



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

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Office of the
Secretary

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Secretary's Order No. 2011-W-0018

**Re: APPLICATIONS OF BOY SCOUTS OF AMERICA FOR PERMITS FOR
TWO PUBLIC WATER SUPPLY WELLS NEAR DOVER, KENT
COUNTY**

Date of Issuance: March 22, 2011

Effective Date: March 22, 2011

Under the authority granted the Secretary of the Department of Natural Resources and Environmental Control (Department or DNREC) under *7 Del C. §6003*, the following findings, reasons and conclusions are entered as an Order of the Secretary.

This Order considers the applications of the Boy Scouts of America (Applicant) for permits to construct and operate two public water supply wells. The proposed wells would be used to provide the potable water supply and fire protection requirements for Applicant's proposed campground, which would be built on property along New Burton Road, just south of the City of Dover municipal limit along Webbs Lane. The Applicant intends to use one well as a primary well and one well for backup purposes for water service for up to 350 campers during the summer months. During the off season the water usage will be much less based upon the occasional use of the camp in the Fall and usage by a caretaker/ranger. Applicant's property is not within any water utility service territory. The Applicant would install two 4" diameter wells, which would be 380' deep. Each well would have a maximum withdrawal capacity of 30 gallons per minute and a limit of 10,000 gallons per day.

The Camden Wyoming Sewer and Water Authority (CWSWA) opposed the applications, and the Department held a public hearing on January 6, 2010 before the Department's presiding hearing officer, Robert P. Haynes, who prepared a Report of recommendations dated March 3, 2010, a copy of which is attached hereto and incorporated herein. The Report recommends approval of the requested permits, consistent with the recommendation of experts within the Department's Division of Water, Water Supply Section (WSS).

I adopt the Hearing Officer's Report and its review of the record and recommendations. I agree with the Report that the record supports dismissing the opposition to the two public wells based upon concerns with contamination of the aquifer used by CWSWA. The Department's regulation of well drilling and well operations should protect CWSWA's water source from contamination. CWSWA also raised an issue with the possible availability of water service from either CWSWA or the City of Dover. The records supports that Applicant's wells is a lawful option that will not harm the public health or environment. The record supports a finding that the Applicant has established that it is entitled to permits. The record shows that there are legal and operational problems with either CWSWA or City of Dover providing Applicant with water service that is acceptable to Applicant.

Ideally, the Department would prefer if the Applicant and SWSWA would negotiate a mutual agreement, but the record shows that efforts were made towards such a resolution, but were unsuccessful. Consequently, the record supports granting Applicant well permits because it has met the Department's regulatory requirements. Nevertheless, if CWSWA wants to include the Applicant's property in its service territory and/or

establish an interconnection with the City of Dover water system, then nothing in this Order prohibits the Applicant from pursuing these options and not drilling the two wells.

In sum, as more fully described in the reasons and findings in the Report, I adopt and direct the following as a final order of the Department:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;

2. The Department provided adequate public notice of the proceeding and the public hearing, and held the public hearing in a manner required by the law and its regulations;

3. The Department considered all timely and relevant public comments in making its determination;

4. The record of decision supports the issuance of the permits based upon the applications, and such reasonable conditions that the Department includes in the permits in order to protect the environment and public health;

5. The duly authorized Department official shall timely prepare and issue the permits consistent with this Order; and

6. The Department shall provide notice of this Order to the persons affected by this Order, as determined by the Department.

s/Collin P. O'Mara

Collin P. O'Mara

Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Senior Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Application of Boy Scouts of America for Well Permits for Wells on Kent County
Tax Parcel 2-00-08500.02-0502-0001 Near Dover, Kent County.

DATE: March 3, 2011

I. PROCEDURAL HISTORY

This Report considers the administrative record and makes recommendations to the Secretary of the Department of Natural Resources and Environmental Control (DNREC or Department) concerning the Boy Scouts of America (Applicant) applications submitted to the Water Supply Section (WSS) within the Department's Division of Water.

