

**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **APPLICATION NOs.:**
DIV-200702824

PEQUOT HOLDINGS TWO LLC : **MARCH 10, 2010**

PROPOSED FINAL DECISION

**I
SUMMARY**

Pequot Holdings Two LLC (Pequot/the Applicant) has filed an application with the Department of Environmental Protection (DEP) Inland Water Resources Division for a permit to divert waters of the state for use at the Pequot Golf Club in Stonington. The permit application proposes to pump water for golf course irrigation, maintenance, and potable water needs from three bedrock wells and from a 1.08-acre holding pond.

The DEP issued a Notice of Tentative Determination (NTD) on August 14, 2009 indicating its intent to issue the requested permit for the proposed activity and waive any public hearing. A timely petition for a hearing was submitted to the DEP and a hearing schedule was established. The parties are the Applicant, DEP, and the Sylvia's Pond Conservation Association (the Association). The Association was granted status as an intervening party prior to the release of the NTD. A hearing was held in Stonington on January 7, 2010 for the collection of public comment. The parties submitted a signed stipulation dated February 8, 2010 (Attachment A) that agreed to additional permit terms and conditions as a means to resolve the intervening party's issues regarding the proposed diversion's potential impacts downstream on Sylvia's Pond.

Through the presentation of substantial evidence, the Applicant has demonstrated that the proposed activity, if conducted in accordance with the proposed draft permit and the additional

permit conditions agreed to in the stipulation, complies with the relevant statutory and regulatory requirements articulated at General Statutes §§22a-366 through 22a-379 and Regs., Conn. State Agencies §22a-377(c) et seq. Therefore, I recommend that the water diversion permit be issued to the Applicant.

II
DECISION

A
FINDINGS OF FACT

The following findings of fact are based on a review of the entire record of this proceeding and on reasonable inferences drawn from the evidence.

I
Procedural Background

1. Pequot filed an application with the DEP on December 28, 2007 for a permit to withdraw water from on-site bedrock wells and an irrigation pond to supply water to its golf course. DEP notified Pequot that its application was insufficient on September 22, 2008. Pequot provided a response to this notice on November 20, 2008 that provided the information deemed missing from the original application. The DEP issued a Notice of Tentative Determination (NTD) indicating its intent to issue the requested permit and waive the public hearing. The NTD was published in The Day of New London on August 14, 2009. (Exs. APP-3, 4, DEP-4, 7 and 11.)

2. On September 11, 2009, a petition for a public hearing signed by 25 members of the public was submitted to DEP. The petition was filed in a timely fashion and a hearing schedule was established to provide an opportunity for public comment on the record and for the collection of evidence from the parties. (Ex. INT-6.)

3. Notice of the hearing was published on December 7, 2009 in The Day of New London. The hearing was held on January 7, 2010 in Stonington for the collection of public comment. The parties submitted a signed stipulation agreeing to additional permit terms and conditions and agreeing that the presentation of additional evidence was unnecessary. (Exs. DEP-1, 3, and 6.)

Water System Description

4. The Applicant owns and maintains an 18-hole public golf course in Stonington operating under the name Pequot Golf Club. The course is situated on 127 acres with irrigated turf representing 30 acres. The irrigation system and a 1.08-acre holding pond were installed in 2000 and 2001. Pequot uses water from three bedrock wells to serve its irrigation, maintenance, and potable water needs. Pequot has operated its irrigation system since 2001 without a permit. DEP required Pequot to file its application for an individual permit as part of a consent order. (Exs. APP-3, DEP-7, 8.)

5. Pequot uses Well 1 for irrigation and maintenance needs. It discharges irrigation water to the holding pond and can also directly supply water to the irrigation system for holes 4 through 8. Well 2 is used solely for irrigation purposes and discharges directly to the holding pond. Well 3 is used solely by the clubhouse for potable water needs. During the growing season, Pequot withdraws a maximum 150,000 gallons per day (gpd) from the three bedrock wells. The system is operated manually and each well is metered to determine actual use. Pequot withdraws a maximum 200,000 gpd from the holding pond to supply the irrigation system. (Ex. APP-3.)

Site Resources, Impacts, and Mitigation

6. There are nine mapped wetland areas within the golf course consisting primarily of palustrine forested wetlands. Two of the nine wetlands areas have potential vernal pools. The primary function and value of the wetlands areas are local wildlife habitat, pollution renovation, and nutrient uptake. No endangered, threatened, or special concern wildlife species are present at the site. (Ex. APP-3.)

7. Stony Brook runs in a southerly direction approximately four hundred feet east of the Pequot Golf Club's eastern boundary. A stream tributary to Stony Brook runs in an easterly direction across the 15th and 16th holes of the golf club before it joins an unnamed tributary that eventually drains to Stony Brook. (Ex. APP-3.)

8. The Applicant conducted a five-day aquifer pumping test to simulate the impact of the withdrawal from the bedrock wells on adjacent water resources. The Applicant's consultant monitored water levels in the three on-site bedrock wells, seven private bedrock wells, and eleven streambed and wetlands piezometers. Three stream gauges, two in Stony Brook and one in an unnamed tributary to Stony Brook were also monitored during the pumping test. The withdrawals have a minimal impact on groundwater contributions to Stony Brook. A nearby private well is also impacted but does not lose well capacity. Wetland groundwater levels are not impacted and flows in Stony Brook actually increased in the downstream direction. The increase in the flows in Stony Brook demonstrates that natural discharge into the Brook offsets any loss of groundwater contribution attributable to the pumping. (Exs. APP-3, 4.)

