June 16, 2023

Commissioner Manisha Juthani, MD
Connecticut Department of Health
410 Capitol Avenue
Hartford, CT 06134
Email: dph.commissioner@ct.gov; dph.sourceprotection@ct.gov

RE: Comments on the MDC's Abandonment Permit Application for Colebrook River Reservoir

On behalf of Save the Sound, Inc., Northwest Connecticut Land Conservancy (NCLC), Rivers Alliance of Connecticut, Farmington River Watershed Association, Connecticut Land Conservation Council, and The Nature Conservancy (collectively, the "Commenters"), we submit these comments to the Connecticut Department of Public Health (DPH) on the Metropolitan District's (MDC) abandonment permit application for the abandonment of its rights to 10 billion gallons (BG) of water storage in the Colebrook River Reservoir. The Commenters have no objection to, and in fact support, the issuance of the abandonment permit requested for the reasons stated herein, including, most importantly, a Memorandum of Understanding between the MDC, Save the Sound, and NCLC to grant a conservation easement on 5,500 acres of open space land that surrounds this water resource, if the abandonment permit is granted. This agreement will ensure that these invaluable source protection lands will remain intact and will continue to preserve the public trust in future and emergency water supply quality in perpetuity. We ask DPH to consider these permanent benefits to the land and to future and emergency water supply in rendering its decision.

The classification and management of drinking water resources has significant consequences on both the surrounding open space land and downstream river flow. The requested abandonment permit is for the 10 BG of water storage in the Colebrook River Reservoir, on the West Branch of the Farmington River, to which MDC has the rights by way of a 1965 agreement with the United States Army Corps of Engineers (USACE). The Colebrook River Reservoir and the downstream West Branch Reservoir are surrounded by thousands of acres of open space land in Connecticut and Massachusetts, which protect the quality of these water resources. The abandonment permit, if granted, will aid in facilitating the cancellation of the MDC's USACE Agreement, which obligated the MDC to pay costs in exchange for the maintenance and rights to the 10 BG Storage Area in the Colebrook River Reservoir.

Connecticut state law provides strict protections to the lands within the watersheds of drinking water resources to ensure the purity of the water supply. When a water company abandons an entire supply, other statutory protections might no longer be applicable to that water or surrounding source protection lands. For example, the surrounding land might then be reclassified to Class III allowing for sale to a developer or for uses contradictory to protecting the water supply for drinking water purposes. Once source protection lands are lost through development or intensive uses or a water supply is subject to sources of pollution, that source is hard or impossible to reclaim as one for public drinking water supply. Further, the management

of a source as drinking water, such as the source at issue, may have consequences to downstream river flow.

To address these concerns, on June 16, 2023, the MDC, Save the Sound, and NCLC executed a Memorandum of Understanding (MOU), attached hereto, that commits the MDC to granting a conservation easement to NCLC on 5,500 acres of open space land that surrounds the Colebrook River Reservoir. This land includes 4,300 acres of Class I and II land in Connecticut and 1,200 acres of land in Massachusetts, and is part of a larger contiguous block of MDC, State, and land trust owned open space, providing incredible environmental and water quality protection value. The MDC will grant such an easement to NCLC upon the issuance of the abandonment permit to ensure the permanent conservation of the surrounding open space regardless of any changes in drinking water supply or other operations.

This agreement addresses the Commenters' interests in permanently preserving the open space land owned by the MDC surrounding the Colebrook River Reservoir Source in perpetuity for its ecological value as a large contiguous forested parcel, for its passive recreation public access values, and for its water source protection value.

The Commenters have long advocated for statutory and administrative protections of water company lands to ensure that our citizens continue to enjoy high-quality drinking water and these ecologically and environmentally important forests remain intact. The Commenters have also long advocated for adequate and augmented river flow during low-flow conditions to protect water quality, aquatic life, wildlife, recreation, and economic health of downstream communities in the Farmington River, as well as other Connecticut rivers, while negotiating to balance that need with protecting adequate existing and future drinking water supplies. In so doing, and in light of the MOU, the Commenters support the grant of the requested abandonment permit, finding that such outcome would maintain protections to the surrounding open space in perpetuity and benefit water management for downstream river flow, while also effectively preserving the potential of the source for future drinking water use, should that be necessary. Therefore, Commenters would not support a diversion permit for the 10 billion gallons that is the subject of the abandonment permit.

First, the agreement by the MDC to grant the Easement over the Property will ensure the permanent conservation of 5,500 acres of watershed lands, regardless of the present and future classification of these water resources as drinking water supplies. Consequently, the grant of this abandonment permit will not impact, in any way, the protection of these open space lands.

