

Commonwealth of Massachusetts  
Land Court Department of the Trial Court

TOWN CONCORD,

Plaintiff,

v.

LITTLETON WATER DEPARTMENT,

Defendant.

No.: 18 MISC 000596 (KCL)

**BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS UNDER  
MASS. R. CIV. P. 12(B)(1) FOR LACK OF SUBJECT MATTER JURISDICTION**

THE LITTLETON WATER DEPARTMENT,

By its attorneys,

Thomas J. Harrington, BBO # 556741

J. Raymond Miyares, BBO # 350120

Bryan Bertram, BBO # 667102

Eric Reustle, BBO # 681933

Katherine Stock, BBO # 698127

MIYARES AND HARRINGTON, LLP

40 Grove Street, Suite 190

Wellesley, MA 02482

617-489-1600

Tom@miyares-harrington.com

Ray@miyares-harrington.com

BBertram@miyares-harrington.com

EReustle@miyares-harrington.com

KStock@miyares-harrington.com

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## TABLE OF CONTENTS

Introduction .....	1
Statement of the Issue Presented.....	2
Statement of the Legal Elements .....	2
Background .....	3
Argument .....	6
I.    The Land Court Lacks Jurisdiction Over an Actual Controversy Concerning Water Rights, Without a Related Controversy Over a Right, Title, or Interest in Land .....	7
II.   The 1884 Act Gives the Supreme Judicial Court Subject Matter Jurisdiction Over Disputes Under Section 10 of that Act.....	10
III.  Dismissal Will Not Disadvantage Concord, Which Can Advance the Same Legal Arguments in Defense to Littleton's Complaint in the SJC.....	11
Conclusion .....	12
Addendum .....	Add. 1
Stat. 1884, c. 201, § 10.....	Add. 2
G.L. c. 185, § 1(k) (excerpted).....	Add. 3
G.L. c. 212, § 4 .....	Add. 4
G.L. c. 231A, § 1.....	Add. 5
G.L. c. 231A, § 2.....	Add. 6

Defendant, the Littleton Water Department, submits this Brief, pursuant to Land Court Rule 4, in support of its Motion to Dismiss under Mass R. Civ. P. 12(b)(1), 365 Mass. 754 (1974), for lack of subject matter jurisdiction.

## INTRODUCTION

This case is about water. Nagog Pond is a Great Pond located within the boundaries of the Towns of Littleton and Acton. In 1884, when neither Littleton nor Acton used Nagog Pond for their own water supply, the General Court gave the Town of Concord a limited right to “take and hold” Nagog Pond’s waters for its own use. Stat. 1884, c. 201. The General Court, however, expressly reserved to Littleton and Acton a superior right to take and hold Nagog Pond’s waters for their own use—including any waters already taken by Concord—should the need arise. *Id.* § 10. Upon exercising that right, the General Court required Littleton or Acton to pay “just and proportionate” amount of “water damages” to Concord, with jurisdiction over any dispute reserved to a three-commissioner panel appointed by the Supreme Judicial Court. *Id.*

Littleton now needs to exercise its Nagog Pond water rights to meet its own present and future water needs. As the 1884 Act commands, Littleton commenced negotiations with Concord over water damages and gave Concord notice that, if negotiations failed, Littleton would file a Complaint in the SJC as Section 10 of the Act requires. But, after several negotiation sessions, Concord filed this action with no prior notice or warning to Littleton. In this action, Concord asserts what is nothing more than a defense to Littleton’s contemplated Section 10 complaint in the SJC: Concord asks this Court to declare that the General Court impliedly repealed Littleton’s reserved rights to Nagog Pond’s water through enactment of the Water Management Act, G.L. c. 21G.

While such a claim lacks substantive merit—the General Court never intended for the Water Management Act’s regulatory scheme for water allocation and conservation to repeal hundreds of pre-existing, special acts governing municipal rights

to water—a more immediate flaw must be addressed first. Concord has sued Littleton in the wrong court. For two reasons, this Court lacks jurisdiction over the subject matter of this action and must dismiss it under Mass. R. Civ. P. 12(b)(1). First, this case is solely about water and does not concern a dispute over a “right, title or interest in land” under G.L. c. 185, § 1(k) over which this Court has jurisdiction. Second, were that not true, Section 10 of the 1884 Act still gives jurisdiction over water rights disputes between these towns to the SJC and not this Court. See Stat. 1884, c. 201, § 10. And, as a practical matter, dismissal will not disadvantage Concord. Concord can assert the same legal arguments it pleads in this action as defenses to Littleton’s recently filed complaint in the SJC to ascertain “water damages” under Section 10 of the 1884 Act. (SJ-2018-0572.)