9. The proposed activity has no impact on public drinking water supplies. Notices were sent to all private well owners of record within a 2500-foot radius of the wells requesting that they allow their wells to be monitored during the pumping test. Of the seven private wells monitored during the pumping test, the well at 146 Wheeler Road experienced drawdown indicating it is influenced by the pumping from the on-site wells. Under the draft permit, any issues with the yield of this well will be reported to the Applicant and DEP. The well will be tested and, if necessary, corrective action will be taken to restore the yield to pre-permit conditions. No impacts to wells are anticipated in areas hydrologically upstream or outside the 2500-foot zone of influence. (Exs. APP-3, DEP-6, 7 and 15.)

10. The proposed diversion has no impact on wastewater treatment and waste assimilation, water quality in Stony Brook, or flood management. There are no impacts to wetlands and wetlands habitats, fish habitat, or wildlife and wildlife habitat. There are no negative impacts to power generation, agriculture, or recreation. The proposed diversion and the related success of the course have a positive benefit both socially and economically in Stonington and southeast Connecticut. (Exs. APP-3, 4, DEP-10.)

11. The proposed draft permit has a condition that guarantees the yield of the private bedrock well impacted by the proposed withdrawal. The Applicant has agreed that such a condition is

proper. Additional special terms and conditions will address the minimal impact that the proposed diversion may have on the groundwater contribution to Stony Brook and downstream resources supplied by Stony Brook. These terms and conditions include: stream monitoring and reporting using the existing in-stream piezometers; a monthly maximum withdrawal from the three bedrock wells of 3.4 million gallons; and a drought response plan that will require percentage reductions in water use in conjunction with varying levels of drought stage announced by the DEP Commissioner or the Aquarion Water Company's Mystic system. The added involvement of the local water system ensures that any locally unique weather patterns and precipitation amounts are considered in any drought response plan. (Exs. DEP-6, 15, APP-3, 4.)

12. The Applicant will implement signage to inform course users and staff of the presence and value of the potential vernal pools and other on-site wetlands. Pequot will direct course traffic away from these areas. The Applicant employs several course management techniques to conserve and minimize water use. These include:

- A computerized irrigation management system equipped with flow management;
- Sprinkler adjustments to target desired irrigation areas;
- Hand watering to apply water more efficiently;
- Selection of nozzle sizes based on conditions throughout the system;
- Winterization and springtime charging of system with checks for leaks;
- Regular inspection for leaks and use of isolation valves to shut off leaking areas to avoid water loss;
- Use of early morning and evening irrigation to avoid evaporation;
- Use of low-water turf grasses and native vegetation;
- Use of weather forecasts to schedule irrigation and use of computer equipment to pause irrigation during rain events;
- Use of nutrients, soil management and wetting agents to improve efficiency of irrigation
- Pruning of trees to avoid competition for water and nutrients; and
- Limiting cart traffic to cart paths to avoid turf wear and soil compaction

(Exs. APP-3, 4, DEP-6.)

Need for the Diversion and Alternatives Analysis

13. The Applicant evaluated several alternatives as part of its application process. The “no action” alternative is not feasible. Pequot needs the amount of water requested to keep the golf course playable and maintained to its current level of quality. It cannot rely solely on precipitation to serve its water needs. Other sources of water were evaluated as alternatives. Surface water withdrawals from the tributary to Stony Brook and from Stony Brook itself do not provide adequate flow to supply water needs during the summer months. The use of stormwater was evaluated but eliminated because stormwater alone would not provide an adequate water supply. Stormwater collected in the current holding pond is already used to supplement the water withdrawn from its wells. The installation of additional ponds or the expansion of the current pond to collect additional stormwater is not feasible due to site constraints. The course cannot use water from the public water supply due to the cost of connecting the system and the possibility that excess water from the system is not available to serve the course’s needs. The use of treated effluent from the nearest wastewater facilities is not prudent because of cost factors and potential DEP and Department of Public Health concerns. Soil conditions and geological formations make the use of overburden groundwater impossible. The use of the bedrock groundwater is the most prudent and feasible means to serve the golf course’s water needs. (Exs. APP-3, 4.)

B***CONCLUSIONS OF LAW***

Pequot requires a diversion permit for the proposed use of water from its three bedrock wells because it involves the withdrawal of water in excess of 50,000 gpd. In order to issue a permit the Commissioner must determine that the application is complete and the proposed project is consistent with the applicable statutes and regulations.

1

Compliance with General Statutes § 22a-369

General Statutes § 22a-369 specifies the minimum information required by the Commissioner in an application to divert waters of the state. The application presented by Pequot provided the required information to the DEP for its review. In instances where DEP required additional information, the Applicant complied as part of its response to the Notice of Insufficiency.

2

***Compliance with General Statutes §22a-373(b) and
Regulation of Connecticut State Agencies §22a-377(c)-2***

The statute and regulations require the Commissioner, in making her decision, to consider the factors listed below. The Applicant, in its study of the impacts of the proposed diversion and the potential alternatives to the diversion, adequately addressed these issues in its initial application and in its subsequent submittal responding to DEP staff's Notice of Insufficiency.

(1) The effect of the proposed diversion on related needs for public water supply including existing and projected uses, safe yield of reservoir systems and reservoir and groundwater development;

The proposed diversion will have no impact on these resources or any planned uses of them as drinking water supplies.

(2) The effect of the proposed diversion on existing and planned water uses in the area affected such as public water supplies, relative density of private wells, hydropower, flood management, water-based recreation, wetland habitats, waste assimilation and agriculture;

The proposed diversion's minor impact to groundwater supply to Stony Brook is adequately addressed by the permit terms and conditions, including stream monitoring requirements, monthly maximum withdrawal limits, and the drought response plan. The impact to the private well at 146 Wheeler Road is also adequately covered by the permit. The

applicant's assessment of other potential impacts correctly concluded that there were no additional impacts from the proposed withdrawal.

(3) Compatibility of the proposed diversion with the policies and programs of the state of Connecticut, as adopted or amended, dealing with long-range planning, management, allocation and use of the water resources of the state;

The Applicant's approach minimizes its use of water through the use of several best management practices. Its drought response plan is considerate of state and local concerns.

