

OFFICE OF ADJUDICATIONS

IN THE MATTER OF _____ : ***APPLICATION DS-201814638***
FIRST TAXING DISTRICT
CITY OF NORWALK (New Canaan) : ***APRIL 6, 2021***

PROPOSED FINAL DECISION

***I
SUMMARY***

The First Taxing District of the City of Norwalk¹ (“the Applicant”) has applied for a dam safety permit for activities associated with the proposed rehabilitation of the Grupes Reservoir Dam in New Canaan. General Statutes § 22a-403. The Department of Energy and Environmental Protection (“DEEP” or “the Department”) published a tentative determination to approve the application and a draft permit; in response, the Norwalk River Watershed Association (“NRWA” or “the Association”) filed a petition for hearing. The NRWA and the New Canaan Land Trust (“the Land Trust”) have been granted intervening party status under General Statutes § 22a-19. The parties are the Applicant, DEEP Staff,² the NRWA, and the Land Trust.³

This process included pre-hearing efforts by the Applicant and DEEP Staff to respond to questions and issues raised by the NRWA, the Land Trust, and members of the public and a hearing to receive public comment. Three hearing sessions were held to receive evidence from the parties. The parties filed post-hearing legal submissions that included briefs, legal memoranda, and proposed findings of fact and conclusions of law for my consideration.

¹ The First Taxing District is a municipal corporation. Successor to the Water Commissioners of the Borough of Norwalk and the City of Norwalk, it is authorized by the Special Acts of the Connecticut General Assembly to provide a public supply of water within and outside the limits of the First District.

² Dam Safety Program, Bureau of Water Protection and Land Reuse, Planning and Management Division.

³ The Land Trust adopted the issues and arguments of the NWRA at the hearing and in its post-hearing submission.

I have reviewed the entire record in this matter, including the recordings and transcripts of the hearings, the evidence and legal arguments presented by the parties at the hearing and in their post-hearing submittals, the proposed draft permit, public comments, and the relevant statutory and regulatory criteria, e.g., General Statutes § 22a-403(b), Regs., Conn. State Agencies § 22a-409-2. I have carefully considered the arguments regarding potential impacts from the proposed regulated activities, including possible adverse impacts to wetlands and watercourses.

The Applicant has satisfied its burden of proving that its application complies with relevant statutory and regulatory requirements. General Statutes §§ 22a-6g, 22a-36 to 22a-45, inclusive, 22a-403, Regs., Conn. State Agencies §§ 22a-409-1 and 22a-409-2. This determination is supported by the evidence in the record.

This hearing process included the opportunity for the Association to show that granting this permit would result in unreasonable pollution and, if so, to present alternatives to the proposed regulated activities. For reasons to be detailed herein, I find that the NRWA did not meet its burden to show that this permit is likely to result in unreasonable pollution. I recommend that the Commissioner issue the attached draft permit (Appendix A) as a final permit.

II
DECISION
A
FINDINGS OF FACT

The Applicant and DEEP Staff presented joint proposed findings of fact and the NRWA offered its own proposed findings of fact. The facts found below incorporate those facts that are relevant to my decision.

1
Procedural History

1. This application was filed with the DEEP on November 7, 2018. Notice of Application was published in the Stamford Advocate on November 18 pursuant to General Statutes § 22a-6g(a)(1) and served on the Town Clerk of New Canaan. Following its review, which included a necessary determination that the application was complete, General Statutes § 22a-403(a), the Department published a tentative determination to approve the application with a draft permit on February 26, 2020. General Statutes § 22a-403(a). A petition for hearing was filed by the NRWA on March 20, 2020. (Exs. APP- 10, DEEP- 1, 2, 33 to 35, 41.)
2. The pre-hearing process began with a July 22, 202 status conference to discuss the request for hearing and the hearing process. After efforts by the Applicant and DEEP Staff to address questions and concerns expressed by the NRWA and others before and at the conference, a second status conference was held on August 21, 2020, where it was determined that a hearing process was necessary and dates for that process were set. (Exs. DEEP – 15 to 26.)⁴
3. The Applicant and DEEP Staff timely filed pre-hearing information (i.e., proposed issues, exhibits and witnesses) on September 11, 2020. The NRWA and the Land Trust filed requests to intervene as parties pursuant to General Statutes § 22a-19 on September 16 and 17, respectively. While the time for objections to those requests for intervention was pending, Regs., Conn. State Agencies § 22a-3a-6(h)(3), the NRWA was permitted to file its proposed pre-hearing information.⁵

⁴ All procedural memoranda are included in the docket file of this matter, which is part of the administrative record.

⁵ Intervenors are bound by the record as of the date they intervene. § 22a-3-3a(k)(8). Although the requests to intervene came after the September 11 date for the filing of pre-hearing information, I allowed the NRWA to file pre-hearing information to give this potential party the chance to present its environmental claim. See *Rocque v. Northeast Utilities Service Co.*, 254 Conn. 78 (2000). (General Statutes § 22a-19 confers standing to bring actions to protect the environment.)

4. At the September 18 pre-hearing conference, the Applicant and DEEP Staff discussed and stipulated to the admission of proposed exhibits and the qualifications of proposed expert witnesses, as set out in their respective pre-hearing information submissions. Because the Land Trust did not file proposed pre-hearing information or seek permission to make such a filing, it was advised that it had forfeited its right to offer such information if granted status as an intervening party. The Applicant indicated it would be filing objections to the requests to intervene by September 22, and a second pre-hearing conference was scheduled for September 25 for a ruling on those requests and a decision on the proposed pre-hearing information offered by the NWRA.
5. After hearing objections from the Applicant, the NWRA and the Land Trust were granted status as intervening parties at the pre-hearing conference on September 25. The NWRA was allowed to offer pre-hearing information regarding its environmental claims and both intervening parties were directed that their cases would be limited to their allegations of unreasonable pollution.
6. An October 6 site visit was held, where I observed the overall site, the areas of the proposed work, and part of the abutting Land Trust property with representatives of the Applicant, DEEP, and the intervening parties. A hearing to receive public comment was held on September 29, 2020; hearing sessions to receive evidence from the parties, including expert testimony, were held on September 30 and October 9 and 19, 2020.⁶ The parties submitted post-hearing filings on November 20, 2020; the Applicant filed a reply brief on December 14, 2020. The NWRA moved to submit new evidence and testimony on January 13, 2021; following objections from the parties, the motion was rejected on January 25, 2021. (Exs. APP-1 to 9, DEEP-35, 37 to 40, INT – 3,4.)

⁶ The intervening party NRWA was allowed to fully participate at the hearing, as were all parties. During cross-examination, the hearing was recessed so the NRWA could prepare its questions.