For these reasons, explained more below, this Court should enter an order and judgment under Mass. R. Civ. P. 12(b)(1) dismissing this action.

#### **STATEMENT OF THE ISSUE PRESENTED**

Whether the Land Court has subject matter jurisdiction over this lawsuit, whose sole claim concerns water and not any “right, title or interest in land,” and where Section 10 of the 1884 Act expressly provides a specific mechanism for resolving disputes, through the Supreme Judicial Court.

#### **STATEMENT OF THE LEGAL ELEMENTS**

Rule 12(b)(1) requires dismissal of a complaint where a court lacks subject matter jurisdiction over the claim. “[B]ecause the question of subject matter jurisdiction goes to the power of the court to hear and decide the matter, [the Court may] consider matters in the record outside the face of the complaint.” 311 W. Broadway LLC v. Zoning Bd. of Appeal of Boston, 90 Mass. App. Ct. 68, 73 (2016), citing Ginther v. Commissioner of Ins., 427 Mass. 319, 322 n.6 (1998). When deciding a challenge to subject matter jurisdiction through a motion to dismiss, the Court assumes that facts alleged in a

complaint are true where, as here, the moving party does not submit affirmative evidence to contest those allegations. Ginther, 427 Mass. at 322 n.6.<sup>1</sup>

### BACKGROUND

Nagog Pond is a natural Great Pond. Flagg v. Concord, 222 Mass. 569, 571 (1916). It is located within Littleton and Acton, with those towns' shared border passing approximately through the center of the Pond. (See Compl. ¶5.) Because it is a Great Pond, the Commonwealth holds ultimate title to the Pond's lands and water in public trust, Watuppa Reservoir Co. v. City of Fall River, 147 Mass. 548 (1888); Colony Ordinances of 1641-47, not susceptible to absolute ownership but only to usufructuary rights and uses, Flagg, 222 Mass. at 573.

During the 19<sup>th</sup> century, neither Littleton nor Acton used Nagog Pond for water supply. Instead, Concord, during a period of severe drought,<sup>2</sup> petitioned the General Court to use Nagog Pond's then-unused water (Compl. ¶ 5). The General Court obliged by enacting, on April 30, 1884, "An Act to Authorize the Town of Concord to Increase its Water Supply." Stat. 1884, c. 201. The 1884 Act gave to Concord a qualified right to take and hold the waters of Nagog Pond, along with associated water rights and land, for its water supply. Stat. 1884, c. 201, §§ 1-3. But in giving Concord that right, the General Court reserved to Littleton and Acton a superior right to use Nagog Pond's waters in the future. Specifically, Section 10 of the 1884 Act reserves to Littleton and Acton authority to take and hold part or all of Nagog Pond's waters, even if the water to

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<sup>1</sup> As required by Land Court Rule 4, those facts material to Littleton's jurisdictional arguments (under Rule 12(b)(1)) are set forth in a separate, contemporaneously filed concise statement of material facts. All citations to allegations in Plaintiff's Complaint are assumed true only for purposes of this Motion. Littleton reserves and does not waive all rights to contest the allegations in the Complaint for any other reason or in connection with any other paper, event, or issue in this lawsuit.

<sup>2</sup> U.S. Geological Survey Water-Supply Paper 2375 National Water Summary 1988-89--Floods and Droughts: Massachusetts (available at <https://md.water.usgs.gov/publications/wsp-2375/ma/>).

be taken is already held by Concord. Stat. 1884, c. 201, § 10. Moreover, the 1884 Act says that if Nagog Pond's waters are not enough for Concord's needs and those of either Littleton or Acton, then Littleton or Acton must be "first supplied" over Concord. Id.