(4) The relationship of the proposed diversion to economic development and the creation of jobs;

The proposed diversion ensures the economic viability of a locally popular recreational facility. It will continue to provide seasonal employment opportunities in southeastern Connecticut.

(5) The effect of the proposed diversion on the existing water conditions, with due regard to watershed characterization, groundwater availability potential, evapotranspiration conditions and water quality;

The proposed project will have minimal impact on groundwater flow to Stony Brook. The permit terms and conditions adequately address this minor impact.

(6) The effect, including thermal effect, on fish and wildlife as a result of flow reduction, alteration or augmentation caused by the proposed diversion;

No impact to fish and wildlife will occur.

(7) The effect of the proposed diversion on navigation;

There is no impact to navigation.

(8) Whether the water to be diverted is necessary and to the extent that it is, whether such water can be derived from other alternatives including but not limited to conservation;

The applicant has demonstrated its need for a consistent water supply during the growing season. Its evaluation of alternatives was comprehensive and demonstrated that no prudent and feasible alternative exists to supply its water needs.

(9) Consistency of the proposed diversion with action taken by the Attorney General, pursuant to sections 3-126 and 3-127;

This section is inapplicable.

(10) The interests of all municipalities which would be affected by the proposed diversion.

The impacts of the proposed project are limited to Stonington. Continued operation of Pequot Golf Club is of significant interest to the Town of Stonington from a recreational and economic standpoint.

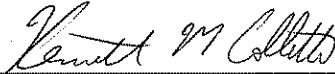
III PUBLIC COMMENT

Several individuals provided comment on the record at the evening hearing session held on January 7, 2010 and in writing after the hearing. The majority of these comments were in favor of Pequot's application. These comments cited the great value of Pequot as an affordable recreational area and as stewards of 127 acres of open space. In addition to its water conservation efforts, supporters cited Pequot's impressive record in establishing migratory bird habitat and maintaining an overall natural setting by minimizing the manicured areas of the course. The comments concerning impacts to private wells that were not monitored during the pumping test were specifically and adequately addressed by DEP and that response was provided for the record.

IV CONCLUSION AND RECOMMENDATION

The applicant provided the required information and analysis of the proposed diversion to support its application. The proposed activity, if conducted in accordance with the terms and conditions and recommended proposed draft permit, complies with the applicable statutes and

regulations. I recommend that the Commissioner issue the proposed water diversion permit (Attachment B) without delay.



Kenneth M. Collette, Hearing Officer

SERVICE LIST

Pequot Holdings Two LLC
Application No. DIV-200702824

PARTY

REPRESENTED BY

The Applicant

Pequot Holdings Two LLC
c/o Robert D. Tobin
43 Broad Street
New London, CT 06320

Robert Tobin, Esq.
rtobin@tcors.com

David Murphy
davem@miloneandmacbroom.com

Department of Environmental Protection

Inland Water Resources Division
79 Elm Street
Hartford, CT 06106

Doug Hoskins
douglas.hoskins@ct.gov

Intervening Party

Sylvia's Pond Conservation Association
c/o Stuart Cole
132 Mistuxet Ave.
Mystic, CT 06355

Stuart Cole
stugc@prodigy.net

Peter Harvey
harveyai@snet.net

INTERESTED PERSON

Erica Lindberg Gourd
28 Quana Duck Road
Stonington, CT 06378
ericalindberg@msn.com

**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

OFFICE OF ADJUDICATIONS

IN MATTER OF : **APPLICATION NO.**
PEQUOT HOLDINGS TWO, LLC : **DIV-200702824**
: **FEBRUARY 8, 2010**

STIPULATION

1. On December 28, 2007, the Applicant, Pequot Holdings Two, LLC, filed an application with the State of Connecticut Department of Environmental Protection for the diversion of water pursuant to Conn. Gen. Stat. §§22a-365 through 22a-378a at the Pequot Golf Course in Stonington, Connecticut.

2. On May 27, 2008, the Intervenor, Sylvia's Pond Conservation Association, Inc., filed a petition to intervene claiming that the proposed diversion would adversely affect environmental resources in and around Sylvia's Pond located in Stonington, Connecticut.

3. On August 14, 2009, the Department of Environmental Protection issued a Notice of Tentative Determination and Intent to Waive Public Hearing in which it proposed to issue a permit in accordance with a Draft Permit.

4. The Draft Permit proposed to authorize the Applicant to withdraw a maximum of 0.200 mgd from an irrigation pond and a combined maximum of 0.150 of ground water per day from three bedrock wells subject to certain Special Conditions contained in the Draft Permit.

5. On September 11, 2009, a Petition to Request Hearing on Diversion of Water was filed with the Department of Environmental Protection signed by twenty-six individuals.

6. On October 23, 2009, a status conference was held and hearing dates established.

7. On January 7, 2010, the public hearing commenced at Stonington High School in Stonington, Connecticut.

8. The Applicant and Intervenor have conducted discussions relative to the concerns raised by the Intervenor and have reached a proposed agreement which, subject to the conditions in the Draft Permit, satisfies the concerns of the Intervenor.

9. The Applicant and the Intervenor agree to a modification of the Draft Permit as follows:

The permittee is authorized to withdraw a maximum of 0.200 million gallons per day (mgd) from an irrigation pond and a combined maximum of 0.150 mgd of ground water from three bedrock wells (Wells 1, 2 and 3) used to supplement supply in the irrigation pond, provide water to a maintenance building, and provide potable water to the clubhouse, in accordance with plans entitled "Site Plan / Pequot Golf Club", dated December 2007, prepared by Milone & MacBroom, and documentation submitted as a part of the application. In addition, the above authorization for Wells 1, 2 and 3 shall be further limited by a total monthly maximum withdrawal of 3.400 million gallons. The monthly withdrawal maximum shall be based on a calendar month.

