

*IN THE MATTER OF* : *APPLICATION 202004971-DIVC*

*AQUARION WATER COMPANY OF CT  
(SW REGIONAL PIPELINE)* : *SEPTEMBER 7, 2021*

***PROPOSED FINAL DECISION***

***I***

***SUMMARY***

The Aquarion Water Company of Connecticut (“Applicant”) has filed an application with the Department of Energy and Environmental Protection (“DEEP” or “Department”) to modify its existing water diversion permit (DIV97-13) to increase the authorized maximum daily transfer of water from its Greater Bridgeport System (“GBS”) to its Southwest Fairfield County Region (“SWFCR”) through its Southwest Regional Pipeline (“SWRP”).<sup>1</sup> General Statutes §§ 22a-365 to 22a-378, inclusive (“Connecticut Water Diversion Policy Act”). This increase has been requested to provide adequate public water supply to the SWFCR while improving drought resiliency and allowing the Applicant to fully meet the release requirements of the Department’s Stream Flow Standards and Regulations. Regs., Conn. State Agencies §26-141b-1 to 26-141b-8.<sup>2</sup>

<sup>1</sup> The Greenwich, Stamford, Darien and New Canaan public water systems. These have traditionally been grouped together for water supply planning as the Southwest Fairfield County Region (“SWFCR”).

<sup>2</sup> The purpose of the stream flow regulations, which update the current standards, is to protect Connecticut’s river and stream systems. The regulations require minimum releases that will be effective in 2029 and will apply to all river and stream systems in the state through a classification process. See <https://portal.ct.gov/DEEP/Water/Stream-Flow-Standards/Connecticut-Stream-Flow-Standards>.

The DEEP determined that the application was complete and, following its technical review, determined that the proposed diversion is necessary, will not significantly affect long-range water resources management, and will not impair proper management and use of the water resources of the State. General Statutes §22a-371. Petitions for hearing were filed after the DEEP issued its Notice of Tentative Determination approving the application and publishing the draft permit, which modifies the existing permit.

The parties in this proceeding were the Applicant, DEEP staff,<sup>3</sup> and the following intervening parties: the Fairfield Conservation Commission (“Commission”), Fairfielders Protecting Land and Neighborhoods (“FairPLAN”), the Lake Hills Association, Inc. and the Mill River Wetland Committee. Only the Commission and FairPLAN participated in the proceeding as intervening parties or filed post-hearing briefs.<sup>4</sup>

Following the hearing, the Applicant and DEEP staff jointly filed the attached proposed findings of fact and conclusions of law and responses to eight issues outlined in the May 12, 2021 Post-Hearing Directive (“Joint Submission”). (Attachment I.) The Commission filed a post-hearing brief that also presented proposed finding of fact and conclusions of law and responses to the eight issues; FairPLAN relied on that brief as its post-hearing submission. All these parties, including FairPLAN, filed reply briefs on July 16, 2021.

The entire administrative record in this matter has been reviewed, including the documents and testimony in the record as evidence. The parties’ post-hearing memoranda and claims of all the parties have been evaluated in light of the relevant statutes and regulations. Public concerns, comments and questions and the extensive responses of the Applicant and DEEP staff to those comments and questions throughout the hearing process have been considered.

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<sup>3</sup> DEEP Bureau of Water Protection and Land Reuse, Water Planning and Management Division

<sup>4</sup> Use of the term “intervening parties” in this decision is intended to refer only to the Commission and FairPLAN.

The Joint Submission of the Applicant and DEEP staff is fully supported by the hearing record and provides factual findings and conclusions of law essential to this decision. It is adopted in full as part of this decision, which also includes my complementary factual findings and conclusions. The Applicant has met its burden to show that the proposed diversion set forth in the application, as conditioned by the draft permit, complies with the Connecticut Water Diversion Policy Act and relevant regulations that implement that Act. The intervening parties have not met their burden to prove that the proposed diversion, i.e., the proposed regulated activity, is “reasonably likely to have the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.” General Statutes § 22a-19 (a).

I adopt the Joint Submission of the Applicant and DEEP staff, and, as further supported by additional findings and conclusions in this decision, find that if conducted as proposed and in accordance with the terms and conditions of the draft permit (Attachment II), this regulated activity will be consistent with all relevant statutes and regulations.

## *II*

### *FINDINGS OF FACT*

The proposed factual findings set out in the attached Joint Submission of the Applicant and the Department are comprehensive and are fully supported by the evidence in the record. The additional findings set out below are intended to complement those findings.

#### *A*

##### *Project Background*

1. The further limitation in the draft permit of the requested 14.2 MGD authorized maximum daily transfer to an annual daily average of 12.56 MGD means that the

Applicant will not be consistently transferring the maximum daily authorization. (Exs. DEEP-1, 13, 16.)

**B**  
***Procedural History***

2. Petitions for hearing were received on January 21, 2021, initiating this hearing process.<sup>5</sup> At the Pre-Hearing Conference on April 16, 2021, several rulings were made on the admissibility of certain evidence proposed by the Commission.<sup>6</sup> The Commission claims that it was denied due process by these rulings and others that were based on the limited scope of its environmental intervention. General Statutes §22a-19.
3. While DEEP was reviewing this application, the Applicant held meetings with interested stakeholders and other members of the public, including a meeting on August 26, 2020, which was facilitated by DEEP. The December 8, 2020 Notice of Tentative Determination announced a public informational meeting that was held on January 6, 2021. A hearing for public comment was held on May 4, 2021, as part of the hearing process. All these meetings proved an opportunity for the public to learn about the proposed diversion and to make comments and pose questions to the Applicant and DEEP. (Exs. APP-1, 4, DEEP-12, 13.)
4. The evidentiary hearing was held on May 6, 2021, and included the following witnesses: Daniel Lawrence and Peter Galant (Applicant); Douglas Hoskins (DEEP);

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<sup>5</sup> Two petitions for hearing are in the files of the Office of Adjudications and are part of this administrative record.

<sup>6</sup> The Commission alleged I improperly relied on an objection of the Applicant regarding proposed evidence. At the time of the ruling, I informed the Commission that I had been “informed” by the Applicant’s objection, but my ruling on its evidence was primarily based on my earlier decisions in regard to the Commission’s scope of intervention. In its post-hearing brief, the Commission objects that my comment was not included in my Summary of the Pre-Hearing Conference. While this comment was not required to be in the Pre- Hearing Conference summary, this comment is in the record, as it is referenced in an April 16, 2021, email from me to the parties. Further, in relation to this objection, I granted the Commission’s motion to reconsider my ruling. Therefore, the Commission had a full opportunity to respond to the Applicant’s objection through this motion.

and Jennifer Hauhuth and Matthew Sanford (Commission). (Exs. APP- 3, 4, DEEP- 25, INT- 11,12; test. 5/6/21, Lawrence, D. tr. pp. 16-18, Galant, P. tr. pp. 18-46, Hoskins, D. tr. pp. 51-86, Hauhuth, J. tr. pp. 86 – 91, Sanford, M., tr. pp. 92-99.)

5. Written comments were submitted by groups such as Trout Unlimited and the Fairfield Harbor Management Commission.<sup>7</sup> The Applicant responded to these and other comments and questions received. Letters of support for the project were received from the Connecticut Department of Public Health and elected officials from Stamford and Darien. (Exs. DEEP – 3, 10, 11, 12, 17 to 21.)
6. The Applicant made a significant effort, with the assistance of DEEP staff, to share information and answer questions and concerns about its application, including the need for the diversion, alternatives considered, the system operation, and impacts of the requested diversion. Through the course of the public meetings and the hearing, the Applicant and DEEP answered many questions and heard numerous comments and followed up with extensive written replies, which were either direct responses or postings on the websites of the Applicant and the DEEP. (Exs. APP-1, 4, DEEP- 12, 13, 14.)
7. The record indicates that the DEEP recognized the concerns and questions presented by the public regarding a diversion of this scale. The DEEP's review of this application, in accord with the applicable statutes and regulations, includes assurance that the Applicant adequately addressed the issue of potential impacts to flows

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<sup>7</sup> The comments of the Harbor Management Commission are not binding recommendations. See *Cohen v. DEEP*, No. HHDLNDCV196124076S, 2021 WL 761794 at \*2 (Conn. Super. Ct. Jan.27, 2021) (Gen. Stat. §22a-133n does not provide a harbor management commission power to make binding recommendation on an individual permit.)

downstream of the diversion, water supply concerns, and continued monitoring of water use and consumption. (Exs. DEEP- 13, 25.)

### *C*

#### *Project Description*

8. Streamflow downstream of the reservoirs in the donor basin that supply the transfer will not change as a result of the transfer. Therefore, no evaluation of stream flows in Cricker Brook or the Mill River was necessary and there is no need to re-activate the Duck Farm gage to measure flow downstream with an additional gage.<sup>8</sup> (Ex. DEEP-12, test. 5/6/21, Hoskins, D. p. 61.)

### *D*

#### *Statutory and Regulatory Considerations*

9. The Applicant submitted a complete application to the DEEP. General Statutes §22a-369(a) and Regs., Conn. State Agencies §22a-377(c)-2(a)(1). (Ex. DEEP-1.) The Applicant provided all information requested by the DEEP. See, i.e., Regs., Conn. State Agencies §22a-377(c)-2(d)(1). (Ex. DEEP-7.)
10. The evidence in the record supports a determination that the application, and the regulated activity it describes, i.e., the requested diversion, comply with the all relevant statutes and regulations enumerated in the Joint Submission.
11. Notwithstanding this conclusion, notable aspects of compliance include:
  - a. The proposed diversion is needed to provide adequate water supply to the SWFCR while improving drought resiliency and allowing the Applicant to comply with the DEEP Streamflow Standards and Regulations. General

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<sup>8</sup> Notably, FairPLAN identified the Duck Farm gage as a “redundant” system, but no such redundant system is required by the applicable statutes or regulations. (FairPLAN Reply Brief p. 2)

Statutes §§22a-369 (1) and (2), §22a-373(b)(1) and (8). (Ex. DEEP 1, Attachment A, C, C4, D4 p. 1-5.)

- b. The Applicant provided a description of the existing water system and identified the location of the withdrawals. General Statutes §§22a-369 (3) and (4). (Ex. DEEP 1 Attachment A P.1-2, Attachment B, Attachment C, C4, C6, N-1, N-4, N-5).
- c. The Applicant appropriately identified the quantity, frequency and rate of water the applicant proposes to divert. General Statute § 22a-369 (5). (Ex. DEEP-1 Attachment A p. 1-3, Attachment C p. 1-6, Attachment C-4, Attachment C6, N-4, N-5, DEEP-7).
- d. The Applicant has provided information necessary to support its request for a 25-year permit term. The term sought by the Applicant is needed to meet the objectives of the diversion. There is no need for a term of less than 25 years. General Statutes §22a-369 (6), Regs., Conn. State Agencies §22a-377(c)-2(h)(1). (Test. 5/6/21, Hoskins, D., tr. p. 58.)
- e. The Applicant provided information pertaining to General Statute § 22a-369(7). The proposed diversion will not adversely impact the Applicant's ability to meet water supply needs, and will not significantly impact flows downstream of the sources supplying the SWRP, as well as water quality, wetland habitat, fisheries, and wildlife. General Statutes §22a-369 (7), Regs., Conn. State Agencies § 22a-373(b)(1), (2) and (6). (Exs. DEEP-1 Attachment C4, 7).
- f. The source system (GBS) has adequate supply with acceptable margins-of-safety ("MOS") and considering future reservoir releases in accordance with

the DEEP Stream Flow Standards and Regulations. General Statutes §22a-369 (7), Regs., Conn. State Agencies §22a-377(c)-2(a)(2), Conn. Gen Stat. §22a-373(b)(4). While the Commission asserted that the Applicant failed to meet this statutory requirement because there was not a stream flow of Cricker Brook or Mill River, the diversion will have no impact on water quantity or quality downstream of the Hemlocks Reservoir, including the downstream water bodies of Cricker Brook and the Mill River (the Mill River watershed). Flows to the downstream water bodies of Cricker Brook and the Mill River, which will not change as a result of the requested diversion, are subject to the DEEP Streamflow Standards and Regulations, a separate regulatory program. General Statutes §22a-369 (7), Regs., Conn. State Agencies §22a-377(c)-2(a)(2). (Ex. DEEP-12.)

- g. The Applicant underwent and submitted the appropriate information pertaining to its alternative analysis and outlined its immediate and long-range conservation measures. General Statute § 22a-369 (8) and (9). Regs., Conn. State Agencies §22a-377(c)-2(b). Its selection of the proposed diversion and dynamic conservation efforts was the most feasible and prudent option. General Statutes §22a-369 (8). (Exs. DEEP-1 Attachments A, Attachment C10, Attachment C4, H, DEEP-7, 9).
- h. The Applicant completed an Environmental Impact Report in satisfaction of General Statutes § 22a-369 (10). (Ex. DEEP-1 C4). The GBS provides public water supply to the diversion. An MOS analysis was performed for the GBS that accounted for the requested increase in the diversion and factored in the re-



activation of the Housatonic Wellfield. The MOS is expected to remain above the guideline; therefore, the donor basins will have adequate water supply to meet present and future public water supply needs.<sup>9</sup> General Statutes §22a-369 (10).

- i. The permit requires ongoing communication and annual reporting to the DEEP throughout its term. A leak detection program, which requires actions if leakages are detected, is also part of the permit. Condition #10 in the permit provides that the Commissioner retains the authority to restrict the authorized diversion if there is a local, state, or national drought, a need for an emergency restriction, or if the diversion has an adverse impact on water quality, fisheries resources, aquatic habitat or public health. (Ex. DEEP-16, test. 5/6/21, Hoskins, D., tr. pp. 67-68.)
- j. Since there will be no significant impact to the flow below the source water reservoirs, the hydrologic flow regime downstream will not change. Therefore, there will be no change in downstream water temperature as a result of the diversion. (Test. 5/6/21, Hoskins, D. tr. p. 59.).
- k. The draft permit (Condition #4) requires the Applicant to develop a strategy plan to avoid impacts to the *Rotala Ramosior*, commonly known as the Toothcup. General Statutes §26a-310. (Ex. DEEP-16.)
- l. The proposed diversion is consistent with the State's water quality standards. Regs., Conn. State Agencies §22a-377(c)-2(f)(1).

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<sup>9</sup>The Hemlocks Reservoir has a total storage capacity of 15.8 *billion* gallons. (Ex. DEEP-9.)

- m. The proposed diversion will not alter flooding or flood hazards and is consistent with the DEEP flood management standards and regulations. Regs., Conn. State Agencies §22a-377(c)-2(f)(3).
- n. The reactivation of the Housatonic Wellfield is included in the calculation of adequate water supply, but is not a required source of water for this permit. Therefore, the application did not require a separate MOS regarding the Housatonic Wellfield.

**III**  
**THE FAIRFIELD CONSERVATION COMMISSION**  
**RIGHT AND RESPONSIBILITIES**

**A**  
**Right to Fair Hearing**

The Commission alleges that rulings on discovery and evidence deprived it of its right to a fair administrative hearing. The Commission fails to demonstrate how these rulings were either inconsistent with the scope of its intervention under General Statutes §22a-19 or why these rulings were otherwise in error. Nevertheless, this concern will be addressed, as “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances; due process is flexible and calls for such procedural protections as the particular situation demands.” *Matthews v. Eldridge*, 424 US 319 (1975).

The Commission’s status as an intervening party under §22a-19 limited the scope of its intervention to its allegations of unreasonable environmental impacts to air water and other natural resources of the state from the proposed activity. CGS §22a-19(a)(1). See *Rocque v. Northeast Utilities Service Co.*, 254 Conn. 78 (2000) (intervention under CGS §22a-19 strictly limited to the

raising of environmental issues); see also *Pond View, LLC v. Planning & Zoning Commission*, 288 Conn. 143 (2008) (standing under §22a-19 permitted where conduct at issue in application would cause harm to environment). The Commission, which had opportunities to object to this limitation and did so when rulings were made denying the admission of certain evidence or a request for the production of documents that went beyond the scope of this intervention, was bound by those rulings. See Regs., Conn. State Agencies §22a-3a-6(k)(8). The Commission has not articulated any legal argument as to why these rulings were erroneous or a denial of its due process.

