

Testimony of Donald F. Rieger, Jr. regarding S.B. 840

Providing for UCONN's future must not be done at the cost of irremediable environmental harm. One aspect of the proposed bill is to provide for the asserted water needs of UCONN's growth, including its planned technology park. Although UCONN's choice among three water supply proposals is still ostensibly under study, the MDC proposal is being pushed very hard. Its environmental consequences would be dire.

The MDC proposal includes a seventeen mile pipeline from East Hartford to Mansfield. As is pointed out in UCONN's Environmental Impact Evaluation ("EIE"), the MDC is required by its charter to "supply water to any inhabitants of the towns through which the line of main pipes ...shall pass".<sup>i</sup> Thus, the MDC proposal could expand its public water service to each of the towns between East Hartford and Mansfield. That would bring development pressures of the very sort that the draft State Conservation and Development Policies Plan for 2013-2018 seeks to avoid when it calls upon us to:

"Rely upon the capacity of the land to provide drinking water and wastewater disposal needs in rural areas. Support the introduction or expansion of public water and sewer services... only at a scale which responds to the existing need without serving as an attraction to more intensive development."

Much of the affected area is classified by the present State Plan of Conservation and Development as no-build or low development. The MDC proposal is a catalyst for sprawl. In discussing "[t]he powerful and highly probable effects of water mains on land use patterns... hinted at but not fully described in this EIE" , the Council on Environmental Quality noted,

"In decades past, water mains along major roads were key drivers of suburban sprawl. The State Plan and most current state policies discourage sprawl because it is wasteful of public funds and harmful to the environment."

The obligation to provide water to the towns along the pipeline has another environmental consequence: it puts a greater burden on the Farmington River. Worse yet, because the possible demand from those towns has not been quantified, the extent of that burden cannot be determined. It should be clear that the Farmington River is not an inexhaustible resource. In its comments on the MDC proposal, the United States Department of Interior, National Park Service, wrote, "Evidence we see on the Farmington River includes recurring summer drought conditions and declining water levels due to decreased rainfall and snowmelt and groundwater recharge during critical periods....These factors... have not been analyzed or addressed in considering the available water supply of the Farmington basin." A December 2012 memorandum from the Department of Energy and Environmental Protection Inland Fisheries Division, observed, "[T]he East Branch of the Farmington River from the mouth of the mainstem Farmington River upstream to Lake McDonough outlet dam (1.1 miles) and the Nepaug River from the mouth at confluence with the mainstem Farmington River upstream to the Nepaug

Reservoir Outlet Dam (0.9 miles) do not meet water quality standards for aquatic life and recreation.” The East Branch of the Farmington and the Nepaug River have long been prominently featured on the state's 303(d) list of impaired waters. Citizens of towns along the mainstem of the river have long complained of low flow conditions. Because of the impacts already occurring, river advocates have had a long-standing position against expansion of the MDC's service area.

For its part, MDC makes developing revenue potential the number one goal in its strategic plan. Two of the objectives highlighted are:

- "Expand the customer base to optimize use of water assets and grow revenue", and
- "Secure rights to water for water supply purposes from the West Branch of the Farmington River".

The MDC Strategic Plan does not recite any objectives for the environmental health of the Farmington River. Moreover, the strategic plan language suggests that the water is the MDC's asset. It is not. The MDC does not own the water; it is a public trust resource.

When the legislature granted the MDC the right to dam the Farmington River, it included a charter provision that encouraged it to “use any part of the water therein stored, which is not needed for its water supply system, for the purpose of returning to said Farmington river at convenient times water... for the purpose of maintaining in said river a more constant flow regardless of seasonal variation...” The MDC has not done so. The DEEP memorandum cited above points out that “[i]n previous review of MDC Water Supply Plans (1997, 2003, and 2008) the Inland Fisheries Division encouraged the MDC to undertake a comprehensive analysis of water allocation throughout their service area. That analysis should ... be used to develop a water management strategy to balance consumptive water supply needs while providing sufficient instream flows to restore riverine habitat to the extent possible.” The thrust of state policy in the past 15 years has been that surplus water should be used at least in part to provide relief to low-flow streams in the watershed. Similarly, the new Plan of Conservation and Development now before the legislature calls for balancing the competing needs of water for human consumption and habitat sustainability.

The MDC asserts that it has at least five million gallons per day and perhaps as much as twelve million gallons per day of "excess" water in its Farmington Valley reservoirs. It has not provided any recent reliable data to substantiate that claim. Nor has it addressed future prospects in light of the climate change impacts cited in the Department of the Interior comments noted above. (Its existing water customers might properly be concerned that making a supply commitment to UCONN and beyond could imperil their water service if climate change continues). Plainly, if the MDC had been true to the legislature's clear intent that water be released to maintain flows in the river, the supposed excess would not be tempting the district to further beggar the environment through its UCONN scheme. And the river would be healthier.

The chief executives of eleven Farmington Valley municipalities have written to UCONN opposing the MDC proposal. The legislature should be very careful not to do indirect, inadvertent and irremediable environmental harm by an overbroad blessing of UCONN's development plans.

Thank you for your attention to this matter.

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<sup>i</sup> Mr. Christopher Stone, the MDC's Assistant District Counsel, has, on at least one occasion, taken the position that the EIE is incorrect in this regard, and that Section 6-3 of the Charter deals only with pipelines carrying untreated water. For his argument to be correct, the pipe to Mansfield has to fall outside the term "the line of main pipes conducting said water". I do not find in the Charter a definition of the term 'main pipes', so it would seem that the law would import a common sense definition. A big high pressure pipe such as is contemplated would certainly be called a water main or a main pipe. Note, as well, that the phrase refers to "said water". It does not specify untreated water.

To argue that 6-3 really only intends to deal with untreated water, Mr. Stone refers to 6-1, asserting that 6-1 (and, it seems, the rest of Section 6) only deals with untreated water. However, 6-1 does not mention a distinction between treated and untreated water. Moreover, it authorizes the MDC to convey "such water" "between reservoirs or from reservoirs to any part of said district or to any other place which is, or under authority of law may be supplied with water by said district..." Section 6-1 would, thus, cover the transmission of East Branch water to Mansfield, treated or not.

If we look back at 6-3, the second clause says "but said district shall now [probably intended to be 'not'] sell water in any such town in competition with any other company or system not [probably intended to be 'now'] having authority to supply water in such town... except water at wholesale to any such company or system desiring the same." It seems unlikely that such a restriction would have been needed if only untreated water were at issue in 6-3.

Even if Mr. Stone's interpretation of 6-3 were correct, which I believe it not to be, the MDC's ability under 5-8 to *voluntarily* expand service to other towns along the pipeline to Mansfield would still be a problem to those who believe that the mainstem of the Farmington River needs more water throughout the year than is being made available to it.