

Commonwealth of Massachusetts
Land Court Department of the Trial Court

TOWN CONCORD,

Plaintiff,

v.

LITTLETON WATER DEPARTMENT,

Defendant.

No.: 18 MISC 000596

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

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

Table of Contents

Complaint, without exhibits (this action), No. 18 MISC 000596.....	Tab 1
Complaint, Ex. A (this action), No. 18 MISC 000596.....	Tab 2
1909 Concord Taking of Nagog Pond, Middlesex Registry of Deeds, book 3457, pages 221-37.....	Tab 3
Littleton Notice to Concord re: Exercise of 1884 Act Rights (Feb. 20, 2018)	Tab 4
Complaint, SJ-2018-0572.....	Tab 5
Motion to Transfer, SJ-2018-0572.....	Tab 6

TAB 1

COMMONWEALTH OF MASSACHUSETTS

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MIDDLESEX, ss.

LAND COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. _____

TOWN OF CONCORD,

Plaintiff,

v.

LITTLETON WATER DEPARTMENT,

Defendant.

18 MISC 000596



COMPLAINT

The Legislature authorized the Town of Concord ("Concord") to use Nagog Pond, a surface water body located in the towns of Acton and Littleton, MA, as a public water supply by Chapter 201 of the Acts of 1884 (the "1884 Act"). Pursuant to the 1884 Act, Concord acquired land by eminent domain and constructed a dam, intake pipe, and other water supply infrastructure at the pond in 1909. Concord has continuously operated Nagog Pond as a public water supply since that time, and has devoted substantial financial and management resources to the maintenance and operation of the pond as a reservoir for drinking water, fire protection, and public water supply to residents and businesses in Concord and Acton.

When Massachusetts adopted the Water Management Act, G.L. c. 21G (the "WMA"), in 1985 to "establish one state-wide, uniform system for authorizing and managing water withdrawals," Concord applied for and received a Registration, grandfathering and protecting its rights to withdraw water from Nagog Pond. Despite never being authorized to withdraw water from Nagog Pond and never actually withdrawing water from Nagog Pond, the Littleton Water Department ("Littleton") is demanding that Concord relinquish its rights to Nagog Pond based

on Littleton's assertion that an unexercised provision in Section 10 of the 1884 Act supersedes Concord's Registration under the WMA.

Littleton is also attempting to establish a set of groundwater wells known as the Cobbs Wells, which based on data provided to date has a hydrologic connection to Nagog Pond and will draw water from Concord's registered public water supply.

Littleton's claim of rights under the 1884 Act is invalid, because the WMA effectively repealed the 1884 Act and terminated any rights Littleton may have had to withdraw water from Nagog Pond. Alternatively, even if the 1884 Act has not been repealed, Littleton has not satisfied the criteria in Section 10 of the 1884 Act to exercise rights to Nagog Pond.

This declaratory judgment action seeks a judicial determination on the extent to which the WMA repealed and superseded the 1884 Act and the extent to which Concord's Registration pursuant to the WMA is superior to any assertion by Littleton that it has rights to Nagog Pond.

PARTIES

1. The Plaintiff, Town of Concord ("Concord"), has its principal office at Town House, 22 Monument Square, Concord, MA 01742.
2. The Defendant, Littleton Water Department ("Littleton"), has a principal place of business at 39 Ayer Road, Littleton, MA 01460-3406.

JURISDICTION

3. As an equitable matter involving rights to Nagog Pond and the use of the land Concord obtained through eminent domain and other measures for the purpose of operating and maintaining a public water supply, the Land Court has jurisdiction over the parties and this matter, pursuant to G.L. c. 185, § 1(k), c. 212, § 4, and c. 231A, §§ 1 and 2.

FACTUAL BACKGROUND

A. CONCORD'S RIGHTS TO NAGOG POND UNDER THE 1884 ACT

4. During the late 19th Century, Concord anticipated that it may need more water supply to support its inhabitants, businesses, and the state penitentiary.

5. After diligently investigating opportunities to increase its water supply, Concord petitioned the state legislature for authorization to withdraw water from Nagog Pond, a fresh water pond located along the border of the towns of Littleton and Acton.

6. In 1884, the General Court passed *An Act to Authorize the Town of Concord to Increase its Water Supply*, (the "1884 Act"), which gave Concord authorization to withdraw water from Nagog Pond and undertake land acquisitions by eminent domain to support its water withdrawal efforts. A copy of the 1884 Act is attached as **Exhibit A**.

7. Specifically, Section 2 of the 1884 Act states that Concord "may take and hold the waters of Nagog Pond, so called, in the towns of Acton and Littleton and the waters which flow into and from the same, and may also take and hold by purchase or otherwise all necessary land for raising, holding, diverting, purifying, and preserving such waters and conveying the same to any and all parts of said town of Concord, and may erect thereon proper dams, reservoirs, buildings, fixtures and other structures."

8. To effectuate its rights under the 1884 Act, in 1909, Concord Town Meeting adopted Article 14 authorizing the Concord Water and Sewer Commission "to take and hold the waters of Nagog Pond, ...and to also take and hold by purchase or otherwise all necessary land, water rights, rights of water and easement for raising, holding, diverting, purifying and preserving such waters."

9. On July 28, 1909, Concord recorded an Instrument of Taking, in the Middlesex Registry of Deeds, Book 3457, Page 221, which enabled Concord to acquire several parcels along

Nagog Pond for the purpose of “laying out, establishing, operating and maintaining an additional water supply system to be obtained from Nagog Pond.”

10. In addition to the initial takings in 1909, Concord periodically obtained other parcels on Nagog Pond to support its water supply infrastructure, limit development along the pond, and ensure water quality.

11. Currently, Concord owns approximately 40 acres of land in Littleton and 60 acres of land in Acton along the southeast shore of Nagog Pond, which it developed for its water supply, pursuant to an authorization from the General Court in the 1884 Act.

12. In 1909, Concord installed a cast-iron intake pipe in Nagog Pond and constructed a dam to hold the water for regulating the volume of the pond to ensure supply.

13. Concord started water withdrawals from Nagog Pond in September, 1909.

14. During its decades of water withdrawal operations, Concord devoted significant resources to the management and maintenance of Nagog Pond as a public water supply, including the construction and maintenance of a pump house and water mains and the pursuit and exercise of best land and water management practices to preserve excellent water quality in the reservoir.

15. As a surface water body, Nagog Pond is a unique and crucial asset in Concord’s public water supply system. Having a surface water reservoir gives Concord essential operational flexibility in how it manages its water resources through periods of drought thereby enhancing its long-range resiliency and climate adaptability.

B. MASSACHUSETTS ADOPTS THE WMA

16. In the late 1970’s, the Massachusetts Senate Special Legislative Commission of Water Supply (the “Water Supply Commission”) was established to address concerns that the availability of the water supply in the Commonwealth could no longer be assumed. The Water

Supply Commission conducted a study to assess what actions, if any, the Commonwealth should take to ensure water needs were met, to establish a definitive water supply policy, and recommend the means to meet the identified needs. As part of its work, the Water Supply Commission issued a study, Senate No. 1826, Report of the Special Commission Established to Make Investigation and Study Relative to Determining the Adequacy of the Water Supply of the Commonwealth, (1983) (the "Water Supply Commission Report"). A copy of the Water Supply Commission Report is attached as **Exhibit B**.

17. The Water Supply Commission Report highlighted the interconnection of ground and surface waters as a single hydrologic system, and the consequent inability of local authorities that have geographically limited powers to address issues or remedy problems inherent in the regional span of water sources. The Water Supply Commission Report recommended regulation of water withdrawals at the state level through the adoption of comprehensive new legislation, the WMA.

18. In 1985, Massachusetts adopted the WMA.

19. Pursuant to the WMA, the Massachusetts Department of Environmental Protection ("MassDEP") adopted the regulations it deemed necessary to establish "a mechanism for managing ground and surface water in the commonwealth as a single hydrologic system..." M.G.L. c. 21G, § 3.

20. MassDEP published these regulations at 310 CMR 36.00. These regulations reflect the comprehensive two-tiered scheme of registrations and permits established by the WMA for the management of withdrawals of water in excess of 100,000 gallons per day (gpd) from river basins throughout the Commonwealth.

21. The registration tier acknowledged the established historic withdrawals which were in place before the state set up a state-wide administration to regulate Massachusetts water resources as a "single hydrological system."

22. To accomplish this, the WMA enabled users who consistently withdrew 100,000 gpd or more of water to "file a registration statement" on or before January 1, 1988, setting forth their "existing withdrawal," based on measured withdrawals from January 1, 1981 through December 31, 1985 (the "WMA Registration Eligibility Period").

23. Pursuant to M.G.L. c. 21G, § 5, if a user filed its registration statement prior to the January 1, 1988 deadline and timely renewed its registration, absent a state of emergency, the registrant could continue forever to withdraw water at the rate of the existing withdrawal established in its initial registration.

24. Unregistered uses were relegated to the second tier: permits. For new or increased withdrawals after the close of the WMA Registration Eligibility Period, applicants had to apply for a WMA permit from MassDEP.

25. In contrast to registrations under G.L. c. 21G, § 5, WMA permits issued by MassDEP under G.L. c. 21G, § 7, can be conditioned based on a variety of factors, including the impact of the proposed withdrawal on other hydrologically interconnected water sources and reasonable conservation measures, among other criteria and standards.

C. MASSDEP HAS ARGUED THAT THE WMA REPELAED PRIOR WATER LEGISLATION

26. In an October 8, 1987 letter to address an emerging dispute in which the Town of West Newbury was trying to pursue groundwater wells within the watershed of Newburyport's Artichoke Reservoir – which is located entirely within the Town of West Newbury, the then Water Management Program Manager at the Department of Environmental Quality Engineering,

Steve Roy, provided an assessment of the purpose and operation of the WMA, which was roughly contemporaneous with the adoption and implementation of the WMA. A copy of the letter is attached as **Exhibit C**.

27. In his letter, the Water Management Program Manager issued the following strong opinion that the WMA repealed prior water laws and was intended to provide uniform administration of water management and protection for registered sources:

The Water Management Act (M.G.L. c. 21 G) was passed by the legislature in 1985 to resolve such disputes and prevent them from occurring and causing a negative impact. All water withdrawals in use between 1981 – 1985 can be registered and grandfathered as protected water rights...All previously granted water rights by the legislature are essentially repealed by the comprehensiveness of the Water Management Act in its establishment of a water allocation program in DEQE.

28. The supremacy of the WMA over prior legislative acts granting water withdrawal rights, was also expressly endorsed by MassDEP in an adjudicatory hearing concerning competing claims of rights to make withdrawals from a system of five interconnected great ponds, known as the Lakeville Pond Complex. In the Matter of Freetown, Docket Nos. 91-103 and 91-112, Ruling on Department's Motion for Summary Decision, 7 DEPR 33 (March 30, 2000).

29. MassDEP's Memorandum in Support of the Department of Environmental Protection's Motion for Summary Decision ("MassDEP's Freetown Memorandum"), attached hereto as **Exhibit D**, provides the agency's own interpretation of this statutory scheme and a strong argument in support of the conclusion that the WMA repealed and replaced the prior acts with respect to authorization for water withdrawals.

30. Based on the legislative history of the WMA, MassDEP's Freetown Memorandum argued that the "legislature clearly adopted the rationale of the [Special

Commission] Report in enacting the Water Management Act which it proposed” and that “[t]here is no doubt that the legislature intended the Act to establish one state-wide, uniform system for authorizing and managing water withdrawals.”

31. In MassDEP’s Freetown Memorandum, the agency stated that the WMA “does not protect rights accorded under prior statutes, which are unexercised and for which the Department has received no application by the time permit applications were due.”

D. CONCORD’S WMA REGISTRATION

32. Prior to the January 1, 1988 deadline in G.L. c. 21G, § 5, Concord filed with MassDEP its registration statement documenting its historic use of Nagog Pond.

33. In its application for registration under the WMA, Concord sought a registration for an aggregate of 2.1 Million Gallons per Day (“MGD”) for its six historic water withdrawal resources, including surface and groundwater resources.

34. MassDEP issued Concord its Registration for Nagog Pond on May 30, 1991.

35. Concord has timely renewed its Registration for Nagog Pond, pursuant to the WMA and MassDEP Regulations at 301 CMR 36.00 et seq.

36. Of the 2.1 MGD of approved withdrawal volume for Concord’s Registration across several sources, the withdrawals from Nagog Pond accounted for 0.89 MGD.¹ Concord’s historic withdrawal of 0.89 MGD at Nagog Pond was determined during the WMA Registration Eligibility Period from 1981 – 1985.

37. In the early 1990s, Concord’s cumulative water withdrawal from all sources exceeded 2.1 MGD, to as much as 2.3 MGD.

¹ As permitted in the application instructions, Concord presented its withdrawals from six existing sources in the aggregate. See Form D of Concord’s Registration statement. Based on the underlying withdrawal volumes observed by Concord during the WMA Registration Eligibility Period, the volume attributable to Nagog Pond was 0.89 MGD.

38. To address the minor exceedance of its registration volume, MassDEP issued Concord an interim WMA Permit in 1991. This permit included all of Concord's water withdrawal resources, including its surface water withdrawal at Nagog Pond.

39. To address this minor exceedance of its registered volume, Concord intended to establish a new groundwater resource, the Robinson Well, which would have given Concord the ability to withdraw an additional 1.0 MGD. Concord's intent was to have the Robinson Well proceed pursuant to a WMA Permit, while its other resources remained solely registered sources.

40. Concord encountered some difficulties establishing and permitting the Robinson Well. During this period, MassDEP renewed Concord's Interim Permit several times. Eventually, MassDEP instructed Concord to apply for a WMA Permit without the Robinson Well.

41. In 1997, Concord applied for and received a WMA Permit, which, like its interim permit, included Nagog Pond.

42. Once the permitting for the Robinson Well was complete on May 27, 1998, MassDEP issued an Amended Permit to Concord to include the Robinson Well.

43. Even though Nagog Pond is listed in Concord's WMA Permit, there is no specific withdrawal volume attributed to Nagog Pond for the Permit.

44. Though it has not been adopted as a formal condition of Concord's use of Nagog Pond, a recent U.S. Geological Service ("USGS") study estimated the firm yield of Nagog Pond, with no releases, to be 0.86 MGD (Refinement and Evaluation of the Massachusetts Firm-Yield Estimator Model, 2011, Scientific Investigation Report 2011-5125).

45. The volume of water Concord withdrew from Nagog Pond during the WMA Registration Eligibility period, 0.89 MGD, exceeds the 0.86 MGD firm yield estimated by USGS.

46. Using the USGS firm yield estimate, there is no remaining available volume of water for another user to receive a permit for a separate withdrawal volume from Nagog Pond.