**B**  
***Obligation to Satisfy Burden of Proof***

As required by General Statutes §22a-19, the intervening parties asserted “the proposed increased diversion is reasonably likely to have the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state, and more specifically that of Mill River and Cricker Brook. The Commission has the *affirmative* burden to prove these allegations of environmental harm it asserted to gain party status under General Statutes §22a-19. It must show that the unreasonable environmental impacts it alleges will or are reasonably likely to occur if this diversion is approved. An intervening party “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 [or impairment] has, or is about to occur. He must prove that the pollution complained of is unreasonable and unavoidable.” (Internal citations omitted.) *Id.*, 551. The intervening parties have not met their burden to show that the approval of this permit is reasonably

likely to result in unreasonable pollution, impairment or destruction of natural resources as required by General Statutes §22a-19.

The Commission does not offer any legal argument or evidence that the diversion will result in harm because it does not comply with the governing statutes and regulations. “When... the legislature has enacted an environmental legislative and regulatory scheme specifically designed to govern the particular conduct that is the target of the action, that scheme gives substantive content to the meaning of the word “unreasonable” as used in the context of an independent action under CEPA. Put another way, when there is an environmental legislative and regulatory scheme in place that specifically governs the conduct that the plaintiff claims constitutes [sic] an unreasonable impairment under CEPA, whether the conduct is unreasonable under CEPA will depend on whether it complies with that scheme. *City of Waterbury v. Town of Washington*, 260 Conn. 506, 557 (2002); see *Friends of Animals, Inc. v. United Illuminating Co.*, 124 Conn. App. 823,851 (2010) (quoting *Waterbury*.)

The evidence offered by the Commission does not adequately support its argument regarding the reasonable likelihood of unreasonable harm. Many arguments are merely assertions and speculation without evidentiary support and, despite having the opportunity and being advised in pre-hearing memoranda to do so<sup>10</sup>, the Commission did not provide any independent evidence or reports in support of any of its claims. “Evidence of general environmental impacts, mere speculation or general concerns do not qualify as substantial evidence. *River Bend Associates v. Conservation & Inland Wetlands Commission*, 269 Conn. 57, 71 (2004). See also *Estate of Casimir Machowski v Inland Wetlands Commission*, 137 Conn. App. 830, 836 (2012). The closest

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<sup>10</sup> See, i.e., *Pre-Hearing Conference Summary*, J. Deshais, April 19, 2021 (Parties reminded that hrg officer decision must be based on substantial and empirical evidence. Speculation, expressions of concern, or mere identification of possible harm without substantiation is not sufficient.)

the Commission came to presenting evidence of a potential for unreasonable harm were the assertions made by its expert Mr. Sanford in his pre-filed testimony. On direct examination, however, Mr. Sanford did not attempt to present evidence, such as a report or data, to support his claims.<sup>11</sup> When questioned on cross examination as to whether there was any evidence in the record that indicated unreasonable impairment of either Cricker Brook or the Mill River as a result of the application, Mr. Sanford said there was nothing in the record and that he had none. While it is true that a prima facie case under §22a-19 can be provided by the testimony of witnesses, *Fromer v. Inland Wetlands and Watercourse Commission*, 1996 WL 367735, \*3 (Conn. Sup.Ct. June 10, 1996), the witnesses for the Commission did not provide direct testimony or responses to cross examination that could be relied on as empirical evidence of unreasonable pollution, impairment or destruction of natural resources.

### *C*

#### *Obligation to Provide Evidence to Support Claims*

In addition to the claims raised by the Commission that did not support its burden of proof under §22a-19, some go beyond the scope of this intervention, including its claim that the application was incomplete. The Commission alleges that the application submitted to the DEEP was incomplete because it had missing information. Beyond its assertion that the alleged missing information makes it “impossible to judge the merits of the application.”<sup>12</sup> The Commission does not identify or make a legal argument as to how any alleged missing information would lead to any unreasonable environmental impacts from the requested diversion.

“An agency has the authority to determine when an application is complete, that is, has all the information required by application statute or regulations.” *Comm. On Hospitals and Health*

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<sup>11</sup> The Commission and this expert could have presented reports, data, and other materials to support their claims.

<sup>12</sup> It is not clear if the Commission is alleging that the DEEP could not judge the merits or if the Commission, as an intervening party, could not make this decision.

*Care v. Stamford*, 208 Conn. 663, 668-69 (1988). Agencies, in general, are given broad discretion to exercise their regulatory authority. *Id.* at 673. In Connecticut, the legislature has extended this wide discretion to the DEEP to enforce environmental laws. *Cadlerock Properties Joint Venture, L.P. v. Comm'r of Env't Prot.*, 253 Conn. 661, 670, (2000). The evidentiary record demonstrates that the Applicant provided the required information for the DEEP to determine the application was complete and that the DEEP was able to conduct its review of that application under the statutory and regulatory schemes set out in the Joint Submission and as noted above.

The Commission bases some of its argument to deny this permit on an incomplete statement about the provisions of the regulations governing this application.<sup>13</sup> Others would require the DEEP to expand its authority beyond that granted by the legislature. The DEEP cannot act in matters where its authority complements that of other state agencies.<sup>14</sup> Finally, many of the Commission's concerns about the impact of the diversion are based on speculation or unproven allegations, which do not qualify as substantial evidence. See *Estate of Casimir Machowski v. Inland Wetlands Commission*, 137 Conn. App. 830, 836 (2012) (speculation or generalized concerns not substantial evidence); *N&L Associates v. Planning and Zoning Commission of Torrington*, 2005 Conn. Super. LEXIS 1511 (Conn. Super. Ct. June 8, 2005).

#### *IV* **EIGHT ISSUES OF CONCERN**

The following issues were consistently raised in public concerns and comments; some were brought up by the intervening parties. As advised, the parties addressed these issues in their post-

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<sup>13</sup> The Intervening parties asserted that the application was incomplete under Regulations of Connecticut State Agencies §22a-377(c)-2(a)(2) in relation to stream flows, yet failed to note that the language of the regulation states "where applicable." Neither the DEEP nor I can ignore the plain language of the regulation and this abridged description of the regulations do not justify a reversal of the tentative determination to approve this application.

<sup>14</sup> For example, it is not the role of DEEP to conduct a secondary review of an approved water supply plan.

hearing filings. In addition to the conclusions regarding these issues set out in the Joint Submission, which I have adopted, my findings on these issues are as follows.

### **1. Margin of Safety Analysis and Its Influence on Water Supply Assessment**

An MOS analysis was part of the application to define the need for water in the SWFCR and to show that the GBS has an adequate water supply.<sup>15</sup> The MOS supports the need for the diversion and demonstrated that the GBS has adequate supply over the term of the permit.

### **2. Compliance with and Relevance of Streamflow Standards and Regulations**

The evidence in the record shows that the releases from the Hemlocks Reservoir will continue to comply with the DEEP Streamflow Standards and Regulations and will be consistent with the updated Standards and Regulations that supersede the existing regulations in 2029.

### **3. Reactivation of “Duck Farm” Gage**

The reactivation of the gage will not be needed to measure the potential impacts of the diversion. As shown by the substantial evidence in the record and as discussed herein, there will be no downstream impact, including to Cricker Brook and to the Mill River. The Applicant’s compliance with streamflow release requirements (i.e., any impacts on flow in Cricker Brook and the Mill River independent of this diversion) are best monitored at the point of release, which is already being performed.

### **4. Use of DOT Data Regarding Population Growth**

The water demand projections in the Applicant’s 2018 Water Supply Plan are based in part on population projections prepared by the Connecticut Department of Transportation (“DOT”). The demand and use projections of this Plan were used to determine the need for the amount of

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<sup>15</sup>An MOS is the unitless ratio of water available to demand. An MOS of >1.0 means there is more supply than demand; <1.0 means less supply than demand. The Connecticut Department of Health recommends that water supply systems maintain an MOS of at least 1.15 (15%).

the requested division (GBS Water Supply Plan). The Connecticut Department of Public Health (DPH) is the agency that must approve the Applicant's water supply planning population and demand projections. The DPH reviewed and approved of the Applicant's analysis that used the DOT data in its 2018 Water Supply plan.

#### **5. Definition, Use, and Impacts of "Instream Flow Data" or "River Flow Assessment"**

Instream flow studies assess the amount and timing of water flow and the relationship between that flow and habitat, recreation and /or water quality and are used to recommend flow regimes in certain bodies of water.<sup>16</sup> Because the proposed diversion will not impact water flow in Cricker Brook or the Mill River, instream flow studies of these streams were not required.

#### **6. Impacts on River Temperatures**

This diversion will not impact downstream river temperatures. The location of the "real time" temperature gauge requested by Trout Unlimited is upstream of Cricker Brook and would not be impacted by the diversion, which is expected not to have any impact on the Mill River watershed. Downstream dams and pond on the Cricker Brook and Mill River would also moderate changes in river temperatures.

#### **7. Re-activation of Wells for Water Supply and Manganese**

The projection of water supply for this diversion includes the re-activation of the Housatonic Wellfield, as required by the permit. There is evidence in the record that supports this re-activation, but, in the event the Wellfield cannot be returned to service, the MOS of the GBS would be reduced but remain at or near the projected 1.15 for the duration of the permit. The ongoing reporting and monitoring requirements, DEEP oversight and the ability of the DEEP to restrict the diversion set out in the draft permit would remain in place.

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<sup>16</sup> See, for an example, Farmington River Instream Flow Study, [www.farmingtonriver.org](http://www.farmingtonriver.org), (June, 1992).



Recent sampling of the Wellfield indicated manganese<sup>17</sup> concentrations below the standard that can cause water discoloration. The Department of Public Health must approve the Applicant's plans to re-activate the Wellfield, and is responsible for ensuring that water quality for sources such as the Wellfield continue to meet applicable drinking water standards.

**8. Need for Hydrological Studies or Assessment of "Ecological Data"**

No hydrologic studies or assessment were necessary because the proposed diversion will not impact downstream hydrology or ecology.

V

***CONCLUSIONS OF LAW:***

***THE APPLICATION AND THE DRAFT PERMIT COMPLY WITH THE WATER DIVERSION POLICY ACT AND ITS IMPLEMENTING REGULATIONS***

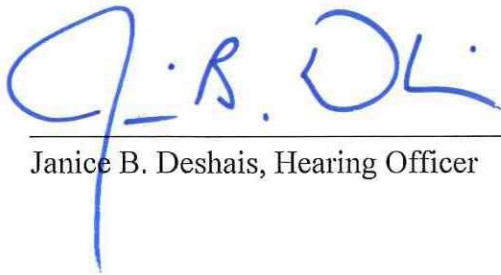
The substantial evidence in the record demonstrates that the application complies with the requirements of the Water Diversion Policy Act and its implementing regulations. General Statutes §§ 22a-365 to 22a-378, Regs., Conn State Agencies §§22a-377(c) and (b). I adopt and supplement the proposed conclusions of law set out in the Joint Submission. The proposed diversion is needed to provide adequate water supply to the SWFCR and to improve drought resiliency while allowing for flow releases to comply with the DEEP Streamflow Standards and Regulations. §22a-369 (1) and (2). The diversion will also have no adverse impacts, §22a-369(7), including any impact on the Applicant's compliance with the DEEP Streamflow Standards and Regulations. Regs., Conn. State Agencies §22a-377(c)-2(a)(2). The 25-year permit term, during which oversight of the DEEP will continue, is consistent with the Applicant's demand and use projections and needed to support long-term water planning efforts by the Applicant.

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<sup>17</sup> Reference to magnesium in the May 12, 2021 Post-Hearing Directive was made in error.

**VI  
CONCLUSION AND RECOMMENDATION**

If conducted as proposed and in accordance with the terms and conditions of the draft permit, this regulated activity will be consistent with all relevant statutes and regulations. I recommend that the Commissioner finalize and issue the requested permit as soon as possible so this project may proceed.

A handwritten signature in blue ink, appearing to read "J.B. Deshais", is written above a horizontal line. The signature is stylized and cursive.

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Janice B. Deshais, Hearing Officer

**ATTACHMENT I**

**STATE OF CONNECTICUT DEPARTMENT OF ENERGY & ENVIRONMENTAL  
PROTECTION OFFICE OF ADJUDICATIONS**

**IN THE MATTER OF** : **APPLICATION NO.**  
: **202004971-DIVC**  
:  
:  
**AQUARION WATER COMPANY** :  
:  
**OF CONNECTICUT** : **JULY 2, 2021**  
**JOINT POST HEARING SUBMITTAL PROPOSED FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW AND RESPONSES TO EIGHT TOPICS IN HEARING**  
**OFFICER'S POST HEARING DIRECTIVE**

**INTRODUCTION**

Pursuant to the Hearing Officer's May 12, 2021 Post Hearing Notice and Directive, Aquarion Water Company of Connecticut ("Aquarion" or "Applicant") and the Connecticut Department of Energy and Environmental Protection ("DEEP") hereby submit the following Joint Proposed Findings of Fact, Conclusions of Law and Responses to Eight Topics in the Hearing Officer's Post Hearing Directive.

Aquarion filed an application on March 23, 2020 with DEEP to modify its existing water diversion permit (Permit No. DIV 97-13) regarding its Southwest Regional Pipeline ("SWRP"), under Section 22a-365 *et seq.* of the Connecticut General Statutes ("Conn. Gen. Stat."). After a technical review of the application, DEEP issued a notice of tentative determination to approve Aquarion's application and a notice of the scheduling of an informational hearing, both published on December 8, 2020, and a draft Water Diversion Permit No. DIVC-202004971 (modifying Permit No. DIV-97-13) (the "Draft Permit"). (Exhibits ("Exs.") DEEP-14; DEEP-16).

Throughout the application process, Aquarion, with DEEP's participation, conducted various public outreach efforts. Aquarion published notice of the application in newspapers distributed in the Greater Bridgeport System ("GBS") and the Southwest Fairfield County Region ("SWFCR") (Ex. DEEP-1), held a voluntary public informational meeting on August 24, 2020, where Aquarion solicited public comments and questions and presented details of the application, and held one-on-one meetings with stakeholders (Exs. APP-1; APP-4). Aquarion accepted comments and questions from the public verbally at the August 24, 2020 meeting and subsequently in writing, and provided the public and DEEP with one hundred and nineteen responses to the comments received from individuals and organizations on a variety of issues. (Ex. DEEP-12). As noticed in DEEP's Notice of Tentative Determination, DEEP held a public informational hearing on January 6, 2021 (Exs. DEEP 14, APP-2). DEEP's Office of Adjudications conducted a site visit on April 22, 2021, a hearing for public comment on May 4, 2021, and an evidentiary hearing on May 6, 2021.

Aquarion and DEEP respectfully request that the Hearing Officer approve the Draft Permit as proposed by DEEP's Water Planning and Management Division for issuance by the Commissioner of DEEP pursuant to Conn. Gen. Stat. §22a-368.

### **PROPOSED FINDINGS OF FACT**

Taking into consideration and giving due regard to all of the substantial evidence in the record, Applicant and DEEP stipulate to the following findings of fact:

#### **I. Project Background**

1. Applicant owns and operates the Greenwich, Stamford, Darien and New Canaan public water systems in southwest Fairfield County, which have traditionally been grouped together for water supply planning as the Southwest Fairfield County Region ("SWFCR"). (Exs.

APP-1, APP-2, APP-3, APP-4; DEEP-1; DEEP-13). Water supply to the SWFCR comes from reservoir systems in Greenwich and Stamford, wells in Darien and Stamford, and the SWRP. (Exs. DEEP-1; DEEP-7; APP-1; APP-2; APP-4). The SWRP has been in service since the 1990s and currently has a permitted maximum daily capacity of 7.26 million gallons per day (“MGD”) (Permit No. DIV 97-13). (Exs. DEEP-1; DEEP-13; APP-1; APP-2; APP-3; APP-4).

