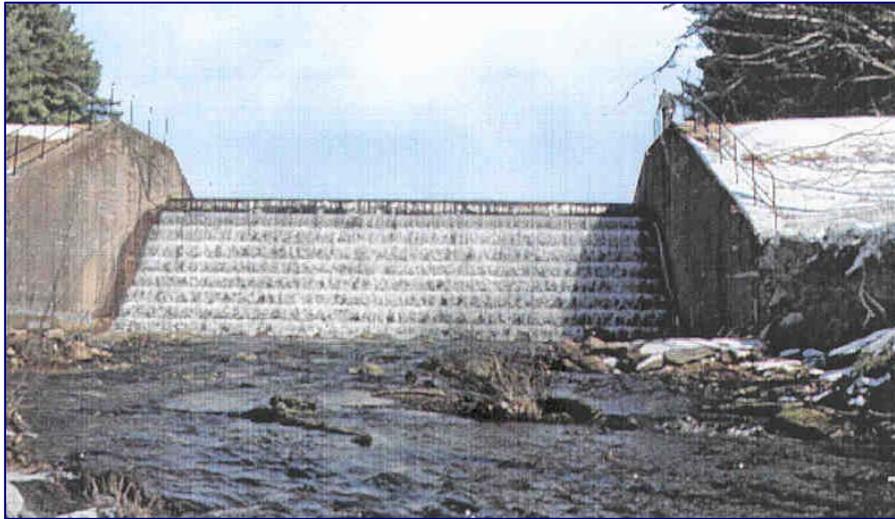


**REPORT  
OF  
WATER UTILITY MANAGEMENT  
SUBCOMMITTEE B**



**WATER UTILITY COORDINATING COMMITTEES**

**TO THE**

**WATER UTILITY  
MANAGEMENT COMMITTEE**

**AUGUST - 2002**

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## **I. SUBCOMMITTEE CHARGE**

The subcommittee considered its charge to be “**the procedure for coordination of planning of public water supply systems**”. The subcommittee approached this subject in two ways, first we identified and evaluated the process in terms of its individual strengths and shortcomings and then viewed it in the context of its impact on other water-related processes currently being reviewed by the various subcommittees of the Water Planning Council.

In performing this charge the subcommittee not only reviewed the **points of considerations, areas for action** and **possible areas to investigate** outlined in the Water Planning Council Work Plan of 1/28/02 but also included additional issues it derived during its review. (See Appendix A – Output of Strategic Planning Exercise).

The format for this report may not directly provide a response to each item listed in the Water Planning Council’s Work Plan for Issue 11. However, it should be noted that all of the issues identified in the Council’s report will be addressed in some manner in this report.

### **Major Points of Consideration:**

- Establishment of Exclusive Service Area Boundaries (ESA) is often difficult and delayed due to conflicts in claimed exclusive service areas and the process for making revisions to exclusive service areas is unclear.
- Providing legal counsel and liability coverage for WUCC members were issues identified during the public hearing.
- Municipalities have expressed a desire to be designated as official WUCC members.
- Exclusive service areas have been assigned to entities that have no demonstrated ability to satisfy future public water supply needs.

### **Areas for Action**

- The four state agencies on the Water Planning Council should develop a reasonable timeline and cost estimates for (a) completion of the WUCC process in the three remaining Water Supply Management Areas that have not yet been convened, and (b) continuing the process of revising all WUCC plans every ten years as legislatively required.

The specific charges for this subcommittee were all considered against the backdrop of the **General Issues** that were identified in the Work Plan for all the committees to consider including:

- *The legal framework that governs water use and management in Connecticut is complex and fragmented making it difficult for the general public, the regulated community, and regulatory agencies to have a clear and comprehensive understanding of all laws and policies that impact water resource management.*
- *There is no long-range plan for the statewide management of water resources. It further noted, “The need for an overall water resources plan for the state is a legitimate concern and its accomplishment would take a long-term commitment by the state agencies to implement.”*

## II. SUMMARY/RECOMMENDATIONS

The Committee concluded that, while the current WUCC process may have flaws, there are certainly merits to providing a mechanism for coordinated water supply planning. It was agreed that there can and should be improvements to the water supply planning process. It was clear that the current process is not perceived by all as being effective and that there are concerns that not all stakeholders are adequately represented in the process. However, it was understood that without some coordinated approach to water supply planning, decisions about water supplies and utility service areas would be left primarily to political processes, with little consistency or continuity, and with the risk of duplication, redundancy or gaps in service.

Options about the extent and context of proposed changes to the water supply planning process were explored by the Subcommittee, with consideration given to improving the current WUCC process as well as to a more comprehensive approach that would impact all aspects of water supply planning and water resource allocation. The subcommittee developed several detailed recommendations, including a number that address specific elements of the current WUCC process and Water Supply planning programs. It is the Subcommittee's opinion that these changes would all serve to improve the current process.

However, as one of the major recurring issues is the need for greater coordination between the regulatory authorities of the various state agencies, it is our belief that the recommended changes to the WUCC process would only truly be effective in the context of an overarching regulatory authority with responsibility for both water supply planning and water resource allocation. The subcommittee is concerned that even if the various recommendations are implemented, but retained in the context of the current regulatory structure, the process will be improved but the full value and benefits of the water supply planning and water resource allocation efforts will not be realized.

The Subcommittee's recommendations are summarized below:

1. **There needs to be a means to provide a more coordinated process between water supply planning and resource allocation and a stronger statutory link between the coordinated water supply planning process and the water resource allocation process.** Currently concurrence from the various regulatory authorities (DEP, OPM, and DPUC) is required before an individual water supply plan is approved by DPH. However, since there is no defined role in the current WUCC process for these agencies, except to review and comment on the plan, there is no obligation or assurance that the WUCC plan will be able to be implemented or that the water resources will be available.

