

**Meeting Minutes**  
**Eastern WUCC Meeting #9**  
**Northeastern Connecticut Council of Governments – 125 Putnam Pike, Killingly, CT**  
**February 8<sup>th</sup>, 2017 1:00 p.m.**

The Eastern Water Utility Coordinating Committee (WUCC) met on February 8<sup>th</sup>, at 1:00 p.m. The meeting was held at the Northeastern Connecticut Council of Governments offices at 125 Putnam Pike, Killingly, CT. Prior notice of the meeting was posted on the DPH website, Eastern WUCC webpage: <http://www.ct.gov/dph/wucc/>

The following WUCC member representatives were in attendance (listed in alphabetical order of affiliation):

<b>WUCC Member Representative</b>	<b>Affiliation</b>
Kenneth Skov	Aquarion Water Company
Craig Patla	Connecticut Water Company
Brendan Avery	Jewett City Water Company
John Avery	Jewett City Water Company
Chris Clark	Mohegan Tribal Utility Authority
Eric Sanderson	Northeastern Connecticut Council of Governments
Mark Decker	Norwich Public Utilities
Samuel Alexander	Southeastern Connecticut Council of Governments
Jim Butler	Southeastern Connecticut Council of Governments
Josh Cansler	Southeastern Connecticut Water Authority
Mike Cherry	Town of Ledyard WPCA
Bob Congdon	Town of Preston
Jerry Beausoleil	Town of Putnam
Patrick Bernardo	Town of Putnam/SUEZ
Dale Boisselle	Town of Sterling WPCA
Russell Gray	Town of Sterling WPCA
Neftali Soto	Town of Waterford Utility Commission
Jim Hooper	Windham Water Works

The following non-WUCC member representatives were in attendance (listed in alphabetical order of affiliation):

<b>Non-WUCC Member Representative</b>	<b>Affiliation</b>
Lori Mathieu	CT DPH
Dean Applefield	CT DEEP
David Cooley	CT DEEP
Melissa Czarnowski	CT DEEP
Corinne Fitting	CT DEEP
Scott Bighinatti	Milone and MacBroom, Inc.

A copy of the meeting agenda is attached. A copy of the presentation given at the meeting will be available for download from the Eastern WUCC webpage.

The following actions took place:

**1. Welcome & Roll Call**

The meeting was called to order at 1:01 PM by Tri-chairs Pat Bernardo (Town of Putnam/SUEZ), Bob Congdon (Town of Preston), and Mark Decker (Norwich Public Utilities).

All in attendance stated their names and affiliations.

**2. Approval of January Minutes**

Mr. Congdon asked for comments and changes to the January Meeting minutes. There were none.

Craig Patla of Connecticut Water Company made a motion to accept the January Meeting minutes as presented. Josh Cansler of Southeastern Connecticut Water Authority (SCWA) seconded the motion. The motion carried unanimously.

**3. Formal Correspondence**

Samuel Alexander (Southeastern Connecticut Council of Governments (SCCOG)) described the formal correspondence sent and received by the Eastern WUCC.

- Mr. Alexander stated that a letter was posted online, with hard copy sent to Citizen's Campaign for the Environment, from all three WUCC regions, addressing concerns of letters received in December.
- Mr. Alexander stated that a letter was received on February 1<sup>st</sup> from the Connecticut Department of Energy and Environmental Protection (CT DEEP) regarding CT DEEP's intention to retract its Exclusive Service Area (ESA) claims in the three WUCC regions and the opinion of its agency that DEEP has "sovereign immunity" from WUCC statutes and regulations such that ESA boundaries would be unenforceable on DEEP owned and maintained lands. DEEP thereby requested that DEEP owned and maintained lands be either noted as such, or remain unassigned.

**4. Public Comment**

Mr. Congdon asked if there were comments from the public. There were none.

**5. Discussion Regarding ESA Provider Roles and Responsibilities**

Mr. Bighinatti began a PowerPoint presentation with a brief update on where the WUCC is in process for completing the coordinated water system plan, with the goals for the meeting including clarifying issues that were raised at previous meetings regarding ESA holders' responsibilities, particularly for non-community water systems adjacent to their ESA, and to adopt preliminary boundaries for 15 communities.

