

McLane

McLane, Graf,
Raulerson &
Middleton

Professional Association

FIFTEEN NORTH MAIN STREET • CONCORD, NH 03301-4945
TELEPHONE (603) 226-0400 • FACSIMILE (603) 230-4448

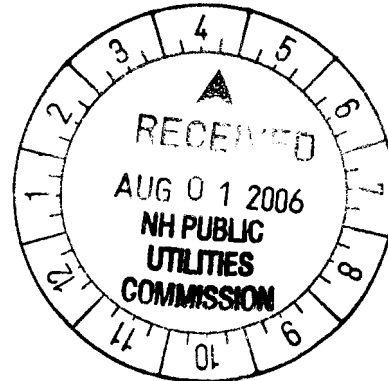
SARAH B. KNOWLTON
Direct Dial: (603) 334-6928
Internet: sarah.knowlton@mclane.com

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH

August 1, 2006

BY HAND DELIVERY

Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301



Re: DW 04-048; City of Nashua—Taking of Pennichuck Water Works, Inc.

Dear Ms. Howland:

On behalf of Pennichuck Water Works, Inc. and related entities, I enclose for filing an original and seven copies of Pennichuck's Motion to Strike or Exclude Portions of the City of Nashua's May 22, 2006 Testimony. The Staff of the Commission does not object to this Motion.

Due to the size of the attachments, I am enclosing a CD-ROM containing the enclosed documents in electronic pdf format. I have served all parties on the service list by e-mail and first class mail.

Thank you for your assistance with this matter. Please call me with any questions.

Very truly yours,

Sarah B. Knowlton

Enclosures

cc: Service List
Hannah McCarthy, CEO and President, Pennichuck Corporation
Donald L. Ware, President, Pennichuck Water Works, Inc.

11/1/2006 10:10 AM

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

City of Nashua: Taking Of Pennichuck Water Works, Inc.

Docket No. DW 04-048

**MOTION TO STRIKE OR EXCLUDE PORTIONS OF THE CITY OF NASHUA'S
MAY 22, 2006 TESTIMONY**

NOW COME Pennichuck Corporation, Pennichuck Water Works, Inc., Pennichuck East Utility, Inc., Pittsfield Aqueduct Company, Inc. and Pennichuck Water Service Corporation (collectively, "Pennichuck") in the above captioned action and state as follows:

Introduction

1. This motion arises out of the City of Nashua's ("Nashua" or the "City") attempt to turn long-standing Commission procedures on their head by filing its case in chief through the form of rebuttal testimony. On May 22, 2006, the City filed rebuttal testimony from six witnesses, presenting for the first time detailed testimony that should have been filed nearly two years ago – on November 22, 2004 – as was required under this Commission's order that the City present its direct case on why the proposed taking is in the public interest and whether the City is qualified to operate a water utility. See Order 24,379. The Commission should strike or exclude from the record Nashua's rebuttal testimony of the witnesses identified below because the late submission of such testimony violates the procedural schedule in this case, Pennichuck's due process rights, and established case law regarding the scope of rebuttal testimony.

Background

2. Nashua initially filed its eminent domain petition under RSA 38:9 on March 25, 2004. In its petition, the City averred that it had initiated the taking of PWW's assets based on a

resolution adopted by its Board of Aldermen. This resolution identified as the primary reason for the taking of the assets the City's desire to maintain "an adequate supply of clean, affordable drinking water [as] essential to the viability of any community." See Exhibit A to Petition. The Board's resolution further stated that "in order to obtain an adequate supply of clean, affordable water for drinking and other purposes, substantial actions must be taken in the future to re-invest the revenues of the water company in the enhancement of the system, in the maintenance of the system, and in protection of the source of supply of the system." Id.

3. Although the City's petition was initially unsupported by testimony despite Commission rules to the contrary, it ultimately filed testimony on November 22, 2004 after being ordered by the Commission to do so. The City's direct case, which consisted of testimony from five witnesses, addressed the City's technical, financial and managerial capability to operate PWW and how the public interest would be served by the taking.¹ Consistent with the aldermanic vote that initiated the eminent domain process, the City's testimony prominently identified Pennichuck's stewardship of its watershed as one of its primary reasons for this eminent domain action. See page 2 of testimony of Direct Pre-Filed Testimony of Brian McCarthy ("[i]n recent years there has been concern about its [Pennichuck's] growing real estate operations and what some believe as its failure to protect the watershed through those real estate operations."). However, the City did not provide any details or facts in support of this statement.

4. Pennichuck engaged in discovery on the City's testimony, in part by taking the deposition of Katherine Hersh, the community development director for the City. At her July 2005 deposition, Ms. Hersh testified at length about the City's concerns regarding Pennichuck's

¹ The Commission had "require[d] Nashua to file testimony on its technical, financial and managerial capability to operate the public utilities as requested and how the public interest would be served by the taking." Order 24,379 at 11.

stewardship of the watershed, dating those concerns at least as early as the time of the Philadelphia Suburban merger. See e.g., Hersh deposition, p. 15, attached hereto as Exhibit 1. In fact, nearly the first 50 pages of Ms. Hersh's deposition detail her concerns about watershed issues. For example, Ms. Hersh testified that "the resource [water supply] has not been protected as well as it had been and has degraded", that the development of land through the Southwood Corporation and in the buffers was inappropriate, id. at 21-28, and that increased withdrawals of water by from the Merrimack River by Pennichuck was problematic. Id. at 41. Ms. Hersh's testimony went on to identify particular parcels of land and transactions that were of concern to the City.

5. The Commission's own records verify that the City has held these concerns since at least 2002. In November 2002, the City submitted testimony of its mayor, Bernard Streeter, in DW 02-126, the docket regarding the merger of Philadelphia Suburban and Pennichuck Corporation. As part of his testimony in that docket, Mayor Streeter submitted a report titled "Summary Report – Comprehensive Review Pennichuck Water System Nashua, New Hampshire" prepared by Rizzo Associates. This report contains an entire section titled "Watershed Management" in which the City analyzes and criticizes Pennichuck's management of the watershed, and provides recommendations on watershed management issues. A copy of this section of the Rizzo report is attached as Exhibit 2.

6. Despite the fact that the City formally presented to the Commission in detail its concerns about watershed issues since as early as 2002, and identified watershed protection issues as primary in its reasons for initiating the taking of PWW's assets, the City waited eighteen months after the deadline for filing direct testimony on public interest issues in this case to provide any detailed testimony on watershed issues. Instead, the City chose to submit a direct

case that contained the barest of unsupported allegations, either hoping that that would be sufficient to support its case or, more likely, planning from the outset to lay in wait to provide the substance of its case in chief until Pennichuck had responded to the City's direct case.

7. Having waited until Pennichuck submitted its responsive case demonstrating in great detail that it had in fact been a good steward of the public water supply and that Nashua had not, and having also read the Commission staff's testimony stating that the City had failed to present any objective evidence that Pennichuck had harmed or mismanaged the watershed, on May 22, 2006 the City presented "rebuttal" testimony of three witnesses on watershed issues: Katherine Hersh, Brian McCarthy, and John Henderson. For the first time, the City provided in detail the purported basis for its claim in its original filing regarding Pennichuck's stewardship of the water supply.

8. It is a near certainty that Nashua will claim its May 22 testimony was merely intended to rebut the testimony of Eileen Pannetier of Comprehensive Environmental, Inc., who presented detailed testimony about Pennichuck's stewardship of the watershed. But as noted above, Pennichuck presented this testimony in response to the unsupported allegations in Nashua's petition and Mr. McCarthy's November 22, 2004 direct testimony about the watershed.

9. There is no reasonable explanation for why Nashua did not or could not have filed direct testimony on watershed issues in November 2004, the time for filing its direct case in chief. By November 2004, the City had had the Rizzo report in hand for over two years, which addressed watershed issues in detail. There was no reason that Ms. Hersh's testimony could not have been submitted in November 2004, given that her concerns dated back to at least 2002 and she was within the City's employ since then and was directly involved in the eminent domain case during that entire time. Similarly, Mr. McCarthy did not have to wait until May 22, 2006 to

detail his concerns about the watershed, particularly when he identified the watershed as a primary reason for pursuing the taking of PWW's assets in his November 22, 2004 testimony. The third witness, Mr. Henderson, an engineer with Tetra Tech, was presented by the City in its filing on January 12, 2006 as a part of the team of contractors hired by the City. However, Mr. Henderson did not mention anything about Pennichuck's stewardship of its watershed until four months later. Assuming there was any proper basis for Mr. Henderson to submit testimony regarding the watershed issue, which there was not, there is no reason that the City needed to wait an additional four months to submit a second round of testimony on an issue that the City had identified two years before in its initial petition and its direct testimony as being of primary importance to its case.

10. In a further effort to remake its direct case on public interest, Nashua also submitted the testimony of Allan Fuller as part of its May 22, 2006 rebuttal testimony. Mr. Fuller, a private citizen and chairman of the Pennichuck Brook Watershed Council, was apparently encouraged by the City of Nashua to present testimony on Pennichuck's stewardship of the watershed. However, just like other Nashua witnesses, Mr. Fuller's concerns about the Pennichuck watershed were well known to the City well before the City submitted its direct case in 2004. In particular, Mr. Fuller had submitted written testimony to this Commission in the Philadelphia Suburban docket well over two years before the City filed its petition in this case. See December 8, 2002 testimony of Allan Fuller in DW 02-126. Yet in Mr. Fuller's own words, he did not submit testimony in this docket until May 22, 2006 "because I just did not have the time". See Mr. Fuller's response to Pennichuck Data Request 5-119, attached as Exhibit 3. Whether Mr. Fuller truly did not have the time to provide his testimony on the City's behalf in this case when the City submitted its direct testimony or the City simply chose to delay providing

substantiation of its more general allegations may never be known. What is known however, is that the City is counting on the Commission to allow Nashua to supplement its case at will and that the City believes that even a defendant whose property and very existence are at stake has no procedural rights before this Commission.

11. The City – and Mr. Fuller’s – cavalier attitude about Commission deadlines and Pennichuck’s due process rights has been evident throughout this proceeding. Setting aside Nashua’s failure to file its direct testimony with its petition in March 2004, the Commission gave the City an additional eight months (until November 22, 2004) to pull together its direct case on public interest, and then another chance to significantly supplement its public interest case on January 12, 2006 by filing extensive testimony on its third party contract operator and oversight contractor. There was more than ample time between March 2004 and November 2004 for Nashua to assemble all of the information within its possession on watershed issues, identify potential witnesses who could support its position, and develop written testimony on why the watershed should be considered by the Commission as a public interest issue.

12. To submit this testimony on May 22, 2006 for the first time and under the guise of rebuttal testimony makes a mockery of the Commission’s process. Nashua’s May 22, 2006 testimony constituted an almost complete make over of its direct testimony, attempting to make a fresh start in the presentation of its direct case. In fact, if the Commission were to go back and read Nashua’s Petition and its initial direct testimony filed on November 22, 2004, it would be evident that Nashua’s case has changed dramatically from its initial filing. For example, Nashua’s Petition and direct testimony is premised entirely on the operation of the water system by a regional water district. The City has never explained in testimony that it has abandoned its plan to have the assets owned and run by a regional water district nor has it modified its petition

to indicate which assets it really seeks or who would own those assets. Instead, the City's case – its plan for how it will own and operate the water system – is ever changing and essentially remade every time it files testimony. Pennichuck and other parties are left to respond to a continually moving target.

13. In addition to its late filed testimony on watershed issues, the City also submitted testimony on its qualifications to operate a water utility well past the January 12, 2006 deadline set by the Commission, which was already an extended time frame that was afforded to Nashua. In Order No. 24,567 issued on December 22, 2005, the Commission considered the issue of when Nashua must file testimony on its ability to perform billing and collections functions. The Commission ruled that "...we consider the billing and collections issue related to the issues of technical, financial, and managerial capability, regarding which Nashua, as determined above, will be filing testimony on January 12, 2006." Order 24,567 at 7. Despite this clear directive from the Commission, the City filed no direct testimony on January 12 on its billings and collections capabilities. Instead, it waited until May 22, 2006 to file testimony of its two employees who would be responsible for these activities. This testimony – of Nashua's Chief Financial Officer, Carol Anderson and Deputy Treasurer and Tax Collector, Ruth Raswyck – was filed under the guise of a reply to the testimony of Bonalyn Hartley filed on January 12, 2006 and of Amanda Noonan, which was filed on April 13, 2006. The Anderson/Raswyck testimony provided for the first time basic information about how Nashua would perform billing and collections services, including matters as fundamental as the number of City employees who would perform these tasks and how the City would handle complaints from customers.

14. Just like the watershed testimony, there is no reason why Nashua could not have filed this testimony by the January 12, 2006 deadline as part of its direct case. Both Carol

Anderson and Ruth Raswyck have been in the City's employ during the entire pendency of this case and could have presented the City's plan for handling water billing and collection issues. Moreover, the City knew from Commission Order 24,567 that it would need to present testimony on its billings and collections capabilities by January 12. Instead of complying with this directive, the City has decided to play by its own rules, filing testimony without regard to the procedural schedule, Commission rules, or the rights of the parties.

15. The requirement that a party file direct testimony serves an important purpose in any litigation--to require that a petitioner submit its entire case once, in an orderly fashion. "Evidence which supports one's own case should be introduced during the presentation of the evidence in chief." 75 Am Jur 2d, Trial § 358. After the party with the burden of proof – in this case, the City of Nashua – presents its direct case, rebuttal (reply) testimony is typically permitted. "Rebuttal is evidence given to prove, disprove, explain, repel, or contradict the evidence of the adversary party." 75 Am Jur 2d Trial § 365; see also State v. Stewart, 663 A.2d 912, 927 (R.I. 1995); U.S. v. Sebaggala, 256 F.3d 59 (1st Cir. 2001); United States v. Laboy, 909 F.2d 581, 588 (1st Cir. 1990). It is not intended to give a party an opportunity to tell its story twice or to present evidence that was proper in the case in chief. 75 Am Jur 2d Trial § 374.