2. Aquarion applied to modify Permit No. DIV-97-13 under Conn. Gen. Stat. § 22a-368 to divert waters from the GBS to the SWCFR and to increase the authorized maximum daily transfer from Applicant’s GBS to the SWFCR from 7.26 MGD to 14.2 MGD, which, in the Draft Permit, will be further limited to an annual daily average capacity of 12.56 MGD. (Exs. DEEP-1; DEEP-7; DEEP-9; DEEP-13; APP-3; APP-4). The purpose of the requested increase is to provide adequate public water supply to the SWFCR while improving drought resiliency and allowing Aquarion to fully meet the release requirements of DEEP’s Stream Flow Standards and Regulations. (R.C.S.A. §§ 26-141b-1 to -8; Exs. DEEP-1; DEEP-7; DEEP-9; DEEP-12; DEEP-13; DEEP-16; APP-1; APP-2; APP-3; APP-4).<sup>1</sup>

3. The requested diversion will enable Aquarion to make instream flow releases from dams in the Greenwich and Stamford Systems (the receiving systems) in compliance with DEEP’s Stream Flow Standards and Regulations while maintaining adequate water supply for the region. (Exs. DEEP-1; DEEP-7; DEEP-9; DEEP-12; DEEP-16; APP-1; APP-2; APP-3; APP-4). The requested diversion will not impact Aquarion’s ability to make instream flow releases from dams in the GBS (donor system). (Exs. DEEP-1, Attachments A, C8, N4; DEEP-7; DEEP-9; DEEP-12; DEEP-16; APP-1; APP-2; APP-3; APP-4). Additional supply is needed in the

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<sup>1</sup> The application (Ex. DEEP-1) along with Aquarion’s subsequent responses to DEEP’s requests for additional information (Exs. DEEP-7; DEEP-9) are herein referred to, collectively, as the “Application”).

SWFCR to provide an adequate margin-of-safety (“MOS”) between supply and demand, as required by the Connecticut Department of Public Health (“DPH”), and to reduce the risk of drought emergency. (Exs. DEEP-1, Attachments A, C6; DEEP-7; DEEP-9; DEEP-12; APP-1; APP-2; APP-3; APP-4).

4. Aquarion has a phased plan for improvements to increase the physical capacity of the SWRP over the 25-year permit term. (Exs. DEEP-1, Attachments A, C6, DEEP-7; DEEP-9; DEEP-12; APP-1; APP-2; APP-3; APP-4).

## **II. Procedural History**

5. On March 20, 2020, Aquarion’s submitted its application to modify Permit No. DIV-97-13 under Conn. Gen. Stat. § 22a-365, *et seq.* to divert waters from the GBS to the SWFCR. (Ex. DEEP-1).

6. Legal notice of the application was published on March 20, 2020, in the Connecticut Post, Greenwich Time, The Danbury News-Times, and The Stamford Advocate. (Ex. DEEP-1).

7. Notice of the application was sent to the First Selectmen in Darien, Easton, Fairfield, Greenwich, New Canaan, Redding, Stamford, Weston and Westport pursuant to Conn. Gen. Stat. § 22a-6g. (Exs. DEEP-1, Attachment AA; DEEP-12, Q. 34).

8. During the technical review of the Application, DEEP’s Fisheries Division concluded that it had no resource concerns with the proposed diversion. (Ex. DEEP-4; Testimony of D. Hoskins, May 6, 2021 Hearing Transcript, p. 57, lns. 7 - 18).

9. DEEP’s Watershed Program submitted comments on the Application that were subsequently addressed to DEEP’s satisfaction. . (Exs. DEEP-5; DEEP-6; DEEP-8; DEEP-13;

APP- 7; APP-9; Testimony of D. Hoskins, May 6, 2021 Hearing Transcript, pp. 54, ln. 10 - 57, ln. 6).

10. DEEP issued its initial request for information on June 8, 2020 (Ex. DEEP-6) to Aquarion regarding its application submittal. Aquarion responded on July 31, 2020 with additional information addressing eleven items requested by DEEP including responses to question and comments regarding the environmental impact report, description of the diversion, need for the diversion, alternatives assessment, impact on the Greater Bridgeport System and the Natural Diversity Data Base (“NDDDB”) review (Ex. DEEP-7).

11. While DEEP was conducting its review of the application, Aquarion voluntarily held meetings with interested stakeholders to explain the application and, on August 24, 2020, held a public information meeting facilitated by DEEP which solicited public comments and questions regarding the proposed diversion modification. (Exs. APP-1; APP-4). Notice of this public meeting was provided on DEEP’s website and in the same newspapers as the notice of Application. (Ex. DEEP-12, Q.34). During this public information meeting, Aquarion presented details of the Application including a description of system operations, the need for and a description of the proposed diversion modification, alternatives considered, and impacts to the GBS. (Ex. APP-1).

12. Aquarion accepted comments and questions from the public verbally at the public input meeting and in writing subsequent to the meeting. In response to comments received from individuals and organizations on a variety of issues, Aquarion prepared one hundred and nineteen comment responses which were submitted to DEEP. (Exs. DEEP-12, DEEP-13).

13. Following the public information meeting, on September 15, 2020, DEEP issued a further request for information, asking for additional information regarding the environmental

impact report, need for diversion, alternatives assessment, the impacts on the GBS, and annual average water need. (Ex. DEEP-8). Aquarion responded to this request on October 15, 2020. (Ex. DEEP-9).

14. Following the technical review of the Application and supplementary material, on December 8, 2020, DEEP issued a Notice of Tentative Determination to Approve the Application and issue a diversion permit, which included an extended forty-five-day comment period (Ex. DEEP-14), as well as the Draft Permit. (Ex. DEEP-16). Pursuant to Conn. Gen Stat. §22a-371(d), DEEP's Notice of Tentative Determination was also sent directly to the Chief Executive Officers of Bridgeport, Darien, Easton, Fairfield, Greenwich, New Canaan, Norwalk, Redding, Stamford, Weston and Westport. (Ex. DEEP-15).

15. During the public comment period on the Notice of Tentative Determination and following the January 6, 2021 Public Informational Hearing, DEEP received written comment letters from the Fairfield Harbor Management Commission (Ex. DEEP-17), the Rivers Alliance (Ex. DEEP-18), the Southwest Conservation District (Ex. DEEP-19) and Trout Unlimited (Ex. DEEP-20). Aquarion provided DEEP written responses to those comments in a letter dated March 24, 2021. (Ex. DEEP-21). Moreover, letters of support were received from the Mayor of the City of Stamford and the First Selectman of the Town of Darien. (Exs. DEEP-10; DEEP-11),

16. On March 31, 2021, the DPH submitted comments in support of the Application. (Ex. DEEP-3).

17. On April 22, 2021, a site visit was conducted with the Hearing Officer, Applicant, DEEP, and members of the public, including representatives of the Intervening Parties<sup>2</sup>. Maps of

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<sup>2</sup> "Intervening Parties" collectively refer to: Fairfield Conservation Commission (the "Commission"), Fairfielders Protecting Land and Neighborhoods ("FairPLAN"), Lake Hills Association, Inc. ("LHA"), and Mill River Wetland Committee, Inc. ("MRWC"). Each of the



the route and stops were entered into evidence (Exs. APP-5; APP-6, May 6, 2021 Hearing Transcript pp. 12, ln. 10 – 13, ln. 18).

18. Consistent with the notice of public informational hearing (Ex. DEEP-13), the public comment portion of the hearing on the Application took place virtually over Zoom on May 4, 2021 for the purpose of collecting public comment on the record (with a comment period open through May 15, 2021<sup>3</sup>). (See May 12, 2021 Hearing Officer's Post Hearing Notice and Directive). At the public informational hearing, the public was afforded the opportunity by the Hearing Office to subsequently provide sworn testimony. No sworn testimony was received. (See May 4, 2021, Hearing Transcript).

19. The majority of concerns raised by commenters who spoke at the May 4, 2021 public information hearing and provided subsequent written comments relate to issues raised in prior public comments and addressed in Aquarion's one hundred and nineteen responses to the same. (See May 4, 2021, Hearing Transcript; Ex. DEEP-12). For example, commenters raised unsupported concerns regarding the reactivation of the Housatonic Wellfield (See May 14, 2021 Comment of Shawn O'Sullivan; *but see* Ex. DEEP-12 p. 16), the necessity of the proposed diversion and permit term (See May 14, 2021 Comments of Nancy Jones, Ginny Romano and Joshua Katz; *but see* DEEP-1 Attachments A, pp. 1-2, C, Items 6-13, C4, D4, pp. 1-5; DEEP-7; APP-4), potential impacts to waters from the proposed diversion (See May 14, 2021, Comments

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Intervening Parties was granted intervening party status under and subject to Conn. Gen. Stat. § 22a-19 of the Connecticut Environmental Protection Act ("CEPA"), limited in scope to allegations of unreasonable environmental impacts to air water and other natural resources of the state from the proposed conduct. (April 12, 2021 Hearing Officer's Ruling on Intervention Requests of FairPLAN, LHA and MRWC; *see* March 5, 2021, Hearing Officer's Ruling on Fairfield Conservation Commission Intervention).

<sup>3</sup> An extension was granted for the Fairfield Harbor Management Commission until May 21, 2021 to submit its comments.

of David Joyce; *but see* Ex. DEEP-12, Q.3, Q. 35) and the re-activation of the Duck Farm gage (See May 14, 2021, Comments of David Joyce; *but see* Exs. DEEP-1; DEEP-7; DEEP-9; DEEP-12, Q.2).

20. On May 6, 2021, the hearing for the collection of evidence was held virtually via Zoom beginning at 9:00 AM. (May 6, 2021, Hearing Transcript, p 4, ln.1). At the hearing, pre-filed testimony from Peter Galant (Tighe & Bond) and Daniel Lawrence (Aqurion) was adopted on behalf of Applicant (Exs. APP-4; APP-5; May 6, 2021, Hearing Transcript, pp. 16, ln. 4-21, ln.1) and pre-filed testimony from Douglas Hoskins on behalf of DEEP was likewise adopted (Ex. DEEP-25; May 6, 2021, Hearing Transcript, pp. 51, ln. 21-68, ln.20). Those portions of pre-filed testimony of Jennifer Hauhuth and Matthew Sanford that were within the scope of the intervention under Conn. Gen. Stat. § 22a-19, were adopted on behalf of intervenor, the Commission. (Exs. CMSN-10; CMSN-12; May 6, 2021, Hearing Transcript, pp. 86, ln. 22-98, ln. 25).<sup>4</sup>

21. The hearing record closed on June 1, 2021. (May 12, 2021, Hearing Officer Post-Hearing Notice and Directive).

### **III. Parties**

22. The parties to this proceeding are the Applicant, DEEP Bureau of Water Planning and Land Reuse, Water Planning and Management Division, and the Intervening Parties (the Commission, FairPLAN, MRWC and LHA).

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<sup>4</sup> See March 5, 2021, Hearing Officer's Ruling on Fairfield Conservation Commission Intervention); April 12, 2021 Hearing Officer's Ruling on Intervention Requests of FairPLAN, LHA and MRWC; April 19, 2021 Hearing Officer's Pre-Hearing Conference Summary; April 29, 2021 Hearing Officer Reconsideration Fairfield Conservation Commission Pre-Hearing Information.

#### IV. Project Description

23. Aquarion seeks to renew and modify Permit No. DIV 97-13, to provide water to the SWFCR through the SWRP and to increase its maximum authorized daily rate from 7.26 MGD to 14.2 MGD. (Exs. DEEP-1, Attachments A, C4, C6; DEEP-7; DEEP-9; DEEP-13; APP-3; APP-4).

24. Aquarion owns and operates the Greenwich, Stamford, Darien (a/k/a Noroton) and New Canaan public water systems. Because of the interconnectivity of these systems, Aquarion has traditionally performed water supply planning for them together as the SWFCR. Water supply to the SWFCR comes from reservoir systems in Greenwich and Stamford, the Wire Mill and Rewak wells in Stamford and Darien, respectively, and the SWRP, which provides needed supplemental supply from the GBS. (Ex. DEEP-1, Attachments A, C6, C8).

25. The GBS is supplied by the Trap Falls, Easton and Hemlocks reservoir systems and the Canal Street and Coleytown Wellfields. (Ex. DEEP-1, Attachment C6). The SWRP is supplied through the Greater Bridgeport distribution System. (Ex. DEEP-1, Attachments C6, N-1). The point of transfer between service areas is the boundary between the Town of Wilton and the Town of New Canaan. (Ex. DEEP-1, Attachment C6).

26. The SWRP has been in service since the 1990s and Permit No. DIV-97-13 was issued in 2003 and expires on June 20, 2023. (Ex. DEEP-1, Attachments A, C8). This existing permit authorizes the transfer of up to 7.26 MGD from the GBS to the four systems in the SWFCR. (Ex. DEEP-1, Attachment C8). The transfer is metered at the entry points to the New Canaan (Little Brook Pump Station), Darien (Talmadge Hill Pump Station and Leeds Lane Regulator), and Stamford (Regional Meter) Systems. Transfers to Greenwich are transferred through the Stamford distribution system. (Ex. DEEP-1, Attachment C8).

27. When the Water Diversion regulations became effective in 1982, the SWRP had not been constructed and the four water systems in the SWFCR were owned by separate companies (Greenwich and Darien were owned together). (Ex. DEEP-1; DEEP-9; DEEP-13). Each public water system was therefore considered a separate distribution system and transfers between the systems were individually registered. (Ex. DEEP-1, Attachments A, C6, N-1). Because of the interconnectivity of the water systems in these four towns, and their joint dependence on the SWRP, Aquarion's Water Supply Plan, Drought Response Plan and Conservation Plans consider them as a single region. (Ex. DEEP-1).

28. Permit No. DIV 97-13 authorized transfer of water from the GBS to the New Canaan, Stamford, Greenwich and Darien Systems. Under Permit No. DIV 97-13, the SWFCR is therefore a "service area" as defined in the Water Diversion regulations (R.C.S.A. § 22a-377(b)-1(a)(18)). (Ex. DEEP-1). As a result, Aquarion requested as a part of the subject permit modification that DEEP define the four towns within the SWFCR as one "service area". (Exs. DEEP-1, Attachments A, C6; DEEP-12, p.5, Q.5; DEEP-13; DEEP-25).

29. Transfers of water through the interconnection will continue to be metered at the entry points to the New Canaan, Darien, and Stamford systems, and adjusted for direct residential connections, as described in Permit No. DIV 97-13. (Exs. DEEP-1; DEEP-27).

30. The GBS also has interconnections to provide water to Aquarion's Newtown (Permit No. DIVC-201711069) and Ridgefield (Permit No. DIVC-201709173) Systems. (Ex. DEEP-1, Attachment N-4).

31. The Application did not propose changes to withdrawal structures or source waters and withdrawals from all sources will remain below their authorized rates. (Ex. DEEP-1).

32. Stream flow downstream of the reservoirs in the donor basin that supply the transfer are controlled by Aquarion's state regulated releases and will not change as a result of the transfer, except as will be required to comply with updated standards in DEEP's Stream Flow Regulations that become effective in 2029.<sup>5</sup> (Ex. DEEP-1 Attachments A, C4). Releases from the Hemlocks Reservoir will continue to comply with DEEP's current Minimum Stream Flow Standards. (Ex. DEEP-12, Q. 38). Once the release requirements from DEEP's updated Stream Flow Standards and Regulations supersede the existing regulations in 2029, releases from the Hemlocks Reservoir will meet the standards to be mandated by regulations in 2029. (Ex. DEEP-12, Q. 38).

33. The requested diversion will utilize existing withdrawal structures and will neither require construction of additional infrastructure nor disturbance of natural resources. (Ex. DEEP-1, Attachment C4). Aquarion's phased improvement plan for increasing the SWRP to meet the requested additional authorization of approximately 7 MGD includes future construction of water mains and a pump station on the existing Hemlocks Water Treatment Plant site. (Exs. DEEP-1, Attachment C4; APP-1; APP-2).

