



February 1, 2017

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

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

Dear Water Utility Coordinating Committee Chairs:

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

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

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

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

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

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

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

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

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

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

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

Thank you for your consideration.

Sincerely,


Robert Kaliszewski
Director of Administration

