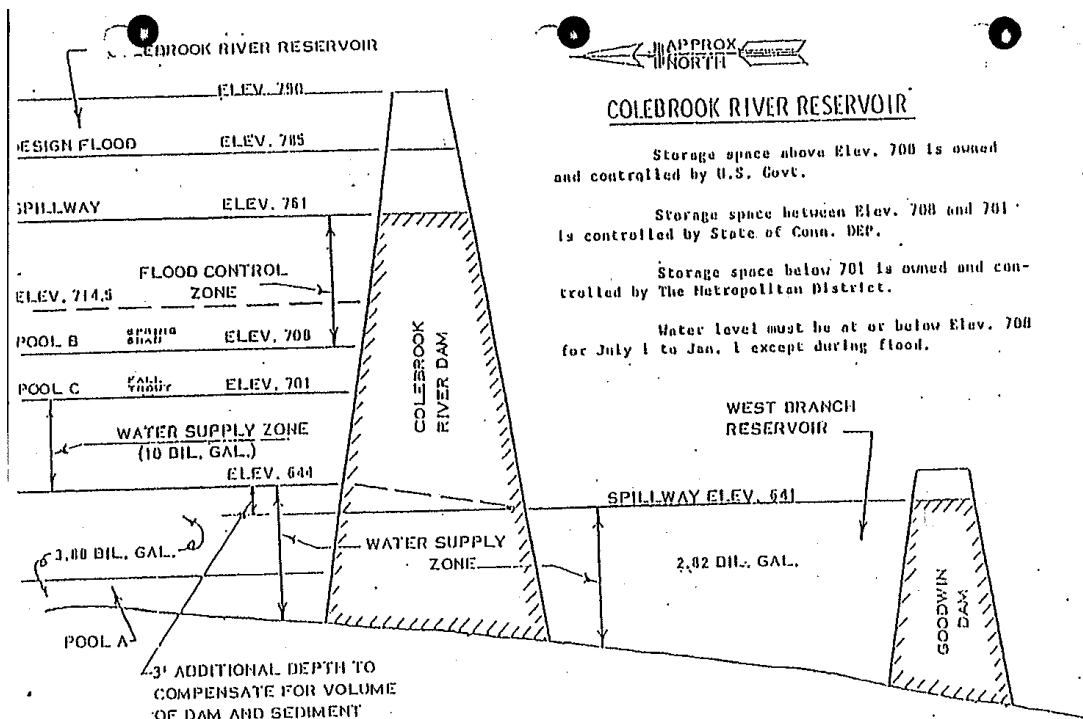
Department of Public Health

cc: Lisa Morrissey, MPH, Deputy Commissioner, DPH
Lori Mathieu, Branch Chief, Environmental Health and Drinking Water Branch, DPH
Katie Dykes, Commissioner, Department of Energy and Environmental Protection
Jeffrey Beckham, Secretary, Office of Policy and Management
Jeffrey Gaudiosi, Executive Secretary, Public Utilities Regulatory Authority

EXHIBIT A

Schematics provided by MDC:





POOL A 5,000 AC - FT = 1.63 DIL. GAL. - HOLDOVER POOL.
 POOL B 5,000 AC - FT = 1.63 DIL. GAL. - FISHERY POOL.
 POOL C 5,000 AC - FT = 1.63 DIL. GAL. - FISHERY POOL.

