



## MEMORANDUM PORTLAND WATER DISTRICT

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TO: Board of Trustees

FROM: Carrie Walker

DATE: December 6, 2022

RE: **Workshop Meeting – Monday, December 12, 2022**

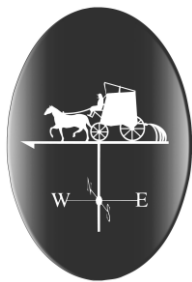
There will be a Workshop Meeting of the Board of Trustees of the Portland Water District on Monday, December 12, 2022. The meeting will begin at 6:30 p.m. in the Nixon Training Center at the general offices of the District located at 225 Douglass Street, Portland, Maine.

The Workshop will be preceded by meetings of the following Board Committees:

<b><u>Committee</u></b>	<b><u>Room / Location</u></b>	<b><u>Time</u></b>
Water Bottle Filling Station	General Manager's Conference Room	5:00 p.m.
Pension	General Manager's Conference Room	5:30 p.m.
Administration & Finance	Monie Conference Room	5:30 p.m.
Operations	EOC 2 <sup>nd</sup> Floor	5:30 p.m.
Planning	Nixon Training Center	5:30 p.m.

### **AGENDA – WORKSHOP**

- 1. \$8M Watershed Grant/Sebago Clean Water Update**  
Paul Hunt, Environmental Services Manager, will provide an update to the Board of Trustees on the \$8 Million RCPP federal grant received by PWD and the related Sebago Clean Waters activities.
- 2. CES Battery Proposal Concept**  
David Kane, Executive Director of Administration, and Seth Garrison, General Manager, will lead a discussion on a concept to employ micro-grid scale batteries at East End Wastewater Treatment Facility and the Sebago Lake Water Treatment Facility to reduce power costs and secondarily to increase operational resiliency.
- 3. Other Business**
- 4. Adjourn**



## **MEMORANDUM PORTLAND WATER DISTRICT**

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TO: Pension Committee / Board of Trustees

FROM: Mary Demers, Director of Employee Services

DATE: December 2, 2022

RE: **Pension Committee Meeting – December 12, 2022**

A meeting of the Pension Committee of the Portland Water District Board of Trustees is scheduled for Monday, December 12, 2022 in the General Manager's Conference Room at 225 Douglass Street, Portland, Maine. The start time is 5:30 p.m. or upon arrival of all Committee members.

### **AGENDA**

1. **Approval of Pension Distributions**  
Staff will present a request to approve benefits for one retiree.
2. **Other Business**



## MEMORANDUM PORTLAND WATER DISTRICT

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TO: Administration and Finance Committee / Board of Trustees

FROM: David Kane, Director of Administration  
Mary Demers, Director of Employee Services

DATE: December 2, 2022

RE: **Administration and Finance Committee Meeting – December 12, 2022**

A meeting of the Administration and Finance Committee of the Portland Water District Board of Trustees will be held on Monday, December 12, 2022. The meeting will begin at 5:30 p.m. in the Monie Room at 225 Douglass Street, Portland, Maine.

### **AGENDA**

1. **Windham Wastewater Fund Bond**  
Staff proposes amending the previously approved motion authorizing the Depot Street Upgrade Bond financing to allow unspent bond proceeds to be used to finance the aeration and clarifier systems upgrade project costs at the Westbrook Regional Wastewater Treatment Facility.  
(See attached memo)
2. **Non-Union Salary Structure**  
Staff proposes the adoption of the Non-Union Salary Structure effective pursuant to the Non-Union Compensation Policy. (See attached memo)
3. **Fund Balance Policy**  
Staff recommends amending the fund balance policy. (See attached memo)
4. **Other Business**



## **ADMINISTRATION AND FINANCE COMMITTEE / AGENDA ITEM SUMMARY**

Agenda Item: 1  
Date of Meeting: December 12, 2022  
Subject: Windham Wastewater Bond Amendment  
Presented By: David Kane, Director of Administration

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### **RECOMMENDATION**

The following proposed language is presented for Board of Trustee approval:

RESOLVED, Resolution 21-011 is hereby amended to allow bond proceeds to be used to finance upgrades to the aeration and clarifier systems and related infrastructure at the Westbrook Regional Wastewater Treatment facility. The full form of the Resolution attached hereto is hereby approved and shall be attached to and incorporated as part of the minutes of this meeting.