47. Under the WMA, Concord is the only entity with authorization to withdraw water from Nagog Pond.

E. ADDITIONAL INVESTMENT IN NAGOG POND BY CONCORD IN RELIANCE ON ITS REGISTRATION RIGHTS UNDER THE WMA

48. On February 20, 1992, DEP issued Concord an "Approval of Waiver from Requirement to Install Filtration at Nagog Pond" in accordance with federally mandated Surface Water Filtration Treatment Rule (SWTR) requirements, enabling Concord to defer a very costly and federally compliant filtration facility.

49. In accordance with the filtration waiver, Concord constructed an ozone treatment facility on its land adjacent to Nagog Pond to provide enhanced disinfection in 1995. The Acton Board of Selectmen issued a Special Permit and Variance for this ozone treatment facility.

50. Concord completed a major renovation of the dam at Nagog Pond in 2012.

51. Concord is in the process of undertaking a major project to replace the 1909 intake pipe and construct a new water treatment plant with state-of-the art water purification processes, in compliance with the federal Safe Drinking Water Act.

52. The 1909 intake pipe is at risk of failure and may jeopardize Concord's ability to provide consistent high quality drinking water to residents and businesses in Concord and Acton.

53. The intake pipe and water treatment plant are important public health and public safety initiatives. There are also examples of Concord's deliberate planning and stewardship of the Nagog Pond.

54. On November 10, 2016, Concord received a Certificate from the Secretary of Energy and Environmental Affairs ("EOEEA") approving the Final Environmental Impact Report under the Massachusetts Environmental Policy Act ("MEPA") for the replacement of the intake pipe and the construction of the new water treatment plant. The Secretary determined that the project "adequately and properly complies with MEPA and its implementing regulations."

55. Following an appeal to the Land Court and two remands to the Acton special permit granting authority, Concord obtained a special permit and a site plan special permit from the Acton Board of Selectmen for the new water treatment plant and intake pipe in April 2018.

56. Concord also received an Order of Conditions from the Acton Conservation Commission for work on the water treatment plant and intake pipe, within the jurisdiction of the Massachusetts Wetlands Protection Act and the Acton Wetlands Protection Bylaw.

57. In addition to the local zoning and Conservation Commission approvals, Concord will seek other state and federal permits for the construction of a water treatment facility.

58. Phase I of this project is fully designed and advertised for bid. The final phases of the project are scheduled to be bid during the winter of 2018.

59. The intake pipe replacement and new water treatment plant are projected to cost Concord in excess of \$20 million.

F. LITTLETON'S ALLEGED RIGHTS TO NAGOG POND UNDER THE 1884 ACT

60. Section 10 of the 1884 Act reserved certain rights to Nagog Pond for Littleton.

Section 10 of the 1884 Act states:

Nothing 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 for any reason the supply of water in said pond shall not be more than sufficient for the needs of the inhabitants of said 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 and 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 the 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 corporation 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.

61. Littleton has never been “authorized to take” the waters of Nagog Pond.
62. Littleton has not taken the waters of Nagog Pond.
63. Littleton did not seek to exercise any water withdrawal rights to Nagog Pond under the 1884 Act, prior to the enactment of the WMA.
64. Littleton did not attempt to exercise any water withdrawal rights to Nagog Pond during the period from 1981 through 1985, which Massachusetts used to establish registration rights under Section 5 of the WMA.
65. Littleton did not submit any comments on Concord’s WMA Registration statement to limit or condition Concord’s Registration in an effort to preserve rights that Littleton may have had to withdraw water from Nagog Pond.
66. Littleton mentioned the 1884 Act in its own registration statement for four (4) groundwater wells in Littleton, but it did not establish or even assert any active use of Nagog Pond.

67. Littleton's reference to the 1884 Act in its registration statement, did not preserve any rights.

68. With respect to the section of the registration statement application asking about past special acts of the legislature regarding water rights, the instructions in the Water Management Act Registration Guidelines 2 (July 1987), stated that the past legislation information was: "for [MassDEP] information only: the existence of previously legislated water rights does not guarantee you unlimited water rights under the Water Management Act."

69. MassDEP awarded registrations solely on the basis of actual water withdrawals during the WMA Registration Eligibility Period.

70. After Concord received its Registration to withdraw water from Nagog Pond, Littleton did not apply for a Permit under the WMA to withdraw water from Nagog Pond.

71. Littleton did not comment on any of Concord's Registration renewals.

72. Littleton does not have any water withdrawal rights to Nagog Pond under the WMA.

G. LITTLETON'S DEMANDS FOR WATER WITHDRAWAL RIGHTS AT NAGOG POND

73. In a letter to Concord, dated February 20, 2018, Littleton stated, "[p]ursuant to Chapter 201 of the Acts of 1884 (the "1884 Act"), notice is hereby given that the Littleton Water Department intends to exercise the full extent of the rights conferred thereby to withdraw water from Nagog Pond." A true and accurate copy of Littleton's February 20, 2018 letter is attached hereto as **Exhibit E**.

74. The February 20, 2018 letter stated that the 1884 Act "establishes Littleton's right to withdraw water from Nagog Pond, subject to the requirement that Littleton pay the Town of

Concord ‘a just and proportionate part of whatever sums...Concord shall have paid...for water damages...for the taking of water rights...’”

75. In its February 20, 2018 letter, Littleton also indicated that it anticipated negotiating for the transfer of Concord’s water registration, pursuant to 310 CMR 36.09.

76. Littleton asserted that the “water damages” it would pay to compensate Concord for the transfer of its Registration to withdraw the full safe-yield from Nagog Pond, would be less than \$24,388, which Littleton asserts represents the cost for Concord’s eminent domain takings in 1909.

77. Littleton also stated it was prepared to initiate the petition process in the Supreme Judicial Court for an assessment of the “water damages” it may owe Concord, as provided in Section 10 of the 1884 Act.

78. On April 17, 2018, Littleton issued a second letter reiterating its demand to take Concord’s Registration rights. A true and accurate copy of Littleton’s April 17, 2018 letter is attached hereto as **Exhibit F**.

79. Concord responded to Littleton’s demands on April 30, 2018. In addition to stating that it held a Registration under the WMA, Concord indicated that it needed to learn more about the nature and extent of Littleton’s interest in Nagog Pond.

80. In addition, Concord noted that Littleton’s proposed pump test for new bedrock wells near Cobbs Hill (the “Cobbs Wells”) had a potential hydrogeologic connection to Nagog Pond, and explained that, to the extent the Cobbs Wells intercept groundwater, which would otherwise supply water to Nagog Pond, Concord would object to the Cobbs Wells for interfering with its Registration rights. A figure showing the proposed Cobbs Wells in relation to Nagog Pond is attached as **Exhibit G**.

81. In a May 10, 2018 response to Concord's April 30, 2018 letter, Littleton explained that the demand for Concord's Registration was not related to the proposed pump test for the Cobbs Wells and that Littleton intended to "exercise its rights to withdraw water from Nagog Pond, which were conferred by Chapter 201 of the Acts of 1884," regardless of the progress of the Cobbs Wells. A true and accurate copy of Littleton's May 10, 2018 letter is attached hereto as **Exhibit H**.

82. On May 23, 2018, Concord agreed to attend a meeting with Littleton to discuss their demand.

83. During the first week of June 2018, Littleton conducted the pump test for the Cobbs Wells.

84. On June 6, 2018, representatives from Concord met with representatives from Littleton to discuss Littleton's demands for Nagog Pond water.

85. During the June 6, 2018 meeting, Littleton expressed its interest in withdrawing water from Nagog Pond to meet increased demands for water within Littleton, including two new businesses which took over previously abandoned industrial resources in Littleton: (1) a PepsiCo affiliate had taken over the abandoned Very Fine bottling plant to operate a commercial water bottling facility; and (2) a new operator who had reopened a concrete batching plant.

86. Following the June 6, 2018 meeting, the towns agreed to meet again on July 24, 2018.

87. In an email from Scott Edwards of Littleton to Rich Reine of Concord outlining the issues for discussion at the July 24, 2018 meeting, Littleton provided the following terms which it believed were essential for an agreement:

- Littleton and Concord agree that Littleton does have water rights to its share of the Nagog Pond water (approximately half).

- Littleton will exercise these rights to withdraw water no sooner than 20 years.
- Littleton and Concord will negotiate a monetary value to the "water damages," as described in the Special Act of 1884. Littleton will pay this amount to Concord on the 20 year anniversary of this agreement.
- Littleton and Concord agree to meet every 5 years, after the signing of the agreement, to share information on water needs and discuss the forecasted need for water from Nagog Pond.
- Littleton will have the right to extend the withdrawal of water past the 20 year deadline in 5 year increments.
- Littleton and Concord shall work together to find a solution to sharing water from a common water treatment plant. This may involve extension of a water main on Great Road in Acton.
- This agreement is null and void if the Cobbs Wells site is not permitted by MassDEP, as the short-term need for water may possibly then shift toward Nagog Pond.

88. Littleton's position during the July 24, 2018 meeting was consistent with these bullet points.

89. Throughout the meeting on July 24, 2018, Littleton continued to claim that its rights under the 1884 Act superseded Concord's Registration under the WMA.

90. Despite Littleton's aggressive posture during the July 24, 2018 meeting, Concord's representatives suggested Littleton continue negotiations and requested Littleton to propose terms of a potential water-sharing agreement for further discussion. Concord specifically requested that any subsequent outline address the proposed Cobbs Wells and recognize Concord's WMA Registration.

91. Littleton composed an agreement outline, which included bullet-points acknowledging Concord's Registration and laid out proposed terms for the Cobbs Wells, in addition to Littleton's interest in a long-term water sharing agreement involving Nagog Pond.

92. The agreement outline stated that the "1884 Act...authorizes Littleton...to exercise water rights in Nagog Pond that (if exercised) would be superior to the water rights of Concord."

93. Littleton asserts that Concord should agree to transfer its water rights to Littleton under the mechanism of the proposed agreement, because Littleton's 1884 rights are superior to Concord's Registration.

94. During August, September, and October of 2018, Concord made a request through legal counsel and the Department of Public Works staff to receive the results of the June 2018 Cobbs Wells pump test.

95. Based on the limited data Littleton has provided, it appears that the June 2018 Cobbs Wells pump test data shows that Littleton's proposed Cobbs Wells would intercept groundwater which would otherwise flow to Nagog Pond and induce flow directly from the Nagog Pond surface water to the Cobbs Wells.

96. Since the Cobbs Wells would intercept groundwater that feeds Nagog Pond, their operation would have a negative impact on Concord's Registration, because the Cobbs Wells would decrease the available amount of water in Nagog Pond.

97. In late October 2018, Littleton demanded that Concord agree to conduct further discussions on its desire to take control of Nagog Pond away from Concord and exercise its rights under the 1884 Act without regard to the Cobbs Wells.

98. Concord met with Littleton on November 7, 2018 to conduct further discussions regarding the impacts from the Cobbs Well and a potential settlement to enable Littleton to operate the proposed groundwater wells.

99. During the November 7, 2018 meeting, Littleton declared that it would not discuss a settlement for the Cobbs Wells.

100. Littleton was adamant that it continues to believe its 1884 Act rights are superior to Concord's WMA Registration, and that it intends to exercise those rights and deprive Concord

of the use of the Nagog Pond reservoir, which Concord has managed as a public water supply for over a century.

101. In response to the extreme demands from Littleton seeking to usurp Concord's Registration for Nagog Pond, Concord initiated this declaratory judgment action to obtain a judicial determination on the extent to which the WMA repealed and superseded the 1884 Act.

CLAIM FOR RELIEF

COUNT I: Declaratory Relief Pursuant to G.L. c. 231A

1. Concord re-alleges and incorporates by reference herein the allegations of Paragraphs 1- 101 as if they were restated in full.
2. General Laws Chapter 231A, § 1 provides, in part:

[T]he land court . . . 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.
3. The facts pleaded above, including Littleton's demand to take Concord's right to withdraw water from Nagog Pond and Littleton's intention to start a damages proceeding pursuant to Section 10 of the 1884 Act, give rise to an actual controversy as to the extent to which the WMA supersedes the 1884 Act, and the extent to which Concord's Registration under the WMA specifically negates Littleton's claim to Nagog Pond under Section 10 of the 1884 Act.

PRAYERS FOR RELIEF

WHEREFORE, Concord requests that this Honorable Court:

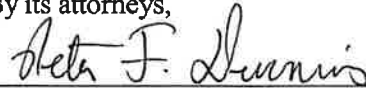
1. Issue a Declaratory Judgment stating that the WMA effectively repealed special acts regarding water withdrawals adopted prior to the WMA;

2. Issue a Declaratory Judgment stating that Concord's right to withdraw water from Nagog Pond under its WMA Registration is superior to any rights Littleton purports to hold pursuant to Section 10 of the 1884 Act; and
3. Grant such further relief as this Court deems just and proper.

Respectfully submitted,

Town of Concord

By its attorneys,



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Date: November 8, 2018

TAB 2

EXHIBIT

A

twenty-nine of the Public Statutes and any acts in amendment thereof or in addition thereto so far as the same are applicable.

SECTION 4. This act shall take effect upon its acceptance by a two-thirds vote of the voters of said town present and voting thereon at a legal town meeting called for the purpose within two years from its passage.

Subject to acceptance by a two-thirds vote.

Approved April 30, 1884.

AN ACT TO AUTHORIZE THE TOWN OF CONCORD TO INCREASE ITS WATER SUPPLY. *Chap. 201*

Be it enacted, etc., as follows:

SECTION 1. The town of Concord, in addition to the powers now conferred upon it by law, is hereby authorized to supply itself and its inhabitants and other persons, towns and corporations on the line of its water works with pure water to extinguish fires, generate steam and for domestic and other purposes, and may establish public fountains and hydrants and regulate their use, and discontinue the same, and may collect rates to be paid for the use of the water.

May increase water supply.

SECTION 2. Said town, for the purposes aforesaid, may take and hold the waters of Nagog Pond, so called, in the towns of Acton and Littleton and the waters which flow into and from the same, and may also take and hold by purchase or otherwise all necessary lands for raising, holding, diverting, purifying and preserving such waters, and conveying the same to any and all parts of said town of Concord, and may erect thereon proper dams, reservoirs, buildings, fixtures and other structures, and make excavations and embankments, and procure and operate machinery therefor; and for such purposes may construct and lay down, dig up and repair conduits, pipes and other works in, under or over any lands, water courses or railroads, and along any street, highway, alley or other way, in such manner as not unnecessarily to obstruct the same, and may dig up, raise and embank any such lands, street, highway, alley or other way in such manner as to cause the least hindrance to travel thereon.

May take waters of Nagog Pond in Acton and Littleton.

SECTION 3. Instead of taking the entire waters of said Nagog Pond, said town of Concord may, if it shall so elect, take a part of said waters, such election to be made by a vote of said town declaring the quantity or proportion of said waters to be so taken.

Quantity of water to be taken subject to a vote of the town.

To file in registry of deeds a description of land and water taken.