## V. Site Description

34. As shown on the Site Location Map, the SWRP Interconnection has a street address of Route 106 (New Canaan Road) at the Wilton/New Canaan town boundary, with a latitude and longitude of the approximately 41.156956°, -73.449655°. (Ex. DEEP-1, p. 4 and

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<sup>5</sup> Although the Stream Flow Standards and Regulations promulgated in sections 26-141b-1 to 26-141b-8, inclusive of the Regulations of Connecticut State Agencies, were effective as of December 12, 2011, certain portions were drafted with delayed effective dates to allow for (1) the stream classification process to occur and (2) any necessary modifications to the dam outlet structures to enable the releases to be made. As a result, the outdated (old) Minimum Streamflow Standards in sections 26-141a-1 to 26-141a-8 R.C.S.A. remain in effect until the new standards become fully effective for the subject basin in 2029. Any reference to old and new standards or regulations reflects this transition period.

Attachment B). The primary source of supply to the SWRP is the Hemlocks Reservoir System consisting of the Saugatuck, Aspetuck and Hemlock Reservoirs. (Ex. DEEP-1, Attachments A, N-1, N-2). The reservoirs are in the following subregional basins of the Southwest Coast major basin: Saugatuck River (7200); Aspetuck River (7202); and Cricker Brook (7107). (Ex. DEEP-1, Attachments A, N-1, N-2). The Greenwich and Stamford Reservoir Systems are the “receiving systems” and the GBS is the “donor system”. (Ex. DEEP-1, Attachments A, C).

#### **VI. The Applicant**

35. The Applicant is Aquarion Water Company of Connecticut with a mailing address of 600 Lindley Street, Bridgeport, Connecticut 06606. (Ex. DEEP-1).

#### **VII. The Application**

36. The Application has been submitted on the prescribed forms and consists of a completed application form entitled “Permit Application for Diversion of Water for Consumptive Use” (DEP-WPMD-APP-100) (the “Application Form”) as supplemented by Attachments AA through N-5 (but excluding those attachments that are not required for this diversion application). (Exs. DEEP-1). These Attachments consist of those required by Part VI of the Application Form, including: Attachment AA: A copy of the published notice of the Application, Attachment A: Executive Summary, Attachment B: United States Geological Survey (“USGS”) Topographic Quadrangle Map, Attachment C: Documentation form for Consumptive Water Diversion Permits, Attachment H: Alternatives Assessment, Attachment I: Applicant Compliance Information Form, Attachment J: Applicant Background Information Form, Attachment N: Other information including N-1: SWRP Schematics, N-2, Sources of Supply, N-3, SWRP Improvement Plan, N-4 GBS Adequacy of Supply, N-5, NDDB Review. (Ex. DEEP-1). The Application is further supplemented by the Applicant’s July 31, 2020 and

October 15, 2020 responses to DEEP's requests for additional information (Exs. DEEP-7, DEEP-9), and Aquarion's responses to public comments (Exs. DEEP-12; DEEP-21).

### **VIII. Statutory and Regulatory Background**

37. Conn. Gen. Stat. § 22a-369 and its implementing regulations, R.C.S.A. § 22a-377(c)-2, provide that a complete water diversion permit application must include the following information on forms prescribed by the DEEP Commissioner:

#### **Conn. Gen. Stat. § 22a-369(1) and (2) - - Reasons and Need for the Diversion**

38. Aquarion seeks continued authorization to divert waters from the GBS to the SWCFR through the SWRP and to increase its authorized maximum daily transfer capacity from 7.26 MGD to 14.2 MGD. (Exs. DEEP-1, APP-3, APP-4).

39. The requested diversion will be used to provide adequate water supply to the SWFCR while improving drought resiliency and allowing Aquarion to fully meet the release requirements of DEEP's Stream Flow Standards and Regulations. (Exs. DEEP-1, Attachment A, Attachment C, Attachment C-4; DEEP-7; APP-4).

40. The requested maximum daily transfer of 14.2 MGD is necessary in order to provide adequate public water supply to the SWFCR, including to meet current demand and projected growth, as defined by MOS, as well as to improve drought resilience and to meet reservoir release requirements under DEEP's Stream Flow Standards and Regulations. (Ex. DEEP-1, Attachments A, C, Item 8, C-8; DEEP-7; APP-1; APP-2; APP-3; APP-4).

41. Water supply to the SWFCR comes from reservoir systems in Greenwich and Stamford, the Wire Mill and Rewak wells in Stamford and Darien, respectively, and SWRP. To meet projected water demands over the requested 25-year duration of the water diversion permit, Aquarion is requesting an approximate 7 MGD increase in maximum daily transfer rate to 14.2 MGD. This considers the reduction in available water resulting from implementation of the

reservoir release requirements of DEEP's Stream Flow Standards and Regulations, which are required to begin prior to March 2029. (Ex. DEEP-1, Attachment C-8).

42. As part of its application, Aquarion submitted a MOS analysis which analyzed the reasons and need for the requested diversion. (Exs. DEEP-1, Attachments A, C4, N4; DEEP-12, Q. 10); APP-4). For Connecticut water supply planning purposes, the MOS is the unitless ratio of supply to demand. (Exs. DEEP-1; APP-4).

43. An MOS greater than 1.0 therefore means that a system has more supply than demand, and an MOS less than 1.0 means that there is inadequate supply to meet system needs. (Exs. DEEP-1, Attachments A, C4, N4; DEEP-12, Q. 10).

44. The DPH typically considers an adequate MOS to be 1.15, or 15% more supply than demand. (Exs. DEEP-1; APP-4). An adequate MOS must be maintained under average day, maximum month and maximum day demand scenarios. (Exs. DEEP-1; APP-4). In order to have adequate available water the SWFCR needs an average annual transfer limit from the SWRP of 12.56 MGD, with a maximum daily limit of 14.2 MGD. (Ex. DEEP-1 Attachments A, C4, N4; DEEP-12, Q. 10; APP-4).

45. Following the 2016 drought, Aquarion implemented permanent 2-day/week irrigation restrictions in the four towns comprising the SWFCR. Aggressive conservation to reduce the quantity of additional supply required is integral to Aquarion's planning for the region but on its own conservation is not considered adequate to eliminate the need for additional supply. (Exs. DEEP-1, Attachment C-10; DEEP-12).

46. Aquarion has long recognized the need for increased water supply to the SWFCR. Prior to the 2016 drought, Aquarion initiated a formal analysis to define those needs and to evaluate alternatives for meeting them, and increased supply from the GBS through the SWRP, in



conjunction with conservation, was selected as the most feasible alternative. (Exs. DEEP-1, Attachments A, pp. 1-2, C, Items 6-13, C4, D4, pp. 1-5; DEEP-7; APP-4).

47. DEEP concurs that the diversion is needed for the reasons specified. (Exs. DEEP-13; DEEP-14; DEEP-25; Testimony of D. Hoskins, May 6, 2021, Hearing Transcript pp. 61, ln.21 – 63, ln. 5).

**Conn. Gen. Stat. § 22a-369(3) – Description of the Existing Water System Where the Diversion is Proposed.**

48. The Application provides a detailed description of the existing water system. (Exs. DEEP-1; APP-4). Water supply to the SWFCR comes from reservoir systems in the Greenwich and Stamford systems, the Wire Mill and Rewak wells in Stamford and Darien, respectively, and the SWRP that provides supplemental supply from Aquarion's GBS. (Exs. DEEP-1, Attachments A, B, C6, N-1, N-2, N-3, N-4, N-5; DEEP-7).

49. The sources of supply for the SWRP are the Hemlocks Reservoir System and the Canal Street and Coleytown Wellfields located in the Saugatuck River (7200), Aspetuck River (7202) and Cricker Brook (7107) subregional basins in the western portion of Aquarion's GBS. (Ex. DEEP-1, Attachments A, N-1, N-2; *see* Exs. DEEP-1, Attachments B, C, C-6, N-3, N-4, N-5; DEEP-7).

**Conn. Gen. Stat. § 22a-369(4) -- The Locations of Withdrawals and Discharges of Water the Applicant Proposes to Divert**

50. The Applicant documented the location of withdrawals and discharges of water in the Application. (Ex. DEEP-1). The withdrawals supplying water to the diversion will be located in basin numbers 7200, 7202, 7107 and 7108. (Ex. DEEP-1, Attachments A, C). (Exs. DEEP-1, Attachments A, B, C4, C6, N-1, N-2, N-3, N-4, N-5; DEEP-7).

**Conn. Gen. Stat. § 22a-369(5) -- Quantity, Frequency and Rate of Water the Applicant Proposes to Divert**

51. The Applicant documented the quantity, frequency and rate of water proposed to be diverted in the Application. (Exs. DEEP-1, Attachments A, pp. 1-2, C, C4, C6, N-4, N-5; DEEP-7; APP-3; APP-4). The Applicant seeks renewal of the SWRP Diversion Permit at a modified maximum daily capacity of 14.2 MGD, approximately 7 MGD more than its currently permitted capacity. (Exs. DEEP-1, Attachments A, pp. 1-2, C, C4, C6, N-4, N-5; DEEP-7; APP-4). Withdrawals from all sources will remain well below their permitted/registered capacities. (Exs. DEEP-1, Attachments A, pp. 1-2, C, C4, C6, N-4, N-5; DEEP-7; APP-3; APP-4). In addition the Draft Permit restricts the annual average transfer rate of the diversion to 12.56 MGD. (Ex. DEEP-16).

**Conn. Gen. Stat. § 22a-369(6) – Length of Time for Which the Diversion Permit is Sought**

52. A 25-year permit term is requested in the Application. (Exs. DEEP-1, Attachment C, Item 7(a); DEEP-9) in order to meet the needs of the SWFCR and to comply with the DEEP Stream Flow Standards and Regulation requirements for ecological reservoir releases without creating a conflict in water use. (Ex. DEEP-1, Attachment C4).

53. The 25-year permit term is consistent with the objectives of long-term water planning such as incentivizing strategic system interconnections and addressing the uncertainty in available supplies due to climate change which are recommendations of both the State Water Plan and the draft recommendations of the Governor's Council on Climate Change. (Exs. DEEP-1, Attachments C4, C10; DEEP-9; APP-1). A shorter permit period would create water supply risk and be inconsistent with these objectives of long-term planning. (Ex. DEEP-9). In addition, Aquarion is making significant investment in the SWRP infrastructure to meet the public water needs while improving drought resilience and meeting DEEP's Stream Flow Standards and

Regulations, which investments are supported by the 25-year permit term. (Exs. DEEP-1, Table C8-3; DEEP-7; DEEP-9).

54. The requested 25-year permit duration was deemed acceptable by DEEP. (Testimony of D. Hoskins, May 6, 2021 Hearing Transcript, p. 58, lns. 11-12). The conditions of the Draft Permit require, throughout the 25-year permit term, ongoing communication with the permittee and annual reporting on withdrawals to confirm that they are within the permit limitations. A leak detection program is required, as well as actions if there are leaks observed in their water system. Regular contact with the permittee through these reporting requirements is maintained throughout the permit's duration, as is DEEP's ability to restrict the diversion. (*Id.* at pp. 66, ln. 25 – 68, ln.6).

**Conn. Gen. Stat. § 22a-369(7) -- Effect of the Proposed Diversion on Public Water Supplies, Water Quality, Wastewater Treatment Needs, Flood Management, Water-Based Recreation, Wetland Habitats, Waste Assimilation, Agriculture, Fish and Wildlife and Low Flow Requirements**

55. The Applicant evaluated potential impacts and effects of the proposed diversion. (Exs. DEEP-1, Attachment C4; DEEP-7; DEEP-22). The proposed diversion will not adversely impact Aquarion's ability to meet the water supply needs and demands of its customers and that the requested diversion will have no material impact on: i) flows downstream of the sources supplying the SWRP; ii) water quality; iii) wastewater treatment needs; iv) flood management; v) water based recreation; vi) wetland habitat; vii) waste assimilation; viii) agriculture; and ix) fish and wildlife. (Exs. DEEP-1; DEEP-7; APP-4).

56. Each of these considerations, as required by CGS § 22a-369(7), is assessed in the Environmental Impact Report ("EIR") included as Attachment C4 to the Application. (Ex. DEEP-1, Attachment C4) and discussed further in Aquarion's July 31, 2020 response to DEEP (Ex. DEEP-7).

57. There will be no significant impact to the flow below the source water reservoirs and the source system (GBS) has adequate supply with acceptable MOS and considering future reservoir releases in accordance with DEEP's Stream Flow Regulations and reactivation of the Housatonic Wellfield. (Exs. DEEP-13; DEEP-25). Further, the GBS is projected to have an annual average MOS over the term of the requested permit of at least 1.35. (Exs. DEEP-1, Attachment N4-3; APP-1 p. 15; APP-2 p. 11).

58. The input collected from DEEP Fisheries Division and DPH as part of DEEP Staff's technical review did not identify concerns based upon their review of the Application. (Exs. DEEP-3; DEEP-4). Source water diversions within the SWRP will not be modified and Aquarion will continue to operate within their currently authorized withdrawal limits. (Ex. DEEP-4). The increased transfer rate will enable Aquarion to meet release requirement at all reservoirs within the SWRP network as mandated by DEEP's Stream Flow Standards and Regulations. (Ex. DEEP-4).

59. With the information provided in the Application along with certain conditions unique to the Draft Permit (Condition 4) fulfilling recommendations of DEEP's Wildlife Division as contained in the Application (Ex. DEEP-1, Attachment N-5) along with the report Applicant submitted entitled *2020 Survey Report and Conservation Assessment for Toothcup (Rotala ramosior) at Aspetuck, Hemlocks, and Saugatuck Reservoirs* by Christopher R. Mangels, dated January 24, 2021 (Ex. DEEP-22), negative impacts to state listed species are not anticipated. (Ex. DEEP-25).

**Conn. Gen. Stat. § 22a-369(8) – Alternatives Analysis**

60. An alternative analysis is provided as Attachment H to the Application. (Exs. DEEP-1, Attachment H; DEEP-7, Items 8 and 9; DEEP-9, Item 3). Five primary alternatives were

evaluated for meeting the supplemental public water supply needs of the SWFCR: (i) increase reservoir storage; (ii) develop groundwater supplies; (iii) purchase treated water from New York City; (iv) purchase raw water from New York City and (v) increase supply from the GBS through the (SWRP). (Exs. DEEP-1, Attachment A, Attachment H; DEEP-7; DEEP-9).

61. Increased supply from the GBS through the SWRP, in conjunction with aggressive conservation, was selected as the most feasible alternative due primarily to the greater certainty associated with its implementation and long-term operation, its shorter implementation schedule, and its lower estimated rate impacts. (Exs. DEEP-1, Attachments A, H; DEEP-7; DEEP-9, DEEP-13, APP-3; APP-4).

#### **Conn. Gen. Stat. § 22a-369(9) – Conservation Measures**

62. The Applicant provided an evaluation of conservation measures in its Application, including excerpts of its 2018 Water Supply Plan, including long-range conservation planning (Ex. DEEP-1, Attachment C-10). The Applicant's conservation efforts are further discussed in the Environmental Impact Report and as part of the additional information provided by the Applicant to DEEP during the permit application review process. (Exs. DEEP-1, Attachments A, C-4; DEEP-7; DEEP-9; DEEP-12; DEEP-13; APP-4).

63. Following the 2016 drought, Aquarion implemented permanent 2-day/week irrigation restrictions in the four towns comprising the SWFCR. Aggressive conservation to reduce the quantity of additional supply required was integral to each alternative, but on its own conservation was not considered adequate to eliminate the need for additional supply. (Exs. DEEP-1, Attachments A, C4, C10; DEEP-7, Item 8; DEEP-9, Item 3).

64. As part of the Draft Permit, DEEP has included new special conditions requiring Aquarion to implement its Long Range Water Conservation Plan as described in the Application

and to provide DEEP annually with a summary of all actions taken consistent with the Long Range Water Conservation Plan including estimated or actual water savings achieved. (Ex. DEEP-16, Conditions 7 and 9).

