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## **Littleton Water Dept. Files with Supreme Judicial Court As Next Step in Process to Use Nagog Pond**

LITTLETON – The Littleton Water Department has taken the next step toward using Nagog Pond as a water source. It has requested the state Supreme Judicial Court initiate the process to calculate the value of “water damages,” if any, due to Concord when Littleton commences using Nagog Pond as a water source.

An 1884 state law preserved the rights of Littleton and Acton to future use of Nagog Pond, which is split equally by the town border, while allowing Concord to use the water until such time as it was needed by the other towns. The 1884 act states that Littleton must compensate Concord for “water damages” in connection with using Nagog Pond as a water supply. In addition, the Acts of 1911 granted Littleton the right to supply itself with water, including through the taking and holding of waters and water rights “within the limits of the town.”

“Upon completion of the procedures set forth in the 1884 Act, Littleton will be entitled to take from Nagog Pond the full amount of water that is necessary for the needs of its residents and businesses,” state’s LWD’s filing with the SJC, the state’s highest court.

Beginning last February, LWD officials attempted to reach an agreement with Concord, but after a handful of negotiating sessions, Concord officials declined to participate further. The 1884 Act established a process for the SJC to appoint three independent commissioners to determine if there are “water damages” and calculate the value.

“In times of increasing water scarcity and a growing population, Littleton now needs to identify and develop new water supplies and intends to take and hold at least a part of Nagog Pond’s waters toward that purpose,” according to LWD’s filing with the SJC.

“Concord, meanwhile, has developed alternative water supply sources over the last century. It now also has emergency water capacity available to it from neighboring Acton and Bedford (the latter connected to the Massachusetts Water Resources Authority) in times of true need.”

The LWD filing, prepared by the law firm Miyares and Harrington, LLP, states the Legislature “explicitly limited those ‘water damages’ to only damages in a just and proportionate amount of whatever Concord had previously paid to ‘any persons or corporations for the taking of water rights from [Nagog Pond] or the outlet thereof ...”

The filing further states the Legislature “declined to require the payment of any additional ‘water damages’ or ‘damages’ in any other form to Concord should Littleton or Acton, or both, choose to exercise their superior water supply rights.”

Littleton serves 2,989 residential customers and 498 commercial customers from six groundwater wells. Since 2010, Littleton’s average daily withdrawals for public water supply in any given year have been as high as 1.23 million gallons per day, with the maximum on a single day of 2.12 mgd. By 2040, the maximum daily demand could reach 2.54 mgd.

According to the Water System Capacity Analysis prepared by Tighe & Bond, an expert engineering consulting firm, Littleton is “facing the extremely challenging situation of meeting rapidly increasing customer demands while balancing the feasibility, schedule and costs of water system upgrades and keeping rates reasonable.”

In early November, Concord filed a lawsuit in the Massachusetts Land Court seeking to block Littleton from asserting its rights to water in Nagog Pond, claiming the 1884 Act was superseded by the 1985 Water Management Act. LWD is preparing a response but has not yet filed with the Land Court.

While a separate legal action from the Concord Land Court lawsuit, the LWD filing with the SJC references the Water Management Act, stating, “Nowhere in its text does the WMA assign, change, or otherwise alter property rights related to water withdrawals.”

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