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October 31, 2008

DRAFT RECORD OF DECISION

PROJECT NAME : Windsor Reservoir Dam Reconstruction  
PROJECT MUNICIPALITY : Windsor, Hinsdale, Dalton  
PROJECT WATERSHED : Housatonic  
EEA NUMBER : 14316  
PROJECT PROPONENT : Dalton Fire District, Board of Water Commissioners  
DATE NOTICED IN MONITOR : September 24, 2008

Pursuant to the Massachusetts Environmental Policy Act (M.G.L.c.30, ss. 61-62 I) and Section 11.11 of the MEPA Regulations (301 CMR 11.00), I have reviewed this project and hereby **propose to grant a waiver** from the categorical requirement to prepare an Environmental Impact Report (EIR). In a separate Certificate also issued today, I have set forth the outstanding issues related to the project that can be addressed by permitting agencies.

Project Description

The Windsor Dam serves as the impoundment for the Windsor Reservoir, located in the Towns of Windsor and Hinsdale with downstream discharge to Wahconah Falls located in the Town of Dalton. As described in the Expanded Environmental Notification Form (EENF), the project proposes the re-construction of the Windsor Dam, an existing stone masonry arch dam, located in the Town of Windsor and owned and operated by the Dalton Fire District through its Board of Water Commissioners. Windsor Dam is a 51-foot high by 245-foot long stone masonry and concrete structure that was constructed in the mid-1800s with a holding capacity of approximately 900-acre-feet to provide public water storage and supply water to the Dalton Water District. The reservoir is fed primarily from May Brook, Windsor Brook and Cady Brook. The dam is located in a rural area immediately upstream of residential and commercial zoned areas of the Town of Dalton. The dam impoundment has been partially filled in with sediment. During major rainfall events, water flows directly on top of the impounded sediment and falls over the dam's spillway.

In October 2005, the Department of Conservation and Recreation (DCR) Office of Dam Safety (ODS) determined the dam to be in an “Unsafe” condition and having a “High” hazard potential. The ODS ordered the Proponent to drain the impoundment to its low level outlet elevation. On April 25, 2008, DCR issued an Emergency Order citing the compromised integrity of the stone masonry and concrete spillway and impoundment structure and its determination that the dam posed a threat to public health and safety. The Dam Safety Order required the Proponent take actions make necessary emergency repairs to the impoundment to abate the threat to public safety.

### Jurisdiction

The project is subject to the preparation of a mandatory EIR pursuant to Section 11.03(3)(a)(4) and 11.03(3)(b)(1)(d) of the MEPA regulations because it will result in an expansion of 20 percent in the impoundment capacity of an existing dam and because it will impact more than 5,000 square feet (sf) of bordering vegetated wetlands (BVW). The project will require a Programmatic General Permit from the U.S. Army Corps of Engineers (ACOE) pursuant to Section 404 of the Clean Water Act; a Chapter 253 Dam Safety Permit – Jurisdictional Determination review from DCR; a 401 Water Quality Certificate from the Department of Environmental Protection (MassDEP); and a Chapter 91 License review from MassDEP. The project is being undertaken pursuant to a Declaration of Emergency issued by ODS and is therefore exempt from the requirement to file a Notice of Intent prior to undertaking any work. The Proponent has requested a full waiver from the requirement for the preparation of an EIR to comply with outstanding Dam Safety Orders to address the condition of the structure in an expedient manner. DCR’s ODS has indicated its support for the project and the Proponent’s Waiver request in its comments on the EENF. Because the Proponent is seeking financial assistance for the project from the Commonwealth (\$2.5 million – Mass. Energy and Environmental Bond Bill), MEPA jurisdiction extends to all aspects of the project that may cause Damage to the Environment as defined in the MEPA regulations, including land alteration, wetlands, rare species, drainage and dam safety.

### Waiver Request

The proponent submitted an Expanded Environmental Notification Form (EENF) for the project with a request for a waiver from the requirement for the preparation of an EIR. The waiver request was discussed at the consultation/scoping session for the project which was held on October 7, 2008.

### Standards for All Waivers

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) Result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and,
- (b) (b) Not serve to avoid or minimize Damage to the Environment.

#### Determinations for an EIR Waiver

The MEPA regulations at 301 CMR 11.11(3) state that, in the case of a waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) The project is likely to cause no Damage to the Environment; and,
- (b) Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction.