PERMITTEE'S FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT SHALL SUBJECT PERMITTEE AND PERMITTEE'S CONTRACTOR(S) TO ENFORCEMENT ACTIONS AND PENALTIES AS PROVIDED BY LAW.

10. **Drought Response Plan.** Upon notification by the Commissioner of a particular drought stage as described in "Connecticut Drought Preparedness and Response plan" (August 4, 2003), or of a particular drought stage as declared pursuant to Aquarion Water Company's Drought Response Plan for their Mystic system, the permittee shall limit the authorized total combined maximum withdrawal from the irrigation ponds as follows:

- a. Drought Advisory: Pond – 0.180 mgd, Wells – 0.135 mgd, 3.06 million gallons per month (10% reduction)
- b. Drought Watch: Pond – 0.170 mgd, Wells – 0.127 mgd, 2.89 million gallons per month (15% reduction)
- c. Drought Warning: Pond – 0.160 mgd, Wells – 0.120 mgd, 2.72 million gallons per month (20% reduction)
- d. Drought Emergency: Pond – 0.150 mgd, Wells – 0.112 mgd, 2.55 million gallons per month (25% reduction)

The maximum monthly withdrawal shall be calculated on a proportionate basis for periods when each drought stage is in effect.

10. A copy of the Draft Permit as modified is attached as Exhibit A.
11. The Intervenor withdraws any objection to the issuance by the Commissioner of a permit as herein modified to the Applicant.

THE APPLICANT:

Pequot Holdings Two, LLC

By: 

Robert D. Tobin, Esq.
Of Tobin, Carberry, O'Malley,
Riley & Selinger, P.C.
43 Broad Street, P.O. Box 58
New London, CT 06320
Email: rdtobin@tcors.com

THE INTERVENOR:


Sylvia's Pond Conservation Association, Inc.

By: 

Stuart Cole
132 Mistuxet Avenue
Mystic, CT 06355
Email: stugc@prodigy.net

Approved:

Department of Environmental Protection

By: 

Douglas Hoskins
Dept. of Environmental Protection
Inland Water Resources Division
79 Elm Street
Hartford, CT 06106
Email: douglas.hoskins@ct.gov

CERTIFICATION

I hereby certify that a copy of the foregoing Stipulation was sent via electronic mail, this 19th day of February, 2010, to the following:—

Douglas Hoskins
Dept. of Environmental Protection
Inland Water Resources Division
79 Elm Street
Hartford, CT 06106
douglas.hoskins@ct.gov

Sylvia's Pond Conservation
Association
132 Mistuxet Avenue
Mystic, CT 06355
Attn: Stuart Cole
stugc@prodigy.net

Sylvia's Pond Conservation Association
132 Mistuxet Avenue
Mystic, CT 06355
Attn: Peter A. Harvey
harveyai@snet.net

Erica Lindberg Gourd
28 Quanaduck Road
Stonington, CT 06378
ericalindberg@msn.com



Robert D. Tobin, Esq.

EXHIBIT A

DRAFT PERMIT

PERMITTEE: Pequot Holdings Two LLC
43 Broad Street
New London, CT 06320

PERMIT NO.: DIV-200702824
TOWN: Stonington
WATERS: Stony Brook, Ground Waters

Pursuant to Connecticut General Statutes section 22a-368, Pequot Holdings Two LLC (the "permittee") is hereby authorized to divert the waters of the state at the Pequot Golf Club (the "site") in accordance with the permittee's application dated December 27, 2007, filed with this Department on December 28, 2009 and described herein. The purpose of the diversion is to provide irrigation water for an 18-hole golf course, supply potable and non-potable water to site facilities.

AUTHORIZED ACTIVITY

The permittee is authorized to withdraw a maximum of 0.200 million gallons per day (mgd) from an irrigation pond and a combined maximum of 0.150 mgd of ground water from three bedrock wells (Wells 1, 2 and 3) used to supplement supply in the irrigation pond, provide water to a maintenance building, and provide potable water to the clubhouse, in accordance with plans entitled "Site Plan / Pequot Golf Club", dated December 2007, prepared by Milone & MacBroom, and documentation submitted as a part of the application. In addition, the above authorization for Wells 1, 2 and 3 shall be further limited by a total monthly maximum withdrawal of 3.400 million gallons. The monthly withdrawal maximum shall be based on a calendar month.

PERMITTEE'S FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT SHALL SUBJECT PERMITTEE AND PERMITTEE'S CONTRACTOR(S) TO ENFORCEMENT ACTIONS AND PENALTIES AS PROVIDED BY LAW.

SPECIAL CONDITIONS

1. **Metering of Withdrawals.** The permittee shall install totalizing flow meters to measure the total amount of water withdrawn from Wells 1, 2 and 3 and the irrigation pond for which withdrawals are authorized herein, and shall for the duration of this authorization continuously operate and maintain such meter in good working order. In the event of meter malfunction or breakage, the permittee shall repair or replace such meter within 72 hours. The permittee shall secure such meter in a locked facility, with access controlled solely by the permittee or other designee.

2. **Daily Withdrawal Record.** The permittee shall maintain a daily record of the meter readings indicating the total volume of water in gallons withdrawn from the bedrock wells and irrigation pond that day. The daily record shall also record the hours of operation, the time of meter readings, and denote and explain any instances in which the diversion of water exceeded the authorized withdrawal limitations specified in this permit. A copy of the daily record of withdrawals shall be included in the Annual Report to the Commissioner as required by Special Condition #13 of this permit.

