

Meeting Minutes
Western WUCC Convening Meeting
Brookfield Municipal Center – 100 Pocono Road, Brookfield, CT
February 14, 2017 10:00 AM

The Western Water Utility Coordinating Committee (WUCC) held a meeting on February 14, 2017 at 10:00 a.m. at the Brookfield Municipal Center at 100 Pocono Road in Brookfield, Connecticut. Prior written notice of this meeting was given via emails from the Department of Public Health (DPH) to eligible WUCC members, chief administrative officials, local health directors, town clerks, the Secretary of State, state agencies (OPM, PURA, DEEP, CT Office of Consumer Counsel, CT DOT, CT DECD, the Commissioner of Agriculture), and other interested persons. Notice of the meeting was also posted on the DPH website <http://www.ct.gov/dph>.

The following WUCC member representatives were in attendance (listed in alphabetical order of affiliation):

WUCC Member Representative	Affiliation
Ken Skov	Aquarion Water Company
Dan Lawrence (Co-Chair)	Aquarion Water Company
Doug Arndt	Town of Bethel
Ray Sullivan	Town of Brookfield, Health Department
Russ Posthauer (Co-Chair)	Candlewood Springs Property Owners Assoc.
David Connors	Connecticut Water Company
Mike Elliot	First District Water
David Banker	Metropolitan District Commission
Aaron Budris	Naugatuck Valley COG
Wesley Marsh	New Hartford
Mike Crespan	Town of New Milford
Donna Culbert	Newtown Health Department
Joanna Wozniak-Brown	Northwest Hills COG
Rose Gavrilocic	South Central CT Regional Water Authority
Tom Villa	South Norwalk Electric & Water
Jeremy Leifert	Town of Thomaston
Mike Towle	Western CT Council of Governments
William Kenny	Western CT Council of Governments
Jim Rollins	Winsted Water Works
Laurie Bosco	Town of Wolcott
Philip Olmstead	Town of Wolcott

The following non-WUCC member representatives were in attendance (listed in alphabetical order of affiliation):

Non-WUCC Member Representative	Affiliation
Corinne Fitting	CT Department of Energy & Environmental Protection
Melissa Czarnowski	CT Department of Energy & Environmental Protection
David Cooley	CT Department of Energy & Environmental Protection
Brendan Schain	CT Department of Energy & Environmental Protection

Eric McPhee	CT Department of Public Health
Eileen Fielding	Farmington River Watershed Association
Len Dejong	Pomperaug River Watershed Coalition
David Murphy	Milone & MacBroom, Inc.
Hugh Rogers	Rivers Alliance

A copy of the meeting agenda is attached. The following actions took place:

1. Welcome & Roll Call

The Chairs opened the meeting at 10:00 AM. The chairs requested a roll call of attendees.

2. Review of January Meeting Minutes

Mr. Lawrence asked if there were any comments or changes from the floor. No comments were made. Mr. Sullivan moved to approve the minutes. Mr. Posthauer seconded. Members voted unanimously to approve, two members abstained from the vote.

3. Review of Formal Correspondence

Mr. Banker discussed the following correspondence which the WUCC received, sent or was copied on:

- 01-12-2017 – Combined letter from West, Central and Eastern WUCCs responding to letters received from the public
- 02-01-2017 – WUCC received DPH WUCC Exclusive Service Areas Frequently Asked Questions, available on the DPH WUCC webpage
- 02-01-2017 – WUCC received DEEP letter regarding “Exclusive Service Areas and Lands under the Custody and Control of the Department”
- 02-07-2017 – WUCC received DPH letter regarding “Department of Energy and Environmental Protection’s February 1, 2017 Letter”

A copy of the above correspondence is attached.

4. Public Comment

The Chairs opened the public comment period. No public comment was received

5. Review/Approval of ESA Process Document & Schedule

- Mr. Murphy reviewed the draft ESA process document and schedule. He presented the WUCC with multiple options, consisting of leaving the document as a guide for the WUCC, having the WUCC approve the documents, or approving the documents and appending them to the work plan.

- A brief discussion ensued, after which Mr. Posthauer made a motion to accept and amend the process document and ESA schedule to the Work Plan. Mr. Connors seconded the motion and members voted unanimously in favor of the motion.

6. Update on DEEP ESA Claim & ESA Potential Conflict Presentations

- Mr. Schain provided a summary DEEP's ESA letter dated 2-1-2017, stating that the Department does not need to and perhaps cannot hold ESAs. The Department and the State of Connecticut are exempted by sovereign immunity. The Department also presented the WUCC with two options, consisting of either leaving state lands within the ESA areas unassigned or assigning the land an ESA, but noting the exemption.
- Mr. Lawrence preferred the second option, since this is similar to existing ESAs already assigned previously, as well as to how transient and non-transient water systems are handled under previous ESA maps.
- Mr. Murphy stated that the Eastern WUCC had left DEEP land unassigned where new ESAs were being established, but the Central and Western WUCC approaches could be different.
- Ms. Fitting stated that the Eastern WUCC had debated whether two separate categories for unassigned land and DEEP unassigned land were needed for ESA mapping.
- Ms. Wozniak-Brown stated that having DEEP land shown separately in green on ESA maps helps to distinguish developable area.
- Mr. Posthauer agreed that there was benefit to showing the lands on mapping for planning purposes.
- Mr. Banker asked if the sovereign immunity applied to all state and federal lands, potentially expanding the area of lands in question. After a brief discussion, there was consensus that the WUCC was only considering DEEP lands, since they had sought to be involved in the process.
- There was consensus that the WUCC would continue to show DEEP lands as green on the mapping for planning purposes. Regarding assignment of ESAs over DEEP lands, there was consensus that:
 - In towns where the entire town is being assigned an ESA, DEEP lands would be assigned, but a note would be placed on the map.
 - In towns where the entire town is not being assigned an ESA, DEEP lands would remain unassigned.
 - In towns where an ESA had been assigned by a previous WUCC, a note could be added to these maps.
- Mr. Schain offered assistance from DEEP and there was consensus among members for the WUCC to coordinate with the Central and Eastern WUCCs in an attempt to develop similar language across the three WUCCs.
- Mr. Murphy provided an update on the remaining ESA conflicts within the WUCC. Due to DEEP's withdrawal of ESA claims, the only remaining conflict is in Litchfield.
- Mr. Elliot provided a summary of the resolution of the conflict in Norwalk, which consisted of First Taxing District and South Norwalk Electric & Water forming a legal joint venture to provide water to two areas of overlap between the utilities. The utilities will provide confirmation of the joint venture by February 28th. While viewing the map of Norwalk, there was a discussion about whether the preliminary ESA in Wilton needed to be modified where the polygon for the joint venture ESA protruded into Wilton. There was consensus that the Aquarion's Wilton ESA did not need to be modified.

