

**OFFICE OF ADJUDICATIONS**

**IN THE MATTER OF**

**: GENERAL PERMITS  
DEP-IWRD-GP-010, 011, 012, 001R**

**DIVERSION OF WATER FOR  
CONSUMPTIVE USE:**

- NON-FILING CATEGORIES**
- FILING CATEGORIES**
- AUTHORIZATION REQUIRED CATEGORIES**
- REAUTHORIZATION CATEGORIES**

**: FEBRUARY 28, 2007**

**PROPOSED FINAL DECISION**

**I**

**SUMMARY**

The Department of Environmental Protection (DEP) intends to issue the four general permits referenced above pursuant to General Statutes §22a-378a. The general permits revise and renew the current *General Permit for Diversion of Water for Consumptive Use*, which will expire on June 27, 2007, streamline the reauthorization process and expand coverage of the general permit program. The general permits will authorize minor activities regulated by the Connecticut Water Diversion Policy Act. General Statutes §§22a-365 through 22a-379.

A petition for hearing on the proposal to issue the general permits was filed on December 29, 2006. The petitioner, Masoret Holdings LLC, subsequently withdrew its participation in the proceeding; the hearing went forward on February 21, 2007.<sup>1</sup> During the hearing, DEP staff provided an overview of the proposed general permits and responses to public comments. Staff also entered into the record drafts of the general permits (Attachments B - E).

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<sup>1</sup> Despite the withdrawal of the petitioner as a participant, the hearing continued due to the filing of the petition.

Upon review of the relevant facts and applicable law in this matter, I find that the activities authorized under the proposed general permits would cause minimal environmental effects and would have no adverse effect on existing or potential uses of water. Therefore, I recommend that the proposed general permits be issued.

## ***II***

### ***DECISION***

#### ***A***

### ***FINDINGS OF FACT***

#### ***1***

#### ***Procedural History***

1. On June 5, 2006, the DEP issued a notice of its intent to issue three general permits to revise the current General Permit, which expires on June 27, 2007. Several petitioners who later intervened in that proceeding requested a hearing. The hearing was subsequently cancelled with the consent of all parties. Negotiations between the parties resulted in substantial changes to the proposed general permits. Those changes are represented in the four proposed general permits that are the subject of this proceeding. (Ex. DEP-7.)
2. On December 1, 2006, the DEP issued a notice of intent to issue the four general permits. Masoret Holdings, LLC (Masoret) timely filed a petition for hearing. On February 2, 2007, Masoret withdrew its participation in the proceeding having resolved its issues through negotiations with the Department.<sup>2</sup> (Ex. DEP-1.)
3. Written comments were received during the comment period from the Town of Fairfield Conservation Commission, O&G Industries, the Connecticut Department of Public Health and Mr. Robert Fromer. The hearing was properly noticed and conducted on February 21, 2007. Douglas Hoskins, DEP Bureau of Water Protection and Land Reuse, Inland Wetland Resource Division, presented an overview of the proposed general permits and a summary of

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<sup>2</sup> The petitioner's notice that it did not intend to participate in the hearing is contained in the Office of Adjudications docket file for this matter and is part of the record of this proceeding.

the public comments received. Attorney Paul Balavander, on behalf of O&G Industries, Inc., restated previously submitted comments regarding the absence of any provisions in the general permits for recycling diverted water. Staff provided written responses to public comments, which indicate that there are no proposed changes to the draft general permits as a result of the public comments (Attachment A). (Exs. DEP-9, 10, 12, 15 - 17.)