**Conn. Gen. Stat. § 22a-369(10) – Interbasin Transfer**

65. Because this proposed diversion involves an interbasin transfer, Aquarion filed an Environmental Impact Report as requested by DEEP. Exs. DEEP-1, Attachment C4; DEEP-7, Items 1-3; DEEP-9, Item 1). The EIR assessed possible impacts on wetlands, fish and wildlife, local water quality, stream flows and other factors. (Exs. DEEP-1, Attachments A, C4; DEEP-7; DEEP-9; DEEP-13; APP-4).

66. The Application includes an MOS analysis for Aquarion's GBS that provides public water supply to the proposed diversion, taking into consideration the requested increased SWRP diversion capacity. (Exs. DEEP-1, Attachments C4, N, Item 3; DEEP-7; DEEP-12, Q.10; APP-4). The analysis includes re-activation of the Housatonic Wellfield in Shelton, as required as a condition of approval in diversion permits DIVC-201709173 and DIVC-201711069, and indicates that the margins of safety for the GBS under all demand conditions evaluated are expected to remain above the DPH guideline of 1.15. (Ex. DEEP-1, Attachments C4, N). The donor basins will therefore have adequate supply to meet present and future public water supply needs. (Ex. DEEP-1).

67. Streamflow downstream of the reservoirs in the donor basin that supply the transfer are controlled by Aquarion's releases which are set by DEEP regulation and the releases will not change as a result of this diversion. In addition, the GBS will be able to comply with the release requirements of the DEEP Stream Flow Standards and Regulations (R.C.S.A. § 26-141b) and not have to reduce releases to maintain an adequate MOS. (Ex. DEEP-1, C4). Furthermore, conditions

in the Diversion Permits referenced above do not allow Aquarion to apply the provisions of the Stream Flow Standards and Regulations that allow for reduced releases from the dams supplying this diversion even if the MOS drops below 1.15. The proposed transfer will therefore have no effect on the present and future water use in these streams. (Exs. DEEP-1, Attachments A, C4; DEEP-12, Q.10; APP-4).

68. The GBS MOS indicates that, with reactivation of the Housatonic Wellfield, the GBS is anticipated to have adequate supply to meet the demands in the donor basin through 2060. (Ex. DEEP-1, C4).

In parallel with the statutory considerations, the Application contains the information required to be provided for DEEP's consideration pursuant to R.C.S.A. § 22a-377(c)(2). (Exs. DEEP-1; DEEP-7; APP-4).

**R.C.S.A. § 22a-377(c)-2(a)(1) - - Submittal of Application - - Required Information**

69. As required by R.C.S.A. § 22a-377(c)-2(a)(1), Aquarion has provided DEEP with a complete application for consideration. (Exs. DEEP-1; DEEP-7; DEEP-9; APP-4). The proposed diversion is not expected to change the boundaries of the area of contribution or recharge areas of a wellfield, therefore a Level A Map is not included in the Application. (Exs. DEEP-1; APP-4).

**R.C.S.A. § 22a-377(c)-2(a)(2) - - Stream Flows**

70. The Applicant evaluated the effect of the proposed diversion using stream flows in its Application. (Exs. DEEP-1; DEEP-4; DEEP-12; DEEP-13; DEEP-21; APP-4; APP-7; APP-9; Testimony of D. Hoskins, May 6, 2021 Hearing Transcript, p. 61, lns. 7 - 17). More specifically, Aquarion evaluated stream flow below the dams in the Hemlocks Reservoir System that are controlled by Aquarion's releases, and increased withdrawals will not impact Aquarion's

ability to comply with DEEP's Stream Flow Standards and Regulations and therefore will not have any downstream environmental impact. (Exs. DEEP-1, Attachment A, pp. 1-2, C, p. 5, C4, pp.1-5, C6, N-4; DEEP-4; DEEP-7; DEEP-12, DEEP-13; DEEP-21APP-4; Testimony of D. Hoskins, May 6, 2021 Hearing Transcript, p. 58, ln. 25 – 59, ln. 17).

**R.C.S.A. § 22a-377(c)-2(a)(3) -- Additional Information**

71. Additional information was requested by DEEP staff on June 8, 2020 and September 15, 2020 (Exs. DEEP-6; DEEP-8). The requested information was timely provided to DEEP by Aquarion on July 31, 2020 and October 15, 2020, respectively. (Exs. DEEP-7; DEEP-9). In addition, Aquarion provided additional information in response to public comments received on the Application and Draft Permit. (Exs. DEEP-12; DEEP-21).

**R.C.S.A. § 22a-377(c)-2(b) -- Long-range Water Conservation Plans**

72. The record reflects that Applicant provided information regarding Aquarion's long-range water conservation plans in the following sections of the Application and subsequent responses (Exs. DEEP-1, Attachments A, pp. 1-2, C, p.6, C4, p.3, C10; DEEP-7; DEEP-9; DEEP-12).

**R.C.S.A. § 22a-377(c)-2(c)(1) -- Lost or Unaccounted for Water**

73. The requests of this Section are not applicable as the Commissioner did not notify Aquarion that its plans were inadequate. (Ex. APP-4). While DEEP did not notify Aquarion that its plans were inadequate, DEEP asked for information regarding unaccounted for water in their requests for information, which information Aquarion provided. (See Exs. DEEP-7, Item 6; DEEP-9, Item 2).



**R.C.S.A. § 22a-377(c)-2(d) - - Environmental Impact Reports**

74. The Environmental Impact Report provided as part of the Application addresses each of the elements of an Environmental Impact Report and the requirements in R.C.S.A. § 22a-377(c)-2(d). (Exs. DEEP-1, Attachment C4; DEEP-7).

**R.C.S.A. § 22a-377(c)-2(e) - - Construction of Low Flow and Higher Flow Channels**

75. The Draft Permit does not include any requirements for high or low channels. (Ex. DEEP-16; APP-4).

Based on the foregoing, the Application contains the information required to be provided by the Applicant for DEEP's consideration as part of its water diversion permit modification application under Conn. Gen. Stat. § 22a-369 of the Water Diversion Policy Act and its implementing regulations, R.C.S.A. § 22a-377(c)-2. (Exs. DEEP-1; DEEP-7; DEEP-9; APP-4; DEEP-25).

In deciding whether to issue a diversion permit, the Commissioner must also consider all relevant facts and circumstances that include, but are not limited to, those listed in Conn. Gen. Stat. § 22a-373(b) and Conn. Gen. Stat. § 26-310 as well as those listed in R.C.S.A. § 22a-377(c)-2(f) and (h). There is substantial evidence to support issuance of the Draft Permit (Ex. DEEP-16) based on consideration of each substantive issue below:

**Effect of the Proposed Diversion on Related Needs for Public Water Supply Including Existing and Projected Uses, Safe Yield and Reservoir Systems and Reservoir and Groundwater Development (Conn. Gen. Stat. § 22a-373(b)(1))**

76. The Application and supporting documents demonstrate that the proposed diversion will not adversely affect the adequacy of public water supplies including existing and projected uses, safe yield, reservoir systems and reservoirs, and groundwater development in the GBS. (Exs. DEEP-1; DEEP-7; DEEP-9; APP-4).

**Effect of the Proposed Diversion on Existing and Planned Water Uses in the Area Affected Such as Public Water Supplies, Relative Density of Private Wells, Hydropower, Flood Management, Water Based Recreation, Wetland Habitats, Waste Assimilation and Agriculture Development (Conn. Gen. Stat. § 22a-373(b)(2))**

77. The diversion will not adversely impact Aquarion's ability to meet the water supply needs and demands of its users, and will not impact public water supplies, the relative density of private wells, hydropower, flood management, water based recreation, wetland habitat, waste association and agriculture (Exs. DEEP-1; DEEP-7, DEEP-9). The proposed diversion will not impact Aquarion's streamflow releases, and will not impact flows downstream of Aquarion's reservoirs. (Exs. DEEP-1; DEEP-7; DEEP-9).

**Effect of the Proposed Diversion on Existing and Planned Water Uses in the Area Affected Such as Public Water Supplies, Relative Density of Private Wells, Hydropower, Flood Management, Water Based Recreation, Wetland Habitats, Waste Assimilation and Agriculture Development (Conn. Gen. Stat. § 22a-373(b)(2))**

78. The record reflects that the Applicant has evaluated the effect of the proposed diversion and confirmed that there is no adverse impact on existing and planned water uses. (Exs. DEEP-1; DEEP-7; DEEP-9). The diversion will not impact Aquarion's ability to meet the water supply needs and demands of its users, and will not impact public water supplies, the relative density of private wells, hydropower, flood management, water based recreation, wetland habitat, waste association and agriculture (Exs. DEEP-1; DEEP-7; DEEP-9). The proposed diversion will not impact Aquarion's streamflow releases, and will not materially impact flows downstream of Aquarion's reservoirs. (Exs. DEEP-1; DEEP-7; DEEP-9).

**Compatibility of the Proposed Diversion With the Policies and Programs of the State of Connecticut Dealing with Long-Range Planning, Management, Allocation and Use of Water Resources (Conn. Gen. Stat. § 22a-373(b)(3))**

79. The record demonstrates that Aquarion has considered the effect of the transfer on present and future water uses in the GBS and SWFCR. The proposed diversion is compatible with the programs and policies of the State of Connecticut dealing with long-range planning,

management, allocation and use of water resources. (Exs. DEEP-1, Attachment C-10; DEEP-7; DEEP-9).

**Relationship of the Proposed Diversion to Economic Development and the Creation of Jobs  
(Conn. Gen. Stat. § 22a-373(b)(4))**

80. The proposed diversion will assist the SWFCR in ensuring adequate supply to support existing and projected residential, commercial and industrial growth and development needs well into the future. (Exs. DEEP-1; DEEP-7; DEEP-9; DEEP-12). Additionally, the proposed diversion will provide adequate supply to meet the current and future needs of Aquarion's customers in the GBS. (Ex. DEEP-12, Q. 80).

**Effect Of The Proposed Diversion On Existing Water Conditions (Conn. Gen. Stat. § 22a-373(b)(5))**

81. The record establishes that the proposed diversion will not adversely impact water quality or flow in the donor basin. (Exs. DEEP-1; DEEP-7; DEEP-9; DEEP-12).

**Effect, Including Thermal Effect, Of The Proposed Diversion On Fish And Wildlife (Conn. Gen. Stat. § 22a-373(b)(6))**

82. The record includes ample evidence that the proposed diversion will not adversely impact fish and wildlife, including thermal effect, fish and wildlife habitat. (Exs. DEEP-1; DEEP-4; DEEP-7; DEEP-9; DEEP-22; Testimony of D. Hoskins, May 6, 2021 Hearing Transcript, pp. 58, ln. 25 – 59, ln. 17).

**Effect Of The Proposed Diversion On Navigation (Conn. Gen. Stat. § 22a-373(b)(7))**

83. The diversion will not result in any impacts to navigation. (Ex. DEEP-1).

**Necessity (Conn. Gen. Stat. § 22a-373(b)(8))**

84. Taking into consideration and giving due regard to the Alternative Assessment (Ex. DEEP-1, Attachment H) offered by the Applicant, the water to be diverted is necessary. (Exs. DEEP-1, Attachments A, C; DEEP-7).

**Effect on Interstate Waters (Conn. Gen. Stat. § 22a-373(b)(9))**

85. The proposed diversion will not affect interstate waters; therefore, this provision is not applicable. (Ex. DEEP-1).

**Consideration of Municipal Interests (Conn. Gen. Stat. § 22a-373(b)(10))**

86. Notice of the Application was sent to the First Selectmen in Darien, Easton, Fairfield, Greenwich, New Canaan, Redding, Stamford, Weston and Westport and published in the CT Post, Greenwich Time, The News-Times and The Advocate. (Exs. DEEP-1, Attachment AA; DEEP-12). Further, Notice of the Application and DEEP's Notice of Tentative Determination was sent directly to the Chief Executive Officers of Bridgeport, Darien, Easton, Fairfield, Greenwich, New Canaan, Norwalk, Redding, Stamford, Weston and Westport. (Exs. DEEP-12; DEEP-15; APP-4).

87. There were multiple opportunities to provide oral and written comments on the Application and Draft Permit. Aquarion reached out directly and presented the application to potentially interested stakeholder groups and to the general public at public informational meetings, where it solicited comments verbally and in writing, on August 26, 2020, and January 6, 2021. (Exs. DEEP-12; APP-1; APP-2; APP-4). In addition, there was a formal 45-day public comment period after DEEP issued its Notice of Tentative Determination, and the public was provided with an opportunity to comment at the public hearing held on May 4, 2021 and by written comments through May 15, 2021<sup>6</sup>. (See Ex. DEEP- 14; April 19, 2021 Hearing Officer's Pre-Hearing Conference Summary; May 4, 2021 Hearing Transcript; May 12, 2021 Hearing Officer's Post Hearing Notice and Directive).

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<sup>6</sup> An extension was granted for the Fairfield Harbor Management Commission until May 21, 2021 to submit its comments.

88. Letters of support were received from the Mayor of the City of Stamford and the First Selectman of Darien following the Notice of Tentative Determination, and the City of Stamford Director of Public Safety, Health and Welfare, and Town of Darien First Selectwoman also provided verbal comments at the public informational hearing. (Exs. DEEP-10; DEEP-11). The Fairfield Conservation Commission was provided with a full opportunity to participate as an Intervening Party under Conn. Gen. Stat. § 22a-19 (March 5, 2021, Hearing Officer's Ruling on Fairfield Conservation Commission Intervention), and the Fairfield Harbor Management Commission submitted public comments throughout the application process, that have been addressed by Applicant (*see* Exs. DEEP-12; DEEP-17; May 21, 2021 Comments of FHMC).

#### **Conn. Gen. Stat. § 22a-373(c) Considerations**

89. Conn. Gen. Stat. § 22a-373(c) requires the Commissioner to consider: (i) capital expenditures and other resource commitments made prior to July 1, 1982 in connection with the diversion at issue here; and (ii) proposed diversions recommended in a water supply plan in the same manner as proposed diversions not recommended in any such plan.

90. Notwithstanding that no capital expenditures and other resource commitments were made prior to July 1, 1982 for the SWRP, the record reflects consideration of all applicable factors. (Exs. DEEP-1; DEEP-7; DEEP-9, DEEP-13).

#### **Conn. Gen. Stat. § 26a-310 Requirements**

91. Conn. Gen. Stat. § 26-310 requires that "any action authorized, funded or performed by ... [a state] agency ... not threaten the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat designated as essential to such species."

92. The Applicant has not identified any significant threats to the continued existence of any threatened or endangered species or related habitat. (Exs. DEEP-1; DEEP-4; DEEP-22).

DEEP's Bureau of Natural Resources, Fisheries Division reviewed the Application and expressed no concerns, saying "[t]he Fisheries Division does not have any outstanding resource concerns associated with the issuance of the [Draft Permit]." (Ex. DEEP-4; Testimony of D. Hoskins, May 6, 2021 Hearing Transcript, p. 57, lns. 17-18 ("there were no fisheries concerns"). Additionally, the DEEP Wildlife Division submitted comments requesting that a strategy plan be developed to avoid impact to the state threatened Toothcup, and Applicant submitted a *2020 Survey Report and Conservation Assessment for Toothcup (Rotala ramosior) at Aspetuck, Hemlocks, and Saugatuck Reservoirs*, in accordance with Draft Permit Condition No. 4. (Exs. DEEP-1; DEEP-22; Testimony of D. Hoskins, May 6, 2021, Hearing Transcript, pp. 54, ln. 10-57, ln. 6, p. 84, ln.19 – 85, ln. 16).