- Ms. Wozniak-Brown asked if the joint venture comes with the ESA responsibility to its holders
- Mr. Elliot stated that the joint venture documentation specifies the decision of customer assignment based upon customer choice, proximity, ability to serve and other parameters.
- Mr. Lawrence stated that the WUCC will need a copy of the joint venture agreement

7. Consideration of the Approval of ESA Maps for Public Comment in March

- Mr. Murphy reviewed the following maps. Comments as noted:
 - Barkhamsted
 - Mr. Rollins asked if Winsted was approached to expand its service in Barkhamsted, what would be the process?
 - Mr. Lawrence stated it would be an ESA modification/boundary change per the process document.
 - Bethlehem
 - Bridgeport
 - Canaan
 - Mr. Scov stated that the map needs to be updated to show Aquarion Water Company's water supply main
 - Colebrook
 - Darien
 - Easton
 - Fairfield
 - Goshen
 - Greenwich
 - Hartland
 - Kent
 - Mr. Lawrence reviewed Aquarion's compromise with the town to establish an ESA around Aquarion's system to cover the towns planned development areas, leaving other areas unassigned.
 - Middlebury
 - Monroe
 - Morris
 - New Canaan
 - Mr. Elliot noted the need to edit an Aquarion Water Company water main shown on the map
 - New Fairfield
 - New Hartford
 - Norfolk
 - North Canaan
 - Plymouth
 - Redding

- Roxbury
 - Salisbury
 - Sharon
 - Shelton
 - Sherman
 - Southbury
 - Stamford
 - Stratford
 - Thomaston
 - Torrington
 - Trumbull
 - Warren
 - Washington
 - Waterbury
 - Watertown
 - Weston
 - Westport
 - Wilton
 - Winchester
 - Wolcott
- Mr. Lawrence stated that the assigned ESAs in the final mapping should show the assigned areas shaded in color. There was consensus among the members.
 - Mr. Murphy stated that the towns with previously assigned ESAs covering the town would not appear on this list, since the prior ESAs will not change.
 - Mr. Murphy reviewed a potential motion to approve the draft town maps reviewed this meeting for public comment and a motion regarding ESA mapping and assignment of DEEP lands. A discussion of the motion ensued.
 - Mr. Posthauer stated that he would prefer to wait to approve the draft maps until the DEEP note language has been developed.
 - Mr. Murphy stated that he would prefer to have the same note language for newly assigned and existing assigned ESA maps, as well as similar text between the three WUCCs, if possible.
 - Mr. Posthauer stated that the language could be discussed in the next WUCC conference call.
 - There was consensus among the members to delay approving the maps reviewed until the next WUCC meeting, pending development of footnote text.
 - Mr. Murphy stated that any remaining ESA conflicts must be resolved by the end of February, to include the maps with the agenda for the next meeting.
 - Mr. Lawrence stated that resolution in Litchfield is pending the next town council meeting on February 21st.
 - Mr. Murphy stated that a draft ESA report could be distributed to members on March 1st for comments prior to the next WUCC meeting.

- Mr. Dejong asked if the joint venture proposed in Norwalk would meet the legal requirements for ESA assignment.
- Mr. McPhee stated that the ESA statute only identifies an entity, and does not define.
- Mr. Lawrence stated that the joint venture makes sense because First District and South Norwalk are the only organizations chartered to provide water in Norwalk.

8. Other Business

- Mr. Murphy stated that CIRCA will make a brief 10 minute presentation at the WUCC's March 14th meeting regarding their work for the state on climate change and strengthening water systems. Elements/concepts of their plan could feed into the WUCC and State Water plans.
- Ms. Wozniak-Brown asked if the study will consider small water systems in rural areas not close to the shore.
- Mr. Murphy stated that the results of the resiliency plan can be applied statewide and will include small systems and individual wells.
- Mr. Murphy presented a diagram on how the state water plan, resiliency document and WUCC plan have and will inform each other.

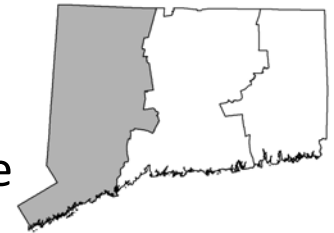
As there was no more business, Ms. Wozniak-Brown made a motion to adjourn. Mr. Elliot seconded the motion. The motion passed unanimously and the meeting closed at 11:35 AM.

The next Western WUCC Meeting is scheduled for Tuesday March 14th, 2017 to be held at the Brookfield Municipal Center at 100 Pocono Road in Brookfield, Connecticut.

Respectfully Submitted,

David Banker, Recording Secretary – Western WUCC

Western Region
Water Utility Coordinating Committee



Meeting Agenda

February 14, 2017

Location: Brookfield Town Hall

Time: 10:00 a.m. to 12:00 p.m.

Russell Posthauer, Jr., Co-Chair
russellposthauer@ccaengineering.com
203-775-6207

Daniel Lawrence, Co-Chair
DLawrence@aquarionwater.com
203-362-3055

David Banker, Recording Secretary
DBanker@themdc.com
860-278-7850 Ext. 3650

1. Welcome & Roll Call (5 minutes)
2. Review and Approval of January Meeting Minutes (5 minutes)
3. Review of Formal Correspondence (5 minutes)
4. Public Comment (5 minutes)
5. Review/Approval of ESA Process Document & Schedule (5 minutes)
6. Update on DEEP ESA Claim & ESA Potential Conflict Presentations
(Tentative Presentation Schedule Attached, 45 minutes)
7. Consideration and approval of ESA maps for public comment in March
(List & Maps Attached 50 minutes)
8. Other Business, if time allows

If meeting is cancelled due to inclement weather, the revised meeting date will be Tuesday February 21st.

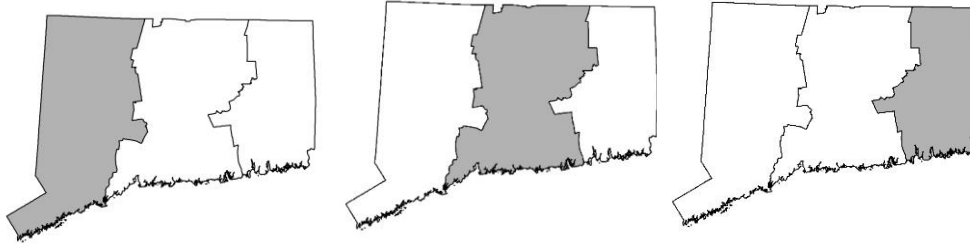
**Potential ESA
Conflict
Presentations**

Town	Declarant
Cornwall	Town
Cornwall	DEEP
Hartland	Town
Hartland	DEEP
Kent	Town
Kent	DEEP
Litchfield	Town
Litchfield	TWC
Litchfield	Aquarion
Litchfield	DEEP
Morris	Town
Morris	DEEP
Salisbury	Town
Salisbury	DEEP
Winchester	Town
Winchester	DEEP

ESA Maps for Consideration - 42 Communities

Town	Map Number
Barkhamsted	ESA Fig. 2
Bethlehem	ESA Fig. 5
Bridgeport	ESA Fig. 6
Canaan	ESA Fig. 11
Colebrook	ESA Fig. 13
Darien	ESA Fig. 16
Easton	ESA Fig. 18
Fairfield	ESA Fig. 19
Goshen	ESA Fig. 20
Greenwich	ESA Fig. 21
Hartland	ESA Fig. 22
Kent	ESA Fig. 24
Middlebury	ESA Fig. 26
Monroe	ESA Fig. 27
Morris	ESA Fig. 28
New Canaan	ESA Fig. 30
New Fairfield	ESA Fig. 31
New Hartford	ESA Fig. 32
Norfolk	ESA Fig. 35
North Canaan	ESA Fig. 36
Plymouth	ESA Fig. 39
Redding	ESA Fig. 41
Roxbury	ESA Fig. 43
Salisbury	ESA Fig. 44
Sharon	ESA Fig. 46
Shelton	ESA Fig. 47
Sherman	ESA Fig. 48
Southbury	ESA Fig. 49
Stamford	ESA Fig. 50
Stratford	ESA Fig. 51
Thomaston	ESA Fig. 52
Torrington	ESA Fig. 53
Trumbull	ESA Fig. 54
Warren	ESA Fig. 55
Washington	ESA Fig. 56
Waterbury	ESA Fig. 57
Watertown	ESA Fig. 58
Weston	ESA Fig. 59
Westport	ESA Fig. 60
Wilton	ESA Fig. 61
Winchester	ESA Fig. 62
Wolcott	ESA Fig. 63

Connecticut Water Utility Coordinating Committees



January 12, 2017

Members of the Public

This letter is in response to written communications received from the public regarding the Coordinated Water System Planning process in the Western, Central, and Eastern Water Utility Coordinating Committee (WUCC) regions.