Mr. Bighinatti stated that a first draft ESA Document was distributed to active WUCC members on February 7th. Mr. Bighinatti stated that the WUCC is receptive to comments on the document and

explained that the ESA document will describe rights and responsibilities of ESA holders in detail, among other things.

Mr. Bighinatti stated that the Connecticut Department of Public Health (CT DPH) has also issued a Frequently Asked Questions (FAQ) document that was meant to specifically address concerns raised at the last Eastern WUCC meeting regarding ESA holders' responsibilities relative to existing non-community water systems abutting their ESA.

- Mr. Patla asked if the ESA Document discusses an ESA holder's roles in regards to new community and non-community water systems.
  - Mr. Bighinatti stated that the document does discuss those roles and stated that the WUCC meetings would be an appropriate place to discuss any additional concerns so that they may be incorporated into the document.
- Mr. Decker asked what an ESA holder's responsibilities were to provide water to a failed community water system, specifically in regards to cost.
  - Mr. Bighinatti stated that Connecticut General Statutes (CGS) Sections 16-262n through 16-262r address takeover of unviable public water systems, a process overseen by the Public Utility Regulatory Authority (PURA) and DPH. Mr. Bighinatti continued, explaining that while there is nothing in the statutes or regulations that directly assigns responsibility for unviable water systems to the ESA holder, the fact remains that by virtue of holding the ESA the ESA holder has been found to be technically, managerially, and financially capable of owning public water systems. Therefore, the ESA holder(s) surrounding or adjacent to that system will likely be "at the front of the line" to potentially takeover such an unviable system.
  - Lori Mathieu of CT DPH agreed, stating that the large system holding the adjacent (or surrounding) ESA would be the first contacted by CT DPH. Ms. Mathieu continued, explaining that is beneficial for holders of large ESA in unserved areas to get to know owners of the smaller systems surrounded by their ESA. Ms. Mathieu suggested that ESA holders offer assistance and advice to adjacent small systems. This service could be provided at a reasonable fee.
  - Mr. Decker asked, if a large system took over a small, failed system and chose to serve that area with a satellite system, if the large utility would have the option of serving them with a different rate structure.
  - Ms. Mathieu confirmed that this is provided for in the statutes. Ms. Mathieu continued, stating that the owner of the failed system would be typically be responsible for the construction of a new satellite system or main extension by the larger utility.
- Mr. Congdon asked, in the instance that an adjacent ESA holder is unable to serve a failed system through connection to the larger system, but must serve them as a satellite system, what protections would the failed system (e.g., a Homeowners' Association) have to ensure a fair cost associated with that take-over process. For instance, what if the ESA holder required a far more sophisticated system than the failed system could afford?
  - Ms. Mathieu stated that the Public Utility Regulatory Authority (PURA) and DPH would take those issues into consideration when considering a decision in the takeover process.
  - Mr. Patla stated that Mr. Congdon's question relates to the question of "who pays?" and whether it would be existing customers or the new system being taken over. Mr. Patla

continued, stating that this question has caused apprehension among utilities because many of the smaller community and non-community systems require large capital investments to upgrade, and often times the existing system has no money to fund the upgrades (resulting in the need for the takeover).

- Mr. Condon stated that, if the town is involved in the process, it allows for better planning because a new system could potentially serve more than one neighborhood and provide greater service per unit cost.
  - Mr. Patla clarified that PURA regulates only private utilities and CWC has been criticized by PURA in recent years for spreading the cost of the take-over onto the rest of their customer base.
  - Mike Cherry of the Town of Ledyard WPCA stated that, in the case of municipal water systems, the townspeople provide for cost scrutiny through the annual budget.
  - Ken Skov of Aquarion Water Company stated that they have been involved in numerous small system take-overs and it is difficult to build an overly sophisticated system because of concerns about the cost of water to customers.
- John Avery of Jewett City Water Company stated that he was concerned that the WUCC may treat public and private utilities unequally in regards to cost burden for taking over failed systems. Mr. Avery urged that the WUCC develop a recommendation that is consistent through both types of systems.
    - Mr. Patla suggested that the WUCC take a risk-based approach to the take-over of failed systems.
    - Mr. Bighinatti stated that the preceding discussion of potential financial responsibilities of ESA holders is important, and that the discussion in the Integrated Report could either provide recommendations, or prioritize this issue for further evaluation. Mr. Bighinatti encouraged additional discussion on this topic at future meetings. Mr. Bighinatti also reminded the group that ESA boundaries may be modified.
  - Mr. Congdon stated that there must be town involvement in addressing failed systems, regardless if the takeover would be the responsibility of a public system or a private system.