3. **Water Well Guarantee.** If the owner of the water supply well at 146 Wheeler Road believes the yield of their well has been significantly impacted by activities authorized as part of this permit, they should notify the permittee and the Department of this situation. The permittee shall respond by having their hydrogeologic consultant evaluate the situation, report to the permittee, the Department and to the concerned well owners, within 30 days of the initial notification, their findings as to the existence, nature, extent and/or cause of the alleged impact. If the assessment of the permittee's hydrogeologic consultant determines that activities authorized as part of this permit have no direct impact on the subject well, and the Department concurs with the assessment, then the permittee will not be required to assist the subject well owner with well yield mitigation measures as outlined below. In the event that the permittee's hydrogeologic consultant or the Department determines that that activities authorized as part of this permit result in more than a negligible loss in the yield of the subject well, the permittee shall mitigate this loss in yield of the affected well by implementing, at its cost, one or more of the following actions:
 - a) If pre-permit yield can be restored by setting the pump at a lower depth in the existing well, the pump will be lowered in the well as necessary.
 - b) If the affected well is too shallow to accommodate resetting the pump to restore pre-permit yield, but is capable of being deepened, the well will be deepened and the pump reset to restore pre-permit yield.
 - c) If lowering the pump or deepening the well are insufficient methods to restore pre-permit yields, a new well that reestablishes pre-permit yield will be installed on the property of the affected well owner.

4. **Stream Monitoring, Reporting.** The permittee shall monitor, on bi-weekly basis, all streambed piezometers (P-3, P-5, P-6, P-8, and P-9) referenced in Table 3-1 of Attachment D12 of their application during the first irrigation season following permit approval. If flow in Stony Brook does not attain its 80% duration flow during that season, monitoring shall continue for the next irrigation season(s) until monitoring occurs during 80% duration flow. The permittee shall maintain a record of piezometer water level data. A copy of this record shall be included in the Annual Report to the Commissioner as required by Special Condition #13 of this permit.

5. **Well Water Quality Sampling, Testing Reporting.** The permittee shall employ a qualified individual to sample ground waters withdrawn from all water wells on site for Volatile Organic Compounds (VOC's) twice during the first year of authorization -- once in the spring and once in the fall. Samples shall be sent to a qualified lab for analysis. The permittee shall submit a report to the department containing the sampling results and conclusions as to compliance with water quality standards as part of the Annual Report to the Commissioner as required by Special Condition #13 of this permit.
6. **Chemigation.** The permittee is prohibited from using the irrigation system for the purpose of chemigation without the appropriate discharge permit and pesticide application permit from the Commissioner.
7. **Seasonal Irrigation Restrictions.** Withdrawals authorized under this permit are restricted to the period April 15 through October 31 inclusive. Records of annual diversion shutdown and startup dates shall be included in the Annual Report to the Commissioner as required by Special Condition #13 of this permit.
8. **Other Restrictions.** The DEP shall have the right to restrict the diversion authorized in this permit at any time the Commission in his judgment determines: a) a declared local, regional or state-wide drought advisory, watch, warning or emergency necessitates restriction or reduction of non-essential water uses, or b) the continuation of the diversion may have an adverse effect on water quality, fisheries resources, aquatic habitat or public health.
9. **Long-range Water Conservation Plan.** The permittee shall implement its Long-range Water Conservation Plan, as described in the permittee's application. The permittee shall maintain a summary of all actions taken each year pursuant to the Long-range Water Conservation Plan and a description of the estimated or actual water savings achieved. A copy of this summary shall be included in the Annual Report to the Commissioner required by Special Condition #13 of this permit.
10. **Drought Response Plan.** Upon notification by the Commissioner of a particular drought stage as described in "Connecticut Drought Preparedness and Response plan" (August 4, 2003), or of a particular drought stage as declared pursuant to Aquarion Water Company's Drought Response Plan for their Mystic system, the permittee shall limit the authorized total combined maximum withdrawal from the irrigation ponds as follows:
 - a. Drought Advisory: Pond – 0.180 mgd, Wells – 0.135 mgd, 3.06 million gallons per month (10% reduction)
 - b. Drought Watch: Pond – 0.170 mgd, Wells – 0.127 mgd, 2.89 million gallons per month (15% reduction)

- c. Drought Warning: Pond – 0.160 mgd, Wells – 0.120 mgd, 2.72 million gallons per month (20% reduction)
- d. Drought Emergency: Pond – 0.150 mgd, Wells – 0.112 mgd, 2.55 million gallons per month (25% reduction)

The maximum monthly withdrawal shall be calculated on a proportionate basis for periods when each drought stage is in effect.

Furthermore, during a declared “Drought Emergency” stage, the permittee shall comply fully with the “Connecticut Drought Preparedness and Response Plan” (August 4, 2003) as may be amended or modified.

11. Record Keeping Requirements. Except as provided below, or as otherwise specified in writing by the commissioner, all information required under this permit shall be retained at the subject site, or be readily available on request. The permittee shall maintain a copy of this permit on site at all times. The permittee shall retain copies of all records and reports required by this permit; and records of all data used to compile these reports for a period of at least three years after the expiration date of this permit.

12. Recording and Reporting Violations. Within 48 hours after the permittee learns of a violation of this permit, the permittee shall submit in writing a report of the violation to the Commissioner. Such report shall contain the following information:

- a. The provision(s) of this permit that has been violated,
- b. The date and time the violation(s) was first discovered and by whom,
- c. The cause of the violation(s), if known;
- d. If the violation(s) has ceased, the duration of the violation(s) and the exact date(s) and time(s) it was corrected,
- e. If the violation(s) has not ceased, the anticipated date when it will be corrected; and
- f. Actions taken and actions planned to prevent a reoccurrence of the violation(s) and the date(s) such actions were implemented or will be implemented.