Second, if the abandonment permit is granted, the practical effect will be that any water within the 10 BG of storage will potentially become available without restriction for new flow to be released downriver to augment existing river flows, particularly during low flow conditions. This supplemented flow has the potential to improve aquatic life, river water quality, and ecological diversity within the downstream reaches of the Farmington River.

Finally, as a consequence of this MOU and MDC's retained drinking water resources in the watershed, this watershed will still be maintained in such a way that protects the water quality for present and future drinking water supply should that need arise. The Commenters note that

the MDC is not applying to abandon all of its drinking water supplies in this watershed, including 3 BG in the West Branch Reservoir and its remaining rights to 3.5 BG in the Colebrook River Reservoir. Thus, 6.5 BG of drinking water supply remains available for potential emergency or future water supply use in this watershed. Consequently, the surrounding open space lands will remain classified as Class I and II even with the grant of this abandonment permit, and are further protected by the conservation easement in perpetuity, should that classification ever change. Further, the Commenters note that if the USACE Agreement for the Water Resource were to be terminated, this does not preclude the MDC, another water company, or the State from entering into a future contract for the storage rights and use as a drinking water source, so long as the Colebrook River Reservoir continues to be operated by the USACE for flood control purposes.

Given all of the unique facts and circumstances stated above, the Commenters support the issuance of the abandonment permit requested in the Application and ask DPH to consider the permanent benefits of assuring high quality raw water supply through the permanent protection of the MDC's watershed forest lands.

Respectfully submitted,

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MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE METROPOLITAN DISTRICT, SAVE THE SOUND, INC. AND NORTHWEST CONNECTICUT LAND CONSERVANCY, INC.

This Memorandum of Understanding (MOU) dated June 16, 2023 is by and among The Metropolitan District (MDC), Save the Sound, Inc. ("Save the Sound") and the Northwest Connecticut Land Conservancy, Inc. (NCLC) (collectively, "the Parties").

WHEREAS the MDC has the rights to 10 billion gallons (BG) of water storage area between 701 and 644 feet above mean sea level within the Colebrook River Reservoir ("the Storage Area") pursuant to a 1965 Agreement between the MDC and the United States Army Corps of Engineers ("the USACE Agreement");

WHEREAS the Colebrook River Reservoir is surrounded by open space land, including 4,300 acres of Class I and II land, as defined in Conn. Gen. Stat. § 25-37c, in Connecticut and 1,200 acres of MDC owned land in Massachusetts located on the watershed tributary to the Colebrook Reservoir/ West Branch Reservoir system, a total of 5,500 acres of open space land, as described in the MDC's most recent Water Supply Plan. This open space land is referred to as the West Branch Block (see Exhibit A), owned by the MDC, in part, for the protection of water quality;

WHEREAS the MDC has managed these lands in a conservation manner since their acquisition and continues to have an interest in managing these lands in such a manner;

WHEREAS the MDC also owns and controls the rights to 3.5 BG of water within Colebrook River Reservoir and 3 BG of water within its West Branch Reservoir;

WHEREAS the MDC has not used any water which, at any given time, may be stored within the Storage Area as a drinking water supply, nor is it connected to any distribution system or service area;

WHEREAS, by submission dated April 21, 2023, the MDC filed a Source Abandonment Permit Application pursuant to Conn. Gen. Stat. §25-33k ("the Application") for the Storage Area with the Connecticut Department of Public Health ('DPH");

WHEREAS Save the Sound and NCLC have interests in preserving the open space land owned by the MDC surrounding the Colebrook River Reservoir Source in perpetuity for its ecological value as a large contiguous forested parcel, for its passive recreation public access values, and for its water source protection value;

WHEREAS the MDC has interests in garnering the support for the abandonment permit application in order to alleviate unnecessary costs of maintaining the Storage Area given its current assessment as unnecessary for its service area for the 50-year planning period;

WHEREAS the Parties seek a mutually agreeable resolution that meets the interests of all Parties, including the protection of the MDC open space lands surrounding the Colebrook River and West Branch Reservoirs in perpetuity, while meeting the planning objectives of the MDC;

NOW THEREFORE, the Parties agree to the following:

The Metropolitan District:

