



Lisa Rhodes
Massachusetts Department of Environmental Protection
Wetlands and Waterways
One Winter Street, 6th Floor
Boston, MA 02108

April 11, 2003

Dear Ms. Rhodes:

Friends of the Blue Hills takes this opportunity to comment on the Variance Request filed by MWRA for the Blue Hills Covered Storage Project and noticed in the Environmental Monitor on March 25, 2003 (DEP file 059-0854).

Since 1976 Friends of the Blue Hills (FBH) has worked to protect and preserve the quality of life, sense of place, natural beauty, and ecological value that is contained within the century-old Blue Hills Reservation.

Our comments refer to the project as described in the Notice of Intent submitted to the Quincy Conservation Commission in September, 2002 and in the Variance Request submitted to DEP by the MWRA on February 28, 2003.

FBH previously submitted public comment letters on this project to the MEPA office in April 2000, March 2001, and December 2001.

FBH asks the Department to deny the Request because approval would result in permanent loss of over eight acres of protected wetland resource areas in the Blue Hills Reservation and because the applicant does not propose equivalent mitigation.

FBH finds it remarkable that in all the voluminous project documents released by the MWRA since 1999, the possibility that the Blue Hills Covered Storage project will be required to

meet widely-supported 1:1 mitigation standards is never recognized, nor is there any evidence that plans exist to meet this eventuality.

FBH is prepared to support a Variance Request for this project provided that the Request meets the variance conditions set forth in 310 CMR 10.05 (10).

What follows is a discussion of each of the three variance standards, and the degree to which the Request meets them.

STANDARD NO. 1

There are no reasonable conditions or alternatives that would allow the project to proceed in compliance with 310 CMR 10.21 through 10.60

This standard is not met because many of the other sites and approaches considered in the alternatives analysis involved little or no impact to wetland resources, and hence would have allowed the project to proceed in compliance with 310 CMR 10.21 through 10.60.

These sites and approaches were rejected for considerations having nothing to do with wetlands protection. The analysis consistently treated engineering considerations as primary and environmental considerations as secondary. Alternatives such as Pumped Storage that involved additional engineering constraints but lesser wetlands impacts were discarded. The fact that these other alternatives did not become the preferred alternative does not establish that they were not reasonable.

Please note that long before the alternatives analysis was complete, the proposed work was officially entitled “Blue Hills Covered Storage Project,” even though the analysis showed there was no need to perform work in the Blue Hills Reservation in order to achieve the work’s water supply objectives.

Please also note that the 11/99 “Final Draft Alternatives Evaluation and Recommendations” proposed to select a “preferred” and two “backup” alternatives (p. 4), but never identified the latter.

STANDARD NO. 2

Mitigating measures are proposed that will allow the project to be conditioned so as to contribute to the protection of the interests identified in M.G.L. c. 131, § 40

Once the decision was made to site the tanks in the existing reservoir, permanent loss of eight acres of existing wetland resources became inevitable.

A realistic mitigation scheme would seek to offset this loss on a comparable scale. But the applicant's proposal, which is still far from complete, reveals no plan to lessen this loss by any increase in protected wetland resources. Even under the most optimistic scenario, wherein all the proposed mitigation is performed and provides the intended benefits, there is still a net loss of more than eight acres of protected wetlands in the Reservation.

The Dept. identified unpermissible project impacts in its permit denial dated February 13, 2003, citing permanent impacts to 8.7 acres of Land Under Water and 2210 linear feet of Bank. The chief public interests that will be harmed by these impacts are Fisheries and Wildlife Habitat. The harm will come via permanent elimination of resources that support the named interests.

Proposed mitigation for these losses is identified on p. 13 of the Variance Request as "reservoir restoration and enhancement" and "on-site vegetated habitat creation."

Reservoir Restoration and Enhancement

The MWRA proposes to regrade and replant the edges of the remnant of the reservoir that will refill after the tanks are constructed.

Here one must ask "What is being restored?" Before the reservoir was built in 1951, its entire footprint was occupied by an extensive wetland known as Twinbrook Swamp. This high, rock-rimmed bowl straddled the watershed between Furnace Brook and the Neponset River and had been part of the Reservation for over fifty years, acting as a scenic highlight along the two main east/west routes through the park, Skyline Path and Chickatawbut Road.