Mr. Bighinatti continued the PowerPoint presentation, describing the process to-date for establishing new ESAs. Mr. Bighinatti stated that the Preliminary ESA Document is due to CT DPH in March and that a 30-day public comment period would begin following submission. Mr. Bighinatti explained that following that, the WUCC would begin seeking statements of confirmation from ESA holders.

Mr. Bighinatti stated that the WUCC would prepare a final ESA Document for approval in June but that the WUCC would also begin work on the Integrated Report in the meantime. Mr. Bighinatti explained that the ESA Document would include the WUCC's recommendations for ESA boundaries but that final approval of ESA boundaries would be the responsibility of CT DPH.

Mr. Bighinatti reviewed the rights and responsibilities of ESA holders. Mr. Bighinatti clarified that ESA holders are required to supply adequate water service within ESA boundaries, within a reasonable timeframe, responding to changes in development and potentially other conditions such as well failure. Mr. Bighinatti continued, stating that ESA holders have no inherent rights to divert water from within their ESA, stressing that the ESA designation is for service and not source

development. Mr. Bighinatti also explained that the DPH has the authority to require any public water system to prepare a Water Supply Plan, and has requested ESA holders to do so in the past even when they did not meet the numerical thresholds of 250 service connections or 1,000 people served.

Mr. Bighinatti explained that large community water systems typically prefer to serve new areas by main extension due to lower cost of service. ESA holders are required by statute to own new community systems within their ESA, without necessarily operating the new system. Mr. Bighinatti clarified that RCSA 16-262m only applies to community water systems and not non-community water systems and that, in the event that an ESA holder cannot take on a new community water system, there a number of required steps before a utility other than the ESA holder is able to own and operate that new community water system, or so that the developed entity can own the system. Mr. Bighinatti continued, stating that the WUCC would review that action and would need to allow for an ESA boundary modification.

Mr. Bighinatti explained that new supply wells within 200 feet of a community system cannot be approved by the local health director except for certain situations. Mr. Bighinatti stated that it may be best not to address procedures for all of those situations in the ESA document, however, but rather assess them case-by-case.

- Mr. Cherry stated that creating a buffer around each ESA after the ESA process is complete could create conflicts.
  - Mr. Bighinatti cited an example where in the previous WUCC process for the former Southeastern WUCC, SCWA declared an ESA in all unserved areas of the town of Salem, except for within 200 feet of existing systems, and except for town-owned lands where there may be the possibility for development of a town facility, thus creating an easier process for the town. Mr. Bighinatti stated that this was not reflected on the map but that the mapping will address these nuances in the future.

Mr. Bighinatti reiterated that developers that create a new need for water are responsible for the costs associated with a main extension or creation of a new satellite system. Mr. Bighinatti explained that developers are often unaware of the costs or regulatory complexity of providing water or creating a new water system. Mr. Bighinatti explained that ESA holders should provide agreements and analyses for the provision of water in a reasonable time frame and that the draft ESA Document recommends that ESA holders should be prepared to be responsive in timeframes similar to reviews by CT DPH and PURA. Mr. Bighinatti added that the WUCC should remain open to suggestions of other timeframes.

- John Avery asked when a project developer would come to the WUCC if the project involved the creation of a new public water system.
  - Mr. Bighinatti answered that, unless the developer has an engineer aware of the ESA designations, a developer typically first learns of the process from local officials reviewing a proposed development. The local health director or zoning commission will direct the developer to send a screening form to CT DPH to determine if the project would result in the creation of a public water system. The DPH response advises the developer of the ESA holder.
  - Mr. Cherry stated that nothing in the statutes drives developers toward creating new public water systems and that, in the case of the town of Ledyard, local land use

regulations drive housing developers to need public water systems because of the density of development.