It will ultimately be more effective if the various regulatory functions for water supply planning and water resources were housed in a single entity with the regulatory structure modified accordingly to provide for a more comprehensive approach to these essential water resource functions. Any such entity must have an assured, continued mechanism of funding to address the planning, modeling/data collection, education/conservation, permitting and enforcement aspects of water resource programs.

Such an integrated water resources planning program would have to consider planning and needs assessments for other water resource uses, not strictly public water supply. For any comprehensive water resources program to be effective it must have to have adequate data on the needs of all the potential uses such as recreation, fisheries, agriculture, waste assimilation, industrial, energy users, etc. Absent those components, water resources planning efforts cannot truly be effective as public water supplies represent only a fraction of the use of the resource. Without data on all uses and needs there will not be a complete picture or the ability to make adequate decisions.

It is also anticipated that the Allocations Subcommittee will develop an allocation process that provides for water planning and apportionment of water resources identified in the WUCC process. If such recommendations are effectively implemented, these issues pertaining to the implementation of the individual water supply plans and WUCC plans will be addressed.

2. **A mechanism needs to be developed to re-evaluate and possibly consolidate the existing Public Water Supply Management Areas (PWSMAs)** (See Appendix B – Map of PWSMA) with goals of (1) reducing the number of WUCCs that would have to be convened (thereby expediting the process) and (2) to provide greater consideration of watershed basins to link to water resource planning.
3. **The obstacles (financial, staffing and regulatory) that have limited the completion, approval and/or updates of the WUCC plans to date need to be eliminated** to assure that the process continues and that the plans are most timely and effective. A key element of this is clearly funding, but other aspects such as statutory constraints on contracts or the number of PWSMAs need to be reviewed as well.
4. **Participation on the WUCCs should be reviewed to determine the level of participation and role of various stakeholders in the process.** The process should promote stakeholder involvement. Over time this has changed to include all public water systems, which raises the number of potential WUCC members from the 600 originally anticipated by the Task Force to over 3,000. This change, coupled with the decision to allow municipalities who are utilities solely as a result of ownership of a municipal building served by a well to participate as members on the WUCC, has the potential to significantly change the process. As there was limited participation on the subcommittee by municipalities and no clear agreement by the participants, it is evident that this needs further study. (See section IV, item 3). Likewise the issue of participation of non-community public water systems also needs to be considered further.

If the Subcommittee's recommendation on deferring conflicts on ESA claims to the DPH for resolution is adopted, many of the issues about participation and voting rights on the WUCC may be eliminated. Ideally, the process should provide a mechanism to solicit input from various stakeholders – utilities, municipalities, environmental organizations, business interests, etc - while leaving the ESA claims and decisions on utility plans to the utility or

utilities that will ultimately have to implement them and the DPH that will have to oversee their implementation.

5. **Procedural Guidelines for WUCCs should be provided to make the process more efficient and allow the WUCC that is being convened the benefit of previous WUCCs' experience.** Whether these are formally adopted as regulations or provided as guidance from the DPH, they should be developed and provided to the WUCC when initially convened. The Subcommittee has provided suggested areas for consideration in Section V Item 5.
  
6. **The general process by which Exclusive Service Areas are established and conflicts are resolved needs to be reviewed and revised to ensure consistency.** The subcommittee has suggested details of the process for establishing ESAs and resolving ESA conflicts in Section V Item 6. Under the proposed process, there is a clearly defined conflict resolution process that first encourages mutual agreement between the parties, and then refers any unresolved ESA boundaries to be acted on by the regulatory agencies, rather than being 'voted' on by the WUCC members. The criteria established in the regulations for demonstrating that the entity claiming an ESA has the ability to provide pure and adequate supply would be expanded to include specific factors of (1) existing water allocations, (2) availability of future water allocations, (3) analysis examining current & future water demand and supply, and (4) history of water utility operations and regulatory compliance. Additionally, if an unresolved matter is referred to DPH for a decision, the regulations would also require that they would take into account the entity's financial and managerial resources. Finally, there would be interim or tentative approval of an ESA pending receipt and approval of a water supply plan or an update of an existing water supply plan. Accordingly, there would also be an interim or tentative approval of the Coordinated Plan of the WUCC while those individual supply plans are being developed or revised.
  
7. **There needs to be a mechanism to ensure consistency between claimed ESAs and utility water supply plans.** The WUCC process requires that a utility's Individual Water Supply Plan be integrated into the WUCC's final "Coordinated Plan". (See Appendix C – Coordinated Plan Flow Design). However, in many cases, Exclusive Service Areas are established by the WUCC without an approved Individual Water Supply Plan that is consistent with the ESAs that are being claimed. It is not clear, at the time the WUCC is conducting its work, whether the entity will truly be able to serve the ESA that is claimed. That cannot be adequately demonstrated until their water supply plan is developed and/or updated to reflect the ESA that is claimed. The subcommittee recommends that prior to the final approval of the WUCC plan and the ESAs, the entities claiming the ESA would have to develop and/or update their water supply plan to demonstrate how they would provide service in the ESA they have claimed. With the addition of an interim approval of the ESA boundaries, and the subsequent amendment of the individual water supply plans, there will also need to be an interim approval for the Coordinated Plan. Only when the individual water supply plans are approved would the ESA be assigned and the Coordinated Plan be adopted.