The coordinated water system planning process began in June of 2016. The plans developed by each WUCC will consist of: (1) the individual water system plans of each public water system in the region; and (2) an Areawide Supplement, which includes the Water Supply Assessment, Exclusive Service Area Boundaries; Integrated Report; and Executive Summary. Respectively, these components must be completed within 6, 12, 24, and 24 months following convening of each WUCC.

To date, water supply assessments have been prepared for each region and the exclusive service area delineation process is underway. The final Water Supply Assessment reports were submitted to the Department of Public Health in December 2016; preliminary and final exclusive service area delineations and reporting will be published in March and June of 2017 respectively; and the integrated reports and executive summaries for the three regions will be published in June of 2018, thus concluding the two-year planning process.

A substantial amount of public comment has been received to date. The letters convey the following common themes:

- Prioritize environmental protection.
- Ensure the quality and quantity of drinking water is not compromised.
- Keep Connecticut's water in public trust.
- Require water conservation.
- Develop a regional water planning strategy.
- Prioritize the need for clean drinking water over corporate interests.
- Provide ample opportunity for public comment.

To the extent that comments received specifically pertained to one or more of the Water Supply Assessments, they were considered and addressed in the final documents. The following responses are intended to address the broader issues raised.

WESTERN REGION WUCC

Russell Posthauer, Jr., Co-Chair
Russellposthauer@ccaengineering.com
203-775-6207

Daniel Lawrence, Co-Chair
DLawrence@aquarionwater.com
203-362-3055

David Banker, Recording Secretary
DBanker@themdc.com
860-278-7850 Ext. 3650

CENTRAL REGION WUCC

David Radka, Co-Chair
DRadka@ctwater.com
860-669-8630

Bart Halloran, Co-Chair
bhalloran@themdc.com
860-726-7810

Brendan Avery,
Recording Secretary
bavery@hazardvillewater.com

EASTERN REGION WUCC

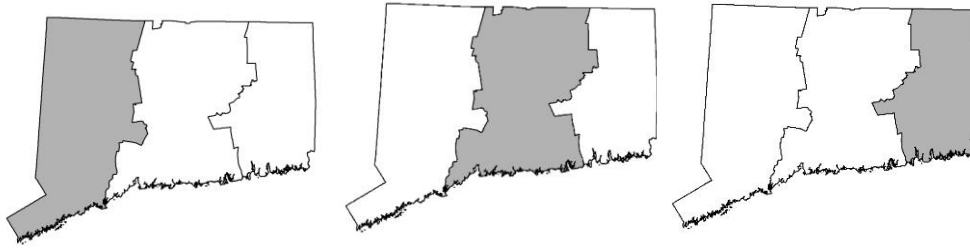
Robert Congdon, Tri-Chair
congdon@preston-ct.org
860-887-5581 Ext.105

Mark Decker, Tri-Chair
MarkDecker@npumail.com
860-823-4168

Patrick Bernardo, Tri-Chair
Patrick.bernardo@suez-na.com
856-718-7003

Samuel Alexander,
Recording Secretary
salexander@seccog.org
860-889-2324

Connecticut Water Utility Coordinating Committees



Prioritize Environmental Protection – Members of environmental groups and the public have voiced concern over the potential for environmental impact related to water withdrawals from reservoirs and groundwater aquifers. Environmental protection of watersheds and aquifers is important to ensure high quality drinking water and is a shared goal by water suppliers throughout the state. Source protection programs are in place for small and large public water systems and various environmental laws and regulations are in place for the protection of drinking water supplies. For new water withdrawals, and for those previously permitted under the Water Diversion Act administered by the Connecticut Department of Energy & Environmental Protection (DEEP), potential environmental impacts are rigorously reviewed. Previously registered water diversions, including those for public drinking water supply, did not undergo environmental review, as these withdrawals are grandfathered. The Integrated Report will consider potential impacts of the Coordinated Water System Plan (CWSP) on other uses of water resources, including water quality, flood management, recreation, hydropower, and aquatic habitat issues.

Ensure the Quality and Quantity of Drinking Water is not Compromised – The WUCC regions recognize the importance of ensuring adequate quality and quantity of drinking water. Each provider of public water in Connecticut is required to meet public health standards set by the Environmental Protection Agency (EPA) and the Connecticut Department of Public Health (DPH). Responsibilities borne by public water systems include source water protection, water treatment, water quality monitoring, and rigorous reporting requirements. DPH, DEEP, and EPA regulate and enforce the standards for water quality and quantity protection, use, conservation, and distribution.

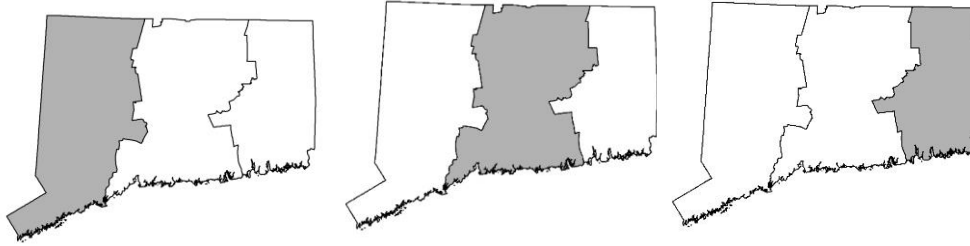
Keep Connecticut's Water in Public Trust – The State's water is managed by riparian water use principles and its use is overseen by DEEP under the water diversion program. As such, water will remain in the public trust. Water utility customers don't pay for "water" per se. Rather, they pay for the pumping, treatment, and distribution of that water (and related costs) to their homes and businesses. Such use of water is allowed and regulated by the state. The WUCC process will not result in the changing of ownership of water.

Require Water Conservation – Water conservation is an important element of sound public water system operation. In some cases, significant conservation measures have already been enacted. In other cases, public water systems could benefit from additional conservation efforts. While the WUCC has no regulatory enforcement powers, water conservation has been identified in the regional water supply assessments as a key issue for further evaluation in the coordinated water system planning process.

Develop a Regional Water Planning Strategy – Development of a regional water planning strategy is one of the anticipated outcomes of the WUCC process. This will culminate with the completion of the areawide supplement.

Prioritize the Need for Clean Drinking Water Over Corporate Interests – Public water providers operate and provide drinking water based upon statutes and regulations, their individual charters and enabling legislation, as well as the feasibility of providing service. Provision of water may not be withheld from a viable business or individual if the water utility has sufficient water available to provide. Those utilities that are required to prepare an individual water supply plan are also required to identify priority users. In many cases, priority users include high-volume industrial and commercial customers in the same vein as hospitals and other residential care facilities. Typically, these are considered

Connecticut Water Utility Coordinating Committees



priority users because they employ a significant number of people, and the desire to get as many people back to work as soon as possible following a disaster or emergency. In other cases, such as power plants, these facilities are required to for those experiencing power outages (particularly homeowners with private wells) to return to normalcy.

