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September 30, 2005

PHASE I DRAFT RECORD OF DECISION

PROJECT NAME : Swansea Desalination Project
PROJECT MUNICIPALITY : Swansea
PROJECT WATERSHED : Narragansett Bay
EOEA NUMBER : 13183
PROJECT PROPONENT : Swansea Water District
DATE NOTICED IN MONITOR : August 24, 2005

Pursuant to the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby **propose to grant a waiver** to allow Phase I of the project as defined in this Record of Decision to proceed to the state permitting agencies pending preparation of an Environmental Impact Report (EIR) for the project as a whole. In a separate Certificate issued today, I have allowed the proponent to prepare an EIR for the project as a whole and laid out the scope for the required EIR.

Project Description

The proposed desalination plant project has three elements: installation of an intake structure and pumping station on the Palmer River, including a pipeline to transmit the raw water; construction of a desalination plant and an ultrafiltration/membrane filtration plant at the site of an existing wellfield; and construction of a brine concentrate pipeline and discharge structure back to the Palmer River.

The project originally underwent MEPA review in January 2004. As described in the Environmental Notification Form (ENF) the project involved a proposed development of a desalination plant to supply up to 3 million gallons per day (mgd) of treated potable water (with a total raw water withdrawal of 4.3 mgd) to the Town of Swansea. The proposed project included

construction and operation of an intake structure and pumping station on the Palmer River; transmission infrastructure to transport raw and treated water; a desalination plant with storage tanks and backwash lagoons; a discharge pipe and discharge diffuser for disposal of brine concentrates; and associated supporting infrastructure. The proponent's preferred location for the desalination plant was approximately 2000 feet east of the proposed intake on a five-acre site of an abandoned school.

In October 2004 a Notice of Project Change (NPC) was submitted on this project. The project changes included the relocation of the proposed facility to a 3.5-acre portion of the existing Vinnicum wellfield property, located about two miles to the east of the Palmer River, and a proposal to construct a smaller facility.

In June 2005 my predecessor determined that the Final Environmental Impact Report (FEIR) submitted on this project was not adequate and required the preparation of a Supplemental Final Environmental Impact Report (SFEIR).

The proponent has requested in a NPC filed in conjunction with this Phase One waiver that the project be separated into two phases. Phase One of the project is composed of building the facility for the treatment of the Vinnicum Wellfield and Phase Two is comprised of the desalination project. A separate Certificate will be issued today on the NPC.

Jurisdiction

The project is undergoing MEPA review and requires the preparation of a mandatory EIR pursuant to Section 11.03 (4)(a)1.a. of the MEPA regulations, because the project, as originally submitted, involved new withdrawal of more than 2.5 mgd from a surface water source. The project also meets a filing threshold pursuant to Section 11.03 (3)(b)6. of the MEPA regulations for construction of a bottom-anchored structure in tidelands with greater than 2,000 square feet of base area. At a minimum, the project will require several permits and approvals from the Department of Environmental Protection (DEP), including a Chapter 91 License, a Section 401 Water Quality Certificate, a New Source Approval, and approvals for operation of a water treatment plant and discharge of Reverse Osmosis Reject Water. The project will also require an Order of Conditions from the Swansea Conservation Commission, and hence a Superseding Order from DEP if the local Order were appealed. In addition, the project will require a National Pollutant Discharge Elimination System (NPDES) permit from the United States Environmental Protection Agency (USEPA), and a permit from the United States Army Corps of Engineers (USACOE).

The proponent may seek financial assistance from the Commonwealth for the project. If the proponent seeks financial assistance from the Commonwealth for the project, MEPA jurisdiction would extend to all aspects of the project with the potential to cause significant Damage to the Environment as defined in the MEPA statute. If the proponent does not seek

financial assistance from the Commonwealth for the project, MEPA jurisdiction would extend to those aspects of the project that may cause significant Damage to the Environment and that are within the subject matter of required or potentially required state permits. In this case, the broad subject matter of the numerous required or potentially required state permits effectively confers MEPA jurisdiction over all aspects of the project with the potential to cause significant Damage to the Environment.

Waiver Request

On August 15, 2005, the proponent requested that I grant a waiver to allow Phase One of the project to proceed in advance of completion of the EIR. The waiver request was submitted with the Notice of Project Change (NPC). As proposed, Phase One consists of the treatment of the Vinnicum Wellfield. The Vinnicum Wellfield facility will treat up to 1.15 million gallons per day of well water to remove elevated levels of iron, manganese, and organics. Access to this additional water will allow the Swansea Water District to reduce the tight controls currently in place to reduce water usage by its customers. The proposed treatment plant will utilize a membrane filtration process to remove the pollutants from the well water, as well as having standard chemical addition capabilities. Treated water will be pumped into the existing water distribution system. Solids from the filtration process will be removed in two dewatering lagoons and trucked from the site.

Criteria for Waiver

Section 11.11 of the MEPA Regulations provide that I may grant a waiver from any provisions of the MEPA regulations not specifically required by the MEPA statute upon a finding that strict compliance with the regulations will result in undue hardship and will not serve to minimize or avoid Damage to the Environment. Further, when a proponent seeks to proceed with Phase I of a project pending the preparation of an SFEIR for the project as a whole, the Phase I waiver request must meet additional tests including a test of insignificance and a test of severability.

Criteria for a Phase I Waiver

Section 11.11 of the MEPA Regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would: a) result in undue hardship to the proponent, unless based on delay in compliance by the proponent; and b) not serve to minimize or avoid damage to the environment.

In the case of a partial waiver of a mandatory EIR review threshold that would allow the proponent to proceed to Phase One of the project prior to completing the EIR process, this

finding shall be based on one or more of the following circumstances: 1) the potential environmental impacts of Phase One are insignificant; 2) ample and unconstrained infrastructure and services exist to support Phase I; 3) the project is severable, such that Phase One does not require the implementation of any other future phases; and 4) the agency action on Phase One will contain conditions that ensure due compliance with MEPA.

Findings:

1. The potential impacts of the project for Phase One are insignificant.
 - Impacts are limited to the construction activity required to build the treatment plant and associated facilities, and residual disposal through settling lagoons. Impacts will be mitigated by employing erosion controls and runoff will be managed in accordance with the MA Stormwater Management Policy.
 - The treatment plant will be located next to an existing infrastructure to minimize impacts to the interior of the 80 acre forested property.
2. Ample and unconstrained infrastructure currently exists to support Phase One.
 - No additional off-site work will be needed to upgrade the existing transportation of water supply infrastructure.
3. The project is severable.
4. The permitting associated with Phase One can include sufficient conditions to ensure due compliance with MEPA prior to implementation of later phases.
 - The condition of decisions and permits on Phase One of the project will state that the proponent will not proceed with any future phase of the project until it adequately complies with the MEPA process.
5. The proponent must submit a SFEIR that resolves the remaining issues outlined in the June 16, 2005 FEIR Certificate.

Based on these findings, it is my judgment that the waiver request has merit, meets the tests established in Section 11.11 of the MEPA Regulations, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I propose to grant the waiver for Phase One of the project as defined in this Record of Decision. This Draft Record of Decision shall be published in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

September 30, 2005

Date


Stephen R. Pritchard

EOEA#13183

DROD Certificate

09/30/05

Comments received:

09/13/05 Department of Environmental Protection, SERO
09/14/05 Massachusetts Coastal Zone Management Office

SRP/ACC/acc