**R.C.S.A. § 22a-377(c)-2(f) Regulatory Factors**

93. The Application, which describes in detail the proposed diversion, is consistent with the State's water quality standards. R.C.S.A. § 22a-377(c)-2(f)(1) provides:

*The proposed diversion is consistent with the standards, criteria, policies and water quality classifications for ground and surface water adopted and amended under section 22a-426 of the General Statutes.*

The Application, supplemental materials and supporting testimony demonstrate that the proposed diversion would not have an effect on the quality of the State's waters for water supply, aquatic life, wildlife, wildlife habitats, and recreational uses. (Exs. DEEP-1; DEEP-7; DEEP-9; DEEP13; DEEP-25; APP-3; APP-4; Testimony of D. Hoskins, May 6, 2021, Hearing Transcript, pp. 58, ln. 25 – 59, ln. 17, p. 61, lns. 7 - 17).

94. The proposed diversion is consistent with Chapter 440 of the General Statutes and corresponding regulations. R.C.S.A. § 22a-377(c)-2(f)(2) provides:

*The proposed diversion is consistent with the policies and requirements of chapter 440 of the General Statutes and regulations thereunder.*

The consistency of the proposed diversion with the State's Wetlands and Watercourses standards is discussed throughout the record in this matter, including in particular Attachment C4 to the Application. (Exs. DEEP-1, DEEP-7, DEEP-9, APP-4; DEEP-22; Testimony of D. Hoskins, May 6, 2021, Hearing Transcript, pp. 54, ln. 10- 57, ln. 6).

95. Based on review of the record in this matter, the proposed diversion will not alter flooding or flood hazards and is consistent with DEEP's flood management standards and regulations. R.C.S.A. § 22a-377(c)-2(f)(3) provides:

*The proposed diversion is designed and will be carried out so as to minimize and, if possible, eliminate flooding and flood hazards, and to be consistent with the policies and requirements of Chapter 476a of the General Statutes and regulations thereunder.*

The consistency of the diversion with the State's flood management standards is discussed in Attachment D4 to the Application and elsewhere as part of the record in this matter. (Ex. DEEP-1).

96. The proposed activity is not located within the coastal area. R.C.S.A. § 22a-377(c)-2(f)(4) provides:

*If it is within the, or may significantly affect, the coastal area as defined by subsection (a) of section 22a-94 of the General Statutes, the proposed diversion is consistent with, the goals and policies of Chapter 444 of the General Statutes.;*

Therefore, this section does not apply. (Ex. DEEP-1).

97. The proposed water diversion is consistent with relevant policies of the State Plan of Conservation and Development. (Exs. DEEP-1; DEEP-7; DEEP-9). R.C.S.A. § 22a-377(c)-2(f)(5) provides:

*The proposed diversion is consistent with the relevant policies of the State Plan of Conservation and Development adopted under sections 16a-24 to 16a-32, inclusive, of the General Statutes<sup>7</sup>.*

The proposed diversion is consistent with the Growth Management Principles of the State Plan of Conservation and Development to: i) redevelop and revitalize regional centers and areas with existing or currently planned physical infrastructure because the diversion will support redevelopment and revitalization of regional and urban centers in the SWFCR; ii) protect and ensure the integrity of environmental assets critical to public health and safety, because the proposed diversion is necessary to ensure that the SWFCR has an adequate MOS to provide public water supply, fire protection, and drought resilience; and iii) promote integrated planning across all levels of government to address issues on a statewide, regional, and local basis, because the requested diversion provides a regional water supply solution supporting Aquarion's regional economic and conservation plans. (Exs. DEEP-1, Attachment C-4; APP-4).

98. Aquarion has requested, and provided the information necessary to support, a 25-year permit term. (Exs. DEEP-1; DEEP-7; DEEP-9; APP-3; APP-4). R.C.S.A. § 22a-377(c)-2(h)(1) provides:

*The Commissioner shall establish the duration of each diversion permit in light of all relevant factors, including but not limited to:*

*(A) the extent to which the waters affected by such permit have already been allocated;*

*(B) the uses to which such previously-allocated waters are put, including non-consumptive uses;*

*(C) the need for water system rehabilitation or for an effective water conservation program; and*

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<sup>7</sup> Public Act 05-205 amended Conn. Gen. Stat. §22a-366, the implementing statute for these regulations, removing the statutory language mandating that water diversion permits issued under the statute be compatible with the state plan of conservation and development effective July 1, 2005. (P.A. 05-205, Sec. 15). Therefore, this regulatory requirement no longer applies. This section is included for consideration because, while not a requirement following the passage of P.A. 05-205, the proposed diversion is nevertheless consistent with the State Plan of Conservation and Development.



*(D) the factors set out in this section and sections 22a-369 and 22a-373 of the General Statutes.*

*In no event shall a permit authorize any diversion for a period greater than twenty-five years...*

99. The 25-year permit term is requested in order to meet the needs of the SWFCR and to comply with the DEEP Stream Flow Standard and Regulations' requirements for ecological reservoir releases without creating a conflict in water use. (Exs. DEEP-1, Attachments, C, C4; DEEP-9).

100. The 25-year permit term is consistent with the objectives of long-term water planning such as incentivizing strategic system interconnections and addressing the uncertainty in available supplies due to climate change that are recommendations of both the State Water Plan and the draft recommendations of the Governor's Council on Climate Change (GC3). (Ex. DEEP-9). A shorter permit period would create water supply risk and be inconsistent with these objectives of long-term planning. (Ex. DEEP-9). In addition, Aquarion is making significant investment in the SWRP infrastructure to meet the public water needs while improving drought resilience and meeting DEEP's Stream Flow Regulations, which investments are supported by the 25-year permit term. (Ex. DEEP-1, Table C8-3; DEEP-7; DEEP-9).

101. DEEP, based upon its review of the Application and supporting materials, supports the issuance of a water diversion permit to Aquarion for a permit term of 25 years. (Exs. DEEP-13; DEEP-16; Testimony of D. Hoskins, May 6, 2021 Hearing Transcript p. 58, lns. 4-12).

102. Conditions in the Draft Permit requires ongoing communication, monitoring, reporting between Aquarion and DEEP throughout the 25-year permit term that allow for DEEP oversight and even "the right to restrict the diversion authorized in this permit at any time the Commissioner in her judgment determines a declared local, regional or statewide drought

advisory, watch, warning, or emergency necessitates restriction or reduction of water uses or B, a continuation of the diversion would have an adverse affect (sic) on water quality, fisheries, resources, aquatic habitat or public health.” (Testimony of D. Hoskins, May 6, 2021 Hearing Transcript, pp. 66, ln. 3 – 68, ln. 1; Ex. DEEP-16, Conditions 2, 4-10; *see* Exs. DEEP-13; DEEP-25).

#### **IX. Public Comments on Proposed Permit**

104. The public was provided with multiple opportunities to provide oral comments on the Application and Draft Permit. Notice of the Application was sent to the First Selectmen in Darien, Easton, Fairfield, Greenwich, New Canaan, Redding, Stamford, Weston and Westport and published in the CT Post, Greenwich Time, The News-Times and The Advocate. (Exs. DEEP-1; DEEP-12). In addition, Aquarion reached out directly and presented the application to potentially interested stakeholder groups and to the general public at public informational meetings, where it solicited comments verbally and in writing, on August 26, 2020, and January 6, 2021. (Exs. DEEP-12; APP-1; APP-2; APP-4).

105. In response to the comments and questions Aquarion accepted from the public verbally at the August 24, 2020, public input meeting and in writing subsequent to the meeting, Aquarion provided a 29-page response document to the public and DEEP with one hundred and nineteen responses. (Ex. DEEP-12).

106. In addition, there was a formal 45-day public comment period after DEEP issued its Notice of Tentative Determination, including the January 6, 2021 public informational meeting, and the public was provided with an opportunity to comment at the public hearing held on May 4, 2021 and by written comments thereafter. (May 4, 2021, Hearing Transcript).

107. During the May 4, 2021 public informational hearing, verbal comments were received from a dozen individuals. The Town of Darien First Selectwoman and City of Stamford Director of Public Safety, Health and Welfare spoke in support of the Application. (May 4, 2021 Hearing Transcript, Comments of Darien First Selectwoman Stevenson and Ted Jankowski, Director of Public Safety, Health and Welfare, Access for All (A4A) Stamford). During the written comment period, over 40 written comments were received from the public.

108. Issues raised by commenters who spoke at the May 4, 2021 hearing and who provided subsequent written comments largely concerned issues previously raised in prior public comments and addressed in Aquarion's one hundred and nineteen responses to the same. (Ex. DEEP-12). For example, commenters raised unsupported concerns regarding the reactivation of the Housatonic Wellfield (*see* May 14, 2021 Comment of Shawn O'Sullivan; *but see* Ex. DEEP-12 p. 16), the necessity of the proposed diversion and permit term (*See* May 14, 2021 Comments of Nancy Jones, Ginny Romano and Joshua Katz; *but see* DEEP-1 Attachments A, pp. 1-2, C, Items 6-13, C4, D4, pp. 1-5; DEEP-7; APP-4), potential impacts to waters from the proposed diversion (*See* May 14, 2021, Comments of David Joyce; *but see* Ex. DEEP-12, Q.3, Q. 35) and the re-activation of the Duck Farm gage (*See* May 14, 2021, Comments of David Joyce; *but see* Exs. DEEP-1; DEEP-7; DEEP-9; DEEP-12, Q.2) were addressed in evidence on the record including in the Application (Exs. DEEP-1; DEEP-7; DEEP-9) and Aquarion's public presentations and responses to public comments (Exs. APP-1; APP-2; DEEP-12).

109. Further, the public comments received verbally and in writing concerned topics that have been fully addressed by evidence on the record and in these Proposed Findings of Fact and Conclusions of Law, such as whether there would be streamflow and environmental impacts of the proposed diversion drought resilience impacts of the proposed diversion, Aquarion's

conservation efforts, the proposed length of the permit, the application process and DEEP's water diversion procedure more generally, the MOS calculation, and the reactivation of the Housatonic Wellfield. (See May 4, 2021 Comments of Senator Hwang, Mary Hogue of MRWC and FairPLAN, Myke Hartigan of LHA, Ted Jankowski of Director of Public Safety, Health and Welfare, Access for All (A4A) Stamford, Darien First Selectwoman Stevenson; Exs. DEEP-1; DEEP-7; DEEP-9; DEEP-13; DEEP-21; DEEP-25; APP-4).

### **PROPOSED CONCLUSIONS OF LAW**

Taking into consideration and giving due regard to all of the evidence in the record, Applicant and DEEP stipulate to the following proposed conclusions of law:

#### **I. JURISDICTION**

1. Conn. Gen. Stat. § 22a-368(b) provides, in relevant part:

*... no person or municipality shall, after July 1, 1982, commence to divert water from the waters of the state without first obtaining a permit for such diversion from the [C]ommissioner [of DEEP].*

The Commissioner of DEEP is empowered pursuant to Conn. Gen. Stat. § 22a-369 to issue water diversion permits and the Applicant has applied for such a permit in this case. The Applicant has satisfied all standing requirements and, accordingly, the Commissioner has subject matter jurisdiction as to this matter.

#### **II. THE APPLICATION**

2. Section 22a-369 of the General Statutes and its implementing regulations, R.C.S.A. § 22a-377(c)-2, require that an application for a diversion permit include information DEEP has deemed necessary to fulfill the purposes of the Connecticut Water Diversion Policy Act (Conn. Gen. Stat. §§ 22a-365 *et seq.* (the "Diversion Act")), including the following: 1) the need for the diversion; 2) the reasons for the diversion and the use of the diverted water; 3) a description of the existing water system where the diversion is proposed; 4) the locations of the

withdrawals and discharges of water Applicant proposes to divert; 5) the quantity, frequency and rate of water Applicant proposes to divert; 6) the length of time for which the diversion permit is sought; 7) the effect of the proposed diversion on public water supplies, water quality, waste water treatment needs and waste assimilation, flood management, water-based recreation, wetland habitats, agriculture, fish and wildlife, and low flow requirements; 8) the alternatives to the proposed diversion; 9) conservation measures instituted by Aquarion and Applicant's long-range water conservation plan; and 10) an Environmental Impact Report.

3. The Application contains the information required to be provided by the Applicant for DEEP's consideration as part of its water diversion permit renewal application under Conn. Gen. Stat. § 22a-369 of the Water Diversion Policy Act and its implementing regulations, R.C.S.A. § 22a-377(c)-2.

4. The Applicant submitted the Application on the appropriate forms provided by DEEP, DEEP-WPMD-APP-100. (Ex. DEEP-1). Applicant also filed additional information requested by DEEP staff. (Exs. DEEP-7; DEEP-9). Thereupon, pursuant to Conn. Gen. Stat. § 22a-371, DEEP determined the Application to be complete and determined that the proposed diversion "1) is necessary, 2) will not significantly affect long-range water resources management, and 3) will not impair proper management and use of the water resources of the State". (Ex. DEEP-14).

5. Based on the evidentiary record, the Applicant presented sufficient evidence to support the information required by the Diversion Act. The Application therefore complies with Conn. Gen. Stat. § 22a-369.

### **III. PROCEDURAL REQUIREMENTS**

6. Based on the record, and as addressed in the Findings of Fact filed simultaneously herewith, the procedural requirements of Conn. Gen. Stat. §§ 22a-371 and 22a-372 have been fulfilled.

### **IV. STATUTORY AND REGULATORY STANDARDS FOR PERMIT ISSUANCE**

7. Conn. Gen. Stat. § 22a-373 sets forth certain criteria that must be considered in rendering a decision on a diversion permit. R.C.S.A. § 22a-377(c)-2(f) sets forth additional substantive matters that must be considered. As set forth in the Findings of Fact, the record reflects that there is substantial evidence to support issuance of the proposed diversion permit, based on consideration of each of the substantive matters that must be considered. Based upon the record, the Applicant has demonstrated that:

- The proposed diversion will not have a substantial adverse impact on needs for public water supply, including existing and projected uses, safe yield of reservoir systems and reservoir and groundwater development;
- The proposed diversion will not have a substantial adverse impact on existing and planned water uses in the area affected, such as public water supplies, relative density of private wells, hydropower, flood management, water-based recreation, wetland habitats, waste assimilation and agriculture;
- The proposed diversion is compatible with the policies and programs of the state of Connecticut, as adopted or amended, dealing with long-range planning, management, allocation and use of the water resources of the state;
- The relationship of the proposed diversion to economic development and the creation of jobs is positive;
- The proposed diversion will not have a substantial adverse impact on the existing water conditions, with due regard to groundwater availability, watershed characterization, potential evapo-transpiration conditions, and water quality;
- There will be no substantial adverse impact, including thermal

effect, on fish and wildlife as a result of flow reduction, alteration or augmentation caused by the proposed diversion;

- There will be no substantial adverse effect on navigation from the proposed diversion;
- The water to be diverted is necessary for Applicant to provide adequate water to the SWFCR and improve drought resiliency while providing the ability to make ecological flow releases from Aquarion's dams in compliance with applicable stream flow standards and regulations;
- Since the proposed diversion will not affect interstate waters, it will not be inconsistent with actions taken by the Attorney General pursuant to Conn. Gen. Stat. §§ 3-126 or 3-127;
- Any municipality affected by the proposed diversion has had ample opportunities for voicing their interests and having such interests considered;
- The proposed diversion is consistent with the standards, criteria, policies, and water quality classifications for ground and surface water adopted and amended under Conn. Gen. Stat. § 22a-426;
- The proposed diversion is consistent with the applicable policies and requirements of Chapter 440 of the General Statutes and regulations thereunder;
- The proposed diversion is designed and will be carried out so as to minimize and, if possible, eliminate flooding and flood hazards, and to be consistent with the policies and requirements of Chapter 476a of the General Statutes and regulations thereunder; and
- The proposed diversion is not within and will not affect the coastal area as defined by Conn. Gen. Stat. § 22a-94(a).

## **V. PERMIT AND PERMIT CONDITIONS**

8. The Draft Permit meets all the statutory requirements and contains provisions that are sufficiently protective of the environment. The Applicant has not objected to the Draft Permit's terms and conditions. Accordingly, issuance of the diversion permit is recommended in

its current form and wording (attached hereto as Exhibit A) except as may be needed to correct typographical or clerical errors, if any exist.

