



Town of Concord

22 Monument Square, PO Box 535
Concord, Massachusetts 01742
Phone: (978)-318-3000

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Erin Stevens
Public Information and
Communications Manager
estevens@concordma.gov
978-318-3052

SJC Upholds Concord Registration for Drinking Water Withdrawals from Nagog Pond

CONCORD, MA— On March 11, 2021, the Massachusetts Supreme Judicial Court (SJC) issued its decision on the litigation among Concord, Littleton, and Acton regarding the Towns' respective rights to use Nagog Pond as a drinking water source.

All three towns were given rights to access Nagog Pond from an act of the state legislature in 1884, but Concord is the only town that has exercised its right of withdrawal. Concord initially exercised its rights under the 1884 Act in 1909 and has been using Nagog Pond for drinking water ever since. Following the passage of the Water Management Act (WMA) in 1985, Concord applied for and received a Registration from the State that grandfathered its existing withdrawal volume at Nagog Pond.

The central issue in the current litigation was whether Littleton and Acton could supersede Concord's WMA Registration based on a provision of the 1884 Act that reserved a priority withdrawal right for those two towns.

The SJC concluded the 1884 Act remained viable and still gave each of the three towns the ability to use Nagog Pond as a water supply. However, the SJC also ruled the legislature's decision to adopt the WMA and its structure of protecting and grandfathering existing withdrawals under a separate classification of registration, effectively repealing the priority provision in the 1884 Act.

Concord believes the SJC decision strikes the proper balance between Concord's Registration under the WMA and Acton and Littleton's continuing right to seek local and state approvals to use Nagog Pond under the 1884 Act. Concord is also pleased that its investments in and stewardship of Nagog Pond will continue to benefit Concord's water customers as well as potential future users by Littleton or Acton.

Mackie Shea Durning PC successfully represented Concord in the Land Court and SJC on this Water Law case. The team of attorneys working with the Town of Concord on this matter included Peter Durning, John Shea, Gail Magenau Hire and Peter Vetere.

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