Provide Ample Opportunity for Public Comment – The WUCC process is one of public inclusion. All meetings are noticed and open to the public. Meeting agendas, presentations, and minutes are posted on the DPH website, as are documents that are developed as part of the coordinated water system planning process. Public comment has been and will continue to be sought on each major plan element as well as interim documents that are developed to support the process. Finally, any member of the public may request to be added to the e-distribution as an interested party and receive direct emails pertaining to the WUCC process.

Many of the above issues are also being considered as part of the development of the State Water Plan. We encourage the public to contact the Connecticut Water Planning Council to determine how to remain informed of that process. In particular, several public meetings have been scheduled in early 2017.

The WUCC officers appreciate public input and involvement and look forward to a rigorous planning process over the next year and a half.

Very Truly Yours,

Russel Posthauer
Western WUCC Co-Chair

Daniel Lawrence
Western Region Co-Chair

David Radka
Central Region Co-Chair

Bart Halloran
Central Region Co-Chair

Robert Congdon
Eastern Region Tri-Chair

Mark Decker
Eastern Region Tri-Chair

Patrick Bernardo
Eastern Region Tri-Chair

WUCC Exclusive Service Areas

Frequently Asked Questions

February 1, 2017

The Department of Public Health (DPH) has received many questions regarding the expectations of Exclusive Service Area (ESA) holders. Since 1987, ESA holders have had a right and a responsibility to provide potable water to consumers within a designated area. ESA designations have been followed by State, municipal, and private entities for the past three decades, and this valuable statutory requirement has been consistently upheld by the DPH. ESAs have significant meaning for water supply for the State as they are integrated into the Certificate of Public Convenience and Necessity (CPCN) process for new public water systems and existing public water systems that wish to expand. Answers to the most frequently asked ESA questions are provided below. Existing and prospective ESA holders should note that more detailed descriptions of roles and responsibilities will be provided within the upcoming ESA Documents.

1. For a new community water system, is the ESA holder statutorily expected to own and operate the new public water system developed per CGS Section 16-262m(c)? Or are alternative arrangements, such as division of ownership, or non-ownership with contract operation allowed?

For new community public water systems, the ESA holder is statutorily expected to own and provide operation of the new community public water system. In this case contract operation is allowed assuming the ESA holder owns the system. RCSA Section 16-262m-4 provides additional options if this is deemed infeasible:

(a) In the event that the Department of Public Utility Control and Department of Health Services determine that a main extension is not feasible, i.e. that it is too costly to construct a main extension; and that no existing regulated public service or municipal utility or regional water authority is willing to expand or own, operate and maintain the final constructed water supply facilities as a non-connected satellite system, the applicant may pursue the following options:

(1) If an existing regulated public service or municipal utility or regional water authority is willing to provide satellite ownership and management services, but is unable to meet all the criteria described in Sections 16-262m-8 and 16-262m-9 herein, the Department of Public Utility Control and the Department of Health Services may waive specific criteria in writing, if it is deemed to be in the best interest of the public affected.

(2) The applicant may withdraw the application and request the town in which the project is to be constructed to determine if the town's zoning requirements will permit individual wells. If this proposal is acceptable to the town, the developer may change the configuration of the project in order to accommodate individual wells. This option is available to the applicant at any time and may be pursued without obtaining a Certificate of Public Convenience and Necessity.

(3) The applicant may continue forward with the application by sustaining the burden of proof that the entity that will own the water system has the financial, managerial and technical resources to operate the proposed water supply system in a reliable and efficient manner and will provide continuous, adequate service to the proposed consumers to be served by the system. The criteria for meeting this burden of proof is set forth in Section 16-262m-9 of these Regulations.

The above options must be pursued in the order presented, i.e. option three cannot be pursued until options one and two have been exhausted.

WUCC Exclusive Service Areas

Frequently Asked Questions

February 1, 2017

2. For a new non-community water system, the WUCC understands that an ESA holder is allowed to not agree to own and operate such a system as stated in CGS Section 16-262m(e)(1); essentially, an ESA holder has the right of first refusal for such systems in its ESA. Is the ESA holder required to provide notice of such unwillingness to the WUCC under CGS Section 25-33i, or only to DPH? If an ESA holder is unwilling to own and operate a non-community system, but is willing to provide contract operation, is that acceptable to DPH?

For a new non-community public water system, if the ESA holder is unwilling or unable to provide ownership or service, the ESA holder should notify the Department and the WUCC in writing. In the case of a Non-Transient, Non-Community system, where a certified operator is required, the ESA holder can, but is not required to, provide contract operation. In the case of Transient, Non-Community systems, a certified operator is not required. Larger public water systems that are claiming vast ESAs should recognize that towns may be agreeable to these circumstances assuming that a large utility interest in their town will be a mutually beneficial situation. Given that, the DPH encourages the ESA holder to offer informal technical assistance, when requested, to non-community systems within their ESA.

3. For a new non-community water system where the ESA holder is unwilling to provide ownership or service, do the developer's options include the eventual entity either (1) owning and operating the non-community water system itself, or (2) retaining a contract operator other than the ESA holder? Is this determination required to be made by DPH? Also, can the non-community system developer enter into an agreement with another entity other than the ESA holder to own and operate the system?

For a new non-community public water system where the ESA holder is unwilling or unable to provide ownership or service, the developer can own and operate the system or retain a contract operator who does not have to be the ESA holder. In this case, the Department does not dictate who must operate the system. Regardless of what scenario occurs, the DPH would like the ESA holder to be available for assistance to area water systems should the need arise.

4. For a new non-community water system where the ESA holder is unwilling to provide service, is a vote of the WUCC required to approve the new system, or can DPH approve the new system under CGS 25-33i without a vote of the WUCC?

CGS 25-33i(b) states that no public water supply system may be approved within a public water supply management area after the Commissioner of Public Health has convened a water utility coordinating committee unless (1) an existing public water supply system is unable to provide water service or (2) the committee recommends such approval.

For a new non-community public water system where the ESA holder is unwilling or unable to provide ownership or service, the DPH approves the new system, but will notify the WUCC of such action and request a boundary change.

5. For a new non-community water system where the ESA holder is unwilling to provide service and DPH authorizes the system, how is CGS Section 16-262m(e)(3) enforced once the ESA holder extends a water main to the area of the non-community system, which could occur after the system had been in operation for several years?

WUCC Exclusive Service Areas

Frequently Asked Questions

February 1, 2017

*During the 2007 legislative session, CGS 16-262m was modified to include the following language with an effective date of October 1, 2007: CGS 16-262m(e)(3) states that ownership of the system will be assigned to the provider (holder) for the exclusive service area, as determined pursuant to section 25-33g, if agreeable to the exclusive service area provider and said department, or may remain with the applicant, if agreeable to said department, **until such time as the water system for the exclusive service area, as determined by section 25-33g, has made an extension of the water main, after which the applicant shall obtain service from the provider for the exclusive service area.***

Given the language and effective date, a non-community public water system where the ESA holder is unwilling or unable to provide service, but then extends a water supply main after the system is built, is required to connect to the water supply main if the system was constructed after October 1, 2007. Systems constructed prior to October 1, 2007 would not be required to connect; however, if a system has experienced water quality or quantity issues or if the system components are deficient, that may necessitate enforcement actions to ensure problematic systems achieve compliance. These actions may include connection to an available public water supply main.