SECTION 4. Within ninety days after the time of taking any lands, waters or water courses as aforesaid, otherwise than by purchase, said town shall file in the registry of deeds for the southern district of the county of Middlesex a description thereof sufficiently accurate for identification, with a statement of the purpose for which the same is taken, signed by a majority of the water commissioners of said town; and if said town shall have made the election authorized by section three of this act, said description and statement shall be accompanied by a copy of the vote of said town signifying such election.

May, by vote, take an increased proportion of waters.

SECTION 5. Said town of Concord, if it shall have made the election authorized by section three of this act, may thereafter from time to time, if it shall so elect, take an increased proportion of said waters, each successive election to be made by a vote of said town declaring the additional quantity or proportion of said waters to be so taken, and upon each such successive election and within ninety days thereafter said town shall file in said registry of deeds a description, statement and copy of the vote therefor as provided for in section four of this act.

Water to be measured.

SECTION 6. If said town shall make the election authorized by section three of this act, said town shall provide a reliable means or method of measuring and registering the amount of water taken, such register or record to be at all times accessible to any interested parties.

Liability for damages.

SECTION 7. The said town of Concord shall pay all damages sustained by any person in property by the taking of any land, right of way, water, water source, water right or easement, or by any other thing done by said town under the authority of this act; said damages to be based and proportioned in case of the taking of water or water rights upon the amount of water taken as aforesaid. Any person or corporation sustaining damages as aforesaid under this act, who fails to agree with said town as to the amount of damages sustained, may have the damages assessed and determined in the manner provided by law when land is taken for the laying out of highways, on application at any time within three years from the time when the water is actually withdrawn or diverted, and not thereafter. No application for the assessment of damages shall be made for the taking of any water, water right, or for any injury thereto, until the

Application for damages not to be made until water is actually withdrawn.

water is actually withdrawn or diverted by said town under the authority of this act.

SECTION 8. Said town of Concord, for the purposes herein authorized, may from time to time borrow money and issue notes, bonds or scrip therefor to an amount not exceeding fifty thousand dollars in addition to the amount already authorized by law in the manner and under the restrictions provided by section four of chapter one hundred and eighty-eight of the acts of the year eighteen hundred and seventy-two.

May borrow money and issue bonds, etc.

SECTION 9. The board of water commissioners of said town of Concord shall execute, superintend and direct the performance of all the works, matters and things mentioned in this act and exercise all the rights, powers and privileges hereby granted to said town and not otherwise specifically provided for herein, subject to the vote of said town. The provisions of sections seven, eight, nine and ten of chapter one hundred and eighty-eight of the acts of the year eighteen hundred and seventy-two shall apply to this act as if inserted herein.

Water commissioners to have charge of works.

SECTION 10. Nothing 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.

Acton and Littleton not prevented from taking waters of Nagog Pond.

If water is taken, towns to pay just proportion of damages.

Commonwealth
may take water
from Nagog
Pond.

Contract be-
tween Concord
and the Com-
monwealth.

Subject to ac-
ceptance by
town of Concord
within one year.

SECTION 11. The Commonwealth of Massachusetts shall have the right to take from said Nagog Pond, for use in buildings owned by said Commonwealth in the town of Concord, an amount of water not exceeding two hundred thousand gallons per day, and the said right is hereby reserved. If the said Commonwealth shall take from said pond its waters, or any part thereof, which the town of Concord may have taken under this act, otherwise than by contract with said town of Concord, the said Commonwealth shall pay to said town of 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 and determined as is provided for in section ten of this act. But if upon the expiration of the contract made on the first day of October in the year eighteen hundred and eighty-three between the said town of Concord and said Commonwealth to provide for the delivery of water from the Concord water works for use within the walls of the state prison, said town of Concord by its water commissioners shall renew said contract for five years on the terms named therein, or shall tender to the governor of the Commonwealth a renewal of said contract for five years on the terms named therein, with the option upon the part of said Commonwealth of a further renewal for a term of twenty years upon said terms, then the right of said Commonwealth herein provided for shall cease.

SECTION 12. This act shall take effect upon its passage, but shall become void unless it is accepted by a vote of said town of Concord at a legal meeting held for the purpose within one year from its passage.

Approved April 30, 1884.

Chap. 202 AN ACT TO INCORPORATE THE HIGHLAND CONGREGATIONAL CHURCH
IN LOWELL.

Be it enacted, etc., as follows:

Corporators.

SECTION 1. James G. Buttrick, William J. Davis, Cyrus B. Emerson, John T. Carter, Hamden Spiller, Lucy R. Carter, Almira Sturtevant, Clara S. Spiller and all other members of the Highland Congregational Church in Lowell, and their successors as members of said

TAB 3

John McNamee
order. So. Dis. address ss.

Commonwealth of Massachusetts.

Now all men by these presents
wedge that I at the Town of Concord in the County and Commonwealth
of Massachusetts, acting through its Water and Sewer Commissioners
thereof elected and qualified, and by virtue and in part exer-
cise of the powers given by Chapter 188 of the Acts of said
Commonwealth for the year 1872, by Chapter 201 of the Acts of
1873, and by any Acts of said Commonwealth in amendment
thereof, and under the authority of
an Act of the Town by vote at a legal meeting held for the purpose
of the Peace of the 5th 1909, Does hereby for the purposes mentioned in
said Act and more particularly for laying out, establishing
and maintaining an additional water supply sys-
tem to be obtained from Nagog Pond in the Town of Acton
in Middlesex County, in connection with and in
extension of the water works of said Town
make the following takings:
First; all the
land containing Nagog Pond, so called, located in the Towns
of Philadelphia and Littleton, Massachusetts, and the waters which
flow into and from the same except so much water
hereby assigned to the riparian owners upon Nagog Brook between Nagog
Brook and the confluence of Nagog and Nashoba Brooks
as aforesaid be entitled to for domestic uses and for watering
state thereby. Second; the land under said Nagog Pond up to
the overflow level of the existing dam at the outlet of
said Nagog Pond, as it exists at the present time, and all
the flowage vested in or acquired by the present own-
ers of said dam. (b) Said Town hereby takes a right of
way and to redemptor and under the following described parcels of
land set aside for purpose of laying and constructing and for-
operating, maintaining, repairing and renewing there-
of water pipes and structures and appurtenances in-
cluding a complete system of water works; with the right
reasonably appeared and repossess over said land on foot or with teams
and with the right to grade and prepare the same
for any and all of the above mentioned uses, each of
the parcels of land being 40 feet in width (and contained

Towns of
Concord
Takings

403-458-8-100
0716 405
" 3736 " 497
" " " 3736
" " " 3763
" " " 3767
" " " 514
" " " 515
498

between two parallel lines, each respectively upon the west and Con-
 sidered sides of and 20 feet distant from the respective center (base seven degrees
 thereof), located and described *below: *Footnote: The bearings and sup. line
 given in this document are true bearings and not magnetic bearings. Deflected
 bearings, based upon records obtained from the Massachusetts the right
 setts Harbor and Land Commissioners. (b) First Parcel, minutes east
 lands supposed to belong to Moses Taylor. Beginning at point shown as "Sta. = 4+97.8" of the right-of-way, and thence Deflected
 as "Point of Beginning" on the plan filed herewith (to the left
 and entitled "Concord Water Works, Concord, Mass., located three miles
 North of Way in Acton, Mass., Taken by the Town of Concord and on
 for a Water Supply from Nagog Pond", dated May 26, 1888, thence Deflected
 and prepared by Maclellan & Eddy, Consulting Engineers, Boston 30' 42') to the
 Mass., in the dividing line between lands supposed to belong to said Moses Taylor and the Pilgrim Milling Company (said parcel of land of the Pilgrim Milling Company Sta. = 21 + 38.
 being the same referred to in Section (c) Fourth Parcel (Sta. = 54' 05"
 12 hereon) said "Point of Beginning" being located ten degrees fifty
 one tenth (10.1) feet, measured southwesterly along said and twenty
 vision line, from the angle in the division wall between said
 lands supposed to belong to said Moses Taylor, said Pilgrim Milling
 Company and George Murphy, and running south 57° 43' 40" feet in
 ninety five and two tenths (95.2) feet to a point and eighty
 shown as "Sta. = 5+93.0" in the division wall between land Parcel; in
 supposed to belong to said Moses Taylor and Thomas F. McBarthy, comprising within said strip of land for the dis-
 (40) feet in width, an area of approximately eighty seven to said
 thousandths (0.087) of an acre. (b) Second Parcel; in land by the
 supposed to belong to Thomas F. McBarthy. Beginning at the last described point shown as "Sta. = 5+93.0" in the division wall between lands supposed to belong to Moses Taylor, to a
 Taylor and Thomas F. McBarthy and continuing by the last described course south fifty seven degrees forty three and
 minutes east (S 57° 43' E) forty four (44) feet to a point and
 shown as "Sta. = 6+37.0" in the division wall between said
 land supposed to belong to Thomas F. McBarthy and lands supposed
 Moses Taylor; comprising within said strip of land for the dis-
 (40) feet in width an area of approximately forty thousandths (0.040) of an acre. (b) Third Parcel; in land supposed to belong to Moses Taylor. Beginning at the last described point shown as "Sta. = 6+37.0" in the division wall between lands supposed to belong to Thomas F. McBarthy and Moses Taylor, the division

37.80 37.5 448.
 37.80 3881
 37.80 374.
 37.80
 " " " " " "

by upon opposite and continuing by the last described course south fifty
five center line degrees forty three minutes east (S 57° 43' E) ninety seven
The bearings of said line the 97.6) feet to a point shown as Sta. 7+3.0;
and not "magnetic" line Deflecting thirty seven degrees fifteen minutes (37° 15')
the Massachusetts the right and running south twenty degrees twenty eight
First Parcel: in minutes east (S 20° 28' E) five hundred and eighty one and
beginning at a point shown as Sta. 7+16.0;
of way, and mark line Deflecting twenty two degrees five minutes (22° 5')
ed herewith (what) the left and running south forty two degrees thirty
Mass, Location of minutes east (S 42° 33' E) two hundred and forty
the Town of Concord and one tenth (244.1) feet to a point shown as Sta. 5+10.1;
led May 20, 1909 line Deflecting thirty degrees and forty two minutes
of Engineers, Boston (42') to the right and running south eleven degrees
supposed to be fifty one minutes east (S 11° 51' E) five hundred and seven
from Killing Company eight and seven tenths (578.7) feet to a point shown as
Killing Company Sta. 2+38.8; thence Deflecting fifty four degrees five min-
Fourth Parcel: (page 15) (54° 05') to the left and running south sixty five
ated ten and five fifty six minutes east (S 65° 56' E) two hundred
by along said division twenty four and two tenths (224.2) feet to a point
on wall between shown as Sta. = 23+63.0 in the division wall between
Taylor, said Pilgrimage supposed to belong to said Moses Taylor and Ruth
a running south line; comprising within said strip of land forty
ast (S 57° 43' E) 6.3 feet in width, an area of one and five hundred
to a point shown as eighty five thousandths (1.085) acres. (b) Fourth
all between hundred, in land supposed to belong to Ruth Robbins.
and Thomas Finning at the last described point shown as Sta. = 23+63.0
of land forty the division walls between lands supposed to belong
ly eighty seven said Moses Taylor and Ruth Robbins and continue
Parcel; in land by the last described course south sixty five degrees
by Beginning by six minutes east (S 65° 56' E) through land supposed
a. = 5+93.0 in the belong to Ruth Robbins, one hundred and nine (109)
belong to Moses, to a point shown as Sta. = 24+72.0; thence Deflect-
ing by the eleven degrees thirty seven minutes (11° 37') to the
press forty three and running south fifty four degrees nineteen
it to a point in minutes east (S 54° 19' E) fifty seven (57) feet to a point
wall between shown as Sta. = 25+29.0 in the division line between
to Carthy and now supposed to belong to Ruth Robbins and Mary
of land forty hours, comprising within said strip of land forty
forty thousandths feet in width, an area of one hundred fifty six
land supposed to be and the (0.152) of an acre. (b) Fifth Parcel; in
the last described and supposed to belong to Mary S. Burns. Beginning
on wall between the last described point shown as Sta. = 25+29.0 in
thy and Moses Taylor and division line between lands supposed to belong to

said Ruth Robbins and Mary S. Munro and continuing (47) feet to a point shown as Sta. = 281.5, five hundred and
by the last described course south fifty four degrees thirty five degrees fifty
ten minutes east, S. 54° 19' 6", three hundred and eighty four feet
and three tenths (318.3) feet to a point shown as Sta. = 281.5, five hundred and
thence Deflecting twenty degrees forty nine minutes (20° 49') to the left and running south seventy five degrees fifty three min
utes east (S. 75° 18' 6") two hundred and ninety eight and fifty four
two tenths (298.2) feet to a point shown as Sta. = 314.5, fifty nine and
thence Deflecting twenty three degrees fifty minutes (23° 50') to the right and running south fifty one degrees eight minutes east (S. 51° 18' 6") two hundred and eighty seven and nine
tenths (287.9) feet to a point shown as Sta. = 341.5, an area of approx
thence Deflecting nineteen degrees eight minutes (19° 08') to the right and running south thirty two degrees twenty four minutes east (S. 32° 10' 6") one hundred forty one and
tenths (141.6) feet to a point shown as Sta. = 357.5, a wall between
in the property line between lands supposed to belong to said Mary S. Munro and Stella D. Smith, comprising within said strip of land forty (40) feet in width, an area of approximately nine hundred and sixty
thousandths (0.961) of an acre. (b) Sixth Parcel, supposed to belong
land supposed to belong to Stella D. Smith. Beginning at the last described point shown as Sta. = 357.5, the last described
the property line, between the lands supposed to belong to said Mary S. Munro and Stella D. Smith, and continuing to belong
ing by the last described course south thirty two degrees twenty four minutes east (S. 32° 10' 6") three hundred and eighty four feet
and eight tenths (384.8) feet to a point shown as Sta. = 394.8, thence Deflecting twenty two degrees twenty nine minutes (22° 29') to the left and running south fifty four degrees thirty nine minutes east (S. 54° 39' 6") eight hundred and twenty eight and two tenths (828.2) feet to a point shown as Sta. = 477.0, in the division
fence between lands supposed to belong to said Stella D. Smith and O. Bartlett, comprising within said strip of land forty (40) feet in width, an area of approximately
one and ninety seven thousandths (1.097) acres. (c) Seventh Parcel, in land supposed to belong to O. Bartlett, said Ruth
Beginning at the last described point shown as Sta. = 477.0, of the right-of-way
in the division fence between lands supposed to belong to said Stella D. Smith and O. Bartlett, and continuing within
by the last described course south fifty four degrees thirty nine minutes east (S. 54° 39' 6") one and nine hundredths (1.0918)