16. This is the rule in most tribunals, including the Superior Court. Superior Court Rule 70 states: "In all trials, the plaintiff shall put in his whole case before resting and shall not thereafter, except by permission of the Court for good cause shown, be permitted to put in any evidence except such as may be strictly rebutting; and the defendant shall, before resting, put in his whole defense, and shall not thereafter introduce any evidence except such as may be in reply to the rebutting evidence". The Commission has applied these same principles. See Re: Public Service of New Hampshire et al., 71 NH PUC 547, 548 (1986)("...rebuttal testimony is

testimony which responds to matters raised by direct testimony. Direct testimony constitutes a party's case in chief. The Commission will not countenance a party's attempt to present its entire case in rebuttal.”).

17. Allowing the proponent to put in evidence for its case in chief through rebuttal can result in: (1) unfairness to an opponent who has justly supposed that the case in chief was the entire case which it had to meet; and (2) confusion created by an unending alternation of successive fragments of the case which could have been put in at once in the beginning. Wigmore on Evidence, Vol VI § 1873, p. 511(3rd Ed. 1940). “The principal objective of rebuttal is to permit a litigant to counter new, unforeseen facts brought out in the other side's case.” Faigin v. Kelly, 184 F.3d 67, 85 (1st Cir. 1999); Lubanski v. Coleco Indus., Inc., 929 F.2d 42, 47 (1st Cir. 1991). “When a party knows that a contested matter is in the case, yet fails to address it in a timely fashion, he scarcely can be heard to complain that the trial court refused to give him a second nibble at the cherry.” Faigin at 85-86; see also Lubanski, 929 F.2d at 47 (upholding the denial of rebuttal when the proffered rebuttal evidence was available to the plaintiff during her case in chief and the testimony she sought to rebut was not unexpected).

18. Here, Nashua was fully aware that both billings and collections and watershed issues would be contested matters in this case, yet it failed to present that testimony in the time prescribed by the procedural schedule. The net effect of this has been that Pennichuck has been left to respond to a moving target, in which Nashua changes its case to reflect the facts as presented in the direct cases of Pennichuck and the PUC staff.

19. Moreover, because Nashua waited until May 22, 2006 to present this testimony instead of submitting it earlier as it was required to do, Pennichuck has suffered actual prejudice. According to the procedural schedule, Pennichuck (and other parties) were entitled to submit two

rounds of data requests on Nashua's original direct case and, with regard to the City's January 12 filing, rolling data requests from January 12 through February 6, 2006, with responses due 10 days from the date of the request, and then a second round of discovery on that testimony on February 27. Thus, Pennichuck lost multiple opportunities to take discovery on what should have been in Nashua's November 2004 and January 2006 testimony, and the chance to submit its own testimony (on January 12, February 27 and/or May 22) to respond to Nashua's allegations. Because Nashua filed its testimony late, Pennichuck has been relegated instead to one round of data requests on that testimony, and the opportunity to address Nashua's allegations only as part of its capstone testimony, which presumably was intended to bring together all of the testimony that had previously been filed. This lost opportunity is not insignificant. For example, the extent of Nashua's capabilities to provide billing and customer service functions to approximately 25,000 retail water customers is central to the Commission's determination of whether the taking is in the public interest. Not having sufficient notice and opportunity to test Nashua's assertions on this critical testimony violates Pennichuck's due process rights and could do real harm to the company's customers. For these reasons, the Commission should not consider Nashua's late filed testimony of Katherine Hersh, Brian McCarthy, John Henderson, Allan Fuller, Carol Anderson and Ruth Raswyck and should strike or exclude it from the record.

20. Pennichuck has contacted other parties to this docket to learn their position on this Motion. To date, Barbara Pressly objects to the Motion, the Town of Merrimack takes no position, and the other parties have not responded.

WHEREFORE, Pennichuck respectfully requests that the Commission:

a. Grant this Motion to Strike or Exclude Portions of the City of Nashua's May 22, 2006 Testimony;

- b. Strike or exclude the reply testimony of Katherine Hersh, Brian McCarthy, John Henderson, Allan Fuller, Carol Anderson and Ruth Raswyck; and
- c. Grant PWW such other and further relief as the Commission deems necessary and just.


Respectfully submitted,

Pennichuck Corporation
Pennichuck Water Works, Inc.
Pennichuck East Utility, Inc
Pittsfield Aqueduct Company, Inc.
Pennichuck Water Service Corporation

By Their Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: August 1, 2006


By: 

Thomas J. Donovan
Steven V. Camerino
Sarah B. Knowlton
Bicentennial Square
Fifteen North Main Street
Concord, NH 03301
Telephone (603) 226-0400

Joe A. Conner, Esquire
Baker Donelson Bearman
Caldwell & Berkowitz, P.C.
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450

Certificate of Service

I hereby certify that on this 1st day of August, 2006, a copy of this Motion to Strike has been forwarded to the parties listed on the Commission's service list in this docket.



Sarah B. Knowlton

CITY OF NASHUA PETITION FOR VALUATION
Deposition of Katherine E. Hersh

STATE OF NEW HAMPSHIRE
PETITION FOR VALUATION PURSUANT TO RSA 38:9

CITY OF NASHUA

Docket No. DW-04-048

DEPOSITION of KATHERINE E. HERSH

Taken by Notice at the offices of the Nashua City
Hall, 229 Main Street, Nashua, New Hampshire, on

Thursday, July 21, 2005, commencing at 10:50 in the

forenoon.

Court Reporter: Marcia G. Patrisso,
Certified Shorthand Reporter
NH CSR No. 83 (RSA 331-B)
Registered Professional Reporter
Certified Realtime Reporter

CITY OF NASHUA PETITION FOR VALUATION
Deposition of Katherine E. Hersh

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1 APPEARANCES:
2 For the Petitioner, City of Nashua:
3 UPTON & HATFIELD, LLP
23 Seavey Street - P.O. Box 2242
4 North Conway, New Hampshire 03860-2242
By: Robert Upton II, Esq.
5
6 For the Respondent, Pennichuck Water Works:
7 McLANE, GRAF, RAULERSON & MIDDLETON, P.A.
900 Elm Street - P.O. Box 326
8 Manchester, New Hampshire 03105
By: Thomas J. Donovan, Esq.
9 Sarah B. Knowlton, Esq.
10
11 STIPULATIONS
12 It is agreed that the deposition shall be taken
13 in the first instance in stenotype and when
14 transcribed may be used for all purposes for which
15 depositions are competent under New Hampshire
16 practice.
17 Notice, filing, caption and all other formalities
18 are waived. All objections except as to form are
19 reserved and may be taken in court at the time of
20 trial.
21 It is further agreed that if the deposition is
22 not signed within thirty (30) days after submission
23 to counsel, the signature of the deponent is waived.

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1 KATHERINE E. HERSH,
2 having been duly sworn, was examined and
3 testified as follows:
4 EXAMINATION
5 BY MR. DONOVAN:
6 Q. Could you give us your name and
7 address for the record, please.
8 A. Sure. It's Katherine Hersh, and my
9 address is 13 Berkeley Street, Nashua, New
10 Hampshire.
11 Q. And by whom are you employed?
12 A. I'm employed by the City of Nashua.
13 Q. And what's your job title?
14 A. Community development director.
15 Q. And how long have you served in that
16 position?
17 A. Almost four years.
18 Q. So that would mean you began --
19 A. August 2001.
20 Q. Were you employed prior to that?
21 A. I was employed prior to that. Not by
22 the city.
23 Q. What was your employment before that?

CITY OF NASHUA PETITION FOR VALUATION
Deposition of Katherine E. Hersh

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1 A. I worked for Vanasse, Hangen,
2 Brustlin, VHB, as a consultant.
3 Q. That's an engineering firm?
4 A. It is. I was a senior planner.
5 Q. Did you have a specialty there?
6 A. My specialty was working on municipal
7 projects.
8 Q. Any particular type of municipal
9 projects?
10 A. Transportation and land use projects.
11 If you want examples --
12 Q. Please.
13 A. -- I can give you examples. Sure.
14 For example, I was the project manager
15 for the Route 2 Corridor Study, Route 2 being
16 Route 2, New Hampshire; I was the project manager
17 for the Loudon Road Corridor Study in Concord; I was
18 the project manager for the Piscataqua Trail Project
19 in Manchester. Projects like that.
20 Q. And did you also at one time serve as
21 an alderman?
22 A. Yes, I did.
23 Q. What were the dates of your service

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1 there?
2 A. I served as an alderman from January
3 1992 until August 2001.
4 Q. So that means you must have resigned
5 your position as alderman prior to the end of your
6 term?
7 A. Correct.
8 Q. And did you resign in order to take
9 this position with the city?
10 A. Yes, I did.
11 Q. And who would have hired you for that?
12 A. The mayor makes the recommendation to
13 the board of aldermen, and the board of aldermen
14 votes on it.
15 Q. It must be unlike Manchester where
16 there's actually a prohibition in the charter of
17 elected officials.
18 A. There is now some -- there was
19 legislation introduced subsequent to that because
20 there was a lot of discussion about it.
21 Q. Briefly, what was your educational
22 background after high school?
23 A. I have a Bachelor of Science degree in

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1 mathematics from Northeastern University.
2 Q. And do you have any graduate degrees?
3 A. I do not.
4 Q. In your role as a planner for V --
5 A. HB.
6 Q. -- HB, did you work on any water
7 projects?
8 A. I did not.
9 Q. Any watershed projects, per se?
10 A. Not that I recall.
11 Q. I understand that you and Mr. McCarthy
12 brought a lawsuit relating to proposed development
13 in the Pennichuck Brook Watershed; is that correct?
14 A. That is correct.
15 Q. And do you recall what year that was?
16 A. I do not recall the exact year.
17 Q. And both of you were serving as
18 aldermen at the time?
19 A. That's correct.
20 Q. And briefly, what was the subject
21 matter of that lawsuit?
22 A. The subject matter was that the ZBA
23 granted a variance for a change of use. And our

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1 issue was that there was no hardship and that the
2 variance should not have been granted.
3 Q. And what transpired with that case?
4 A. Subsequent to that, the applicant
5 withdrew their application; withdrew their plan.
6 Q. So it never did go to adjudication?
7 A. It never did go to adjudication.
8 Q. You and Mr. McCarthy brought that in
9 your role as individuals, not as aldermen?
10 A. That's correct.
11 Q. And the concern you had with respect
12 to that development was what?
13 A. Was its proximity to -- was its
14 intensity of development and its proximity to our
15 drinking water supply.
16 Q. Generally, what does your current job
17 entail?
18 A. I am responsible for oversight of the
19 division -- management of the division -- which
20 includes planning department, building department,
21 code enforcement, economic development and urban
22 programs.
23 Q. So there is a planning director in

CITY OF NASHUA PETITION FOR VALUATION
Deposition of Katherine E. Hersh

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1 Nashua who reports to you?
2 A. That's correct.
3 Q. Similarly, there would be a code
4 enforcement --
5 A. Manager.
6 Q. -- building --
7 A. Building manager.
8 Q. And what role do you have with the
9 potential Nashua acquisition of Pennichuck assets?
10 A. I am part of a group of staff that is
11 part of the discussions and the strategies.
12 Q. I do see your name as part of a group,
13 and we could get into that later, that serve on a --
14 some type of a steering committee that meets
15 regularly; is that right?
16 A. If you're talking about the internal
17 group of staff that meets regularly, yes. Yes.
18 Q. At five o'clock on Mondays?
19 A. Sometimes, yes.
20 Q. And sometimes the meeting's not held,
21 but that's when it's scheduled?
22 A. That's generally when it's scheduled.
23 Q. Right. And you're on it and the

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1 mayor's on it and Mr. Sousa is on it?
2 A. Uh-huh.
3 Q. Alderman McCarthy is on it, and who
4 else is on it?
5 A. Carol Anderson, the CFO, and David
6 Connell.
7 Q. Anyone else on it?
8 A. The other person that sometimes
9 attends but doesn't always attend is the
10 representative from the fire department, who's Brian
11 Morrissey.
12 Q. Who's responsible for keeping any
13 notes or agendas with respect to that working group?
14 A. I can't say that there's a person
15 that's always responsible. For a while I was
16 keeping some of the notes, particularly when there
17 were a number of different issues that were going on
18 at the same time. So I would keep -- I had a table
19 that I'm sure that was in the documentation that was
20 upstairs, but it wasn't always kept.
21 MR. UPTON: It's 21.
22 Q. I'm going to show you what was marked
23 as Exhibit 21. Is that the table you're talking

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1 about?
2 A. Yes. Yes.
3 Q. And you were the person who kept that?
4 A. Yes.
5 Q. And this is a document that was one
6 that you could update from meeting to meeting?
7 A. Yes.
8 Q. And it has various tasks and dates and
9 persons who are assigned; is that right?
10 A. That's correct.
11 Q. And who chairs those meetings that are
12 referenced in Exhibit 21?
13 A. I would assume that the mayor would be
14 considered the chair of the meeting.
15 Q. I understand he would certainly be the
16 head of it, but does he actually actively act as the
17 chair, or is it someone else?
18 A. It's the dynamic of -- it depends on
19 what's going on; who takes primary -- who does the
20 primary talking, depending on what the issue is at
21 the moment. So if it's a legal issue that we're
22 discussing, then Attorney Connell would be the
23 person that would be taking the primary role. It's

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1 not like someone's chairing it and...
2 Q. In terms of Pennichuck matters, isn't
3 there a point person within the city who receives
4 and tends to convey information back and forth?
5 A. I tend to do most of that.
6 Q. That's what it seems like from the
7 communications?
8 A. Right. I tend to do a lot of that. I
9 try to make sure everyone's communicating. So for
10 example, when we were dealing with -- because we had
11 so many issues at one point that we were dealing
12 with at the same time, I put this together so that
13 we would not forget the different issues. And so at
14 this point I might be the person that you might be
15 considered that was chairing the meeting. I was
16 basically facilitating getting through these issues,
17 but -- getting through these issues, period, I
18 guess.
19 Q. When did your involvement with respect
20 to the Pennichuck matter begin?
21 A. I would say it began at the very
22 beginning -- when Philadelphia Suburban first
23 proposed the acquisition.