## 2

### *The Proposed General Permits*

4. Each proposed general permit authorizes specific categories of eligible activities, which are grouped according to “non-filing”, “filing”, “authorization required” and “reauthorization” conditions. The proposed additions and revisions to the current General Permit are intended to expand the activities authorized by the general permit program, provide assurance that eligible activities would have minimal environmental effects, expand permit flexibility and improve program efficiency. (Ex. DEP-7.)
5. The following diversions would be eligible for authorization under the proposed general permits, provided they meet the conditions set forth in the draft general permits:
  - a. Non-filing Categories
    - i. Pump and Recharge Geoexchange System (Heat Pumps)
    - ii. Withdrawal from Long Island Sound
    - iii. Non-Contact Cooling Surface Waters
  - b. Filing Categories
    - i. Backup Well
    - ii. Withdrawals from Large Tidally-Influenced Rivers
    - iii. Small Supplemental Bedrock Well
    - iv. Small Water Supply Well
  - c. Authorization Required
    - i. Withdrawal up to 250,000 gallons per day (gpd) - Bedrock Aquifer
    - ii. Withdrawal up to 250,000 gpd - Surface Water/Stratified Drift Aquifer
    - iii. Interconnection and Transfer up to 1,000,000 gpd
  - d. Reauthorization Categories
    - i. Water Supply System Interconnection
    - ii. Unregistered Water Supply Systems
    - iii. Diversion up to 250,000 gpd New Water

- iv. Backup Wells
- v. Small Water Supply System
- vi. Restoration of Lost Capacity

6. The proposed revisions would eliminate the amnesty category “Unregistered Water Supply Systems” provided in the current General Permit. Also, a prohibition against withdrawals from basins less than one square mile has been added to ensure a proper environmental review for proposed withdrawals in watershed areas with limited ability to replenish resources. The duration for each proposed permit would be extended from five to ten years. (Ex. DEP-7.)
7. The activities that would be authorized by the “non-filing” categories would not require a request for authorization to divert. Such activities include withdrawal of ground water that is discharged back to the same aquifer, withdrawal of surface water discharged back to the same area of surface water, and withdrawal of less than two million gallons of surface water per day from Long Island Sound. (Ex. DEP-3.)
8. Activities that would be authorized by the “filing” categories include withdrawals from backup wells, small supplemental backup wells, small water supply systems or large tidally-influenced rivers. Registrants in these categories must submit a request for authorization. (Ex. DEP-4.)
9. Eligible diversions under the “authorization required” general permit would include withdrawals of up to 250,000 gpd provided that such withdrawals do not exceed certain stream flow parameters or that aquifer testing has not identified potential significant impacts to other wells located within 2000 feet of the subject well(s). Transfers between one community water system to another would also be authorized provided the rate or quantity of the transfer does not exceed the rate or quantity of withdrawal registered under a general permit or permitted by law. (Ex. DEP-5.)
10. The “reauthorization categories” include such diversions as those that have been previously authorized under the current General Permit, provided the quantity of the withdrawal is equal

to or less than the quantity previously authorized. The reauthorization general permit is designed to provide a streamlined process for certain eligible diversions covered under the current General Permit. (Ex. DEP-6, 7.)

11. All registrants under the proposed general permits would be required to adhere to certain operating conditions including: diversion metering; meter calibration; routine inspections; recording of daily diversions; implementing best management practices for controlling erosion and disposing of excess materials; and recording, reporting and correcting violations. (Exs. DEP-3 - 6.)
  
12. The DEP would have the right to restrict diversions authorized under the proposed general permits should the commissioner determine that drought conditions warrant “curtailment of non-essential water uses,” or that continuation of the diversion would have an adverse effect on wetlands, watercourses, water quality, fisheries resources, aquatic habitat, or public or private wells. (Exs. DEP-3 - 6.)
  
13. The Commissioner would have the discretion to take any lawful action to abate violations of the proposed general permits, including collection of penalties or revocation of authorization. The Commissioner may also revoke, suspend or modify any or all of the proposed general permits to establish provisions necessary to protect human health or the environment. (Exs. DEP-3 - 6.)

