



TOWN OF LEVERETT
Massachusetts 01054

August 8, 2007

George L. Darey, Chairman
Massachusetts Fisheries & Wildlife Board
Massachusetts Division of Fisheries and Wildlife
1 Rabbit Hill Rd
Westborough, MA 01581

Dear Chairman Darey:

Our attention has been drawn to the recent meeting of the Massachusetts Fisheries & Wildlife Board where permission was given for Nestle Corporation to investigate water resources at the Montague Plains.

We appreciate the statements of concern about the Nestle proposal voiced by several members of the Board at the meeting.

We write to express our own concern and to apprise the Board of a water sustainability study now in progress funded by the Town of Leverett.

Water resources in the northeastern United States are under constant threat by contamination, over-use, and climatic variability. Maintenance and availability of clean drinking water is extremely important, and management of water resources is especially difficult in areas with distributed water supplies (e.g., residential water wells).

The Town of Leverett has just commissioned a new study of our water resources, revisiting and extending a 1974 study, to aid the Town in planning decisions and assessment of our by-laws. The study is led by Professor David Boutt, a hydrogeologist with the Department of Geosciences, University of Massachusetts-Amherst. The study is guided by concern for water sustainability under conditions of changing and intensifying use, with a special focus on ground water - surface water interaction.

Article 97 of the Amendments of the Constitution of Massachusetts guarantees that: "The people shall have the right to clean air and water, ... and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose."

The preamble of land and resource disposition policy of the Division of Fisheries and Wildlife acknowledges the fundamental principles of Article 97: "The DFW has the duty to carry out its statutory responsibilities in such a manner that the people's right to the natural and aesthetic qualities of the environment is protected for their benefit and enjoyment."

Massachusetts General Laws, Chapter 12, Section 11D, establishes a division of environmental protection in the department of the attorney general and gives the attorney general wide authority "to prevent or remedy damage to the environment caused by any person, body corporate or politic or any agency, department, board, commission, division or authority of the commonwealth or any political subdivision thereof."

M.G.L. Ch. 12, s. 11D also requires "each agency, board, commission, division and authority of the commonwealth" to "give written notice to the attorney general of all adjudicatory proceedings or public hearings in which damage to the environment is or may be at issue...." While the recent meeting of the Board was not a "hearing," in that public comments were not permitted, we believe that the Board should provide notice to the Attorney General of any further discussion of the Nestle (or other similar) proposal.

As used in section 11D, "'damage to the environment' shall mean any destruction, damage or impairment, actual or probable, to any of the natural resources in the commonwealth and shall include, but shall not be limited to ... the impairment or eutrophication of rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources...."

M.G.L. Chapter 21A, Section 2, defining the duties and functions of the Executive Office of Environmental Affairs, states that "providing safe water to drink and clean air to breathe is a basic mandate."

M.G.L. Chapter 30, Section 61, establishing an environmental protection process, states, "Unless a clear contrary intent is manifested, all statutes shall be interpreted and administered so as to minimize and prevent damage to the environment. Any determination made by an agency of the commonwealth shall include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact." The statutory definition of "damage to the environment" reiterates the language in Ch. 12, s. 11D, quoted above.

Under the "hard-look" test applied in Massachusetts environmental law, an Environmental Impact Statement is required if the potential for environmental damage is "not insignificant." *Secretary of Environmental Affairs v. Massachusetts Port Authority*, 366 Mass. 755, 323 N.E.2d 329 (1975).

M.G.L. Chapter 21G, Section 3, of the Massachusetts Water Management Act, requires the adoption of "principles, policies and guidelines necessary for the effective planning and management of water use and conservation in the commonwealth ... as necessary and proper to ensure an adequate volume and quality of water for all citizens of the commonwealth, both present and future."

The concerns of the Town of Leverett, manifested in our funding of the water sustainability study and otherwise, lead us to request that the Board notify us of any and all further activity, including both discussion and formal hearings, regarding the Nestle (or any other similar) investigation of water resources in our region. We request that this notification be

by U.S. Mail or other direct written contact, in addition to any public notice that may be published in newspapers or otherwise.

By copy of this letter, we also hereby request the attention of the Attorney General's Division of Environmental Protection, the Executive Office of Energy and Environmental Affairs, and the Department of Environmental Protection to this matter.

Regards,

Leverett Select Board:

Richard P. Brazeau

James C. Lyons

Peter d'Errico

CC:

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