

CITY OF NASHUA
Petition for Valuation Pursuant to RSA 38:9
DW 04-048

City of Nashua's Responses to Pennichuck's Public Interest Data
Requests - Set 1 Round 1

Date Request Received: May 5, 2005

Date of Response: June 10, 2005

Request No. 1-73

Respondent: Brian A. McCarthy

Request: Please indicate with specificity what watershed property Mr. McCarthy is referring to on page 2 of his testimony. Your listing should also set forth the most recent assessed value of such property for real estate tax purposes.

Response: The primary watershed parcel remaining is parcel M of the Sasaski report. Despite the fact that "a good part of that site overlies a very high yield ground water aquifer," as so stated by Pennichuck engineer Tom McAloon at the Aldermanic Planning and Economic Development Committee meet dated 8/30/94, the company has had plans for over 10 years to develop the site for office space and/or for a golf course. Parcel M includes:

Parcel ID	Assessed \$
H-577	\$25,300
H-523	\$520,000
H-645	\$7,359,500
H-634	\$4,500,000
H-633	\$4,283,100
H-576	\$14,943,200
H-575	\$1,400
H-635	\$7,400

The City had to step forward and purchase the developable parcels of Parcel M to prevent it from being developed by the water company. The City has since purchased additional parcels totaling over 100 acres in the vicinity of Parcel M and assisted in the donation of approximately 80 acres to the NH Audubon Society. The company went so far as to call Aldermen in pursuit of escape clauses from the City's water supply protection district ordinance so they could develop Parcel M.

The company has never purchased or bought land for watershed protection with the small exception of one lot, lot H-632. The company purchased

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the lot in September 1999, subdivided the lot into two lots and sold one of the two lots as a house lot in 2001. The house that was subsequently built on the lot is entirely within the 300-foot setback from Bowers Pond. The 1998 Pennichuck Water Works Watershed Management Plan recommends “a minimum of 400’ buffer around the chain ponds ...” Lot H-632 is located in the PBB subwatershed, which has an imperviousness of 29%, according to the 1998 PWW Watershed Management Plan. The report states that “Shueler (1994) suggests that the cycle of stream and water quality degradation begins at approximately 10% imperviousness. He also suggests that once background loads exceed 20-25%, it may be difficult or impossible to fully restore water quality.” (page 9-2) By selling property within the 300’ buffer as recommended by the Sasaki Report or 400’ as recommended in the 1998 PWW Watershed Management Plan, the company demonstrates an inconsistent concern for the watershed and the utilization of its buffers.

The company has consistently failed to pursue the purchase of buffer land, such as the Sanderson farm property, Best Ford property, which at this point is all paved, and has never objected to the development within the watershed. Although Pennichuck claims to have made an offer to buy the Sanderson property, according to the 6/18/98 planning board minutes, the attorney for the Sanderson property stated “his clients have never been approached by Pennichuck to have the land purchased. He said it is important for the Board to take into consideration that this land belongs to his client and you can’t take land away without just compensation. He said if Pennichuck thought this was so important they should have purchased it and they have the right to do that through eminent domain as they are a water company.”

Pennichuck’s protection of the watershed appears to be inconsistent with the company’s short-term goals for revenue and profit generation. The company’s own sale of lands within the buffer zone and the proposal to develop Parcel M demonstrate the company’s lack of concern for the watershed.

When Mr. McCarthy refers to others involved, he specifically refers to the fact that the purchase of Parcel M and the water supply protection district ordinance (without the amendment requested by Pennichuck CEO Arel) passed the Board of Aldermen. Others believe what Mr. McCarthy believes and Mr. McCarthy is echoing the general sentiment of the City and the character and nature of their voting record on these issues. When the City introduced its water supply protection plan, the only objection to the plan was Pennichuck itself. The ordinances are in effect today and they are City ordinances, they are not ordinances that were proposed by, adopted by, or advanced by Pennichuck.

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Date Request Received: May 5, 2005

Date of Response: June 10, 2005

Request No. 1-75

Respondent: Brian A. McCarthy

Request: Identify the individuals that Mr. McCarthy contends believe that Pennichuck has failed to protect the watershed through those real estate operations. Provide copies of all supporting documents.