The Grupes Dam and the Reservoir

7. The Grupes Dam (“the Dam”) was originally constructed in 1871. Major dam upgrades were performed in 1905 and 1962, and a gatehouse was constructed in 1933. The Dam is classified as a high hazard Class C dam under the provisions of Regs., Conn. State Agencies § 22a-409-2(a)(1)(E)(i)-(v) because its failure could result in probable loss of life and major damage to downstream property. An analysis by GZA GeoEnvironmental, Inc. (“GZA”), the Applicant’s engineering firm, showed that the combined primary and auxiliary spillways had insufficient hydraulic capacity and, as a result, the main Dam would be overtopped during the ½ Probable Maximum Flood” (“½ PMF”).⁷ The Dam was also deemed to be in poor condition and in danger of further deterioration. Previous flooding events have caused water to overtop the Dam, impairing its stability and causing overflow from the Reservoir to the East Service Road and to other properties. (Test. 9/30/20, DiGangi, D., DeLano, J., 10/9/20, Laskin. A., exs. APP -1 to 4; DEEP – 1, 3, 4, 5, 37, 39.)
8. The Grupes Reservoir (“the Reservoir”) is the southernmost of four reservoirs along the Silvermine River, and has been continually operating as a reservoir for public water supply since it was constructed. The Reservoir currently serves over 42,000 customers in the City of Norwalk and the Town of New Canaan. The Reservoir property is approximately 54 acres, located at 1100 Valley Road in New Canaan. It is bordered on the west by a limited number of residential properties and on the

⁷ A “probable maximum flood” is the theoretically largest flood resulting from a combination of the most severe meteorological and hydrologic conditions that could conceivably occur in a given area. *Engineering Guidelines for the Evaluation of Hydropower Projects*, 2001, Chap. VIII, Determination of the Probable Maximum Flood, p. 90, US Federal Energy Regulatory Cmsn, US Dept of Energy. www.ferc.gov/industries-data/hydropower/dam-safety-and-inspections/eng-guidelines.

east by property of the Applicant. Land Trust property also borders the Reservoir property to the east.

(Test. 9/30/20, DiGangi, D.; exs. APP-1, DEEP-1, 29.)

9. There is a service road on the east side of the property, starting at 1100 Valley Road and continuing north for 3850 linear feet to North Wilton Road. This road is used every business day by the Applicant's motor vehicles for service and maintenance of the Reservoir property. A water main is beneath the road for the transfer of water from another reservoir to a water treatment plant south of the Dam. (Test. 9/30/20, DiGangi, D.; ex. APP-1.)
10. The Grupes Dam requires maintenance, improvements, and upgrading to address federal and state standards for dam safety. The proposed work set out in the application follows efforts to upgrade upstream dams completely or partially in New York and is the result of engineering studies of the Grupes Dam that began in 2012 and involved the input of the DEEP dam safety staff. GZA performed a dam safety inspection in 2014, a spillway analysis in 2015, and filed a report with the Applicant and DEEP in 2015 that noted the poor condition of the Dam and outlined deficiencies that needed to be addressed, including the results of a spillway analysis. In December 2015, consistent with the inspection report and spillway analysis and pursuant to its jurisdiction over dams, the DEEP recommended the Applicant submit a dam safety permit application for work necessary to correct the Dam's deficiencies and for improvements necessary to safely discharge a ½ PMF storm, the regulatory design standard. (Test. 9/30/20, DiGangi, D., DeLano, J.; exs. APP – 1, 2, DEEP- 1, 3 to 6.)
11. The site is not located within an area of additional interest such as an aquifer protection area, a conservation or preservation restriction area, or an area identified as a habitat for endangered, threatened or special concern species. DEEP review of the Natural Diversity Database (NDDB) confirmed this last conclusion; the Applicant was therefore not required to submit an NDDB review

request. Although the NWRA claimed potential impacts to flora or fauna, it did not identify any rare species or specific flora or fauna. (Test. 9/30/20 DeLano, J., 10/9/20, Laskin. A., 10/9/20, 10/19/20, Kinney, W., Wildman, L.; exs. DEEP -37, 38.)

3 *The Application*

12. The primary objectives of the permit application are to address dam safety deficiencies through activities that include stabilizing the stone masonry of the Dam and mitigating observed seepage/leakage, increasing spillway capacity to safely pass the ½ PMF, providing operational upgrades and structural repairs to the gatehouse, and managing ½ PMF flood waters by holding the waters in the Reservoir and routing them over the dam spillway to prevent offsite and downstream flooding and the undermining of the Dam by flood waters. Flooding on the east side of the Reservoir will be addressed with a partial wall with elevated natural terrain and a berm to hold flood waters in the Reservoir and channel them over the spillway of the Dam to the existing downstream channel of the Silvermine River, preventing downstream flooding the undermining of the Dam. (Test. 9/30/20. DiGangi. D., DeLano, J.; exs. APP- 1, 2, DEEP-1.)

13. The work to be done is outlined in the application, and includes upgrading the east service road and replacing an existing water main. In the area between the service road and the Reservoir, the design specifies a combination of a cast-in-place concrete wall and an earthen berm to provide a water-tight barrier between the Reservoir and the service road and the property to the east. The wall will be constructed from the east side abutment of the Dam with a maximum height of 6 feet at the Dam (elev 306) and continue, tapering down to 5 feet where the wall intersects with existing high ground. This high ground, also referred to as the knoll, will be modified to establish the earthen berm. The

Applicant will remove trees and brush growth on and near the berm and establish grass on the earthen embankment as required by Regs., Conn. State Agencies §§ 22a-409-2 (f)(6)(A) and (B). The concrete wall will begin again at the end of the earthen berm and proceed to the northern end of the construction area adjacent to Land Trust property to the east, with the wall tapering as it progresses to the north from a height of 3.5 feet to 1 foot. On the Reservoir side of the wall, rip rap will be installed along the shoreline to prevent erosion and the undermining of the structures during a storm. (Test. 9/30/20 DiGangi, D., DeLano, J., 10/9/20, Laskin, A., exs. APP-1, 2, DEEP-1, 36, 37.)

14. The work will also include the installation of anchors to stabilize the Dam, re-pointing the face of the Dam, and grouting its stone masonry to mitigate seepage and leakage. Trees will be cleared around the Dam abutments to permit inspections and maintenance of the Dam and to prevent the trees' root systems from impacting and compromising any part of the Dam structure. The primary spillway will remain in place, but the top of the Dam will be increased by four feet to elevation 306 to provide additional spillway capacity and freeboard (to allow for wave action) to prevent overtopping and pass floodwaters from a ½ PMF. The existing capacity of the Reservoir will remain the same and will continue to meet the safe yield for drinking water supply. The auxiliary spillway will be improved to prevent erosion and weakened or downed trees that could obstruct the discharge channel will be removed; maintenance will be done to ensure waters will safely pass downstream. The existing gatehouse and footbridge/catwalk will be replaced and associated operational upgrades will be made. The former chlorination building will be demolished and piping and culverts will be abandoned or replaced. The project will make other repairs, operational upgrades, and renovations of the Dam

structure.⁸ The proposed erosion and control measures will mitigate upland erosion and in-stream sediment transport. (Test. 9/30/20, DeLano, J., DiGangi, D., 10/9/20, Laskin, A.; exs. APP-1, 2, DEEP-1, 37.)

