



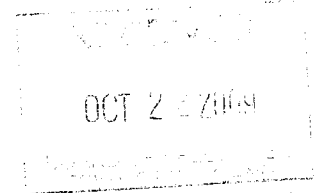
# United States Department of the Interior

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October 20, 2009

Ira Leighton  
Acting Regional Administrator, EPA  
EPA Region 1  
One Congress Street  
Suite 1100  
Boston, MA 02114



Re: EOOEA No. 14197, Birch Road Well Field Redevelopment and Water Treatment Plant

Dear Mr. Leighton:

Attached for your information are copies of the letters from the National Park Service and the United States Fish and Wildlife Service sent to Ian Bowles, Secretary, Executive Office of Environmental Affairs for the Commonwealth of Massachusetts, regarding their MEPA review process for this proposed project.

This proposal, unlike many MEPA review proposals about which Department of the Interior agencies comment, is funded by federal monies that is disbursed by your agency. Therefore, as fellow federal agencies, mutually committed to the restoration of water quality for our nation's rivers and to the fish, wildlife, cultural and recreational uses dependent upon the habitats and environments created by these rivers, it is incumbent upon us to collaborate whenever possible to mutually support our agencies' missions.

In addition to the Section 7 review process under the Wild and Scenic Rivers Act, we are also taking this opportunity to raise larger federal issues to your attention. Besides the Sudbury, Assabet, and Concord Wild and Scenic River, two federal enclaves have been established for resource protection and conservation along the Sudbury and Concord Rivers. These are the Great Meadows National Wildlife Refuge and Minute Man National Historical Park. Both of these areas were designated by Congress.

Thousands of acres of land have been acquired by the Department of the Interior to protect the natural resources of Sudbury River system, and, in the case of Minute Man National Historical Park, to also preserve the cultural and historic appearance of the Sudbury/Concord Rivers. The Old North Bridge crosses the Concord River and this park was created to preserve these waters and lands as they were during the colonial/revolutionary era, as well as to protect the wildlife and recreational scenes enjoyed by Thoreau, Emerson and Hawthorne. Great Meadows National Wildlife Refuge's primary purposes are to protect the river and wetland habitats for migratory birds, fish and other aquatic life. Annual public visitation to these two areas approaches 2 million people.

Proposals which may exacerbate the existing low flow and eutrophication problems of the rivers are obviously of great concern to the Department of the Interior. As you may be aware from other information we have provided to your agency, the Department of the Interior is spending hundreds of thousands of dollars to restore and combat the impacts of excess nutrients and low seasonal flows on these rivers.

Annually, these two federal enclaves, as well as other communities along the Sudbury and Concord Rivers, and numerous volunteers, spend countless hours to remove tons of invasive water chestnut, vegetation which forms from an excess of phosphorous and low water conditions in the summer months. This year, due to an allotment of "stimulus funding" Minute Man National Historical Park is fortunate to receive additional funding for several restoration projects along the Concord River shoreline, adjacent tributaries, wetlands and meadows. These efforts to remove invasive vegetation and "daylighting" of tributaries (removing conduits and restoring the natural flow of the tributary) will restore natural water conditions as well as the historic appearance of the park.

As part of their statutory missions to protect and conserve these natural resources for future generations, both the U.S. Fish and Wildlife Service and the National Park Service called upon my Office last fall to insure that a pending NPDES permit would not be finalized with conditions that would allow excessive levels of phosphorous to be released. We also raised concerns about the levels of pharmaceuticals and personal care products (PPCP's) that enter our rivers from waste treatment facilities. That particular NPDES appeal was successfully concluded just last week, after a conscientious effort by both of our staffs to resolve the issues through non-adjudicatory approaches. In addition, we appreciate the invitation extended by your staff to the Department to present current research on PPCP's to EPA at a meeting this week.

This new collaborative relationship between our agencies is healthy.

It is in this spirit of interagency communication and collaboration that I am writing to express our strong concerns with this ground water pumping proposal. It raises serious questions about whether ground water withdrawals will exacerbate existing seasonal low water problems. But, unlike the NPDES EAB Appeal, this matter does not fall within the administrative confines of the NPDES permit process--it is entirely discretionary with the EPA grants program.

