

COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court in and for Suffolk County

_____)	
The TOWN OF LITTLETON,)	
)	
Plaintiff,)	
)	
v.)	No.: <u>SJ-2018-0572</u>
)	
The TOWN OF CONCORD,)	
)	
Defendant.)	
_____)	

THE TOWN OF CONCORD'S MOTION TO DISMISS

Littleton's Petition to the Supreme Judicial Court for an assessment of damages pursuant to Section 10 of the Acts of 1884 is not ripe for adjudication and should be dismissed. Littleton has not alleged facts in its Complaint demonstrating that it has fulfilled the requirements of Section 10 of the Acts of 1884 upon which it seeks to invoke this Court's jurisdiction to appoint a panel of commissioners to assess water damages. Thus, Count I in Littleton's Complaint is pre-mature and the SJC lacks jurisdiction to adjudicate the claim. Similarly, there is no actual controversy for Littleton's Count II seeking a declaratory judgment on the water damages because there is no evidence that Littleton can take any water from Nagog Pond which would be a condition precedent to the need to assess water damages.

Accordingly, pursuant to Mass. R. Civ. Pro. 12(b)(6), the Single Justice should dismiss Littleton's Complaint.

Respectfully submitted,

Town of Concord

By its attorneys,



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Date: December 21, 2018

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail, postage prepaid, (hand-delivering a copy of same) to all counsel of record on December 21, 2018

