

**OFFICE OF ADJUDICATIONS**

**IN THE MATTER OF:** : **APPLICATION NO. DIV-200301906**

**SKUNGAMAUG CLUBS, INC.** : **JULY 27, 2004**  
**JOHN MOTYCKA**

**PROPOSED FINAL DECISION**

The applicants, Skungamaug Clubs, Inc. and John Motycka, have filed an application with the Department of Environmental Protection (DEP) Inland Water Resources Division for a water diversion permit. General Statutes §22a-368. The applicants propose to withdraw water from the Skungamaug River in quantities greater than 50,000 gallons per day for the purpose of irrigating the Skungamaug River Golf Course in Coventry. DEP staff has determined that this proposed regulated activity is necessary and will not significantly affect long-range water resource management or impair proper management and use of the state's water resources. General Statutes §22a-371. Staff has prepared a draft permit authorizing the project.

A hearing in this matter was held on May 27, 2004, at the Town Hall Annex in Coventry for the purpose of taking public comments on the application. Members of the public spoke generally on the application and many testified under oath. Sworn statements are considered as evidence, provided the information is relevant. General consideration is given to unsworn statements. Almost all public comments pertained to concerns about the Skungamaug River water flow levels.

On June 30, 2004, counsel for the applicants informed me that the parties had agreed to prepare and submit an Agreed Draft Decision for my consideration. On July 7, 2004, the applicants submitted a draft decision to staff and on July 22, 2004, staff filed an Agreed Draft

Decision signed by the applicant. (Attachment A). Regs., Conn. State Agencies §22a-3a-1)(3)(A)(i).

I have reviewed the draft decision, the record and relevant public comments. I have assessed the application with regard to relevant statutes and regulations. General Statutes §§22a-365 through 22a-378; Regs., Conn. State Agencies §22a-377(c). I adopt the Agreed Draft Decision as my Proposed Final Decision and recommend the Commissioner issue the requested permit.<sup>1</sup> (Attachment B.)

July 27, 2004  
Date

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

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<sup>1</sup> In Section G, Finding of Fact 4 should be revised to read as follows: “The diversion will have little or *no* effect on existing water conditions.” (Emphasis here for explanation.)



I held a Status Conference on April 14, 2004, at which CTDEP Staff, as a result of the petition, formally requested that a hearing be held in this matter. On April 19, 2004 I issued a Status Conference Summary that acknowledged CTDEP Staff's request, set a hearing date, set a Pre-Hearing Conference date, and designated Helen C. Armstrong as an interested person. (HO Record #8).

On May 13, 2004, I held a Pre-Hearing Conference at which the parties submitted respective lists of issues, witnesses and proposed exhibits. (HO Records #10, #11, and #12). There being no objection, I admitted all of the parties' proposed exhibits, as listed in HO Records #11 and #12, into the record in this matter. I also set a date for the site visit and hearing for May 27, 2004, at 5 P.M. and 7 P.M., respectively. (HO Record #13).

The site visit and hearing occurred at the scheduled date and times. At the hearing I received testimony and exhibits from John Motycka, Mr. John Hankins of Fuss & O'Neill (for the Applicants), Mr. Peter Pierson of the Connecticut Association of Golf Course Superintendents, Ms. Danielle Stevenson (CTDEP), Mr. Brian Murphy (CTDEP), from Ms. Armstrong, and from other members of the public who attended the hearing. With respect to Mr. Hankins, Mr. Pierson, Ms. Stevenson, and Mr. Murphy, the parties submitted resumes or documentation for these witnesses regarding their professional experience and also provided a summary as to the general nature of the opinions these witnesses would give. (HO Records, #11 and #12). I closed the hearing on May 27, 2004, but left the record open until June 10, 2004, to allow for the submission of additional information.

On June 7, 2004, I received, and placed in the record, a sworn statement from Mr. Robert V. Jeal and Mrs. Judy Jeal dated June 1, 2004, in which Mr. and Mrs. Jeal raised a variety of environmental and procedural issues. On June 8, 2004, I received and placed in the record, a letter signed by John Motycka and Susan Motycka responding to the statements made by Mr. and Mrs. Jeal. On June 10, 2004, I closed the record in this matter.

Aside from Mr. Hankins, Mr. Pierson, Ms Stevenson, and Mr. Murphy, no other person testifying at the hearing claimed to have any professional training or experience, or specialized knowledge with respect to the criteria and matters that must be considered when deciding whether to issue a permit under the Act. This applies equally to the written statements submitted by Mr. and Mrs. Jeal, and by Ms. Armstrong.

## **B. Parties**

The parties to the proceeding are Skungamaug Clubs, Inc., Mr. John Motycka and CTDEP Staff of the Inland Water Resources Division. Ms. Helen C. Armstrong did not formally intervene or seek party status, and was, therefore, designated an interested person. (HO Record #8).