During the water main extension planning process, utilities are encouraged to consult with the Department regarding existing public water systems along the proposed route. The Department has also been including a review of nearby water mains into the sanitary survey process to ensure this statute is enforced and will continue to do so.

6. If an ESA holder is providing contract operation services, what recourse does the water system owner have if the owner feels that the contract operation is inadequate or too expensive? Are there any other statutes that provide protection to small water system owners from being forced to work with a singular contract operator?

As previously stated, for non-community public water systems, the DPH does not dictate who must be hired as a contract operator, other than the requirement that they are actively certified by the department. A system would only be bound by their own contract with an operator.

7. What recourse does a developer have if an ESA holder is failing to provide water service in an adequate timeframe by causing unreasonable delays in the CPCN process, such as by failing to provide the agreements required by DPH specific to phases of the process?

If a developer feels that an ESA holder is failing to provide water service within an adequate timeframe by causing unreasonable delays, the developer should petition the WUCC, with a copy to the DPH, to be put on the agenda for the next meeting. The developer and ESA holder should be present at the meeting to discuss the project. The WUCC will be expected to look at the adequacy of the ESA holder's response. The WUCC work plan and/or ESA Procedures should address what actions will be taken to resolve such issues (i.e. mediation, reassignment of ESAs, etc.).

8. Similarly, what recourse does a developer have if an ESA holder is requiring water system components beyond those required to provide a pure and adequate water supply as defined by the minimum design standards required by state law, state regulation, and adopted utility standards, is unwilling to provide compensation for components which exceed the minimum required, and the standoff is causing unreasonable delays in the process?

WUCC Exclusive Service Areas

Frequently Asked Questions

February 1, 2017

CGS 16-262m states that “the applicant will complete the construction or expansion in accordance with engineering standards established by said department's regulations for water supply systems.” If a developer feels that an ESA holder is requiring components beyond those required by the State, the developer should contact the Department and/or the WUCC. Minimum design standards can be found in RCSA 16-262m, and will be discussed in the Integrated Report.



February 1, 2017

Mr. Daniel Lawrence and Mr. Russell Posthauer, Jr., Co-chairs, Western WUCC
Mr. Bart Halloran and Mr. David Radka, Co-Chairs, Central WUCC
Mr. Bob Congdon, Mr. Mark Decker and Mr. Patrick Bernards, Tri-Chairs, Eastern WUCC

Re: Exclusive Service Areas and Lands under the Custody and Control of the Department

Dear Water Utility Coordinating Committee Chairs:

I am writing as a follow-up to Eric Ott's December 9, 2016 Exclusive Service Area Declaration Form sent to each water utility coordinating committee regarding exclusive service areas and lands under the custody and control of the Department of Energy and Environmental Protection ("the Department").

The above-referenced forms were sent regarding the establishment of exclusive service areas by the water utility coordinating committees pursuant to Conn. Gen. Stat. § 25-33g. Under that statute each water utility coordinating committee is charged with establishing preliminary exclusive service area boundaries ... for each public water system within the Committee's management area. In the Department's letter, the Department claimed as exclusive service areas, certain state lands under the custody and control of the Department. This was done protectively and to bring these properties to the attention of each Committee so they are not overlooked as exclusive service area boundaries are established pursuant to Conn. Gen. Stat. § 25-33g.

Conn. Gen. Stat. § 25-33g(b) specifies that the Committees shall establish preliminary exclusive service area boundaries for each *public water system*. The term "public water system" is defined as "any private, municipal or regional utility supplying water to fifteen or more service connections or twenty-five or more persons." Conn. Gen. Stat. § 25-33d(a). Under this definition, the Department cannot be considered a public water system, since the Department is not a private, municipal or regional utility. For that reason, the establishment of exclusive service area boundaries for water being supplied by the Department is not within the purview of the Committees under section 25-33g. Notably, under Conn. Gen. Stat. § 16-262m(f), the Department is exempt from the requirement to offer any water system it constructs for satellite management by an exclusive service area provider during the certificate of public convenience and necessity review process, confirming the intent of the legislature that the Department is not subject to the same regulatory scheme as public water supply companies and further confirming that the state's exclusion from the definition of public water system in section 25-33d(a) was purposeful.

The fact, however, that the Department is not a "public water system" would not, in and of itself, preclude a Committee from assigning to some other public water system, an exclusive

service area that included the Department's lands. However, such an assignment would contravene well-established principles of sovereign immunity. It is well settled that "the rights of the government are not to be impaired by a statute unless its terms are clear and explicit, and admit of no other construction." *State v. City of Hartford*, 50 Conn. 89, 90–91 (1882); See, e.g., *Rivers v. City of New Britain*, 288 Conn. 1, 13 (2008) ("We note, moreover, that even when a statute creates a duty or liability of general applicability, the legislature ordinarily uses language that expressly subjects the state to that duty or liability.")

Under these principles, unless the General Assembly clearly and unmistakably subjects state lands, such as those under the custody and control of the Department, to the establishment of exclusive service area boundaries, the state is immune, exempt and not bound by provisions such as a Committee's assignment of an exclusive service area to a public water system. In this case, the provisions authorizing the assignment of exclusive service areas makes no mention of the state or lands under the custody and control of the Department. Absent is any clear and unmistakable indication that the General Assembly intended to allow exclusive service areas to be established on lands under the custody and control of the Department. For that reason, any assignment of an exclusive service area, with whatever rights or obligations that may entail, would be of no force or effect on any such current or future lands.

To assist the Committees in taking action that is consistent with the principle that as a result of state sovereignty the designation of an exclusive service area has no bearing on the provision of water to lands under the custody and control of the Department, we offer the Committees two approaches. Under one approach, the Committees could determine the boundaries for an exclusive service area that includes the Department's lands. In doing so however, the Committees would have to make clear that the rules are different for any of the Department's lands in any such service area; that with respect to any such lands the Department retains both the ability and responsibility to determine how best to supply water on such lands. I understand that certain water companies who had previously claimed exclusive service areas over lands in the custody and control of the Department have withdrawn those claims, a clear acknowledgement of this principle.

Alternatively, and this may be the preferred approach, when determining the boundaries of exclusive service areas each Committee could determine that all current and future lands under the custody and control of the Department remain unassigned.


Both alternatives provide a method to resolve all potential conflicts regarding the Department's lands at one time, rather than piecemeal. Perhaps more importantly, both alternatives recognize the uniqueness of the Department's lands resulting from the principle of state sovereignty.

I also recognize that some members of the Committees may feel that lands under the custody and control of the Department must be assigned to an exclusive service area because it is possible that such land may be sold at some point in the future. However, as a practical matter, the Department rarely sells such land because doing so may run counter to both State and Department policy. In the unlikely event that such land is sold at some point in the future, under Conn. Gen. Stat. 25-33g, a Committee could assign the land to an exclusive service area once the land was transferred to private ownership. Section 25-33g clearly contemplates and makes provision for such boundary adjustments.