The Department published public notice of the permit applications, and received a November 9, 2010 letter from the Camden Wyoming Sewer and Water Authority (CWSWA). CWSWA opposed the applications and requested a public hearing. I was assigned as the Department's hearing officer and presided over a public hearing held January 6, 2011 in the Department's Dover offices. At the conclusion of the public hearing, I granted a request to keep the public comment period open for one week and Applicant provided a response. I requested technical advice from WSS, which WSS provided in a February 24, 2011 memorandum attached hereto as Appendix A.

This Report considers the record as reviewed below, and applies the applicable laws and regulations in support of my recommendation to the Secretary that WSS be directed to issue the permits.

II. SUMMARY OF THE RECORD

I find and recommend adoption of the record, consisting of the 45 page verbatim transcript of the public hearing and the documents introduced as exhibits at the public hearing and in this Report.

The Department provided for the record at the public hearing DNREC Ex. 1,¹ which includes the applications, the public notices of the applications and the public hearing, and CWSWA's November 9, 2010 letter. In addition, I recommend including the post-hearing written comments timely submitted by the Applicant and CWSWA and I requested from the Applicant information on the sewer service to be provided to the Property, which the Applicant provided. Finally, I recommend that this Report be included in the record. While additional information may be added by the Secretary, I find that the recommended record supports the recommended decision to issue the permits.

CWSWA's November 9, 2010 comment noted that it provides water supply service to 5,000 customers using 2 wells, which withdraw water from the Piney Point and Cheswold aquifers. CWSWA asserts that the Applicants' wells may cause possible contamination to the CWSWA water supply. The comments also indicate that CWSWA could serve Applicant water service at the Property from the existing 10" water main located along New Burton Road. The comments also noted that the City of Dover water system is in close proximity to the Property. The comments indicates that the opposition was not motivated by any desire to provide water service, but instead was concerned with the health safety and welfare of the public and the best interests of the Applicant.

¹ The Department does not have an obligation to develop the public hearing record and remains neutral on the merits of any pending permit application until after the public hearing, but the Department nevertheless develops a basic public hearing record for the public's benefit in making public comments.

At the public hearing, the Applicant's representatives included Bob Simpkins with Becker Morgan Group, Mike Reiman with Becker Morgan, and Ray Teat, Director Support Services for Delmarva Council of the Applicant. Mr. Reiman explained that the Applicant approached the City of Dover for water service, but that such service was not available because the Property was not within the City limits and an adjacent property's owner located between the Property and the City did not want to be annexed by the City. He indicated that meetings had been held with CWSWA and after the meetings the Applicant determined that a connection to CWSWA's system was not reasonably feasible.

Bob Simpkins explained the Applicant's response to the CWSWA's objections by noting that the Property would be used to serve 350 campers and a permanent staff of one ranger and a few overseers. The camping would be in the summer months and most geared toward Cub Scouts. There may be weekend camping in the Fall season. The Applicant is familiar with operating public water supply wells based on its camps in Maryland, which are larger than the proposed camp to be built on the Property. He indicated that the wells would be installed pursuant to Department regulations and using licensed well drillers, which means a low risk of any pollution contaminating CWSWA's source of water supply. He noted that the withdrawal would be 10,700 gallons per day with 350 campers in the camp and that for the remainder of the year the withdrawals would be approximately 1,000 gallons per day. Finally, he responded to the point about the water systems by saying that neither CWSWA or Dover is authorized to provide utility water service to the Property. Finally, he indicated one reason why the Applicant did not consider CWSWA's water service feasible was because the water pressure would be too low at 25 pounds per square inch (psi), which would be insufficient to meet Applicant's pressure requirements for fire flows. The Applicant also had water quality concerns because the CWSWA's service would be at the end of a 3,000 foot water main that would be needed to be

built. When the camp was not full the water would remain dormant in the water main for over a week and that presents water quality problems unless Applicant would flush the main periodically and that would waste water resources.