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1 Q. And if I said to you that was sometime
2 in 2002, would that sound right?
3 A. That sounds right. Like April 2002.
4 Q. So prior to that time, at least in
5 your official capacity, you didn't have any role
6 with respect to the potential acquisition of
7 Pennichuck assets?
8 A. No.
9 Q. Did you have any informal involvement
10 with that possibility?
11 A. Not that I recall.
12 Q. So it was that Philadelphia Suburban
13 issue, the potential sale, that triggered your work
14 involvement?
15 A. That's the way I recall it, yes.
16 Q. And how did that come to be?
17 A. My recollection is that I was called
18 upon because of my knowledge of the land use issues,
19 and that that was -- that has been more my focus
20 on -- with regard to Pennichuck.
21 Q. Called upon by yourself or called upon
22 by others?
23 A. You'll have to clarify that.

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1 Q. All right. You used the word "called
2 upon" because of your expertise in land use matters,
3 and I was wondering if that was a self-generated --
4 A. Sometimes it's self-generated; I would
5 assume that sometimes it's not.
6 Q. Okay. And what did you -- what were
7 the first sorts of things that you did in that
8 regard after you began to get involved?
9 A. I guess what I recall is -- and what I
10 continue to do is look at the issue with respect to
11 the land use, with respect to the buffers and with
12 respect to the resource protection. So if there was
13 something that needed to be written with respect to
14 the resource protection, I might be the person that
15 did the research on that or wrote that.
16 Q. Would you have been also involved with
17 the more general issue of the concept of
18 municipalizing private water systems and what's
19 happening in other parts of the country? Would that
20 be part of what you took under your wing?
21 A. As far as doing research on what's
22 happening in other parts of the country?
23 Q. Yes.

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1 A. I did not do extensive research.
2 Q. Was there someone else who looked into
3 that?
4 A. There were other people that looked
5 into that that I -- I don't know who particularly
6 would have looked into that, but certainly there
7 were numerous discussions about what other people
8 were doing across the country; but I can't tell you
9 who, particularly.
10 Q. Did you have any personal involvement
11 reaching out to other municipalities who might have
12 dealt with a similar situation?
13 A. Yes. Yes.
14 Q. And could you --
15 A. That dealt with a similar situation
16 with regard to?
17 Q. Either with respect to a private water
18 company selling assets or with respect to
19 municipalizing water company assets.
20 A. No.
21 Q. No?
22 A. No.
23 Q. At some point the City of Nashua

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1 decided to oppose the proposed sale by Pennichuck to
2 Philadelphia Suburban; is that right?
3 A. Yes.
4 Q. How did that come about?
5 MR. UPTON: Objection.
6 You can go ahead and answer.
7 A. How did the --
8 Q. Decision-making go about to oppose the
9 proposed sale by Pennichuck to Philadelphia
10 Suburban.
11 A. You know, I don't recall. If you're
12 asking me for details on how that decision-making
13 happened, I don't recall.
14 Q. Well, and I'm not looking at this
15 point for details, more of an overall view. Was it
16 something that evolved over time, was there a
17 particular event that triggered that decision?
18 A. Actually, I do recall. There was an
19 article in the paper, and I recall expressing my
20 concerns to the mayor, and I recall that other
21 people expressed their concerns to the mayor. So
22 that was the immediate response at that time.
23 Q. There was an article in the paper

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1 about what?
2 A. About Philadelphia Suburban making an
3 offer.
4 Q. There was an article in the paper
5 announcing that there was a plan to sell to
6 Philadelphia Suburban, and that triggered you and
7 others expressing concerns about that potential
8 transaction to the mayor?
9 A. Correct.
10 Q. And that's when you and other people
11 began working on that project?
12 A. Correct.
13 Q. Right. And the immediate goal -- what
14 was the result that -- or the goal that was being
15 sought at that point?
16 A. The goal for the city?
17 Q. Yes.
18 A. The goal for the city has been and
19 continues to be the long-term protection of our
20 drinking water supply for our citizens.
21 Q. And in the context of the proposal
22 that you encountered in the newspaper with respect
23 to Philadelphia Suburban, what would be the

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1 consequence upon that proposal?
2 A. The concern was that the purchaser, or
3 the proposed purchaser of Pennichuck, would have
4 different goals than the city; would not necessarily
5 share the same goals.
6 Q. And had Pennichuck shared those same
7 goals with the city up till that point?
8 MR. UPTON: I'm going to object again.
9 This is really getting into motivation. Again, it's
10 got nothing to do with what is in the public
11 interest, whether this taking by the city is in the
12 public interest. I don't want to do this again, but
13 we're getting awfully close to the point where I
14 say, "Stop." Are you going to keep going on in this
15 area?
16 MR. DONOVAN: Well, I think -- I mean,
17 I think the particular question I'm asking is
18 getting right to the public interest -- or what her
19 perception is of whether Pennichuck is serving the
20 public interest or not --
21 MR. UPTON: All right. That, I'll
22 allow. But you're -- the opposition that the city
23 had to the Pennichuck merger -- I mean, the

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1 Philadelphia merger is all stuff that goes to
2 motivation. It is not relevant to the issue. And I
3 really don't want to say, "Stop answering," but I've
4 given you a lot of leeway already.
5 But if you want to explore it in that
6 context, that's fine.
7 MR. DONOVAN: Okay.
8 Q. (BY MR. DONOVAN) Do you have in mind
9 my last --
10 A. Ask me the question.
11 MR. DONOVAN: Can you read --
12 (The reporter reads the pending
13 question.)
14 THE WITNESS: And you're okay with my
15 answering that?
16 MR. UPTON: Yes.
17 A. I believe that Pennichuck did not
18 always share that same goal. Did not always have
19 actions that shared that -- that implied they shared
20 the same goals.
21 Q. And Pennichuck's actions which you
22 believe did not share the same goals as Nashua
23 related to watershed protection issues; is that

Page 21

1 right?
2 A. Correct.
3 Q. Any others that you can recall?
4 A. I think that's the major issue.
5 Q. In terms of providing safe and clean
6 and adequate water supply to the citizens of Nashua,
7 they shared Nashua's goals in that regard; is that
8 right?
9 A. They shared Nashua's goals for the
10 short term. And my concern has always been that
11 they did not -- they were not necessarily as planned
12 as they should be for Nashua's resource -- for
13 Nashua's needs in the future.
14 Q. And that's because you're assuming
15 that Nashua's water needs will be growing in the
16 future?
17 A. No, that's because I think that the
18 resource has not been protected as well as it had
19 been and has degraded.
20 Q. This is the watershed?
21 A. That's correct.
22 Q. So what was it about the Philadelphia
23 Suburban transaction that would make that concern

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1 any different than the concern you already expressed
2 with respect to Pennichuck's lack of sharing of
3 goals with Nashua?

4 MR. UPTON: I object to that question,
5 Tom. That deals with what's wrong with Philadelphia
6 and not with what's wrong with Pennichuck. If you
7 want to deal with Pennichuck, that's fine.

8 MR. DONOVAN: Well, I think it's using
9 as an example -- or probing the extent to which this
10 witness in fact had -- it's probing the level of
11 concern that Nashua had with respect to Pennichuck's
12 stewardship in comparison with another opportunity.

13 MR. UPTON: You can answer, but try to
14 confine your answer to what your concerns were with
15 Pennichuck as opposed to Philadelphia.

16 THE WITNESS: Thank you. I will.

17 A. I had expressed long before the
18 Philadelphia Suburban proposal my concerns with the
19 stewardship -- with Pennichuck's stewardship in the
20 watershed; and in fact, introduced legislation in
21 the late 1990s for the Water Supply Protection
22 District Ordinance because I was concerned that the
23 resource was not being protected to the extent that

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1 it should be protected.

2 I -- my view is that that is
3 Pennichuck's -- and certainly the city's as well --
4 but Pennichuck's responsibility as the steward of
5 the watershed, as the owner of the watershed
6 company, that has been providing water and is
7 projecting to provide water for the future, that
8 they would be protecting the resource better than I
9 believe they were protecting the resource. Some of
10 the information that I had came straight out of
11 their own management plan, their watershed
12 management plan.

13 Q. Generally your concern was with the
14 development that had been ongoing through the
15 Southwood subsidiary in what had previously been
16 undeveloped lands owned by Pennichuck; is that
17 right?

18 A. It's in that, and it's also in the
19 development of other properties that Pennichuck did
20 not own and Pennichuck never chose to pursue
21 ownership of and Pennichuck should have pursued
22 ownership of --

23 Q. That were within --

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1 A. -- as a responsible steward.

2 That were in the buffers that were
3 established by the Sasaki report.

4 Q. The Southwood development that you're
5 concerned about took place pursuant to Nashua land
6 use regulations; isn't that right?

7 A. I'd have to think about which ones,
8 because there may have been variances or special
9 exceptions that were granted. So I would have to --
10 I would have to go back and look. I don't know.

11 Q. The board of aldermen in Nashua had
12 passed or amended its zoning ordinances over time to
13 include a watershed zone; isn't that correct? I may
14 not be using the correct term, but wasn't there a
15 watershed zone?

16 A. We adopted a water supply protection
17 district ordinance, which is maybe what you're
18 talking about.

19 Q. And what year was that?

20 A. In the -- it was in the late 1980s.
21 I'm sorry, 1990s.

22 Q. And you were on the board of aldermen
23 at that time?

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1 A. I was.

2 Q. And you voted in favor of that?

3 A. Yes.

4 Q. And the Southwood development occurred
5 outside of that watershed protection zone; isn't
6 that right?

7 A. What Southwood development?

8 Q. The development that occurred within
9 the Pennichuck watershed but outside of that
10 resource protection zone.

11 A. Which development are you speaking
12 about?

13 Q. Why don't you tell me the names of the
14 Southwood developments that you can recall, and then
15 I'll ask you about each one of them.

16 A. Parcel M is one of the parcels that
17 was owned by Pennichuck that had a proposal for
18 development of a million square feet which would
19 have required a bridge to cross the wetlands. And
20 they were clear in discussions with them that they
21 would require special exceptions or variances from
22 the water supply protection district ordinance to
23 access that land, and that they intended to pursue

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<p style="text-align: right;">Page 26</p> <p>1 that. And in fact, Moe Arel was clear about that;</p> <p>2 as a matter of fact, Moe Arel opposed the Water</p> <p>3 Supply Protection District Ordinance as it was</p> <p>4 originally introduced to the board of aldermen</p> <p>5 because he was concerned about the ability to</p> <p>6 develop his land. The city subsequently bought the</p> <p>7 property from Pennichuck to prevent Pennichuck from</p> <p>8 developing the property.</p> <p>9 Q. That's Parcel M?</p> <p>10 A. That's Parcel M.</p> <p>11 Q. All right. Let's talk about each</p> <p>12 other parcel that you are concerned about.</p> <p>13 A. Another parcel that I am concerned</p> <p>14 about is not owned by Pennichuck. It's the</p> <p>15 Sanderson Farms' parcel. Sanderson Farms was</p> <p>16 undeveloped for years and years. It borders on</p> <p>17 Bowers Pond, and a proposal came to the city and was</p> <p>18 introduced to the planning board in 1998 to</p> <p>19 subdivide that property and to build houses within</p> <p>20 150 feet of Bowers Pond.</p> <p>21 And Steve Densberger went to the</p> <p>22 planning board meeting and opposed the development,</p> <p>23 and the planning board made amendments, made</p>	<p style="text-align: right;">Page 28</p> <p>1 A. There are not. I am not as familiar</p> <p>2 with that -- with the intricacies of that area with</p> <p>3 respect to the buffers or anything.</p> <p>4 Q. All of that is within the Pennichuck</p> <p>5 Brook Watershed?</p> <p>6 A. It is within the Pennichuck Brook</p> <p>7 Watershed.</p> <p>8 Q. And I take it your preference would</p> <p>9 have been that none of that land be developed; isn't</p> <p>10 that correct?</p> <p>11 A. No, I don't know that to be the case.</p> <p>12 Q. You have no opinion on that one way or</p> <p>13 the other?</p> <p>14 A. I do not have an opinion on that. I</p> <p>15 mean, I think it's important that particularly the</p> <p>16 buffers that Pennichuck has established for</p> <p>17 Pennichuck's properties be -- I would think that</p> <p>18 Pennichuck would want to impose those buffers</p> <p>19 everywhere, on all properties; and that they should</p> <p>20 have purchased those buffers and did not.</p> <p>21 Q. Where else? We've talked about</p> <p>22 Parcel M and we've talked about Sanderson Farms.</p> <p>23 Were there any others?</p>
<p style="text-align: right;">Page 27</p> <p>1 modifications to the plan to address some of the</p> <p>2 remarks from Mr. Densberger, but they passed the</p> <p>3 plan because it met the law. And subsequently,</p> <p>4 Pennichuck went to the PUC and filed a petition for</p> <p>5 eminent domain, stating the importance of a 300-foot</p> <p>6 buffer from the ponds, and then subsequently reached</p> <p>7 agreement -- reached settlement with the new owner</p> <p>8 of the property. And eight houses were built within</p> <p>9 300 feet of Bowers Pond.</p> <p>10 Q. So are you complaining that Pennichuck</p> <p>11 went to the PUC to try to take --</p> <p>12 A. No. I am complaining that Pennichuck</p> <p>13 did not -- my concern is that Pennichuck did not</p> <p>14 seek to own that property long before it ever was</p> <p>15 proposed for development. Long before. They've</p> <p>16 known for many, many, many years the importance of</p> <p>17 buffers.</p> <p>18 Q. Let's talk about the land off of</p> <p>19 Exit 8, off of the Everett Turnpike. That's part</p> <p>20 of the Southwood development, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Are there any parcels in that area</p> <p>23 that you have concerns about?</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Those were the major ones that I</p> <p>2 recall.</p> <p>3 Q. Were there any minor ones?</p> <p>4 A. Well, there are other private</p> <p>5 developments that certainly have been of concern,</p> <p>6 that have been of concern, that I have been</p> <p>7 concerned about.</p> <p>8 Q. Are they within the 300-foot buffer?</p> <p>9 A. Absolutely.</p> <p>10 Q. And what are they?</p> <p>11 A. Wendy's; CVS; the -- what's now Best</p> <p>12 Ford, which is the property that we petitioned the</p> <p>13 ZBA. Those are the only ones I could think of right</p> <p>14 now.</p> <p>15 Q. I take it your concerns relating</p> <p>16 thereto have been ongoing since the early 1990s; is</p> <p>17 that right?</p> <p>18 A. I can't give a date. I don't really</p> <p>19 know when I became really aware of the --</p> <p>20 Q. When was your lawsuit?</p> <p>21 A. Oh, the lawsuit? I don't know what</p> <p>22 year. I thought it was more in the mid to late</p> <p>23 '90s.</p>

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1 Q. But my point is that certainly by --
2 at the time of the lawsuit in the mid-'90s or so,
3 you were particularly concerned about protection of
4 the watershed.