If the entity could not adequately demonstrate that they could serve the area, it would revert back to the WUCC process to determine a provider. There needs to be further review of a

mechanism to revoke an ESA or portion thereof, if the entity granted the ESA is unable or unwilling to provide service within a reasonable time. Any proposed mechanism would have to be established in regulations taking into account several factors. This requires further study.

- 9. There were concerns raised about whether there needs to be a better mechanism to ensure coordination and consistency with the WUCC plans and local planning documents and the State’s Plan of Conservation and Development.** It appears to the subcommittee that individual utility water supply plans are developed with consideration to the local plans of development and zoning regulations and the WUCC plans (which incorporate those individual water supply plans) are reviewed for consistency with the State Plan of Conservation & Development. If there is a disconnect, it does not seem appropriate to focus on the Water Supply Plan or WUCC process, but rather in whether local zoning regulations and land use decisions adhere to both the local plans of development and the State Plan of C&D.
  
- 8. The Subcommittee examined whether it was necessary to provide legal counsel and liability coverage for WUCC members.** Most of the concerns regarding potential liability for WUCC members was associated with the mechanism for conflict resolution and a decision by the WUCC that might not be acceptable to one of the members. The Subcommittee believes that if the recommended changes to the method for assigning ESAs are adopted and ESA conflicts are referred to DPH for resolution, then the issue of potential liability for the WUCC members is minimized and does not require that legal counsel or liability coverage be provided.

### **III. BACKGROUND ON THE WATER SUPPLY PLANNING PROCESS**

In 1982 the Legislature adopted Special Act 82-28 “An Act Concerning a Study of State Agency Authority and Management of Water Resources for Public Water Supplies”. As part of that Special Act, a Water Resource Task Force was formed. The Task Force was charged with evaluating and making recommendations concerning the authority of State agencies in the management of water resources for public water supplies; institutional structure, franchise, and operational areas of water utilities; the State’s water supply system including sources, present and future demands, and rate structures; conservation of water resources; and groundwater supply problems.

In 1984 the Task Force submitted an interim report to the Legislature, which recommended significant legislation that was passed during the 1984 session. These were Public Acts 84-330, 84-281 and 84-502. In addition to these pieces of legislation, the Task Force turned its attention to long term water resource issues. The Task Force began concentrating its activities on the development of a public water supply coordination law based on a pilot program in place in the State of Washington.

In 1985 the Legislature passed Public Act 85-535 “*An Act Concerning a Connecticut Plan for Public Water Supply Coordination*”. The Legislature found that “**in order to maximize efficient and effective development of the State’s public water supply systems and to promote public health, safety and welfare, the Department of Public Health (DPH) shall administer a procedure to coordinate the planning of public water supply systems**”.

The Act provides for a coordinated approach to long range water supply planning, by addressing the water quality and quantity issues from an area wide regional perspective. The process is designed to bring together public water system representatives and regional planning organizations to discuss long range water supply issues and to develop a plan for dealing with those issues. The “Connecticut Plan” was a Task Force attempt to resolve problems of water quality, water supply planning, protection of present and future sources, the State’s role in regulating water supply and service, proliferation of small water systems, an adequate maintenance and repair of the utilities, overlapping service areas, and the adequacy of rates. The subcommittee felt that a Connecticut law modeled on the Washington Act provided a creative, long term solution to many of the State’s water related problems with a minimum of new state authorities while encouraging participation of the utility industry and local and regional levels of government.

The “Connecticut Plan” would address

- Comprehensive planning for water supply service and quality on a regional basis.
- Future water supply planning.
- Water quality and quantity problems.
- Problems with water utility performance.
- The proliferation of new water systems.

- The integration of water system plans and land use plans, identification and resolution between land and water system planning.
- Cooperation among water purveyors; large and small, public and private.
- Coordination and accountability among water purveyors concerning provision of service, interconnections, responsibility for service, future service areas, future sources and other potential areas of conflict.
- Satellite management, (large water utilities provide technical, managerial and financial assistance to small water companies).
- Uniformity of water system standards, standardization of water system data to aid in evaluation of water company performance.

The Task Force recommended that all municipal utilities, regional water authorities, and private water utilities serving a minimum of 15 service connections or 25 persons would be subject to the Act. The State Department of Public Health (DPH) would have primary responsibility, at the State level, for implementation of the Act. A Water Utility Coordinating Committee (WUCC) would be formed in each water supply management area and would be responsible for developing a coordinated plan for that area, for municipal, DEP, DPUC and OPM review and ultimately DPH approval.

The “Connecticut Plan” was established by Public Act 85-535 to perform the following:

- Establish public water supply management areas (PWSMA). (See Appendix B).
  - PWSMAs should be established based upon criteria such as population, location of existing water utilities, service and franchise areas, location of water supplies, natural drainage basins, topography and geological factors, existing interconnections, local boundaries, and regional planning agency boundaries.
- Establish water utility coordinating committees (WUCCs).
  - A Water Utility Coordinating Committee (WUCC) should be established for each public water supply management area (PWSMA).
  - WUCC membership be limited solely to the eligible water utilities in the region (those serving a minimum 15 service connections or 25 customers (private and municipal). Include those utilities with watershed land within that region.
  - The WUCC membership should elect a chairperson, adopt rules, review the “Connecticut Act” and decide on a work plan.
  - The WUCC would be required to solicit the input from municipalities, regional planning agencies and state agencies at certain points in the process. Input should be required in at least the following points: (See Appendix C)
    - Preliminary assessment. Does the assessment accurately reflect the conditions, problem and concerns within the region?
    - Service area. When tentative service areas have been delineated by the WUCC, the review group should have input. Municipalities should confirm that water service is proposed for areas that are likely to require such service.