Soheil Ghaghi, CWSWA's engineer, spoke and read from the written comments summarized above. He also provided a chronology of meetings with the Applicant about the possible extension of the CWSWA main that now ends at the Wingate subdivision along New Burton Road and that such an extension would enable an interconnection with the City of Dover water system. He introduced as CWSWA Ex. 1 the current rate schedule for water service from CWSWA. CWSWA Ex. 2 was the application for water service from CWSWA, and CWSWA Ex 3 was the CWSWA Resolution. CWSWA Ex 4 was Mr. Teat's November 10, 2010 letter on negotiations with CWSWA. CWSWA Ex. 5 was its November 15, 2010 letter to the Applicant that sought a main extension agreement from the Applicant. CWSWA Ex 6 was an email from Mr. Duke of Becker Morgan on behalf of the Applicant that provided a rough sketch plan for various main extension options. CWSWA Ex 7 was its formal memorandum for Applicant's consideration of a main extension agreement. CWSWA's Ex. 8 was the Applicant's reply that it was considering its water supply options. CWSWA Ex. 9 was a copy of the Department's Secretary's Order No 85-WS-01 on the water supply in Kent County and the need for an interconnection between the City of Dover and CWSWA. I asked questions of CWSWA on the procedures to follow for CWSWA to serve the Applicant and Mr. Gharebaghi indicated that a main extension would cost the Applicant approximately \$69,000 in impact fees, and would require a 3,000' main to be built after receiving approval from the Public Service Commission to provide service to the Applicant. The Applicant provided BSA Ex. 1, which showed that the proposed water usage would not harm the CWSWA's water supply and the Applicant provided a

more detailed reply dated January 13, 2011 as its post-hearing comments, which I shall include in the record as BSA Ex. 2.

III. FINDINGS AND DISCUSSION OF REASONS

I recommend a finding that the Applicant has adequately supported the application and that the application complies with the Department's *Regulations Governing the Construction and Use of Wells. 7 DE Admin. Code 7301*. I recommend a finding that the public comments from CWSWA should be rejected insofar as they oppose issuing the permits. The record, as shown by the memorandum submitted by the Department's experts and Applicant's experts in BSA Ex. 1 & 2, support the issuance of the permits.

I agree that if the City of Dover Water supply was available then that would be the preferred water supplier, but the City of Dover is not willing to provide outside of its municipal limits and annexation is not possible in the immediate future. Applicant has established a need for the two wells. I find that Applicant has met its regulatory burden to show that it is entitled to construct two wells for use as its source of water supply. The Property currently is not served by any utility water provider. I agree that water service is not reasonably feasible from either the City of Dover or CWSWA unless legal obstacles are removed for both these possible water providers. Even if reasonably feasible, the Applicant still could drill the wells absent some environment or public safety concern that is not present in this case.

I find that a 3,000 10" CWSWA water main would be needed to be built, but even if this main was installed CWSWA's water service would have water pressure and water quality issues. I find that the presence of a CWSWA hydrant along New Burton Road is not the same as having fire protection near the buildings that could be on fire. Thus, Applicant's desire for fire protection requirements provides another reason to drill the wells as opposed to relying on CWSWA for fire protection water service.

I find that CWSWA's concern with the possible withdrawal from the aquifer would occur if the Applicant would become CWSWA's customer. Indeed, the record supports a finding that that more water would be withdrawn from the aquifer by CWSWA to serve Applicant because Applicant would need to flush the 3,000' water main frequently during the campground's off season because of the water quality issues.

The Department's role in selecting between water suppliers is more limited than when the Department had legal authority to determine water suppliers' service territories. CWSWA cites the Department's policies and regulations when the Department had the authority to decide between competing water utilities. Similarly, I find that CWSWA's reliance on the water allocation regulation is misplaced because the two proposed wells would not withdraw enough water to trigger the water allocation regulations. In sum, I agree with the Department's experts' conclusion that the proposed wells will not cause any undue risk of harm to the public water supply. I find and recommend that the Department issue Applicant its permits as an appropriate exercise of its authority over Delaware's water resources, but the permit should include reasonable permit conditions.

IV. RECOMMENDED CONCLUSIONS

Based on the record developed, I conclude that the record supports approval of issuing Applicant the permits to construct and use two wells, subject to such reasonable permit conditions recommended by the Department's experts. I recommend the Secretary adopt the following findings and conclusions:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;

3. The Department held a public hearing in a manner required by the law and regulations;

4. The Department considered all timely and relevant public comments in making its determination;

5. The Department shall issue Applicant the permits subject to the reasonable general and specific permit conditions recommended by WSS; and

6. The Department shall serve either by mail or email a copy of this Order on each person who participated in the public hearing,

s/Robert P. Haynes
Robert P. Haynes, Esquire
Senior Hearing Officer

MEMORANDUM

TO: Robert Haynes
Stewart Lovell, P.G.