5 A. Yes.

6 Q. And you were aware of what you
7 perceived during that time frame of the inadequacies
8 of Pennichuck to protect the watershed; isn't that
9 right?

10 A. That's correct.

11 Q. But in your role as an employee of the
12 City of Nashua, you never spent work time with
13 respect to watershed issues prior to the
14 Philadelphia Suburban transaction appearing in the
15 newspaper; is that right?

16 A. Well, I spent actually quite a bit of
17 time in assistance, but I was not the primary person
18 with regard to the acquisition of Parcel M.

19 Q. That's the parcel that the city
20 eventually purchased?

21 A. Yes.

22 Q. Okay. That was after August of 2001?

23 A. I don't know the dates.

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1 Q. Well, you got hired in August of 2001.

2 A. I realize that. But I don't know
3 whether it was when I was an alderman or whether it
4 was -- however, actually, there was a second piece
5 that we did definitely purchase when I was in my
6 current position, and that was the additional
7 100 acres adjacent to Parcel M, and that was with
8 L-CHIP funds, as well. And that was definitely when
9 I was in this position.

10 Q. When was this?

11 A. I would say we closed on that piece in
12 July of 2003.

13 Q. By then, the --

14 A. Or '04. I'm not sure.

15 Q. '03 or '04?

16 A. Yeah.

17 Q. After the Philadelphia Suburban matter
18 had come and gone?

19 A. I guess if that's the way the dates
20 go. I don't --

21 Q. I'll represent to you that
22 Philadelphia Suburban deal hit the streets in the
23 first half of 2002.

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1 A. Uh-huh.

2 Q. So I'm trying to --

3 A. I mean, I can look up dates for you.
4 I don't know the dates.

5 Q. Right. But I'm just trying to get
6 sequences at this point. We don't need dates.

7 A. Okay. I can tell you that I have
8 clearly been concerned since the late 1990s about
9 the watershed, and certainly the lawsuit; the
10 introduction of the Water Supply Protection District
11 Ordinance and any public comments, which there are
12 numerous of, that I made as an alderman and are
13 clear indication; and then the work acquiring -- the
14 negotiations with regard to Parcel M, and the
15 acquisition of that and the subsequent parcel
16 adjacent to that. Whether it's in my capacity as
17 alderman or division director or -- and irrelevant
18 of what was going on with regard to Philadelphia
19 Suburban, that has always been -- that has been my
20 direction for a long time.

21 Q. Okay. But the idea -- and you
22 previously testified -- I understand your concerns
23 for stewardship issues with respect to Pennichuck.

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1 The potential for somehow acquiring Pennichuck
2 occurred after the Philadelphia Suburban proposal
3 became public; isn't that right?

4 A. If I said that, I didn't -- I don't
5 know. I don't know the dates. But I can tell you
6 that the original Parcel M acquisition -- it would
7 seem to me that that was before the Philadelphia
8 issue. I just don't know the dates.

9 Q. Right. But I'm talking about the
10 taking of Phil- -- of Pennichuck; I'm not talking
11 about a particular piece of watershed land, I'm
12 talking about the taking of Pennichuck Water Works,
13 the condemning of Pennichuck Water Works, the
14 municipalization of Pennichuck Water Works. That
15 idea came to light after Philadelphia Suburban in
16 terms of time. I believe that's your prior
17 testimony; isn't that right?

18 A. Yes.

19 Q. Okay. When did it -- do you recall
20 when that idea started coming to be?

21 A. I do not recall exactly when that idea
22 started to become to be, but it seems that it was in
23 the very beginning of discussions when Philadelphia

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1 Suburban initiated their -- or that became public.
2 Q. I take it when it became public, you
3 made -- you had in mind these various concerns
4 that -- and issues that -- whether it be Parcel M or
5 Sanderson Farms -- that were concerns that would be
6 issues that could be solved if Nashua controlled the
7 watershed; is that correct?
8 MR. UPTON: You're slipping back into
9 motivation. I really don't want to do this.
10 MR. DONOVAN: No, it's public
11 interest.
12 MR. UPTON: It has nothing to do with
13 public interest. Why it's in the public interest
14 for us to acquire that corporation? Articulate for
15 me why that question has anything to do with the
16 public interest.
17 MR. DONOVAN: I think I've given her a
18 pretty good hint from -- I'm not trying to give her
19 the answer, but...
20 A. You're going to have to repeat the
21 question now.
22 Q. (BY MR. DONOVAN) Let me rephrase it.
23 After the Philadelphia Suburban story hit the

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1 streets, who were the people who were involved with
2 the initial discussions within city government with
3 respect to how to handle it?
4 MR. DONOVAN: What has that got to do
5 with what's in the public interest?
6 MR. UPTON: Well, that's just a --
7 MR. DONOVAN: That is just a "who"
8 question.
9 MR. UPTON: I understand that. But
10 you're launching into areas that have absolutely
11 nothing to do with whether or not this taking is in
12 the public interest. You're doing just what the
13 commission said it didn't want you to do. You're
14 getting into areas that are interested --
15 interesting to you for reasons other than this
16 proceeding. And, Tom, I'm going to stop her in just
17 a minute. I'm telling you. This is way -- you're
18 doing this again. You're going way beyond where you
19 need to go.
20 MR. DONOVAN: I take it what you're
21 telling me is that based on the commission's
22 guidelines, there are things that you're not going
23 to let me inquire into. Is that what you're telling

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1 me?
2 MR. UPTON: That's correct. And
3 you're very close to that place.
4 Q. (BY MR. DONOVAN) Do you recall when
5 the idea for acquiring Pennichuck first came up?
6 MR. UPTON: If you know, you can
7 answer that question.
8 THE WITNESS: I think I already
9 answered that question.
10 MR. UPTON: You don't need to answer
11 it again.
12 Q. Are you a Pennichuck customer?
13 A. Yes.
14 Q. How's your water service?
15 A. It's fine.
16 Q. Do you have any complaints?
17 A. No.
18 Q. What is the reason that it is in the
19 public interest for Nashua to acquire the Pennichuck
20 Water Works' assets?
21 A. I believe that the goals of public
22 ownership is the long-term viability, affordability,
23 quality, et cetera, of drinking water, and that is

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1 the sole goal when it's publicly owned.
2 Q. What do you mean by "viability"?
3 A. Availability of --
4 Q. You said "availability"?
5 A. Availability. The water is an
6 important resource for community residents, for
7 community businesses, for the community at large, so
8 it's important for the viability of the community.
9 Q. And what would be the risk to the
10 public interest if Nashua did not acquire those
11 assets with respect to the availability of water?
12 A. The risk is that decisions -- if it's
13 privately owned, that decisions are made based --
14 not only based -- that the decisions are made
15 partially based on profitability.
16 Q. And how does profitability risk there
17 being enough water to serve the citizens of Nashua?
18 A. We're talking about long term, is my
19 issue, and sometimes decisions are made for
20 short-term returns that aren't necessarily the best
21 long-term decisions.
22 Q. Do you know what the water studies
23 with respect to the long-term water needs are for

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1 the City of Nashua in terms of growth over time?
2 A. No.
3 Q. But you just have a general concern
4 that there might not be enough water 50 years down
5 the road to service the citizens of Nashua?
6 A. That's correct.
7 Q. You mentioned affordability. And I'm
8 not trying to demean your ample skills, but I take
9 it the economics is not a subject matter of which
10 you're an expert?
11 A. You need to rephrase the question.
12 Q. Why is affordability better with
13 public ownership?
14 A. I didn't say it was better -- well, my
15 concern is with public ownership, that the goals --
16 the goals of the public entity are to make sure that
17 water is available for the long term and it's
18 reasonably priced.
19 Q. And what is it about private ownership
20 that means it would not be reasonably priced?
21 A. If you do not have -- it's a utility.
22 I mean, you don't have another source of water.
23 Unless we have another source of water, then we are

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1 limited by what the prices are that we're charged;
2 by what the PUC would approve.
3 Q. That's the case with Pennichuck?
4 A. That's correct.
5 Q. If Nashua were to control the water,
6 the PUC would not be in charge; is that right?
7 A. That's correct.
8 Q. So how is that an improvement in terms
9 of affordability?
10 A. I believe that there are long-term
11 decisions that may be different than a public entity
12 would make and a private entity would make that
13 would meet those goals.
14 Q. Okay. I'm trying to get back to
15 affordability now. I'm not talking about
16 availability, I'm talking about the affordability --
17 A. Well, availability and affordability
18 are directly related. It's a supply and demand. If
19 the supply is not there, and the demand is still
20 there, then it's going to be more expensive to be
21 able to get that resource.
22 Q. So that's why you think it's more --
23 it will be more affordable with public ownership, is

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1 because on a supply/demand curve analysis, public
2 ownership makes sure there will be plenty of water,
3 is that right?
4 A. That's correct.
5 Q. I think you had a third ability that I
6 forgot to write down in addition to availability and
7 affordability. What was that third one? All right.
8 Maybe I misheard it. Those are the two prongs that
9 are why you feel it's in the public interest for
10 Nashua to own its water system?
11 A. Yes.
12 Q. Is that right?
13 A. That's what I think, yes. I might
14 have added a third that I don't remember either.
15 Q. And in terms of Pennichuck's efforts
16 in the availability front, your concern is that
17 private ownership tends not to look out for long-
18 term interests of their customers, that the focus
19 tends to be more on the short-term; is that right?
20 A. I'm not saying that for all private
21 endeavors at all; I'm saying that is what I have
22 observed from Pennichuck.
23 Q. You feel they have a short-term

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1 outlook?
2 A. I feel they have not taken -- they
3 have not necessarily done a good job in making sure
4 that the long-term is protected.
5 Q. And that's based upon watershed
6 protection issues; is that right?
7 A. That's based also upon comments from,
8 for example, Moe Arel saying that all we need to do
9 is lower Lake Winnepesaukee by three inches, and
10 we'll have all of the water we need in the Merrimack
11 River for Nashua for years to come. That, to me, is
12 not a long-term watershed plan to assure the
13 protection of the drinking water supply.
14 That's also with respect to the
15 decision to take 75 percent -- or the need to take
16 75 percent of the drinking water out of the
17 Merrimack River in the summertime, and the ability
18 to increase the amount of water that -- as
19 communities continue to grow and demand continues to
20 grow. And the ability to increase the amount of
21 water that they can take out of the Merrimack River
22 is solely dependent on a vote by the state
23 legislature. To me, that's not good long-term