15. The current configuration of the Dam will meet the requirements of the DEEP Stream Flow Regulations.⁹ The required releases from the existing release structure of the Dam will be effective in March 2029. (Test. 10/9/20, Laskin, A.; exs. DEEP- 7 to 14, 31, 37.)

16. The design plans in the application do not show a clearcutting of trees. Trees will be removed on and around the knoll, in the west auxiliary spillway, and around the Dam abutments to enable inspections and maintenance and to prevent trees' root systems from compromising any structures, including the earthen embankment. Other areas of tree removal will be along the east side of the wall where an embankment is located as required by Regs., Conn. State Agencies §§ 22a-409-2(f)(6)(A) and (B) to protect the integrity of that earthen embankment. No trees will be removed on Land Trust property or any other land outside the limits of the construction. (Test. 9/30/20, 10/19/20, DeLano, J., DiGangi, D., 10/9/20, 10/19/20, Laskin, A., Missell, D.; ex. DEEP-1.)

17. The work will not affect the scenic beauty of the area. The view from the Land Trust property will not be obstructed by the wall on the east side of the service road; at that area, the wall will be one to three feet high and will not prevent anyone standing on Land Trust property from viewing the Reservoir. (Test. 9/30/20, Delano, J., exs. DEEP – 1, 30, 36, 37.)

⁸ "Structure" means the dam, its appurtenances, abutments and foundation. Regs., Conn. State Agencies § 22a-409-1(a) (24).

⁹ Stream flow standards require minimum releases from dams. Regs., Conn. State Agencies §§ 26-141b -1 through 26-141b-8.

4
Wetlands

18. Wetlands and watercourses were delineated at the site in September 2012, and reconfirmed in August 2014. The application identified wetlands in the area of the immediate vicinity of the Dam and below the Dam spillway. 3,340 square feet (“sqft”) of wetlands will be temporarily impacted by construction and repair work, and such wetlands will be restored following the work. 1,524 sqft of wetlands will be permanently impacted, but such impacts are primarily to wetlands areas that have already been altered during previous construction at the site. The construction impacts to wetlands were quantified and detailed in the application. Overall impacts to these areas are minimal and will not significantly impact the overall wetlands system. An additional wetlands study was prepared by GZA and submitted to the DEEP in September 2020 and supplemented the application. This September report details a study of an area along the proposed earthen berm and parapet wall located on the east side of the Reservoir. This identified wetland (Wetland A) is east of the service road and outside the limits of the proposed work. Because there will be no work in Wetland A, there are no additional regulated wetland or watercourse adverse impacts associated with the project resulting from the delineation of that wetland. The study also confirmed that wetlands soils did not extend into a shallow surface erosion channel that is part of the service road running across that area. (Test. 9/30/20, Delano, J., DiGangi, D., 10/9/20, Nitzsche, D., Riberdy, S., Missell, D., Kinney, W.; exs. APP-1, 2, 5 to 8, DEEP-1, 8, 28, 29, 36, 38, 40, INT-3.)
19. There are areas of wetlands on the Land Trust property. The NRWA offered the testimony of their expert witnesses, who identified other areas of wetlands and claimed there will be impacts as a result of the proposed work. These wetlands will not be directly impacted by construction activities. Instead,

impacts will be due to changes in grades along the east side of the service road, and will be insignificant. The flow of water out of any wetlands on the Land Trust property will continue to the south along the east side of the service road onto the Applicant's property. Evidence offered by the NWRA that a large volume of water drains across Wetland A and could be backed up by construction was not persuasive. Other evidence presented by witnesses for the NRWA of purported changes in water flows as a result of the construction work was inconsistent, speculative and not convincing. The elevation of the wetlands indicates water will flow in the direction of the Reservoir rather than away from it. Waters that currently flow to these wetlands will continue to flow there after the completion of this project. Moreover, these wetlands on the Land Trust Property will be protected from overflow from the Reservoir during a ½ PMF storm due to the work that is the subject of the application – the wall, berm and concrete wall to be constructed to the west of the east service road proximate to the Reservoir. (Test. 9/30/20, DiGangi, D., DeLano, J., 10/9/20, Missell, D., 10/9/20, 10/19/20, DeLano, J., Kenney, W, Wildman, L.; exs. APP- 1, 2, DEEP-1, 29, 36, 38, INT-3, 4, figures 1 to 4.)

5
Alternatives

20. To determine the final design of this proposed project, the Applicant explored other alternate designs as required before it finalized its application. These alternatives, which were set out as required in the application and about which the Applicant testified, were eliminated on engineering, operational and environmental grounds. The alternatives were found to have potentially harmful impacts on the Dam and the area; to be impractical as they required maintenance or human intervention, particularly during a storm event; to lack some necessary quality or element; or to otherwise not be feasible or prudent. The DEEP review and tentative determination showed that it accepted the alternatives analysis

presented by the Applicant. (Test. 9/30/20, DiGangi, D., DeLano, J.; exs APP-2, DEEP-1, Attachment M, 28, 29, 38.)

21. The NRWA presented what were offered as alternatives to the design of the project; however, close examination reveals that only ideas or concepts were presented, not fully developed alternatives. The NRWA admits that some of their proposals are conceptual. The merits of these proposals were not verified from an engineering perspective through hydrological or hydraulic studies or even by a close visual inspection of the area. The results were not measured and calculated, and possible impacts of the designs were not completely considered beyond certain environmental impact claims. The NRWA was given a full opportunity to present its proposed alternatives, including extensive presentations and explanations of its exhibits by its primary witness. A careful and complete review of the concepts and the arguments and exhibits put forth to support them, however, finds them inadequate for consideration as viable alternatives. Some ideas were modifications that were already considered and rejected by the Applicant as neither feasible nor prudent. Other concepts would require the use of Land Trust property for temporary storage of flood waters, property over which the Applicant has no authority and which, as a result of the proposed project, will not be impacted by flood waters. The results of other concepts would impact the use of the gatehouse and footbridge, require more land than what is available, impact the infrastructure downstream of the Dam, effect forested and wetland areas in the boundary between the Applicant's land and Land Trust property, and use parts of the Dam structure that are in a weakened condition. Some design changes could result in the need to remove more trees than the amount already of concern to the NRWA, would not meet required elevations, and harm area wetlands by impacting water flow and impounding water during a ½ PMF storm. In sum, none of the concepts presented by the NRWA demonstrated they were either novel ideas or developed to the point that they could

considered as an alternative means to meet the Applicant's objective of controlling flooding during a ½ PMF storm without causing greater impact to the natural resources of concern to the NWRA. (Test. 9/30/20, DiGangi, D., 10/9/20, 10/19/20, Wildman, L., 10/19/20 DeLano, J., Wildman, L., exs. APP-1, 2, DEEP-1, 32, INT-4, figures 1 to 4.)

