



Testimony of Eric Brown
Connecticut Business and Industry Association
Before the Environment Committee
March 14, 2018

The Connecticut Business and Industry Association (CBIA) appreciates this opportunity to comment on:

SB-427, An Act Concerning Public Trust Components of the State Water Plan

CBIA finds the current language inadequate to address concerns with the State Water Plan

Good morning. My name is Eric Brown and I serve as Senior Counsel for the Connecticut Business and Industry Association (CBIA). CBIA represents thousands of businesses throughout the state of Connecticut with the majority having fewer than 25 employees.

CBIA expressed its significant concerns to the Water Planning Council when, after 4 years of productive, collaborative discussions, work on several preliminary drafts and a public hearing on a final draft – none of which ever included the concept of attaching the public trust doctrine, the final State Water Plan included the attachment of that doctrine, which could have significant ramifications for Connecticut's economic future.

Specifically, the final plan references the Connecticut Environmental Policy Act (CEPA) statute in the context of the Plan's goal of balancing water use for all needs, including the needs of public water supply, economic development, recreation and ecological health.

However, because the State Water Plan references the CEPA statute in isolation and ignores the extensive body of common law and caselaw on the public trust doctrine and its application as well as other laws regulating water uses, it raises significant concerns regarding how this will impact the established water rights of public water suppliers, business and industry, agriculture, municipalities, and other water users.

The Insertion of the CEPA statute in the State Water Plan may result in the misapplication of the public trust doctrine when implementing the Plan.

The potential misapplication of the public trust doctrine may also raise questions regarding the continued availability of water supplies needed to:

- 1) Maintain business and industrial operations;
- 2) Support agricultural industries, including farms, nurseries and greenhouses;
- 3) Plan and move forward with state and local economic development projects, housing developments, shopping centers, and business expansion;
- 4) Address public health and safety needs, including fire suppression; and
- 5) Support colleges, universities, hospitals, nursing homes and other health care facilities.

It is our understanding that SB-427 is a legislative vehicle intended to address these concerns. However, the current language of the bill fails to do so.

Given the enormous implications of the public trust doctrine, including the impact on Connecticut's economy, decisions regarding its reference in the Plan and its application in Connecticut should not be left to the WPC, whose members are not accountable to the public or to the state legislature in establishing linkages or interpretations concerning the application of the public trust doctrine.

Accordingly, CBIA urges this committee, as it considers whether to approve the State Water Plan to delete the references to public trust and Section 22a-15, CGS as pertaining to the development and implementation of the State Water Plan.