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## **C. Project Description**

The Applicants seek to continue a surface water withdrawal from the Skungamaug River and a bedrock supply well at the Skungamaug River Golf Club located at 104 Folly Lane in Coventry,

Connecticut (the "Site"). Specifically, the Applicants seek approval to divert up to 160,000 gpd of water from the Skungamaug River and 10,000 gpd from a bedrock supply well. The 160,000 gpd withdrawal from the Skungamaug River is based on the maximum one-day withdrawal recorded over the period April 2003 to September 2003 (142,621 gpd) plus a 12 percent contingency factor. The 10,000 gpd estimate from the bedrock supply well is based on a two to three day period in the spring when water withdrawn from the well is used to fill the irrigation system. (Exhibit App-3).

#### **D. Site Description**

The Site is an 18-hole public golf course situated on approximately 110 acres. Buildings on the Site consist of a clubhouse, a maintenance garage, and maintenance shed. The golf course has existed since approximately 1966. From 1966 to the mid-1980's the golf course was a nine hole facility. In 1985, the golf course was expanded to 18 holes. The original irrigation system was incrementally expanded by the early 1990s to cover all tees, fairways, and greens at all 18 holes. (Exhibits App-3 and DEP-9). A more complete description of the irrigation system is located at Page 2 of Attachment A in Exhibit App-1 and is incorporated by reference herein.

The Site is located in the Skungamaug River Basin in the eastern highlands of Connecticut. Bedrock geology consists of light-to-medium gray granitic gneiss. Based on well logs by the U.S. Geological Survey, the depth to bedrock in the vicinity of the site is approximately 40 feet. (Exhibit App-3).

The surficial geology of the flood plain of the Skungamaug River consists of interlayered stratified drift sand and gravel deposits. The thickness of the stratified drift thins toward the valley walls. Id.

The drainage area of the Skungamaug River upstream of the diversion is approximately 19 square miles. The Skungamaug River is a tributary to the Hop River, which is located approximately five miles downstream of the golf course. Id.

A U.S. Geological Survey Stream Gauging Station (Number 1198.2) is located approximately two miles downstream of the site. The station has daily stream gauging records available from 1962 to 1964. Peak streamflow records are available from 1964 to 1976. Based on a review of available records, peak streamflow during the period 1964 to 1976 was approximately 1,600 cubic feet per second (cfs) and daily mean streamflow during the period 1962 to 1964 ranged between 3 cfs to 88 cfs. The lowest stream flow was 0.6 cfs, measured on November 11, 1964. Id.

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#### **E. The Applicants**

The Applicants are Skungamaug Clubs, Inc. and John Motycka, the President of Skungamaug, Clubs, Inc. (Exhibit App-1). Skungamaug Clubs, Inc., d/b/a Skungamaug River Golf Course, and John Motycka have an address at 104 Folly Lane, Coventry, Connecticut 06238. Id.

#### **F. The Application**

The Application consists of Exhibit App-1 as supplemented by the Applicants' other exhibits and the testimony provided at the public hearing. Exhibit App-1 consists of a completed application form entitled "Permit Application for Programs Administered by the Inland Water Resources Division" (DEP-IWRD-APP-100)("Application Form") and Attachments A through Q (but excluding those attachments that are not required for this diversion application). Attachment A consists of the form "Attachment A-2: Technical Documentation" which, as the title suggests, provides technical information regarding the water diversion by describing the diversion, the withdrawal and consumptive use of water, the need for the diversion, explains that the diversion will not impact wildlife and fish habitat and that, therefore, no mitigation measures are needed, that the diversion will not cause an interbasin transfer of water, and that no instream flow maintenance is provided. The remaining attachments are those required in Part V of the Application Form. Of particular note are Attachment H (an "Engineering and Hydrogeologic Report" prepared by Fuss & O'Neill, Consulting Engineers, as revised and dated October, 2003 (the "F&O Report" or "Exhibit App-3")), Attachment J (Alternative Assessment), and Attachment M (Long Range Water Conservation Plan). (Exhibits App-1 and App-3).

### **1. Need for the Diversion**

The diversion is needed in order to continue supplying irrigation water to the Skungamaug River Golf Course which has operated at the Site since 1965. The Skungamaug River Golf Course provides the following important benefits: (a) recreation opportunities to the public, (b) preservation of open space in a rapidly developing area (it is formally registered open space), (c) employment for up to twenty-eight (28) persons in season and six (6) persons year round, (d) and free golf privileges to two (2) area high school golf teams. Without the diversion, these benefits will be jeopardized. In addition, continued irrigation of the golf course is necessary for the golf course to maintain turf quality, for grass to survive periods of low rainfall or drought, and for the golf course's economic survival. (Exhibit App-1, Attachments A and J; Exhibit App-9).