Date: February 24, 2011

From: Bill Cocke

cc: Patty Murray

RE: Public Hearing – Camden-Wyoming SWA vs. Boy Scouts of America

Mr. Soheil Gharebaghi of Camden-Wyoming Sewer & Water Authority (CWSWA) expressed objections to the installation of two proposed Piney Point Aquifer wells at the new Boy Scouts camping facility outside the Camden town limits. The objections were:

1. It is the position of the Camden-Wyoming Sewer and Water Authority that the proposed wells could potentially have adverse impacts on the Authority's sources of water supply. The probable harmful effects of the proposed wells could include, but not be limited to, contamination of the two confined aquifers and lowering of water levels in the aquifers.
2. [I]n our estimation, the creation of an enclave public water supply between two existing public and municipal water purveyors could not be adequately justified to warrant the acceptance of probable risks associated with the subject application.
3. Section 3.02 (A) of the Department's Regulations Governing the Allocation of Water, entitled "Existing Systems," indicates that "Use of established regional water collection and distribution systems by new water users will be encouraged whenever appropriate." It is the Authority's position that the two existing, established regional water distribution systems . . . are both physically available and appropriate for use by the Boy Scouts.
4. Section 3.02 (B) of the Regulations Governing the Allocation of Water states "Construction of interconnections between established public water supply systems, whether publicly or privately owned, is in the public interest and will be encouraged." "Approving the subject applications would seriously diminish the potential for the extension of the distribution systems toward an eventual interconnection."
5. Section 3.02 (C) of the Regulations Governing the Allocation of Water indicates that "Proliferation of small water supply systems of insufficient size to maintain an efficient, safe and adequate level of service will be discouraged."
6. Section 3.02 (E) of the Regulations Governing the Allocation of Water states : " Wherever practicable new water service facilities shall be planned to provide water supply on a regional basis, eventually becoming part of an established regional distribution system. Any new or

expanded portion of a housing development with 25 or more total planned units will ordinarily be required to provide a public water supply system.” “It is our position that indeed it would be quite practicable for the Department to uphold its own policy requiring new water service facilities to be planned to provide water supply on a regional basis by denying the subject permit applications. . . .”

7. Quoting from Secretary’s order #85-WS-01, the CWSWA again objected to impacts to the Piney Point and Cheswold aquifers as a result of the proposed withdrawal.

In response to objections 1 and 2, the Boy Scouts presented calculations predicting a drawdown of approximately one foot at the CWSWA’s Piney Point well during peak usage by the Boy Scouts. The impact on the operation of the CWSWA well is too small to calculate, even under worst case considerations.

In response to objections 3,4,5 and 6, relating to Section 3.02 of the Regulations Governing the Allocation of Water, it is only necessary to read the opening paragraph of the section to see its intent:

“The following policies regarding regionalization of water supplies will be followed by the Department in assessing new or renewal allocation permit applications.”

It was the intent of the regulation to deny allocation permit applications to small water suppliers that could connect to an existing system. These policies were once in regulations administered by the Department through the CPCN program, but the General Assembly transferred that CPCN authority to the Public Service Commission. The administration of the regionalization policies through the Department can only be done through denial of allocation permit applications. It was never the intent of the Department, and it is not now possible to enforce this policy on campgrounds too small to need an allocation permit.

In response to objection 7, Secretary’s order #85-WS-01 does not prevent issuing BSA the permits, but instead it ordered the City of Dover and the Authority to jointly conduct feasibility studies for the regionalization of water supplies through the construction of an interconnection. To date no interconnection has been made despite 26 years of studying the possibility of one. Thus, BSA is correct to rely on its own wells to receive water unless a mutual agreement can be reached with CWSWA and BSA. I recommend the well permits be issued as BSA has established that it has met the Department’s regulatory requirements.