- Draft plan. The WUCC should formulate a Coordinated Plan. Municipalities should pay particular attention to the consistency with local land use plans and policies, including water quality protection (it should be noted that DPH, DPUC, DEP and OPM will have already reviewed existing individual utility plans, which became part of the coordinated plan under Public Act 84-502).
  - Primary role of DPH was organizational/secretarial. DPH staff should aid in the developmental work plan for the WUCC. The WUCC would retain a consultant to write the Coordinated Plan. The DPH would contract with a consultant for the services required by the WUCC, but the consultant would take its direction from the WUCC. It was also envisioned that DPH would have the authority to make final decisions to resolve disputes, if necessary, including using outside parties to mediate (i.e. service area boundary disputes).
- Establish exclusive service areas.
  - The WUCC would establish exclusive service areas for the water utilities in the particular region. No water utility would lose its current service area.
  - The establishment of new water utilities would be prohibited except in cases of demonstrated need (i.e. no water purveyor in area, no possible interconnection, no feasible satellite management, etc.
  - DPH would have the ultimate authority to decide service area questions. If two utilities disagreed, they should attempt to resolve it themselves prior to a final decision from DPH.
  - Establish a clear understanding of the distinction between water utility “franchise area” and water utility “service area”. The Task Force clearly felt that (“franchise area” and “service area” distinction) was an area of potential conflict. If this became an impediment, legislation should attempt to resolve the problem by having clear statutory definitions of these terms in their application. Future service areas should be recognized by statute.
- Development/Approval of a Coordinated Plan.
  - Each WUCC in a PWSMA was to develop a coordinated water system plan, which had two parts. (See Appendix C).
    - Individual water system plans for each utility.
    - An area wide supplement to the individual plans which addresses the water system’s concerns pertaining to the area as a whole.
  - The coordinated plan should be reviewed by the towns in the water supply management area for consistency with their land use planning.
    - The town should have a set period of time in which to review the plans (60 days) or waive its right of review.
  - The coordinated plan should be submitted for approval by the State (DPH), with approval procedures clearly defined.

- DPH should approve/disapprove the coordinated plan within a specific time period or deem it approved. The Task Force felt the law should also consider a resolution procedure when local land use policies inhibit supply facility development or protection.
- Utilities should acknowledge that the Coordinated Plan are consistent with the required individual water supply plans, which were required under Public Act 84-502.
- Criteria for Coordinated Plan approval.
  - DPH must look at consistency of coordinated plan with land use plans for the towns and region and address the major problems, potential conflicts and other impediments in implementing the plan.
  - DPH should review town comments on the plan in regard to consistent with land use.
  - Other State agencies must provide “advisory comments” on the coordinated plan concerning all applicable state plans, policy guidelines and laws. State agencies should review and comment on the plan in regard to their responsibilities.
  - OPM should examine the plan for consideration of state polices (i.e. state plan of C & D).
  - DEP should advise that diversions identify exist or can be applied for in the future and that future resource allocations are proper but there are no pre-approval for diversions.
  - DPUC should advise DPH that the coordinated plan developed is cost effective.
- Regional and planning agencies in towns should review and comment on the plan.

#### **IV. SYNOPSIS OF CURRENT SITUATION**

The Legislature, as a result of the recommendations of the 1982 Water Resource Task Force, passed Public Act 85-535, which gave rise to Connecticut General Statutes Sec. 25-33e through Sec. 25-33j. The statutes laid out the framework for the establishment of Public Water Supply Management Areas (PWSMA) (See Appendix B), WUCC membership as well as the requirements for the Area-wide Assessment, including the establishment of Exclusive Service Areas and the Coordinated Plan, which includes the integration of Water Utilities Individual Water Supply Plans. (See Appendix C) These statutes were subsequently promulgated into regulations that contained the Public Health Code in Sec. 25-33h.

Additionally, as a result of Public Act 84-502 “An Act Concerning Individual Water Supply Plans”, DPH promulgated regulations contained in Sec. 25-32d-1 of the Public Health Code. These regulations stipulate the requirements for the content of the Individual Water Supply Plan required from the water utilities. The Water Supply Regulations have subsequently been amended to reflect various public acts.

The Subcommittee believes that the recommendations of the Water Resource Task Force were the genesis for our current water supply planning framework. It appears to the Subcommittee that many of the issues that were identified in the Water Resources Task Force continue to be concerns. Many of the issues identified in the Task Force Report, most notably water resource allocations, have been adequately addressed. Part of the task of this subcommittee is to determine if the process is functioning as envisioned and what (if any) revisions would be necessary to insure that a process is in place to properly address the future long-term water resources issues.

1. **Coordinated plans have not yet been developed and/or approved in all of the seven Public Water Supply Management Areas (PWSMA)** established within the State (See map in Appendix B). To date WUCCs have been convened in four of the seven Public Water Supply Management Areas. As the Water Planning Council Work Plan directed the agencies to develop a reasonable timeline and cost estimates for (a) the completion of the WUCC process in the areas that have not yet been convened and (b) continuing the process of revising all the WUCC plans every ten years as legislatively required, the Subcommittee examined what has led to the delays incurred in the process thus far and found:
  - a) Only one WUCC, Southeastern Connecticut, has had its Coordinated Plan approved. The reason the Coordinated Plans have not been approved for the three prior WUCC areas that were convened are:
    - i) The lack of approved Individual Water Supply Plans consistent with coordinated WUCC plans. The Coordinated Plan requires integration of individual utility plans. Many of these plans were not approved during the time frame the WUCC was actively performing its statutory requirement. This in large part occurred because:

- Timing at the onset of the program whereby the WUCC process and the preparation of the individual water supply plans was done concurrently. As a result, water supply plans were not available when the Coordinated Plans were being developed.
  - Lack of funding for DPH staff necessary to review the individual plan.
  - Confusion on the part of the other regulatory agencies on their role in the process and on what constitutes the appropriate content and approval of a plan.
  - The Coordinated plans that were developed are not consistent with the water supply plans that have subsequently been approved for utilities in those areas.
- b) The major reasons the WUCCs have not been convened for the three remaining areas are:
- i) Lack of funding for and continuity of DPH staff
  - ii) The statutory limitation on the amounts authorized for DPH to enter into contracts for the consultants to support the WUCC process that results in Insufficient funding to retain a consultant to the WUCC. Funding was originally established at \$100,000 per WUCC area. Public Act 98-89 raised this level to \$200,000. Even the higher statutory limit may be an obstacle for future WUCC activities.
- c) The statutes also anticipated that the WUCC plans would be updated at least every ten years, though to date no WUCC plans have yet been updated. This is clearly a function of the previously mentioned limitations for convening and/or approving the WUCCs to date.

In addition to the above-mentioned issues, the subcommittee also identified some critical areas of concern that are currently plaguing the “Connecticut Plan” process. They are:

1. **It is becoming clearly evident that a more coordinated process between water supply planning and resource allocation is required.** A major disconnect exists between the Coordinated Planning process and the process for the allocation of water resources that are identified in the Individual Water Supply Plan.

Currently there is a lack of authority as it relates to the coordination between the identification of future water resources that may require allocation and the planning, protection and eventual allocation of those resources. There is no assurance that Individual Water Supply Plans that are required to be integrated into the WUCC process will be able to be implemented by the utility. Failure to implement these plans may result in utilities that have been given Exclusive Service Areas being unable, due to the lack of sufficient water resources, to serve the areas planned. This should not be considered a failure of the WUCC process as the original Task Force did not envision the actual allocation of water resources as part of this process.

- 2) **The subcommittee also identified as a major concern that coordination between and the roles of various state agencies during the WUCC process may be inconsistent.** The role of the various regulatory authorities (DEP, OPM, and DPUC) requires concurrence with DPH for the approval of an individual water supply plan. However, the WUCC process only requires that these regulatory agencies be consulted and be allowed to comment on the WUCC plans. There is no requirement for these agencies to implement the utility plans, once approved. As a result, due to the lack of regulatory authority, the Coordinated Plan, which includes the utilities' water supply plan, may not be able to be implemented.
  
- 3) **Participation on the WUCCs may need to be reviewed and structured to determine the level of participation and role of various stakeholders in the process.**

It is important that various stakeholders have input into the process. Currently stakeholder input is being deemed equivalent to WUCC membership, with all of the associated rights in making determinations for the WUCC.

The original Task Force report limited WUCC membership to the eligible water utilities and regional planning agencies in the region and defined that to include those utilities serving a minimum of 15 service connections or 25 customers. Over time this has changed to include all public water systems, which raises the number of potential WUCC members from the 600 originally anticipated by the Task Force to over 3000.

The WUCC members would then solicit input from municipalities and state agencies at various points in the planning process. The Task Force appeared to envision the primary role for municipalities without community water systems to be to the review of WUCC plans for consistency with local zoning and provide input to the process. There have been changes in the level of involvement of these municipalities in the development of the WUCC plans and the extent to which they see the establishment of ESAs as a means to control local growth and development.

In more recently convened WUCCs, municipalities have become members of the WUCC by virtue of ownership of a municipal building served by a well. There are differences in opinions as to whether municipalities who are utilities solely as a result of ownership of a municipal building served by a well should have the same role in the WUCC process as those community water systems with existing water supply plans.

It is also an issue as to whether municipalities without any water system should have voting rights in the WUCC process. These issues regarding the municipalities' roles in the WUCC process have been contentious and need to be addressed so there is consistency in future WUCCs.

- 4) **The subcommittee also found that there are no established procedural guidelines for the functioning of a WUCC beyond the broad guidance provided by the statutes and regulations.** Therefore, the four WUCCs that have convened to date have been left to establish their own guidelines thus creating a lack of consistency amongst the various WUCCs. If Rules were established, the various WUCCs would function more consistently between the Public Water Supply Management Areas.
  
- 5) **The subcommittee identified concerns relative to the methodology for the establishment of Exclusive Service Areas (ESAs).** The methodology was not consistent amongst the WUCCs. Current regulation identifies seven criteria that should be followed in making an Exclusive Service Area determination. It is not clear if these criteria have been followed in establishing Exclusive Service Areas in all cases or if these seven criteria are an adequate measure of whether an ESA should be assigned. The greatest area of concern is where there are conflicts between entities wishing to serve the same service area. A resolution of that conflict must require that the guidelines established in the regulations be followed. However, many of the guidelines are broad in nature and subject to significant interpretation.
  
- 6) **Concerns were also identified with the general process by which Exclusive Service Areas were established.** The WUCC process ultimately requires that a utility's Individual Water Supply Plan be integrated into the WUCC's final "Coordinated Plan". (See Appendix C). The requirement for an Individual Water Supply plan applies to water companies serving over 1000 people, or as requested by the Department for systems serving less than 1000 people. There are a number of small systems involved in the WUCC process that are retaining their existing service areas that are not required to develop these water supply plans. It has been the Department's practice to request water supply plans for those small systems if they propose to expand their ESA through the WUCC process.