Should Littleton or Acton choose to exercise their reserved rights, the Act obligates the town exercising that right to pay a "just and proportionate" "water damages" to Concord for the taking of any of Nagog Pond's or its outlet's "waters" or associated "water rights," that Concord may have previously taken. Stat. 1884, c. 201, § 10. In other words, should Littleton or Acton take and hold waters for use from Concord, they must reimburse Concord a "just and proportionate" amount of what Concord may have originally paid in damages to someone else. See id. But Section 10 is limited to water and water rights; it does not affect a transfer of land from Concord to Littleton or Acton and, accordingly, does not require either of the latter towns to pay Concord damages for land not transferred. See id. To determine "water damages," the towns are required to negotiate in good faith but, "if they shall fail to agree," the General Court commanded that disputes over "ascertain[ing]" the "water damages" owed Concord are to be decided by "three commissioners" appointed upon application to the Supreme Judicial Court. Id. The General Court gave no other court of the Commonwealth jurisdiction of any claims under Section 10. See id.

After enactment of the 1884 Act, Concord started using Nagog Pond as a water source, including taking and holding all of the Pond's waters in 1909 and thereafter taking additional lands and constructing a municipal water supply system to use that water. (See Compl. ¶¶ 8-15, 48-59.) Concord has benefited from the 1884 Act for over a century and continues to use Nagog Pond to this day, id. although since 1884, Concord has developed additional sources of water supply.<sup>3</sup>

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<sup>3</sup> <http://www.concordnet.org/363/Water-Supply>

Littleton, meanwhile, has seen significant population growth in recent decades. That growth has come, unsurprisingly, with an increased demand for water. The Littleton Water Department—responsible for supplying and distributing water within the Town’s boundaries—currently operates a public water supply distribution system utilizing six wells. That is not enough to meet projected future needs.<sup>4</sup> Prudently, Littleton is now planning for its future and is pursuing several additional sources of water supply. Nagog Pond is one such source. Because of its need, Littleton will exercise its right under the 1884 Act to take and hold part or all of Nagog Pond’s waters. Doing so is a necessary to appropriately plan for Littleton’s future water needs.

To that end, Littleton gave Concord notice, on February 20, 2018, that it will exercise its rights under the 1884 Act to take, hold, and use Nagog Pond’s waters. (Compl. ¶ 73, Ex. E.) In that notice, Littleton requested negotiations over the terms of its doing so, including paying a “just and proportionate” amount of “water damages” to Concord. *Id.* In that notice, Littleton also reserved its right to file an application in the SJC under the 1884 Act should negotiations fail. *Id.* Concord did not respond. So, on April 17, 2018, Littleton sent a second notice stating its intent to file an application in the SJC under an accelerated timeframe if Concord was unwilling to discuss the issue. (Compl. ¶ 78, Ex. F.) Concord responded on April 30 and the parties thereafter held a handful of negotiating sessions. (Compl. ¶¶ 82, 84-88, 97-99.) The final session occurred on November 7. (Compl. ¶ 99.) The day after that session, and without any prior notice to Littleton, Concord filed this action.

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<sup>4</sup> Tighe & Bond, an expert engineering firm retained by Littleton, describes the Town as “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 addition to recommendations such as optimizing Littleton’s existing water supply system, Tighe & Bond concluded that “to meet future water demands, additional withdrawals at existing well facilities or permitting of withdrawals at new facilities will be necessary.”

On December 7, 2018, Littleton filed a Complaint in the SJC, under Stat. 1884, c. 202, § 10, to ascertain damages for its imminent taking of part or all of Nagog Pond's waters and for a corresponding declaratory judgment, under G.L. c. 231A, §§ 1 and 2, concerning the meaning and scope of the term "water damages" for purposes of properly instructing a three-commissioner panel.<sup>5</sup> Soon after, Littleton also filed a motion in the SJC requesting that the Court transfer this case to its own docket and consolidate both, pursuant to the SJC's authority under G.L. c. 211, § 4A.<sup>6</sup>

### ARGUMENT

Concord cites G.L. c. 185, § 1(k) as the primary basis for this Court's jurisdiction. But that statute does not give this Court jurisdiction over this case about water, whose dispute is not over a "right, title or interest in land." And even if that were not true, the 1884 Act instructs that ascertaining "water damages"—and, by extension, disputes over such damages—belong in the SJC. Stat. 1884, c. 202, § 10. Section 10 thus reflects the policy of the General Court that disputes arising under Section 10 are of sufficient public importance that they are to be adjudicated by the Commonwealth's highest court. This action, as one falling within Section 10's ambit, belongs in the SJC and not here. As explained more below, both supply reasons that independently—or at the least in conjunction—require dismissal of this case under Mass. R. Civ. P. 12(b)(1).