COLEBROOK RIVER RESERVOIR AND DAM
 Multi-Purpose Storage Zones

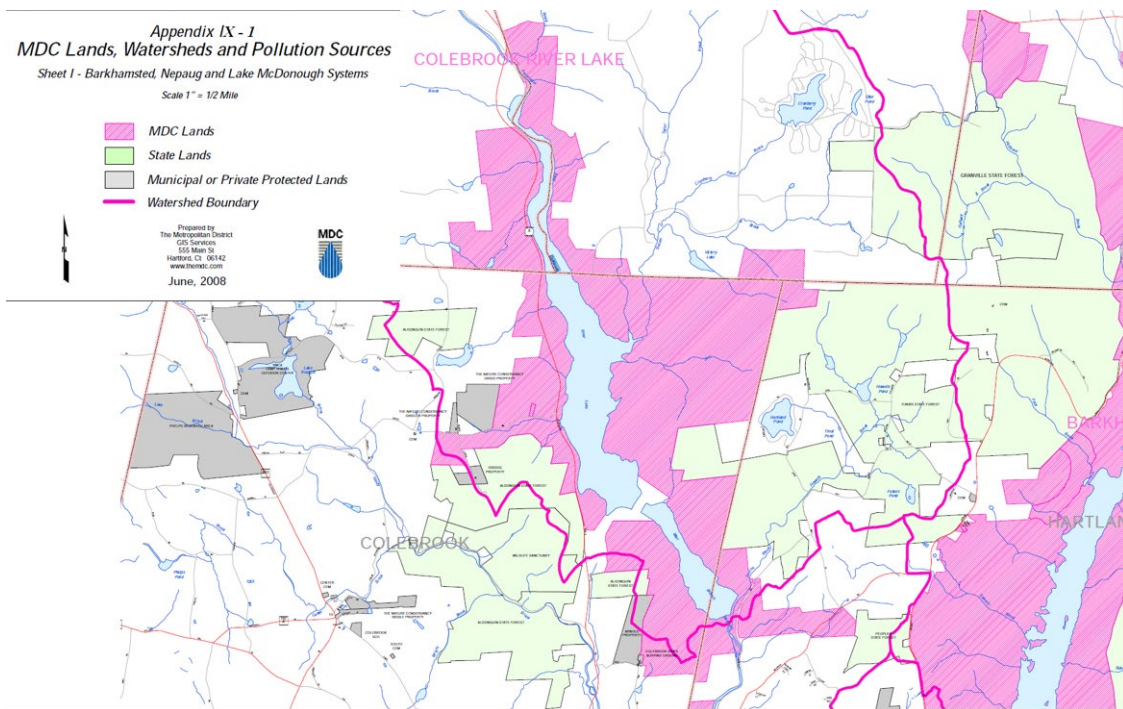


EXHIBIT B

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE METROPOLITAN DISTRICT, SAVE THE SOUND, INC. AND NORTHWEST CONNECTICUT LAND CONSERVANCY, INC.

This Memorandum of Understanding (MOU) dated June 16, 2023 is by and among The Metropolitan District (MDC), Save the Sound, Inc. ("Save the Sound") and the Northwest Connecticut Land Conservancy, Inc. (NCLC) (collectively, "the Parties").

WHEREAS the MDC has the rights to 10 billion gallons (BG) of water storage area between 701 and 644 feet above mean sea level within the Colebrook River Reservoir ("the Storage Area") pursuant to a 1965 Agreement between the MDC and the United States Army Corps of Engineers ("the USACE Agreement");

WHEREAS the Colebrook River Reservoir is surrounded by open space land, including 4,300 acres of Class I and II land, as defined in Conn. Gen. Stat. § 25-37c, in Connecticut and 1,200 acres of MDC owned land in Massachusetts located on the watershed tributary to the Colebrook Reservoir/ West Branch Reservoir system, a total of 5,500 acres of open space land, as described in the MDC's most recent Water Supply Plan. This open space land is referred to as the West Branch Block (see Exhibit A), owned by the MDC, in part, for the protection of water quality;

WHEREAS the MDC has managed these lands in a conservation manner since their acquisition and continues to have an interest in managing these lands in such a manner;

WHEREAS the MDC also owns and controls the rights to 3.5 BG of water within Colebrook River Reservoir and 3 BG of water within its West Branch Reservoir;

WHEREAS the MDC has not used any water which, at any given time, may be stored within the Storage Area as a drinking water supply, nor is it connected to any distribution system or service area;

WHEREAS, by submission dated April 21, 2023, the MDC filed a Source Abandonment Permit Application pursuant to Conn. Gen. Stat. §25-33k ("the Application") for the Storage Area with the Connecticut Department of Public Health ("DPH");

WHEREAS Save the Sound and NCLC have interests in preserving the open space land owned by the MDC surrounding the Colebrook River Reservoir Source in perpetuity for its ecological value as a large contiguous forested parcel, for its passive recreation public access values, and for its water source protection value;

WHEREAS the MDC has interests in garnering the support for the abandonment permit application in order to alleviate unnecessary costs of maintaining the Storage Area given its current assessment as unnecessary for its service area for the 50-year planning period;

WHEREAS the Parties seek a mutually agreeable resolution that meets the interests of all Parties, including the protection of the MDC open space lands surrounding the Colebrook River and West Branch Reservoirs in perpetuity, while meeting the planning objectives of the MDC;

