



Testimony
Elizabeth Gara
Executive Director
Connecticut Water Works Association (CWWA)
Before the Public Health Committee
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HB-5334 - AN ACT CONCERNING THE SALE OR ABANDONMENT OF WATER SUPPLY SOURCES AND ASSOCIATED LAND.

Although we support the stated intent, to clarify procedures concerning the sale or abandonment of water supply sources and related lands, CWWA opposes **HB-5334, An Act Concerning the Sale or Abandonment of Water Supply Sources and Associated Land, as currently drafted.**

By melding the two processes for the sale and abandonment together, the bill creates confusion and unintended consequences that may hinder efforts to appropriately manage water resources. The proposal also has the potential to reopen discussions on controversial aspects of the law regarding water company land sales that were successfully negotiated with stakeholders in 2004.

Therefore, although we support efforts to streamline the process for abandoning and/or selling certain water supply sources, and we commend the Department for raising the issue, we recommend that the committee hold off on moving forward with legislation until parties can engage in a thoughtful dialogue about how to proceed.

The current law, although cumbersome, already prohibits water companies from abandoning a water supply unless the Commissioner of Public Health approves and determines, in consultation with the municipality in which the source is located and the state Departments of Energy and Environmental Protection, the Public Utilities Regulatory Authority and the Office of Policy and Management, that the water is not needed now, in the future, or in the case of an emergency. We have attached an overview of the current law to our testimony.

The language in the current statutes was carefully negotiated to preserve water resources and related open space lands having public water supply value while providing water companies a reasonable process to dispose of resources that were no longer viable or needed for source water protection. HB-5334, however, significantly expands these provisions to apply to “potential water supply sources”, thereby imposing unrealistic requirements on water companies to maintain land and water sources that they do not need or are not viable as water supply sources, now or in the future.

The proposed definition of “potential water supply source” now includes sources that have been identified on a list of sources prepared by the commissioner under a new law, Section 25-33g. At this point, no one has seen the list and it may not be available to the public, pending determination as to whether it poses a security concern. As a result, the list may contain sources that are not considered potential water supply sources by the water company that owns them, either because they are not viable or because treatment and distribution would prove cost-prohibitive. Moreover, a potential source may never receive the necessary environmental permits or approvals to be used as a water supply source.



Yet, under the bill, the water company would be precluded from abandoning the source if, among other things, DPH determines such a source would be needed by ANY public water system to meet current or future water supply needs. This imposes an unreasonable burden on water companies to maintain sources that its customers do not need for current or future water supplies.

The language also has other flaws. It fails to require a company that it deems in need of additional water supplies to actually acquire the source or provide any mechanism to ensure that any permits associated with the source are transferred upon the acquisition. It also creates some unique concerns for municipal water utilities that may determine that a source is no longer needed and, under the current process, could obtain DPH approval to abandon to use the property for other existing municipal uses, such as recreation, town buildings or other facilities. With the processes blended as proposed, it could limit the ability of the municipality to utilize that same option for those lands for planned or future uses in their community.

Unfortunately, the bill fails to address long-standing structural issues with the source abandonment and water company lands statutes, for example, when certain sources will not be sold but will be abandoned, such as when a well that is part of a larger wellfield is approved for abandonment. As drafted, the bill would require notice to the commissioner, chief elected officials and any local health department of the abandonment in addition to any other water company. It also seems there are opportunities to further streamline the process if one water company is purchasing all of the assets of another company and intends to continue to utilize the sources.

Section 1 (b) of the bill provides that the Commissioner may waive the requirement for a permit under specific circumstances which is an important step to streamline the process and clarify requirements. There are other provisions of the bill, such as (e)(4) that indicate an exemption may be requested by a municipality under specification circumstances, so we would suggest that the bill would be improved and the process further clarified if all the activities eligible for exemptions are put in the same section.

Again, laws governing the abandonment of public water supplies and the sale of associated land have been carefully negotiated to protect the interests of the state and other organizations in preserving water supply sources and open space lands and the interest of water companies who need to be able to operate efficiently in order to provide customers with a safe supply of water at a reasonable price.

While we would welcome the opportunity to discuss how to streamline what is a very complex and cumbersome process, we are concerned that, given the extent of the concerns and confusion with the proposed bill, it may be difficult to fully address this issue in a short legislative session.

The Connecticut Water Works Association, Inc. (CWWA) is an association of private, municipal and regional public water supply utilities serving more than 500,000 customers, or population of about 2½ million people, located throughout Connecticut.



Overview of Abandonment and Sale of Associated Lands Laws

The current law prohibits water companies from abandoning a water supply unless the Commissioner of Public Health approves and determines, in consultation with the municipality in which the source is located and the state Departments of Energy and Environmental Protection, the Public Utilities Regulatory Authority and the Office of Policy and Management, that the water is not needed now, in the future, or in the case of an emergency. Concurrence is not required if DPH determines that the proposed abandoned water supply source is (1) a groundwater source with a safe yield of less than 10 gallons per minute and (2) of poor water quality.

The proposed abandonment must also be identified in an approved water supply plan that outlines how the water company will meet current and future water supply needs for 50 years out before an abandonment is approved. Municipalities, local health directors, The Nature Conservancy, the Trust for Public Lands and other conservation and land trust organizations must be notified of any source abandonment, forecasted land sale or land reclassification contained in a water supply plan. These organizations, as well as the general public, have the opportunity to comment on the proposed abandonment and the DPH Commissioner must consider these comments when approving the plan.

The law also gives various entities, including municipalities, a right of first refusal to buy land and water supply sources owned by a water company, in a specified order depending on who seeks to acquire the land and its subsequent use.

Under Section 25-37c of the CGS, water companies cannot lease or assign Class I lands and such lands can only be sold to the state, a municipality, or another water company. The buyer must agree to maintain the land subject to the restrictions in the law and those imposed by a permit authorized by the state Department of Public Health. The company can change the land's use only if it demonstrates that the change (1) will not harm the purity and adequacy of water supply, now or in the future and (2) is consistent with a DPH approved water supply plan filed by the company.

Similarly, DPH can grant a permit for a transaction involving Class II lands or a change of its use, if the company demonstrates that its proposal will not significantly harm the purity and adequacy of the water supply and that any use restriction DPH imposes can be enforced against subsequent owners, lessees. In the case of the sale, lease or transfer of land, DPH can grant a permit only if use restrictions will prevent the Class II land from being developed. When a transaction is with another water company, municipality or a land conservation organization, DPH can grant a permit only if there is a permanent conservation easement on the land, which preserves the land in perpetuity, with most of the land remaining in its natural condition.