6
DEEP Review

22. During its review of this application, DEEP requested and received from the Applicant additional information and responses to its questions. DEEP also visited the site with the Applicant's consulting engineer, GZA and had numerous meetings with GZA and the Applicant. Information supplemented the application, but did not impact the fact that the DEEP had sufficient information and materials to review the application. (Exs., DEEP- 1 to 14, 28, 33 to 38.)
23. As part of its technical review, the DEEP reviewed the 2014 inspection report that had determined that the Dam was in poor condition and the 2015 spillway analysis report from GZA. DEEP agreed that the repairs and maintenance that were part of the application were needed, and advised the Applicant to proceed with the design of modifications to the Dam, including its primary spillway, to be able to pass a ½ PMF storm without overtopping the Dam structures that were susceptible to erosion and breaching. The permit application reviewed by the Department included all recommendations and considerations the Applicant had previously submitted and that the DEP had reviewed and approved. (Exs. DEEP-1, 3, 4, 5, 27, 30, 37.)
24. DEEP calculated the impacts to regulated wetlands and watercourses to determine the legal and technical requirements applicable to these resources. DEEP reviewed the proposed impacts to

regulated areas and agreed with the delineation of the wetlands areas that would be affected by the proposed work set out in the application. (Test. 10/9/20, Missell, D., exs. DEEP-1, 33, 34, 38.)

25. DEEP's review also included an examination of the impact of the proposed work on the safety of persons and property, an assessment of the ability of the Dam to convey the water directed to it, and a review of the Dam's physical and structural components. Proposed work on the structure will increase the Dam's resistance to sliding and overturning and enhance its ability to withstand forces associated with normal water surface elevation at the top of the Reservoir and up to the ½ PMF storm. Additional safety factors incorporated into the Dam's design will make sure the Dam is readily accessible for inspection and maintenance and that trees' root systems will not compromise the Dam structure. Additionally, the DEEP approved the proposed erosion and sediment controls and the plan, and determined that no fishway is required at the Dam. A review of the NDDB confirmed that the project is not within an area identified as a habitat for endangered, threatened or special concern species. (Test. 10/9/20, Laskin, A., Missell, D.; exs. DEEP-1, 3-6, 10-14, 27, 28, 30, 31, 37, 38.)

26. The DEEP review demonstrated that the proposed work was appropriately designed and was consistent with sound engineering practices. The review also showed that the Applicant had appropriately considered alternatives, and had selected the most feasible and prudent option that would best accomplish the goals of this project. DEEP's evaluation also revealed that the Applicant had considered impacts to the environment, including to wetlands and watercourses. Following its conclusion that this application complied with all relevant statutes and regulations, the DEEP published its tentative determination to approve the application, along with a proposed draft permit, on February 26, 2020. (Test. 10/9/20, Larkin, A., Missell, D., exs. DEEP-3, 32, 33, 37, 38.)

B
CONCLUSIONS OF LAW

1
***Compliance with General Statutes § 22a-403:
Application and Dam Safety Permit***

The primary goals of this application are flood control and preservation of the integrity of the public drinking water supply. The application sets out the work that will allow the Applicant to rehabilitate the Grupes Reservoir Dam, which requires maintenance, improvements and upgrading to meet state and federal dam safety standards. A high hazard Class C dam under Regs., Conn. State Agencies § 22a-409-2(a)(1)(E)(i)-(v), the failure of the Dam could result in possible loss of life and major damage to downstream property. The Applicant submitted a comprehensive and sufficient application for DEEP to review the impacts of the proposed work as required by General Statutes § 22a-403(b) and issue a dam safety permit.

a
Safety of People and Property

Under General Statutes § 22a-403(b), the Commissioner must determine the impact of the proposed work on the safety of persons and property and also on the environment, particularly on the inland wetlands and watercourses of the State in accord with the provisions of the Inland Wetland and Watercourse Act, §§ 22a-28 to 22a-45. There is sufficient evidence in the record to show that the Applicant proved that the proposed work to be permitted is sound from an engineering and safety perspective and will ensure that this Dam, which needs structural repairs and other improvements, will meet federal and state safety standards, now and in the future, to protect downstream people and property. The work will result in the ability of the Dam and its spillways to safely manage and discharge flood waters from a ½ PMF storm, the regulatory design flood standard.

b
Impact on Wetlands and Watercourses

In reviewing a dam safety application, the DEEP must consider both the specific requirements of General Statutes § 22a-403(b), and also the requirements of the Inland Wetlands and Watercourses Act (“the Act”), §§ 22a-36 to 22a-45. The Act provides for a balancing of the need to protect wetlands and watercourses with the need to permit beneficial and necessary activities, such as preserving the public water supply and ensuring the safety of persons and property downstream of dams. A permissible but regulated activity is allowed when there is not unreasonable pollution or unreasonable invasion of wetland areas. *Indian Spring Land Co. v. Inland Wetlands and Watercourses Agency*, 322 Conn. 1,7-12 (2016). For example, § 22a-40(a)(5) recognizes that the operation of dams in wetlands and watercourses by water companies providing a public water supply is a permitted activity subject to DEEP regulation under § 22a-403(b).

The Applicant demonstrated that its proposed project represents a proper balance of its dam safety goals and any environmental impacts from its planned construction work. The Applicant considered environmental impacts, particularly on wetlands and watercourses, and complied with applicable requirements of the Act. See e.g., General Statutes § 22a-41. Construction impacts were quantified and identified as temporary or permanent, with permanent impacts shown to be minimal. The application showed that there are no feasible or prudent alternatives¹⁰ to the proposed regulated activities that would still meet the objective of the proposed project while reducing impacts to wetlands or watercourses. The Applicant demonstrated that it was entitled to a permit, by showing through a preponderance of the evidence, that it satisfied the statutory and regulatory criteria relevant to the requested permit and its proposed activities would

¹⁰ A feasible alternative is defined as one that is “able to be constructed or implemented consistent with sound engineering principles.” General Statutes § 22a-38(17). A prudent alternative is “economically and otherwise reasonable in light of the social benefits to be derived from the proposed regulated activity....” § 22a-38(18).

not cause harm. Regs., Conn. State Agencies § 22a-3a-6(f). *Finley v. Inland Wetlands Commission of the Town of Orange*, 289 Conn. 12, 40 (2008), citing *Strong v. Conservation Commission*, 226 Conn. 227, 229 (1993) and *Samperi v. Inlands Wetlands Agency*, 226 Conn. 579, 593 (1993).

2
Claims of Norwalk River Watershed Association
a
Burdens of Proof
i
Unreasonable Pollution

The NWRA, which was granted intervening party status pursuant to General Statutes § 22a-19, asserts that it was erroneously assigned the burden of proving that the conduct alleged in its Notice of Intervention is reasonably likely to lead to unreasonable pollution, impairment or destruction. In its Notice of Intervention, the NRWA claims that the impacts from the wall and berm on the Applicant’s property and the “removal of removal of all vegetation from the land currently covered with trees, shrubs and other vegetation on the Grupes Reservoir Dam property” will result in unreasonable pollution to the flora, fauna and inland wetlands on the Applicant’s property and adjacent land. The NWRA was appropriately directed to satisfy its burden of proof.