Full restoration would entail re-creation of this lost resource. But allowing a portion of the drained basin to refill will merely restore less than half of the clean, highly visible water body that exists today. This will address, in part, the temporary impact to fisheries and habitat values in the western portion of the reservoir, but will do nothing to mitigate the permanent loss of the eight-acre balance. We also note that the refilling, here presented as a substantial contribution by the MWRA, will occur, regardless of whether the applicant takes credit for it, as ordinary runoff and precipitation collect behind Chickatawbut Road.

The proposed shoreline regrading is described as the creation of an aquatic shelf and peninsula. No matter how successful this work may be, it will result in the loss of an additional 9900 square feet of Land Under Water, bringing the total to approximately nine acres. Contrary to the claim on p. 15 of the Request, it will not create additional wetland habitat, but only substitute shallow habitat for deep habitat. In the context of the Reservation as a whole, deep habitat is scarcer than shallow habitat.

The planting that will follow the regrading is described as the creation of additional vegetated wetland. Insofar as it replaces the mostly barren bank along the dam, the vegetation will indeed be additional. But the request fails to note that the proposed work will impact not only Bank and Land

Under Water, but significant areas of Bordering Vegetated Wetland (BVW) that currently exist at the east and west ends of reservoir's southern shoreline. These gently sloping areas, which extend up to 50 feet horizontally from the upland edge, have been colonized by thickets of woody wetland vegetation including black willow, pussy willow, highbush blueberry, and meadowsweet in the fifty years since the reservoir's creation. Some of the willows are massive, and their dense skirts of adventive roots provide shelter and feeding opportunities for a variety of fish and wildlife. Herbaceous elements include large patches of northern dwarf St-Johnswort (a wetland obligate), golden hedge-hyssop, and late-flowering *Agrostis* and *Dichanthelium* grasses, along with prostrate turf-forming mosses.

All of these BVW areas will be lost due to plans to lower the annual high water mark by three feet to 256 feet. And not only the BVW's, but all the vegetated banks not proposed to be buried under fill will be left high and dry by this altered hydrology. No planting plan, no matter how expert, can easily restore functions and values produced by five decades of wetland development.

On-site Vegetated Habitat Creation

The Variance Request states (p. 16) that an additional 10,000 square foot vegetated wetland habitat will be created in the existing meadow on the western side of the Reservoir. But the plan neglects to note that much of the area proposed for this replication in Figure 3 already displays wetland soils and hydrology. No claim of enhancement is credible here until the proposed work is more precisely described, particularly regarding the creation of wetland hydrology where none exists—a notoriously difficult task.

10,000 square feet is a less than a quarter of an acre. Because any vegetated wetland creation in the refilled portion of the reservoir will be more than counterbalanced by adjacent losses of BVW, Bank, and Land Under Water consequent on the proposed drawdown and regrading, this quarter-acre must stand as the sum of area-for-area mitigation that the Request presents to offset the loss of over eight acres of protected wetland resources in the eastern portion of the reservoir. **In other words, even if all the contemplated actions produce the desired results, the outcome will be a 97-100% net loss of wetlands in the Blue Hills Reservation.**

Is the Dept. prepared to affirm that a Variance which produces a 97-100% net loss of wetland resource areas “contributes to the protection of the interests identified in M.G.L. c. 131, § 40?”

Throughout the planning process, whenever presented with opportunities to mitigate rather than increase wetland impacts, MWRA chose the second, more damaging option. It chose a skewed alternatives analysis that favored any amount of wetland losses over any compromise of engineering constraints. It chose a preferred-alternative site lying entirely within a large, high-quality wetland at the center of a historic reservation acquired by the commonwealth over a century ago for the preservation of natural scenery. It advanced a remarkable claim that the elimination of over half of this wetland via placement of millions of tons of concrete and fill would not violate performance standards for work in or near resource areas. And when Friends of the Blue Hills submitted written comments suggesting nearby watershed locations that could furnish appropriately-scaled mitigation for the major wetland losses

proposed, MWRA revealed that it had unilaterally ruled out any and all off-site options, thereby ensuring that mitigation approaching a standard 1:1 ratio could not be attained.