and continuing 71 feet to a point shown as Sta. = 47 + 71.9; thence Deflecting four degrees nine degrees fifty minutes ($6^{\circ} 50'$) to the right and running one hundred and eighty eight and forty seven degrees forty nine minutes east ($87^{\circ} 49' 50'$) shown as Sta. = 28 + 47.3; thence Deflecting four degrees five degrees eighty three minutes ($6^{\circ} 53'$) to the left and running one hundred and eighty eight and forty four degrees and forty two minutes east ($87^{\circ} 42' 50'$) as Sta. = 31 + 45.5; thence Deflecting four degrees and forty two minutes east ($87^{\circ} 42' 50'$) to a point in the division wall between the land of said O. Bartlett and the one degree eighteen highway locally known as the Aetons road shown as Sta. = 53 + 73; thence Deflecting four degrees and forty two minutes east ($87^{\circ} 42' 50'$) and running within said strip of land forty (40) feet in width shown as Sta. = 34 + 33.4; area of approximately five hundred and fifty four thousand (19' 03") and the (0.554) of an acre. (b) Eighth Parcel; in the highway locally known as Aetons Road. Beginning at the last point shown as Sta. = 53 + 73 in the division wall between the land of O. Bartlett and said Aetons road and continuing by the last described course south forty two degrees and forty two minutes east ($87^{\circ} 42' 50'$) one hundred and eighty six (186) feet to a point shown as Sta. = 54 + 19 in the division wall between said Aetons Road and land supposed to belong to Luther Davis. (b) Ninth Parcel; in the highway locally known as Aetons Road. Beginning at the last point shown as Sta. = 54 + 19 in the division wall between said Aetons Road and land supposed to belong to Luther Davis and continuing by the last described course south forty two degrees and forty two minutes east ($87^{\circ} 42' 50'$) one hundred and fifteen and one tenth (115.9) feet to a point shown as Sta. = 55 + 34.9; thence Deflecting thirty one degrees twenty four minutes ($31^{\circ} 24'$) to the right and running south twenty three degrees eighteen minutes east ($83^{\circ} 18' E$) seven hundred and eighty two and eight tenths (720.8) feet to a point shown as Sta. = 62 + 55.7; thence Deflecting eighteen degrees thirty minutes ($18^{\circ} 30'$) to the left and running south forty four degrees fifty four minutes east ($44^{\circ} 54' E$) one hundred and sixty three and five tenths (163.5) feet to a point shown as Sta. = 64 + 19.2; thence Deflecting four degrees and forty two minutes east ($87^{\circ} 42' 50'$) to a point in the division wall between said Luther Davis and the supposed westerly side of the New York, New Haven and Hartford Railroad Company shown as Sta. = 64 + 19.2; continuing within said strip of land forty (40) feet in width four degrees and forty two minutes east ($87^{\circ} 42' 50'$) area of approximately nine hundred and eighteen thousand (0.918) of an acre. (b) Tenth Parcel; in the

right of way supposed to belong to the U. S. R. R. Co. and the
 Company. Beginning at the last described point shown said Massachu-
 setts Sta. 64 + 9.2 on the division fence between land supposed to belong
 to said Luther Davis and the right-of-way supposed to belong to
 to belong to said U. S. R. R. Co. and continuing by Massachusetts
 last described course south forty one degrees fifty four minutes Massachu-
 setts Sta. 64 + 9.2 one hundred and three and five tenths (Great Road)
 feet to a point in the division fence between the Massachusetts High-
 right-of-way and land supposed to belong to Alice Davis. Said Town
 shown as Sta. 65 + 22.7; comprising within said strip of land in
 land forty (40) feet in width, an area of approximately purpose of
 ty five thousandths (0.095) of an acre. (b) Eleventh Party, Nagog Town
 and supposed to belong to Alice Davis. Beginning operation, at
 the last described point shown as Sta. 65 + 22.7 on the boundary line
 between the right-of-way supposed to belong to the Parcel; in
 U. S. R. R. Co. and land supposed to belong to Alice Davis. Beginning
 continuing by the last described course south for supposed to
 one degree fifty four minutes east (S. 1° 54' E) one hundred and
 three and three tenths (132.3) feet to a point hereon
 in the division wall between the land of said Allocation of said
 Davis and the highway locally known as the Great Road, Acton and
 shown as Sta. 66 + 0.5, comprising within said strip taken by
 land forty (40) feet in width an area of one hundred and
 ty one thousandths (0.121) of an acre. (c) Twelfth Party, Engineers, Co.
 in the highway locally known as the Great Road, five (145) feet
 beginning at the last described point shown as Sta. 66 + 0.5 north seven
 in the division wall between land supposed to belong to Alice Davis
 to Alice Davis and the highway locally known as the boundary
 Great Road and continuing by the last described course, Massachu-
 setts south forty one degrees and fifty four minutes south thirty eight
 (S. 41° 54' E) one hundred thirty five and seven tenths and one
 (135.7) feet to a point in said "Great Road" shown as
 Sta. 67 + 90.7; from which point the adjacent Massachusetts
 highway bound upon the westerly side of said right and a
 Road (opposite Station 99 of said Massachusetts Highway (606) feet
 Commission's plan of "Great Road" in Acton is also supposed to
 one hundred thirty two and seven tenths (132.7) feet of Acton; the
 an angle deflecting twenty seven degrees and three and seven
 seven minutes (27° 57') to the right from the previous north eight
 y mentioned course, the bearing of which is south approximately
 one degree and fifty four minutes east (S. 1° 54' E); said high water
 Sta. 67 + 90.7 may also be defined as one hundred and thirty
 thirty two and seven tenths (132.7) feet distant from approximately

1. H. & H. B. B. Massachusetts Highway Board, opposite Station 99 of the
shown as Massachusetts Highway Commission's plan of Great Road
supposed to be on a line deflecting ten degrees and twenty three
y supposed minutes ($10^{\circ} 23'$) to the right from a line running through said
ning by the Massachusetts highway board (opposite Station 99) from the adja-
er minute Massachusetts highway board on the westerly side of said
lenth (103.5) feet Road opposite Station 99 35.0 of the plan of the Massa-

the said Massachusetts Highway Commission of the Great Road in Acton.
Alice Davis said Town hereby takes the following described parcels
a strip of land in the towns of Acton and Littleton, Mass. for the
imately nine purpose of preserving and protecting the purity of the waters
with Parcel Nagog Pond and for use incidental to the construction,
inning at station, maintenance, repair and renewal of said water
on the line supply system to be derived from Nagog Pond. (c) First
a the A. F. Hall, in land supposed to belong to Luther Bonant.
Alice Davis running to a point in the division wall between lands
th forty supposed to belong to B. D. Hall and Luther Bonant, said
e being shown as the Point of Beginning upon a plan
a point and hereunto and entitled Concord Water Works, Concord, Mass.
id Alice Davis of Lands Bordering upon Nagog Pond in the Towns
eat Road Acton and Littleton Mass. and Rights of Way leading there-
strip of taken by the Town of Concord for Water supply Purposes.
red town July 1, 1909, and prepared by Metcalf & Eddy, Consulting
th Parcel Engineers, Boston, Mass. and being one hundred and forty
Road (145) feet distant on a course the true bearing of which
to be $70^{\circ} 55'$ north seventy one degrees and thirty eight minutes east
to belong to $71^{\circ} 38'$ from a line known as Bound No. 2 in
as the boundary line between the towns of Acton and Little-
bed Concord, Mass. and running north seventy one degrees and
tes east thirty eight minutes east ($71^{\circ} 38'$) approximately five hun-
a tenth and ninety one (571) feet to a wall, thence Deflecting
shown as forty four degrees and sixteen minutes ($44^{\circ} 16'$) to the
Massachusetts and running south seventy four degrees and six-
of Great minutes east ($74^{\circ} 06'$) approximately six hundred and
Highway (606) feet to a point in the division wall between lands
distant supposed to belong to Luther Bonant and to the Town
2 feet in Acton, thence Deflecting one hundred and fourteen de-
a fifty two and six minutes ($144^{\circ} 06'$) to the left and running
previous north eight degrees and twelve minutes west ($18^{\circ} 12'$)
th forty approximately three hundred and eighty one (381) feet to the
said high water flow-line of Nagog Pond, thence Deflecting
red and to the left and running westerly by said flow-line
from approximately twelve hundred and twenty five (1225) feet to

the division wall between lands supposed to belong to Luther Bonant and to B. D. Hill; thence Deflecting to the left and running south seven degrees and five minutes east ($87^{\circ}05'6''$) approximately two hundred and sixty three (263) feet to the point of beginning; comprising an area of approximately eight and nine tenths (8.9) acres. (c) Second Parcel, in land supposed to belong to the Town of Acton - Beginning at a point in the division wall between lands supposed to belong to Luther Bonant and to the Town of Acton as shown on the plan as the "Point of Beginning," and running south seventy four degrees and six minutes east ($74^{\circ}06'6''$) approximately one thousand and seventy three feet to a point in the division wall between lands supposed to belong to the Town of Acton and to Moses Taylor; thence Deflecting one hundred and fifteen degrees and seven minutes ($15^{\circ}27'$) to the left and running north nine degrees and thirty three minutes west ($89^{\circ}33'W$) approximately three hundred and forty five (345) feet to the high water flow-line of Nagog Pond; thence Deflecting to the left and running northwesterly by the said flow-line said to be approximately thirteen hundred (1300) feet to the division wall between lands supposed to belong to the Town of Acton and to Luther Bonant; thence Deflecting to the left and running south eight degrees and twelve minutes east ($88^{\circ}12'6''$) approximately two hundred and eighty one feet to the point of beginning; comprising an area of approximately seven and five tenths (7.5) acres. (c) Third Parcel, in land supposed to belong to Moses Taylor - Beginning at a point in the division wall between lands supposed to belong to the Town of Acton and Moses Taylor on the plan as the "Point of Beginning" and running north seventy two degrees and twenty one minutes east ($72^{\circ}21'W$) approximately six hundred and eighty two (682) feet to the end of a division wall between lands supposed to belong to Moses Taylor and to the Pilgrim Mill; thence Deflecting one hundred and forty one degrees and forty three minutes ($141^{\circ}43'$) to the left and running by a north sixty nine degrees and twenty two minutes west ($69^{\circ}22'W$) approximately five hundred and thirty seven (537) feet to the high water flow-line of Nagog Pond; thence Deflecting to the left and running westerly by the said flow-line approximately two hundred and ten (210) feet to the division wall between lands supposed to belong to

belong to Moses Taylor and to the Town of Acton; thence Deflecting
 to the left and running south nine degrees and thirty three
 minutes east ($89^{\circ} 33' E$) approximately, three hundred and forty
 three (263) feet to the point of beginning, comprising an area
 of approximately three and five tenths (3.5) acres. (C) Fourth
 and Parcel; which, in land supposed to belong to the Pilgrim Mill-
 ing Company. Beginning at a point on the division wall
 and supposed to belong to Moses Taylor and
 of Acton the Pilgrim Milling Company, and shown on the plan.
 Beginning and running north thirty four
 minutes and forty nine minutes east ($34^{\circ} 49' E$) along the
 line between lands supposed to belong to the
 Pilgrim Milling Company and to Moses Taylor approxima-
 te hundred and one (101) feet to the angle in the
 division wall between lands supposed to belong to the Pil-
 grim Milling Company, Moses Taylor and George Murphy,
 Deflecting to the left and running westerly
 five feet to the division wall and brook between the lands sup-
 posed to belong to said Pilgrim Milling Company and
 said George Murphy, approximately two hundred and
 five (255) feet to the intersection of said brook with
 the Town of Acton division wall between the lands supposed to
 belong to said Pilgrim Milling Company and to said
 George Murphy, thence Deflecting to the right and run-
 ning north one degree and forty eight minutes west
 ($1^{\circ} 48' W$) along the division wall between lands sup-
 posed to belong to the Pilgrim Milling Company and
 Moses Taylor and George Murphy, approximately two feet to an
 angle in said division wall, thence Deflecting seventy
 seven degrees and thirteen minutes ($75^{\circ} 13'$) to the left and
 running north seventy seven degrees and one minute west
 east ($72^{\circ} 21' E$) along the wall between lands supposed to be-
 long to said Pilgrim Milling Company and to said George
 Murphy, approximately two hundred and fifty seven (257)
 feet to an angle in said division wall, thence Deflecting
 one degree and fifty minutes ($1^{\circ} 50'$) to the right and run-
 ning by said wall seventy six degrees and eleven
 minutes west ($76^{\circ} 11' W$) approximately one hundred and
 thirty two (132) feet to the intersection of the division wall be-
 tween lands supposed to belong to the Pilgrim Milling
 Company, George Murphy and A. F. Prentiss, thence Deflect-
 ing nine degrees and thirty five minutes ($9^{\circ} 35'$) to the
 right and running north sixty six degrees and thirty-

six minutes west ($N 66^{\circ} 56' W$) along the division wall between
 lands supposed to belong to said Pilgrim Milling Company, Comfrey
 and A. F. Prentiss twenty four (24) feet more or less, to the
 high water flow line of Nagog pond thence Deflecting and
 to the left and running southerly, then easterly, thence
 southerly along the crest of the mill dam, thence
 along said flow-line, to the division wall between lands
 supposed to belong to the Pilgrim Milling Company along
 to Moses Taylor, thence Deflecting to the left and running
 south sixty nine degrees and twenty two minutes easterly
 ($S 69^{\circ} 22' E$) along said division wall approximately four hundred
 and thirty two (532) feet to the point of beginning
 comprising an area of approximately five and three tenths
 (5.3) acres. (c) Fifth Parcel, in land supposed to belong
 to George Murphy, Beginning at the intersection of the
 division wall and line between lands supposed to belong
 long to the Pilgrim Milling Company, Moses Taylor to
 George Murphy, shown on the plan as the "Point Murphy
 Beginning", and running thence north thirty eight degrees
 and fifty four minutes east ($N 38^{\circ} 54' E$) along the wall
 between lands supposed to belong to George Murphy and
 Moses Taylor thirty three and four tenths (33.4) feet
 to the intersection of the walls between lands supposed to belong
 to Moses Taylor Thomas F. McCarthy and George Murphy
 thence Deflecting eighty three degrees and thirty eight minutes
 ($S 83^{\circ} 38' E$) to the left and running north forty four degrees
 and forty four minutes west ($N 44^{\circ} 44' W$) across land
 supposed to belong to George Murphy five hundred and
 (502) feet to a boundary stone on the wall between land
 supposed to belong to George Murphy and A. F. Prentiss
 thence Deflecting eighty nine degrees and forty four minutes
 ($S 89^{\circ} 44' E$) to the left and running south forty five degrees
 and thirty two minutes west ($S 45^{\circ} 32' W$) along the division
 wall between land supposed to belong to George Murphy
 and A. F. Prentiss, two hundred and eighty five (285) feet
 to an angle in the wall, thence Deflecting no degrees
 ten minutes ($0^{\circ} 10'$) to the right and running south
 forty five degrees and forty two minutes west ($S 45^{\circ} 42' W$)
 along said division wall one hundred and twenty
 feet to the intersection of the division walls between
 lands supposed to belong to said George Murphy, A. F.
 Prentiss and the Pilgrim Milling Company, thence
 Deflecting one hundred and twenty one degrees and four