Response: Mr. McCarthy believes that individuals who agree that Pennichuck has failed to protect the watershed is demonstrated by the aldermanic vote to purchase Parcel M, the enactment of a water supply protection ordinance, the fact that the Department of Environmental Services provided water supply money in part for the purchase of parcel M and that LCHIP provided money. Pennichuck Corporation provided nothing, but sold the land. These participants demonstrate a number of agencies and constituents concerned with the watershed protection.

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**City of Nashua's Responses to Pennichuck's Public Interest Data
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Date Request Received: May 5, 2005

Date of Response: June 10, 2005

Request No. 1-77

Respondent: Brian A. McCarthy

Request: Please provide all information that Mr. McCarthy or the City is aware of that indicates that Mr. McCarthy or the City opposed development of the watershed referred to on page 2 of Mr. McCarthy's testimony. Provide copies of all supporting documents.

Response: As an example of Mr. McCarthy's or the City's opposition to development of the watershed, one can look at the Hersh-McCarthy v. City lawsuit against the City of Nashua for the variance issued on the Best Ford property. That proposed project ultimately was withdrawn. Furthermore, in previous answers the City is the entity which has moved forward to purchase property, has moved forward to enact ordinances, and has moved forward to protect the watershed where it has been able to in direct contrast to Pennichuck's lack of activity and, in fact, lobbying to find escape and exemptions of its parcels from development restrictions.

Documents responsive to this request, to the extent that they are not privileged or work product, are available for inspection and marking for copying at the Nashua City Hall.

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Nashua's Responses to Pennichuck Water Works, Inc. Data Requests – Set 3 Round 2

Date Request Received: January 26, 2006

Date of Response: February 6, 2006

Request No. 3-51

Respondents: Brian S. McCarthy.

Req. 3-51 Please state every fact in support of the contention on page 4 of the Ashcroft/Ford/Burton/Noran testimony that "Investor owned utilities like PWW are focused on the stockholder not the customer."

OBJECTION: Nashua objects to this request on the grounds that it is overbroad and fails to identify the information sought with specificity pursuant to Puc 204.04. Nashua cannot possibly specify "every fact in support" of the conclusion that investor-owned monopolies like PWW are responsible primarily to their shareholders.

ANSWER: *Without waiving the foregoing objection, Brian S. McCarthy states as follows:*

I have been informed by counsel that Veolia withdrew the above-statement as a result of complaints filed by United Water and American Water to the Water Partnership Council, a trade association of which Veolia is a member. See <http://www.waterpartnership.org/> I note that Don Correll, CEO of Pennichuck Corp., is a former CEO for United Water, and that attorney Joe Conner, counsel to PWW in this case, serves or has served as legal counsel to American Water in several cases. I am disappointed that these complaints have resulted in the need for Veolia's withdrawal of a statement that I believe is important to this proceeding. I have therefore adopted the statement as my own and respond to it here:

The statement was intended to explain how Nashua's public-private partnership will use market forces to the benefit customers of its water system. Both Veolia and Pennichuck are obviously owned by and responsible to their respective investors. However, Veolia's operations, unlike those of PWW, will be subject to competitive forces. For example, in the *highly unlikely* event that Veolia failed to provide high quality services at competitive prices, Nashua has several options that are not available to customers of an investor owned utility, including (1) the option to not renew its contract and award the contract to another operator; or (2) exercise its right to terminate the contract for convenience. As a

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result, despite its obligation to its shareholders, it is in Veolia's best interest to provide service that is superior in both quality and price.

Investor owned utilities like PWW are monopolies. Their primary focus is to provide a return on shareholder investment while operating within the limits set by regulatory authorities. While this approach often provides acceptable service, it is less efficient than competitive markets. Veolia being the subject of competitive bidding, must be responsive on both service and price, whereas a regulated utility must provide adequate service at an acceptable cost. This selects neither the best nor the lowest option on either axis, and allows service and price to be suboptimal in favor of profit. Recourse through the regulatory process is limited and customers do not have the ability select a better operator if they are not satisfied with the terms and conditions of their service.

