



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

August 27, 2009

Alicia McDevitt, Director
MEPA Office
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Mr. Richard K. Sullivan, Jr., Commissioner
Department of Conservation and Recreation
251 Causeway Street, Suite 600
Boston, MA 02114

Ms. Laurie Burt, Commissioner
Department of Environmental Protection
One Winter Street
Boston, MA 02114

Ms. Kathleen M. Baskin, P.E., Executive Director
Water Resources Commission
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Ms. McDevitt, Mr. Sullivan, Ms. Burt, and Ms. Baskin:

Recently we received a letter from the National Park Service regarding the proposed Framingham Birch Road Well project (EOEEA #14197). This project is slated to receive American Recovery and Reinvestment Act (Stimulus Act) funds through the Massachusetts State Revolving Fund Program. The National Park Service ("Service") detailed several concerns raised through its evaluation of the Draft Environmental Impact Report (DEIR) for the project, and asked that EPA work cooperatively with the Service in a review of the Final Environmental Impact Report (FEIR) to ensure that the project does not pose a direct and adverse impact to the federally designated Wild and Scenic Sudbury River.

EPA was not made aware of the Massachusetts Environmental Policy Act notice for this project until immediately before the deadline for comments, and consequently did not comment on the DEIR. However, we would like to bring several concerns to your attention.

EPA issues wastewater discharge permits under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) to dischargers downstream of the proposed well project, including wastewater treatment plants in Wayland, Concord and Billerica. The permits for these plants contain effluent limits that are based on calculations of expected effluent dilution under low flow conditions. If the proposed well project reduces river flow, that reduction in river flow will alter the assumptions on which these permits' effluent limits were based, and will likely lead

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to the need for EPA to impose more stringent permit limits to ensure compliance with water quality standards. Such limits could have significant capital or operational cost implications.

EPA is also concerned about the water quality impacts from a potential reduction in flows in the Sudbury River and in water levels at Lake Cochituate, which may result from operation of the wells. The Massachusetts Department of Conservation and Recreation (DCR) states in its July 31, 2009 comment letter on the DEIR that recent research by the USGS, in cooperation with DCR, indicates that the Upper Sudbury is already "highly depleted in summer months." DCR also notes that during the summer and fall of 2007 the Sudbury River fell below the proposed well withdrawal rate during three weeks between August and September. The proposed wells would have the capacity to completely dry up the river during those times.

Furthermore, Section 7 of the Wild and Scenic Rivers Act (WSRA) prohibits the use of federal assistance for any water resources project that would have a "direct and adverse" effect on the resource values for such a river. See 16 U.S.C. § 1278. The Wild and Scenic Rivers Act is a cross-cutting federal authority that must be applied to State Revolving Funds and funds made available through the American Recovery and Reinvestment Act. Compliance with federal cross-cutting authorities is a grant condition that imposes an obligation on the State to comply with, and to ensure that recipients comply with, applicable authorities. See 40 C.F.R. §§ 35.3575-3585.

Lastly, the project description provided in the August 7, 2009 certificate of the Secretary of Energy and Environmental Affairs on the Draft EIR states that the Town of Framingham has concluded that the purpose of the project is to reduce the cost of purchasing water from the MWRA by rehabilitating and treating the Birch Road wells. This statement may raise concerns about the eligibility of this project to receive SRF funds. The intent of the DWSRF as stated in numerous places in the SDWA is to protect public health by providing affordable financing for projects to facilitate compliance with national primary drinking water regulations. We would like to further discuss this particular issue with the state.

EPA plans to evaluate what steps EPA and the Massachusetts Department of Environmental Protection must take to fulfill section 7 of the WSRA. In the meantime, we strongly urge that the State ensure that the FEIR fully addresses the issues discussed above, including the potential impacts of the proposed withdrawal on water quality in the Sudbury River and Lake Cochituate, potential impacts on downstream discharges, and the Wild and Scenic River status of the Sudbury River. We will work with the National Park Service to review the FEIR to ensure that these concerns are adequately addressed. If you have any questions about this letter, please feel free to contact me at (617) 918-1502.

Sincerely,



Ken Moraff, Acting Director
Office of Ecosystem Protection

cc: Jamie Fosburgh, NPS
Glen Haas, MA DEP

Town of Wayland
Town of Framingham

Town of Concord
Town of Billerica