on wall between two minutes ($121^{\circ} 53'$) to the left and running south
 along Company twenty six degrees and eleven minutes east ($87^{\circ} 11' 6''$) along
 or less, to the wall between lands supposed to belong to George Murphy
 Deflecting to the Pilgrim Milling Company, one hundred and seven
 easterly, then 17 feet to an angle in the wall, thence Deflecting
 v, then easterly one and fifty minutes ($1^{\circ} 56'$) to the left and running
 between lands with seventy seven degrees and one minute east ($77^{\circ} 51' 0''$)
 Company and long said division wall two hundred and fifty seven 207
 it and running to an angle in said division wall, thence Deflecting
 minutes east twenty five degrees and thirteen minutes ($75^{\circ} 37'$) to the right
 nately five hundred running south one degree and forty eight minutes east
 of beginning ($1^{\circ} 48' 6''$) along the division wall between lands supposed
 to three tenths belong to the Pilgrim Milling Company and George
 supposed to belong Murphy sixty two (62) feet to the middle of the brook,
 section of the thence Deflecting to the left and running southerly
 supposed to belong the brook and division wall between lands supposed
 Taylor and to belong to the Pilgrim Milling Company and George
 Point of Murphy approximately two hundred and sixty five (265) feet
 of eight degrees the Point of beginning, comprising an area of approximately
 the wall between two and eighty five hundredths (2.85) acres. (Exhibit
 Murphy and well in land supposed to belong to A. F. Prentiss. Begin
 53.5 feet to the ring at a boundary stone in the division wall between
 supposed to belong lands supposed to belong to George Murphy and A. F.
 George Murphy Point at its intersection with a wall across the land
 to eight minutes A. F. Prentiss, shown on the plan as the Point of Begin-
 g four degrees and running north twenty eight degrees and thirty
 cross land, six minutes west ($82^{\circ} 32' W$) along said wall across
 dired and two and supposed to belong to A. F. Prentiss, one hundred
 between lands and ninety two (92) feet to an angle in said wall at
 A. F. Prentiss, which another cross wall meets it, thence Deflecting
 forty five minutes and fifty eight minutes ($1^{\circ} 53'$) to the right and
 five degrees running north twenty seven degrees and thirty four minutes
 of the division west ($82^{\circ} 34' W$) along said wall two hundred and forty
 George Murphy three (243) feet to the intersection of said wall with the
 five (285) feet division wall between lands supposed to belong to A. F.
 no degrees and Prentiss and J. Sidney White, thence Deflecting one hun-
 ing south and eighteen degrees and fourteen minutes ($118^{\circ} 14'$)
 east ($84^{\circ} 42' W$) to the left and running south thirty four degrees and
 twenty (20) twelve minutes west ($83^{\circ} 12' W$) along the division wall
 is between the lands supposed to belong to A. F. Prentiss and
 Murphy, A. F. Sidney White three hundred and thirty (330) feet
 thence Deflecting an angle in said division wall, thence Deflecting
 and fifty degree and thirty three minutes ($1^{\circ} 33'$) to the left

and running south thirty six degrees and thirty minutes (36° 30') east along said division wall, supposed to be hundred and two (120) feet to the high water mark of the Nagog Pond, thence Deflecting to the left and running east and southerly by said flow line approximately minutes hundred and eighty five (185) feet to the division wall between lands supposed to belong to A. F. Charles and fifty (50) feet to the division wall between lands supposed to belong to A. F. Prentiss the Pilgrim Milling Company, thence Deflecting to the left and running south sixty six degrees and thirty six minutes (66° 36') east along said division wall twenty four (24) feet to its intersection with the division wall between lands supposed to belong to A. F. Prentiss the Pilgrim Milling Company and George Murphy, thence Deflecting to the left and running north forty five degrees and forty two minutes (45° 42') east along the division wall between lands supposed to belong to A. F. Prentiss and George Murphy one hundred and twenty (120) feet to an angle in said wall thence Deflecting to the left and running north forty five degrees and thirty two minutes (45° 32') east along a single in division wall two hundred and eighty five (285) feet and thence the point of beginning, comprising an area of approximately three (3) acres. (c) Seventh Parcel; in land supposed to belong to J. Sidney White beginning at a point on the division wall between lands supposed to belong to J. Sidney White and A. F. Prentiss shown on the plan as the point of beginning and running north twenty six degrees and forty one minutes (26° 41') west across land supposed to belong to J. Sidney White one hundred and fifty (150) feet to an angle in a wall, thence Deflecting to the left and running north forty four degrees and twenty minutes (44° 20') west along said wall, substantially one hundred and forty (140) feet to an angle in the wall and barway, thence Deflecting to the left and running north twenty four minutes (24° 30') to the left and running north seventy two degrees and fifty six minutes (72° 56') along said barway eighteen (18) feet to land as an angle in the wall, thence Deflecting to the left and running north twenty six degrees and forty six minutes (26° 46') along said wall one hundred and ninety (190) feet in

to nine feet to its intersection with a cross wall on land supposed to belong to J. Sidney White, thence Deflecting ninety degrees and forty seven minutes ($94^{\circ}47'$) to the left and running south fifty eight degrees and twenty seven minutes west ($83^{\circ}52'27''$) along the said cross wall on land supposed to belong to J. Sidney White five hundred and thirty eight feet to the intersection of two walls on the left and a barway, thence Deflecting twenty seven degrees and six minutes ($27^{\circ}06'$) to the left and running south fifty four degrees and thirty five minutes west ($83^{\circ}35'15''$) one hundred and thirty three (133) feet to a stone corner, thence Deflecting to the left and running easterly, southerly, westerly, and easterly along said flow-line approximately one hundred and twelve (112) feet to the intersection of said flow-line with the division wall between lands supposed to belong to J. Sidney White and A. F. Prentiss, thence Deflecting to the left and running north thirty degrees and thirty nine minutes east ($32^{\circ}39'06''$) along said division wall, two hundred and two (202) feet to an iron nail on said division wall, thence Deflecting one degree and thirty three minutes ($1^{\circ}33'$) to the right and running north thirty four degrees and twelve minutes east ($34^{\circ}12'00''$) along said division wall three hundred and thirty (330) feet to the point of beginning, including within the above described parcel of land, the strip of land which the Point flow water forms the point and at high water the land locally known as "Breezy Point", lying within and adjacent to Sagog Pond southwesterly from the above described parcel and comprising within said above described parcel of land, including the island of "Breezy Point", but excluding the land or marshland shown upon the plan as "Island of Breezy Point" upon the assumption that the latter is partially submerged at high water flow-line in Sagog Pond, and is therefore, included in the land under said section, taken under section a, herein, an area of one hundred and nine tenths (10.9) acres.

(2) Said Town hereby gives rights-of-way in and over the following strips of land as a means of access to the lands hereinbefore described in sections (a), (b), and (c); with the right to pass and repass over said land on foot or with teams or vehicles, each of said strips of land being twenty (20) feet in width and contained between two parallel lines,

each respectively from opposite sides of and on so, two hundred
distant from the respective center lines thereof located up
and described below (d) First Right-of-Way For Accompanying
to Northerly End of Pipe Line in land supposed to belong
to J. Sidney White Beginning at a point on the southerly
westerly side of the highway of the Massachusetts Highway
way Commission known as the Great Road in Acton
which runs from Concord to Boston Massachusetts, a point
point being shown upon a plan filed herewith and Right of
titled Concord Water Works, Concord, Mass. location on land
lands bordering upon Magog Pond in the Towns of Waltham
and Littleton Mass., and Rights-of-Way leading therefrom
Taken by the Town of Concord, for Water supply Purpose point
dated July 1, 1909, and prepared by Worcester & Son, Concord
ing Engineers Concord, Mass.; said point being thirty four Acton
and three tenths (30.3) feet on a line bearing southerly
thirty three degrees and thirteen minutes east (S 33° 13' E) from
from the stone bound set by the Massachusetts Highway
way Commission, opposite and twenty five (25) feet south
erly from Sta. = 123 + 08.9 of the center line of said (S 17° 51' W)
highway, Deflecting seventy one degrees and forty
minutes (71° 40') to the right from said southerly
side of said state highway and running thence southerly
thirty eight degrees and twenty three minutes west (S 38° 38' W)
four hundred and fourteen (414) feet to highway,
angle in the driveway in front of and approximately and
teen (14) feet distant from the southerly corner of the and fifty
house standing on the westerly side of said driveway and
thence Deflecting fifteen degrees and forty five minutes
(S 15° 45') to the right and running south fifty four
degrees and eighteen minutes west (S 54° 18' W) approximately
eight hundred and fifty nine (859) feet (the straight air
lines of said right-of-way coinciding with the southerly
bordering upon and marking a lane in the property (324) feet
said J. Sidney White) to a point at the southerly end
of said lane; thence Deflecting two degrees and fifty two
eight minutes (2° 52' 48") to the left and running south
fifty one degrees and forty minutes west (S 51° 40' W) approximately
two hundred and forty three (243) feet to running
point in the pasture land belonging to said J. Sidney
White; thence Deflecting thirty six degrees and seven
minutes (36° 07') to the left and running south fifty
degree and thirty three minutes west (S 53° 33' W) approximately

100 feet hundred and seven (207) feet to a point on a cross
road located all upon the land of said J. Sidney White (said cross road
way for access along the boundary of the parcel of land described here
posed to belong above as "C) Seventh Parcel"; said point being fifteen and
the south-tenth (15.2) feet distant and southerly from the north-
westerly High-way corner of said "C) Seventh Parcel"; above referred to,
in Aetons comprising an area of approximately seven hundred and
thirteen, said one thousandths (1.791) of an acre. (d) 11 Second
and eighth of Way for Access To Pipe Line, South of Quarry;
Location of land supposed to belong to Stella D. Smith, Ruth Robbins
sons of Aetons J. McCarthy and Moses Taylor. (d) 11 First Parcel;
being thereto and supposed to belong to Stella D. Smith. Beginning at
Point on the westerly side of the highway of the Massa-
chusetts Highway Commission known as the Great Road
about five Aetons, which runs from Concord to Groton, Massa-
chusetts, said point being shown upon Sheet 100 of the
100, 13' 6" map referred to under "C) First Parcel", page 2, herein,
High-way point being seventy one (71) feet on a line bearing
southwest with seventeen degrees and fifty one minutes west
said state 11' 51' W) from the stone bound set by the Massachusetts
Highway Commission opposite and twenty five (25) feet west
northwesterly from Sta. 122+00 of the center line of said state high-
way south of Deflecting fifty degrees and thirty eight minutes
west 136' to the left from said westerly side of said state
road to an highway, and running thence north sixty eight degrees
approximately eight and twenty nine minutes west (N. 68° 29' W) four hundred
and fifty (450) feet to a point, thence Deflecting eight de-
grees and seventeen minutes (8° 17' to the right and run-
ning five minutes north sixty degrees and twelve minutes west (N. 60° 12' W)
fifty four hundred and sixty one (561) feet to a point; thence
Deflecting twelve degrees and ten minutes (12° 10' to the
left and running north forty eight degrees and two
minutes west (N. 48° 02' W) three hundred and twenty four
feet to a point; thence Deflecting four degrees and
thirty and sixteen minutes (4° 46' to the left and running north
and thirty two degrees and sixteen minutes west (N. 52° 16' W) two
hundred and ten (210) feet to a point; thence Deflecting
eight degrees and eleven minutes (8° 11' to the left and
running north seventy degrees and twenty seven minutes
(N. 70° 27' W) approximately sixty two (62) feet to a point
near seven and seven in the division road between lands sup-
posed to belong to said Stella D. Smith and Ruth Robbins;
approximately comprising an area of approximately five hundred fifty four

thousandths (0.554) of an acre. id, II Second Parcel, to belong to
land supposed to belong to Ruth Robbins. Beginning on area of
the last mentioned point in the division wall below acre.
lands supposed to belong to Stella D. Smith and Ruth Long to Rob-
bins, and continuing on said last described course with an opening
seventy degrees and twenty seven minutes west $(70^{\circ} 27')$ to be
approximately two hundred and twenty (220) feet, said course contin-
uing parallel to and northerly from a wall, to a point, and
thence Deflecting nine degrees and ten minutes $(9^{\circ} 10')$ approximately
the right and running north sixty one degrees and thirty minutes
west $(61^{\circ} 30' W)$ one hundred and thirty (130) feet to a point;
thence Deflecting sixteen degrees and twenty one minutes
 $(16^{\circ} 21')$ to the left and running north seventy seven degrees and
thirty eight minutes west $(77^{\circ} 38' W)$ the center for
one hundred and sixty six (166) feet to a point; thence Deflecting
three degrees and twenty three minutes $(3^{\circ} 23')$ to five minutes
right and running north seventy four degrees and fifteen
minutes west $(74^{\circ} 15' W)$ three hundred and fifty (350) feet to a point;
thence Deflecting eighteen degrees and fifty three minutes
 $(18^{\circ} 53')$ to the right and running north fifty five degrees and
twenty two minutes west $(55^{\circ} 22' W)$ and, in the
one hundred and ninety (190) feet to a point; thence Deflecting
twenty five degrees and thirteen minutes $(25^{\circ} 13' W)$ the water
right and running north thirty degrees and nine minutes west
 $(30^{\circ} 09' W)$ one hundred and fifty one (151) feet to its real
point; thence Deflecting thirty nine degrees and thirteen minutes
 $(39^{\circ} 13')$ to the left and running north seventy degrees and
twelve minutes west $(70^{\circ} 12' W)$ eighty five (85) feet to a point.
thence Deflecting twenty four degrees and four minutes
 $(24^{\circ} 04')$ to the left and running south eighty five degrees and
fourteen minutes west $(85^{\circ} 14' W)$ approximately one hundred and six (106) feet to a point
in the division line between lands supposed to belong to
said Ruth Robbins and Thomas J. Mc Carthy, comprising
an area of six hundred and thirty six thousandths (0.636) of an acre.
id, II. Third Parcel; in land supposed to hereby and
belong to Thomas J. Mc Carthy. Beginning at the real estate
described point in the division line between lands sup-
posed to belong to Ruth Robbins and Thomas J. Mc Carthy, and
continuing on the last described course south with an opening of
five degrees and fourteen minutes west $(5^{\circ} 14' W)$ approximately one hundred and sixty (160) feet to a point;
thence an opening in the division wall between lands supposed to

Parcel, belong to Thomas F. McBarthy and Moses Taylor, comprising
more or less of approximately seventy three thousandths (0.073) of
an acre between the 11. Fourth Parcel, in land supposed to be
South of the 10. Parcel, belonging to Moses Taylor. Beginning at the last described point
where north, an opening in the division wall between lands sup-
posed to belong to Thomas F. McBarthy and Moses Taylor,
said course and continuing upon said last described course south
85° 14' W to a point eighty five degrees and fourteen minutes west (85° 14' W)
9° 15' to approximately eight (8) feet to its intersection with the east-
and south boundary of the right-of-way for pipe line taken
and nine through land of Moses Taylor hereunder "6. Third Parcel"
degrees and said course running south eighty five degrees and four-
teen minutes west (85° 14' W) when produced intersecting
said line of said pipe line right-of-way at its 2112.4
feet Deflect making therewith an angle of ninety seven degrees and
31' to the 15 minutes (97° 35'), comprising an area of approximately
and fifteen thousandths (0.004) of an acre. The Lands, Rights
and Easements hereby taken are deemed necessary for lay-
ing out, establishing, operating and maintaining an ad-
joining municipal water supply system, to be obtained from a 200
55° 22' W and, in the Towns of Acton and Billerica, Massachusetts
Deflect a connection with and an improvement and extension of
5° 15' to the water works of said town of Concord, Massachusetts
one minute witness whereof the said Town of Concord, has caused
this deed to be read and its seal to be hereunto affixed, and these Presents to be
witnessed in its name and behalf by William Wheeler,
Mayor, James E. Shattuck and Thomas Hollis, its Water and Sewer
Commissioners, hereunto duly authorized, this twenty first
and thirty day of July, 1909. Town of Concord by William Wheeler,
Mayor, James E. Shattuck, Thomas Hollis Its Water and Sewer
Commissioners (Town Seal)

a point
to belong
comprising
(the 0.635) and in case of his absence or inability to act, the Treasurer,
supposed to hereby authorized and directed to execute all conveyances
the last real estate, all assignments of mortgages, and all par-
cels and releases of mortgages held by this bank; and either the
McBarthy or the Treasurer is hereby authorized to execute a
with eighty shares of any mortgage held by this bank upon pay-
ment of the same, and to assign or release its interest
in this and in any other mortgage held by it, or
supposed to be conveyed, released, or assigned. A true copy.

