

January 18, 2018

The Honorable Jack Betkoski
Chair, Water Planning Council
Public Utilities Regulatory Authority
10 Franklin Square
New Britain, CT 06051

Dear Commissioner Betkoski:

On January 19, the Water Planning Council (“WPC”) is voting on the final draft of the State Water Plan (the “Plan”), which will then be transmitted to the General Assembly for its approval.

Although we have actively supported efforts to develop a State Water Plan, we are very concerned that the Plan was revised at the last minute to include reference to the concept of public trust, a concept which could be construed in ways that encroach upon the water rights of public water suppliers, business and industry, agriculture and other water users. This could have serious implications for residents and businesses throughout the state and Connecticut’s economy.

PA 14-163 directs the WPC to develop a State Water Plan for the management of the water resources of the State and requires any such plan to balance water use for all needs, including the needs of public water supply, economic development, recreation and ecological health. In addition, the statute identifies seventeen primary goals to be considered in these deliberations, and an objective to develop, among other things, consensus policy recommendations on how to achieve these goals. Notably, the detailed enabling statute does not reference in any way the concept of “public trust”.

Since 2014, a variety of committees and working groups worked diligently to achieve the statutory goal of completing this final draft by January 1, 2018. Given the subject matter, the discussions that have occurred at all levels were spirited; however, the final draft that was presented to the public was representative of a thoughtful and judicious, consensus based process that many have been engaged in for the last four years.

We have serious concerns that after the January 1 deadline had passed, members of the WPC amended the final draft Plan to include a statement that water is held “in public trust.” Specifically, the Plan inappropriately highlights the declaration of policy included in a single statute within the expanse of applicable laws, Section 22a-15, CGS, as follows:

It is hereby found and declared that there is a public trust in the air, water and other natural resources of the state of Connecticut and that each person is entitled to the protection, preservation and enhancement of the same. It is further found and declared that it is in the public interest to provide all persons with an adequate remedy to protect the air, water and other natural resources from unreasonable pollution, impairment or destruction. (emphasis added).

The concept of “public trust” is a complex matter of law and inserting this reference, particularly without further context, has potentially significant policy implications. It was never discussed at the committee level or in the course of public deliberations and is certainly not a consensus-driven recommendation. For the WPC to attempt to extend this unilaterally to the management of water

resources of the State or the balancing of water needs is overreaching and potentially problematic, given the considerable body of case law regarding the public trust doctrine.

It is worth noting that other issues which were raised in public comment but not consensus-driven are not reflected in the Executive Summary or without qualification in the Plan as indicated by the reference to health equity, as follows: “The WPC agrees that this is an important topic; however, since Plan development did not include a consensus-driven discussion on this topic, this topic has been added to the new subsection in Section 6, as is the topic of environmental equity. One noted suggestion was that DPH and DEEP present to the WPC on these topics during implementation, with consensus-building efforts as part of future implementation and updates to the Plan”. (emphasis added).

Clearly, the issue of extending the public trust to the management of water resources does not reflect a consensus-driven recommendation, as it was vigorously opposed by the state Department of Public Health as a member of the WPC and in public comments by CWWA. Moreover, the issue raises considerable uncertainty and confusion regarding how it will impact the ability of public water suppliers to meet their obligation to provide residents and businesses with a safe, adequate supply of quality water and the costs that businesses and residents would incur for water service.

As such, we believe that the reference to public trust and Section 22a-15, CGS should be deleted from the Executive Summary and the body of the Plan and that the WPC instead handle as other items identified for further discussion, relying on consensus-building efforts as part of future implementation and updates to the Plan.

Thank you for your consideration.

Very truly yours,

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