### **BACKGROUND ANALYSIS**

The Board authorized the issuance of a \$615,000 million bond to finance the upgrades to the Depot Street Pump Station in Windham. The actual cost of the project is approximately \$86,000 less than the bond. Staff recommends the unspent amount be allocated to finance the aeration and clarifier systems and related infrastructure at the Westbrook Regional Wastewater Treatment facility. The planned 2023 \$4M bond to finance the final phase of the upgrade will reduced by the \$86,000. The reduced bond amount will lower Windham's debt service cost by \$6,800 annually.

### **LEGAL REVIEW**

Corporate Counsel has reviewed the proposed Resolution as to form.

### **CONCLUSION(S)**

Staff recommends the motion be approved.

### **ATTACHMENT(S)**

A. Full Form of Motion

**PORTLAND WATER DISTRICT  
BOARD OF TRUSTEES  
AMENDMENT TO RESOLUTION 21-011  
(Windham - Depot Street Pump Station Project)**

**WHEREAS**, pursuant to Resolution 21-011 adopted on July 26, 2021 (the “Prior Resolution”), the Board of Trustees of the Portland Water District authorized, among other things, the District’s sewer bonds in an amount of up to \$640,000 to finance upgrades to the Depot Street Pump Station in Windham (the “Original Project”); and

**WHEREAS**, on November 4, 2021, the District issued its \$615,000 2021 Sewer Bonds (Windham - Depot Street Pump Station) (the “Bonds”) to finance the costs of the Original Project; and

**WHEREAS**, the Original Project is expected to come in under budget leaving unspent bond proceeds of approximately \$86,000 and the District now desires to amend the Prior Resolution to amend the scope of the Original Project to be financed with the proceeds of the Bonds to include upgrades to the aeration and clarifier systems and related infrastructure at the Westbrook Regional Wastewater Treatment facility;

**NOW THEREFORE, BE IT HEREBY RESOLVED** by the Board of Trustees of the Portland Water District Assembled, following a public hearing duly called, noticed and held under District Policy No. 6.50-15:

1. That the description of the Original Project in the Prior Resolution be and hereby is amended to include the costs to finance a portion of the costs to construct upgrades to the aeration and clarifier systems and related infrastructure at the Westbrook Regional Wastewater Treatment facility (the “Additional Project”), which Additional Project is expected to be financed in part with the unspent proceeds of the Bonds and in part with additional sewer bonds to be issued by the District.

2. That in all other respects, the Prior Resolution are hereby ratified and confirmed as if more specifically set forth herein.

Dated: December 27, 2022



## **ADMINISTRATION AND FINANCE COMMITTEE / AGENDA ITEM SUMMARY**

Agenda Item: 2  
Date of Meeting: December 12, 2022  
Subject: Non-Union Salary Range and Market Adjustments  
Presented By: Mary Demers, Director of Employee Services

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### **RECOMMENDATION**

The following proposed language is presented for Board of Trustees approval:

ORDERED, the Non-Union Salary Structure, in substantial form as attached hereto, is hereby adopted to become effective January 1, 2023.

### **BACKGROUND ANALYSIS**

The Board adopted the current policy on non-union compensation in 2022. The policy notes “The minimum and maximum pay levels established for each band will remain in effect until the next salary structure review. Generally, a review of adjustments for inflation occurs every two years.” The bands were adjusted as of January 1, 2022. Because of the unusual high inflation in the past year, staff recommends the bands be adjusted for January 1, 2023. This affects only the pay scale, not employee compensation. The proposed adjustment was recommended by KMA Human Resources Consulting.

### **FISCAL REVIEW / FUNDING**

Adoption of the revised salary structure will not have the effect of increasing employee compensation; it will simply change the pay range allowable for each position.

### **LEGAL REVIEW**

Corporate Counsel reviewed the proposed motion and approved it as to form.

### **CONCLUSION(S)**

Staff recommends the proposed changes to the non-union pay structure.

### **ATTACHMENT(S)**

Attachment A: Proposed Salary Structure to become effective January 1, 2023.