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<sup>5</sup> Fact of its filing can be judicially noticed from the SJC's docket. [http://ma-appellatecourts.org/search\\_number.php?dno=SJ-2018-0572&get=Search](http://ma-appellatecourts.org/search_number.php?dno=SJ-2018-0572&get=Search).

<sup>6</sup> "The supreme judicial court may also direct any cause or matter to be transferred from a lower court to it in whole or in part for further action or directions, and in case of partial transfer may issue such orders or directions in regards to the part of such cause or matter not so transferred as justice may require." *Id.*



**I. The Land Court Lacks Jurisdiction the Actual Controversy in This Case About Water Rights, Without a Related Controversy Over a Right, Title, or Interest in Land.**

Concord points to G.L. c. 185, § 1(k), c. 212, § 4, and c. 231A, §§ 1 and 2 as its bases for jurisdiction. (Compl. ¶ 3.). Those statutes say, in relevant part:

- **G.L. c. 185, § 1(k):** “The land court department shall have exclusive original jurisdiction of the following matters: . . . (k) All cases and matters cognizable under the general principles of equity jurisprudence where any right, title or interest in land is involved . . .” (emphasis added)
- **G.L. c. 212, § 4:** “The [superior] court shall have original jurisdiction of all civil actions, except those of which other courts have exclusive original jurisdiction.”
- **G.L. c. 231A, § 1:** “The supreme judicial court, the superior court, the land court and the probate courts, within their respective jurisdictions, may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby . . .”
- **G.L. c. 231A, § 2:** “The procedure under section one may be used to secure determinations of right, duty, status or other legal relations under deeds, wills or written contracts or other writings constituting a contract or contracts or under the common law, or a charter, statute, municipal ordinance or by-law, or administrative regulation, including determination of any question of construction or validity thereof which may be involved in such determination.”

Not one of these statutes constitutes a basis for jurisdiction in this Court.

To begin, G.L. c. 231A, §§ 1 and 2 are provisions of the Declaratory Judgment Act. That Act does not expand a court’s jurisdiction but only confers equitable, declaratory authority to courts “within their respective jurisdictions.” G.L. c. 231A, § 1; Konstantopoulos v. Whately, 384 Mass. 123, 127 (1981); Sisters of Holy Cross of Mass. v. Town of Brookline, 347 Mass. 486, 491 (1964). Alone, these statutes are not enough.

Next, G.L. c. 212, § 4 applies to the Superior Court Department and not the Land Court Department. Its invocation here is unclear; its text provides no basis for jurisdiction in this Court.

That finally leaves G.L. c. 185, § 1(k), which gives this Court “exclusive jurisdiction” over claims in equity that apply to “any right, title or interest in land.” (emphasis added). This statute also does not help Concord because this case concerns water. Specifically, under Section 10 of the 1884 Act, this case concerns Littleton’s taking, holding, and using “water” and “water rights” from Nagog for which Littleton must pay Concord a “just and proportionate” sum of “water damages.” Water is not land and only land is covered by G.L. c. 185, § 1(k). Straightforwardly reading the statute puts Concord’s sole Count in this action beyond that statute’s reach. See id.

To be sure, there is no argument to be had that land somehow means water for purposes of G.L. c. 185, § 1(k). “In construing a statute, words are to be accorded their ordinary meaning and approved usage.” E.g., Hashimi v. Kalil, 388 Mass. 607, 609 (1983). There is no ambiguity about the ordinary meanings of—and more to the point, differences between—“land” and “water.” And the Land Court’s jurisdictional statutes provide no basis to believe the General Court intended for these plainly different terms to be used interchangeably. Applied here, G.L. c. 185, § 1(k) provisions concerning “land” do not give this Court jurisdiction over a case about “water” and “water rights.”