13. Annual Reporting. The permittee shall submit by January 30 of each year, for the duration of this authorization, an Annual Report for the preceding calendar year. The Annual Report shall be certified in accordance with General Condition #11 of this permit and shall contain the following:

- a. A copy of the record of daily withdrawals and hours operated as required by Special Condition #2 of this permit,
- b. A copy of the stream monitoring record as required by Special Condition #4 of this permit,

- c. A copy of the Well Water Sampling Report as required by Special Condition #5 of this permit,
- d. Records of annual diversion shutdown and startup date as required by Special Condition #7 of this permit,
- e. Summary report of all the actions taken pursuant to the Long-Range Water Conservation Plan and Water Conservation Plan and description of actual or estimated water savings achieved, as required by Special Condition #9 of this permit, and
- f. Denotation and explanation of any instances of violation of the authorized withdrawal limitation(s) or any other condition of this authorization, as required by Special Condition #12 of this permit.

GENERAL CONDITIONS

1. The permittee shall notify the Commissioner in writing two weeks prior to: (A) commencing construction or modification of structures or facilities authorized herein; and (B) initiating the diversion authorized herein.
2. The permittee may not make any alterations, except de minimis alterations, to any structure, facility, or activity authorized by this permit unless the permittee applies for and receives a modification of this permit in accordance with the provisions of section 22a-377(c)-2 of the Regulations of Connecticut State Agencies. Except as authorized by subdivision (5) of section 22a-377(b)-1(a) of the Regulations of Connecticut State Agencies, the permittee may not make any de minimis alterations to any structure, facility, or activity authorized by this permit without permission from the Commissioner. A de minimis alteration means an alteration which does not significantly increase the quantity of water diverted or significantly change the capacity to divert water.
3. All structures, facilities, or activities constructed, maintained, or conducted pursuant hereto shall be consistent with the terms and conditions of this permit, and any structure, facility or activity not specifically authorized by this permit, or exempted pursuant to section 22a-377 of the General Statutes or section 22a-377(b)-1 of the Regulations of Connecticut State Agencies, shall constitute a violation hereof which may result in modification, revocation or suspension of this permit or in the institution of other legal proceedings to enforce its terms and conditions.
4. Unless the permittee maintains in optimal condition any structures or facilities authorized by this permit, the permittee shall remove such structures and facilities and restore the affected waters to their condition prior to construction of such structures or facilities.

5. In issuing this permit, the Commissioner has relied on information provided by the permittee. If such information was false, incomplete, or misleading, this permit may be modified, suspended or revoked and the permittee may be subject to any other remedies or penalties provided by law.
6. If construction of any structures or facilities authorized herein is not completed within three years of issuance of this permit or within such other time as may be provided by this permit, or if any activity authorized herein is not commenced within three years of issuance of this permit or within such other time as may be provided by this permit, this permit shall expire three years after issuance or at the end of such other time.
7. This permit is subject to and does not derogate any rights or powers of the State of Connecticut, conveys no property rights or exclusive privileges, and is subject to all public and private rights and to all applicable federal, state, and local law. In constructing or maintaining any structure or facility or conducting any activity authorized herein, the permittee may not cause pollution, impairment, or destruction of the air, water, or other natural resources of this State. The issuance of this permit shall not create any presumption that this permit should be renewed.
8. In constructing or maintaining any structure or facility or conducting any activity authorized herein, or in removing any such structure or facility under paragraph 4 hereof, the permittee shall employ best management practices to control storm water discharges, to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and other waters of the State. The permittee shall immediately inform the Commissioner of any adverse impact or hazard to the environment which occurs or is likely to occur as the direct result of the construction, maintenance, or conduct of structures, facilities, or activities authorized herein.
9. This permit is not transferable without the prior written consent of the Commissioner.
10. This permit shall expire on [15 years].
11. **Certification of Documents.** Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this permit shall be signed by the permittee or a responsible corporate officer of the permittee, a general partner of the permittee, and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachment may be punishable as a criminal offense in accordance with Section 22a-376 under 53a-157 of the Connecticut General Statutes."

12. **Submission of Documents.** Any document or notice required to be submitted to the Commissioner under this permit shall, unless otherwise specified in writing by the Commissioner, be directed to:

Director
DEP/Inland Water Resources Division
79 Elm Street
Hartford, CT 06106-5127

The date of submission to the Commissioner of any document required by this permit shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this permit, including but not limited to notice of approval or disapproval on any document or other action, shall be the date such notice is personally delivered or the date three days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this permit, the word "day" as used in this permit means any calendar day. Any document or action which is required by this permit to be submitted or performed by a date which falls on a Saturday, Sunday or legal holiday shall be submitted or performed by the next business day thereafter.

This authorization constitutes the permit required by section 22a-368(b) of the Connecticut General Statutes.

Issued as a permit of the Commissioner of Environmental Protection on

Amey W. Marrella
Acting Commissioner

Attachment B

DRAFT PERMIT

PERMITTEE: Pequot Holdings Two LLC
43 Broad Street
New London, CT 06320

PERMIT NO.: DIV-200702824
TOWN: Stonington
WATERS: Stony Brook, Ground Waters

Pursuant to Connecticut General Statutes section 22a-368, Pequot Holdings Two LLC (the "permittee") is hereby authorized to divert the waters of the state at the Pequot Golf Club (the "site") in accordance with the permittee's application dated December 27, 2007, filed with this Department on December 28, 2009 and described herein. The purpose of the diversion is to provide irrigation water for an 18-hole golf course, supply potable and non-potable water to site facilities.

AUTHORIZED ACTIVITY

The permittee is authorized to withdraw a maximum of 0.200 million gallons per day (mgd) from an irrigation pond and a combined maximum of 0.150 mgd of ground water per day from three bedrock wells (Wells 1, 2 and 3) used to supplement supply in the irrigation pond, provide water to a maintenance building, and provide potable water to the clubhouse, in accordance with plans entitled "Site Plan / Pequot Golf Club", dated December 2007, prepared by Milone & MacBroom, and documentation submitted as a part of the application. In addition, the above authorization for Wells 1, 2 and 3 shall be further limited by a total monthly maximum withdrawal of 3.400 million gallons. The monthly withdrawal maximum shall be based on a calendar month.

