THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER COUNCIL

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Appeal of Town of Nottingham
Docket No. 04-15 WC

OBJECTION TO MOTION TO RECONSIDER

NOW COMES the Department of Environmental Services ("Environmental Services"). by and through its attorneys, the Office of the Attorney General, and respectfully objects to the Motion to Reconsider filed on behalf of the Town of Nottingham. In support of this Objection, Environmental Services states as follows:

1. This is an appeal of a large groundwater withdrawal permit issued to USA Springs pursuant to RSA ch. 485-C. According to Nottingham's Motion, during its meeting on October 13, 2004, the Water Council voted to dismiss Nottingham's appeal before the Council. As noted by Nottingham in its Motion, the Council has not yet issued a written decision.

2. Env-WC 203.29 (Motion for Rehearing) governs Nottingham's appeal. The Council's rule states in relevant part (emphasis added):

> (a) Any person whose rights might be directly affected by a decision of the council may file with the council a motion for rehearing **within 30 days of the date the written decision** is issued. Copies of the motion shall also be delivered or sent to all other parties of record.

3. Because the Council has not yet issued a written decision, Nottingham's Motion is premature. As such, it should not be accepted by the Council.

4. Furthermore, even if the Motion were timely filed, it should be denied as it fails to raise issues not previously considered by the Council and should be denied as a matter of law.

5. RSA 485-C:21, VI provides the only means by which appeal can be taken of a decision under the large groundwater withdrawal permit statute. Specifically, RSA 485-C:21, VI states:

> Rehearings and appeals from a decision of the department under this section shall be in accordance with RSA 541.

6. RSA 541, which governs appeals in this case, requires (1) a motion for rehearing be filed with Environmental Services (RSA 541:3) and (2) an appeal after a decision on the motion for rehearing can only be filed with the New Hampshire Supreme Court (RSA 541:6).

7. An appeal from the decision of Environmental Services is directly to the Supreme Court.

8. Given the specific, unambiguous. language that requires all appeals of large groundwater withdrawal permits go directly to the Supreme Court, the Water Council does not have jurisdiction to hear the appeal filed by the Town of Nottingham.

9. Therefore, the Council's decision to dismiss the appeal is legally correct, and the Town's Motion to Reconsider should be denied.

WHEREFORE, for the reasons as stated above, Environmental Services respectfully requests that the Council:

A. Deny the Town's Motion to Reconsider as being premature; or

B. Dismiss the Town's Motion to Reconsider as it fails to raise any issues of law or fact not previously considered by the Council, and the Council's decision is legally correct; and

D. Grant such other relief as the Council deems just and equitable.

RESPECTFULLY SUBMITTED

State of New Hampshire
Department of Environmental Services

By its Attorney,
Kelly A. Ayotte
Attorney General

COPY

By: _____

Richard W. Head
Senior Assistant Attorney General
33 Capitol Street
Concord, New Hampshire
(603) 271-3679

CERTIFICATION

I certify that a copy of this Motion has been forwarded via facsimile and first class mail to E. Tupper Kinder, Esq., Mark Beliveau, Esq., Armand Hyatt, Esq. and Bill McCann.

COPY

Richard W. Head