1. The MDC agrees to grant a conservation easement ("the Easement") to NCLC, subject to mutually agreeable terms and conditions to be negotiated in good faith between the parties, to include the following:
    a. *Property Subject to the Easement*: The property subject to the easement shall be the 4,300 acres of MDC's open space Class I and II land, as defined in Conn. Gen. Stat. § 25-37c and described in the MDC's most recent Water Supply Plan, surrounding the Colebrook River Reservoir and West Branch Reservoir within Connecticut and the 1,200 acres of open space watershed land surrounding the Colebrook River Reservoir within Massachusetts, also known as the West Branch Block and more particularly described in Exhibit A ("the Property").
    b. *Closing*: Closing shall occur within nine (9) months of the grant of a final, unappealable Abandonment Permit issued by DPH as set forth in the Application, unless otherwise agreed upon by the Parties. For the purposes of this MOU, an Abandonment Permit shall not be considered to have been granted if it contains a mandatory condition or conditions that materially and negatively impact the MDC or its ability to fully abandon the 10 BG capacity Storage Area that is the subject of the Application.
    c. *Consideration*: All of the MDC's existing uses of the Property shall be allowed under the easement. The MDC District Board passed a resolution on December 5, 2022 stating its intent to never sell the Property, and such resolution is still in effect. The actions to be conducted by Save the Sound and NCLC herein are considered to be of value by the MDC.
    d. *Retained Uses*: All of the MDC's existing uses of the property shall be retained, including, but not limited to:
        i. Forestry management of the Property for watershed protection management purposes, consistent with the MDC's current and past forestry management practices, as documented and as may be amended, by its "Watershed Forest Management Plan";
        ii. Use of the property for water supply purposes, including access to and the ability to install, construct, and maintain water supply improvements and equipment;
        iii. Public access for existing and future passive recreational use, including hunting, fishing, hiking trails, boating, and other forms of passive recreation;
        iv. Management of the use of the Property to protect public safety and water supply security; and
        v. Use of the property to operate and maintain existing MDC facilities, structures, infrastructure and equipment including dams, spillways, water release structures and appurtenances, pipelines, gates and valves, hydroelectric power generating facility and equipment, fences, gates, and service roads. As to hydroelectric power generation, the MDC may, at its sole discretion and in addition to operating and maintaining the facility, upgrade, improve and increase the capacity of said facility.

e. *New Uses*: New public access for passive recreational use, including hunting, fishing, hiking trails, boating, and other forms of passive recreation, may be permitted, subject to NCLC and DPH approval, not including the development of impervious roads or accessways.

f. *Prohibited Uses*: The following uses and structures shall be prohibited:

   i. Residential, industrial, and commercial development of any kind, or development of municipal use buildings or structures (excluding any MDC buildings or structures necessary for the Retained or New Uses), and the construction of associated infrastructure, roads, and accessways developed for these purposes;

   ii. Solid or hazardous waste storage, transfer, or treatment facilities;

   iii. Active recreational uses, including, but not limited to, ballfields, golf courses, stadiums, tennis courts, swimming pools, or sports centers;

   iv. Mining, drilling, or dredging of any rock, soil, or sand material for any purpose other than to augment or insure public water supply;

   v. Energy transmission lines or pipelines, or fossil fuel or renewable energy generation projects (with the exception of hydroelectric power facilities and generation as provided in Section 1.d.v above), other than pipelines directly associated with public water supply;

   vi. Commercial development of any kind that is not directly associated and necessary for agreed upon Retained or New Uses; and

   vii. Any unpermitted use inconsistent with Connecticut state law and regulations related to Class I and II water company lands, regardless of whether the subject property remains classified as such after granting of the Easement.

   viii. Subdivision of the Property, except divisions that are required by DPH or are approved in writing by NCLC.

g. *Assignability*: The Easement to lands located in Massachusetts shall be assignable with the permission of the MDC, whose permission shall not be unreasonably withheld.

h. *Carbon Credits*: Subject to the MDC's current and past forestry practices and the MDC's "Watershed Forest Management Plan," as may be amended by the MDC from time to time, NCLC may propose to aggregate the Property into its existing American Carbon Registry project. MDC and NCLC have one year from the execution of the conservation easement to agree to the terms of the carbon project and aggregate the Property into NCLC's project; provided any such agreement shall include an agreeable allocation of the net revenues, if any, attributed to the MDC property included in the NCLC American Carbon Registry project. NCLC does not guarantee a viable project or that the project will result in revenue for MDC.

Northwest Connecticut Land Conservancy, Inc.:

2. NCLC's mission is to protect land and water in its operational region for wildlife, ecological value, public use, and enjoyment forever.
3. A conservation easement on the Property is in direct alignment with NCLC's mission.

4. Therefore, NCLC agrees to accept the Easement over the Property with the general conditions and retained and prohibited uses outlined herein and agrees to pay the sum of ONE MILLION (1,000,000.00) DOLLARS in consideration of such grant.
5. This Easement, which shall be in conformance with rights and limitations contained in paragraph 1 and in all other respects consistent with NCLC's standard easement terms, is subject to the approval of the NCLC Board of Directors and the MDC Board of Commissioners. The MDC and NCLC shall agree on a management plan for the Property consistent with: 1) the MDC's existing uses of and practices employed on the Property; 2) the MDC's "Watershed Forest Management Plan"; 3) uses and practices mandated by the MDC Charter and state and federal laws and regulations; and 4) the restrictions within the Easement. Such plan shall be prepared by the MDC and approved by NCLC, such approval not to be unreasonably withheld.
6. MDC agrees to cooperate in obtaining any necessary administrative approvals for the Easement pertaining to the Massachusetts property, including if necessary, division of the Easement into state specific Easements.