### **2. Reasons for the Diversion**

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The Application details the reasons for the diversion. (Exhibits, App-1, App-3, and App-9). The reasons for the diversion are identical to the need for the diversion as described in Section E.1 above.

### **3. Description of the Existing Water System**

The Application provides a detailed description of the existing water system. (Exhibits, App-1, App-3, and App-9).

### **4. Locations of Withdrawals and Discharges**

The locations of withdrawal are set forth in the Application. (Exhibits, App-1, App-3, and App-9). A “Booster Pump House” and “Main Pump House” are located on the eastern side of the Skungamaug River as specified in Figure 3 of Attachment H. (Exhibit App-3).

## **5. Quantity, Frequency and Rate of Water Diversion**

The quantity and frequency of water to be diverted varies with the weather demands. The Application requests approval of a maximum of 160,000 gallons per day. The maximum used on any one day during 2003 was 143,000. The course maintains an evapotranspiration meter that measures the amount of water lost during the day. A computer control that is part of the irrigation system calculates the amount of water to apply that night to balance the water lost due to evapotranspiration during the day. The irrigation season runs from April through October, and the Applicant typically irrigates the golf course eighty to ninety (80 to 90) days during such a season. (Exhibit App-9).

## **6. Length of Time for Which the Diversion is Sought**

The Applicants seek a diversion permit for a period of twenty-five (25) years. (Exhibit App-1 at Attachment A).

## **7. Effect of the Proposed Diversion**

The diversion already exists, thus there will be no new impact if the diversion is allowed to continue. (Exhibits App-1 and App-9). In addition, Fuss & O’Neill performed an engineering and hydrogeologic evaluation of the Skungamaug River based on a Proposed Hydrogeologic Study reviewed and approved by CTDEP Staff. (Exhibit App-3). The result of that evaluation is the F&O Report (Exhibit App-3).

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The diversion of surface water from the Skungamaug River has a negligible affect on stream flow downstream of the dam. The water storage capacity behind the dam maintains downstream flow such that at pumping rates up to 181,000 gpd there is no measurable variation in stream flow. (Exhibit App-3).

The diversion from the Skungamaug River at pumping rates up to 181,000 gpd does not affect water level elevations of the pond (Affricano Pond) behind the dam. The pond is approximately 400 feet downstream of the river pumps. An effect from pumping was not observed consistently in the river water level elevations near the river pumps. A temporary decrease of 0.3 feet in river water level elevation at the irrigation pumps was observed during the maximum rate pump test. However, this effect was only produced on one of the three days of the maximum rate test. It is unlikely that the effect was a product of golf course irrigation. Although the source for the 0.3 feet of change is unknown, the variation is well below the 1.44 feet of change in the river water elevation at this location as a result of precipitation. The variation in surface water level in the vicinity of the river pumps is

not anticipated to have a negative affect on wetlands or habitat areas, particularly since any reduction in water levels is quickly reversed when the pumps are shut down. Id.

The diversion from the Skungamaug River is a surface water diversion and therefore will not have a significant affect on groundwater levels. Groundwater levels in the immediate vicinity of the river could drop slightly as the water level in the river drops during pumping; however, as described above, river water levels did not drop significantly at pumping rates up to 181,000 gpd. Maximum reduction in groundwater levels could not theoretically exceed the 0.3-foot decrease in surface water levels that was observed. Id.

Withdrawal from the maintenance garage bedrock supply well typically occurs at rates less than 1,000 gpd. A temporary withdrawal of up to 10,000 gpd occurs over a three-day period in the spring when the irrigation system is being filled. The closest supply well to the maintenance garage well is located on a separate parcel 600 feet north at the course supervisor's residence. The course supervisor reported that he has never experienced any problems with well yield at the residence during the three-day period of the 10,000 gpd withdrawal from the maintenance garage well. In addition, routine withdrawals of up to 1,000 gpd from the maintenance garage supply well have not had a negative affect on well yield at the residence. Therefore, withdrawal from the maintenance garage bedrock supply well will not negatively impact water yield from supply wells located at distances greater than 600 feet. Id.

## **8. Alternatives**

The Application contains an Alternatives Assessment at Attachment J of Exhibit App-1. (See also Exhibit App-9). The Alternatives Assessment discusses in great detail a variety of alternatives, including alternative sources of water such as the availability of

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a public water supply, of wastewater, and of groundwater. In addition to alternative sources, the Alternatives Assessment evaluates water conservation as an alternative means of accomplishing irrigation objectives. Based on that Assessment, I find that the alternatives are either not prudent (e.g., would not enable the golf course to survive, would be too costly, etc.) or are not feasible (e.g., public water supply is not available).

## **9. Conservation Measures**

Attachment M of Exhibit App-1 contains a detailed "Long Range Water Conservation Plan."

## **10. Environmental Impact Report**

Since there is no proposed interbasin transfer of water, the Application does not contain an Environmental Impact Report. (Exhibit App-1, Attachment A).