Choices like these, each compounding the next, do not and cannot produce a proposal that contributes to the interests protected by the Act.

STANDARD NO. 3

That the variance is necessary to accommodate an overriding community, regional, state or national public interest; or that it is necessary to avoid an Order that so restricts the use of property as to constitute an unconstitutional taking without compensation

The “overriding public interest” is identified on pp. 16-17 of the Request as the reliability and safety of drinking water supplies in Quincy and portions of Boston and Milton.

Although the Commissioner may, “in rare and unusual cases,” waive the requirements of 310 CMR 10.21 through 10.60 in order to accommodate such an interest, the waiver that the MWRA requests is significantly broader than is necessary to serve the interest. The MWRA not only asks approval to permanently eliminate more than eight acres of protected wetlands, but also seeks relief from the responsibility to mitigate for this impact on a 1:1 basis. It offers no explanation of how a waiver of such mitigation serves the water supply interest, since the interest could be equally well served without a waiver.

Nothing prevented the MWRA from providing such mitigation, and the Request nowhere states why such provision would prevent accomplishment of project goals.

Similarly, the Request does not state why this application represents one of the “rare and unusual cases” cited in 310 CMR 10.05(10) as the only instances appropriate for a variance.

Public water supply projects are not rare or unusual. Neither are public projects in general, whether they involve transportation, utilities, public safety, education, or a variety of other activities that could all be said to represent “an overriding public interest.” Considering that the project will result in a net loss of 97-100% of over eight acres of protected Reservation wetlands, it is fair to say that the MWRA is not only asking that the public interest in wetlands protection be overridden, but that it be jettisoned entirely.

This practice, if followed for projects serving a public interest, would result in widespread destruction of wetlands and would preclude the Act from achieving its goals.

EXPEDITED REVIEW

MWRA also asks that its Request for Variance receive expedited review on the grounds that it represents a high-priority item for the agency, and citing legislative approval for a design/build bidding process (Request cover letter, p. 2).

The nearby Quarry Hills project, which accepted 13 million tons of excavate from the Big Dig, was managed via a design/build process. Soon after after construction began in 1997, wetlands, parks, and neighborhoods all around the site and for miles downstream were repeatedly deluged with polluted stormwater and sediments. These impacts, which are still not under control, are directly attributable to a pollution prevention plan designed for a project much different than the one that went forward.

Accordingly, FBH asks that the Dept. deny MWRA's request for expedited review, since our experience has shown that the design/build approach allows critical questions about project impacts and mitigation to be put off indefinitely, to a point where they can no longer be effectively addressed. We do not doubt that if the project goes forward before mitigation and compensation for unavoidable damages are adequately defined, then the likelihood that such mitigation and compensation will be provided will decline rapidly, since these goals are not priorities for the applicant.

In conclusion, Friends of the Blue Hills regrettably finds itself in the same position today as in April, 2000, when we stated the following in our ENF comment letter:

In view of the important public function that the Covered Storage project will serve, FBH is willing to work with MWRA to help insure that this project results in the least possible damage to the Reservation and its resources, *provided that the MWRA includes adequate mitigation for unavoidable impacts.*

In the three-year interim MWRA has not modified its original position regarding wetlands mitigation in the slightest, beyond its recent and ill-defined offer to create a quarter-acre wet meadow west of the Reservoir, in an area that already functions as a wetland. And even this symbolic gesture is contingent on a determination by the contractor that the work is "practicable" (March, 2003, 401 Water Quality Certification Application, p. 35).

We hoped that our ENF comment would initiate a dialogue with the MWRA regarding a mitigation or compensation plan that would meet widely supported no-net-loss standards. We discovered, instead, that our letter marked the end of the agency's interest in our contribution.

FBH believes that many opportunities exist for the MWRA to bring this project into compliance with no-net-loss standards, and we hope that the dialogue will begin again.

Very truly yours

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cc:

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