CITY OF NASHUA PETITION FOR VALUATION
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<p>1 planning. 2 Q. So the 75 percent of the water that 3 Pennichuck uses in the summertime is taken from the 4 Merrimack River? 5 A. That's what I understand, yes. 6 Q. And what's the basis for that 7 understanding? 8 A. The basis for that understanding is 9 the Rizzo report and -- the Rizzo report. And that 10 is what I have always -- I may have also heard that 11 from Pennichuck. I'm not sure. 12 Q. And what was the context in which 13 Mr. Moe Arel made the comment about lowering Lake 14 Winnepesaukee by three inches? 15 A. I don't recall the circumstances that 16 he said that. 17 Q. Okay. He said that to you? 18 A. Yes. I have not been able to find 19 that. I have looked for that quote. I have not 20 been able to find that in any public documents in 21 the City of Nashua. 22 Q. Did he say that while he was the mayor 23 of Nashua or while he was president of Pennichuck?</p>	<p>1 third of which they could operate but would require, 2 I think, approval from the state legislature. 3 Q. And how do you know that? 4 A. I don't know how I know that. 5 Q. And with respect to Pennichuck's 6 inadequacies on the affordability front, I take it 7 from your prior testimony, because it has not 8 adequately protected its supply, that means that in 9 the future the demand may outstrip the supply. Is 10 that what you're saying? 11 A. That is correct. And also, the cost 12 of maintaining the system. My understanding is that 13 the cost of maintaining the system also can increase 14 when the -- for example, the cost of treating water. 15 It is more expensive to treat water that -- if it 16 requires more treatment than if it's cleaner when it 17 gets into the treatment plant. 18 Q. Are you aware of any other drivers for 19 increasing treatment costs beyond whether the input 20 water is clean? 21 A. The other drivers for, I'm sorry, 22 treatment costs? 23 Q. Yes.</p>
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<p>1 A. While he was president of Pennichuck. 2 Q. And I take it you've spent some time 3 looking for that? 4 A. I have looked for it. 5 Q. And as I understand it, you're saying 6 that one of your concerns from a public interest 7 standpoint is that Nashua's -- strike that. 8 One of your concerns from a public 9 interest statement -- strike that. 10 One of your concerns from a public 11 interest standpoint is that Pennichuck's taking of 12 water from the Merrimack River is dependent upon the 13 whim of the New Hampshire legislature; is that 14 right? 15 A. That is correct. 16 Q. And what's your basis for your 17 understanding of that? 18 A. They have approval for -- they have 19 three pumps -- my understanding -- I'd have to go 20 back and look up all the details of it -- 21 Q. Sure. 22 A. -- but my understanding of it is they 23 have three pumps, two of which they operate, and a</p>	<p>1 A. Federal laws. 2 Q. Do you know whether there have been 3 any changes to federal laws -- 4 A. I don't know. I don't recall. 5 Q. Right. Are you familiar with Clean 6 Drinking Water Act standards? 7 A. With the standards themselves? No. 8 Q. Yes. And do you know whether they've 9 changed over time? 10 A. My understanding is that they've 11 changed over time, but I can't tell you when or how. 12 Q. And do you have any understanding how 13 the changes over time have -- may require additional 14 costs with respect to the treatment of water that is 15 delivered to customers? 16 A. My understanding is that that is the 17 case. Hearsay. 18 Q. Not just in Nashua but around the 19 country? 20 A. Hearsay. Right. 21 Q. Is there any employee of the City of 22 Nashua who would be an expert on the Clean Drinking 23 Water Act that I could ask that question of?</p>

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1 A. I would -- I do not know for a fact.
2 Q. Okay. So no one immediately comes to
3 mind who has expertise in the Clean Drinking Water
4 Act?
5 A. I would expect that the wastewater
6 treatment plant is very knowledgeable in the Clean
7 Water Act.
8 Q. The Clean Drinking Water Act?
9 A. Possibly.
10 Q. And does that person participate in
11 the -- any of the internal working group discussions
12 with respect to Pennichuck's acquisition?
13 A. I don't know that there is a
14 particular person. I don't know.
15 Q. And you don't know that one way or the
16 other because that person has not been involved with
17 the Pennichuck acquisition team; is that right?
18 MR. UPTON: She doesn't know it
19 because she's guessing, like I told her not to.
20 THE WITNESS: Right. Exactly.
21 Q. But if -- I guess my point is: If
22 someone who had attended one of your meetings had
23 expressed knowledge or expertise with respect to

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1 Clean Drinking Water Act matters, you'd know that,
2 correct?
3 A. Yes.
4 Q. And no one has cropped up from any of
5 your internal working group meetings yet who has
6 that expertise, correct?
7 A. Correct.
8 (Discussion off the record.)
9 Q. (BY MR. DONOVAN) Let me go back and
10 ask a couple of questions about the watershed. Is
11 your concern about Pennichuck's lack of stewardship
12 over the watershed that the volume of water will
13 decrease, or the quality of the water will decrease,
14 or both?
15 A. Both.
16 Q. How have Pennichuck's actions
17 decreased the volume of water in the watershed that
18 would end up in any of the Pennichuck ponds?
19 A. Any development in the watershed, or
20 proximate to the ponds, adds -- has the potential of
21 adding total suspended solids in the ponds. It's
22 been clear, and I -- it's probably in the Rizzo
23 report, that the -- there's been an increase in

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1 sediment -- actually, it's in the Watershed
2 Management Plan -- there's been an increase in
3 sediment and a decrease in volume in the ponds.
4 Q. Which report is that?
5 A. The watershed -- if I'm correct, the
6 Watershed Management Plan from Pennichuck.
7 Q. Okay. I can understand your statement
8 that development within the watershed could create
9 more sediment or other impurities leaching into the
10 ponds. What I'm having a harder time understanding
11 is how that would cause less volume of water
12 arriving in the ponds.
13 A. Because there's less -- there's a
14 certain amount of water that a pond holds. And when
15 you keep filling up the bottom, there's less amount
16 of water for the pond to hold.
17 Q. And that gets to the dredging issue?
18 A. Correct.
19 Q. Are you in favor of dredging?
20 A. I don't have an opinion.
21 Q. Okay. Do you know whether
22 environmental regulations that are out there create
23 considerable obstacles to dredging?

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1 A. Dredging requires a lot of permitting.
2 Q. Because dredging itself raises
3 environmental concerns; isn't that right?
4 A. That is correct.
5 Q. Are you suggesting that had Nashua
6 been -- rather, had Pennichuck been a better
7 steward, that Pennichuck would not need to acquire
8 water from the Merrimack River?
9 A. No, I'm not.
10 Q. You agree that that's a necessary
11 source of water for Nashua?
12 A. No. I just don't know whether or not
13 it's a necessary source.
14 Q. You don't know one way or the other?
15 A. That's correct.
16 Q. The Pennichuck watershed serves as a
17 water supply for not just the City of Nashua; isn't
18 that right?
19 A. That is correct.
20 Q. Who else takes water from that
21 watershed?
22 A. Hollis takes water from that
23 watershed, Amherst takes water from that watershed.

CITY OF NASHUA PETITION FOR VALUATION
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1 From the Pennichuck watershed?
2 Q. Yes.
3 A. Hollis, Amherst, Merrimack, at a
4 minimum.
5 Q. Did you say a fourth there? I
6 didn't --
7 A. No, I said at a minimum.
8 Q. So Hollis, Amherst --
9 A. Merrimack.
10 Q. -- and Merrimack?
11 And if there's constraints on the
12 resource in the future, how will the -- how would
13 one allocate, as among those communities, who would
14 get water from the Pennichuck watershed?
15 A. I don't know.
16 Q. Okay. Is that a concern of yours?
17 A. Yes.
18 Q. And using your Nashua community
19 development hat, you'd want Nashua and their
20 interests to predominate there; isn't that right?
21 A. No, that's not necessarily correct.
22 Q. You don't have a view on that one way
23 or another?

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1 A. No, I think that would need to be --
2 no, I don't. I don't. I don't know.
3 (Hersh Exhibit No. 27, typewritten
4 notes, received and marked for identification.)
5 Q. (BY MR. DONOVAN) Let me show you
6 what's been marked as Exhibit 27. Do you recognize
7 this document?
8 A. Yes, I do.
9 Q. And who prepared it?
10 A. I did.
11 Q. And when did you prepare it?
12 A. I don't know the exact date.
13 Q. What was the purpose for your
14 preparing it?
15 A. I was preparing it as background
16 information with regard to the PUC filing.
17 Q. Which PUC filing?
18 A. The current one. The eminent domain.
19 Q. And this sets forth a number of your
20 concerns about the Sanderson Farm property; is that
21 right?
22 A. That's correct.
23 Q. And it has a number of references to

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1 Nashua Conservation Commission and Planning Board
2 meeting minutes; is that right?
3 A. That is correct.
4 Q. And did you go back to research all of
5 those?
6 A. I recollect that I did.
7 Q. Do you remember when you prepared
8 this?
9 A. I prepared it probably -- well, I'm
10 not allowed to guess. I don't know exactly.
11 MR. UPTON: You can guess on that one.
12 THE WITNESS: Can I guess on this one?
13 Thank you.
14 MR. UPTON: I'll let you guess on this
15 one.
16 A. I probably prepared it within the last
17 year.
18 Q. If you'd look on the last page of
19 Exhibit 27 --
20 A. Yes.
21 Q. -- there's something in italics?
22 A. Yes.
23 Q. And it starts off, "Skip"; is that

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1 right?
2 A. Yes. That's correct.
3 Q. That's Mr. --
4 A. Mr. Sansoucy.
5 Q. So does that mean that you prepared
6 this for Mr. Sansoucy's use?
7 A. Yes, I did.
8 Q. And then you go on to say, "Don Ware
9 has claimed that the reason they did not dredge the
10 pond was because the conservation commission was
11 opposed to it"?
12 A. That's correct.
13 Q. "The commission has always claimed
14 that they had some concerns but were not opposed"?
15 A. Uh-huh.
16 Q. Is that a yes?
17 A. Yes.
18 Q. "I am still looking for quotes from
19 Don Ware to this regard."
20 A. That's what it says.
21 Q. And the reason you're looking for
22 quotes is you're trying to show that Don's statement
23 is incorrect; is that right?

CITY OF NASHUA PETITION FOR VALUATION

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1 A. That is correct.
2 Q. When is the last time you spoke with
3 Don Ware about this?
4 A. I do not recall that I spoke to Don
5 Ware about this.
6 Q. How do you know that Don Ware has made
7 the claim that the reason they did not dredge the
8 pond was because the conservation commission was
9 opposed to it?
10 A. I do not recall exactly how I knew
11 that.
12 Q. Who's Allan Fuller?
13 A. Allan Fuller is a resident of Nashua
14 and chair of the Pennichuck Watershed Council.
15 Q. What is the Pennichuck Watershed
16 Council?
17 A. The Pennichuck Watershed Council is an
18 organization focused on -- an organization of people
19 who have concerns about the Pennichuck watershed.
20 don't know their exact mission.
21 Q. Are you a member of that?
22 A. I do not attend their meetings. I may
23 have signed at some point to say -- you know, signed

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1 something.
2 Q. You and Mr. Fuller communicate with
3 respect to Pennichuck Water Works matters?
4 A. On and off.
5 (Hersh Exhibit No. 28, e-mail to
6 Ms. Hersh from Mr. Fuller dated 6/17/02, received
7 and marked for identification.)
8 Q. (BY MR. DONOVAN) I'm going to show
9 you what's been marked as Exhibit 28, an e-mail from
10 Allan Fuller to you and Mayor Streeter dated
11 June 17, 2002. Just from a date standpoint, does
12 that help put in context the timing of the
13 Philadelphia Suburban announcement?
14 A. Yes.
15 Q. And he was sharing with you some
16 concerns about Philadelphia Suburban, and he was
17 sending it on to you and the mayor; is that right?
18 A. From what I read.
19 MR. DONOVAN: And I'll mark another
20 exhibit.
21 (Hersh Exhibit No. 29, nested e-mails,
22 received and marked for identification.)
23 Q. (BY MR. DONOVAN) I show you an

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1 exhibit marked 29 and ask if this is an e-mail from
2 you to Mayor Streeter and others.
3 A. It looks like it is.
4 Q. Is it possible that this was sent from
5 another computer that you were using; perhaps a home
6 computer?
7 A. Yes.
8 Q. And what you were doing was setting up
9 for the mayor a potential flowchart schedule for the
10 upcoming PUC hearing process relating to the
11 Philadelphia Suburban transaction; is that right?
12 A. That is what it looks like I was
13 doing.
14 Q. And you were drafting a letter for the
15 mayor as part of that work?
16 A. Yes.
17 Q. I take it the mayor was relying upon
18 your reference in this regard?
19 MR. UPTON: You don't need to answer
20 that.
21 Q. Did you create this document,
22 Exhibit 29, based upon your own efforts, or as an
23 assignment?

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1 MR. UPTON: You don't need to answer
2 that, either.
3 MR. DONOVAN: And the basis for that
4 is?
5 MR. UPTON: It has nothing to do with
6 what's in the public interest; whether this
7 acquisition is in the public interest. And I want
8 to make sure I note my objection to both of these
9 exhibits, 28 and 29, as to relevance.
10 Q. Is part of your job communicating with
11 other towns served by any of the Pennichuck
12 companies with respect to water service?
13 A. Yes.
14 Q. And you've had a number of
15 communications with those towns?
16 A. Yes, I have.
17 Q. Do you attend meetings of the Pen- --
18 strike that.
19 Do you attend meetings of the Southern
20 New Hampshire -- strike that.
21 Do you attend meetings of the
22 Merrimack Valley Regional Water District?
23 A. Yes, I do.

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1 Q. And that's part of your job?
2 A. I have not been directed to attend
3 them, but I attend them.
4 Q. And is there a particular contact you
5 work with from the district?
6 A. I work with Karen White.
7 Q. And Karen's day job's as town planner
8 in Bedford, but also has a liaison role for the
9 district; is that right?
10 A. That is correct.
11 Q. And have you performed any services on
12 behalf of the district?
13 A. I attended a meeting in Hollis with
14 the board of selectmen, if that's what you're
15 referring to. Are you referring to that type of
16 thing?
17 Q. Yes. And what would be the reason --
18 or what would be the services you would offer?
19 A. If I am requested to meet with the
20 community or communicate with the community with
21 regard to the regional water district, I have done
22 that.
23 (Hersh Exhibit No. 30, nested e-mails

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1 between Ms. Hersh and Mr. Woodbury dated 5/5/04,
2 received and marked for identification.)
3 Q. (BY MR. DONOVAN) I show you what's
4 been marked as Exhibit 30. As you know how e-mails
5 work, the bottom message tends to be the earlier one
6 and the top message tends to be the more recent one?
7 A. That's correct.
8 Q. So if you look at the bottom message,
9 this is one from you to whom?
10 A. To George Woodbury.
11 Q. And who is he?
12 A. George Woodbury is from Hollis.
13 Q. Is he a selectman?
14 A. He is not currently a selectman, and I
15 do not know what his capacity is in Hollis.
16 Q. Did he have some interest in the
17 Pennichuck water situation?
18 A. He was on the -- he was part of the
19 group of people that worked on the charter.
20 Q. As it turns out, Hollis is not a
21 member of the district; is that right?
22 A. That is correct.
23 Q. If you look at Exhibit 30, he

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1 responds -- strike that.
2 Your memo to Mr. Woodbury is offering
3 the services of Nashua to Hollis with respect to
4 district matters; is that right?
5 A. That's correct.
6 Q. And Mr. Woodbury e-mails back to you
7 saying, "I think that might be useful"; is that
8 right?
9 A. That's what the text says.
10 Q. And then the next message -- or rather
11 the next sentence mentions a concern about potential
12 liabilities that the town may have?
13 A. Uh-huh.
14 Q. Is that correct?
15 A. That's what it says.
16 Q. Right. And you did receive that
17 e-mail, didn't you?
18 A. Yes, I did.
19 Q. Now I'm going to show you an exhibit
20 that was marked as Number 6, and this appears to be
21 an e-mail from Mr. Sansoucy to you headed -- or
22 entitled "Response to Hollis"; is that right?
23 A. That's what it says.