An intervening party bears the burden of proving the allegations of environmental harm that it asserted to gain party status. An intervening party has the burden of production with regards to its allegations; that person “must first come forward and show that the [proposed regulated activities are] reasonably likely to unreasonably pollute, impair, or destroy a natural resource.” *Manchester Env’tl. Coal. v. Stockton*, 184 Conn. 51, 58 (1981), overturned on other grounds by *City of Waterbury v. Town of Washington*, 260 Conn. 506 (2002). A party intervening pursuant to § 22a-19 “has the burden of proving not just the fact that pollution has, or is about to occur. He must prove that the pollution complained of is unreasonable and unavoidable.” (Internal citations omitted.) *Id.*, 551.

ii
Alternatives

The NRWA also claims that it was wrongly assigned the burden of demonstrating the existence of a feasible and prudent alternative. It was not. If the NRWA had met its burden to show that these proposed regulated activities are reasonably likely to result in unreasonable environmental harm, the Applicant would then have the burden to show that there are no feasible and prudent alternatives to its proposed work that would avoid the identified unreasonable environmental harm. See *City of Waterbury v. Town of Washington*, supra, 260 Conn. 550 (When demonstration of unreasonable pollution, applicant has burden to show activities should still be permitted as are no feasible and prudent alternatives).

This application for a dam safety permit included evidence of the Applicant’s consideration of alternatives.¹¹ The Applicant outlined the reasons for its rejection of certain alternatives in its application and in its presentation of evidence at the hearing. When the DEEP reviewed and made a tentative determination to approve the application, the DEEP had evaluated and accepted the Applicant’s evaluation of alternatives and its selection of the most feasible and prudent option that would best accomplish the goals of its project. Our case law is clear that the “evidentiary burden imposed on the applicant is to demonstrate that its proposal is the only feasible and prudent alternative” *Tartullo v. Inland Wetlands Commission of Wolcott*, supra, 236 Conn. 572, 580 (2003). The Department is also not required to consider and make findings on every potential alternative to a proposal. *Id.*, 579; *Samperi v. Inlands Wetlands Agency*, supra, 226 Conn. 589-590.

¹¹ The Applicant also had the burden of demonstrating compliance with General Statutes 22a-41, which requires a showing that no feasible and prudent alternative existed. As discussed above, that Applicant satisfied that burden. *Samperi v. Inland Wetlands Agency*, supra, 226 Conn. 593.

The NWRA was allowed to present its case that feasible and prudent alternatives existed, not because it had a burden to show its alternatives were feasible and prudent, but because if it had satisfied its burden as to unreasonable pollution, I would have had to decide if the Applicant had proven that there was no feasible and prudent alternative. Evidence provided by NWRA that identified a feasible and prudent alternative would have furthered this analysis. If I determined that the NWRA had demonstrated the reasonable likelihood of unreasonable pollution, the administrative record included the options considered and rejected by the Applicant and the evidence of possible alternatives presented by the NRWA.

b
Scope of Appeal and Fairness

The NRWA asserts that it is entitled to make certain allegations in its post-hearing submission because on appeal it must be able to present these claims to support its argument that the Applicant did not meet its burden of proof that no unreasonable pollution will result from its activities. Citing *Finley v. Inland Wetlands Commission of the Town of Orange*, supra, 289 Conn. 40, the NRWA argues that because it will claim on appeal that the application's non-compliance with the dam safety statutes will result in unreasonable pollution, it can now claim that there were deficiencies in the application.

The NRWA contends it has the right to make its claims based on considerations of fairness to environmental intervenors. In *FairwindCT, Inc. v. Connecticut Siting Council*, 313 Conn. 669, 713-714, (2014), the Court noted fundamental fairness as support for the right of intervenors to fully participate in a hearing in order to present their environmental claims. The NWRA argues that this includes its right to present legal arguments and proposed findings of fact and conclusions of law based on a legal theory on which it may prevail on appeal.

Considerations of fairness do compel equitable and equal treatment of all parties in a hearing as allowed under the laws that govern administrative hearings, including our Rules of Practice. Regs., Conn. State Agencies, §§ 22a-3a-2 through 22a-3a-6.¹² However, fairness does not mean that all claims can withstand the scrutiny of an assessment in light of the facts in the record and the law.

The NWRA asserts that the application was not complete because it failed to fully identify, quantify, and minimize impacts to the inland wetlands, watercourses, flora and fauna at the Applicant's property and the adjacent property of the Land Trust. The NRWA argues that the Applicant's failure constitutes "unreasonable conduct" identified in its intervention pursuant to General Statutes § 22a-19. Query whether this alleged failure is "conduct" that will cause unreasonable pollution as envisioned in § 22a-19. Essentially, the NRWA asserts that the act of providing information to the Department for its consideration is conduct. But conduct, in this context, is typically construed to mean activity to be authorized by a proceeding. "The cases wherein we have permitted standing under § 22a-19 have involved circumstances in which the *conduct* at issue in the application before this court allegedly would cause direct harm to the environment." *Pond View, LLC v. Planning & Zoning Commission*, 288 Conn. 143, 159-160 (2008). Conduct within the meaning of §22a-19 can be analyzed for its unreasonable pollution effects on air, water or other natural resources. *Id.*, 154.

Even assuming, *arguendo*, that this nonenvironmental claim could be considered, the record shows that the DEEP requested additional information from the applicant where necessary and only began its technical review of this dam safety permit application when it determined it had the required information to

¹² It is notable that this intervening party was given liberal pre-hearing accommodations, including the chance to file pre-hearing information after the deadline for such filings had expired. The NWRA was also allowed to fully participate at the hearing, including extensive testimony by its experts and the opportunity to fully cross-examine the witnesses of the other parties. The hearing was even recessed to allow the NRWA time to prepare for cross examination.

do so. An agency has the authority to determine when an application is complete, that is, that it has all the information required by the relevant statute or regulations. *Commission on Hospitals and Health Care v. Stamford*, 208 Conn. 663, 668-69 (1988).

The application included a delineation of the areas of the inland wetlands and watercourses that could be impacted by the proposed work. The DEEP issued a notice of its tentative determination following its review. Section 22a-403(a) provides that “[i]f the Commissioner finds that an application is complete, he shall issue” a notice of tentative determination concerning an intent to grant or deny that permit. The DEEP was therefore required to make this determination before it could issue its tentative decision.