NOW THEREFORE, the Parties agree to the following:

- e. *New Uses*: New public access for passive recreational use, including hunting, fishing, hiking trails, boating, and other forms of passive recreation, may be permitted, subject to NCLC and DPH approval, not including the development of impervious roads or accessways.
- f. *Prohibited Uses*: The following uses and structures shall be prohibited:
 - i. Residential, industrial, and commercial development of any kind, or development of municipal use buildings or structures (excluding any MDC buildings or structures necessary for the Retained or New Uses), and the construction of associated infrastructure, roads, and accessways developed for these purposes;
 - ii. Solid or hazardous waste storage, transfer, or treatment facilities;
 - iii. Active recreational uses, including, but not limited to, ballfields, golf courses, stadiums, tennis courts, swimming pools, or sports centers;
 - iv. Mining, drilling, or dredging of any rock, soil, or sand material for any purpose other than to augment or insure public water supply;
 - v. Energy transmission lines or pipelines, or fossil fuel or renewable energy generation projects (with the exception of hydroelectric power facilities and generation as provided in Section 1.d.v above), other than pipelines directly associated with public water supply;
 - vi. Commercial development of any kind that is not directly associated and necessary for agreed upon Retained or New Uses; and
 - vii. Any unpermitted use inconsistent with Connecticut state law and regulations related to Class I and II water company lands, regardless of whether the subject property remains classified as such after granting of the Easement.
 - viii. Subdivision of the Property, except divisions that are required by DPH or are approved in writing by NCLC.
- g. *Assignability*: The Easement to lands located in Massachusetts shall be assignable with the permission of the MDC, whose permission shall not be unreasonably withheld.
- h. *Carbon Credits*: Subject to the MDC's current and past forestry practices and the MDC's "Watershed Forest Management Plan," as may be amended by the MDC from time to time, NCLC may propose to aggregate the Property into its existing American Carbon Registry project. MDC and NCLC have one year from the execution of the conservation easement to agree to the terms of the carbon project and aggregate the Property into NCLC's project; provided any such agreement shall include an agreeable allocation of the net revenues, if any, attributed to the MDC property included in the NCLC American Carbon Registry project. NCLC does not guarantee a viable project or that the project will result in revenue for MDC.

Northwest Connecticut Land Conservancy, Inc.:

- 2. NCLC's mission is to protect land and water in its operational region for wildlife, ecological value, public use, and enjoyment forever.
- 3. A conservation easement on the Property is in direct alignment with NCLC's mission.

4. Therefore, NCLC agrees to accept the Easement over the Property with the general conditions and retained and prohibited uses outlined herein and agrees to pay the sum of ONE MILLION (1,000,000.00) DOLLARS in consideration of such grant.
5. This Easement, which shall be in conformance with rights and limitations contained in paragraph 1 and in all other respects consistent with NCLC's standard easement terms, is subject to the approval of the NCLC Board of Directors and the MDC Board of Commissioners. The MDC and NCLC shall agree on a management plan for the Property consistent with: 1) the MDC's existing uses of and practices employed on the Property; 2) the MDC's "Watershed Forest Management Plan"; 3) uses and practices mandated by the MDC Charter and state and federal laws and regulations; and 4) the restrictions within the Easement. Such plan shall be prepared by the MDC and approved by NCLC, such approval not to be unreasonably withheld.
6. MDC agrees to cooperate in obtaining any necessary administrative approvals for the Easement pertaining to the Massachusetts property, including if necessary, division of the Easement into state specific Easements.

Save the Sound, Inc.:

7. Save the Sound, together with the NCLC, will submit a written comment letter to DPH regarding the Application that shall contain the substantive comments listed below. Furthermore, Save the Sound will circulate this comment letter to, and seek as signatories, the following major environmental organizations: the Farmington River Watershed Association, Rivers Alliance of Connecticut, The Nature Conservancy, and the Connecticut Land Conservation Council. Save the Sound's obligations for solicitation of support shall be deemed satisfied upon good faith efforts, even if any of the aforementioned organizations do not become signatories. The comment letter will include the following major points:
 - a. Save the Sound and its signatories ("the Signatories") have long advocated for statutory and administrative protections of water company lands to insure that our citizens continue to enjoy high quality drinking water and these ecologically and environmentally important forests remain intact.
 - b. The Signatories have long advocated for adequate and augmented river flow during low-flow conditions to protect water quality, aquatic life, and wildlife in the Farmington River, as well as other Connecticut rivers, while negotiating to balance that need with protecting adequate existing and future drinking water supplies.
 - c. The agreement by the MDC to grant the Easement over the Property will insure the permanent conservation of watershed lands, a high value objective of the signatories.
 - d. The abandonment permit subject of the Application, if granted, will aid in the facilitation of the cancellation of the MDC's USACE Agreement, which obligated the MDC to pay costs in exchange for the maintenance and rights to the 10 BG Storage Area in the Colebrook River Reservoir.
 - e. If the USACE Agreement is terminated, the practical effect will be that any water within the 10 BG of storage will potentially become available without restriction for new regime flow to release downriver to augment existing river flows, particularly during low flow conditions, with the potential to improve aquatic life, river water quality, and ecological diversity within the downstream reaches of the river.

- f. The Signatories note that the MDC is not applying to abandon its drinking water supplies owned in fee in this watershed, including 3 BG in the West Branch Reservoir and its remaining rights to 3.5 BG in the Colebrook River Reservoir. Thus, 6.5 BG of drinking water supply remains available for potential emergency or future water supply use in this watershed.
 - g. The Signatories note that in the event that the USACE Agreement for the Water Resource were to be terminated, this does not preclude the MDC, another water company, or the State from entering into a future contract for the storage rights .
 - h. The MDC's watershed lands will be protected for future generations by the Easement, therefore raw drinking water quality will be maintained within the Colebrook River Reservoir and West Branch Reservoir, wherein 6.5 BG of drinking water shall continue to be available for potential emergency or future water supply. The Water Resource at issue can be made available to augment river flow and improve aquatic ecological health.
 - i. Furthermore, so long as the Colebrook River Reservoir continues to be operated by the USACE for flood control purposes, there remains the opportunity to reenter into a contract for the Storage Area.
 - j. Given all of the unique facts and circumstances stated above, (1) the Signatories have no objection to, and in fact support, the issuance of the abandonment permit requested in the Application and ask DPH to consider the permanent benefits of assuring high quality raw water supply through the permanent protection of the MDC's watershed forest lands; and (2) the Signatories would not support a diversion permit for the 10 billion gallons that is the subject of the abandonment permit.
8. In the event the Abandonment Permit as described herein is issued and the Easement is granted to NCLC, the Signatories agree to convey to the appropriate U.S. Congressional representatives their collective support for the termination of MDC's obligations under the USACE Agreement through the enactment of legislation or federal action.

The Parties further agree:

- 9. That the MDC's current use of the Property shall not change upon the granting of the Easement;
- 10. Granting of the Easement does not affect previous agreements and practices associated with real estate taxes associated with the Property;
- 11. The Parties do not believe that the Easement shall have any effect on real estate assessments of associated tax rates levied on the Property;
- 12. The Parties will negotiate details of the Easement within the framework of this MOU and in good faith, in the event that the Application is granted; and
- 13. The Easement and financial consideration are contingent on the grant of a final, unappealable Abandonment Permit by DPH as set forth in the Application.

IN WITNESS of the foregoing, the Parties have executed this Agreement by the duly authorized officers as of the date set forth above:

THE METROPOLITAN DISTRICT

By: 

Name: Scott W. Jellison

Title: Chief Executive Officer

SAVE THE SOUND, INC.

By: 

Name: Leah Schmalz

Title: President

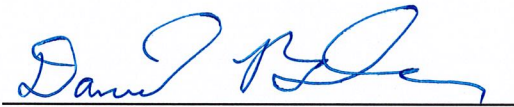
NORTHWEST CONNECTICUT LAND CONSERVANCY, INC.

By: 

Name: Catherine Rawson

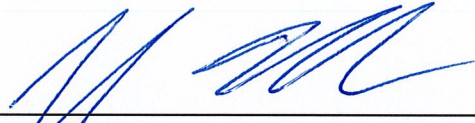
Title: Executive Director

submitted the required notice to the chief elected official of the municipalities and local health departments or district for: Hartland, CT, Blandford, MA, Becket, MA, Tyringham, MA, Monterey, MA, and Otis, MA



David Banker

Subscribed and sworn to before me on this 20 day of April, 2023.



Commissioner of the Superior Court

~~Notary Public~~

My Commission Expires: 4/31/2027