## ***B***

### ***CONCLUSIONS OF LAW***

The Commissioner is authorized to issue a general permit for any minor activity regulated by the Connecticut Water Diversion Act. General Statutes §§22a-365 through 22a-378. The Commissioner must determine that the minor activity “would cause minimal environmental effects when conducted separately and would cause only minimal cumulative environmental effects, and will have no adverse effect on existing or potential uses of water for

potable water supplies, hydropower, flood management, water-based recreation, industry or waste assimilation.” §22a-378a(a). Prior to issuance, the Commissioner is required to publish notice of intent to issue the general permit, allow a thirty-day comment period, and hold a hearing on the general permit upon receipt of a petition signed by at least twenty-five persons. §22a-378a(b).

The record clearly indicates that the Commissioner has complied with all procedural requirements for notice and public comments applicable to the issuance of a general permit. Also, staff has provided a summary of the written comments received during and after the comment period and an explanation as to why recommendations were not followed. I agree with staff’s summary and responses and adopt them as part of my proposed decision and recommendation.

The record also shows that the proposed “non-filing” permit categories include activities that would discharge diverted waters back to the source of the withdrawal, or withdraw waters from substantial water bodies (i.e, Long Island Sound). Such diversions would have minimal, if any, impact on the environment and would not adversely affect existing or potential water uses.

The “filing” and “authorization required” permit categories authorize diversions of specified quantities only after a demonstration of the impact of such withdrawals on stream flows, other wells or surfaces waters. The “reauthorization” permit categories authorize continued diversions of specified quantities and rates that have been previously assessed and authorized under the existing General Permit. The terms and conditions of these three general permits, including the restrictions on withdrawal quantities and rates, required demonstrations of environmental impacts and operating and reporting requirements, ensure that eligible activities will cause only minimal environmental effects and will not adversely effect existing or potential water uses.

### *III*

#### *CONCLUSION*

The terms and conditions of the proposed general permits are consistent with the statutory requirements for their issuance. The activities authorized, if conducted in accordance with such terms and conditions, would cause minimal environmental effects when conducted separately, and would cause only minimal cumulative environmental effects. Also, the diversions that would be permitted would have no adverse effect on existing or potential uses of water for potable water supplies, hydropower, flood management, water-based recreation, industry or waste assimilation. §22a-378a.

### *IV*

#### *RECOMMENDATION*

I recommend that the Commissioner issue the proposed General Permits for Various Water Diversion Activities incorporating the terms and conditions set forth in the draft general permits.

/s/ Jean F. Dellamarggio  
Jean F. Dellamarggio, Hearing Officer

**TO REVIEW THE DRAFT PERMITS, go to**  
**<http://www.ct.gov/dep/cwp/view.asp?a=2720&q=325636>**

DEP - INLAND WATER RESOURCES DIVISION

RESPONSES TO PUBLIC COMMENTS RECEIVED

NOTICE OF PUBLIC HEARING ON PROPOSED GENERAL PERMITS FOR VARIOUS  
WATER DIVERSION ACTIVITIES

Issued December 1, 2006

DEP-IWRD-GP-010 - General Permit for Diversion of Water for Consumptive Use: Non-filing  
Categories

DEP-IWRD-GP-011 - General Permit for Diversion of Water for Consumptive Use: Filing  
Categories

DEP-IWRD-GP-012 - General Permit for Diversion of Water for Consumptive Use:  
Authorization Required Categories

DEP-IWRD-GP-01R - General Permit for Diversion of Water for Consumptive Use:  
Reauthorization Categories

*Comment from Thomas J. Steinke / Director, Fairfield Conservation Commission*

**Comment:** Revise Section 3(a) of DEP-IWRD-GP-012 and DEP-IWRD-GP-001R (sic.) to exclude authorizations "...in watersheds whose proximal downstream reaches are...contained within a waterbody having a TMDL order related to an MS4 Phase II Stormwater Program" unless "...the proposed diversion has a concomitant downstream release of water that matches in all respects the discharge of the diversion".