The application was later supplemented by a delineation and study of Wetland A, which found that this wetland was outside the limits of the proposed work so there were no additional regulated wetland or watercourse impacts. The Applicant considered possible impacts to those wetlands on its property and those off-site or partially off-site. The Applicant was not required to identify and quantify these resources on the adjacent property of the Land Trust. It is clear that the work to be conducted under the permit will not impact the wetlands and watercourses beyond the areas identified in the application. Offsite wetlands that will not be impacted may be considered as part of an assessment of overall wetland system impacts, but it is not required. *Hoffman v. Inland Wetlands Commission*, 28 Conn. App. 262, 267-268 (1992). See *Grimes v. Conservation Comm'n of Town of Litchfield*, 49 Conn. App. 95, 103, (1998) (Adjoining land becomes irrelevant when the proposed development does not have a significant impact on the wetlands and watercourses).

c
Impacts to Wetlands

The NWRA also alleges the Applicant failed to minimize impacts to wetlands. Witnesses offered as experts for the Association identified wetland areas of alleged concern. However, merely referencing potential impacts to off-site wetlands does not meet the burden of establishing unreasonable pollution. An intervening party bears the burden of producing some evidence that the impacts alleged are actually likely to occur and that the conduct of the applicant will cause such harm. See, e.g., *JMS Newberry, LLC v. Kaman Aerospace Corp.*, 149 Conn. App. 630, 635, cert. denied, 312 Conn. 915 (2014) (To establish prima facie case of environmental harm, plaintiff must prove defendant’s conduct will cause more than a de minimis impairment); *City of Waterbury v. Town of Washington*, 260 Conn. 551 (§22a-19 intervening party has burden of proving not just fact that pollution has, or is about to occur, but will cause harm).

The evidence offered by the witnesses for the NWRA did not provide the necessary detail, or field study, to demonstrate that unreasonable impacts to off-site wetlands are likely to occur; the evidence presented was both generalized and speculative. Courts reviewing decisions of administrative agencies look to see if an agency’s decision is supported by substantial evidence. Mere speculation, or generalized concerns, do not qualify as substantial evidence. *River Bend Associates v. Conservation & Inland Wetlands Commission*, 269 Conn. 57, 71 (2004); *Estate of Casimir Machowski v. Inland Wetlands Commission*, 137 Conn. App. 830, 836 (2012).

Although the witnesses were presented as experts for the NWRA and their credentials were admitted to the record, “[t]he determination of the credibility of expert witnesses and the weight to be accorded their testimony is within the province of the trier of facts, who is privileged to adopt whatever testimony he reasonably believes to be credible.” (Internal quotation marks omitted.) *Melillo v. New Haven*, 249 Conn. 138,

151, 732 A.2d 133 (1999).” *Windels v. Environmental Protection Commission*, 284 Conn. 268, 291 (2007). The trier of fact is not required to believe [even] un-rebutted expert testimony . . .” *Bancroft v. Commissioner of Motor Vehicles*, 48 Conn. App. 391, 405 (1998).

I allowed the experts for the NRWA to fully testify about their beliefs that there were wetland areas that would be impacted by this dam safety project. I listened to their testimony at the hearing and reviewed it after in the recording of the hearing. I reviewed the record, including the materials presented by the experts, and gave their concerns and presentations my full consideration. However, I am not convinced that even if they have properly identified certain areas as wetlands, that they are correct in their assessments of the alleged changes to the flow of water and the way in which the total wetlands system would be impacted by this necessary dam safety project.

d
Impacts on Trees

The NWRA alleges that the DEEP failed to evaluate the proposed removal of trees when evaluating this application. The proposed removal of trees, shrubs and brush and the reasons for their removal as a result of the proposed work was evaluated by the DEEP and, where necessary, made part of the proposed plan of work. Certain trees, shrubbery and brush must be removed pursuant to regulation to prevent undermining of the earthen embankment, possible weakening of the Dam by roots, and to facilitate continued maintenance of the Dam. Other trees and related debris must be removed to prevent obstacles to a clear spillway.

Although trees, shrubs and wildlife may be natural resources protected by General Statutes § 22a-19, any impacts to those resources are not unreasonable. As noted by the Applicant in its post-hearing argument, §22a-19 must be construed in a manner that is consistent with the authority of the DEEP to regulate dam safety under §22a-403. See *Connecticut Fund for the Environment v. Stamford*, 192 Conn 247, 250 (1984)

(§ 22a-19 must be read in conjunction with other legislation.) The Applicant's planned removal of trees and shrubs is consistent with DEEP regulations that require such removal to preserve the integrity of dam structures and reservoir embankments.

To the extent that the NRWA is concerned about the removal of other trees in the area, including off-site trees, there was no showing that any impacts would occur, or, if any impacts did occur, they would be harmful to trees of a significant size. And, of note, the flooding control that will result from this project will protect trees, shrubs and brush from inundation and possible loss due to flood waters.

e
Impacts to Flora and Fauna

The NWRA also alleges that the DEEP did not consider impacts on flora and fauna. The DEEP confirmed that the site is not in a conservation or preservation restriction area, or an area identified as a habitat for endangered, threatened or special concern species. The NWRA did not identify any rare species of flora or fauna that would be impacted. The lack of impact to area wetlands and watercourses means there will be no impact on the flora or fauna living in those wetlands. And, as with trees, shrubs, and related brush, the resulting management of flooding will protect flora and fauna in area wetlands and watercourses.

f
Scenic View

Contrary to the claims of the NRWA, this permit cannot be denied on the basis of a failure to protect the scenic beauty of the area, in particular, to preserve the view of the Reservoir from the property of the Land Trust. There is no right to a scenic view, except through a specific easement or other agreement. *Kepple v. Dohrmann*, 141 Conn. App. 238 (2013). (Covenant document evidenced an intent to grant a view easement over adjacent and next adjacent lots.) Also, there is no obstruction of the view of the Reservoir from the Land

Trust property; in this area, the wall on the east side of the service road is only one to three feet high. Someone of average height standing on the Land Trust property will still be able to view the Reservoir.

When considering impacts to views, like other impacts alleged pursuant to § 22a-19, I must determine whether the impact will be unreasonable. Even if there were some minor alteration of the view, there is no evidence upon which to base a determination that the view will be unreasonably destroyed. The argument advanced by NRWA would require me to determine that *de minimus* alteration of a view constitutes its unreasonable destruction. This would transform § 22a-19 into a stick to beat back necessary work any time there is an allegation that there will be a minor change in a particular view. This is an untenable and unworkable result, ignores the plain language of the law, and must be rejected.

g
Feasible and Prudent Alternatives

The NRWA claims that the application is incomplete because feasible and prudent alternatives are not identified. As was discussed above, the application included the Applicant's consideration of alternatives and the reasons for their rejection in favor of the choice made by the Applicant. And, as was thoroughly set out above, General Statutes § 22a-19(b) requires additional consideration of alternatives only if it is proven that the activities to be permitted will result in unreasonable pollution.

C
CONCLUSION AND RECOMMENDATION

This proposed dam safety permit will enable the Applicant to conduct work necessary to correct the Dam's deficiencies, improve the Dam structure, construct an effective flood control system, and make other changes necessary to protect and preserve the integrity of the Reservoir as a continued source of public drinking supply. The application met the requirements of General Statutes § 22a-403 and the Applicant met its burden to demonstrate that compliance, including its consideration of alternatives to the proposed work.