**G. Conn. Gen. Stat. § 22a-373(b) Considerations**

**1. Effect of the Proposed Diversion on Related Needs for Public Water Supply Including Existing and Projected Uses, Safe Yield and Reservoir Systems and Reservoir and Groundwater Development**

The diversion will not have any effect on related needs for public water supply. (Exhibit App-3). The only comment offered by Ms. Lori Mathieu of the Drinking Water Division of the Department of Public Health on the Application was with respect to back flow prevention devices that would prevent irrigation water from becoming mixed with potable water at the Site. (Exhibit DEP-1). A backflow prevention device already in place at the Site addresses that concern. (Exhibit DEP-9). Based on the foregoing, I find that the diversion will not affect related needs for public water supply including existing and projected uses, safe yield, and reservoirs and reservoir and groundwater development.

**2. Compatibility of the Proposed Diversion With the Policies and Programs of the State of Connecticut Dealing With Long-Range Planning, Management, Allocation and Use of Water Resources**

The diversion is compatible with the policies and programs of the State of Connecticut dealing with long range planning, management, allocation and use of water resources. (Exhibit DEP-9).

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**3. Relationship of the Proposed Diversion to Economic Development and the Creation of Jobs.**

The diversion makes it possible to operate the golf course and to provide jobs to the twenty-eight (28) seasonal and six (6) year-round employees currently employed by Skungamaug Clubs, Inc. (Exhibits App-1 and App-9). Without the diversion, the golf course could not continue to function and any economic benefit, including the jobs of those employed by the Skungamaug Clubs, Inc., would be lost. Based on the foregoing, I find that there is a positive relationship between the diversion and economic development and the creation of jobs.

**4. Effect of the Proposed Diversion on Existing Water Conditions**

The diversion will have little or effect on existing water conditions. (Exhibits App-3 and DEP-9).

**5. Effect, including thermal effect, of the Proposed Diversion on Fish and Wildlife**

The diversion will not have any adverse effect on fish or Wildlife. (Exhibit DEP-4; Exhibit App-1, Attachment I).

## **6. Effect of the Proposed Diversion on Navigation**

The diversion will have little or no effect on existing water conditions. (Exhibits App-3 and DEP-9). Since the diversion will have at most a negligible effect on water conditions, and is located at a pond on a brook behind a dam, I find that the diversion will not affect navigation.

## **7. Necessity**

Taking into consideration and giving due regard to the Alternatives Assessment (Exhibit App-1, Attachment J) proffered by the Applicants, and the testimony by Ms. Stevenson (Exhibit DEP-9), I find that there are no prudent and feasible alternatives to the diversion. Since the golf course would likely cease operations if irrigation does not continue, I find that the diversion is necessary. (Exhibit App-1, Attachment A; Exhibit App-7).

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## **8. Effect on Interstate Waters**

The Application shows a wholly intra-state diversion of water that does not impact interstate waters. (Exhibit App-1). Based on that evidence, I find that the diversion will not have any effect on interstate waters.

## **9. Municipal Interests**

Notice of the Application was provided to the Town of Coventry. (Exhibits App-2 and DEP-6). The Town of Coventry did not comment on the Application. The golf course is preserved as open space and is registered as such by the Town of Coventry. (Exhibit App-1, Attachment A). As stated above, the golf course cannot operate without the diversion, and would be put at risk of development (i.e., the Town of Coventry could lose valuable open space) in the absence of the diversion. Based on that information, and on the Town of Coventry's silence, I find that the diversion does not conflict with the Town of Coventry's interests.

## **H. Conn. Gen. Stat. § 26-310 Requirements**

Conn. Gen. Stat. § 26-310 requires that "any action authorized, funded or performed by . . . [a state] agency . . . not threaten the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat designated as essential to such species." The Site and diversion are not located within any area identified as habitat for endangered,

threatened or special concern species. (Exhibit DEP-9). I, therefore, find that approval of the diversion permit will not have any effect on such species.

**I. Other Required Permits**

None.

**J. R.C.S.A. § 22a-377(c)-2(f)(1) Requirements**

The diversion, which is a surface water diversion from the Skungamaug River not a groundwater diversion, will not have a significant effect on groundwater levels. (Exhibit App-3). For the reasons discussed in Section III.F, below, information regarding the 10,000 gpd withdrawal of groundwater from bedrock supply well is irrelevant to addressing this requirement. Therefore, the Applicants have demonstrated that the diversion is consistent with the requirements of RC.S.A. § 22a-377(c)-2(f)(1).

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**K. R.C.S.A. § 22a-377(c)-2(f)(2) Requirements**

The diversion will not have any negative effect on wetlands and the effect on stream flow will be negligible. (Exhibits DEP-9 and App-3). Therefore, the Applicants have demonstrated that the diversion is consistent with the requirements of RC.S.A. § 22a-377(c)-2(f)(2).