- Mr. Bighinatti agreed and stated that the WUCC may want to consider developing model zoning and subdivision regulations that determine whether or not a public water system should be needed, as not all local land use regulations have such a stipulation.
- Mr. Bighinatti added that an ESA holder can adopt reasonable public water system design standards beyond what is required by regulation.

Mr. Bighinatti stated that non-community systems are governed by only by statute which essentially gives the ESA holder right of first refusal. If an ESA holder does not want to own a new non-community system, the ESA holder must submit a letter explaining such to CT DPH and the WUCC. If then, the system does not meet CT DPH standards for managerial, financial, and technical capacity, CT DPH does not need to approve the system. If CT DPH does approve the system, technically the ESA map for that area must be updated to show a new public water system. Mr. Bighinatti continued, stating that an ESA holder is not required to provide contract operation to new systems in its ESA, and that a non-transient non-community system (NTNC) requires a certified operator but a transient non-community (TNC) system does not. Mr. Bighinatti added, stating that NTNC does not need to keep the ESA holder as its operator but may, for example, go out to bid to choose an operator. Mr. Bighinatti also explained that NTNCs and TNCs built after 2007 are required to abandon their system if a water main is extended in front of their property.

Mr. Bighinatti stated that municipalities holding ESAs generally fall into three categories: municipalities that own and operate community systems, municipalities that own systems but use a contract operator for technical capacity, and municipalities that hold ESAs but do not own or operate community water systems (or non-community systems), but instead use the ESA as a method of control over public water system development and extension.

## **6. Consider and Approve Preliminary Exclusive Service Areas Unserved by Public Water Supply in 15 Communities**

Mr. Bighinatti reminded the group that ESA boundaries for Windham Water Works in Windham were approved at the January Meeting. Mr. Bighinatti also stated that Connecticut Water Company has clarified their claims in Pomfret and Woodstock and that Connecticut Water Company would only claim the southeast corner of Pomfret and two parcels in Woodstock.

- Mr. Skov indicated that Aquarion Water Company may wish to declare ESAs in the remaining unserved areas of the towns of Pomfret and Woodstock.
  - Mr. Bighinatti stated that a letter to that effect before February 22<sup>nd</sup> would ensure that mapping could be prepared for consideration at the March meeting.

Mr. Bighinatti reiterated that CT DEEP has retraced its ESA declarations and that CT DEEP requested that their lands remain unassigned or that their lands be noted on maps. Mr. Bighinatti stated that keeping these lands unassigned simplifies the process and that in the unlikely case that ownership of CT DEEP land changes, the WUCC could assign an ESA later. In addition, existing ESAs in the southern part of the region can have notations added to the maps such that ESA boundary modifications would not be necessary.

- Mr. Cherry voiced concern over leaving large areas unassigned.

- Mr. Bighinatti reminded the group of how, at the beginning of the process, it was discussed whether it may make sense to leave certain types of land unassigned and that permanently protected land (such as that owned by the DEEP) was one example where it made sense. Mr. Bighinatti also stated that there would be a statement in the ESA Document as to why certain areas are left unassigned, and that the ESA Procedures address how to make assignments in unassigned areas.
- Mr. Avery asked if, in the case of a campground needed a new public water system, CT DEEP is exempt from applying to CT DPH for a CPCN.
  - Mr. Bighinatti answered that CT DEEP would be required to go through the CPCN process, but that it was unlikely that a new community water system would be needed. The process for the WUCC would be similar to that for other non-community systems, except that there would be no ESA holder.
- Mr. Cherry asked if DEEP's exemption was also true for state land owned by other agencies.
  - Mr. Bighinatti stated that DEEP's letter was specific to DEEP owned and maintained lands and that he did not want to speak for other state agencies.

Mr. Bighinatti reviewed the preliminary ESA boundaries in the towns of Ashford, Brooklyn, Canterbury, Chaplin, Eastford, Hampton, Killingly, Plainfield, Pomfret, Putnam, Scotland, Sterling, Thompson, Union, and Woodstock (see PowerPoint presentation).