We respectfully suggest that the Committees give careful consideration to the uniqueness of lands under the custody and control of the Department. Employing either of the methods noted above, would allow all of the "conflicts" regarding lands under the custody and control of the Department to be resolved at one time. At that point, the Department would withdraw any claims it has made. Representatives from the Department are prepared to attend the next meeting of each Committee and, should any Committee find it helpful, discuss this letter at whatever time is convenient for the Committee.

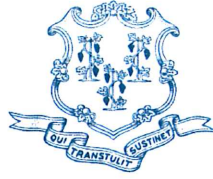
Thank you for your consideration.

Sincerely,


Robert Kaliszewski
Director of Administration

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH



Raul Pino, M.D., M.P.H.
Commissioner

Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

February 7, 2017

Mr. Daniel Lawrence and Mr. Russell Posthauer, Jr., Co-chairs, Western WUCC
Bart Halloran, Esq. and Mr. David Radka, Co-chairs, Central WUCC
Mr. Bob Congdon, Mr. Mark Decker and Mr. Patrick Bernards, Tri-chairs, Eastern WUCC

Re: Department of Energy and Environmental Protection's February 1, 2017 Letter

Dear Water Utility Coordinating Committee Chairs:

This letter is in regards to the Department of Energy and Environmental Protection's ("DEEP") February 1, 2017 letter to the chairs of the Western, Central and Eastern Water Utility Coordinating Committees ("WUCC") concerning Exclusive Service Areas ("ESA") and Lands under the Custody and Control of DEEP. As stated in DEEP's letter, DEEP is not a public water system¹ as that term is defined under the WUCC statutes, *Conn. Gen. Stat.* §§ 25-33c to 25-33j, inclusive, and therefore cannot be assigned an ESA. There is, however, nothing in the statutes that precludes the WUCCs from including DEEP property in a public water system's ESA. While the WUCCs can include DEEP property in an ESA, in establishing such ESAs, the WUCCs should acknowledge that DEEP has certain rights and protections available by law, which DEEP may assert in an appropriate circumstance.

If you have any questions, please contact Lori Mathieu, Public Health Section Chief, Drinking Water Section, at (860) 509-7333.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Pino".

Raul Pino, MD, MPH
Commissioner

cc: Yvonne T. Addo, MBA, Deputy Commissioner
Lori Mathieu, Public Health Section Chief, Drinking Water Section
Robert Kaliszewski, Director of Administration, DEEP

¹ *Conn. Gen. Stat.* § 25-33d(a) defines "public water system" to mean "any private, municipal or regional utility supplying water to fifteen or more service connections or twenty-five or more persons."



Phone: (860) 509-7333 • Fax: (860) 509-7359
410 Capitol Avenue, MS:51 WAT, P.O. Box 340308
Hartford, Connecticut 06134-0308
www.ct.gov/dph

Affirmative Action/Equal Opportunity Employer

ESA Process Timeline

Western WUCC

December 12, 2016

December

1. Accept ESA declaration forms.
2. Identify areas in conflict. Inform conflicted declarants of the opportunity to work together to resolve conflict. Identify unclaimed areas.
3. Determine schedule of meetings and/or presentations for any conflicted areas.
4. Inform conflicted declarants of schedule.

January

1. Hold meetings and presentations on areas in conflict for ESAs. Multiple meetings may be necessary depending on the number of conflicts. Conflict resolution sessions may be necessary.

February

1. Come to consensus on ESA providers. A quorum is necessary for any voting.
2. If necessary, involve PURA to resolve remaining conflicts; WUCC review and action on any PURA recommendations.

March

1. Approve preliminary ESA document for distribution and comment by the public, municipalities, COGs, DPH, DEEP, PURA, and OPM.
2. Begin public comment period.
3. WUCC review and action on any PURA recommendations.

April – May

1. WUCC review and action on any PURA recommendations.
2. Adopt final ESA boundaries.
3. Send unresolved ESA boundaries to DPH for decision.

June

1. Approve ESA document for submission to DPH.

Exclusive Service Area Procedures – Western WUCC

October 25, 2016

Section I. Introduction.

The WUCC is charged by Connecticut General Statute (CGS) Section 25-33g(b) to establish preliminary exclusive service area boundaries, and to change such boundaries as necessary or warranted. An “exclusive service area” is defined as “an area where public water is supplied by one system.” Functionally, exclusive service areas (ESAs) represent currently unserved areas that may be served in the future. The planning process, as defined in the Regulations of Connecticut State Agencies (RCSA) Section 25-33h-1(c)(2), is to *maximize efficient and effective development of public water supply systems and promote public health, safety, and welfare.*

Section II. Public Notification Requirements.

Per RCSA 25-33h-1(c)(6), the WUCC must provide notification to all eligible WUCC members within the public water supply management area (PWSMA) that preliminary ESA boundaries are being developed and of their ability to participate. This was performed for the Western WUCC by letter dated October 11, 2016.

Meetings

- Per Article IV, Section B of the Bylaws of the Western WUCC, “the notice for any meeting at which an ESA boundary or assignment is to be discussed shall include a map of the proposed boundary and/or assignment”. ESA boundaries may only be established or modified at a properly noticed (agenda and maps published at least 14 days in advance) WUCC meeting. Per Article V, Section D of the Bylaws, at least two Officers must be present for a WUCC meeting to occur.
- Per Article IV, Section D and Article V, Section D of the Bylaws of the Western WUCC, the WUCC can meet with the members present and doesn’t require a specific quorum to conduct business, provided at least two Officers are in attendance.
- The WUCC must come to agreement on assignment of ESA boundaries per Section 25-33g(b). Article IV, Section B of the Bylaws of the Western WUCC state that designations or assignments shall be made by consensus, “if possible”. The former Southeastern WUCC Exclusive Service Area Procedures (last modified March 9, 2000) defined agreement to mean a simple majority vote. For purposes of coming to agreement on ESA boundary assignment, the Western WUCC will utilize a similar threshold.
- In the event that the municipality and/or water utility of one of the Officers is involved in an ESA boundary assignment or modification, that Officer must step aside from their duties for the duration of discussion and consideration. This is to prevent conflicts of interest. In such a case, one or more of the following will occur:
 - If one of the Co-chair are unable to perform their duties, the remaining Chair will moderate the meeting.
 - If both Co-Chairs are unable to perform their duties, the Recording Secretary will facilitate the meeting.
 - If the Recording Secretary is unable to perform their duties, an Assistant Secretary or an alternate Secretary will be selected to take notes and serve as timekeeper for the duration of discussion and consideration.

Section III. Assignment of Initial ESA Boundaries.

Factors to Consider for Determining ESAs

Per RCSA 25-33h-1(d)(B), the WUCC shall establish ESAs, first by preparing preliminary and then final ESA boundaries. In establishing ESAs, the WUCC shall:

- aa. Allow utilities to maintain existing service areas;
- bb. Not leave areas as un-served islands, unless it can be demonstrated that there is not and will be no future need for public water service; and
- cc. Not allow new service areas or main extensions which create duplication or overlap of services.

The following factors shall be utilized in determining ESA boundaries:

- aa. Existing water service area;
- bb. Land use plans, zoning regulations, and growth trends;
- cc. Physical limitations to water service;
- dd. Political boundaries;
- ee. Water company rights as established by statute, special act, or administrative decisions;
- ff. System hydraulics, including potential elevations or pressure zones; and
- gg. Ability of a water system to provide a pure and adequate supply of water now and into the future.

