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Acton Seeks to Join Littleton to Defend Nagog Water Rights

LITTLETON – The Littleton Water Department has agreed that the Town of Acton and the Water Supply District of Acton should be allowed to intervene in the lawsuit filed by the Town of Concord to block Littleton from using Nagog Pond Waters. Whether Acton and the Acton water district may intervene will be decided by a land court judge.

“Because the Littleton-Acton line equally divides Nagog Pond, the residents of both towns share in the rights to use this natural resource as a drinking water supply. The Town of Concord has enjoyed the use of Nagog Pond for decades, and now that we need the water, Concord is seeking to strip Littleton, and therefore Acton, of rights to the pond,” said Nick Lawler, general manager of the Littleton Water Department.

In early November, Concord filed a lawsuit in the Massachusetts Land Court seeking to block Littleton from asserting its rights to water in Nagog Pond. The lawsuit says the 1985 Water Management Act supersedes the Act of 1884, which established Littleton’s and Acton’s rights to the water while granting Concord permission to tap the pond.

Acton’s motion to intervene, filed January 7, states “although Concord does not seek a declaration that explicitly affects the rights of Acton or its inhabitants under the 1884 Act, any judicial declaration that nullifies or constrains the rights of Littleton under the 1884 Act will likely be interpreted or applied as also nullifying or constraining the rights of Acton and Acton’s inhabitants.”

On January 3, 2019, Littleton filed a motion to dismiss Concord’s lawsuit filed in land court, arguing:

- State law says the Supreme Judicial Court should decide a water rights dispute between Concord and Littleton, as stated in the Acts of 1884.

- The Land Court has jurisdiction over claims that apply to “any right, title or interest in land,” under state law. The dispute is about rights to water, and not land takings.

In December, LWD filed a request with the state Supreme Judicial Court to calculate the value of “water damages,” if any, due to Concord when Littleton commences using Nagog Pond as a water source. The 1884 Act established a process for determining water damages. With the refusal of Concord officials to further negotiate, the next step is for the SJC to appoint three independent commissioners to determine if there are “water damages” and calculate the value.

“In times of increasing water scarcity and a growing population, Littleton now needs to identify and develop new water supplies and intends to take and hold at least a part of Nagog Pond’s waters toward that purpose,” according to LWD’s filing with the SJC. “Concord, meanwhile, has developed alternative water supply sources over the last century. It now also has emergency water capacity available to it from neighboring Acton and Bedford (the latter connected to the Massachusetts Water Resources Authority) in times of true need.”

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

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