**Reply:** Such categorical exclusion is not warranted given the highly variable nature of TMDL (Total Maximum Daily Load) restoration plans and the water quality impairments that initiated them. As currently drafted, impacts on such impaired waters can be considered on a case-by-case basis pursuant to Section 3(b) "Requirements for Authorization" in subparts 2 - "Water Resources", subpart 3 - "Water Quality Standards", and subpart - 11 "Other Uses" of all proposed general permits. **No change proposed.**

*Comments from Paul Balavender / Counsel, O & G Industries*

**1. Comment:** Incentives to reuse/recycle diverted water, particularly for gravel washing and nursery irrigation, are missing from gp. Applicant should be allowed to demonstrate minimal environmental effect of recycled process water.

**Reply:** Recycling washwater and recycling irrigation systems typically withdraw their recycled water from collection ponds that, unless lined with an impermeable layer, are hydrologically connected with the surrounding groundwater and lower it as pond levels are lowered. Variations in pond levels for recycling systems can vary greatly as can the level of the surrounding groundwater. In addition, the impact of the recycling pond must be considered cumulatively with the impact of the withdrawal of the original source water. Formulating general permit

requirements whereby the applicant can demonstrate minimal environmental effects of their entire diversion system, including the recycling component, is currently beyond the scope of this general permit revision process. Recycling of diverted water is certainly a desirable best management practice and the Department looks forward to discussing the potential for such general permit requirements with the regulated community as part of future general permit revision/addition activities. **No change proposed at this time.**

**2. Comment:** Regarding the metering of diversion volumes the Department should recognize that a one-size meter calibration accuracy (2%) requirement may not fit all. High diversion volumes through large pipes might be held to a high standard with lower volumes held to a lesser standard.

**Reply:** Department of Public Utility Control regulations (Section 16-11-83 RCSA) require water utilities to test their meters to within 1.5% accuracy for all meters ranging from 5/8” to 6” at intermediate and maximum flows. As the diversion program is typically concerned with the metering of maximum flows in order to judge compliance with authorized diversion limits, a 2% calibration accuracy is more than reasonable for most situations encountered as part of the diversion general permit program. **No change proposed.**

*Comment from Robert Fromer /Environmental Consultant*

[Note: this comment was received after the closing of the above-referenced notice period, in response to the subsequent Notice of Public Hearing]

**Comment:** Applicants should be required to demonstrate the absence of any “feasible and prudent alternative” to the diversion, provide an enforceable plan of water conservation, demonstrate that maximum water conservation has been received, and, if water conservation is not adequate, demonstrate that the diversion is necessary and the only alternative available.

**Reply:**

Given that only minor activities causing only minimal adverse impact are to be authorized under these general permits, consideration of necessity, alternatives, and conservation is not required. The Department has many such general permit programs whereby individual authorizations/registrations need not consider these issues on a case-by-case basis due to their minimal nature.

Nonetheless, the topic of necessity is addressed in DEP-IWRD-GP-012 as part of Section 3(a)(3) “Interconnection and Transfer of Up to 1,000,000 gallons per day” where the need for the water must be consistent with an approved water supply plan. Also, water conservation is addressed in DEP-IWRD-GP-011 and DEP-IWRD-GP-012 in Section 5(a)(5) wherein water companies are required to annually submit to the Department a summary of the water conservation practices included as part of their Water Supply Plans.

**No change proposed.**

*Comments from Lori Mathieu / CT-DEP*

Positive comments. No response required.

*rev. 2/21/07*

**TO REVIEW THE DRAFT PERMITS, go to**  
**<http://www.ct.gov/dep/cwp/view.asp?a=2720&q=325636>**.

*P A R T Y L I S T*

Proposed Final Decision concerning  
General Permits for Diversion of Water for Consumptive Use  
Permit Nos. DEP-IWRD-GP-010, 011, 012, 001R

PARTY

REPRESENTED BY

Department of Environmental Protection

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