PERMITTEE'S FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT SHALL SUBJECT PERMITTEE AND PERMITTEE'S CONTRACTOR(S) TO ENFORCEMENT ACTIONS AND PENALTIES AS PROVIDED BY LAW.

SPECIAL CONDITIONS

1. **Metering of Withdrawals.** The permittee shall install totalizing flow meters to measure the total amount of water withdrawn from Wells 1, 2 and 3 and the irrigation pond for which withdrawals are authorized herein, and shall for the duration of this authorization

continuously operate and maintain such meter in good working order. In the event of meter malfunction or breakage, the permittee shall repair or replace such meter within 72 hours. The permittee shall secure such meter in a locked facility, with access controlled solely by the permittee or other designee.

2. **Daily Withdrawal Record.** The permittee shall maintain a daily record of the meter readings indicating the total volume of water in gallons withdrawn from the bedrock wells and irrigation pond that day. The daily record shall also record the hours of operation, the time of meter readings, and denote and explain any instances in which the diversion of water exceeded the authorized withdrawal limitations specified in this permit. A copy of the daily record of withdrawals shall be included in the Annual Report to the Commissioner as required by Special Condition #13 of this permit.
3. **Water Well Guarantee.** If the owner of the water supply well at 146 Wheeler Road believes the yield of their well has been significantly impacted by activities authorized as part of this permit, they should notify the permittee and the Department of this situation. The permittee shall respond by having their hydrogeologic consultant evaluate the situation, report to the permittee, the Department and to the concerned well owners, within 30 days of the initial notification, their findings as to the existence, nature, extent and/or cause of the alleged impact. If the assessment of the permittee's hydrogeologic consultant determines that activities authorized as part of this permit have no direct impact on the subject well, and the Department concurs with the assessment, then the permittee will not be required to assist the subject well owner with well yield mitigation measures as outlined below. In the event that the permittee's hydrogeologic consultant or the Department determines that that activities authorized as part of this permit result in more than a negligible loss in the yield of the subject well, the permittee shall mitigate this loss in yield of the affected well by implementing, at its cost, one or more of the following actions:
 - a) If pre-permit yield can be restored by setting the pump at a lower depth in the existing well, the pump will be lowered in the well as necessary.
 - b) If the affected well is too shallow to accommodate resetting the pump to restore pre-permit yield, but is capable of being deepened, the well will be deepened and the pump reset to restore pre-permit yield.
 - c) If lowering the pump or deepening the well are insufficient methods to restore pre-permit yields, a new well that reestablishes pre-permit yield will be installed on the property of the affected well owner.
4. **Stream Monitoring, Reporting.** The permittee shall monitor, on bi-weekly basis, all streambed piezometers (P-3, P-5, P-6, P-8, and P-9) referenced in Table 3-1 of Attachment D12 of their application during the first irrigation season following permit approval. If flow in Stony Brook does not attain its 80% duration flow during that

season, monitoring shall continue for the next irrigation season(s) until monitoring occurs during 80% duration flow. The permittee shall maintain a record of piezometer water level data. A copy of this record shall be included in the Annual Report to the Commissioner as required by Special Condition #13 of this permit.

5. **Well Water Quality Sampling, Testing Reporting.** The permittee shall employ a qualified individual to sample ground waters withdrawn from all water wells on site for Volatile Organic Compounds (VOC's) twice during the first year of authorization – once in the spring and once in the fall. Samples shall be sent to a qualified lab for analysis. The permittee shall submit a report to the department containing the sampling results and conclusions as to compliance with water quality standards as part of the Annual Report to the Commissioner as required by Special Condition #13 of this permit.
6. **Chemigation.** The permittee is prohibited from using the irrigation system for the purpose of chemigation without the appropriate discharge permit and pesticide application permit from the Commissioner.
7. **Seasonal Irrigation Restrictions.** Withdrawals authorized under this permit are restricted to the period April 15 through October 31 inclusive. Records of annual diversion shutdown and startup dates shall be included in the Annual Report to the Commissioner as required by Special Condition #13 of this permit.
8. **Other Restrictions.** The DEP shall have the right to restrict the diversion authorized in this permit at any time the Commissioner in his judgment determines: a) a declared local, regional or state-wide drought advisory, watch, warning or emergency necessitates restriction or reduction of non-essential water uses, or b) the continuation of the diversion may have an adverse effect on water quality, fisheries resources, aquatic habitat or public health.
9. **Long-range Water Conservation Plan.** The permittee shall implement its Long-range Water Conservation Plan, as described in the permittee's application. The permittee shall maintain a summary of all actions taken each year pursuant to the Long-range Water Conservation Plan and a description of the estimated or actual water savings achieved. A copy of this summary shall be included in the Annual Report to the Commissioner required by Special Condition #13 of this permit.
10. **Drought Response Plan.** Upon notification by the Commissioner of a particular drought stage as described in "Connecticut Drought Preparedness and Response Plan" (August 4, 2003), or of a particular drought stage as declared pursuant to Aquarion Water Company's Drought Response Plan for their Mystic system, the permittee shall limit the maximum withdrawals from the irrigation pond and wells as follows:

- a. Drought Advisory: Pond - 0.180 mgd, Wells - 0.135 mgd (10% reduction)
- b. Drought Watch: Pond - 0.170 mgd, Wells - 0.127 mgd (15% reduction)
- c. Drought Warning Pond - 0.160 mgd, Wells - 0.120 mgd (20% reduction)
- d. Drought Emergency: Pond - 0.150 mgd, Wells - 0.112 mgd (25% reduction)

The maximum monthly withdrawal shall be calculated on a proportionate basis for periods when each drought stage is in effect.