The U.S. Fish and Wildlife Service has written several letters raising strong concerns about the impacts of these ground water withdrawals on the Great Meadows National Wildlife Refuge, as the Sudbury River is already so depleted and eutrophic during low flow conditions. As they emphasize again in their letter of October 20, 2009, the National Wildlife Refuge lies directly downstream from the proposed re-activated wellfield.

Mr. Fosburgh, Rivers Manager for the National Park Service's Wild and Scenic Rivers Program, cogently describes in his letter the serious information gaps that exist concerning this proposal. He also points out that the information needs were brought to the applicant's attention in July 2009 through comments submitted by the agencies and the Certificate issued by the Massachusetts Secretary of Environmental Affairs. I will not repeat the litany of technical

defects related to low water flows, ground water movement, uncertain impacts from proposed pumping schemes, etc. that have caused him to conclude that the project as presently proposed will have an unacceptable risk of a direct and adverse impact to the Sudbury Wild and Scenic River.

I cannot emphasize enough that both U.S. Fish and Wildlife Service and the National Park Service are concerned that there will be adverse effects on the river's resources. It is premature to commit federal funding to pursue construction of a water treatment facility and reopen the well field until adequate hydrological studies are conducted and such studies affirmatively show that there will no adverse effects on our federal trust resources.

Since EPA's own calculations of the expected 7Q10 flows over a 20 year period and the applicant's proposed mitigation pumping plan show that there will be excessive pumping during low flow periods, this proposal is unacceptable, at least unless EPA reduces the low flow assumptions and rewrites the NPDES permits for all of the wastewater treatment plants on the Sudbury and Concord Rivers.

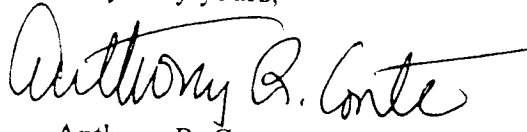
Under the Federal Property Clause of the United States Constitution, the Department is authorized to protect federal lands from harm and damage that may occur from activities occurring outside of the federal enclave, including activities conducted on sites upstream from the federal lands. However, it would be a consummately inefficient exercise for our government to use the federal courts to protect federal lands from harm, particularly if the harm itself was funded by another federal agency, which acted without first obtaining the necessary baseline information to avoid said harm.

We strongly request that no federal funding be allocated for this project as presently proposed until the requisite hydrological information has been obtained and reviewed by all of the potentially impacted downstream riparian landowners, including both of our bureaus. The Environmental Protection Agency has the discretion to deny funding for this project and it should not release any of these funds until the full hydrological studies of the groundwater flow etc. have been completed.

We also understand that there are many other Massachusetts communities have applied for these funds, so that if this project is not awarded funding at this time, the State will still be able to utilize this funding for other meritorious projects. In addition, there apparently have not yet been adequate economic evaluations provided which describe how the applicant would pay back the loan portion of the funding if (as it proposes) the wells are not allowed to pump during a substantial portion of the year due to later-understood adverse effects on the groundwater flows to the river. Since the apparent purpose of the project is to reduce the water bills for Framingham MWRA rate-payers, those existing costs will have to be reallocated to other communities to sustain existing financial commitments by the MWRA and, should the Framingham wells be closed, or pumping periods substantially reduced, their planned pay-off schedules may be affected.

All of these unsettled questions reinforce our concerns that hasty decisions not be made regarding this requested grant award.

Very truly yours,

A handwritten signature in black ink that reads "Anthony R. Conte". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Anthony R. Conte  
Regional Solicitor

cc: Ken Moraff, EPA  
Jackie LeClair, EPA  
James Fosburgh, NPS  
Libby Herland, USFWS  
Glenn Haas, MADEP  
Kathleen Baskin, EOEEA  
Richard Sullivan, DCR  
Town of Framingham  
Town of Wayland  
Town of Concord  
Town of Billerica

Encl.