

Testimony
Brad Kargl
Town of East Lyme
President, Connecticut Water Works Association
Before the Environment Committee
March 16, 2018

Sen. Kennedy, Sen. Miner, Rep. Demicco, Rep. Harding and members of the committee, my name is Brad Kargl. I am the Municipal Utility Engineer for the Town of East Lyme and President of the Connecticut Water Works Association (CWWA), a trade association of municipal, regional and private water utilities.

Thank you for the opportunity to testify on SB-427, which is intended to address concerns with some language that was inserted in the State Water Plan after the public comment period had closed.

The Water Planning Council revised the State Water Plan to insert a reference to the phrase “public trust” and Section 22a-15 of the Connecticut General Statutes as it relates to the Plan’s goal of balancing water uses. CWWA’s Board of Directors was concerned that this reference may have unintended consequences and requested Day Pitney LLP to prepare a legal memorandum to address this issue.

The memorandum, which we would be happy to share with you when it is finalized, concludes that the reference to public trust and Section 22a-15, CGS, should be removed to avoid confusion and any inadvertent misapplication of the public trust doctrine, given its complexity and evolving interpretation by the courts.

We, as public water suppliers rely on established water rights, such as registered and permitted diversions and interconnections, to meet our obligation to provide residents and businesses with safe and adequate drinking water supplies for public health, safety and economic development needs. Based on these established water rights, we have made significant investments in infrastructure, including reservoirs, wells, distribution systems, interconnections, and water treatment facilities, and the protection of watershed lands.

As public water suppliers, we recognize that we are stewards of the water resources and we take that role very seriously. However, according to the legal memorandum, the phrase “public trust”, particularly because it is tied to the language of the CEPA preamble and highlighted in discussions regarding the Plan’s goal of balancing water uses, may open us up to legal challenges, undermining our ability to provide water to our residents and businesses. This is because the public trust doctrine is a very comprehensive legal doctrine that has evolved over the years in ways that may affect established water rights.

In East Lyme, for example, we invested millions of dollars into designing and constructing a water system interconnection with the City of New London to address water supply issues in

months when our demands are higher due to summer tourism and supply is lower due to pumping restrictions imposed by diversion regulations. It is my understanding that the public trust doctrine has been used in some states to challenge water system interconnections and water diversions even though such uses are regulated by the state.

Referencing the public trust doctrine in the State Water Plan could therefore have very severe repercussions for the state's public water supplies, as well as tourism, economic development and agriculture, and we believe these references should be deleted from the State Water Plan.