One example of PWW's focus on shareholders instead of the best interests of rate-payers and conservation is PWW's sale of land that had been set aside for watershed protection in the 1980s. As has been documented in Mr. Sansoucy's testimony and appraisal report and elsewhere, between 1983 and December 31, 2004, PWW's affiliate the Southwood Corporation sold approximately 1,019 acres of land that had been purchased by rate-payers for watershed protection. PWW sold the land for over \$26 million, an enormous profit over its net book value. Its development resulted in additional demand for water, and the need for public infrastructure such as roads, schools and police and fire protection.

A second example is PWW's decision to relocate to its expensive corporate headquarters space in order to send more of the ratepayer's money to a Pennichuck subsidiary which is, according to their reports, operating at periodic negative cashflow. This decision has not received adequate scrutiny, and PWW's customers have little or no recourse, short of initiating a complex and uncertain regulatory process before the Public Utilities Commission.

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Nashua's Response to Staff Data Requests – Set 4 Round 1

Date Request Received: February 27, 2006	Date of Response: March 20, 2006
Request No. 4-62	Respondents: Katherine Hersh, Brian McCarthy

Regional and Watershed Issues

Req. 4-62 Please identify watershed protection efforts made by Nashua over the past five years.

Response: Nashua does not believe that the protection efforts of PWW have been adequate and improved watershed protection is one of the City's goals in the acquisition. Nashua recent watershed protection efforts include those listed below, which Nashua has accomplished despite the fact that it has not owned the water system.

- Nashua has continued to enforce the standards in the Water Supply Protection District Ordinance passed by the City in 1998, despite opposition by Pennichuck Corporation. The Water Supply Protection District Ordinance included stricter stormwater standards that were subsequently adopted city-wide.
- The City acquired approximately 250 acres of land and an easement on approximately 41 acres of land adjacent to Pennichuck Pond from Pennichuck in 2001 to prevent Pennichuck Corporation from developing it.
- The City subsequently acquired an additional adjacent 107 acres for conservation purposes, and was actively involved in the private donation of an additional approximately 80 acres to NH Audubon.

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Date Request Received: February 27, 2006

Date of Response: March 20, 2006

Request No. 4-63

Respondents: Katherine Hersh

Req. 4-63 Is Nashua participating or going to participate in the update to the 1998 Watershed Management Plan by Roy F. Weston, entitled *1990 Southern NH Water Supply Study*?

Response: Yes. To date, as Nashua's Community Development Director, I attended the meeting at PSNH on Wednesday, October 12, 2005 regarding planning for southern NH's water supply. I met subsequently on January 6, 2006 with Stephen Williams, NRPC Executive Director, Karen White, Bedford Planning Director and David Preese, Executive Director of SNHRPC, to discuss the steps necessary to update the 1990 study.

After Nashua completes the acquisition, Veolia will perform a watershed study as set forth in the OM&M Agreement, Appendix Q. Nashua expects that Veolia will coordinate with any other entities performing watershed studies and meet with all stakeholders.

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Nashua's Response to Staff Data Requests – Set 4 Round 1

Date Request Received: February 27, 2006

Date of Response: March 20, 2006

Request No. 4-64

Respondents: Katherine Hersh

Req. 4-64 Please identify all watershed management plans within PWW's franchise area that Nashua participates in or will participate in. In your response, please distinguish between present participation and future participation in identifying each watershed management plan.

Response: PWW did not invite Nashua to participate in any of its studies of the watershed that resulted in watershed management plans, notwithstanding Nashua's obvious interest. After the acquisition, watershed management plans will be prepared for and implemented on behalf of the City by both Veolia and Beck (see Response to 4-65 and 4-66).

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Nashua's Response to Staff Data Requests – Set 4 Round 1

Date Request Received: February 27, 2006

Date of Response: March 20, 2006

Request No. 4-65

Respondents: George Sansoucy,
Paul Noran, P.E.

Req. 4-65 Source water protection responsibilities are not addressed in the Veolia OM&M contract and is mentioned in the Beck contract under Supplemental Task 3. Please identify in sufficient detail how Nashua will conduct source water protection planning.