Declaration Forms

A declaration form has been developed to assist public water utilities and municipalities in providing information to support an ESA declaration. The declaration form asks questions designed to collect information on the factors described above. As part of the declaration form, entities are asked to contact other potential declarants in an attempt to resolve potential conflicts over particular unserved areas prior to submission of declaration forms. A simple majority vote is the threshold for an ESA assignment. Declarants will be encouraged to meet between WUCC meetings and compromise over conflicted areas.

Meetings

As noted above, assignment of an ESA boundary can only occur at a properly noticed WUCC meeting where at least two officers and a quorum are present. If the quorum is not met, consideration of the assignment will be rescheduled. It is possible that additional meetings beyond the regularly scheduled monthly WUCC meetings may be necessary to meet the regulatory deadlines.

Public Comment

Per CGS 25-33g(b), public comment must be solicited on the ESA boundaries, specifically from municipalities, regional councils of governments, the Commissioners of Energy and Environmental Protection and Public Health, the Public Utilities Regulatory Authority, the Secretary of the Office of Policy and Management, and other interested persons. Per RCSA 25-33h-1(f)(1), the WUCC shall make the preliminary exclusive service areas available for public review and comment.

One public comment period is currently included in the ESA schedule requesting comment on the preliminary ESA Document. Public comment periods and notifications will be provided for as per the Statutes, Regulations, and Bylaws of the Western WUCC.

Voting

In order to determine agreement (consensus) on assignment of an ESA, a vote must be held. If the vote carries, the assignment is confirmed by the WUCC and the assignment becomes part of the Exclusive Service Area document. Areas where there is only one declarant should come to consensus relatively quickly, although the WUCC is entitled to request additional information from any declarant prior to voting.

Declaration Conflicts

In the case of multiple declarants proposing the same ESA, presentations will be scheduled during regular or special WUCC meetings. Per Article V, Section B of the Bylaws of the Western WUCC, a map of the proposed area must be submitted with the agenda for said meeting. A schedule of presenters will be determined during or following the December 2016 meeting.

It is possible that presentations on the same conflicted area may span multiple meetings. A scoring rubric will be provided to assist WUCC members with scoring presentations, such that their thoughts may be written down and available to them at subsequent meetings. The scoring rubric is for guidance purposes and for use by individual WUCC members and will not be collected by the WUCC.

For each area in conflict between one or more declarants, each conflicted declarant will have 15 minutes to defend their declaration, followed by a 15 minute question and answer period. It is encouraged that written documentation be submitted by each declarant (for distribution to WUCC members) to support the oral presentation. Presentations by conflicted declarants will begin at the January 2017 meeting. Following the presentations and question and answer periods, the WUCC will enter a 15-minute discussion period to consider potential alternatives to mediate the conflict. More time for presentations and questions may be allotted by the WUCC if deemed necessary by the Officers.

Following the discussion period, the WUCC has two pathways for coming to an ESA determination:

1. Motions can be made to accept one of the proposals presented by a conflicted declarant, or on an alternative proposal proposed by other WUCC members that would resolve the conflict. In the latter case, it is suggested that any alternative proposal be amenable to at least one of the conflicted declarants. Conflicted declarants may not make a motion, but are allowed to vote. Should the motion carry, the ESA designation in question is considered confirmed by the WUCC and added to the ESA Document.
2. Alternatively, the WUCC may move to send the conflicted declarants to a mediation session with (or without) the WUCC consultant in an attempt to resolve the conflict prior to the next WUCC meeting. The WUCC may similarly move in the event that a motion is made under #1 above but does not carry. The results of any mediation would be discussed at the next WUCC meeting.

Following the discussion of the results of the mediation at the subsequent WUCC meeting, the WUCC will again move on a proposal as stated in #1 above. If the WUCC cannot come to consensus on any proposal, CGS 25-33g(b) requires that a recommendation be sought from the Public Utility Regulatory Authority (PURA). This will most likely occur in the case of three or more conflicted declarants where it may not be possible to achieve a simple majority for any one proposal. PURA has indicated that it will open a docket for such cases to facilitate its administrative duty under the statute. Following the receipt of the recommendation by PURA, the following will occur:

- Each conflicted declarant will have 10 additional minutes at a subsequent meeting to address the issues raised by PURA in coming to their recommendation, followed by a 10 minute question and answer period. More time for presentations and questions may be allotted by the WUCC if deemed necessary by the Chairs.

- Following the question and answer period, the WUCC will vote specifically on whether to adopt the PURA recommendation for the ESA assignment. Should the motion carry, the ESA conflict is considered resolved and the ESA designation per the PURA recommendation is considered confirmed and added to the ESA Document.
- If the vote does not carry following the PURA recommendation, the WUCC members may enter a discussion period to consider additional alternative recommendations, such as a division of the conflicted area. Following the discussion period, additional voting will occur as per #1 or #2 above.

If a vote on alternative awards does not carry or following additional mediation between declarants to arrive at a solution, the assignment will be provided to the Commissioner of DPH for a decision. Per RCSA 25-33h-1(f)(1)(D), the WUCC is required to provide to DPH the following:

- Documentation that the WUCC consulted with PURA;
- The PURA recommendation;
- A summary discussion of unresolved issues;
- Identification of persons affected by the conflict;
- Any considered alternatives; and
- Additional information as necessary.

The Commissioner of DPH is required to consider the following in assigning ESA boundaries:

- Any water company rights established by statute, special act, or administrative decisions.
- Maintaining existing service areas.
- The orderly and efficient development of public water supplies.

Per RCSA 25-33h-1(f)(1)(D), and at the discretion of the Commissioner of DPH, a hearing may be held to receive comment on the ESA boundaries in conflict. DPH shall then establish ESA boundaries in the disputed area and provide notice of such boundaries to the WUCC.

Appeals

The WUCC and/or DPH will only consider an appeal of an ESA boundary if there is a significant change that would support modification. While the process is designed to promote consensus by declarants and the WUCC, it is possible that an aggrieved party could pursue legal action to appeal the WUCC and/or DPH decision. Modification of established ESA boundaries within an ESA, or between two ESA holders will follow the procedures below.

Section IV. Modification of Established ESA Boundaries.

In most cases, modification of an ESA boundary will be presented to the WUCC by contiguous ESA holders who have come to agreement on how an area should be served, and wish to modify the boundary to allow service. A second case would be when a new public water system is proposed within an ESA as per CGS 25-33i(b), and either (1) an existing public water system cannot provide service, or (2) the WUCC recommends the creation of a new public water system.

Furthermore, it is possible that an aggrieved party could appeal to DPH and the WUCC as noted above, demonstrating that a significant change has occurred since the time of the previous ESA assignment that would support modification. In this latter case, the aggrieved party should appeal by letter to the WUCC with a copy to DPH. The Chairs will work with DPH to determine if sufficient evidence has been presented to support adding the potential modification to the agenda of a regular or special WUCC meeting.

In summary, four types of ESA modifications have been identified:

- A. Modification between two ESA holders;
- B. Modification due to creation of new public water system that will not be owned by ESA holder;
- C. Modification due to appeal;
- D. Modification due to other reasons.

Meetings

As defined in the Bylaws of the Western WUCC, modification of an ESA boundary can only occur at a properly noticed WUCC meeting where at least two officers and a quorum are present. If a quorum is not met, consideration of the modification will be rescheduled.