Nor would it be right for Concord to assert that its claim—while founded upon Littleton’s exercise of its Section 10 water rights—somehow still implicate a dispute over land, within G.L. c. 185, § 1(k)’s ambit. The Water Management Act—the provisions of which Concord looks to for implied repeal—does not concern land; consistent with its name, it concerns water. See G.L. c. 21G. Section 10 of the 1884 Act also does not concern land; the word “land” does not even appear within its text. See Stat. 1884, c. 201, § 10. Section 10 authorizes Littleton to take and hold “the waters of said Nagog Pond,” Stat. c. 201, § 10, not lands held by Concord, and that is what Littleton will do. Concord’s own request for relief bears this out. In its claim for relief, Concord points to “Littleton’s demand to take Concord’s right to withdraw water from Nagog Pond” as the basis for its asserted entitlement to declaratory relief. (Compl. Count I, ¶ 3.). To the

extent that Concord's Complaint contains a myriad of other paragraphs concerning land it has taken under the 1884 Act to create its own water supply system, those allegations are irrelevant. (See Compl. ¶¶ 9-11.) Littleton has not threatened to take that land—even Concord doesn't plead that. (See generally Compl.) Thus, the actual controversy in this case concerns only the water and water rights held by Concord that Littleton will now take and hold, not land.<sup>7</sup> Without an actual dispute over a legal interest in land, Concord fails to plead a claim that triggers jurisdiction under G.L. c. 185, § 1(k). See id.<sup>8</sup>

It is also no rejoinder to argue, as Concord may, that the 1884 Act itself concerns both land and water. As just explained, the actual controversy in this case arises under Section 10, which concerns only “water,” “water rights,” and “water damages.” It does not arise other sections of that Act. Those other sections of the 1884 Act—that deal with legal interests in land concern municipal takings (by Concord) of private property rights—do not inform the jurisdiction analysis for this case. It follows that this controversy, which arises from the rights and obligations set forth in Section 10 and not other Sections of the 1884 Act, is limited to that Section's subject matter: water.

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<sup>7</sup> An actual controversy under the Declaratory Judgment Act must appear on the face of the complaint, see G.L. c. 231A, § 1 (“specifically set forth in the pleadings”), and must concern “a real dispute,” Libertarian Ass'n of Mass., 462 Mass. at 546, rather than a “potential future conflict[ ],” Penal Insts. Comm'r for Suffolk Cty. v. Commissioner of Correction, 382 Mass. 527, 531 (1981).

<sup>8</sup> This Court's prior decision guard this jurisdictional limit by requiring, in any case related to water, that an actual dispute exist over a “right, title or interest in land” under G.L. c. 185, § 1(k). E.g., DeWolf v. Apovian, 08 MISC 381982 HMG, 2012 WL 3139702 (Mass. Land Ct. Aug. 2, 2012); Lazarus v. Knowles, 10 MISC 420255 HMG, 2012 WL 194386 (Mass. Land Ct. Jan. 19, 2012); Loiselle v. Hickey, 16 MISC 000333 (AHS), 2017 WL 2829296 (Mass. Land Ct. June 30, 2007). Cf. Harihar v. Citigroup Global Markets Realty, Corp., No. 18 MISC 000144 (MDV), 2018 WL 6494607 (Mass. Land Ct. Dec. 7, 2018), judgment entered sub nom. 2018 WL 6492705 (Mass. Land Ct. Dec. 7, 2018) (noting Court's lack of jurisdiction over lawsuit without dispute over right, title, or interest in land); Wells Fargo Bank, N.A. v. Coffin, No. 18 MISC 000166 (RBF), 2018 WL 5532497 (Mass. Land Ct. Oct. 29, 2018) (same).

## II. The 1884 Act Gives the Supreme Judicial Court Subject Matter Jurisdiction Over Disputes Under Section 10 of that Act.

Concord's lawsuit suffers another jurisdictional flaw that independent of the prior flaw—or at least in conjunction with it—requires dismissal.

The General Court specified, in the 1884 Act, how and where disputes over Section 10 water rights should be resolved. Where, as here, Littleton intends to take and hold part or all of Nagog Pond's waters, which Concord previously took in their entirety in 1909, then Littleton must:

[P]ay to said Concord a just and proportionate part of whatever sums the said town of Concord shall have paid or become liable to pay for water damages to any persons or corporations for the taking of water rights from said pond or the outlet thereof, to be ascertained, if the parties shall fail to agree, by three commissioners to be appointed upon the application of either party by the supreme judicial court.