9. As part of the Draft Permit, DEEP has included new special conditions 4, 7 and 9 requiring Aquarion to: fulfill recommendations of DEEP's Wildlife Division to ensure that there will not be negative impacts to the state threatened species, the Toothcup; conduct a system-wide comprehensive leak detection survey of the water distribution system and repair any leaks found; implement its Long Range Conservation Plan; and to provide DEEP annually with a summary of all actions taken consistent with the Long Range Water Conservation Plan including estimated or actual water savings achieved.<sup>8</sup>

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<sup>8</sup> These new conditions are as follows:

**Condition 4. Conservation Strategy Plan.** "The permittee shall submit a strategy plan for the conservation of the State Threatened *Rotala ramosior* populations located at the Hemlock, Aspetuck and Saugatuck Reservoirs as recommended in the February 6, 2020 letter from Dawn McKay of DEEP's Wildlife Division to the Commissioner by January 15, 2021."

**Condition 5. Leak Detection.** Every five years, based upon the schedule below, the permittee shall conduct a system-wide comprehensive leak detection survey of the water distribution system and repair any leaks found. The leak detection survey shall follow standards and criteria contained within AWWA Manual M36 as may be amended or revised, or using other criteria as approved by the Department. No later than January 31, of the following year, the permittee shall report to the Commissioner all actions taken pursuant to the leak detection survey, including the number of miles of main surveyed, survey techniques and methodology, leaks found and repairs made. A copy of this record shall be included in the Annual Report to the Commissioner required by Condition 9 of this permit. The permittee shall undertake such leak detection surveys in the years 2022, 2027, 2032, 2037, and 2042.

**Condition 7. Long-range Water Conservation Plan.** The permittee shall implement its Long-range Water Conservation Plan ("the plan"), as described in the permittee's application, and in accordance with the permittee's Water Supply Plan as approved pursuant to CGS Section 25-32d and any amendments or updates thereto, including the expansion of their "Two Day Per Week Irrigation Policy", alternative rate configuration, and wastewater treatment pricing as included the plan. The permittee shall maintain a summary of all actions taken each year pursuant to the Long-range Water Conservation Plan and a description of the estimated or actual water savings achieved. A copy of this summary shall be included in the Annual Report to the Commissioner required by Condition 9 of this permit.



10. As part of the Draft Permit, there are conditions relating to metering of withdrawals (Condition 1), Daily Withdrawal Records (Condition 2), Annual reporting (Condition 9) and Other Restrictions (Condition 10).<sup>9</sup>

11. In addition, the Draft Permit incorporates Applicant's request to have the SWFCR considered a single public water supply system.

## VI. CONCLUSION AND RECOMMENDATION

12. Applicant has demonstrated by a preponderance of the evidence presented that the Application and the Draft Permit comply with all applicable statutory and regulatory requirements.

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<sup>9</sup> Of note, Conditions 9 and 10 provide as follows:

**Condition 9: Annual Reporting.** The permittee shall electronically submit, by January 31 of each year for the duration of this authorization, an Annual Report for the preceding calendar year that is consistent with reporting protocols located on the Department website at

[www.ct.gov/deep/waterusereporting](http://www.ct.gov/deep/waterusereporting). The Annual Report shall be certified in accordance with Condition 13 of this permit, emailed to [DEEP.WaterUseReport@ct.gov](mailto:DEEP.WaterUseReport@ct.gov), and shall contain the following:

- a. a copy of the record of daily withdrawals and hours operated as required by Condition 2 of this permit,
- b. denotation and explanation of any instances of violation of the authorized withdrawal limitation(s) or any other condition of this authorization,
- c. a summary report of all the actions taken pursuant to the Long-Range Water Conservation Plan including a description of actual or estimated water savings achieved, as required by Condition 7 of this permit,
- d. a copy of the leak detection report as required by Condition 5 of this permit, and
- e. a copy of the stream gage record and stream flow as required by Condition.

**Condition 10. Other Restrictions.** The Commissioner shall have the right to restrict the diversion authorized in this permit at any time the Commissioner in her judgment determines: a) a declared local, regional or state-wide drought advisory, watch, warning or emergency necessitates restriction or reduction of water uses, or b) the continuation of the diversion would have an adverse effect on water quality, fisheries resources, aquatic habitat or public health.

13. Based on the record in this proceeding, the Intervening Parties have failed to prove, as required by CEPA, Conn. Gen. Stat. §§ 22a-14, *et seq.*, that the conduct proposed in the Application would be reasonably likely to result in unreasonable pollution, impairment, or destruction of the public trust in the air, water or other natural resources of the state. (*See* May 6, 2021, Hearing Transcript, p. 94, Ins. 20-23 (Intervenor the Commission’s sole expert witness, Matthew Sanford was asked on Cross-Examination “Is there any evidence in the record that there will be any impairment of Cricker Brook or Mill River?” A: “No”)).

14. Accordingly, the Draft Permit attached hereto as Exhibit A should be issued as a final permit.

**AGREEMENT**

The undersigned hereby agree to the foregoing Proposed Findings of Fact and Conclusions of Law regarding the Draft Permit.

**RESPONSES TO EIGHT TOPICS IN HEARING OFFICER'S  
POST-HEARING DIRECTIVE**

In the Post-Hearing Directive, the Hearing Officer also requested that the Parties address eight issues raised in any Post-Hearing Briefing, which topics generally reflect topics raised in comments received verbally and in writing during the various opportunities for public comment, including the May 4, 2021 public hearing and subsequent comment period (*see* Proposed Findings of Fact, Sec. IX, *supra*). Regarding these eight topics, Aquarion and DEEP provide the following responses:

*i. Margin-of-safety analysis and influence on water supply assessment*

As the record reflects, the requested maximum daily transfer of 14.2 MGD is necessary in order to provide adequate public water supply to the SWFCR to meet current demand and projected growth, as defined by the MOS. (Exs. DEEP-1; DEEP-7; APP-1; APP-2; APP-3; APP-4). Aquarion included in the Application an MOS analysis, supporting the necessity of the requested diversion to meet both current demand and projected growth. (Ex. DEEP-1; APP-4). MOS is the unitless ratio of available water to demand. (Ex. DEEP-1, Attachment A). An MOS greater than 1.0 means that there is more supply than demand and a margin less than 1.0 means that there is less supply than demand. DPH advises that water supply systems maintain an MOS of at least 1.15 (15%). (Exs. APP-4, pp. 12-13; DEEP-12 pp. 3-4).

MOS is used in two ways in the Application: 1) to define the need for water in the SWFCR (Exs. DEEP-1, Attachment C-8; DEEP-12, pp. 3-5, APP-1, p. 8; APP-2, p.6); and 2) to demonstrate that the GBS has adequate supply to meet the needs of the requested diversion (Exs. DEEP-1 Attachments N-4, C4; DEEP-7 pp. 6-10). In both cases, the MOS presented in the Application were based upon the analyses in Aquarion's 2018 Water Supply Plan prepared and submitted to the DPH, DEEP, Office of Policy and Management and Public Utilities Regulatory

Commission in accordance with R.C.S.A. § 25-32d (Exs. DEEP-1 Attachments C-8, N-4; APP-4 p. 14). Aquarion's MOS analysis for the GBS has been approved by DPH, taking into account comments from the other State agencies (May 6, 2021 Hearing Transcript, p. 97, ln. 4). DPH, the agency responsible for approving demand projections and ensuring adequacy of public water supply, supports the requested diversion. (Ex. DEEP-3).

The estimated annual average capacity needed from the SWRP to provide an adequate (1.15) MOS for the SWFCR over the term of the requested permit is 12.56 MGD. (Ex. DEEP-1 p. 32). If this capacity has been over-estimated, Aquarion will transfer less than the permitted limit of water through the SWRP. If this capacity has been under-estimated, the SWFCR will have inadequate public water supply potentially resulting in more frequent drought restrictions, the need for additional supply development and associated diversion permitting, and possible limits on new service connections.

The GBS is projected to have an annual average MOS over the term of the requested permit of at least 1.35. (Exs. DEEP-1, Attachment N4-3; APP-1 p. 15; APP-2 p. 11). The proposed transfer withdrawals are relatively insignificant, as compared to the total storage capacity of the Hemlocks Reservoir System, further supporting that there will be no adverse impacts. (Ex. DEEP-9, p.1, "The Hemlocks Reservoir System has a total storage capacity of **15.8 billion gallons (BG)**") (emphasis added)).

Additionally, this projection assumes re-activation of the Housatonic Wellfield at an annual average capacity of 11.58 MGD, as required by Diversion Permits DIVC-201709173 and DIVC 201711069. (Exs. DEEP-1, Attachments C4-1, N4; DEEP-9 p. 4) and information provided to DEEP supports this minimum available water. (Exs. DEEP-1; DEEP-7; APP-4; May 6, 2021, Hearing Transcript p. 72 ln. 8) The wellfield has a documented safe yield of 25.74 MGD

and was pump tested at 17.96 MGD in 2005. (Ex. DEEP-7 p. 5.) Aquarion has made progress re-activating the wellfield including completion of a Well Water Quantity and Quality review by DPH for four of the eight wells and testing to prepare a review for the remaining wells. (Ex. DEEP-12 p. 16).

In the unlikely event that the Housatonic Wellfield cannot be returned to service at all the projected MOS of the GBS would be reduced but would remain near or above 1.15 for the duration of the permit period. (Ex. DEEP-12 p 19, Q67). Moreover, as discussed above, the Draft Permit provides ongoing monitoring and recording requirements, continued DEEP oversight and the ability for DEEP restrict the permitted diversion. (Ex. DEEP-16, Conditions 2, 4-10). As Mr. Hoskins testified at the May 6, 2021 Hearing:

There is ongoing communication with the application, as you mentioned. Annual reporting on their withdrawals to confirm that they are within the permit limitations. A leak detection is required, as well as actions in there are leaks observed in their water system are annual monitoring requirements. But I do want to just highlight one particular point I don't think you mentioned, and that is special condition or condition Number 10 called Other Restrictions. And this is safety net (sic) that we put into all applications. And I will just, if you don't mind, read – it is the best way – verbatim where *the Commissioner shall have the right to restrict the diversion authorized in this permit at any time the Commissioner in her judgment determines a declared local, regional or statewide drought advisory, watch, warning, or emergency necessitates restriction or reduction of water uses or B, a continuation of the diversion would have an adverse affect (sic) on water quality, fisheries, resources, aquatic habitat or public health.*

(Testimony of D. Hoskins, May 6, 2021 Hearing Transcript, pp. 66, ln. 3 – 68, ln. 1) (emphasis added).

Therefore, conditions in the currently held diversion permits, Permits Nos. DIVC-201709173 and DIVC 201711069, preclude Aquarion from reducing releases from the Hemlocks Reservoir System dams to maintain an adequate MOS in the GBS, and conditions in the Draft Permit ensure that the requested diversion will not have adverse environmental impacts. (Exs. APP-4 p. 13; DEEP-1, Attachment C4-4; DEEP-13 DEEP-16, Conditions 2, 5, 6, 7, 9, 10; May

6, 2021 Hearing Transcript pp. 22 ln. 21, 32 ln. 12, 35 ln. 15, 38 ln. 4, 40 ln. 12, 41 ln. 3, 71 ln. 9, 97 ln. 1).

*ii. Compliance with and relevance of Stream Flow Standards and Regulations*

DEEP's Stream Flow Standards and Regulations (R.C.S.A. § 26-141b) Statement of Purposes states that the regulations "balance the needs of humans to use water for drinking and domestic purposes, fire and public safety, irrigation, manufacturing, and recreation with the needs of fish, wildlife and other biota that also rely upon the availability of water to sustain healthy, natural, communities." DEEP's Stream Flow Standards and Regulations require releases from dams to support and maintain downstream ecology. (R.C.S.A. §§ 26-141b1-8; *see* APP-4). These regulations set required minimum release rates from Aquarion's dams, including from the Hemlocks Reservoir to Cricker Brook which ultimately flows into the Mill River. The proposed diversion will not impact Aquarion's need, or ability, to comply with these regulations. (Exs. DEEP-1; APP-4, pp. 12- 13).

Releases from the Hemlocks Reservoir will continue to be in compliance with DEEP's Minimum Stream Flow Standards. (Ex. DEEP-12, Q. 38). Once the release requirements from DEEP's updated Stream Flow Standards and Regulations supersede the existing regulations in 2029, releases from the Hemlocks Reservoir will be consistent with the standards that will become effective in 2029. (Exs. DEEP-1, Attachments A, C4, C8; DEEP-12, Q. 38; APP-4).

*iii. Re-activation of "Duck Farm" gage*

The USGS maintained a flow gage on the Mill River at Duck Farm Road in Fairfield from 1972 – 2017 (USGS 01208925). The Town of Fairfield previously worked with USGS to maintain this gage (Exs. DEEP-19 p. 2; DEEP-21 p. 3) that was reportedly discontinued due to

budget constraints. (See Public comment from Stephanie Barnes, Senja Foster and Julianne Kleber).

Reactivation of the Duck Farm gage is not necessary for measuring potential impacts of the proposed diversion because, as shown by the evidence and discussed above, there will not be any downstream impact. (Exs. DEEP-1; DEEP-7; DEEP-9; DEEP-12, Q.2; Testimony of D. Hoskins, May 6, 2021 Hearing Transcript p. 61 lns. 9 - 17 (“there would be no downstream impact from the source reservoirs ... There would be no need for monitoring flow downstream with an additional gauge. There is a meter at the dam on the Hemlock Reservoir that measures [Aquarion’s] release as required.”). In addition, the Mill River at Duck Farm Road gage is reportedly between 2 and 4 miles downstream from the Hemlocks Dam on the Mill River. (See May 6, 2021, Hearing Transcript p. 82, ln. 16, Public comment of Julianne Kelber). The drainage area of the Mill River at the site of the Duck Farm gage is 28.6 square miles and the watershed of Cricker Brook upstream of the Hemlocks Dam is 5.2 square miles. (See Exs. APP-1; APP-2; APP-5; APP-6). Aquarion’s required releases into Cricker Brook, which flows into the Mill River, will not change as a result of the proposed diversion and, therefore, there will not be an impact on flow<sup>10</sup>. (Exs. DEEP-1; DEEP-7; DEEP-9; DEEP-12, Q.2; Testimony of D. Hoskins, May 6, 2021 Hearing Transcript p. 61 lns. 9 – 17).

Further, Aquarion’s compliance with streamflow release requirements, and therefore its impact on flow in Cricker Brook and Mill River independent of this requested diversion, are best monitored at the point of releases, which monitoring is already being performed. These releases

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<sup>10</sup> Moreover, except when the reservoirs are spilling during high spring flows, flow into Cricker Brook immediately below the Hemlocks Dam is determined by Aquarion’s releases, which are not expected to change as a result of the requested diversion but will increase as a result of future requirements pursuant DEEP’s Streamflow Standards and Regulations (Ex. DEEP-12, Q.1).

are currently measured and reported to DEEP as a condition of diversion permit DIVC-201709173, and will also be reported in compliance with DEEP's Stream Flow Standards and Regulations when their release requirements become effective. (Ex. DEEP 12, p. 6, Q14). Not only is the Duck Farm gage therefore not necessary, it also would not provide monitoring data that would be more useful or accurate than the data already being collected.<sup>11</sup>

*iv. Use of DOT data re population growth*

Determination of the need for the requested 14.2 MGD diversion, detailed in the Application, is based on providing the above-discussed DPH target 15% MOS, utilizing demand and use projections from Aquarion's 2018 Water Supply Plan. (Exs. APP-1; DEEP-7; DEEP-12, Q.10; DEEP-13). The water demand projections utilized in Aquarion's 2018 Water Supply Plan, re-stated in the Application, are based in part on population projections prepared by the Connecticut Department of Transportation ("DOT"). (Exs. DEEP-1; DEEP-12, Q.10, May 6, 2021, Testimony of D. Hoskins, May 6, 2021 Hearing Transcript p. 65 Ins. 17-24).