In many cases, Exclusive Service Areas (albeit preliminary) are established by the WUCC without presence of an Individual Water Supply Plan which provides detail on how the entity will serve the Exclusive Service Area.

- 7) **Coordination of the WUCCs with the State Plan of Conservation and Development is perceived as not being consistent.** The original Task Force considered that this would be done through OPM. The role of regulatory agencies other than DPH in the WUCC process is merely advisory and as a result not given a priority by the other regulatory authorities. This fact, coupled with ever increasing financial constraints on the regulatory agencies, has had an impact on the WUCC process. Additionally, the Task Force envisioned that the input from local municipalities during the review of the WUCC's Coordinated Plan would provide an additional means to ensure consistency with the State's Plan of Conservation and Development.

While the WUCC process clearly considers consistency with the State Plan of C&D, Exclusive Service Areas may be claimed for areas that are not necessarily planned to be

served in the immediate future, unless the development is approved in accordance with local plans of development and zoning regulations. In reality, the real mechanism to assure consistency of water supply extensions with the State Plan of C&D depends on the Town's adherence to the State Plan and local plans, not a utility's claim of ESAs.

## V. DETAILED RECOMMENDATIONS

### 1. MEANS TO ENSURE BETTER COORDINATION BETWEEN APPROVED WATER SUPPLY PLANS & WATER RESOURCE ALLOCATIONS AND A STRONGER STATUTORY LINK BETWEEN THE COORDINATED WATER SUPPLY PLANNING PROCESS AND THE WATER RESOURCE ALLOCATION PROCESS.

One of the major recurring issues discussed (in this subcommittee and in others) is the need for greater coordination between the regulatory authorities of the various state agencies. Currently concurrence from the various regulatory authorities (DEP and DPUC) is required before an individual water supply plan is approved by DPH. However, since there is no defined role in the current WUCC process for these agencies, except to review and comment on the plan, there is no obligation or assurance that the WUCC plan will be able to be implemented or that the water resources will be available. Further, since the DEP has various statutory obligations such as ensuring that there is no adverse environmental impacts from proposed activities, or mandates that certain water quality or quantities be maintained to meet other programmatic requirements (such as streamflows, fisheries, wastewater, etc.) there are continuing conflicts and difficulties in meeting all of the various agencies' parallel responsibilities and obligations. There is no need or means to integrate or evaluate competing needs of the users or prioritize the various charges of the respective agencies.

It would be more effective if the various regulatory functions for water supply planning and water resources were housed in a single entity, with their respective regulatory structure and responsibilities modified to provide for a more comprehensive, interagency approach to these essential water resource functions. Any such entity would have to have an assured continued mechanism of funding to address the planning, modeling/data collection, education/conservation, permitting and enforcement aspects of water resource programs.

Such an integrated water resources planning program would have to consider planning and needs assessments for other water resource uses, not strictly public water supply. For any comprehensive water resources program to be effective it would have to have adequate data on the needs of all the potential uses such as recreation, fisheries, agriculture, waste assimilation, etc. Absent those components, water resources planning efforts cannot truly be effective, as public water supplies represent only a fraction of the use of the resource. Without data on all uses and needs there will not be a complete picture or the ability to make adequate decisions.

These recommended changes to the WUCC process will be more effective in the context of a broader programmatic change to an overarching regulatory authority. We are concerned that even if the various recommendations of the subcommittee specific to the WUCC process are implemented, but the current regulatory structure and multiple agency responsibilities are retained, the full value and benefits of the water supply planning and water resource allocation efforts will not be realized.

There are a number of ways such an interagency model could be implemented and this obviously requires further study. It is expected that the Water Resources Management Subcommittee B (Issues 9 & 10) Process will be providing a more detailed recommendation on this. As a result, the WUCC subcommittee did not focus on the details of such a model, merely considered how the recommended changes to the WUCC process could be enhanced in that context. Any effort to develop an interagency model will be challenging, particularly since the agencies whose authorities and responsibilities will need to be changed are the ones charged to make the recommendations. Initially, it would seem important to agree on the features and functions that should be combined (and/or retained) without considering the specific regulatory structure, and then focus on the details of where those functions and responsibilities would ultimately be housed and/or operated.

It is also anticipated that the Allocations Subcommittee will develop an allocation process that provides for water planning and apportionment of water resources identified in the WUCC process. If such recommendations are effectively implemented, these issues pertaining to the implementation of the individual water supply plans and WUCC plans will be addressed.

## **2. REVIEW AND POSSIBLE CONSOLIDATION OF PUBLIC WATER SUPPLY MANAGEMENT AREAS (PWSMAs)**

A mechanism needs to be developed to re-evaluate and possibly consolidate the existing Public Water Supply Management Areas with goals of (1) reducing the number of WUCCs that would have to be convened (thereby expediting the process) and (2) to provide greater consideration of watershed basins to link to water resource planning.

The current PWSMAs are shown in Appendix B. The factors for delineating PWSMAs established in Section 25-33e of the statutes are:

- (1) similarity of water supply problems among water companies operating in the preliminary management areas;
- (2) population density and distribution in the area;
- (3) location of existing sources of public water supply, service areas, or franchise areas;
- (4) existing interconnections between public water systems;
- (5) municipal and regional planning agency boundaries;
- (6) natural draining basins; and
- (7) any other factor he deems relevant.

The subcommittee does not have a definitive recommendation for alternate PWSMAs but supports the further review of the number and delineation of these areas.