Stat. 1884, c. 201, § 10 (emphasis added). That text is a legislative command for the SJC to decide such matters as a matter of public policy. See Stat. 1884, c. 201.

To be sure, Section 10 does not explicitly contemplate legal challenges in the nature of an implied repeal. But that does not alter the textual analysis. Section 10 concerns disputes over water damages arising from Littleton's or Acton's taking of water or water rights held by Concord. See Stat. 1884, c. 201, § 7. When drafted, the General Court surely perceived no need to contemplate issues of implied repeal based a statutory water allocation scheme still over a century away. If the General Court determined that public policy required a dispute over ascertaining "water damages" to be important enough for original entry in the SJC, it is hard to imagine that the General Court intended a related legal challenge to the statute's ongoing viability to be decided anywhere else. See Stat. 1884, c. 201, §§ 7 and 10.

The textual analysis becomes even stronger in reference to other sections of the 1884 Act. In Section 7, the 1884 Act requires Concord to pay damages to persons from whom it takes "land, right of way, water, water source, water right or easement" (or any

other action taken) in furtherance of the Act. Stat. 1884, c. 201, § 7. For that kind of dispute, the General Court directed that such damages “are to be assessed and determined in the manner provided by law when land is taken for the laying out of highways ...” Id. That is a grant of concurrent jurisdiction to whatever courts may otherwise have jurisdiction such an action, different from Section 10. Id. The differing text between Sections 7 and 10 shows that the General Court carefully considered what courts were to have jurisdiction over which claims arising from specific sections of the 1884 Act. See MacLaurin v. City of Holyoke, 475 Mass. 231, 241 (2016) (“Where different words with different meaning are used in different sections of a statute, they cannot be construed interchangeably, but must be construed in relation to one another.”) (internal citations and quotations omitted). Properly implementing the General Court’s intent therefore demands that this action go to the SJC, not this court.

Finally, that Concord advances its case as one for declaratory judgment under G.L. c. 231A, changes nothing. As explained already, the Declaratory Judgment Act does not expand the subject matter jurisdiction of any court. G.L. c. 231A, § 1; Konstantopoulos, 384 Mass. at 127; Sisters of Holy Cross of Mass., 347 Mass. at 491. The General Court’s command as to the underlying rights of the 1884 Act and their proper process and forum for adjudication controls. Advancing this claim through the vehicle of the Declaratory Judgment Act does not confer jurisdiction on this court, where jurisdiction is otherwise proper in the SJC.

### **III. Dismissal Will Not Disadvantage Concord, Which Can Advance the Same Legal Arguments in Defense to Littleton’s Complaint in the SJC.**

Although Rule 12(b)(1) does not concern itself with prejudice or disadvantage to a party, it is still reassuring to note that dismissing this action will inflict neither upon Concord. Littleton has filed a complaint under Section 10 of the 1884 Act in the SJC. In defense to that complaint, Concord can argue—as it does here—that the Water Management Act impliedly repealed the 1884 Act. Indeed, resolving the issue as a

defense in the SJC is far more efficient than two litigations, in two different courts, concerning the same core facts and subject matter.

For that reason, Littleton has also asked the SJC to transfer this action to its own docket under G.L. c. 211, § 4A. Littleton will keep this Court apprised of the status of that Motion specifically, and the SJC proceeding more generally.

### CONCLUSION

For the reasons above, the Court should enter an order and final judgment DISMISSING this case WITH PREJUDICE, pursuant to Mass. R. Civ. P. 12(b)(1), for lack of subject matter jurisdiction.