By way of background, Connecticut's Water Supply Planning Regulations require long-term projections of water supply needs necessary to ensure that adequate infrastructure is in place before the water is needed. (R.C.S.A. § 25-32d; *see* Ex. DEEP-12, Q.10).<sup>12</sup> These

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<sup>11</sup> It would be difficult, if not impossible, to associate changes in flow in the Mill River at the Duck Farm gauge with changes in Aquarion's releases since 80% of its watershed is unassociated with the Hemlocks Reservoir. (*See* Ex. DEEP 12, Q. 14, Q. 89; Testimony of D. Hoskins, May 6, 2021 Hearing Transcript p. 61 Ins. 9 – 17).

<sup>12</sup> To ensure that public water systems in Connecticut maintain an adequate supply of water, DPH regulations require water companies that serve 1,000 or more people to regularly update Water Supply Plans that compare available water to projected demands for five-, twenty- and fifty-year planning periods and present technical and financial plans for addressing identified supply deficiencies (R.C.S.A. § 25-32d). Each Water Supply Plan, including its determination of available water, and demand and MOS projections, is approved or rejected by DPH after considering comments received from DEEP and the Public Utility Regulatory Authority ("PURA"). The Connecticut Public Health Code also charges DPH with ensuring that



governing regulations clearly identify DPH as the agency of authority for determining the quantity of water needed by a public water system and tasked with review and approval of water supply plans, including the population and demand projections used therein. (R.C.S.A. § 25-32d(a); *see* R.C.S.A. § 19-13-B102(o)).

Not only did the DPH approve of Aquarion's demand projections in the GBS Water Supply Plan (May 6, 2021 Hearing Transcript, p. 97, line 4), but the DPH also submitted a comment letter in favor of approving the Application. (Ex. DEEP-3). In its letter of support, the DPH said:

We have reviewed and are in support of [the Application]. DPH will continue to work with Aquarion Water Company on their on-going conservation efforts and on the demand side and the supply side to ensure sufficient water supply for the region for the full duration of the diversion permit. (Ex. DEEP-3).

Therefore, the agency statutorily tasked with review of Aquarion's water supply planning population and demand projections, DPH, has reviewed and approved of Aquarion's analysis making use of DOT data in its 2018 Water Supply Plan and is in support of this Application.

*v. Definition, use, and impacts of "instream flow data" or "river flow assessment"*

Instream flow studies typically assess the relationship between flow and habitat, recreation, and/or water quality in specific stream segments. The proposed diversion will not impact flow in Cricker Brook or Mill River and therefore instream flow studies of these streams were not necessary and were not performed. (May 6, 2021, Hearing Transcript pp. 22 Ins. 7 – 24 ln. 19; Exs. DEEP-12, Q.3; APP-4, p.5).

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community water systems maintain supply capacity in excess of demand with an adequate MOS (R.C.S.A. § 19-13-B102(o)).

*vi. Impacts on river temperatures*

The proposed diversion will not impact Aquarion's reservoir releases, and therefore will not impact downstream river temperature. (May 6, 2021, Hearing Transcript pp. 58 ln. 22 –59 ln. 17). Public comment from Trout Unlimited requested installation of a real-time temperature gauge at the confluence of the Mill River and Lake Mohegan. (Ex. DEEP-20) This location is upstream of Cricker Brook and therefore could not be impacted by the proposed diversion. (Ex. DEEP-21, p. 4). The requested diversion is not expected to have any impact on the Mill River watershed. (Ex. DEEP-12, Q.3). Further, any potential impact of the proposed diversion on river temperatures would also be tempered by downstream dams and ponds on Cricker Brook and the Mill River, including Samp Mortar Lake. (See Ex. DEEP\_12, Q.3, Q. 35). Moreover, except when the reservoirs are spilling during high spring flows, flow in Cricker Brook immediately below Hemlocks Dam is determined by Aquarion's releases, which will not change as a result of the requested diversion, but will increase as a result of DEEP's Stream Flow Standards and Regulations. (Ex. DEEP-12, Q. 1).

*vii. Reactivation of wells for water supply (discuss issues with magnesium)*

Reactivation of the Housatonic Wellfield in Shelton is required by DEEP as a condition of diversion permits DIVC-201709173 and DIVC-201711069 (Ex. DEEP-1, Attachments C-4, N-4) and is incorporated into Aquarion's Water Supply Plan for the GBS recently approved by DPH (May 6, 2021, Hearing Transcript p. 97, ln 4).

Water quality from the wells, when operated until 2006, was in compliance with all applicable public health standards. (Ex. DEEP-12, Q. 4). Naturally occurring manganese occasionally exceeded the 0.05 mg/L secondary (un-enforceable) standard that can cause water to be discolored, but was consistently below EPA's 0.3 mg/L lifetime health advisory limit. (Ex.

DEEP-12, Q. 4). Recent sampling performed in conjunction with the wellfield reactivation indicated manganese concentrations below the secondary standard. (Ex. DEEP-12, Q.4) DPH must approve Aquarion's plans for re-activating and treating the Housatonic Wellfield before it is returned to service and is responsible for ensuring that water quality from all of Aquarion's sources, including the Housatonic Wellfield, continue to meet applicable drinking water standards. (Ex. DEEP-12 Q.4, Q.18, Q.19, Q.51, Q.54, Q.55, Q.60, Q.61, Q.62, Q.108).

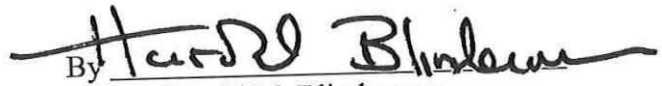
*viii. Need for any hydrologic studies or assessment of "ecological data."*

The proposed diversion will not impact downstream hydrology or ecology so hydrologic studies or assessments of "ecological data" are not necessary. (Ex. DEEP-12, Q.35, Q. 63, Q. 64, Q. 65, Q. 69, Q. 70, Q. 89, Q. 90, Q. 94, Q. 95).

**CONCLUSION**

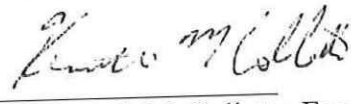
For the foregoing reasons and consistent with the above Joint Proposed Findings of Fact and Conclusions of Law, the record supports issuance of a Proposed Final Decision approving the Draft Permit.

**AQUARION WATER COMPANY OF  
CONNECTICUT**

By 

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**THE CONNECTICUT DEPARTMENT  
OF ENERGY AND  
ENVIRONMENTAL PROTECTION**

By 

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**WATER DIVERSION PERMIT**

Permittee: Aquarion Water Company of Connecticut  
600 Lindley Street  
Bridgeport, CT 06606

Attn: Ingrid Jacobs

Permit No.: DIVC-202004971 (modifies DIV-97-13)

Towns: Bridgeport, New Canaan, Darien, Stamford, Fairfield, Easton, Weston, Redding,  
Greenwich, Westport, Norwalk

Project: Modify Permit No. DIV-97-13 to increase the transfer of public water supply  
from the applicant's Greater Bridgeport System to their Southwest Fairfield  
County Region

Waters: Hemlock Reservoir System, groundwater, Saugatuck River below Saugatuck  
Dam, Aspetuck River below Aspetuck Dam, Mill River below Cricker Brook, and  
Cricker Brook below Hemlocks Dam

Pursuant to Connecticut General Statutes Section 22a-368, the Commissioner of Energy and Environmental Protection ("Commissioner") hereby grants a permit to the Aquarion Water Company of Connecticut ("Permittee") to divert the waters of the state at their system interconnection on the Wilton/New Canaan border along New Canaan Road (a.k.a Route 106) just north of the intersection with Valley Road in New Canaan ("Site"). The purpose of the diversion is to transfer public water supply from the applicant's Greater Bridgeport System (GBS) to their Southwest Fairfield County Region (SWFCR).

**AUTHORIZED ACTIVITY**

The permittee is authorized to transfer a maximum of 14.2 million gallons of water per day (mgd), further limited by an annual daily average of 12.56 mgd, via the Southwest Regional Pipeline from the permittee's GBS to their SWFCR.

Note that transfers by the permittee between distribution systems within their SWFCR are exempt pursuant to Section 22a-377(b)-1(a)(6) RCSA, provided the quantity of water withdrawn from any SWFCR source does not exceed the quantity authorized pursuant to permit or registration.

All activities shall be conducted in accordance with plans entitled: "*Attachment B – Location map*" prepared by Tighe & Bond, dated October 2019, and documentation submitted as part of the permit

application.

This authorization constitutes the licenses and approvals required by Section 22a-368 of the Connecticut General Statutes.

*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. Metering of Withdrawals.** The permittee shall maintain the totalizing flow meters currently located at: the Little Brook Pump Station located at the intersection of Little Brook Road and Silvermine Avenue in New Canaan, the Talmadge Hill Booster Pump Station located at Talmadge Hill Road just east of the rail tracks in New Canaan, the Leeds Lane meter point located on Hoyt Street in Darien, and the two Regional Meters on Woodway Road just west of the Noroton River in Stamford. The permittee shall measure the total amount of water transferred from the Southwest Regional Pipeline at the above-referenced meters as authorized herein, and shall for the duration of this authorization continuously operate and maintain such meter in good working order. In the event of meter malfunction or breakage, the permittee shall repair or replace such meter within 72 hours. The permittee shall secure such meter in a locked facility, with access controlled solely by the permittee or other designee.
- 2. Daily Withdrawal Record.** The permittee shall maintain a daily record of the meter readings at the meter points referenced in Condition 1 as prescribed on the Department's Water Diversion Reporting webpage at [www.ct.gov/deep/waterdiversionreporting](http://www.ct.gov/deep/waterdiversionreporting) indicating the total volume of water in gallons transferred that day. The daily record shall also record the time of meter readings, and denote and explain any instances in which the diversion of water exceeded the authorized withdrawal limitation(s) specified in this permit. A copy of the daily record of withdrawals shall be included in the Annual Report to the Commissioner required by Condition 9 of this permit.
- 3. Prohibition of Future Connections.** The permittee shall not allow any new service connections to the Southwest Regional Pipeline between the Wilton/New Canaan town line and the Woodway Road Regional Meter in Stamford, unless authorized by the Commissioner. For the purposes of compliance reporting, the permittee shall use a maximum day demand of 0.01 mgd for the existing twenty-one residential customers connected either directly to or by a pipeline extended from the Southwest Regional Pipeline.

4. **Conservation Strategy Plan.** The permittee shall submit a strategy plan for the conservation of the State Threatened *Rotala ramosior* populations located at the Hemlock, Aspetuck and Saugatuck Reservoirs as recommended in the February 6, 2020 letter from Dawn McKay of DEEP's Wildlife Division to the Commissioner by January 15, 2021.
5. **Leak Detection.** Every five years, based upon the schedule below, the permittee shall conduct a system-wide comprehensive leak detection survey of the water distribution system and repair any leaks found. The leak detection survey shall follow standards and criteria contained within AWWA Manual M36 as may be amended or revised, or using other criteria as approved by the Department. No later than January 31, of the following year, the permittee shall report to the Commissioner all actions taken pursuant to the leak detection survey, including the number of miles of main surveyed, survey techniques and methodology, leaks found and repairs made. A copy of this record shall be included in the Annual Report to the Commissioner required by Condition 9 of this permit. The permittee shall undertake such leak detection surveys in the years 2022, 2027, 2032, 2037, and 2042.
6. **Meter Calibration and Reporting.** The permittee shall annually test and calibrate the totalizing flow meter referenced in Condition 1 to within two percent accuracy as shown through a post-calibration test. The permittee shall maintain a record of the accuracy and calibration test(s) along with supporting documentation and certifications. The permittee shall make a copy of said records available to the Commissioner or the Commissioner's designee immediately upon request.
7. **Long-range Water Conservation Plan.** The permittee shall implement its Long-range Water Conservation Plan ("the plan"), as described in the permittee's application, and in accordance with the permittee's Water Supply Plan as approved pursuant to CGS Section 25-32d and any amendments or updates thereto, including the expansion of their "Two Day Per Week Irrigation Policy", alternative rate configuration, and wastewater treatment pricing as included the plan. The permittee shall maintain a summary of all actions taken each year pursuant to the Long-range Water Conservation Plan and a description of the estimated or actual water savings achieved. A copy of this summary shall be included in the Annual Report to the Commissioner required by Condition 9 of this permit.
8. **Record Keeping Requirements.** Except as provided below, or as otherwise specified in writing by the commissioner, all information required under this permit shall be retained at the subject site, or be readily available on request. The permittee shall maintain a copy of this permit on site at all times. The permittee shall retain copies of all records and reports required by this permit; and records of all data used to compile these reports for a period of at least ten years from the date such data was generated or report created, whichever is later.

9. **Annual Reporting.** The permittee shall electronically submit, by January 31 of each year for the duration of this authorization, an Annual Report for the preceding calendar year that is consistent with reporting protocols located on the Department website at [www.ct.gov/deep/wateruserreporting](http://www.ct.gov/deep/wateruserreporting). The Annual Report shall be certified in accordance with Condition 13 of this permit, emailed to [DEEP.WaterUseReport@ct.gov](mailto:DEEP.WaterUseReport@ct.gov), and shall contain the following:
- a copy of the record of daily withdrawals and hours operated as required by Condition 2 of this permit,
  - denotation and explanation of any instances of violation of the authorized withdrawal limitation(s) or any other condition of this authorization,
  - a summary report of all the actions taken pursuant to the Long-Range Water Conservation Plan including a description of actual or estimated water savings achieved, as required by Condition 7 of this permit,
  - a copy of the leak detection report as required by Condition 5 of this permit, and
  - a copy of the stream gage record and stream flow as required by Condition.
10. **Other Restrictions.** The Commissioner shall have the right to restrict the diversion authorized in this permit at any time the Commissioner in her judgment determines: a) a declared local, regional or state-wide drought advisory, watch, warning or emergency necessitates restriction or reduction of water uses, or b) the continuation of the diversion would have an adverse effect on water quality, fisheries resources, aquatic habitat or public health.
11. **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:
- the provision(s) of this permit that has been violated;
  - the date and time the violation(s) was first observed and by whom;
  - the cause of the violation(s), if known
  - if the violation(s) has ceased, the duration of the violation(s) and the exact date(s) and times(s) it was corrected;
  - if the violation(s) has not ceased, the anticipated date when it will be corrected;
  - 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;
  - 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 11 of this permit.
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 any 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 and 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. Notification of Project Initiation.** The permittee shall notify the Commissioner in writing two weeks prior to: (A) commencing construction or modification of structures or facilities authorized herein; and (B) initiating the diversion authorized herein.

16. **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 in accordance with the provisions of section 22a-377(c)-2 of the Regulations of Connecticut State Agencies. Except as authorized by subdivision (5) of section 22a-377(b)-1(a) of the Regulations of Connecticut State Agencies, the permittee may not make any de minimis alterations to any structure, facility, or activity authorized by this permit without written permission from the Commissioner. A de minimis alteration means an alteration which does not significantly increase the quantity of water diverted or significantly change the capacity to divert water.
17. **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.
18. **Removal of Structures.** Unless the permittee maintains in optimal condition any structures or facilities authorized by this permit, the permittee shall remove such structures and facilities and restore the affected waters to their condition prior to construction of such structures or facilities.
19. **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.
20. **Initiation of Construction.** 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 other time.
21. **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.

22. **Best Management Practices & Notification of Adverse Impact.** In constructing or maintaining any structure or facility or conducting any activity authorized herein, or in removing any such structure or facility under Condition 18 hereof, 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. 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.
23. **Permit Transfer.** This permit is not transferable without the prior written consent of the Commissioner.
24. **Expiration.** This permit shall expire on [25 years].

Issued by the Commissioner of Energy and Environmental Protection on:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Betsey Wingfield  
Deputy Commissioner

**AQUARION WATER COMPANY OF CT  
APP 202004971-DIVC**

**SERVICE LIST**

**Parties**

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**Intervening Parties**

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