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**STATEMENT FROM MICKEY HERBERT, PRESIDENT AND CEO OF THE BRIDGEPORT REGIONAL
BUSINESS COUNCIL TO THE
ENVIRONMENT COMMITTEE IN OPPOSITION SENATE BILL 427, AN ACT CONCERNING PUBLIC
TRUST COMPONENTS OF THE STATE WATER PLAN**

Good afternoon Senator Kennedy, Senator Miner, Representative Demicco, and members of the Environment Committee. My name is Mickey Herbert and I am the President and CEO of the Bridgeport Regional Business Council (BRBC). Thank you for the opportunity to submit testimony today.

The BRBC directly serves the communities of Bridgeport, Stratford and Trumbull, and indirectly serves the entire greater Bridgeport Region and represents the interests of 730 member businesses in matters of public policy. We cannot support SB 427 as drafted for the reasons stated below.

Although we do not support SB-427, as drafted, our understanding is that the bill is intended to address concerns with the eleventh-hour insertions in the draft State Water Plan of language referencing the “public trust” and how this may impact the availability of water supplies for other uses.

After four years of productive, collaborative discussions among the Water Planning Council (WPC) and stakeholders, the Plan was revised at the last minute to reference the concept of public trust under the Connecticut Environmental Policy Act (CEPA).

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 misappropriation of the Public Trust Doctrine jeopardizes established water rights and signals a clear change in temperament and recognition of local control in favor of a 4-person appointed panel not accountable to voters or taxpayers.

For the WPC to attempt to extend the public trust doctrine 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 common law and caselaw regarding the public trust doctrine, which dates to ancient Roman and early English times, and, in Connecticut, to the 1800s.

The Connecticut Supreme Court in *Waterbury v. Washington* was very clear – the CEPA statute does not trump other environmental laws. However, by highlighting the CEPA statute as central to the State Water Plan’s goal of balancing water uses, the Plan appears to position the CEPA statute to, in fact, trump other laws in governing water use rights. This creates enormous uncertainty that will invite legal challenges to established water rights, such as registered diversions, diversion permits, reservoir impoundments, and other regulated water uses.

The reference to the public trust doctrine in the Plan is particularly troubling given that its proponents have relied on this phrase to call for 1) the elimination of registered diversions, which public water suppliers have invested in and relied upon to meet public water supply needs; 2) the extension of stream flow regulations to groundwater supplies, which may result in water shortages and economic development moratoriums in certain municipalities; 3) the imposition of inflexible water

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PROGRAM AFFILIATES: Leadership Greater Bridgeport, Thrive Young Leaders, Women’s Leadership Council

CORPORATE AFFILIATE: Bridgeport Economic Development Corporation

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conservation requirements that may impose unnecessary and/or unachievable burdens on public water suppliers, businesses, and residents; and 4) new permitting requirements on high volume water users that will add unnecessary costs and administrative burdens on water companies and customers.

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.

This move exceeds the scope of the water planning council's responsibilities and the effort over 4 years to reach consensus. Moreover, the public trust issue was not discussed during any of the numerous state water plan meetings held over a four-year period.

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.

The definition of balance specified in Public Act 14-163, which was carefully and deliberately crafted by lawmakers, is not relevant to the application of the public trust doctrine in Connecticut.

Clearly, the public trust doctrine and its application in Connecticut is a significant public policy issue and should not be allowed to be inserted in the State Water Plan at the eleventh hour.

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.

Accordingly, we are urging lawmakers to delete the references to public trust and Section 22a-15, CGS as pertaining to the development and implementation of the State Water Plan.

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