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1 Q. And what's the date?
2 A. The date on this correspondence is
3 May 24, 2004.
4 Q. So about three weeks or less after
5 Exhibit 30?
6 A. Three weeks after Exhibit 30; that's
7 correct.
8 Q. And do you recall receiving this
9 e-mail?
10 A. Not particularly.
11 Q. Attached to it is a memo. You can
12 take a minute to look at it.
13 A. (Witness complies.)
14 Q. Do you recognize that document?
15 A. Yes.
16 Q. And do you recall whether you provided
17 that to Mr. Woodbury?
18 A. I do not recall.
19 Q. And if you see in the second sentence
20 on that first page of the paragraph that reads,
21 "It is not certain at this time the district will
22 ever have any of the Pennichuck assets and the
23 district, without eminent domain powers, is a



**Summary Report -
Comprehensive Review
Pennichuck Water
System
Nashua, New Hampshire**

**Submitted to:
City of Nashua**

November 1, 2002

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4.0 Watershed Management

The 1996 Safe Drinking Water Act Amendment promotes “source protection” as a key component in protecting drinking water quality. Source protection is the first step in a multi-phased approach to protecting water quality and is accomplished through a watershed protection plan. Subsequent phases include treatment, disinfection and distribution system controls.

4.1 Watershed Management Plan

The Pennichuck Water Works Watershed Management Plan was published in August 1998. The management plan is summarized below:

4.1.1 Watershed Characteristics

The Pennichuck watershed lies in five towns including Nashua, Merrimack, Amherst, Milford and Hollis. The watershed is divided into 10 subwatersheds as summarized in Table 4-1 and shown on Figure 4-1.

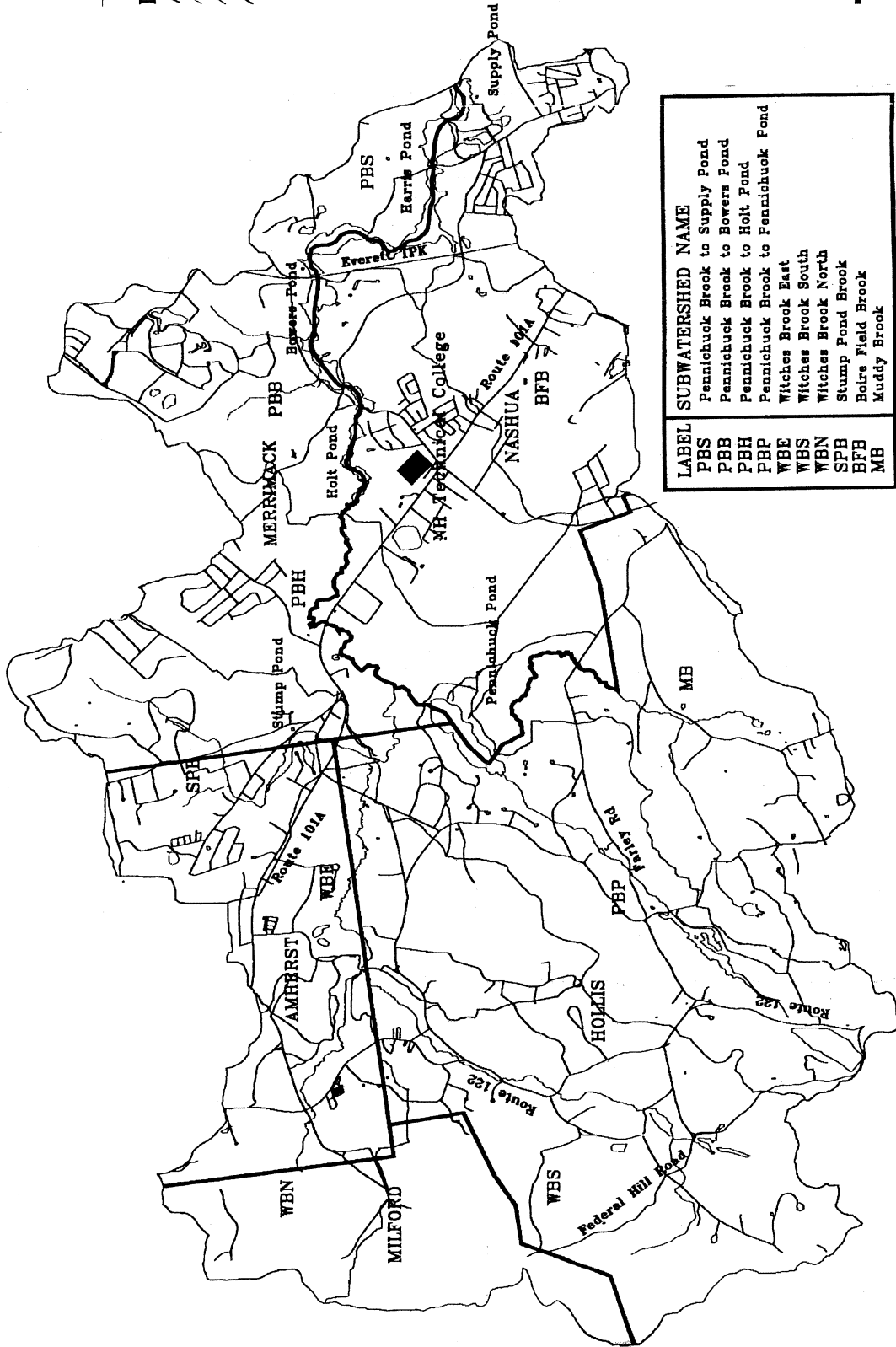
Table 4-1 Subwatershed Characteristics - Pennichuck Water Works Watershed

Subwatershed ¹	Land Area (acres)	Water Surface Area (acres)
PBS – Pennichuck Brook to Supply Pond	1285	140
PBB – Pennichuck Brook to Bowers Pond	2390	94
PBH – Pennichuck Brook to Holts’s Pond	1508	0
PBP – Pennichuck Brook to Pennichuck Pond	1978	89
WBE – Witches Brook East	1365	0
WBS – Witches Brook South	3193	0
WBN – Witches Brook North	1425	0
SPB – Stump Pond Brook	1516	21
BFB – Boire Field Brook	1006	0
MBI – Muddy Brook	2317	7
Total Acreage	17,984	351

¹ See Figure 4-1 for Subwatershed Locations

Source: Pennichuck Water Works Watershed Management Plan, August 1998

- Legend**
- ~ Watershed Boundary
 - ~ Roads
 - ~ Water
 - ~ Town Lines



LABEL	SUBWATERSHED NAME
PBS	Pennichuck Brook to Supply Pond
PBB	Pennichuck Brook to Bowers Pond
PBH	Pennichuck Brook to Holt Pond
PBK	Pennichuck Brook to Pennichuck Pond
WBE	Witches Brook East
WBS	Witches Brook South
WBN	Witches Brook North
SPB	Stump Pond Brook
BFB	Boire Field Brook
MB	Muddy Brook



The watershed drains to a series of ponds including Stump Pond, Pennichuck Pond, Holts's Pond, Bowers Pond, Harris Pond and Supply Pond. Table 4-2 below summarizes pond characteristics. These larger ponds and a number of smaller ponds make up approximately 351 acres of surface water in the watershed.

Water is taken from Harris Pond 12 months of the year and supplemented with water from Supply Pond for 6 months of the year. In addition, water from the Merrimack River is taken into Bowers Pond primarily during the summer months when pond levels are lowest and water demand is highest.

Table 4-2 Pond Characteristics

Pond Name	Drainage Area (acres)	Pond Surface Area (acres)	Pond Storage (MG)
Stump Pond	1,516	21	Unknown
Pennichuck Pond	4,295	57	Unknown
Holtss Pond	14,171	23	Unknown
Bowers Pond	15,955	92	180 at full pond
Harris Pond	17,199	78 at spillover	340 at spillover
Supply Pond	17,598	16	Unknown

Source: Pennichuck Water Works Watershed Management Plan, August 1998

4.1.2 Water Quality of the Watershed

Water quality monitoring was done at various times between 1991 and 1996 for bacteria and nutrients as reported in the Pennichuck Water Works Watershed Management Plan. Samples were taken at 13 locations including at four dams and in nine tributaries. Following is a summary of the water quality data:

Fecal Coliform Samples were collected for fecal coliform analysis from 10 locations in various ponds and brooks from 1991 through 1994 and from 12 locations in 1996. Table 4-3 presents a summary of the data. A threshold concentration of 200 colonies per 100 ml was used to evaluate the sampling data. Approximately 7% of the samples collected from the ponds and 20% collected in the brooks exceeded the threshold limit.

Table 4-3 Summary of Fecal Coliform Data 1991-1996

Description	Ponds	Brooks
Number of Samples	449	409
Highest Concentrations, Colonies per 100 ml	540	4,600
Number of Samples Exceeding 200 colonies/100 ml	30	82
Percentage of Samples Exceeding 200 colonies/100 ml	7%	20%

Source: Pennichuck Water Works Watershed Management Plan, August 1998

Phosphorus Samples were collected for total phosphorus from 13 locations in various ponds and brooks during 1995 and 1996. A threshold value of 0.1 mg/l was used to evaluate the results from the sampling data. Table 4-4 presents a summary of the data. Approximately 28% of the samples collected from the ponds and 30% collected from the brooks exceeded the threshold limit.

Table 4-4 Summary of Total Phosphorus Data, 1995 and 1996

Description	Ponds	Brooks
Number of Samples	49	56
Highest Concentrations, mg/l	4.53	1.35
Number of Samples Exceeding 0.10 mg/l	14	17
Percentage of Samples Exceeding 0.10 mg/l	28%	30%

Source: Pennichuck Water Works Watershed Management Plan, August 1998

Nitrate-Nitrogen Samples were collected for nitrate nitrogen from 13 locations in various ponds and brooks during 1996. A threshold value of 10 mg/l was used to evaluate the results from the sampling data. Table 4-5 presents a summary of the data. None of the samples collected exceeded the threshold limit.

Table 4-5 Summary of Nitrate Nitrogen Data, 1996

Description	Ponds	Brooks
Number of Samples	18	21
Highest Concentrations, mg/l	0.52	0.74
Number of Samples Exceeding 10 mg/l	0	0
Percentage of Samples Exceeding 10 mg/l	0%	0%

Source: Pennichuck Water Works Watershed Management Plan, August 1998

4.1.3 Pollution sources

A number of land use activities in the watershed were identified in the management plan as potential sources of pollution. Figure 4-2 shows various land use activities that are potential sources of pollution to the water supply. These include:

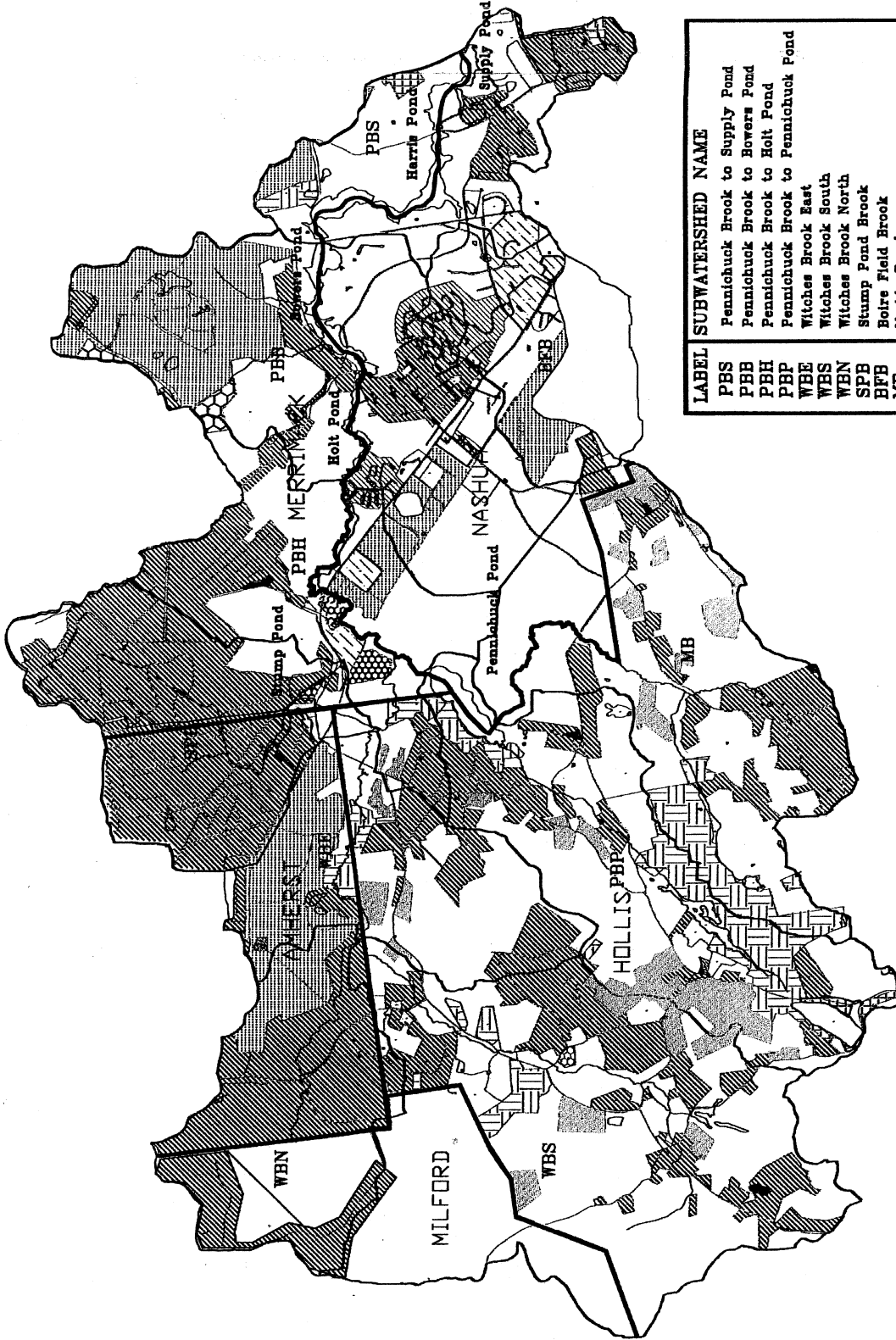
- | | |
|----------------------------|-------------------------------|
| Residential, >1 acre lots | Residential, ½ to 1 acre lots |
| Residential, < ½ acre lots | Agriculture |
| Municipal/State Park | Multi-Family Dwellings/Condos |
| Town Owned Land | Vacant Undeveloped Land |
| Commercial | Industrial |



LEGEND

- ∧ Watershed Boundary
- ∧∧ Roads
- ∧∧∧ Water

- Residential > 1 acre lots
- Residential 1/2 to 1 acre
- Residential < 1/2 acre lots
- Agriculture
- Municipal / State Park
- Multi-Family Dwellings/Condos
- Town Owned Land
- Vacant Unbuilt Land
- Commercial
- Industrial



LABEL	SUBWATERSHED NAME
PBS	Pennichuck Brook to Supply Pond
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PBP	Pennichuck Brook to Pennichuck Pond
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WBN	Witches Brook North
SPB	Stump Pond Brook
BFB	Boire Field Brook
MB	Muddy Brook

Map based on data from NRPC.



4.2 Model Watershed Management Plans

The 1996 Safe Drinking Water Act Amendments established a nationwide commitment to safe drinking water based on watershed management and pollution prevention. The Amendments required that each State establish a watershed management plan which include the following steps:

- Step 1 Organize a community planning team
- Step 2 Delineate water supply watershed
- Step 3 Inventory existing sources of pollutants and prioritize threats
- Step 4 Prepare source protection plan
- Step 5 Implement the plan and educate the public

After completing an inventory of the potential threats to the water supply, Best Management Practices (BMPs) can be implemented to prevent or control the threats. These BMPs can range from regulatory controls and public education to structural controls.

In order to assess the Pennichuck Watershed Management Plan it was compared to four other similar plans. These plans include:

- Lake Massabesic Watershed Management Plan – Manchester Water Works, New Hampshire
- Little River Watershed Protection Plan – Springfield Water and Sewer Commission, Massachusetts
- Wachusett Reservoir Watershed Protection Plan – Massachusetts District Commission and Massachusetts Water Resources Authority
- Model Watershed Management Plan – “Source Protection: A National Guidance Manual for Surface Water Supplies” by New England Interstate Water Pollution Control Commission

Table 4-6 on the following pages presents a summary of the comparative analysis of the Pennichuck Water Works Watershed Management Plan with that of the four plans listed above.

Table 4-6 Comparison of Watershed Management Plans – Existing and Recommended Protection Measures

Comparative Criteria	Lake Massabesic Watershed Management Plan Manchester Water Works, NH	Little River Watershed Protection Plan Springfield Water and Sewer Commission, MA	Wachusett Reservoir Watershed Protection Plan MDC and MWRA	Source Protection: A National Guidance Manual for Surface Water Supplies NEI/PC	Pennichuck Water Works Watershed Management Plan
Storm Water Management	<ul style="list-style-type: none"> - Storm water ordinance prohibiting industrial zones within critical areas - Plan reviews for storm water drainage systems 	<ul style="list-style-type: none"> - Storm water runoff managed by the MADEP under the Massachusetts storm water policy - Commission owns spill control booms for deployment in the event of a spill into a reservoir or tributary of the water supply 	<ul style="list-style-type: none"> - Use of best management practices for stormwater runoff from new development - Limit impervious cover to 10 percent per lot in protection zones - Evaluate structural controls to reduce pollutant loads in storm water - Disconnect illegal floor drains - Fully implement existing authority under the NPDES permitting program to include storm water runoff - Ensuring proper handling of hazardous materials and wastes 	<ul style="list-style-type: none"> - Educate municipalities, industries and residents on pollution prevention measures such as waste oil and hazardous waste collection; reduced fertilizer, pesticide, and herbicide use; animal waste removal; catch basin maintenance; use of oil and grit separators; construction activities that promote erosion and sedimentation control etc. - Evaluate the installation of BMPs such as vegetated buffer strips adjacent to waterbodies, grassy swales along roadways, detention basins, sedimentation basins, infiltration basins, wet ponds, constructed wetlands filtration of runoff through the use of installed filters, etc. 	<ul style="list-style-type: none"> - Require post-development runoff equal predevelopment runoff - Minimize parking lot impacts using permeable dividers, street buffer strips and modified landscaping - Reduce transportation impacts of subdivisions by using narrow streets with grass swales - Use onsite infiltration whenever possible, including recharge of roof leaders and other drainage structures - Use clearing and grading plans that minimize site disturbance - Require grading plans, erosion control plans and inspect progress during construction - Minimize lawn sizes, encourage the use of native species for landscaping wherever possible and leave native vegetation in place as a buffer - Determine sediment depths in each of the ponds and dredge as needed to provide sedimentation capacity
Pond Eutrophication		<ul style="list-style-type: none"> - Monitoring suggests that runoff entering tributaries and reservoirs does not lead to a significant increase in bacterial or nutrient loading - Water quality of the reservoirs is monitored on a weekly basis 			
Buffer Zones/Land Acquisition	<ul style="list-style-type: none"> - Purchase land surrounding the waters outright or obtain conservation easements 	<ul style="list-style-type: none"> - The Commission owns and protects 12,000 acres or 38% of the watershed area - Approximately 95% of the land surrounding the reservoirs and 10% of the land adjacent to the tributaries is under direct ownership of the Commission - Continue purchasing land and conservation restrictions 	<ul style="list-style-type: none"> - Buffer zone of 200 feet from tributaries and 400 feet from reservoirs - MDC owns 7,000 acres of protected open space land in the watershed, approximately 10% of the watershed - 7,500 acres or approximately 10% of open space is owned by state/municipal agencies in the watershed - Additional land acquisition of 10,500 acres will increase the MDC land ownership to 25 percent. - MDC owned stream bank and shoreline frontage would increase from 18.1 percent to 34.4 percent 	<ul style="list-style-type: none"> - Buffer zones have been recognized as highly effective in protecting critical areas around water supplies - Optimally, municipalities or water supply utilities should own or acquire buffer areas to protect water supplies - Purchasing or transferring development rights or outright purchase of land are other methods of protecting watershed land from development 	<ul style="list-style-type: none"> - Buffer zone of 200 feet around tributaries to the ponds and 400 feet around the chain ponds
Transportation Impacts	<ul style="list-style-type: none"> - Revised sand to salt ratios - Alternates to using sodium chloride - Snow removed from roads should be dumped outside of critical areas - Educate salt truck operators on optimum application rates and efficiency - Proper storage of road salt 	<ul style="list-style-type: none"> - The Massachusetts Turnpike Authority has posted watershed limits and monitors traffic 	<ul style="list-style-type: none"> - Reroute transport of hazardous waste and materials to less dangerous roads away from the reservoir - Evaluate structural controls for railroads - Develop interagency emergency response plan and training - Train local and MDC police to enforce regulations regarding transport of hazardous materials - Develop agreements with transporters to have them submit annual summary reports describing transportation activities - Encourage low salt use on roads - Monitor outdoor storage supplies of salt 	<ul style="list-style-type: none"> - Catch basin cleaning - Controlled application of approved dust suppressant materials - Vegetated filter strips to reduce velocity and increase infiltration of road runoff - Proper road ditch management - Street sweeping/road cleanup - Proper management of road salt storage facilities - Road salt application management 	<ul style="list-style-type: none"> - Work with Public Works Departments and the state Department of Transportation to avoid direct piping of runoff to streams - Use infiltration technologies such as grassed swales and leaching catch basins - Work with watershed Fire Departments to address spill issues - Develop a monitored demonstration roadway for comparison to an old style roadway

Comparative Criteria	Lake Massabesic Watershed Management Plan Manchester Water Works, NH	Little River Watershed Protection Plan Springfield Water and Sewer Commission, MA	Wachusett Reservoir Watershed Protection Plan MDC and MWRA	A National Guidance Manual for Surface Water Supplies NEIPC	Pennichuck Water Works Watershed Management Plan
Agricultural Impacts	<ul style="list-style-type: none"> - Only federal or state approved fertilizers and pesticides permitted in the watershed - No fertilizer, except lime or wood ash, shall be used on lawns or areas with grass on residential properties 	<ul style="list-style-type: none"> - Limited public and private recreation in the watershed - "No Trespassing" rule on the watershed land 	<ul style="list-style-type: none"> - Develop a model best management practice policy for use in local agricultural operations - Enforce existing MDC regulations to prevent pollution from animal wastes - Evaluate and implement alternatives for eliminating water quality impacts of gull/geese roosting at the reservoir - Evaluate impact of increased bacterial levels in the system - Support concept of new Massachusetts Department of Food and Agriculture regulations protecting ground water supplies from the use of herbicides and pesticides - Encourage the use of integrated pest management (IPM) program 	<ul style="list-style-type: none"> - Erosion and sedimentation control measures such as conservation tillage, vegetated filter strips, cover crops, pasture management, and reduced irrigation - Fertilizer management that includes calibration of application equipment, crop rotation, etc. - Pesticide management that includes calibration of application equipment, possible substitute with a less toxic alternative, etc. - Animal waste management that include impermeable floors for manure storage sheds, use of vegetative filter strips around animal facilities as a means of treating contaminated runoff 	<ul style="list-style-type: none"> - Provide education materials for agricultural landowners - Request buffer strips or zones from livestock concentrations - Purchase conservation easements where needed to protect from direct stream channel encroachment by livestock
Recreational Activities	<ul style="list-style-type: none"> - Hiking, biking and fishing are allowed. However, kiosks setup at the recreation sites educate the public about protection of water 	<ul style="list-style-type: none"> - Information on the septic systems along the tributaries and to the reservoirs will be reviewed 	<ul style="list-style-type: none"> - Repair or replace failing systems in critical areas throughout the watershed - Conduct and implement a facilities plan to provide long-term sewage disposal solutions - Ensure strict enforcement of Title V and local requirements - Develop and implement stronger Board of Health regulations (Model regulations) - Limit density of development through legislation or zoning - Develop a subsurface sewage disposal "Maintenance and Proper Use Program" 	<ul style="list-style-type: none"> - Prohibit any use and access to finished water reservoirs and adjacent lands - Use limits on allowable contact with the feeding tributaries - Establishing prohibition zones where public access is not allowed - Educate public about the objectives of watershed protection program, policies, regulations and enforcement to control activities that may threaten water quality 	<ul style="list-style-type: none"> - Hold a technical transfer workshop for Conservation Commissions, Planning Board members, Public Works staff, site developers and engineers - Develop an educational questionnaire to gauge the level of understanding within the watershed communities both before and after the education program - Develop a school age public education program for watershed schools
Individual Septic Systems	<ul style="list-style-type: none"> - Watershed patrol's duties focus on performing sanitary survey of the watershed including walking lot to lot and looking for any visual evidence or smell indicating a septic leak 	<ul style="list-style-type: none"> - Promoting wise land use and development 	<ul style="list-style-type: none"> - Community wide water knowledge surveys assessing homeowner watershed knowledge, attitudes, and practices - Signs along roadways and in residential areas to identify watershed - Distribute BMP guidelines for items such as urban runoff, protecting critical areas, household hazardous materials, lawn-care and gardening, septic tanks and water conservation - Provide speakers for community groups to discuss topics such as septic system maintenance - Distribute newsletters or water bill inserts - Contact local school districts for participation in watershed protection activities - Set up a volunteer watershed monitoring program - Celebrations such as drinking water week or day and other watershed festivals 	<ul style="list-style-type: none"> - Septic system maintenance ordinance to ensure that septic systems are inspected and pumped periodically to prevent malfunction - Septic system tracking program that requires registration of all systems and encourages routine inspections and pumping - Municipal septic system program - Homeowner education concerning the proper care of a septic system - Guidelines for installing new septic systems 	<ul style="list-style-type: none"> - Assessing homeowner watershed knowledge, attitudes, and practices - Signs along roadways and in residential areas to identify watershed - Distribute BMP guidelines for items such as urban runoff, protecting critical areas, household hazardous materials, lawn-care and gardening, septic tanks and water conservation - Provide speakers for community groups to discuss topics such as septic system maintenance - Distribute newsletters or water bill inserts - Contact local school districts for participation in watershed protection activities - Set up a volunteer watershed monitoring program - Celebrations such as drinking water week or day and other watershed festivals
Public Education	<ul style="list-style-type: none"> - Kiosks setup at the recreation sites educate the public about ecology and lake use - Educational material on BMPs for lawn maintenance and gardening for home owners - Participate in national drinking water week to educate residents through public information displays, science fair, grade school poster contests and open tours of the WTP - Education by watershed patrolmen through personal contact 	<ul style="list-style-type: none"> - Tours of the facilities especially for school children - Annual open house at the water treatment plant 	<ul style="list-style-type: none"> - Promoting wise land use and development 	<ul style="list-style-type: none"> - Community wide water knowledge surveys assessing homeowner watershed knowledge, attitudes, and practices - Signs along roadways and in residential areas to identify watershed - Distribute BMP guidelines for items such as urban runoff, protecting critical areas, household hazardous materials, lawn-care and gardening, septic tanks and water conservation - Provide speakers for community groups to discuss topics such as septic system maintenance - Distribute newsletters or water bill inserts - Contact local school districts for participation in watershed protection activities - Set up a volunteer watershed monitoring program - Celebrations such as drinking water week or day and other watershed festivals 	<ul style="list-style-type: none"> - Assessing homeowner watershed knowledge, attitudes, and practices - Signs along roadways and in residential areas to identify watershed - Distribute BMP guidelines for items such as urban runoff, protecting critical areas, household hazardous materials, lawn-care and gardening, septic tanks and water conservation - Provide speakers for community groups to discuss topics such as septic system maintenance - Distribute newsletters or water bill inserts - Contact local school districts for participation in watershed protection activities - Set up a volunteer watershed monitoring program - Celebrations such as drinking water week or day and other watershed festivals