**L. R.C.S.A. § 22a-377(c)-2(f)(3) Requirements**

The equipment and material associated with the diversion will not have any significant effect on potential floodplain storage, and the underground equipment will not create any floodplain hazard. (Exhibit App-3). Therefore, the Applicants have demonstrated that the diversion is consistent with the requirements of RC.S.A. § 22a-377(c)-2(f)(3).

**M. R.C.S.A. § 22a-377(c)-2(f)(4) Requirements**

The diversion is not located within a coastal area. (Exhibit App-1).

**N. R.C.S.A. § 22a-377(c)-2(f)(5) Requirements**

The diversion is consistent with the relevant policies and long term planning requirements of the State of Connecticut. (Exhibit DEP-9). Therefore, the Applicants have demonstrated that the diversion is consistent with the requirements of RC.S.A. § 22a-377(c)-2(f)(5).

## **O. The Draft Permit and Proposed Permit Conditions**

CTDEP Staff has proposed the issuance of a water diversion permit to the Applicants, Authorizing Skungamaug Clubs, Inc., to divert waters of the State at the Skungamaug River in accordance with the Application. The stated purpose of the diversion is to divert up to a maximum of 160,000 gpd of water from the Skungamaug River for use as irrigation water at and 18 hole golf course known as the Skungamaug River Golf Course.

By virtue of the draft permit, Skungamaug Clubs, Inc. would be authorized to withdraw a maximum of 160,000 gpd from the Skungamaug River in accordance with the plans, supplemental materials and other information provided in the Application. (Exhibit DEP-5)

The CTDEP staff has proposed a series of special and general conditions to the proposed permit. The proposed conditions include an expiration date of fifteen (15) years from the date of issuance, a limit on the period during which withdrawals for irrigation can be made (April 14 through October 31, inclusive), a provision that the maximum month average day withdrawal shall not exceed 130,000 gpd, metering of withdrawals record keeping and reporting requirements, meter calibration and reporting, chemigation limits, recording and

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reporting violations requirements, and a provision allowing the Commissioner to restrict the diversion if he determines certain conditions warrant curtailment of non-essential water uses, or if the Commissioner determines that the diversion will have an adverse effect on water quality, fisheries resources or aquatic habitat. Id.

The Applicants have reviewed both the special and general conditions contained in the proposed and have no objection to their inclusion in the final permit.

## **Proposed Conclusions of Law and Decision**

### **I. Jurisdiction**

Conn. Gen. Stat. § 22a-368(b) provides, in relevant part, as follows:

. . . no person or municipality shall, after July 1, 1982, commence to divert water from the waters of the state without first obtaining a permit for such diversion from the [C]ommissioner [of Environmental Protection]

The Commissioner is empowered pursuant to Conn. Gen. Stat. § 22a-369 to issue diversion permits and the Applicants have applied for such a permit in this case. Accordingly, the Commissioner has subject matter jurisdiction as to this matter.

### **II. Regulatory Requirements**

#### **A. Application Contents**

Conn. Gen. Stat. § 22a-369 requires an applicant for a diversion permit to submit the application on forms prescribed by the Commissioner and with information that the Commissioner deems necessary to fulfill the purposes of the Connecticut Water Diversion Policy Act, Conn. Gen. Stat. §§ 22a-365 to 22a-378. In addition, the application must, at a minimum, contain the information specified in Conn. Gen. Stat. § 22a-369. CTDEP regulations also specify requirements for the contents of diversion permit applications (see RCSA § 22a-377(c)-2); as well as that specified in DEP-IWRD-APP-100 (Exhibit APP-1), as evidenced by DEP staff's completeness determination pursuant to Conn. Gen. Stat. § 22a-371 as contained in its Notice of Tentative Determination (Exhibit DEP-6) as well as the Hearing Officer's personal review of the record. Accordingly, I conclude that the application contains that material required pursuant to applicable law.

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## **B. Procedural Requirements**

Based on the record, I conclude that the procedural requirements of Conn. Gen. Stat. §§ 22a-370, 22a-371(c), (d), and (f), and 22a-372(e) have been fulfilled. (Exhibits App-1, App-2, DEP-6, DEP-8, and HO Record #9).

