

Neighborhood Guardians
PO Box 104, West Nottingham, NH 03291

October 10, 2016

Kevin Delaney
Nottingham Springs, LLC
214 Lake View Avenue
Cambridge, MA 02138

RE: Possible Resurrection of Large Groundwater Withdrawal on USA Springs Property

Dear Kevin:

For background purposes I have been intricately involved in this project from the beginning (2001), first as a selectman; as a planning board member; Save Our Groundwater board member; and since 2009 as chairman of the Neighborhood Guardians (NG). The purpose of our group is defined in the footer below.

Based on the September 29, 2016 filing by Attorney Tim Smith, the Trustee for the US Bankruptcy Court I noticed that you are once again pursuing the purchase of the USA Springs property in Nottingham, NH for the purpose of extracting groundwater from a confined and contaminated bedrock aquifer. I would have thought that the letter sent by NHDES to Microwaters and yourself back on July 19, 2013 was why you had abandoned your interest in the property back then. That letter in part stated:

“NHDES has concerns that the occurrence of the contaminant 1,4-dioxane has not been assessed at the closed Just Cause site which was contaminated with chlorinated solvents that co-occur with 1,4-dioxane. We have learned that 1,4-dioxane is often the contaminant that dictates the extent of contamination and remedial remedies at sites contaminated with chlorinated contaminants”.

According to NHDES records you did not perform due diligence on this site back in 2013 and that you have yet to even start that process again this time. Since state and local laws and regulations have changed since 2010 it will be nearly impossible for you to procure the necessary approvals and permits for this project to move forward. However, if you did, the appeal process available to us and others could take at least several years before you would be allowed to begin activities at the site. As you may know the original proposal began in 2001 and it was in 2008 when the applicant finally was forced to file for bankruptcy, following several lengthy and costly appeals by various parties.

The NHDES has maps that show where the stratified drift aquifers are located by municipality. As you know stratified drift aquifers (aka sand and gravel) are not confined aquifers as bedrock aquifers are. Rainfall replenishes sand and gravel aquifers within days while bedrock aquifers could take years. Given the record drought in the region a water extraction from a confined bedrock aquifer would not make sound business sense. For example, 99% of Dover, NH is underlain by sand and gravel aquifers while Nottingham is underlain with 97% bedrock aquifers. This is not rocket science.

During the original USA Springs project, a prior Nottingham Selectboard hired renowned hydrogeologist Dr. Tom Ballestero, a UNH Professor to provide research and to review the findings of the required 2002 10-day pump test. I am attaching one of his reports dated May 23, 2004 which clearly shows why this type of withdrawal would have devastating adverse impacts and should not be approved.

A few of the changes in the laws and regulations since the original project began in 2001 are as follows:

1. The Little River and its watershed where the USA Springs property is located is now designated and protected under the NH Rivers Management and Protection Program (RMPP). State designation of significant rivers is to manage and protect the river's values and characteristics and the local development of river corridor management plans for shorelines and adjacent lands to

NG is a proactive citizen group dedicated to protecting and guarding groundwater, property values, the health and safety of residents and businesses of Nottingham and the surrounding communities.

- protect river resources. Governor John Lynch signed this bill (HB149) into law in June 2011. I had the pleasure of chairing this committee in during 2009 and 2010.
2. Although there was no expiration date on the special exception granted by the Nottingham Zoning Board of Adjustment (ZBA) on May 1, 2001 to USA Springs, the **state law (RSA 674:33 IV) was changed in 2013 as follows: “Special exceptions authorized under this paragraph shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the ZBA for good cause, provided that no such special exception shall expire within 6 months after the resolution of a planning application filed in reliance upon the special exception”.**
 3. A similar change was made at the local level to the Nottingham Zoning Ordinances via a petition warrant article presented by the NG and Nottingham Water Alliance (NWA) which passed on March 19, 2010 with 63% of the vote (549 to 327). Fortunately for the local citizens and towns that would have been adversely impacted, the special exception was never implemented by USA Springs. The wording of the approved local ordinance was, **“All work proposed in the special exception approval letters granted by the ZBA shall be completed within two years. Failure to complete that work shall be ‘null and void’, unless a later date was specified in the approval letter”.**
 4. According to Attorney David Carroll of the NH Local Government Center in 20019 wrote for a law lecture that, **“a special exception becomes null and void if a zoning amendment that affects the special exception is enacted before the special exception is implemented. Navin v. Exeter, 115 N. H. 248 (1975). An automatic expiration of an unimplemented special exception protects the public interest in the event there has been a material change of circumstances that would currently justify denial of the special exception”.**
 5. **Given the changes to both state laws and local ordinances, the special exception granted by the ZBA has expired and is no longer valid. Since a water extraction operation is not a permitted use under the Nottingham Zoning Ordinance Regulations, a new applicant for the USA Springs site, would have to apply to the ZBA for a new special exception. The regulations state that a special exception could be allowed “if the granting of such special exception would adversely impact neighboring parcels” As you know during the pump test it was reported by NHDES that neighboring wells had projected drawdowns of between 39 feet and 61 feet. They also reported that contaminants were pulled into the water supply.**

Since the hearing on your proposed purchase of the USA Springs site is not scheduled until November 15 you still have sufficient time to perform your own ‘due diligence’ on this project. I would hope that you will share this information and attachment with your attorney, Andrew Sullivan. As you may know the Nottingham Planning Board voted this project as a development of regional impact affecting several towns within the Lamprey River watershed which is now also protected under the RMPP.

As the record drought continues in southern NH, coupled with updated state and local regulations, it is hard to fathom anyone attempting to repeat the mistakes made by USA Springs in requesting a large groundwater withdrawal within a confined (and contaminated) bedrock aquifer.

If you have any questions, please contact me by email at jhadley@metrocast.net.

Sincerely,



Jim Hadley, Chair ~ Neighborhood Guardians (NG)
MPA, MBA, MS-Community Economic Development

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