	MINIMUM	MAXIMUM
<b>Grade 8</b>	<b>\$160,000</b>	<b>\$218,000</b>
	General Manager 9018	
<b>Grade 7</b>	<b>\$127,000</b>	<b>\$172,000</b>
	Corporate Counsel 9035	
	Executive Director of Administration 9004	
	Executive Director of Asset Management/Planning 9005	
<b>Grade 6</b>	<b>\$106,000</b>	<b>\$146,000</b>
	Director of Employee Services 9007	
	Director of Operation Services, Water 9011	
	Director of Operation Services, Wastewater 9011	
	Engineering/Asset Mgmt Services Manager 9031	
<b>Grade 5</b>	<b>\$83,000</b>	<b>\$125,000</b>
	Customer Services Manager 9006	
	Director of Financial Services 9008	
	Distribution System Manager, Water 9014	
	Environmental Services Manager 9020	
	Information Services Manager 9010	
	Strategic Project Manager 9047	
	Senior Project Engineer 9045	
<b>Grade 4</b>	<b>\$77,000</b>	<b>\$115,000</b>
	Database Administrator 9027	
	Network Administrator III 9026	
	Project Engineers 9030	
	Public Relations Manager 9025	
	Regulatory & Security Advisor 9028	
	Right of Way Agent 5014	
	Utility Asset Coordinator 9038	
	Utility Asset Coordinator Water 9039	
	Wastewater Chief Operator - Plant 9042	
	Wastewater Chief Operator - Systems 9050	
	Wastewater Maintenance Manager Planner Scheduler 9048	
	Water Services Plant/System Chief Operator 9002	
<b>Grade 3</b>	<b>\$71,000</b>	<b>\$103,000</b>
	Asset Manager Program Manager 9049	
	Business System Analyst GIS, Senior 9505	
	Business System Analyst, Senior 9504	
	Chief of Security Operations 1069	
	Customer Service Program Manager 9502	
	Facilities Manager 5019	
	Industrial Pretreatment Program Supervisor 5035	
	Network Administrator II 9044	
	Source Protection Coordinator 5018	
	Transmission/Distribution Supervisor 5011	
	Utility Specialist Supervisor 9023	
	Water Quality Program Manager 9506	
<b>Grade 2</b>	<b>\$60,000</b>	<b>\$88,000</b>
	Associate Engineer 5023	
	Employee Services Consultant 5036	
	Employee Services Consultant Safety/Training 5004	
	Employee Services Consultant-Benefits 5003	
	Environmental Education Coordinator 5017	
	Financial Analyst 5020	
	Purchasing Agent/Buyer 5005	
	Scheduler/Coordinator-AMaP 5032	
	Scheduler/Coordinator-Operations 5033	
	Network Admin I 9503	
<b>Non-Exempt</b>	<b>\$51,000</b>	<b>\$72,000</b>
	General Accounting Assistant 5028	
	Executive Administrative Assistant 5010	



Portland Water District  
*From Sebago Lake To Casco Bay*

## **ADMINISTRATION AND FINANCE COMMITTEE / AGENDA ITEM SUMMARY**

Agenda Item: 3  
Date of Meeting: December 12, 2022  
Subject: Fund Balance Policy Amendment  
Presented By: David Kane, Director of Administration

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### **RECOMMENDATION**

The following proposed language is presented for Board of Trustee approval:

RESOLVED, the Board hereby amends the Fund Balance policy attached hereto and incorporated herein, effective December 31, 2022.

### **BACKGROUND ANALYSIS**

The Board originally adopted the Fund Balance policy effective June 1, 2009. Staff recommends the policy to be updated to reflect the following:

- Exclude Investment Unrealized Losses/Gain in the calculation of operating fund balances;
- Incorporate the previously approved Rate Stabilization and Water Master Plan funds into the policy; and
- Increase the Wastewater Renewal and Replacement Fund target to the current standard.

### **LEGAL REVIEW**

Corporate Counsel has reviewed the proposed Resolution as to form.

### **CONCLUSION(S)**

Staff recommends the motion be approved.

### **ATTACHMENT(S)**

A. Fund Balance Policy



***Fund Balance Policy******December 31, 2022***

The Portland Water District is a publicly-owned water and wastewater utility and strives to maintain a balanced operating budget with on-going revenues equal to on-going expenses. However, good financial practice recommends all utilities maintain a fund balance to meet seasonal cash flow shortfalls, provide for unexpected contingencies so it can continue to provide service, enable water rates and wastewater assessments yearly change to be less volatile, and maintain the District's credit rating by establishing an unrestricted Operating Reserve Fund Balance in each water and wastewater funds. Additionally, the District maintains a Watershed Supply Protection Fund balance and Sewer Renewal and Replacement Funds balances. Those funds provide financial resources to support the acquisition of real estate interest promoting protection of our water supply and to pay for smaller capital expenditures.