## **C. Evidence**

As noted in the Findings of Fact, Mr. Hankins, Mr. Pierson, M. Stevenson, and Mr. Murphy were the only persons identified as having professional training or expertise, or specialized knowledge, with respect to the criteria for rendering a decision on an application for a diversion permit. The evidence offered by the foregoing persons at the hearing represents expert testimony as to the matters within their respective areas of expertise. No other expert testimony was offered as part of the hearing or record in this matter. Therefore, the testimony provided by Mr. Hankins, both orally at the hearing and in the F&O Report, by Mr. Pierson, by Ms. Stevenson, and by Mr. Murphy represents un rebutted expert testimony. While I am not required to believe expert testimony, in this case the expert testimony is credible and worthy of belief. See, e.g., Simard v. Commissioner of Motor Vehicles, 62 Conn. App. 690, 695-96 (2001). Other persons took the time to attend the hearing or prepare written comments. Those persons testified at the hearing or in writing, many under oath, and expressed their opinion with respect to various matters that are before me. However, while their concerns are no doubt genuinely felt, none of those persons provided expert testimony on the specific criteria that I must consider in rendering a decision in this matter. As a result, in rendering this decision, I have given the expert testimony I received the greater weight it deserves, and assigned less weight to testimony provided by lay persons at the hearing or in writing in the record. Moreover, to the extent that testimony I received from non-experts raised concerns regarding the diversion at issue here, I conclude that the evidence in the record, and the special and general conditions of the Draft Permit address those concerns.

## **D. Standards for Issuing Permit**

Conn. Gen. Stat. § 22a-373 sets forth certain substantive matters which must be considered in rendering a decision on a diversion permit. In addition, R.C.S.A. § 22a-377(c)-2(f) sets forth additional substantive matters that must be considered. As set forth in the Findings of Fact, the record reflects that substantial evidence has been presented on the record relevant to each of the substantive matters that must be considered. Based upon the record, The Applicants have demonstrated to my satisfaction that:

the proposed diversion will not have a substantial adverse impact on related needs for public water supply including existing and projected uses, safe yield of reservoir systems and reservoir and groundwater development;

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the proposed diversion will not have a substantial adverse impact on existing and planned water uses in the area affected such as a public water supplies, relative density of private wells, hydropower, flood management, water-based recreation, wetland habitats, waste assimilation and agriculture;

the proposed diversion is compatible with the policies and programs of the state of Connecticut, as adopted or amended, dealing with long-range planning, management, allocation and use of the water resources of the state;

the relationship of the proposed division to economic development and the creation of jobs are positive;

the proposed diversion will not have a substantial adverse impact on the existing water conditions, with due regard to groundwater availability, watershed characterization, potential, evapotranspiration conditions, and water quality;

there will be no substantial adverse impact, including thermal effect, on fish and wildlife as a result of flow reduction, alteration or augmentation caused by the proposed diversion;

there will be no substantial adverse effect on navigation from the proposed diversion;

the water to be diverted is necessary for the Applicants to irrigate the Skungamaug River Golf Course and, considering all of the alternatives, including but not limited to conservation, is the best alternative;

since the proposed diversion will not affect interstate waters, it will not be inconsistent with actions taken by the Attorney General pursuant to Conn. Gen. Stat. §§ 3-126 or 3-127;

the diversion is not in substantial conflict with the interests of any municipality which would be affected by the proposed diversion, and may, by allowing the Skungamaug River Golf Course to be maintained as open space, be in harmony with such interests;

the proposed diversion is consistent with the standards, criteria, policies, and water quality classifications for ground and surface water adopted and amended under Conn. Gen. Stat. § 22a-426;

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the proposed diversion is consistent with the policies and requirements of chapter 440 of the General Statutes and regulations thereunder;

the proposed diversion is designed and will be carried out so as to minimize and, if possible, eliminate flooding and flood hazards, and to be consistent with the policies and requirements of chapter 476 a of the General Statutes and regulations thereunder;

the proposed diversion is not within and will not significantly affect the coastal area as defined by Conn. Gen. Stat. § 22a-94(a); and

the proposed diversion is consistent with the relevant policies of the State Plan of Conservation and Development adopted under sections 16a-24 to 16a-32, inclusive, of the General Statutes.

#### **E. Conn. Gen. Stat. §22a-373(c) Requirements**

There are no capital expenditures and other resource commitments made prior to July 1, 1982, in connection with the diversion at issue here. In addition, the diversion is not one that was recommended in a water supply plan. As a result, the requirements of Conn. Gen. Stat. § 22a-373(c) do not apply.

#### **F. Permit and Permit Conditions**

The Draft Permit meets all the statutory requirements and contains provisions that are sufficiently protective of the environment. CTDEP Staff has not proposed any changes to the Draft Permit, and the Applicants have not objected to any of the Draft Permit's terms and conditions. Accordingly, I recommend issuance of the diversion permit in its current form and wording (Exhibit DEP-5) except as may be needed to correct typographical errors, if any exist.

For purposes of clarity, while information on it was included in the Application, the withdrawal of 10,000 gpd of ground water from a well at the Site is exempt from permitting requirements pursuant to Conn. Gen. Stat. § 22a-377. Apparently, the CTDEP Staff concluded that the 10,000 gpd groundwater withdrawal was exempt from permitting requirements because CT DEP Staff did

not include that withdrawal in the Draft Permit. Therefore, to the extent that the Application requests a permit to withdraw 10,000 gpd of groundwater, that request is denied as moot.