Widdleson ss. July 28, 1909. 9 h. 50 m. A. M. Reed, & recorded

Extract From By-Laws Art. 21. The President
in case of his absence or inability to act, the Treasurer,
hereby authorized and directed to execute all conveyances
the last real estate, all assignments of mortgages, and all par-
cels and releases of mortgages held by this bank; and either the
McBarthy or the Treasurer is hereby authorized to execute a
with eighty shares of any mortgage held by this bank upon pay-
ment of the same, and to assign or release its interest
in this and in any other mortgage held by it, or
supposed to be conveyed, released, or assigned. A true copy.

Wildes
Laws 58.
Extract from
By-Laws

TAB 4

EXHIBIT

E

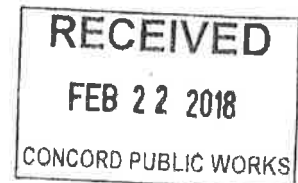


39 Ayer Road, P.O. Box 2406
Littleton, MA 01460-3406
978.540.2222
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www.lclwd.com

Scott Edwards, General Manager

February 20, 2018

By Certified Mail #70150640000453526921
Concord Public Works Commission
133 Keyes Road
Concord, MA 01742



Re: Nagog Pond

Dear Commissioners,

Pursuant to Chapter 201 of the Acts of 1884 (the "1884 Act"), notice is hereby given that the Littleton Water Department intends to exercise the full extent of the rights conferred thereby to withdraw water from Nagog Pond.

The 1884 Act, a copy of which is attached hereto, establishes Littleton's right to withdraw water from Nagog Pond, subject to the requirement that Littleton pay to the Town of Concord "a just and proportionate part of whatever sums...Concord shall have paid...for water damages...for the taking of water rights..." Littleton is willing to negotiate terms agreeable to both Towns regarding the exercise of that right and the required payment to Concord.

In 2011, the Town Clerk of Concord and Concord public Works provided Littleton with documentation that appears to show that the total amount paid by Concord in water damages for the taking of water rights since 1909 has been \$24,388. Littleton is certainly prepared to pay a just and proportionate share of this amount.


Pursuant to Section 10 of the 1884 Act, Littleton is prepared to apply, after August 1, 2018, to the Supreme Judicial Court to determine the specific amount due to Concord. Before that becomes necessary, however, Littleton is hopeful that an agreement with Concord can be worked out. Specifically, Littleton hopes to negotiate terms upon which Concord's water registration under the *Water Management Act* can be transferred to Littleton pursuant to 310 CMR 36.09. Whether or not such negotiations are successful, however, Littleton intends to move ahead with the exercise of its rights.

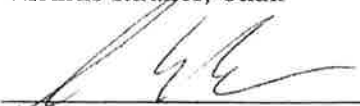


PRINTED ON RECYCLED PAPER

I look forward to hearing from you regarding this matter.

Littleton Water Commissioners

DocuSigned by:

Thomas Ranker, Chair


Scott Edwards, General Manager

Cc: Concord Board of Selectmen (By Certified Mail #70150640000453536938)
Alan Cathcart, Concord Water and Sewer Superintendent
(By Certified Mail #70150640000453526914)
Littleton Board of Selectmen
Keith A. Bergman, Littleton Town Administrator

twenty-nine of the Public Statutes and any acts in amendment thereof or in addition thereto so far as the same are applicable.

SECTION 4. This act shall take effect upon its acceptance by a two-thirds vote of the voters of said town present and voting thereon at a legal town meeting called for the purpose within two years from its passage.

Subject to acceptance by a two-thirds vote.

Approved April 30, 1884.

AN ACT TO AUTHORIZE THE TOWN OF CONCORD TO INCREASE ITS WATER SUPPLY. *Chap. 201*

Be it enacted, etc., as follows:

SECTION 1. The town of Concord, in addition to the powers now conferred upon it by law, is hereby authorized to supply itself and its inhabitants and other persons, towns and corporations on the line of its water works with pure water to extinguish fires, generate steam and for domestic and other purposes, and may establish public fountains and hydrants and regulate their use, and discontinue the same, and may collect rates to be paid for the use of the water.

May increase water supply.

SECTION 2. Said town, for the purposes aforesaid, may take and hold the waters of Nagog Pond, so called, in the towns of Acton and Littleton and the waters which flow into and from the same, and may also take and hold by purchase or otherwise all necessary lands for raising, holding, diverting, purifying and preserving such waters, and conveying the same to any and all parts of said town of Concord, and may erect thereon proper dams, reservoirs, buildings, fixtures and other structures, and make excavations and embankments, and procure and operate machinery therefor; and for such purposes may construct and lay down, dig up and repair conduits, pipes and other works in, under or over any lands, water courses or railroads, and along any street, highway, alley or other way, in such manner as not unnecessarily to obstruct the same, and may dig up, raise and embank any such lands, street, highway, alley or other way in such manner as to cause the least hindrance to travel thereon.

May take waters of Nagog Pond in Acton and Littleton.

SECTION 3. Instead of taking the entire waters of said Nagog Pond, said town of Concord may, if it shall so elect, take a part of said waters, such election to be made by a vote of said town declaring the quantity or proportion of said waters to be so taken.

Quantity of water to be taken subject to a vote of the town.

To file in registry of deeds a description of land and water taken.

SECTION 4. Within ninety days after the time of taking any lands, waters or water courses as aforesaid, otherwise than by purchase, said town shall file in the registry of deeds for the southern district of the county of Middlesex a description thereof sufficiently accurate for identification, with a statement of the purpose for which the same is taken, signed by a majority of the water commissioners of said town; and if said town shall have made the election authorized by section three of this act, said description and statement shall be accompanied by a copy of the vote of said town signifying such election.

May, by vote, take an increased proportion of waters.

SECTION 5. Said town of Concord, if it shall have made the election authorized by section three of this act, may thereafter from time to time, if it shall so elect, take an increased proportion of said waters, each successive election to be made by a vote of said town declaring the additional quantity or proportion of said waters to be so taken, and upon each such successive election and within ninety days thereafter said town shall file in said registry of deeds a description, statement and copy of the vote therefor as provided for in section four of this act.

Water to be measured.

SECTION 6. If said town shall make the election authorized by section three of this act, said town shall provide a reliable means or method of measuring and registering the amount of water taken, such register or record to be at all times accessible to any interested parties.

Liability for damages.

SECTION 7. The said town of Concord shall pay all damages sustained by any person in property by the taking of any land, right of way, water, water source, water right or easement, or by any other thing done by said town under the authority of this act; said damages to be based and proportioned in case of the taking of water or water rights upon the amount of water taken as aforesaid. Any person or corporation sustaining damages as aforesaid under this act, who fails to agree with said town as to the amount of damages sustained, may have the damages assessed and determined in the manner provided by law when land is taken for the laying out of highways, on application at any time within three years from the time when the water is actually withdrawn or diverted, and not thereafter. No application for the assessment of damages shall be made for the taking of any water, water right, or for any injury thereto, until the

Application for damages not to be made until water is actually withdrawn.

water is actually withdrawn or diverted by said town under the authority of this act.

SECTION 8. Said town of Concord, for the purposes herein authorized, may from time to time borrow money and issue notes, bonds or scrip therefor to an amount not exceeding fifty thousand dollars in addition to the amount already authorized by law in the manner and under the restrictions provided by section four of chapter one hundred and eighty-eight of the acts of the year eighteen hundred and seventy-two.

May borrow money and issue bonds, etc.

SECTION 9. The board of water commissioners of said town of Concord shall execute, superintend and direct the performance of all the works, matters and things mentioned in this act and exercise all the rights, powers and privileges hereby granted to said town and not otherwise specifically provided for herein, subject to the vote of said town. The provisions of sections seven, eight, nine and ten of chapter one hundred and eighty-eight of the acts of the year eighteen hundred and seventy-two shall apply to this act as if inserted herein.

Water commissioners to have charge of works.

SECTION 10. Nothing 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.

Acton and Littleton not prevented from taking waters of Nagog Pond.

If water is taken, towns to pay just proportion of damages.

Commonwealth
may take water
from Nagog
Pond.

Contract be-
tween Concord
and the Com-
monwealth.

Subject to ac-
ceptance by
town of Concord
within one year.

SECTION 11. The Commonwealth of Massachusetts shall have the right to take from said Nagog Pond, for use in buildings owned by said Commonwealth in the town of Concord, an amount of water not exceeding two hundred thousand gallons per day, and the said right is hereby reserved. If the said Commonwealth shall take from said pond its waters, or any part thereof, which the town of Concord may have taken under this act, otherwise than by contract with said town of Concord, the said Commonwealth shall pay to said town of 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 and determined as is provided for in section ten of this act. But if upon the expiration of the contract made on the first day of October in the year eighteen hundred and eighty-three between the said town of Concord and said Commonwealth to provide for the delivery of water from the Concord water works for use within the walls of the state prison, said town of Concord by its water commissioners shall renew said contract for five years on the terms named therein, or shall tender to the governor of the Commonwealth a renewal of said contract for five years on the terms named therein, with the option upon the part of said Commonwealth of a further renewal for a term of twenty years upon said terms, then the right of said Commonwealth herein provided for shall cease.

SECTION 12. This act shall take effect upon its passage, but shall become void unless it is accepted by a vote of said town of Concord at a legal meeting held for the purpose within one year from its passage.

Approved April 30, 1884.

Chap. 202

AN ACT TO INCORPORATE THE HIGHLAND CONGREGATIONAL CHURCH
IN LOWELL.

Be it enacted, etc., as follows:

Corporators.

SECTION 1. James G. Buttrick, William L. Davis, Cyrus B. Emerson, John T. Carter, Hamden Spiller, Lucy R. Carter, Almira Sturtevant, Clara S. Spiller and all other members of the Highland Congregational Church in Lowell, and their successors as members of said

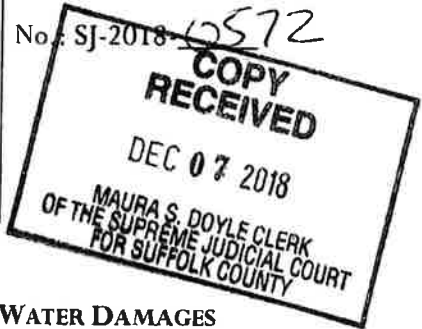
TAB 5

**Commonwealth of Massachusetts
Supreme Judicial Court in and for Suffolk County**

The TOWN OF LITTLETON, MASSACHUSETTS, acting by
and through its BOARD OF WATER COMMISSIONERS,
Plaintiff,

v.

The TOWN OF CONCORD, MASSACHUSETTS,
Defendant.



**COMPLAINT FOR ASSESSMENT OF STATUTORY WATER DAMAGES
UNDER STAT. 1884, C. 201 AND RELATED DECLARATORY RELIEF**

1. Nagog Pond is a freshwater, natural Great Pond lying along the boundary between the Towns of Littleton and Acton. Littleton has historically not needed to use Nagog Pond for its water supply needs. Although Littleton is authorized to use Nagog Pond for such a purpose and has the right to do so pursuant to Stat. 1884, c.201 and Stat. 1911, c.617, it has, until recently been able to supply its inhabitants with water from other sources.

2. During the period that it has been unneeded by Littleton (or Acton), Nagog Pond has historically served as a water supply to the Town of Concord. In 1884, Concord successfully secured from the General Court a legislative right to take and hold Nagog Pond's waters, associated water rights, and other land or property for Concord's use in meeting its water supply needs. Stat. 1884, c.201 (the "1884 Act"). Concord eventually took the waters of Nagog Pond in its entirety in 1909 and has, for over a century, been the beneficiary of that water supply. That right, however, was limited and inferior to a reserved right left with Littleton: At any point in the future, Littleton

could take and hold Nagog Pond's waters --including waters held by Concord--and its inhabitants would be "first supplied" over Concord's. Stat.1884, c.201, §10.

3. 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. Concord, meanwhile, has developed alternative water supply sources over the last century.¹ 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.²

4. Knowing that it will need to exercise its rights under the 1884 Act to secure water from Nagog Pond, Littleton has attempted to negotiate a fair and equitable process for doing so with Concord, including reimbursement to Concord of an appropriate sum of "water damages." Concord, after participating in a handful of negotiation session, has declined to participate further.

5. Accordingly, Littleton, acting by and through its Board of Water Commissioners, files this petition as the General Court commanded in 1884. See Stat. 1884, c.201, §10 (requiring application to the Supreme Judicial Court for ascertaining water damages related to Littleton's or Acton's taking of waters from Nagog Pond already taken by Concord). By this action, Littleton seeks to resolve its dispute with Concord over its imminent taking of Nagog Pond's waters. Count I of this petition requests the appointment of three commissioners, under Stat. 1884, c.201, §10, to ascertain a just and proportionate sum of "water damages" Littleton will be obligated to pay Concord for its intended lawful taking and holding of waters from Nagog Pond. Littleton further asks, in Count II, that this Court declare, pursuant to *M.G.L. c.231A*,

¹ <http://www.concordnet.org/363/Water-Supply>

² *Id.*; also <http://www.mwra.com/02org/html/locallist.htm>

the scope and extent of the term “water damages” as used in the 1884 Act and to instruct the three-commissioner panel consistent with that declaration.