Information Required

Article IV, Section B, paragraph 2 of the Bylaws of the Western WUCC requires documentation of the proposed modification to be submitted to the WUCC. The WUCC should request details regarding the modification to inform the understanding of the WUCC membership. Information similar to that on the Declaration Form may be required, and a map detailing the proposed ESA boundary modification must be submitted. The parties involved should be prepared to make a 15-minute oral presentation (together, or two separate presentations depending on the circumstances).

Opportunity for Comment

Article IV, Section B, paragraph 2 of the Bylaws of the Western WUCC requires an opportunity for comment on the modification by the WUCC and any affected municipality. Per the suggestion of RCSA Section 25-33h-1(c)(7), the minimum comment period for any WUCC member and any affected municipality shall be 30 days. The WUCC shall provide written notification to each affected municipality of the opportunity to comment, and a description and map of the proposed modification. A notification to WUCC members will be sent by DPH to WUCC members and interested parties, and a copy of the notifications will be posted on the WUCC website.

Functionally, if a modification is brought to the WUCC's attention, they should have a WUCC meeting to collect preliminary data, followed by a 30-day comment period, and then a vote on the proposed modification at a second WUCC meeting. The meetings must be either regular or special meetings. The parties involved will have the opportunity (together, or separately depending on the circumstances) to respond to any comments received.

Type A (ESA Boundary Adjustment between Two Contiguous ESA Holders) Modification Procedures

For Type A modifications (as defined above), Article IV, Section B, paragraph 2 of the Bylaws of the Western WUCC states that modification of ESA boundaries between two members may occur without a vote of the WUCC. The parties are still required to provide documentation acceptable to the WUCC and allow for comments from WUCC members and affected municipalities as described under "Opportunity for Comment" above.

Type B (New Public Water System) Modification Procedures

For Type B modifications (as defined above), the DPH will provide notice to the WUCC that a new system has been approved and that an ESA boundary modification is necessary. Modification of the ESA boundary will only occur once the new system is approved by DPH for use. In some Type B cases, the WUCC will already be aware of the system in question as it may have been asked by DPH to provide a recommendation on such a system in accordance with CGS 25-33i(b). No motion by the WUCC is necessary for Type B modifications. The new system, once approved by DPH, will automatically be assigned an ESA that is contiguous with its identified service area. The WUCC must work with DPH to

ensure that the ESA boundary maps are properly updated to reflect the ESA boundary assigned to the new system, and keep appropriate records of the change (including a posting on the DPH website).

Type C (Appeals) and Type D (Other) Modification Procedures

In order to determine agreement (consensus) on the modification of an ESA in other modification cases, such as the result of an appeal by an aggrieved party (Type C), or for another reason (Type D - e.g. due to a boundary modification between three or more parties), a vote must be held at a regular or special WUCC meeting with at least two Officers and a quorum present, and following an appropriate opportunity for comment (see Opportunity for Comment). The proposed modification must be an agenda item for both meetings. In the case of a conflict, the WUCC will remind the parties involved that a simple majority vote is the threshold for an ESA modification. The conflicted parties will be encouraged to meet between WUCC meetings and compromise over conflicted areas.

The process for proceeding with Type C and Type D modifications is similar to those under “Declaration Conflicts” in Section III of these procedures. At the first meeting, the WUCC would collect preliminary data regarding the proposed modification. The parties involved will have time (either together, or separately depending on the circumstances) to present the proposed modification and/or defend their position, followed by a question and answer period. The amount of time available for presentations and questions and answers is at the discretion of the Chairs. It is encouraged that written documentation be submitted by each declarant to support their oral presentation. The WUCC may elect to distribute the scoring rubric to provide guidance for WUCC members hearing the presentations as noted above in Section III.

Following the “Opportunity for Comment”, and at the next regular or special WUCC meeting, the parties will each have time (together or separately, depending on the circumstances) to address the comments received, including any public comment provided at the regular or special meeting. This presentation period will be followed by a question and answer period. The amount of time available for presentations and questions and answers is at the discretion of the Chairs.

Following the discussion period, the WUCC has two pathways for coming to a determination on the ESA modification:

1. Motions can be made to accept one of the proposals presented by one or more of the parties, or on an alternative proposal proposed by other WUCC members that would resolve a conflict. Conflicted parties may not make a motion, but are allowed to vote. Should the motion carry, the ESA designation is considered modified, and appropriate documentation must be provided to DPH for posting.
2. Alternatively, the WUCC may move to send the conflicted parties to a mediation session in an attempt to resolve the conflict prior to the next WUCC meeting. The WUCC may similarly move in the event that a motion is made under #1 above but does not carry. The results of any mediation would be discussed at the next WUCC meeting.

Following the discussion of the results of the mediation at the subsequent WUCC meeting, the WUCC will again move as stated in #1 above. If the WUCC cannot come to consensus on any proposal, CGS 25-33g(b) requires that a recommendation be sought from PURA. PURA has indicated that it will open a docket for such cases to facilitate its administrative duty under the statute. Each conflicted party will have additional time at a later meeting to address issues raised by PURA in coming to their recommendation, followed by a question and answer period. The amount of time available for presentations and questions and answers is at the discretion of the Chairs.

Following the question and answer period, the WUCC will vote specifically on whether to adopt the PURA recommendation for the ESA modification. Should the motion carry, the ESA designation is considered confirmed per the PURA recommendation and appropriate documentation must be provided to DPH.

If the vote does not carry following the PURA recommendation, the WUCC members may enter a discussion period to consider additional alternative recommendations, such as a division of the declared area. Following the discussion period, additional voting will occur as per #1 or #2 above. The parties are welcome to pursue additional discussion of alternatives that will be satisfactory to the WUCC prior to the next WUCC meeting.

If a vote on an alternative modification does not carry or following the failure of additional mediation between parties to arrive at a solution, the modification will be provided to the Commissioner of DPH for a decision. Per RCSA 25-33h-1(f)(1)(D), the WUCC is required to provide to DPH the following:

- Documentation that the WUCC consulted with PURA;
- The PURA recommendation;
- A summary discussion of unresolved issues;
- Identification of persons affected by the conflict;
- Any considered alternatives; and
- Additional information as necessary.

The Commissioner of DPH is required to consider the following in modifying ESA boundaries:

- Any water company rights established by statute, special act, or administrative decisions.
- Maintaining existing service areas.
- The orderly and efficient development of public water supplies.
- Established exclusive service areas.

Per RCSA 25-33h-1(f)(1)(D), and at the discretion of the commissioner, a hearing may be held to receive comment on the ESA boundaries in conflict. DPH shall then modify ESA boundaries in the disputed area.

Appeals

The WUCC and/or DPH will only consider an appeal of an ESA boundary if there is a significant change that would support modification. While the process is setup to promote consensus, it is possible that an aggrieved party could pursue legal action to appeal the DPH decision.

Section V. Reporting.

Per RCSA 25-33h-1(d)(B)(iii), a plan for exclusive service areas within the public water supply management area shall be developed, including:

- aa. A map or maps at a scale of 1:50,000 depicting existing and future service areas within the exclusive service area boundaries.
- bb. A reference list of exclusive service area or supply agreements between public water systems or localities, including charter or enabling act revisions as applicable and a brief description of terms of agreement including dates and length of agreement.
- cc. Description of future service area boundaries.

The WUCC must provide the necessary documentation regarding any ESA boundary assignment or modification to DPH in a timely manner. Any map submitted with any agenda or for acknowledgement by DPH must be at a scale of, at a minimum, 1:50,000.