Response: Source water protection by Veolia is addressed in Appendix D (page 2, Section 2.0), Appendix E (page 2, Paragraph A. 7), and Appendix Q (page 4, Section 4.0 (15)) to the OM&M Agreement.

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Date Request Received: February 27, 2006

Date of Response: March 20, 2006

Request No. 4-66

Respondents: John Henderson, P.E.,
Paul Doran, P.E.

Req. 4-66 Supplemental Task 3 of the Beck contract states: "Building upon the watershed services provided by the O&M Contractor, develop and implement a "source protection" program to create a detailed watershed management plan that begins to develop and implement an aggressive source protection program." What is meant by "building upon"?

Response: Pursuant to Appendix Q of the OM&M Agreement, Section 4.0 (15), Veolia will perform and provide a watershed evaluation that will look at a number of watershed concerns and issues, including water quality and water flow and make recommendations to Nashua. In Supplemental Task 3, Beck will be asked to start with the evaluation performed by Veolia and develop and implement a "source protection" program as outlined.

"Building upon" means that Beck will review, incorporate and advance the work that has been previously completed, including PWW and Veolia, to establish or modify and implement an aggressive source protection plan that has quantifiable bench marks and goals. Beck will not repeat previous work but rather advance the watershed protection planning and protection efforts achieved by others in a cooperative and collaborative manner.

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Date Request Received: February 27, 2006

Date of Response: March 20, 2006

Request No. 4-67

Respondents: Paul Doran, P.E.
John Henderson, P.E.

Req. 4-67 Will Nashua include its Planning Department in development of any watershed management plans and source water protection plans?

Response: Yes. Beck understands that as an oversight contractor it is responsible to make sure that the operations of the water system, including the development and implementation of the watershed management and resource protection plans, are fully integrated with the City's other departments including Planning, Public Works and Finance.

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Nashua's Response to Staff Data Requests – Set 4 Round 1

Date Request Received: February 27, 2006

Date of Response: March 20, 2006

Request No. 4-68

Respondents: George Sansoucy, P.E.
Bernard Streeter, Brian McCarthy

Req. 4-68 How will municipalization improve:

a) PWW's present source water protection efforts?

b) PWW's present watershed protection efforts?

Response: Municipalization will provide greater resources, expertise and focus in the areas of source and watershed protection, through the use of Veolia as Nashua's operator and Beck as its oversight contractor. See Responses to 4-65 and 66. Nashua ability to and interest in implementing watershed protection and conservation plans will be a significant improvements in source and watershed protection over PWW's present efforts.

PWW's has ignored the recommendations of its own consultants concerning the need to acquire and protect lands within the watershed to protect water quality in its reservoirs. PWW's need to provide returns on shareholder investments have led it to sell off and develop the very lands that should have been protected from development for source water protection. PWW's actions have led to a steady deterioration in source water quality causing the need for in-reservoir treatment (aeration) and flow controls to counter water quality problems that have developed due to the lack of adequate protection in the watershed.

A municipal water system does not have a goal of creating return on investment for shareholders but rather maintaining and protecting the valuable resources it has to the benefit of the citizens of Nashua. Reducing development within the watershed and preserving this land as the natural protection for water quality in the reservoirs is the City's first objective. Taking other watershed and reservoir management steps to further protect the source water quality can then be evaluated and assessed based on what is best to protect this resource for the people of Nashua not based on the best way to maximize return on investment to private shareholders.

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Date Request Received: February 27, 2006 Date of Response: March 20, 2006

Request No. 4-70

Respondents: Katherine Hersh,
John Henderson, P.E.

Req. 4-70 The Nashua Regional Planning Commission has conducted a build out analysis for the Nashua region.

- a) What are Nashua's plans to serve the region in light of the anticipated build out projections?
- b) Can Nashua meet this demand?
- c) Will temporary moratoriums on water service connections be used?

Response: Nashua expects to continue to serve the areas within the region that are within the current service district areas transferred to the City's ownership. The ability to meet build out demands will be dependent on water resource allocations made by the State of New Hampshire.

The City believes that a municipal system with a commitment to conservation and strong resource management is a better model for achieving an optimum distribution and utilization of resources than the investor owned model where the incentive is to maximize returns by maximizing the sale of water.