PARTIES

6. The Town of Littleton, Massachusetts is a municipal corporation duly organized under the laws of the Commonwealth. Littleton Town Hall – its principal place of business – is at 37 Shattuck Street, in Littleton.

7. The Littleton Board of Water Commissioners is a five-member elected board whose authority derives from Stat. 1911, c.617 (the “1911 Act”). The Board’s principal place of business is 39 Ayer Road, in Littleton.

8. The Town of Concord, Massachusetts is a municipal corporation duly organized under the laws of the Commonwealth. Concord Town Hall – its principal place of business – is at 22 Monument Square, in Concord.

JURISDICTION AND VENUE

9. This Court has subject matter over this action in accordance with *M.G.L.* c.214, §§1, 2, and 8, and Stat. 1884, c.201.

10. This Court has personal jurisdiction over Concord under *M.G.L.* c.223A, §2.

11. Venue is proper in this Court under Stat. 1884, c.201.

FACTS

A. Overview of Nagog Pond.

12. Nagog Pond is a kettle hole lake situated in both Littleton and Acton.³ The actual boundary line between the two Towns runs approximately through the center of the Pond.

13. Nagog Pond is and has long been recognized as a natural Great Pond.

14. As with any other supply of water, Nagog Pond can only provide sustainable water supply to certain limits. Those limits can be expressed through its “firm yield” and “safe yield.”

15. In 2011, the U.S. Geological Service (“USGS”) determined that the “firm yield” of Nagog Pond—defined in the report as the maximum yield that can be delivered from a system without a failure, even during a severe drought—is 0.86 million gallons per day (MGD).

16. According to the most recent (2017) Annual Statistical Report filed by Concord with the Massachusetts Department of Environmental Protection, Bureau of Water Resources, Drinking Water Program, the “safe yield” of Nagog Pond is 1.23 MGD. *M.G.L. c. 21G, §2* defines “safe yield” as “the maximum dependable withdrawal that can be made continuously from a water source including ground or surface water during a period of years in which the probable driest period or period of greatest water deficiency is likely to occur; provided however, that such dependability is relative and is a function of storage and drought probability.”

³ A kettle hole lake is a shallow, sediment filled body of water.

B. Concord's Request to the General Court to Use Nagog Pond as a Water Supply Source unless and until its Waters Were Needed by Littleton or Acton.

17. In the late 1800s, neither Littleton nor Acton used Nagog Pond as a source of water for either Town's respective inhabitants.

18. During this time, Concord had taken and was using the waters of Sandy Pond in Lincoln as a source of water for use by its inhabitants, among other sources. See St. 1872, c. 188 (authorizing Concord to "take and hold the waters of Sandy Pond" for purposes enumerated in statute).

19. After a severe, multi-year drought,⁴ Concord petitioned the General Court to allow it access to the waters of Nagog Pond, outside of its town borders, as an additional source of water supply.

20. The General Court obliged. On April 30, 1884, it approved "An Act To authorize the Town of Concord to increase its Water Supply." A copy of the 1884 Act is appended to this Complaint as Exhibit 1.

21. Through the 1884 Act, the General Court conferred a qualified authorization and right to Concord to take and use the waters of Nagog Pond, subject and secondary to any need by Littleton or Acton to take and use the same waters in the future. The 1884 Act set forth a framework of rights and obligations to implement that Legislative intent.

22. Section 1 authorized Concord—subject to certain other authorization requirements in later sections—to "supply itself and its inhabitants and other persons, towns and corporations on the line of its water works with pure water" for specific, statutorily-enumerated purposes. St. 1884, c. 201, §1.

⁴ 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/>).

23. Sections 2 and 3 authorized Concord to “take and hold the waters of Nagog Pond” and provided corresponding authority to “take and hold by purchase or otherwise all necessary lands for raising, holding, diverting, and purifying such waters” and on those lands to “erect...proper dams, reservoirs, buildings, fixtures and other structures, and make excavations and embankments, and procure and operate machinery” for water supply purposes. Stat. 1884, c.201, §§2-3. At its option, Concord could either take all of Nagog Pond’s waters (*id.* §2) or only “a part of said waters” (*id.* §3). In the case of taking a water or water right, Concord was required to pay those proportioned damages only when “the water [was] actually withdrawn or diverted....” *Id.*

24. Section 10 reserved primary rights to Nagog Pond’s waters to the two Towns within which it is located: Littleton and Acton. See Stat. 1884, c.201, §10. That section states explicitly that none of the Act’s provisions “shall prevent” the Towns of Littleton and Acton “from taking the waters of Nagog Pond whenever said towns or either of them may require the same for similar purposes....” *Id.* The Act then goes on to subjugate Concord’s water supply rights to those of Littleton and Acton, commanding that “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.” *Id.*

25. Section 10 of the 1884 Act also anticipates that either or both of Littleton’s or Acton’s exercise of their superior rights to Nagog Pond’s waters might mean taking and holding waters previously taken and held by Concord. In such a circumstance, Littleton or Acton would be obligated to pay “water damages” to Concord for whatever “water rights” the Town took from Concord. Stat. 1884, c.201, §10. The General Court 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....” *Id.* The General Court 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.

26. Finally, Section 10 contemplates the possibility of a dispute over the “ascertain[ment]” of “water damages” owed to Concord. Stat. 1884, c.201, §10. Thus, the General Court said that “water damages” are to be “ascertained, if the parties fail to agree, by three commissioners to be appointed upon the application of either party by the supreme judicial court....” *Id.*

27. At its Annual Town Meeting the year following enactment of the 1884 Act, Concord voted to accept the Act’s provisions as the Act required. See Stat. 1884, c.201, §12.

C. Concord’s Taking and Holding of All of Nagog Pond’s Waters for Its Own Use in the Early 1900s.

28. It would not be until another quarter century passed, before Concord found the need to exercise its qualified right to take and hold Nagog Pond’s waters under the 1884 Act.

29. After a “[s]eries of dry years alternating with wet ones,” the Concord Water and Sewer Commissioners recommended in Concord’s Town Report that the Town “procure an additional supply [of water] from another source.” Seventh Annual Report of the Water and Sewer Commissioners, Concord Town Report, pp. 126-28 (for the year ending Jan. 31, 1909), appended to this complaint as Exhibit 2.

30. By vote taken pursuant to Article 14 of the 1909 Concord Annual Town Meeting, the Concord Water and Sewer Commission was authorized to “take and hold the waters of Nagog Pond...and also to take and hold by purchase or otherwise all necessary land, water rights, rights of water and easement for raising, holding, diverting, purifying, and preserving such waters.”

31. On July 28, 1909, Concord recorded an Instrument of Taking in the Middlesex County Registry of Deeds, book 3457, Page 221-237. A copy of the original cursive instrument and a transcription of the original are appended to this Complaint as Exhibits 3 and 4.

32. The Instrument of Taking purports to take: (i) all of the waters of Nagog Pond; (ii) the waters that flow into and from the Pond; (iii) the land under the Pond up to the overflow level of the dam at its outlet; and (iv) the littoral rights otherwise accruing to the owner of the adjacent properties thereby taken.

33. The July 28, 1909 Instrument of Taking and various other taking instruments recorded since that date, purport to take other property interests pursuant to the authority conferred by the 1884 Act.

34. On information and belief, none of the payments made in compensation for such takings constitute "water damages" within the meaning of Section 10 of the 1884 Act.

D. The General Court's Enactment of the *Water Management Act to Create a Statewide Framework for Registering, Licensing, and Coordinating Water Withdrawals*

35. In the early 1980s, the General Court increasingly became aware that "the continued adequacy of the Commonwealth's water supplies [could] no longer be taken for granted."⁵ Thus, the General Court established a Special Commission to examine issues related to water scarcity and to report on those issues, including making recommendations. *Id.*

⁵ Report of the Special Comm'n Established (Under Chapter 13 of the Resolves of 1977 and Most Recently Revived and Continued by Chapter 9 of the Resolves of 1982) to Make an Investigation and Study Relative to Determining the Adequacy of the Water Supply of the Commonwealth ("Senate Report No. 1826"), Senate No. 1826 (Jan. 27, 1983).

36. In making its resulting report to the General Court in 1982, the Special Commission observed, among other items, that “In order to protect existing [water] users, a management framework which will enable water allocation in the future must be developed.”⁶ The Special Commission retained special legal counsel who provided a recommended framework and proposed implementing legislation.⁷ Special legal counsel’s accompanying report described the then-proposed *Water Management Act* as necessary to “establish a mechanism for authorizing new withdrawals of both ground and surface water in excess of a threshold volume....”⁸ That mechanism, according to special legal counsel, was the “minimum level of allocation regulation consistent with its management objectives.”⁹

37. The General Court acted in accord with these recommendations. On December 18, 1985, the General Court enacted “An Act Relative to the Establishment of a Massachusetts Water Management Act” to create a Statewide mechanism for allocating and managing water withdrawals pursuant to existing and future water rights. See Stat. 1985, c.592.

38. Under the *Water Management Act* (WMA), *M.G.L. c.21G*, all water withdrawals in excess of 100,000 gallons per day are reported to the Commonwealth. Withdrawals in excess of that “threshold amount” that existed prior to the Act, if registered no later than January 1, 1988, are now grandfathered from State infringement so long as the withdrawing entity continues to maintain its registration. Stat. 1985, c.592, §5. All non-registered withdrawals beyond that threshold amount

⁶ Senate Report No. 1826, p. 4.

⁷ *Id.*

⁸ *Id.* at 50.

⁹ *Id.*

now require a State-issued permit, in addition, of course, to some property or other legal right to withdraw the water in question. *M.G.L. c.21G, §7.*

39. Through this registration/permit overlay, the Commonwealth now manages the allocation of water withdrawals among those with water withdrawal rights and interests to ensure that, as a collective whole, those withdrawals do not endanger the future existence or replenishment of the Commonwealth's water supply. Nowhere in its text does the WMA assign, change, or otherwise alter property rights related to water withdrawals. Rather, as the "minimum level of allocation regulation consistent with its management objectives" (Senate Report No. 1826, p. 50), the WMA creates a State-level registration and permit framework that applies to and regulates then-existing and all future property rights to withdraw water.

40. In August 1987, Concord filed a Registration Statement pursuant to section 5 of the WMA, establishing its withdrawal of a total of 2.1 million gallons per day (MGD) from 10 withdrawal points, one of which was Nagog Pond. The Registration Statement does not specify what portion of the 2.1 MGD was being withdrawn from Nagog Pond.

41. Concord's Registration Statement was renewed on December 31, 1997 and December 31, 2007. Pursuant to the *Permit Extension Act*, Chapter 240 of the Acts of 2010, § 173 (extended by Chapter 238 of the Acts of 2012, §§74-75), Concord's Registration Statement is currently expected to expire on December 31, 2021 but may be renewed prior to that date.

42. On information and belief, Concord's average daily withdrawals from Nagog Pond since 2010 have never exceeded 0.13 MGD in any single year. Withdrawals have occurred in 100 or fewer days in each year since 2010, and the maximum withdrawal on any single day during that period was 0.84 MGD.

E. Littleton's Comprehensive Water Supply Planning for Its Increasing, Future Town Needs

43. Like many Massachusetts communities, Littleton has seen significant population growth in recent decades. That growth has come, unsurprisingly, with an increased demand for water, for use by the Town's residents and businesses.

44. The Littleton Water Department—responsible for supplying and distributing water within the Town's boundaries—currently operates a public water supply distribution system. That system serves 2,989 residential customers and 498 commercial customers.

45. Littleton currently withdraws water from six groundwater wells:

- Whitcomb TWF #3, DEP Source ID 2158000-01G
- Whitcomb GPW #1, DEP Source ID 2158000-02G
- Spectacle Pond Well, DEP Source ID 2158000-04G
- Replacement Well 2.1, DEP Source ID 2158000-05G
- Replacement Well 2.2, DEP Source ID 2158000-06G
- Replacement Well 2.3, DEP Source ID 215000-07G

Each of these wells is the subject of a permit issued by the Department of Environmental Protection (DEP), which sets the maximum volume of water that can be pumped therefrom on a single day.

46. The combined maximum volume of water that can be pumped from Littleton's six groundwater wells is 2.21 MGD.

47. Littleton does not currently utilize any water from Nagog Pond in its public water supply system.

48. Approximately 60% of Littleton's authorized withdrawals are the subject of a WMA Registration Statement filed with the Department of Environmental Protection (DEP) on or before January 1, 1988 and subsequently renewed on July 1, 1997 and August 8, 2007. The average daily volume of water withdrawals registered

by Littleton is 0.834 MGD. Littleton's Registration Statement is currently expected to expire on December 31, 2021 but may be renewed prior to that date.

49. Withdrawals in excess of Littleton's registered water volumes are currently also made from Littleton's water supply wells for which Littleton holds a WMA permit issued in March 1997 by DEP. The average daily volume of water withdrawals for which Littleton holds a DEP permit is 0.63 MGD.

50. Combining the Town's registered and permit water withdrawal volumes, Littleton is authorized to withdraw an average daily volume of 1.464 MGD from its public water supply wells.

51. Since 2010, Littleton's average daily withdrawals for its public water supply in any single year have been as high as 1.23 MGD. Littleton's maximum withdrawal on any single day during that period was 2.12 MGD.

52. As a practical matter, Littleton's six groundwater wells must be pumped at or near their maximum authorized capacity during periods of peak demand. If any of the wells is undergoing maintenance or repair during a peak-demand period, Littleton currently would not have adequate pumping capacity to meet that demand.

53. Anticipating increased, future demands on its water supply, Littleton retained Tighe & Bond—expert engineering consultants—to conduct a Water System Capacity Analysis.

54. That resulting analysis, delivered on July 31, 2017 and appended to this complaint as Exhibit 5, describes Littleton 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."

55. Tighe & Bond projects that, in order to meet the expected demand of its residential and business customers, the Littleton Water Department would need to accommodate an increase in its daily peak withdrawal volume by 0.33 MGD by the year 2040. Tighe & Bond projects that the maximum daily demand in Littleton in 2040 will be 2.54 million gallons.

56. Consistent with this need for future water supply sources, Littleton is now actively engaged in planning for its future and is pursuing several additional sources of future water supply.

57. One such source is Nagog Pond.

58. Because of its projected future need, Littleton intends to exercise its right under the 1884 Act to withdraw water from Nagog Pond.

59. Littleton is authorized to take waters from Nagog Pond under both the 1884 Act and Stat. 1911, c.617 (the "1911 Act") that authorized Littleton to supply itself with water, including through the taking and holding of waters and water rights "within the limits of the town." A copy of the 1911 act is appended to this complaint as Exhibit 6.