Save the Sound, Inc.:

7. Save the Sound, together with the NCLC, will submit a written comment letter to DPH regarding the Application that shall contain the substantive comments listed below. Furthermore, Save the Sound will circulate this comment letter to, and seek as signatories, the following major environmental organizations: the Farmington River Watershed Association, Rivers Alliance of Connecticut, The Nature Conservancy, and the Connecticut Land Conservation Council. Save the Sound's obligations for solicitation of support shall be deemed satisfied upon good faith efforts, even if any of the aforementioned organizations do not become signatories. The comment letter will include the following major points:
    a. Save the Sound and its signatories ("the Signatories") have long advocated for statutory and administrative protections of water company lands to insure that our citizens continue to enjoy high quality drinking water and these ecologically and environmentally important forests remain intact.
    b. The Signatories have long advocated for adequate and augmented river flow during low-flow conditions to protect water quality, aquatic life, and wildlife in the Farmington River, as well as other Connecticut rivers, while negotiating to balance that need with protecting adequate existing and future drinking water supplies.
    c. The agreement by the MDC to grant the Easement over the Property will insure the permanent conservation of watershed lands, a high value objective of the signatories.
    d. The abandonment permit subject of the Application, if granted, will aid in the facilitation of the cancellation of the MDC's USACE Agreement, which obligated the MDC to pay costs in exchange for the maintenance and rights to the 10 BG Storage Area in the Colebrook River Reservoir.
    e. If the USACE Agreement is terminated, the practical effect will be that any water within the 10 BG of storage will potentially become available without restriction for new regime flow to release downriver to augment existing river flows, particularly during low flow conditions, with the potential to improve aquatic life, river water quality, and ecological diversity within the downstream reaches of the river.

f. The Signatories note that the MDC is not applying to abandon its drinking water supplies owned in fee in this watershed, including 3 BG in the West Branch Reservoir and its remaining rights to 3.5 BG in the Colebrook River Reservoir. Thus, 6.5 BG of drinking water supply remains available for potential emergency or future water supply use in this watershed.
g. The Signatories note that in the event that the USACE Agreement for the Water Resource were to be terminated, this does not preclude the MDC, another water company, or the State from entering into a future contract for the storage rights .
h. The MDC's watershed lands will be protected for future generations by the Easement, therefore raw drinking water quality will be maintained within the Colebrook River Reservoir and West Branch Reservoir, wherein 6.5 BG of drinking water shall continue to be available for potential emergency or future water supply. The Water Resource at issue can be made available to augment river flow and improve aquatic ecological health.
i. Furthermore, so long as the Colebrook River Reservoir continues to be operated by the USACE for flood control purposes, there remains the opportunity to reenter into a contract for the Storage Area.
j. Given all of the unique facts and circumstances stated above, (1) the Signatories have no objection to, and in fact support, the issuance of the abandonment permit requested in the Application and ask DPH to consider the permanent benefits of assuring high quality raw water supply through the permanent protection of the MDC's watershed forest lands; and (2) the Signatories would not support a diversion permit for the 10 billion gallons that is the subject of the abandonment permit.

8. In the event the Abandonment Permit as described herein is issued and the Easement is granted to NCLC, the Signatories agree to convey to the appropriate U.S. Congressional representatives their collective support for the termination of MDC's obligations under the USACE Agreement through the enactment of legislation or federal action.

The Parties further agree:

9. That the MDC's current use of the Property shall not change upon the granting of the Easement;
10. Granting of the Easement does not affect previous agreements and practices associated with real estate taxes associated with the Property;
11. The Parties do not believe that the Easement shall have any effect on real estate assessments of associated tax rates levied on the Property;
12. The Parties will negotiate details of the Easement within the framework of this MOU and in good faith, in the event that the Application is granted; and
13. The Easement and financial consideration are contingent on the grant of a final, unappealable Abandonment Permit by DPH as set forth in the Application.

IN WITNESS of the foregoing, the Parties have executed this Agreement by the duly authorized officers as of the date set forth above:

THE METROPOLITAN DISTRICT

By: _____

Name: Scott W. Jellison

Title: Chief Executive Officer

SAVE THE SOUND, INC.

By: _____

Name: Leah Schmalz

Title: President

NORTHWEST CONNECTICUT LAND CONSERVANCY. INC.

By: Cate M Rawson

Name: Catherine Rawson

Title: Executive Director