**AGREEMENT**

Based on the foregoing, the undersigned hereby agree to the granting of a permit subject to the general and special conditions stated in Exhibit DEP-5, Draft Permit, attached hereto.

SKUNGAMAUG CLUBS, INC.

By: \_\_\_\_\_  
John Motycka  
Its President

INLAND WATER RESOURCES DIVISION

By: \_\_\_\_\_  
Danielle Stevenson

**Attachment B**

**DRAFT PERMIT**

PERMITTEE: Skungamaug Clubs, Inc.  
104 Folly Lane  
Coventry, CT 06238.

PERMIT NO.: DIV-200301906  
TOWN: Coventry  
WATERS: Skungamaug River

Pursuant to Connecticut General Statutes section 22a-368, Skungamaug Clubs, Inc. (the "permittee") is hereby authorized to divert the waters of the state at Skungamaug River Golf Course located in the town of Coventry (the "site") in accordance with permittee's application dated June 28, 2003, filed with this Department on July 7, 2003 and described herein. The purpose of the diversion is to divert a maximum of 160,000 gallons per day of water from the Skungamaug River for irrigation of an 18-hole golf course.

**AUTHORIZED ACTIVITY**

The permittee is authorized to divert a maximum of 160,000 gallons per day of water from the Skungamaug River for irrigation of an 18-hole golf course, the maximum month average day withdrawal shall not exceed 130,000 gallons per day, withdrawals for irrigation are restricted to April 15 through October 31 inclusive, in accordance with plans entitled "Skungamaug River Golf Club", dated June 2003, revised through June 2003, prepared by Fuss & O'Neil Inc., and documentation submitted as a part of the application.

**PERMITTEE'S FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT SHALL SUBJECT PERMITTEE AND PERMITTEE'S CONTRACTOR(S) TO ENFORCEMENT ACTIONS AND PENALTIES AS PROVIDED BY LAW.**

**SPECIAL CONDITIONS**

1. **Metering of Withdrawals.** Prior to initiating the authorized withdrawal of water for the 2004 irrigation season, the permittee shall install a totalizing flow meter(s) to measure the total amount of water withdrawn from the Primary Pump (Pump 1) and the Secondary Pump (Pump 2) located on Affricano Pond on the Skungamaug River near the 4<sup>th</sup> hole as shown on Figure 2 of the permit application entitled "Skungamaug River Golf Club", dated June 2003, revised through June 2003, prepared by Fuss & O'Neil Inc., and shall for the duration of this

authorization continuously operate and maintain such meter. In the event of meter malfunction or breakage, the permittee shall repair or replace such meter within 72 hours. The permittee

shall secure such meter in a locked facility, with access controlled solely by the permittee or other designee.

2. **Record Keeping and Reporting.** The permittee shall maintain a daily record of the amount of water withdrawn from the Primary Pump (Pump 1) and the Secondary Pump (Pump 2) located on Affricano Pond on the Skungamaug River near the 4<sup>th</sup> hole as shown on Figure 2 of the permit application entitled “Skungamaug River Golf Club”, dated June 2003, revised through June 2003, prepared by Fuss & O’Neil Inc., for which withdrawals are authorized herein. The permittee shall, for the duration of this authorization, submit a copy of said withdrawal record for the preceding calendar year annually to the Commissioner no later than January 15 of each year. Such record shall be signed by the permittee and individual(s) responsible for actually preparing such record, each of whom shall certify in writing as follows:

“I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that a false statement made in this document or its attachments may be punishable as a criminal offense, in accordance with Section 22a-6 of the General Statutes, pursuant to Section 53-157b of the General Statutes, and in accordance with any other applicable statute.”

3. **Meter Calibration and Reporting.** The permittee shall annually test and calibrate each source meter and calibrate to within two percent accuracy as shown through a post-calibration test, and shall submit the results of the accuracy test and calibration for the preceding year annually to the Commissioner no later than January 15 of each year.
4. **Chemigation.** The permittee shall not use the irrigation system for the purpose of chemigation without appropriate discharge permit and pesticide application permit form the Commissioner.
5. **Recording and Reporting Violations.** Within 48 hours after the permittee learns of a violation of this permit, the permittee shall report the violation in writing to the Commissioner. Such report shall include the following information:
  - a. The provision(s) of this permit that has been violated;
  - b. The date and time the violation(s) was first discovered and by whom;
  - c. The cause of the violation(s), if known;
  - d. If the violation(s) has ceased, the duration of the violation(s) and the exact date(s) and time(s) it was corrected;
  - e. If the violation(s) has not ceased, the anticipated date when it will be corrected;
  - f. Steps taken and steps planned to prevent a reoccurrence of the violation(s) and the date(s) such steps were implemented or will be implemented;
  - g. The signatures of the permittee and of the individual(s) responsible for actually preparing such report, each of whom shall certify as follows:

“I have personally examined and am familiar with the information submitted in this document, and I certify that, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted

information is true, accurate and complete to the best of my knowledge and belief. I understand that a false statement made in this document or its attachments may be punishable as a criminal offense, in accordance with Section 22a-6 of the General Statutes, pursuant to Section 53a-157b of the General Statutes, and in accordance with any other applicable statute.”