The NWRA did not meet its burden to prove that the proposed work will, or is reasonably likely to have, the effect of resulting in unreasonable pollution, impairment or destruction of the public trust in the air, water, or other natural resource of the state. General Statutes § 22a-19. The record clearly shows that this project will not directly impact the wetlands and watercourses and the flora and fauna that are part of these areas that are beyond the areas of construction. The overall wetlands system will not be adversely impacted by this project.

There is sufficient evidence in the record to prove that the proposed regulated activities, as detailed in the application and conditioned by the draft permit, would comply with the applicable statutes and regulations. I recommend that the Commissioner issue the attached draft permit (Appendix A) as a final permit.

Janice B. Deshais

Janice B. Deshais, Esq.
Hearing Officer

PERMIT

Permittee: First Taxing District Water Department

Attention: Dominick M. Di Gangi, P.E.

Permit No: DS-201814638 & WQC-201814641

Town: New Canaan

Project: Grupes Reservoir Dam (DEEP ID #9003; Hazard Class C, High Hazard)

Waters: Silvermine River

Pursuant to Connecticut General Statutes Section 22a-403, the Commissioner of Energy and Environmental Protection (“Commissioner”) hereby grants a permit to the First Taxing District Water Department (“the Permittee”) to conduct regulated activities associated with the Grupes Reservoir Dam modifications. In addition, pursuant to Section 401 of the Federal Clean Water Act (33 USC 1341), Certification is hereby granted for activities, including but not limited to construction or operation of facilities, which may result in any discharge into the waters of the state associated with the above referenced project. The purpose of said activities is to repair an existing dam.

AUTHORIZED ACTIVITY

Specifically, the permittee is authorized to: raise the top of dam by 4 feet with a cast-in-place concrete cap and regrade the dam abutments, install post-tensioned anchors at the dam, repoint the downstream face of the dam, grout the stone masonry, replace existing footbridge over spillway and catwalk to gatehouse, construct earthen embankment and retaining walls along east side of Grupes Reservoir, regrade existing high ground and access road, demolish existing gatehouse and construct a new one, install three new slide gates at the gatehouse, re-line the existing 24-inch diameter low-level outlet pipe, install a new 24-inch water main to existing distribution system, replace existing culverts at the end of auxiliary spillway discharge channel with articulated block crossing, install articulated concrete block at auxiliary spillway invert, remove trees and boulders that could potentially obstruct discharge channel during storms.

The proposed activities will impact Silvermine River as follows:

- Approximately 4,865 square feet (0.11 acres) of total impacts to wetlands at the site including temporary impacts.

All activities shall be conducted in accordance with plans entitled: *“Rehabilitation of Grupes*

Reservoir Dam, New Canaan, Connecticut", dated October 2017, prepared and stamped by Peter H. Barn, P.E. and John G. Deland, P.E. on October 29, 2018, submitted as a part of the application.

This authorization constitutes the licenses and approvals required by Section 22a-403 of the Connecticut General Statutes and Section 401 of the Federal Clean Water Act (33 USC 1341).

This authorization is subject to and does not derogate any present or future property rights or other rights or powers of the State of Connecticut, conveys no property rights in real estate or material nor any exclusive privileges, and is further subject to any and all public and private rights and to any federal, state, or local laws or regulations pertinent to the property or activity affected thereby.

Said discharge(s) will comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of the Federal Clean Water Act (33 USC 1311, 1312, 1313, 1316 and 1317, respectively) and will not violate Connecticut's Water Quality Standards.

The permittee's failure to comply with the terms and conditions of this permit shall subject the permittee, including the permittee's agents or contractor(s) to enforcement actions and penalties as provided by law.

This authorization is subject to the following conditions:

CONDITIONS:

1. **Expiration.** This Dam Safety Permit shall expire three years following the date of issue unless this permit is specifically renewed. The Water Quality Certification shall expire upon expiration of the U.S. Army Corps of Engineers Section 404 permit for the same activity.
2. **Construction Commencement and Completion.** If construction of any structures or facilities authorized herein is not completed within three years of issuance of this permit or within such other time as may be provided by this permit, or if any activity authorized herein is not commenced within three years of issuance of this permit or within such other time as may be provided by this permit, this permit shall expire three years after issuance or at the end of such time as may be authorized by the Commissioner.
3. **Notification of Project Initiation.**
 - a. The permittee shall notify the Commissioner in writing no less than seven (7) days prior to commencement of permitted activities and no less than seven (7) days following completion of permitted activities.
 - b. The permittee shall, pursuant to Section 22a-377(b)-1(a)(16)C of the Regulations of Connecticut State Agencies, notify the Commissioner and any potentially affected water company in writing at least seven (7) days prior to the lowering of Scantic River for the purpose of undertaking permitted activities.

- c. The Department of Energy and Environmental Protection shall be notified at least forty-eight (48) hours prior to drawdown of the impoundment, in accordance with Section 26-138 of the Connecticut General Statutes. Such notification shall be made to the Inland Fisheries Division, 79 Elm Street, Hartford, CT 06106-5127, and telephone no. 860- 424-3474.
4. **De minimis Alteration.** The permittee may not make any alterations, except de minimis alterations, to any structure, facility, or activity authorized by this permit unless the permittee applies for and receives a modification of this permit. A de minimis alteration means a change in the design, construction or operation authorized under this permit that does not increase environmental impacts or substantively alter the construction of the project as permitted.
5. **In-Water Work.** Confinement of a work area by cofferdam techniques using sand bag placement, sheet pile installation (vibratory method only), portadam, or similar confinement devices is allowed any time of the year unless specifically prohibited by a permit condition. The removal of such confinement devices is allowed any time of the year unless specifically prohibited by a permit condition. Once a work area has been confined, in-water work within the confined area is allowed any time of the year. The confinement technique used shall completely isolate and protect the confined area from all flowing water. The use of silt boom/curtain or similar technique as a means for confinement is prohibited.
6. **Maintenance of Structures.** All structures, facilities, or activities constructed, maintained, or conducted pursuant hereto shall be consistent with the terms and conditions of this permit, and any structure, facility or activity not specifically authorized by this permit, or exempted pursuant to section 22a-377 of the General Statutes or section 22a-377(b)-1 of the Regulations of Connecticut State Agencies, or otherwise exempt pursuant to other General Statutes, shall constitute a violation hereof which may result in modification, revocation or suspension of this permit or in the institution of other legal proceedings to enforce its terms and conditions.
7. **Accuracy of Documentation.** In issuing this permit, the Commissioner has relied on information provided by the permittee. If such information was false, incomplete, or misleading, this permit may be modified, suspended or revoked and the permittee may be subject to any other remedies or penalties provided by law.
8. **Best Management Practices & Notification of Adverse Impact.** In constructing or maintaining any structure or facility or conducting any activity authorized herein, the permittee shall employ best management practices to control storm water discharges, to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and other waters of the State. Best Management Practices include, but are not limited, to practices identified in the *Connecticut Guidelines for Soil Erosion and Sediment Control*

as revised, *2004 Connecticut Stormwater Quality Manual*, Department of Transportation's *ConnDOT Drainage Manual* as revised, and the Department of Transportation Standard Specifications as revised.

