

III. CONNECTICUT’S PRESENT WATER ALLOCATION POLICIES

As mentioned earlier in this report, Connecticut does not have a comprehensive water allocation system in place. The Diversion Act is the primary tool for water quantity management for the state. However, the Diversion Act is only a piece of an allocation policy. The State Plan for Conservation and Development, Water Quality Standards, Flood Management Act, Water Supply Planning Process, Inland Wetland and Watercourses Act, Aquifer Protection Act, and Endangered Species Act all play a role in managing water use. These various programs and associated statutory authorities and regulations are separate and distinct initiatives, each having its own standards and goals for water use, which are not necessarily consistent with one another, although each must be considered when the Department issues a diversion permit. In addition, the Diversion Act does not clearly empower the Department to prioritize uses or establish reserves for specified future water uses – all of which are essential components of any water allocation methodology.

A. The Adequacy of Connecticut’s Water Allocation Policies

Over the years, Connecticut’s General Assembly and executive branch agencies have attempted to develop a water resource management policy for the state. This policy has evolved incrementally through the adoption of various legislative policies, authorities, agency regulations and planning documents. All have focused on the protection and provision of high quality waters for human consumption. Another overarching theme of these efforts particularly since the early 1970’s is the need to balance the demand for potable water with the needs for the natural environment. Subsequently, environment regulations introduced additional important concerns, which compound the complexity of the state’s long-range water planning efforts.

Connecticut’s water management authorities are distributed principally among four agencies: the Office of Policy and Management (OPM); the Department of Environmental Protection (DEP); the Department of Public Health (DPH); and the Department of Public Utility Control (DPUC), (Appendix G). OPM has a central role in coordinating the activities and actions of the state agencies. Specific water management policies and authorities are typically

implemented in conjunction with the assigned agency's primary mission and principal program focuses. Unfortunately, no one agency is authorized to oversee or implement a single state-wide, comprehensive water planning or management effort.

While §22a-352 of the Connecticut General Statutes directs OPM, DEP, and DPH to prepare and update a statewide plan for the management of water resources for the state, the statute does not, provide guidance on the objectives the plan seeks to achieve. A plan under this authority has been worked on from time to time but never completed. In addition, §22a-352 fails to assign implementation responsibility for the plan once adopted by the General Assembly. This statute also predates several important water permitting and planning statutes presently implemented by DEP and DPH. These include the Connecticut Water Diversion Policy Act (§ 22a-365 through 22a-379) adopted in 1982 as well as the Water Supply Planning Process for individual water companies (§ 25-32d) adopted in 1984 and the Coordinated Public Water Supply Planning Process (§25-33c through 25-33n) adopted in 1985. Any comprehensive water planning initiative would need to integrate data derived from these and other programs adopted in the recent past and specifically assign responsibility for implementing a state-wide plan once it is adopted.

Connecticut does not have a single, integrative water allocation authority or policy. Connecticut also does not comprehensively support a statewide program to coordinate water resource planning. A comprehensive planning program is an essential prerequisite to the creation of a statewide allocation policy. Understanding the overall needs and potential competing uses of water is fundamental to a full understanding of the challenges associated with the allocation of water in the state. A comprehensive planning program would evaluate the broad array of water needs including potable water, waste assimilation, habitat maintenance, recreation, irrigation, industrial uses, power generation, agricultural irrigation, and navigation and would guide state agency actions to minimize water use conflicts.

B. The Connecticut Water Diversion Policy Act

The General Assembly enacted the Diversion Act in 1982, giving the Department limited authority to regulate the withdrawal and use of the groundwater and surface waters of the state.

(1) Diversion Registrations

The Diversion Act included a provision for diversions existing at the time the law was passed to continue without being subject to regulation. This “grandfathering” provision allowed registration of ground and surface water diversions maintained prior to July, 1982. Registrants were required to identify the location, capacity, frequency, and rate of withdrawal of the diversion, and to provide a description of the water use and distribution system. These registered diversions may continue indefinitely, regardless of their environmental effects and their impact on the water needs of others.

The Department performed two pilot projects to examine the status of water use, one through the Quinnipiac River Watershed Partnership (Appendix D) and one through the Tolland County Soil and Water Conservation District (Appendix E). In reviewing the status of water use in the Quinnipiac River Watershed, the workgroup found that of 91 registrations, 39 (43%) are for Public Water Supply Use, 22 (24%) are Agricultural/Irrigation uses, 26 (29%) are Industrial uses, and 4 (4%) are Recreational Uses. The Scantic River report was completed through a contract with the Tolland County Soil and Water Conservation District for a cost of approximately ten thousand dollars. The study found that in the Scantic River basin there are 27 water diversion registrants with 125 registered diversions. Twenty-four of the 27 are agricultural operations, one is a state agency, and two are water companies. The Department has information on water usage for the state agency and water companies, however to obtain the status of the agricultural diversions required individual meetings with agricultural registrants to ascertain the status, frequency and use of registered diversions. The Department does not have the resources to do this statewide.

The Scantic River report indicates a great deal of variability in water withdrawals from year to year depending upon climatic conditions. The studies also reported the existence of unauthorized diversions and inactive or defunct diversion program registrations. Significant staff resources and additional contract monies would need to be provided to complete registration reviews for Connecticut’s major watersheds.

(2) Diversion Permits

The Diversion Act requires a permit for any activity that causes, allows, or results in the

withdrawal from or the alteration of the flow of water, for both surface water (rivers, streams, and lakes), and ground water.⁶ When making a decision on a water diversion permit application under § 22a-373 of the Diversion Act, the Department must consider certain factors, including the environmental effects of the proposed diversion and whether it: 1) is necessary, 2) is consistent with long-range water resource management, 3) is consistent with the state Plan of Conservation and Development adopted pursuant to part I of Chapter 297 of the Connecticut General Statutes, and 4) will not impair proper management and use of the water resources of the State. Applications must be consistent with all other state policies that deal with long-range planning, management and use of the water resources of the state, including the State Plan for Conservation and Development, Water Quality Standards, Flood Management Act, Water Supply Planning Process, Inland Wetland and Watercourses Act, Aquifer Protection Act, and Endangered Species Act. In addition, applicants must evaluate the effect of the proposed new diversion on other water uses, including instream uses, and perform a comparative analysis of the costs, feasibility, and impacts of their proposals in comparison to alternative means of obtaining water, including conservation measures.

The permitting program created by the Diversion Act is an important tool for regulating new water uses. It allows the Department to require the applicant to tailor the level of analysis to the magnitude of potential water use conflicts at the site. Recently, a permit applicant's analysis of comparative costs and impacts resulted in the selection of an alternative that avoided the adverse impacts on a unique wetland which would have occurred if the originally proposed diversion were allowed. That alternative was also considerably less expensive for the applicant.

⁶ Withdrawals of less than 50,000 gallons in any one 24-hour period, and certain other categories of diversions, are exempt from the permit process.