The following fund balance policy provides the guidance on the level of fund balance to be maintained by the District. The actual fund balance targets are reviewed by the Board of Trustees and wastewater member municipalities each year during the budget process.

**1. Operating Reserve Fund Balance.**

- 1.1 Water Fund. State law (Title 35-A, 6112) provides the ability for a utility to include an annual contingency allowance of 5% of revenues for rate making purposes. If the utility's actual annual surplus is greater than 7% of the utility's total annual operating expenses for three consecutive years, the water utility shall notify customers in writing of the over-collection and hold a public hearing to detail the extent of the over-collections.

The target fund balance is 3 month, or 25%, of water revenues.

- 1.2 Wastewater Funds. The District's charter states that all surplus shall be transferred to sewer surplus fund which at no time should exceed 3% of the net book value of the asset attributable to the wastewater system, unless approved by the Trustees. The amount should be credited against sums otherwise to be assessed upon participating municipalities on an equitable basis. Exception to the standard may be made with the consent from the wastewater municipalities and the Board.

Individual wastewater fund balance target balance is 3 months or 25% of operating budget.

**2. Watershed Supply Protection Fund.**

- 2.1 State law (Title 35-A, 6113) allows the creation of watershed supply protection fund for the acquisition of interests in real property reasonably necessary for the protection of a public water supply and, if the consumer-owned water utility has adopted a watershed control program, any expenditures from the water supply protection fund pursuant to this section for the purposes of watershed protection must be in conformity with that watershed control program.

The law sets a fund balance limit of 15% of annual revenue. The District may annually contribute up to 5% of prior year surplus to the fund.

The funds may be withdrawn from the fund and returned to operating reserve fund if removal would be in the best interest of the District.

**3. Water Renewal and Replacement Fund.**

- 3.1 The Public Utilities Commission rules allow the District to collect water rates to fund capital projects up to the amount of fixed asset depreciation. As part of the annual planning/budget process, the

amount of depreciation to be included in the water fund expenses and available for capital improvement is authorized by the Board.

The target balance is 1% of gross fixed assets.

#### **4. Wastewater Renewal and Replacement Fund.**

4.1 The Board has established a renewal and replacement fund for each wastewater fund. The fund is intended to finance smaller, unexpected or emergency capital expenditures. With Board approval, the fund may be used for other capital expenditures.

The target balance is 5% of gross fixed assets.

#### **5. General**

5.1 Operating fund balances pursuant to this policy are calculated based on and consistent with generally accepted accounting principles except for the following:

Water:

- Inclusion of depreciation expense up to the amount to fund capital expenditures;
- Inclusion of debt principal payment;
- Inclusion of the amortization of contribution revenue;
- Inclusion of defined benefit plan's annual contribution;
- **Exclusion on Investment Unrealized Losses/Gains;** and
- Consistent with the PUC rules for rate-making.

Wastewater:

- Inclusion of a contribution to a renewal and replacement fund in lieu of depreciation expense,
- Inclusion of debt principal payment;
- **Inclusion of defined benefit plan's annual contribution; and**
- **Exclusion of Investment Unrealized Losses/Gains**

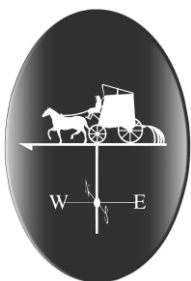
5.2 A plan to address any shortfall to targeted fund balance should be developed by staff and approved by the Board of Trustees.

#### **6. Rate Stabilization Fund**

6.1 The Board established a rate stabilization reserve for the water fund. The purposes of the fund are to assist in smoothing rates as part of the District's multi-year and annual financial planning and to assure that the minimum debt coverage ratio established in the District's Debt Policy, as amended from time to time, is met. Funds deposited into this reserve are treated as operating costs in the year of deposit and such funds disbursed from this fund will be treated as revenues in the year of disbursed for the purposes of computing the District's debt service coverage ratio. Any withdrawal from the fund will be authorized by the Board.