Comparative Criteria	Lake Massabesic Watershed Management Plan Manchester Water Works, NH	Little River Watershed Protection Plan Springfield Water and Sewer Commission, MA	Wachusett Reservoir Watershed Protection Plan MDC and MWRA	Source Protection: A National Guidance Manual for Surface Water Supplies NEIPCC	Pennichuck Water Works Watershed Management Plan
Watershed Protection	<ul style="list-style-type: none"> - Watershed patrols - Prohibition of swimming and wading - Prohibition of waste disposal within 200 feet of the lake 	<ul style="list-style-type: none"> - Program of logged inspections through regular tours by Watershed Team members for unauthorized activities, illegal dumping, encroachment, obstructions to stream flow, deteriorated and missing signs - A resident manager residing near the reservoir for security purposes - Evaluate a need for increases of manpower and vehicles for security to deter actions that might endanger the water supply - Help from State's Environmental Police Officers to perform random patrols - "No Trespassing" and "Drinking Water Supply" place cards 	<ul style="list-style-type: none"> - Increase enforcement of existing local and state regulations regarding recreation, trash disposal, trespassing, and other activities incompatible with the watershed management - Train the Metropolitan and State Police staffs to address environmental crimes - Evaluate the feasibility of barriers to deter access - Managing forests and wildlife - Cleaning up contaminated sites 	<ul style="list-style-type: none"> - Policies, regulations and enforcement to control activities in the watershed that may threaten water quality 	
Regulatory Authority	<ul style="list-style-type: none"> - New Hampshire Code of Administrative Rules by NHDES "Rules for the protection of the purity of the water and ice of Lake Massabesic or any pond, reservoir or stream tributary thereto" 	<ul style="list-style-type: none"> - Zoning by-law with minimum lot sizes, frontage and set-backs and watershed protection districts - Commission By-Laws (Protection of the Water System) <ol style="list-style-type: none"> 1. Section 3.800 Protection of Property 2. Section 3.810 Protection from Damage 3. Section 3.820 Violation Penalty - Article 97 – Constitution of the Commonwealth of Massachusetts 	<ul style="list-style-type: none"> - Regulations regarding activity within the watershed system titled "Sanitary Protection of Waters Used by the Metropolitan District Commission for the Water Supply of any Town or Water Company Under the Authority of M.G.L. c. 92, Section 108" (310 CMR 23.00 et seq.) - Establishment of Use Districts, Intensities and Zoning Maps under the Massachusetts Zoning Act (M.G.L. c.40A) - Protection overlay districts - Wetland protection district to supplement Commonwealth's Wetlands Protection Act, M.G.L. c.131, Section 40 - Floodplain protection district 	<ul style="list-style-type: none"> - Zoning ordinances to control type of development - Designated vegetated buffer zones - water supply overlay protection zones - Performance-based or impact zoning - Local by-laws and ordinances to regulate existing land uses and establish specific requirements for control of pollutants - Conservation easements - Purchase of development rights - Transfer of development rights - Moratorium on development to allow for more comprehensive planning 	<ul style="list-style-type: none"> - Conservation zoning - Subdivision regulations - Site plan review - Protection overlay districts - The NH Code of Administrative Rules, Env-Ws 1008.03 septic systems establishes minimum set backs for septic tanks - Modify watershed regulations or develop cooperative agreements with watershed towns

4.2.1 Watershed Plan Implementation

Table 4-7 presents a comparison of the recommendations that have been implemented by Pennichuck Water Works and by the Massachusetts District Commission and Massachusetts Water Resources Authority relative to their respective Watershed Management Plans.

Table 4-7 Implementation of Watershed Management Plan

Protection Element	Wachusett Reservoir Watershed Protection Plan - MDC and MWRA	Pennichuck Water Works Watershed Management Plan
Storm Water Management	<p>Division of Watershed Management has installed or implemented several BMPs to control stormwater including infiltration basin and sediment forebays</p> <p>An annual Wachusett Stormwater Project List is being developed that will include monitoring and modeling results and prioritizing the projects with an implementation schedule</p> <p>Additional elements of the approach to stormwater includes encouragement of town-wide Stormwater Plans</p>	<p>Study of Urban Non-Point Source Pollution, Pennichuck Brook to Bowers Pond Subwatershed was completed in Spring 2001. Studies for the Witches Brook East and North Subwatersheds were completed in Summer 2002</p>
Buffer Zones/ Land Acquisition	<p>The sum of MDC owned and other protected lands totals over 51% of the Wachusett Reservoir watershed lands and about 63% of the total watershed</p> <p>MDC nearly owns 100% of the lands within 400 feet of the reservoirs and 200 feet from the tributaries</p> <p>Allocated \$8 million per year between 1998 and 2002 for land purchase</p>	<p>Small quantities of land were acquired by outright purchase or easement</p>
Transportation Impacts	<p>In 1998 the Transportation Release Controls Study was completed that evaluated the risks of runoff and accidental spills from roads and railways and included recommendations to reduce existing risks</p> <p>The Hazardous Materials Emergency Response Study was completed that evaluated and made recommendations for improvements in the Emergency Response Plans of individual watershed communities</p>	<p>Designed and constructed the Pennichuck Brook Urban Runoff Project that captures and provides treatment for 1/3 of the storm water from 70 acre area along Rt. 101 A in Nashua</p>
Pond Eutrophication & Agricultural Impacts	<p>Division of Watershed Management is implementing agricultural BMPs at the high priority sites in the watershed in cooperation with the Department of Food and Agriculture</p>	<p>A study was completed to determine sediment depths in Pennichuck Ponds</p>
Individual Septic Systems	<p>Ensure strict enforcement of Title V and local requirements</p>	
Public Education	<p>MDC's Division of Watershed Management Rangers conducted 88 educational/interpretive programs in the watersheds with an estimated 4,360 participants since 1996</p>	
Watershed Protection	<p>Within 400 feet from the reservoirs and 200 feet from the tributaries no alterations are permitted</p> <p>Between 200 and 400 feet of the tributaries specific activities are prohibited and all development is scrutinized</p>	<p>Developed regular inspection of problem areas along Pennichuck Brook and identified areas of concern to the property owners with recommended remedies</p>
Regulatory Authority	<p>Watershed Protection Act was passed in 1992 and has been fully implemented since 1995</p> <p>Maximized watershed protection by State and Local Regulations such as Title 5, Wetlands Protection Act and Storm water Policy</p>	

4.2.2 Recommendations

Based on the information summarizes in Tables 4-6 and 4-7 the primary focus should be to implement the Pennichuck Water Works Watershed Management Plan. **The recommendations provided in the Watershed Management Plan coincide with those presented in the other model plans and industry standards, yet many of the recommendations have not been implemented. Once implemented, the Pennichuck Water Works Watershed Management Plan should be modified to expand in the following areas:**

- ***Storm Water Management*** Implement structural and educational measures and establish criteria that achieve qualitative limits of storm water discharging into the receiving waters; increase groundwater recharge; and increase storm water pretreatment
- ***Pond Eutrophication*** Implement educational measures and work with the Towns to develop and implement a model ordinance on fertilizer application
- ***Buffer Zones/Land Acquisition*** Develop capital plans that include land acquisition for conservation and providing buffer zones, acquiring conservation and developmental rights
- ***Transportation Impacts*** Develop a deicing policy and work with the State and Towns to implement the policy and include consideration of alternatives to sodium chloride
- ***Recreational Activities*** Develop and implement a recreational management plan that includes a permit system, restricts access and activities in critical areas of the watershed and employs an on-site watershed manager
- ***Individual Septic Systems*** Conduct sanitary surveys and develop remediation plans
- ***Watershed Protection*** Develop emergency response procedures, purchase necessary emergency response equipment and train police, fire, public health and hazardous material personnel; upgrade drainage structures to capture pollutants and spills prior to discharging to the receiving waters
- ***System Security*** Conduct a vulnerability analysis of the water supply, treatment and distribution systems

Table 4-8 summarizes the water quality benefits associated with implementation of the recommended measures stated above.

Table 4-8 Recommended Measures – Water Quality Benefits

Recommended Measure	Bacteria	Sodium	Nutrients	Solids	Toxics
Storm Water Management	X		X	X	
Pond Eutrophication			X		
Buffer Zones/Land Acquisition	X	X	X	X	X
Transportation Impacts		X		X	X
Recreational Activities	X		X	X	
Individual Septic Systems	X		X		
Watershed Protection					X
System Security					X

Implementation of the recommended measures presented above can be better performed by a publicly owned utility, which has greater regulatory authority and control over such items as land acquisition, recreational activities, individual septic systems, watershed protection and system security.

Table 4-9 Preliminary Costs - Recommended Measures Implementation

Recommended Measures	Initial Cost or Annual Cost	Total Cost Over 5 Years
Storm Water Management		
• Storm Water Brochure	\$50,000	\$50,000
• Structural Measures	\$100,000	\$300,000
Pond Eutrophication		
• Model Ordinance	\$200,000	\$200,000
Buffer Zones/Land Acquisition		
• Purchase land	\$100,000	\$500,000
Transportation Impacts		
• Develop Deicing Policy	\$50,000	\$50,000
• Alternatives to sodium chloride	\$50,000	\$250,000
Recreational Activities		
• Develop Recreational Management Plan	\$50,000	\$50,000
• Employ Watershed Manage	\$50,000	\$250,000
Individual Septic Systems		
• Conduct Sanitary Surveys	\$25,000	\$125,000
• Remediation of failing systems	\$50,000	\$250,000
Watershed Protection		
• Train police, fire, hazardous material personnel	\$20,000	\$100,000
• Purchase of emergency response equipment	\$50,000	\$100,000
System Security		
• Vulnerability Analysis	\$100,000	\$100,000
Total		\$ 2,325,000 say \$ 2,400,000

City of Nashua

Petition for Valuation Pursuant to RSA 38:9

DW 04-048

Nashua's Responses to Pennichuck Water Works, Inc. Data Requests – Set 5

Date Request Received: June 1, 2006

Date of Response: June 22, 2006

Request No. 5-119

Respondents: Allan Fuller, Ph.D.

Req. 5-119 Nashua's direct testimony concerning matters of public interest (including watershed issues) was filed on November 22, 2004. That testimony addressed watershed issues. Explain why your testimony was not filed until the reply phase. Describe the circumstances of how you came to provide testimony in this case, and attach copies of all communications concerning that.

OBJECTION: Nashua objects to this Request on the grounds that:

- a. The information requested is not necessary to evaluate or relevant to Nashua's Petition within the meaning of Puc 204.04(a) and is argumentative.
- b. The Data Request seeks information that is protected from disclosure by attorney/client and other privileges as provided by law.

ANSWER: I have been concerned with the development in the Pennichuck watershed since 1998. I made a point of educating myself on the issues, talking to professionals, environmental groups, read in detail the Sasaki Report, the CEI Reports, NHDES and EPA documents, attended workshops on water issues, etc. I have tried to educate myself and educate the citizens in the Nashua area on the importance of watershed protection.

I did not originally become involved in this PUC process because I just did not have time. The Pennichuck Brook Watershed Council was an intervenor through in the Philadelphia Suburban case (DW 02-126) in 2002 and I relied on the involvement of others in this proceeding to promote the interests of watershed protection.

I was surprised when the local papers said PUC Staff could not find anything to support that Pennichuck was a bad steward of the watershed. Some of my photographs of the watershed (that were included in my May 22, 2006 Reply Testimony) were seen on my website and I was asked to contribute. No direction or limitations was given. I am not a direct intervenor in this case.

I honestly wish that the PUC Staff had been a little bit more objective about the situation and would never become involved if I thought that the PUC Staff had fairly and objectively evaluated Pennichuck's role in failing to protect the future of the region's water supply. I disagreed with Staff's conclusion thought that I could provide a better perspective on what has taken place in the Pennichuck Brook Watershed.