

PARTRIDGE SNOW & HAHN LLP

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February 25, 2021

VIA EMAIL SCOUTU@BCWARI.COM & REGULAR U.S. MAIL

Mr. Steven Coutu, Executive Director
Bristol County Water Authority
450 Child St.
Warren, RI 02885

**RE: Notice of Objection to Bristol County Water Authority
Dam Removal Proposal -Warren, RI**

Dear Steve:

I am writing on behalf of my clients, Mr. Robert Botelho, 39 and 43 Serpentine Road and Map 21/Lot 179, Warren, RI, Ms. Marcia Hoffer, 25 Serpentine Road, Warren, RI and the Waterview Condominium Association, 510 Child Street, Warren, RI (collectively the "Parties") regarding their substantive objections to the Bristol County Water Authority's ("BCWA") proposal to remove two dams and allow the inundation of water from the Mount Hope Bay and Narragansett Bay ("Bays") into the Kickemuit River in the Town of Warren. The proposed removal is related to the Rhode Island Department of Environmental Management's ("DEM") Notice of Violation and subsequent Consent Agreement between DEM and BCWA. The properties of Mr. Botelho and Ms. Hoffer are located in a mixed residential and commercial/agricultural (farm) zone and designated by DEM as a small business farm and a minority-disabled veteran owned farm. These farms sustain livestock and supports equine assisted therapy for veterans suffering from Post-Traumatic Stress Disorders.

It should be noted that the Parties objection to the dam removal is due to the significant negative impact it will have on their property interests, the Town of Warren and its residents as well as the surrounding communities. Specifically:

1. Negative impact to the property rights and interests of the Parties including but not limited to inundation of the salt marsh and acceleration of tidal erosion on both public and private properties leading to potential inverse condemnation claims, destroying harvestable land that supports the current activities on the farm, reducing overall annual agricultural yield and income, and the elimination of municipal tax credits due to the Parties no longer being able to each maintain farm status.



2. Negative impact to the public safety and health due to the lack of the water main lines servicing the Parties, the Town of Warren and surrounding communities including service for potable water and fire suppression. In addition, the saltwater inundation and associated hydraulic pressure may contaminate private wells of the residents of Warren.

3. Negative impacts related to the potential FEMA's redesignation of flood hazard areas and resulting increase of flood insurance rates. The redesignation will result in the Parties properties, currently not in a flood zone, to be redesignated in a Special Flood Hazard area, requiring flood insurance. The dam removal may prompt new FEMA analysis that will impact other private and public property owners in Warren.

4. Negative impacts to public safety with impediments to emergency response, emergency evacuation routes and first responder equipment. Specifically, the Fire Department utilizes fresh water from the reservoir to supply pumps for fire suppression since there is no water main. With the removal of the dams and inundation of salt water from the Bays into the reservoir, fire suppression equipment will degrade more quickly negatively impacting performance and operational readiness in emergency situations. In addition, this inundation of water will impede emergency evacuation routes along Serpentine Road, which is at the lowest grade to the water level.

5. Negative impacts to commercial and recreational shell fishing and fishing. The dams have provided a barrier to control pollution/contaminates to and from the Bays. Removal of the dams may result in the release pollution/contaminates into the Bays.

6. Negative impacts to historical and Wampanoag/Aquinnah ancient Indian burial grounds including but not limited to the Kickemuit Cemetery (the 3rd oldest in RI & oldest in Warren) on the banks of the Kickemuit river containing over 400 burial plots including veterans of the King Philip War (1675-76) and Rhode Island's last colonial Governor Josiah Lyndon (1768-69). It is my understanding that on January 12, 2021, the Commissioner of Indian Affairs for Bristol and Norfolk Counties notified the BCWA of its opposition to the dam removal proposal due to the impact on this historical and culturally sensitive land.