#### Findings

Based upon the information submitted by the Proponent and after consultation with the relevant state agencies, I find that the waiver request has merit and that the Proponent has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to prepare a Mandatory EIR for the project would result in undue hardship for the Proponent. The Proponent is required to comply with outstanding Dam Safety Orders to address the condition of the structure in an expedient manner and the preparation of an EIR would delay the implementation of remedial measures at the dam site. Breaching of the dam will limit the risk of an uncontrolled breach in the future. DCR's ODS has indicated its support for the project in comments on the EENF.

I also find that compliance with the requirement to prepare an EIR for the project would not serve to avoid or minimize Damage to the Environment. In accordance with 301 CMR 11.11(3), this finding is based on my determination that:

1. The project is not likely to cause Damage to the Environment:

The project will have an overall positive impact on the environment. The impoundment is filled with a significant amount of sediment. The existing Reservoir has been drawn down such that the demolition and reconstruction of the dam will not include the dewatering of a significant pond. Approximately 2,100 cubic yards of material will be excavated from the existing impoundment area. In order to mitigate additional downstream sediment transport during construction, a temporary coffer dam will be installed at the downstream limit of work. According to the information provided in the EENF, the new dam will have a larger structural footprint and will result in permanent impacts to approximately 5,200 square feet of additional Land Under Water (LUW) wetlands, approximately 100 lf of Bank associated with a section of stream channel located immediately below the dam, and approximately

2,500 sf of Riverfront Area associated with the proposed tree and shrub clearing of the embankment adjacent to the downstream dam face.

The project is being undertaken pursuant to a Declaration of Emergency issued by ODS and is therefore exempt from the requirement to file a Notice of Intent prior to undertaking any work.

The Proponent has developed a Sediment and Erosion Control Plan and Construction Sequence for the project. Construction is planned to begin in early fall during the low-flow season to mitigate adverse impacts to fisheries. Best Management Practices (BMPs) including hay bales and silt fences, a stone check dam, and erosion control blankets will be used to prevent against the erosion and discharge of on-site sediment.

The project involves a number of off-site mitigation projects for resource area impacts including: the removal of the existing May Brook Dam structure, restoration of sections of the May Brook stream corridor located upstream of the Windsor Reservoir Dam project site, and the restoration of sections of the Wahconah Falls Brook stream corridor located downstream of the project site.

The Proponent asserts that the removal of May Brook Dam will result in an improvement to the cold water fisheries located in this area and the May Brook ecosystem. I concur that dam removal generally improves the natural capacity of a resource area. MassDEP has stated in its comments on the EENF that it supports the Proponent's request for an EIR waiver and that it will address any potential requirements for wetlands replication during the permitting process.

The Proponent has submitted a Project Notification Form (PNF) to the MHC. On March 13 2, 2008 MHC determined that the project is unlikely to affect significant historic or archaeological resources. Copies of correspondence between the Proponent and MHC were submitted with the EENF.

2. Ample and unconstrained infrastructure facilities and services exist to support those aspects of the project within subject matter jurisdiction:

The project consists of a dam removal and reconstruction that will be supported by existing infrastructure facilities or services.

Access to the project site will be provided via existing north and south access roads. The north access road is a 500 lf gravel road that will serve as the primary site accessway from Wahconah Falls Road in Windsor. The south access road, a 4,000 lf long improved cart path that originates off Adams Road in Hinsdale, will require grading and new crushed stone improvements to make serviceable for project construction activities.

Conclusion

Based on these findings, I have determined that this waiver request has merit, and am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on November 10, 2008 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on November 24, 2008. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision (FROD) or a Scope within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6).

October 31, 2008

Date

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Ian A. Bowles, Secretary

## Comments received:

09/29/2008	State Representative Denis E. Guyer
10/16/2008	Tighe & Bond
10/20/2008	Berkshire Regional Planning Commission
10/21/2008	Congressman John W. Olver
10/22/2008	Natural Heritage and Endangered Species Program (NHESP)
10/24/2008	Department of Conservation and Recreation (DCR)
10/24/2008	Department of Environmental Protection (MassDEP) – WERO
10/24/2008	MA Riverways Program

IAB/NCZ/ncz  
EEA #14316 DROD