### **3. MEASURES TO ELIMINATE OBSTACLES TO THE COMPLETION, APPROVAL AND/OR UPDATES OF THE WUCC PLANS**

The subcommittee identified a number of obstacles (financial, staffing and regulatory) that have limited the completion, approval and/or updates of the WUCC plans to date that need to be eliminated. This is essential to assure that the process continues and that the plans are most timely and effective. A key element of this is clearly funding, and we recommend that dedicated funding be provided for water supply and water resources planning and assure adequate staffing at agency (or agencies) responsible for water supply planning. The staffing and funding issues should also be considered in the context of the overarching regulatory authority. Additionally, the statutory constraints in Sec. 25-33j that limit the amount for WUCC contracts to a maximum of \$200,000 should be eliminated. As identified above, the number of PWSMAs need to be reviewed as well.

The current regulations (25-33h-1(i)(1)) allow flexibility in the timeframe for the WUCC to review coordinated Plan updates. This subcommittee feels this is appropriate and does not recommend changing this.

### **4. ADDRESS PARTICIPATION ON AND MEMBERSHIP IN THE WUCC**

Participation on the WUCCs should be reviewed and structure to determine the level of participation and role of various stakeholders in the process. The process should promote stakeholder involvement.

The role of municipalities was discussed at length by the subcommittee, but there was no clear consensus on a recommendation. As there was limited participation on the subcommittee by municipalities and no clear agreement by the participants, it is evident that this needs further study. (See section IV, item 3). Likewise the issue of participation of non-community public water systems also needs to be considered at that time.

The subcommittee's recommended changes to the process for establishing exclusive service areas that might minimize some of the issues and concerns regarding WUCC membership, most of which stem from questions about 'voting rights' and conflict resolution. The suggestion of the subcommittee in item # 7 below, emphasizes the need to encourage mutual agreements between parties but then defers any outstanding conflicts on ESA claims to the DPH for resolution. If this were done, many of the issues about participation and voting rights on the WUCC would likely be eliminated. The issues about how a utility or entity might be 'outvoted' in a claim for ESA for reasons that may not be consistent with the criteria established in the regulations would be eliminated if the DPH ultimately makes the decision when there is a conflict. By addressing that issue, ESA claims and decisions on utility plans would be left to the utility or utilities that will ultimately have to implement them and the DPH that will have to oversee them.

The process should provide a mechanism to solicit input from various stakeholders – utilities, municipalities, environmental organizations, business interests, etc. The subcommittee

clearly supports this, provided the decisions on ESA claims and utilities' plans and their implementation thereof are mutually agreed upon or deferred to the DPH for resolution.

## 5. **PROPOSED WUCC RULES**

Procedural Guidelines for WUCCs should be provided to make the process more efficient and allow the WUCC that is being convened the benefit of previous WUCCs experience. The subcommittee has provided suggested areas for consideration:

- Strive for consensus building and limit the need for voting or forced decisions.
- Establish voting rights such as One utility, one vote.
- Establish the structure of the organization and procedural operating rules. Recommend Roberts Rules of Order be followed.
- Each WUCC will select a chair or co-chairs and a secretary define the terms of those offices (suggest three years).
- WUCC members will provide assistance and advice on establishing ESAs, however, they will not “resolve” a conflict unless all parties involved in the decision are in agreement. If there is no such agreement, the conflict will be referred to DPH for a decision to resolve.
- ESA recommendations will be based upon a review of the criteria set in statute and regulations, which will be subject to rigorous review and action by DPH.

## 6. **RECOMMENDED ESA ESTABLISHMENT PROCEDURE**

One of the fundamental changes that the subcommittee agreed to was to revise the process for establishing ESAs to clearly encourage mutual agreement between the parties, but then refer any unresolved ESA boundaries to be acted on by the regulators. The recommended steps in the process for establishing ESAs are detailed below:

- 1) Request each existing service provider to make a “Preliminary Exclusive Service Area Declaration” similar to method currently used by DPH. Details of the declaration follow:
  - a) Delineate existing service area.
  - b) State if interested in expanding the existing service area.
  - c) Present proposed ESA via map with boundaries shown and written description.
  - d) Identify overlaps in claimed ESAs
  - e) If there is a proposal to expand ESA or if there are conflicting claims for the ESA, detail how proposed ESA will address the following criteria established in the WUCC regulations.
    - i) Existing service areas.
    - ii) Land use plans, zoning regulations and growth trends.
    - iii) Physical limitations to water service.
    - iv) Political boundaries.
    - v) Water company rights as by statute, Special Act or Administrative Action

- vi) System hydraulics, including potential elevations or pressure zones.
- vii) Ability to provide a pure and adequate supply of water now and into the future.

The regulations would be revised to further define the criteria in this section (vii) to specifically include:

- Existing water allocations
- Availability of future water allocations.
- Analysis examining current and future water demand and supply.
- History of water utility operations and regulatory compliance

- 2) Review/Verification of Preliminary Exclusive Service Area Declarations by WUCC
  - a) Evaluate declarations in terms of “completeness” in addressing criteria established in regulations.
  
- 3) Conflict Resolution Process
  - a) Conduct facilitated meetings collectively and individually with parties in conflict.
  - b) Conduct facilitated peer discussions involving parties in conflict and other WUCC members.
  - c) Clear explanation from regulatory agencies that conflicts will be resolved by State, pointing out advantages to developing a negotiated settlement between parties as opposed to a dictated outcome by State.
  