Respectfully submitted,

THE LITTLETON WATER DEPARTMENT,

By its attorneys,



Thomas J Harrington, BBO # 556741  
J. Raymond Miyares, BBO # 350120  
Bryan Bertram, BBO # 667102  
Eric Reustle, BBO # 681933  
Katherine Stock, BBO # 698127

MIYARES AND HARRINGTON, LLP  
40 Grove Street, Suite 190  
Wellesley, MA 02482  
617-489-1600  
Tom@miyares-harrington.com  
Ray@miyares-harrington.com  
BBertram@miyares-harrington.com  
EReustle@miyares-harrington.com  
KStock@miyares-harrington.com

Dated: January 3, 2019

**ADDENDUM**

Stat. 1884, c. 201, § 10 ..... Add. 2  
G.L. c. 185, § 1(k) (excerpted) ..... Add. 3  
G.L. c. 212, § 4..... Add. 4  
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G.L. c. 231A, § 2 ..... Add. 6

STAT. 1884, C. 201, § 10

Section 10. Noting contained in this act shall prevent the town of Acton nor the town of Littleton from taking the waters of said Nagog Pond whenever said towns or either of them may require the same for similar purposes, and in case of such taking by either of said towns or both of them, if from any reason the supply of water in said pond shall not be more than sufficient for the needs of the inhabitants of the towns of Acton and Littleton, then the needs of the inhabitants of said towns shall be first supplied ; and if either of said towns of Acton or Littleton shall hereafter be authorized to take and shall take the waters of said Nagog Pond or any part thereof which the town of Concord may have taken under this act, said town so taking shall pay to said Concord a just and proportionate part of whatever sums the said town of Concord shall have paid or become liable to pay for water damages to any persons or corporations for the taking of water rights, from said pond or the outlet thereof, to be ascertained, if the parties shall fail to agree, by three commissioners to be appointed upon the application of either party by the supreme judicial court ; the report of said commissioners made after hearing the parties, and returned to and accepted by said court shall be final between the said parties.



**G.L. C. 185, § 1(K) (EXCERPTED)**

The land court department established under section one of chapter two hundred and eleven B shall be a court of record, and wherever the words “land court”, or wherever in this chapter the word “court” is used in that context, they shall refer to the land court department of the trial court, and the words “judge of the land court” or the word “judge”, in context, shall mean an associate justice of the trial court appointed to the land court department. The land court department shall have exclusive original jurisdiction of the following matters: . . .

(k) All cases and matters cognizable under the general principles of equity jurisprudence where any right, title or interest in land is involved, including actions for specific performance of contracts.

**G.L. c. 212, § 4**

The [superior] court shall have original jurisdiction of all civil actions, except those of which other courts have exclusive original jurisdiction.

**G.L. c. 231A, § 2**

The procedure under section one may be used to secure determinations of right, duty, status or other legal relations under deeds, wills or written contracts or other writings constituting a contract or contracts or under the common law, or a charter, statute, municipal ordinance or by-law, or administrative regulation, including determination of any question of construction or validity thereof which may be involved in such determination. Said procedure under section one may be used in the superior court to enjoin and to obtain a determination of the legality of the administrative practices and procedures of any municipal, county or state agency or official which practices or procedures are alleged to be in violation of the Constitution of the United States or of the constitution or laws of the commonwealth, or are in violation of rules or regulations promulgated under the authority of such laws, which violation has been consistently repeated; provided, however, that this section shall not apply to the governor and council or the legislative and judicial departments. For the purpose of this section practices or procedures mean the customary and usual method of conducting municipal, county, state agency or official business.

The foregoing enumeration shall not limit or restrict the exercise of the general powers conferred in section one in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

**G.L. c. 231A, § 1**

The supreme judicial court, the superior court, the land court and the probate courts, within their respective jurisdictions, may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby, either before or after a breach or violation thereof has occurred in any case in which an actual controversy has arisen and is specifically set forth in the pleadings and whether any consequential judgment or relief is or could be claimed at law or in equity or not; and such proceeding shall not be open to objection on the ground that a merely declaratory judgment or decree is sought thereby and such declaration, when made, shall have the force and effect of a final judgment or decree and be reviewable as such; provided, that nothing contained herein shall be construed to authorize the change, extension or alteration of the law regulating the method of obtaining service on, or jurisdiction over, parties or affect their right to trial by jury. When a declaration of right, or the granting of further relief based thereon, shall involve the determination of issues of fact triable by a jury as of right and as to which a jury trial is duly claimed by the party entitled thereto, or issues which the court, in accordance with the practice of courts of equity, considers should be tried by a jury, such issues may be submitted to a jury in the form of questions, with proper instructions by the court, whether a general verdict be required or not.