7. Negative impacts to freshwater habitat and wildlife.

We had the opportunity to review the relevant documents including but not limited to BCWA's proposal to remove the dams and materials presented by PARE Engineering. We have become familiar with the pertinent facts, both those agreed upon and those in dispute. We also reviewed DEM's notice of violation issued to the BCWA and subsequent Consent Agreement entered into by the parties.

Based upon this review, it is clear that BCWA's proposal to remove the dams is solely to avoid the costs associated with restoring and remediating the dams after many years of neglect and failure to maintain them. Despite imposing dozens of rate hikes over the years, the BCWA has never attempted to remediate the dams to ensure proper flow and function. As a result, a body of water that was once used as a freshwater supply for the community has become stagnant



with decreased oxygen levels and inversely, has increased the levels of contaminant due to cesspools and septic systems. The operational and functional failure of these dams was inevitable due to BCWA's failure to operate and maintain them in compliance with DEM's rules and regulations.

BCWA's inaction has not only put my clients' property interests at risk but has presented significant risks to the public's health and safety. BCWA claims the costs associated with restoration and maintenance of dams is approximately equal to costs to remove the dams, however we are not aware of any request for proposal issued by BCWA that support this claim or release of any bids received by BCWA for the necessary repair of the dams. Even if the initial capital outlay for dam removal were equal to the cost of repairs, the BCWA is incentivized and benefits by the elimination of reoccurring overhead expenditures to maintain the dams in compliance with DEM requirements and to ensure public safety.

In order to avoid its obligations to restore and maintain the dams, the BCWA has presented a proposed plan to the Town of Warren to remove both dams and flood the Kickemuit River with salt water from the Bays, citing that the river is no longer used for public water supply. The BCWA further proposes to move forward with removal of both dams without any plans to remediate or mitigate the negative impacts to the Parties and the community in Warren.

Considering how tight PARE's forecasted flood thresholds appear on its mapping for best case scenarios, and also considering that flood modeling has certain percentages of margin of error, this is a major concern for the Parties and should be the focus of concern for the residents of Warren, the Warren Town Council and other stakeholders in the community.

Although the BCWA has provided several computer flood models, the release of water from the Bays into the Kickemuit River is highly dependent on multiple environmental and engineering variables that no computer model or engineer can predict with certainty especially with impacts of climate change. With the acute thresholds projected by the BCWA, the removal of the dams and resulting inundation of salt water from the bay will significantly and negatively impact the Parties property interests, the public health and safety of the community, the private and public infrastructure in the Town of Warren and the habitat along the Kickemuit River.

As a practical matter, without an agreement as to how the BCWA intends on addressing the above concerns, we will be forced to deal with the BCWA in a very public manner that will play out in public hearings before DEM, the Coastal Resources Management Council, the Warren Town Council, the General Assembly, the Rhode Courts and in the media.

Our review of the facts and law suggests that the Parties and other stakeholders may prevail in prohibiting the BCWA from removing the dams. We also understand the risk that all parties would be taking by proceeding to an adjudicatory hearing that may result in a lose-lose proposition not benefiting any of the parties. Consequently, in the interest of all parties, we desire to work with the BCWA to address the outstanding issues and arrive at an acceptable resolution.



It is respectfully suggested that in light of the legal and unique factual issues presented, coupled with the direct negative impact that removal of the dams will have on the Parties property interests and the public health and safety impact on the residents of Warren, it is prudent to work towards an amicable and mutually advantageous resolution. My clients stand ready, willing and able to work with the BCWA to address the outstanding issues involving the removal of the two dams. We do not believe that it is in the best interests of any of the parties to engage in protracted and expensive litigation that will involve extensive third-party discovery as well as unnecessary public scrutiny.

We look forward to meeting to address all issues and work towards an amicable resolution between the parties. There still remains collaborative work that must be completed in order to achieve this goal.

Sincerely,



Christian F. Capizzo

cc: Mr. Alan Klepper, Chair, BCWA Board - acklepper@gmail.com
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