The permittee shall immediately inform the Commissioner of any adverse impact or hazard to the environment which occurs or is likely to occur as the direct result of the construction, maintenance, or conduct of structures, facilities, or activities authorized herein.

Drawdown of Grupes Reservoir shall be limited in extent and duration to that necessary to complete the permitted activities.

9. **Reporting of Violations.** The permittee shall, no later than 48 hours after the permittee learns of a violation of this permit, report same in writing to the Commissioner. Such report shall contain the following information:
 - a. the provision(s) of this permit that has been violated;
 - b. the date and time the violation(s) was first observed and by whom;
 - c. the cause of the violation(s), if known
 - d. if the violation(s) has ceased, the duration of the violation(s) and the exact date(s) and times(s) it was corrected;
 - e. if the violation(s) has not ceased, the anticipated date when it will be corrected;
 - f. steps taken and steps planned to prevent a reoccurrence of the violation(s) and the date(s) such steps were implemented or will be implemented;
 - g. the signatures of the permittee and of the individual(s) responsible for actually preparing such report, each of whom shall certify said report in accordance with condition 13 of this permit.
10. **Material Storage in the Floodplain.** The storage of any materials at the site which are buoyant, hazardous, flammable, explosive, soluble, expansive, radioactive, or which could in the event of a flood be injurious to human, animal or plant life, below the elevation of the five-hundred (500) year flood is prohibited. Any other material or equipment stored at the site below said elevation by the permittee or the permittee's contractor must be firmly anchored, restrained or enclosed to prevent flotation. The quantity of fuel stored below such elevation for equipment used at the site shall not exceed the quantity of fuel that is expected to be used by such equipment in one day.
11. **Permit Transfer.** This permit is not transferable without the prior written consent of the Commissioner.
12. **Contractor Notification.** The permittee shall give a copy of this permit to the contractor(s) who will be carrying out the activities authorized herein prior to the start of construction and shall receive a written receipt for such copy, signed and dated by such

contractor(s). The permittee's contractor(s) shall conduct all operations at the site in full compliance with this permit and, to the extent provided by law, may be held liable for any violation of the terms and conditions of this permit.

- 13. Certification of Documents.** Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this permit shall be signed by the permittee or a responsible corporate officer of the permittee, a general partner of the permittee, and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows:

“I have personally examined and am familiar with the information submitted in this document and all attachments thereto and I certify that based on reasonable investigation, including my inquiry of the individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that a false statement in the submitted information may be punishable as a criminal offense in accordance with Section 22a-6 of the General Statutes, pursuant to Section 53a-157b and in accordance with any other applicable statute.”

- 14. Submission of Documents.** Any document or notice required to be submitted to the Commissioner under this permit shall, unless otherwise specified in writing by the Commissioner, be directed to:

Director, Water Planning & Management Division
Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

The date of submission to the Commissioner of any document required by this permit shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this permit, including but not limited to notice of approval or disapproval on any document or other action, shall be the date such notice is personally delivered or the date three days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this permit, the word "day" means any calendar day. Any document or action which is required by this permit to be submitted or performed by a date which falls on a Saturday, Sunday or legal holiday shall be submitted or performed by the next business day thereafter.

- 15. Rights.** This permit is subject to and does not derogate any rights or powers of the State of Connecticut, conveys no property rights or exclusive privileges, and is subject to all public and private rights and to all applicable federal, state, and local law. In constructing or maintaining any structure or facility or conducting any activity authorized herein, the permittee may not cause pollution, impairment, or destruction of the air,

water, or other natural resources of this State. The issuance of this permit shall not create any presumption that this permit should be renewed.

16. Dam Safety Conditions.

- a. This permit and a copy of the approved plans and specifications shall be kept at the project site and made available to the Commissioner at any time during the construction of permitted activities.
- b. Permitted activities shall be performed under the supervision of an engineer who is licensed to practice in the State of Connecticut and who is familiar with dam construction. Said engineer shall, upon completion of the permitted activities, certify to the Commissioner in writing that the permitted activities have been completed according to the approved plans and specifications.
- c. Within thirty (30) days of completion of the permitted activities, permittee shall submit to the Commissioner record drawings depicting the dam construction as completed, including any deviations from the approved plans and specifications. Said drawings shall be prepared and sealed by the engineer who oversaw the construction. In addition, the permittee shall arrange for submission of an electronic copy of the final record drawings in Adobe Acrobat "pdf" format.
- d. Nothing in this chapter and no order, approval or advice of the Commissioner, shall relieve any owner or operator of {a dam} from his legal duties, obligations and liabilities resulting from such ownership or operation. No action for damages sustained through the partial or total failure of any structure or its maintenance shall be brought or maintained against the state, the Commissioner of Energy and Environmental Protection, or his employees or agents.
- e. If during the process of construction, unforeseen conditions are found on the site and the permittee and their engineer determine that it would be appropriate to modify the design, then the permittee shall notify DEEP within 24 hours of any potential design changes to determine if the design modifications will be an activity that can be categorized as a de minimis activity when compared to the permitted design. No work shall take place which was not included as part of the permitted design until DEEP responds to this determination request.

Issued by the Commissioner of Energy and Environmental Protection on:

Date

Graham Stevens, Bureau Chief
Water Protection and Land Reuse

SERVICE LIST

In the matter of First Taxing District, New Canaan
Dam Safety Permit
Grupes Reservoir Dam

Applicant – First Taxing District

Frank Murphy, Esq.
Kara Murphy, Esq.
Tierney, Zullo, Flaherty & Murphy, PC
fmurphy@tierneyzullo.com
kmurphy@tierneyzullo.com

John De Lano
John.delano@gza.com
Dominick DiGangi
ddigangi@firstdistrictwater.org

DEEP

Bureau of Water Protection and Land Reuse
Permitting and Enforcement Division
Dam Safety

Ken Collette
Kenneth.collette@ct.gov

Corinne Fitting
Yvonne Hall
Chuck Lee
Anna Laskin
Danielle Missell

Petitioner

Norwalk River Watershed Assn (NRWA)
Janet P. Brooks
Attorney at Law, LLC
<http://www.attorneyjanetbrooks.com/>

Louise Washer lbwasher@gmail.com
Alicea Charamut, Rivers Alliance: alicea@riversalliance.org
Margaret Miner, consultant: margaret.miner@charter.net
Bill Lucey, Save the Sound: blucey@savethesound.org
William Kenny, William Kenny Associates: wkenny@wkassociates.net
Cathy Smith, NRWA: mcath144@gmail.com

Land Trust

Alfred Tibbets, atibbetts@butlertibbetts.com

Aaron Lefland, New Canaan Land Trust: aaron@newcanaanlandtrust.org