- 4) Unresolved ESA Boundaries Acted On By Regulatory Agency
  - a) Unresolved ESA claims are forwarded to DPUC for a recommendation to the WUCC in accordance with the current statutes
  - b) If the conflicts are not resolved by the parties following the DPUC recommendation, the outstanding unresolved ESA boundary claims are forwarded to DPH for resolution, rather than “voted” on by the WUCC members.
  - c) DPH, in consultation with the other regulatory agencies, within an established time frame (to be determined) shall assign the ESA by applying the criteria detailed for WUCCs to render decision. In addition the agency shall consider the financial and managerial resources of the entity claiming ESA
  
- 5) Overall Regulatory Review of All ESAs
  - a) Consistency with Water Supply Plans
    - i) Provide for an interim or tentative approval if an entity does not have a water supply plan or if their current water supply plan does not show the designated ESA
    - ii) Only grant final approval to the ESA once a water supply plan is developed and/or amended and approved to reflect the new ESA being claimed
  
- 6) Regulatory Agency Approval of Coordinated Plan of the WUCC
  - i) Provide for an interim or tentative approval of the WUCC plan while utilities are developing and/or updating their water supply plans.

- ii) Only grant final approval to the WUCC once the water supply plans are developed and/or amended and approved by DPH to reflect the ESAs that are claimed

**7. CONSISTENCY BETWEEN UTILITY INDIVIDUAL WATER SUPPLY PLANS AND THE WUCC PLAN**

The WUCC process requires that a utility’s Individual Water Supply Plan be integrated into the WUCC’s final “Coordinated Plan”. However, in many cases, Exclusive Service Areas are established by the WUCC without an approved Individual Water Supply Plan that is consistent with the ESAs that are being claimed. It is not clear, at the time the WUCC is conducting its work, whether the entity will truly be able to serve the ESA that is claimed. That cannot be adequately demonstrated until their water supply plan is developed and/or updated to reflect the ESA that is claimed. The subcommittee recommends that prior to the final approval of the WUCC plan and the ESAs, the entities claiming the ESA would have to develop and/or update their water supply plan to demonstrate how they would provide service in the ESA they have claimed. With this addition of an interim approval of the ESA boundaries, and the subsequent amendment of the individual water supply plans, there will also need to be an interim approval for the Coordinated Plan. Only when the individual water supply plans are approved would the ESA be assigned and the Coordinated Plan be adopted.

If the entity could not adequately demonstrate that they could serve the area, it would revert back to the WUCC process to determine a provider. There needs to be further review of a mechanism to revoke an ESA or portion thereof, if the entity granted the ESA is unable or unwilling to provide service within a reasonable time. Any proposed mechanism would have to be established in regulations taking into account several factors. This requires further study.

**8. ISSUES PERTAINING TO CONSISTENCY BETWEEN WUCC PLANS AND STATE PLAN OF C&D**

There were concerns raised about whether there needs to be a better mechanism to ensure coordination and consistency with the WUCC plans and local planning documents and the State’s Plan of Conservation and Development. It appears to the subcommittee that individual utility water supply plans are developed with consideration to the local plans of development and zoning regulations and the WUCC plans (which incorporate those individual water supply plans) are reviewed for consistency with the State Plan of Conservation & Development. If there is a disconnect, it does not seem appropriate to focus on the Water Supply Plan or WUCC process, but rather in whether local zoning regulations and land use decisions adhere to both the local plans of development and the State Plan of C&D.

## **VI. ACTIVITIES OF THE SUBCOMMITTEE**

The subcommittee met 13 times on a bimonthly basis from March 8 through August 23, 2002. (See Appendix D – Meeting Minutes). The subcommittee was co-chaired by Mr. Robert Young of the Manchester Water Department, Mr. Gregory Leonard of Southeast Connecticut Regional Water Authority. Ms. Maureen Westbrook of the Connecticut Water Company served as an associate co-chair. There were 21 other individuals who participated in the various activities of the subcommittee. A core group of 14 individuals attended a majority of the meetings. (See Appendix E – Subcommittee Participants) The remaining seven individuals attended sporadically but provided input that contributed to the subcommittee’s overall activity. (See Appendix for listing of subcommittee participants).

Regular attendees of subcommittee meetings were primarily members of utilities and regulatory agencies. There was limited involvement from other stakeholders with the exception of one environmental coalition. Early on in the subcommittee process efforts were made to encourage the involvement of other stakeholders such as municipal officials, regional planning agencies and other environmental groups. This had some degree of success. Several municipal officials and a representative from a Small Systems organization attended several meetings and provided valuable insight into the existing WUCC process.

The subcommittee initiated its work by reviewing the “Water Planning Council Work Plan”. The subcommittee then undertook a strategic planning exercise, which developed lists of “pros/cons” relative to the WUCC process. (See Appendix A). Lists of issues were generated. The list of issues were then compared against the Water Planning Council Work Plan. Any items on the Work Plan that weren’t contained in the lists were added to the various lists. The issues evolving from the Strategic Planning Exercise were then grouped into six main categories and the categories were prioritized. The six main prioritized categories were:

- Process
- WUCC membership
- Timing
- Legal
- Planning
- Exclusive service areas.

The subcommittee then evaluated the issues against the existing regulations to identify areas of specific concern and possible action. Furthermore, the subcommittee considered other state programs such as Washington State for which the Connecticut WUCC process was modeled as well as programs in the State of Florida and South Carolina. The Subcommittee then identified action issues and considered possible alternatives and solutions. The analysis of alternatives/options was based upon the following criteria:

- Consider any changes within the context of the bigger picture of the Water Planning Council.
- Focus on the current WUCC process, its worth and benefits and consider how the issues could be remediated within the context of the current statutes and regulatory agencies.

- The problems and issues that would arise if the subcommittee considered a “do-nothing approach”.

The various references used by the subcommittee during their deliberation are contained in Appendix F (References).