6. **Restrictions.** Irrigation withdrawals authorized under this permit are restricted to the period April 15 through October 31 inclusive. The DEP shall have the right to restrict the diversion authorized in this permit at any time the Commissioner in his judgment determines: a) a declared local, regional or state-wide drought advisory, watch, warning or emergency necessitates curtailment of non-essential water uses, or b) the continuation of the diversion would have an adverse effect on water quality, fisheries resources or aquatic habitat.

### **GENERAL CONDITIONS**

1. The permittee shall notify the Commissioner in writing two weeks prior to: (A) commencing construction or modification of structures or facilities authorized herein; and (B) initiating the diversion authorized herein.
2. The permittee may not make any alterations, except de minimis alterations, to any structure, facility, or activity authorized by this permit unless the permittee applies for and receives a modification of this permit in accordance with the provisions of section 22a-377(c)-2 of the Regulations of Connecticut State Agencies. Except as authorized by subdivision (5) of section 22a-377(b)-1(a) of the Regulations of Connecticut State Agencies, the permittee may not make any de minimis alterations to any structure, facility, or activity authorized by this permit without written permission from the Commissioner. A de minimis alteration means an alteration which does not significantly increase the quantity of water diverted or significantly change the capacity to divert water.
3. All structures, facilities, or activities constructed, maintained, or conducted pursuant hereto shall be consistent with the terms and conditions of this permit, and any structure, facility or activity not specifically authorized by this permit, or exempted pursuant to section 22a-377 of the General Statutes or section 22a-377(b)-1 of the Regulations of Connecticut State Agencies, shall constitute a violation hereof which may result in modification, revocation or suspension of this permit or in the institution of other legal proceedings to enforce its terms and conditions.
4. Unless the permittee maintains in optimal condition any structures or facilities authorized by this permit, the permittee shall remove such structures and facilities and restore the affected waters to their condition prior to construction of such structures or facilities.
5. In issuing this permit, the Commissioner has relied on information provided by the permittee. If such information was false, incomplete, or misleading, this permit may be modified, suspended or revoked and the permittee may be subject to any other remedies or penalties provided by law.
6. If construction of any structures or facilities authorized herein is not completed within three years of issuance of this permit or within such other time as may be provided by this permit,

or if any activity authorized herein is not commenced within three years of issuance of this permit or within such other time as may be provided by this permit, this permit shall expire three years after issuance or at the end of such other time.

7. This permit is subject to and does not derogate any rights or powers of the State of Connecticut, conveys no property rights or exclusive privileges, and is subject to all public and private rights and to all applicable federal, state, and local law. In constructing or maintaining any structure or facility or conducting any activity authorized herein, the permittee may not cause pollution, impairment, or destruction of the air, water, or other natural resources of this State. The issuance of this permit shall not create any presumption that this permit should be renewed.
8. In constructing or maintaining any structure or facility or conducting any activity authorized herein, or in removing any such structure or facility under paragraph 4 hereof, the permittee shall employ best management practices to control storm water discharges, to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and other waters of the State. The permittee shall immediately inform the Commissioner of any adverse impact or hazard to the environment which occurs or is likely to occur as the direct result of the construction, maintenance, or conduct of structures, facilities, or activities authorized herein.
9. This permit is not transferable without the prior written consent of the Commissioner.
10. This permit shall expire on [ 15 years ].
11. **Certification of Documents.** Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this permit shall be signed by the permittee or a responsible corporate officer of the permittee, a general partner of the permittee, and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachment may be punishable as a criminal offense in accordance with Section 22a-376 under 53a-157 of the Connecticut General Statutes."

12. **Submission of Documents.** Any document or notice required to be submitted to the Commissioner under this permit shall, unless otherwise specified in writing by the Commissioner, be directed to:

Director  
DEP/Inland Water Resources Division  
79 Elm Street  
Hartford, CT 06106-5127

The date of submission to the Commissioner of any document required by this permit shall be the date such document is received by the Commissioner. The date of any notice by the

Commissioner under this permit, including but not limited to notice of approval or disapproval on any document or other action, shall be the date such notice is personally delivered or the date three days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this permit, the word "day" as used in this permit means any calendar day. Any document or action which is required by this permit to be submitted or performed by a date which falls on a Saturday, Sunday or legal holiday shall be submitted or performed by the next business day thereafter.

This authorization constitutes the permit required by section 22a-368(b) of the Connecticut General Statutes.

Issued as a permit of the Commissioner of Environmental Protection on

Arthur J. Rocque, Jr.  
Commissioner