60. 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.

61. Based on Littleton's current and projected peak demand for water, and upon completion of the procedures set forth in the 1884 Act, and subsequent WMA permitting, Littleton's anticipated maximum daily withdrawals from Nagog Pond by 2040 would prevent Concord from making withdrawals from the pond consistent with its historical peak withdrawal volumes without exceeding the Pond's firm yield.

F. Littleton's Attempt to Negotiate Cooperatively with Concord to Determine "Water Damages" Owed to Concord for Littleton's Taking of Waters from Nagog Pond

62. On February 20, 2018, Littleton—acting through its Water Department—gave Concord notice of its intent to exercise the full extent of its rights to withdraw water from Nagog Pond. A copy of that notice is appended to this complaint as Exhibit 7.

63. In that notice, Littleton offered to negotiate appropriate water damages to be paid to Concord as the result of its exercise of its withdrawal rights. Littleton stated that, in the event that an agreement on the amount owed could not be reached by August 1, 2018, it would commence the process specified in section 10 of the 1884 Act by filing an application in this Court.

64. Concord ignored that notice. On April 17, 2018, the Littleton Water Department wrote to Concord concerning the latter's failure to respond and stating Littleton's intent to file a petition for water damages in this Court on May 1, if Concord had no interest in responding to Littleton.

65. Concord thereafter responded and negotiations between the parties were conducted at meetings held on June 6, July 24 and November 7, 2018. At the final meeting, Concord's representatives informed Littleton that they were willing to discuss only a single issue: Littleton's pending application before DEP for a potential new well, which Littleton believes to be hydrologically unconnected with Nagog Pond.

66. The very next day, November 8, 2018, without any advance notice or warning to Littleton, and without any further offer of negotiation, Concord filed a complaint before the Land Court requesting a declaration that the 1884 had been impliedly repealed in its entirety by the enactment of the *Water Management Act*. (No. 18 MISC 000596.) A copy of that Complaint is appended to this Complaint as Exhibit 8.

**COUNT I: ASSESSMENT OF WATER DAMAGES
UNDER STAT. 1884, C. 201, §10**

67. The allegations set forth in paragraph 1 through 66 are incorporated by reference as if set forth in their entirety in this paragraph.

68. Littleton is authorized to take and hold the waters of Nagog Pond and associated water rights under Stat. 1884, c.201 and Stat. 1911, c.617 for its own use as a water supply.

69. Littleton's right and authorization to take and hold the waters of Nagog Pond and associated water rights is independent of and superior to Concord's right and authorization to take and hold the waters of Nagog Pond.

70. If Littleton's right and authorization come into conflict with Concord's rights and authorization to take and hold the waters of Nagog Pond, then Littleton's needs are to be supplied before Concord's.

71. Littleton presently intends to exercise its duly authorized right to take and hold part or all of Nagog Pond's waters and associated water rights to supply its inhabitants projected, future water needs.

72. Littleton has attempted in good faith to negotiate the water damages that would be owed to Concord for such a taking. Concord has rejected Littleton's overtures and further negotiations would be fruitless.

73. Under the 1884 Act, where the parties fail to agree on water damages, this Court is to appoint a panel of three commissioners to ascertain the amount of water damages payable to Concord.

74. Under the 1884 Act, Littleton is obligated to pay only for "water damages" and not any broader form of damages Concord may have paid to any person or entity related to its use of Nagog Pond.

75. “Water damages” are limited to only damages paid by Concord to “any persons or corporations for the taking of water rights from [Nagog Pond] or the outlet thereof,” Stat. 1884, c.201, §10.

76. On information and belief, Concord has never paid any sums to any person or corporation for the taking of “water rights” from Nagog Pond itself or from its outlet. See Stat. 1884, c. 201, § 10.

77. On information and belief, Littleton does not owe Concord any sum for water damages for the taking, in whole or in part, of the waters of Nagog Pond. A three Commissioner panel appointed by this Court should therefore decline to issue any award of “water damages” to Concord.

COUNT II: DECLARATORY RELIEF – SCOPE OF “WATER DAMAGES” SUBJECT TO COMPUTATION BY COMMISSIONERS

78. The allegations set forth in paragraph 1 through 77 are incorporated by reference as if set forth in this paragraph.

79. Pursuant to *M.G.L. c.231A*, §§1 and 2, this Court is authorized to determine the rights, duties, status or other legal relations of the parties under the laws of the Commonwealth.

80. Littleton has the previously-identified right and authorization under the 1884 Act and the 1911 Act to take the waters of Nagog Pond, as described in this Complaint.

81. Littleton intends to exercise that right.

82. As previously described, Littleton has attempted to negotiate with Concord concerning the amount of “water damages” that is obligated to pay upon exercise of that right, to no avail.

83. An actual controversy exists between Concord and Littleton because the two Towns disagree concerning the meaning and scope of the term “water damages” as included in the 1884 Act.

84. Any three-commissioner panel responsible for ascertaining water damages will require, in the performance of its duties, instruction on the meaning and scope of the term “water damages.”

85. A declaration by this Court defining the legal meaning and scope of “water damages,” as that term is used in the 1884 Act, is necessary to the final assessment of damages payable by Littleton to Concord for the former’s exercise of its right to take the waters of Nagog Pond.

PRAYER FOR RELIEF

WHEREFORE, the Town of Littleton respectfully asks this Court to enter judgment:

- A. In favor of the Town of Littleton on all Counts of this Complaint;
- B. Appointing a panel of three commissioners to ascertain the just and proportionate amount of water damages that should be reimbursed by Littleton as a condition of its exercise of its rights under the 1884 Act;
- C. Declaring that the term “water damages,” as used in Chapter 201 of the Acts of 1884 is limited to only those sums Concord has paid for the taking, purchase, or conveyance of “water rights from [Nagog Pond] or its outlet” and instructing the panel of commissioners concerning the same.
- D. Awarding the Town of Littleton other and further relief as the Court deems to be just, equitable, and proper.

Respectfully submitted,

THE TOWN OF LITTLETON MASSACHUSETTS,
acting by and through its BOARD OF WATER
COMMISSIONERS,

By its attorneys,

A handwritten signature in black ink, appearing to read 'Tom J. Harrington', is written over a horizontal line.

Thomas J. Harrington, BBO # 556741

J. Raymond Miyares, BBO # 350120

Bryan Bertram, BBO # 667102

Eric Reustle, BBO # 681933

Katherine Stock, BBO # 698127

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Dated: December 7, 2018

TAB 6

**Commonwealth of Massachusetts
Supreme Judicial Court in and for Suffolk County**

The TOWN OF LITTLETON, MASSACHUSETTS, acting
by and through its BOARD OF WATER
COMMISSIONERS,

Plaintiff,

No.: SJ-2018-0572

v.

The TOWN OF CONCORD, MASSACHUSETTS,
Defendant.

**PLAINTIFF'S MOTION TO TRANSFER AND CONSOLIDATE LAND
COURT PROCEEDING UNDER *M.G.L. c.211, §4A***

Pursuant to *M.G.L. c.211, §4A*, Plaintiff moves for an order: (i) transferring a pending case in the Land Court Department of the Trial Court (No. 18 MISC 000596) (the "Land Court action") to this Court's docket; and (ii) consolidating the Land Court action with this action.

Both cases concern the same core subject matter: The Town of Littleton exercising its rights under Stat. 1884, c.201 (the "1884 Act") to take, hold, and use waters from Nagog Pond, a Great Pond located in Littleton and the Town of Acton, for municipal water supply. That Great Pond is currently used for water supply by a different town—Concord. As explained below, because both cases concern related legal issues about the same subject matter, they belong in the same court. That court should be the Supreme Judicial Court, because the 1884 Act identifies this Court as the proper forum for resolving such disputes.

In support of this Motion, Littleton states:

Background

1. Under the 1884 Act, the General Court gave Concord the right to take and hold water from Nagog Pond in order to supply itself and its inhabitants with water. Stat. 1884, c.201, §10. Concord exercised its right in 1909 by taking and holding all of Nagog Pond's waters. (Compl. ¶¶29-33.)

2. While the General Court gave Concord this right, it reserved superior water rights to Littleton and Acton, the only two towns within whose boundaries Nagog Pond lies. Specifically, under Section 10 of the 1884 Act, Littleton and Acton retained superior rights to take and hold Nagog Pond's waters, including taking and holding any water or water rights previously taken by Concord. See Stat. 1884, c.201, §10. Furthermore, if the water supplied by Nagog Pond becomes insufficient to meet the needs of all three towns, Littleton's and Acton's needs take priority over Concord's. See id.

3. If Littleton (or Acton) elects to exercise its right to take and hold waters previously taken by Concord, it must pay Concord a "just and proportionate" sum of "water damages." Stat. 1884, c.201, §10. Under the statute, the parties are required to negotiate such a sum but, recognizing that a dispute may occur, the General Court directed the parties to apply to the Supreme Judicial Court to appoint a three-commissioner panel in the event they could not agree. See id. The 1884 Act gives no other court of the Commonwealth jurisdiction over the rights assigned or disputes arising from the exercise of rights under Section 10. See id.

4. Until recently, Littleton has not needed to use Nagog Pond for its water supply. (Compl. ¶1.) That passage of time has seen Littleton grow, along with its need for water. (Compl. ¶¶43-56.) As part of its comprehensive planning for current and projected future water supply needs, Littleton now seeks to exercise its rights under the 1884 Act to take and hold part or all of Nagog Pond's waters. (Compl. ¶¶58-59.)

Littleton has attempted to negotiate a fair and equitable process for doing so with Concord, including an appropriate sum of “water damages.” (Compl. ¶¶62-66.)

5. After participating in a handful of negotiation sessions, and only a day after the most recent of those negotiations, Concord filed a declaratory judgment action against Littleton in the Land Court without any prior notice to the Town. See Land Court No. 18 MISC 000596 (Compl. Ex. 8). In the Land Court action, Concord has requested a declaratory judgment stating that the *Water Management Act*, M.G.L. c. 21G, impliedly repealed any special acts regarding water withdrawal adopted prior to the *Water Management Act*, including the 1884 Act. (Compl. Ex. 8). Concord further seeks to have that Court declare that Concord’s right to withdraw water from Nagog Pond under its *Water Management Act* Registration Statement is superior to Littleton’s reserved rights under the 1884 Act, which Concord asserts have been impliedly repealed. *Id.* Concord’s complaint in the Land Court action seeks no other relief. (See Compl. Ex. 8).

6. This action concerns the same factual controversy and subject matter. Following Concord’s commencement of the Land Court action, Littleton proceeded to do as it had originally told Concord many months ago that it would do if negotiations broke down: File this action. Here, Littleton requests that this Court appoint a three-commissioner panel to assess “water damages” under Section 10 of the 1884 Act. (Compl. Count I.) Further, because the parties’ aborted negotiations revealed fundamental disagreement over the meaning and legal scope of the phrase “water damages,” Littleton requests a related, threshold declaration by the Court concerning the proper legal meaning of the phrase, necessary to instruct the three-commissioner panel in discharging its statutory duty to “ascertain[]” those water damages. (Compl. Count II.) Under the 1884 Act, the Supreme Judicial Court is the only court with jurisdiction to decide these questions. See Stat. 1884, c.201 §10.

Argument

7. This action and the Land Court action concern different aspects of the same core dispute: Whether Littleton's reserved right under the 1884 Act to take and hold Nagog Pond's waters—including waters previously taken by Concord—may be exercised and what amount of "water damages" Littleton must pay to Concord for such a taking. There is no reasoned basis for two courts to resolve, in two separate actions, what is fundamentally one dispute. Such a path would only slow the resolution of these important issues, sunder the consideration of related legal issues, and ultimately waste—through duplicative and inefficient effort—the resources of both the courts and the parties.

8. Transfer and consolidation neatly resolves that waste. Under *M.G.L.* c.211, §4A, a Single Justice may direct any cause or matter pending in any other court of the Commonwealth—including the Land Court Department of the Trial Court—to be transferred to this Court's docket. *M.G.L.* c. 211, §4A; *Empire Apartments v. Gray*, 353 Mass. 333 (1967). Section 4A thus provides an easy mechanism to resolve the problem Concord has created.

9. The Court should use that mechanism. It is plain from Section 10 of the 1884 Act that ascertaining "water damages" is appropriate for only this Court—it is here, and nowhere else, that the General Court tells the parties that they must go. See Stat. c.201, §10. To the extent that there are issues related to that assessment—such as Concord's belief that the 1884 Act was impliedly repealed by the *Water Management Act*, they belong here too, both to effectuate the General Court's intent in Section 10 and as a matter of judicial efficiency and economy. Transfer and consolidation under *M.G.L.* c. 211, §4A is therefore necessary.

10. Doing so would not disadvantage or prejudice Concord; nor would it foreclose its right to seek relief. Concord can raise all of the legal issues it asserts in the Land Court action in defense to the Complaint in this action. If anything, Concord's

race to the courthouse undermined the 1884 Act, which required Littleton first to initiate “water damages” negotiations before filing this action. See Stat. 1884, c.201, §10. Concord should not be permitted to take advantage of Littleton’s compliance with that requirement by filing its own action during the pendency of those negotiations and, in the process, fracturing the resolution of these interrelated issues in a way that Concord presumably believes will benefit its case. Where the 1884 Act prescribes that this Court is the appropriate forum for such disputes, Concord’s Land Court action belongs here, no matter who filed first.¹


WHEREFORE, Littleton respectfully requests this Court to enter an Order transferring Land Court action No. 18 MISC 000596 to this Court’s docket and consolidating that transferred action with this one.

¹ Indeed, the Land Court does not even have subject matter jurisdiction over Concord’s declaratory relief claim, both because the General Court’s grant of jurisdiction under the 1884 Act to this Court was exclusive and because the Land Court’s own jurisdiction extends only to claims over “land” and not “water” or “water rights,” as is the case here. Littleton will be separately moving in the Land Court for an order and judgment dismissing that action. Resolving that jurisdictional issue is not necessary for this Motion and, granting this Motion would render such a motion to dismiss moot.

Respectfully submitted,

THE TOWN OF LITTLETON MASSACHUSETTS,
acting by and through its BOARD OF WATER
COMMISSIONERS,

By its attorneys,



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Dated: December 21, 2018

CERTIFICATE OF SERVICE

I, Katherine Stock, hereby certify that on the 21st day of December, 2018, I have made service of a copy of this motion to transfer and consolidate upon the Clerk for the Town of Concord by first class certified mail to the following person, in the manner specified by Mass. R. Civ. P. 4(d)(4):

Kaari Mai Tari

Town Clerk for the Town of Concord

22 Monument Square

Concord, MA 01742

A handwritten signature in black ink, appearing to read 'K. Stock', is written over a horizontal line.

Katherine Stock, BBO # 698127

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Dated: December 21, 2018