- In reviewing ESA declarations in the town of Pomfret, Mr. Skov asked whether Pomfret School would need to come to the WUCC if the school extended the area of its existing community system.
  - Mr. Bighinatti stated that if it were extended to unserved parcels and if there were no ESA for that area, Pomfret School would go through a CPCN application process only.
  - Mr. Congdon asked, since an expansion of their system would require a map change, if the school would then need to come to the WUCC.
  - Mr. Bighinatti stated that technically they would, but likely not in practice.
- Mr. Cherry asked why CT DEEP land was not shown on the updated map for Pomfret.
  - Mr. Bighinatti stated that this was done for simplicity as the map was updated following receipt of DEEP's letter, and that if Aquarion Water Company were to claim all remaining land in Pomfret (except for CT DEEP land and ESA claims by Connecticut Water Company), a revised map would be issued.

Mr. Bighinatti continued the PowerPoint presentation, showing additional ESA declarations.

There was additional discussion about how CT DEEP land should be represented on maps. It was generally agreed that the WUCC was currently only adopting ESA boundaries and that distinction of CT DEEP land should be considered further, later in the process when the WUCC is adopting detailed maps. It was also felt that it may be beneficial for future maps to differentiate between CT DEEP land and other unassigned lands, if they exist.

Mr. Cherry made a motion to "approve the Preliminary ESA Delineations for utilities and municipalities in the 15 communities as shown on the prepared mapping, to be submitted for public

comment with the Preliminary ESA Document; and to reclassify the Connecticut DEEP claims in the 16 northern communities, as shown on the prepared mapping, to be 'Unassigned' as requested by Connecticut DEEP; and for existing approved ESA Delineations, to note on any mapping that ESA boundaries may be unenforceable on DEEP lands". Russell Gray of the Town of Sterling seconded the motion.

There was discussion.

- Mr. Decker asked DEEP for clarification as to why CT DEEP retracted ESA claims when they had made the claims at such a late date in the declaration process.
  - Dean Applefield, attorney for CT DEEP, stated that there was initially a misunderstanding about how CT DEEP lands fit into the WUCC process.
  - David Cooley of CT DEEP stated that retracting ESAs also presented the best solution to dealing with state-wide ESA conflicts and that the conflicts promoted a closer look at the statutes.
- Mr. Congdon asked if there were additional comments. There were none. The motion was put to a vote. The motion passed unanimously.

Mr. Bighinatti stated that Milone & MacBroom would continue revising the ESA Document and that they would appreciate comments so that a revised document could be distributed. He noted that the final draft would go out for review by March 1, 2017, but that if sufficient comments were received a revised interim draft could be issued.

- Mr. Cherry asked if the final version of the ESA Document would include ESAs in the southern portion of the region in addition to detailed boundary maps.
  - Mr. Bighinatti confirmed.

## **7. Other Business**

Mr. Congdon asked if there was any additional business.

- Mr. Bighinatti continued the PowerPoint presentation, showing a list of required topics for the Integrated Report. Mr. Bighinatti requested that WUCC members begin to consider these topics in order to make the Integrated Report an effective and usable document.
- Mr. Bighinatti stated that the WUCC must consider the compatibility of the Coordinated Water System Plan with local and state plans. Mr. Bighinatti stated that current State Water Plan would inform the Integrated Report.
- Mr. Bighinatti continued with the PowerPoint presentation with a graphic showing the relationship between the Coordinated Water System Plan being prepared by the WUCC, the State Water Plan, and the Drinking Water Vulnerability Assessment and Resiliency Plan being led by the Connecticut Institute for Resilience and Climate Adaptation (CIRCA). Mr. Bighinatti also stated that a representative from CIRCA would be presenting at the next meeting.
- Mr. Bighinatti presented the next meeting's draft agenda. Mr. Congdon suggested being prepared to add the consideration of Aquarion ESA boundaries in Pomfret and Woodstock.



Mr. Gray made a motion to adjourn the meeting. Mr. Cherry seconded the motion. The meeting was adjourned at 1:49.

Respectfully submitted,

Samuel Alexander (Southeastern Connecticut Council of Governments)  
Recording Secretary