Furthermore, during a declared "Drought Emergency" stage, the permittee shall comply fully with the "Connecticut Drought Preparedness and Response Plan" (August 4, 2003) as may be amended or modified.

11. **Record Keeping Requirements.** Except as provided below, or as otherwise specified in writing by the commissioner, all information required under this permit shall be retained at the subject site, or be readily available on request. The permittee shall maintain a copy of this permit on site at all times. The permittee shall retain copies of all records and reports required by this permit; and records of all data used to compile these reports for a period of at least three years after the expiration date of this permit.
12. **Recording and Reporting Violations.** Within 48 hours after the permittee learns of a violation of this permit, the permittee shall submit in writing a report of the violation to the Commissioner. Such report shall contain the following information:
 - a. The provision(s) of this permit that has been violated,
 - b. The date and time the violation(s) was first discovered and by whom,
 - c. The cause of the violation(s), if known;
 - d. If the violation(s) has ceased, the duration of the violation(s) and the exact date(s) and time(s) it was corrected.
 - e. If the violation(s) has not ceased, the anticipated date when it will be corrected; and
 - f. Actions taken and actions planned to prevent a reoccurrence of the violation(s) and the date(s) such actions were implemented or will be implemented.
13. **Annual Reporting.** The permittee shall submit by January 30 of each year, for the duration of this authorization, an Annual Report for the preceding calendar year. The Annual Report shall be certified in accordance with General Condition #11 of this permit and shall contain the following:
 - a. A copy of the record of daily withdrawals and hours operated as required by Special Condition #2 of this permit,
 - b. A copy of the stream monitoring record as required by Special Condition #4 of this permit,
 - c. A copy of the Well Water Sampling Report as required by Special Condition #5

- of this permit,
- d. Records of annual diversion shutdown and startup date as required by Special Condition #7 of this permit,
 - e. Summary report of all the actions taken pursuant to the Long-Range Water Conservation Plan and Water Conservation Plan and description of actual or estimated water savings achieved, as required by Special Condition #9 of this permit, and
 - f. Denotation and explanation of any instances of violation of the authorized withdrawal limitation(s) or any other condition of this authorization, as required by Special Condition #12 of this permit.

GENERAL CONDITIONS

1. The permittee shall notify the Commissioner in writing two weeks prior to: (A) commencing construction or modification of structures or facilities authorized herein; and (B) initiating the diversion authorized herein.
2. The permittee may not make any alterations, except de minimis alterations, to any structure, facility, or activity authorized by this permit unless the permittee applies for and receives a modification of this permit in accordance with the provisions of section 22a-377(c)-2 of the Regulations of Connecticut State Agencies. Except as authorized by subdivision (5) of section 22a-377(b)-1(a) of the Regulations of Connecticut State Agencies, the permittee may not make any de minimis alterations to any structure, facility, or activity authorized by this permit without written permission from the Commissioner. A de minimis alteration means an alteration which does not significantly increase the quantity of water diverted or significantly change the capacity to divert water.
3. All structures, facilities, or activities constructed, maintained, or conducted pursuant hereto shall be consistent with the terms and conditions of this permit, and any structure, facility or activity not specifically authorized by this permit, or exempted pursuant to section 22a-377 of the General Statutes or section 22a-377(b)-1 of the Regulations of Connecticut State Agencies, shall constitute a violation hereof which may result in modification, revocation or suspension of this permit or in the institution of other legal proceedings to enforce its terms and conditions.
4. Unless the permittee maintains in optimal condition any structures or facilities authorized by this permit, the permittee shall remove such structures and facilities and restore the affected waters to their condition prior to construction of such structures or facilities.

5. In issuing this permit, the Commissioner has relied on information provided by the permittee. If such information was false, incomplete, or misleading, this permit may be modified, suspended or revoked and the permittee may be subject to any other remedies or penalties provided by law.
6. If construction of any structures or facilities authorized herein is not completed within three years of issuance of this permit or within such other time as may be provided by this permit, or if any activity authorized herein is not commenced within three years of issuance of this permit or within such other time as may be provided by this permit, this permit shall expire three years after issuance or at the end of such other time.
7. This permit is subject to and does not derogate any rights or powers of the State of Connecticut, conveys no property rights or exclusive privileges, and is subject to all public and private rights and to all applicable federal, state, and local law. In constructing or maintaining any structure or facility or conducting any activity authorized herein, the permittee may not cause pollution, impairment, or destruction of the air, water, or other natural resources of this State. The issuance of this permit shall not create any presumption that this permit should be renewed.
8. In constructing or maintaining any structure or facility or conducting any activity authorized herein, or in removing any such structure or facility under paragraph 4 hereof, the permittee shall employ best management practises to control storm water discharges, to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and other waters of the State. The permittee shall immediately inform the Commissioner of any adverse impact or hazard to the environment which occurs or is likely to occur as the direct result of the construction, maintenance, or conduct of structures, facilities, or activities authorized herein.
9. This permit is not transferable without the prior written consent of the Commissioner.
10. This permit shall expire on [15 years].
11. **Certification of Documents.** Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this permit shall be signed by the permittee or a responsible corporate officer of the permittee, a general partner of the permittee, and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and

belief, and I understand that any false statement made in this document or its attachment may be punishable as a criminal offense in accordance with Section 22a-376 under 53a-157 of the Connecticut General Statutes."

12. **Submission of Documents.** Any document or notice required to be submitted to the Commissioner under this permit shall, unless otherwise specified in writing by the Commissioner, be directed to:

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This authorization constitutes the permit required by section 22a-368(b) of the Connecticut General Statutes.

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Amey W. Marrella
Acting Commissioner