#### **7. Water Master Plan and Related Asset Assessments Fund**

7.1 The Board established a water master plan reserve. The purpose of the fund is to provide funding for the development and updating of the water master plan and related asset assessments. The District periodically creates and updates a long-term asset management plan and perform assessments of asset to determine the each asset conditions. Any withdrawal from this fund will be approved by the Board. At the Board's discretion, it may reallocate the fund for other District's purposes.



## **MEMORANDUM PORTLAND WATER DISTRICT**

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TO: Operations Committee / Board of Trustees

FROM: Scott Firmin, Director of Wastewater Services  
James Wallace, Director of Water Services

DATE: December 2, 2022

RE: **Operations Committee Meeting – December 12, 2022**

A meeting of the Operations Committee of the Portland Water District Board of Trustees will be held on Monday, December 12, 2022 beginning at 5:30 p.m., in the Emergency Operations Center (EOC) Room of the District, 225 Douglass Street, Portland, Maine.

### **AGENDA**

**1. Transmission Valves**

Staff will review the operation, maintenance and replacement of large valves in the distribution system.

**2. Other Business**



## MEMORANDUM PORTLAND WATER DISTRICT

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TO: Planning Committee / Board of Trustees

FROM: Christopher Crovo, P.E., Director of Asset Management and Planning

DATE: December 2, 2022

RE: **Planning Committee Meeting – December 12, 2022**

A meeting of the Planning Committee of the Portland Water District Board of Trustees will be held on Monday, December 12, 2022 at 5:30 p.m. at the Nixon Training Center, Portland Water District, 225 Douglass Street, Portland.

### **AGENDA**

**1. Proposed Land Conservation Policy Amendment**

Staff is proposing a number of changes to the land conservation policy; these will be discussed with Committee members at the meeting. (See attached memo)

**2. Discussion of Proposed Statutory Changes**

Donna Katsiaficas, Corporate Counsel, will discuss with the Committee the proposed changes to 35-A §6113 that would allow for the use of water funds for the purchase of conservation interests by nonprofit entities. (See attached memo)

**3. Discussion of Potential Offer for 270 Richville Road, Standish**

Staff will seek guidance from the Committee on making a potential offer to purchase property at this location.

**4. Other Business**



## **PLANNING COMMITTEE / AGENDA ITEM SUMMARY**

Agenda Item: 1  
Date of Meeting: December 12, 2022  
Subject: Land Conservation Policy Amendment  
Presented By: Chad Thompson, Source Protection Coordinator

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### **RECOMMENDATION**

The following proposed language is presented for Board of Trustee approval:

ORDERED, that the District's policy "Watershed Land Conservation Outside the Two-mile Limit," is hereby amended and approved in substantial form as attached hereto.

### **BACKGROUND**

The District's policy entitled "Watershed Land Conservation Outside the Two-mile Limit," first adopted in 2007, affirms PWD's commitment to and support for locally-based conservation of forests in the watershed. This effort is critical because conserved forest is a natural water treatment method which is far less expensive than a constructed treatment plant. By working with willing landowners and local partners such as land trusts, conserving forestland supports watershed towns, costs the District less, and leaves the ownership and future stewardship of the land to others.

The proposed changes to the policy are designed to do three main things:

1. The current policy is intended to lead to financial support for proposed conservation deals commensurate with their water quality value. It outlines the principles and considerations that justify the District's level of support for each proposed project. Proposed policy language and assessment criteria have been re-ordered to more accurately reflect these principles.
2. The District has used one of two methodologies for determining the value of land: the PWD conservation value and the appraised value. The PWD conservation value is based on an outdated estimate of the development rights per acre, resulting in differences between it and the fair market value appraisal. The amended policy eliminates the PWD conservation value and bases all contributions on the fair market value appraisal. This change will help to ensure accurate value assessments in changing economies and with varying property assets. Staff has determined that the best assessment of true market value is achieved through certified market appraisals of the specific property to be conserved. The proposed appraisal standards will bring the District in alignment with other funders of conservation projects, including the Natural Resources Conservation Service.

3. The District uses several different funding methods to support land conservation projects. Some of these sources (such as issuing bonds) require that the District acquire a real estate or other interest which supports the long-term protection of the property. In other cases (such as with a particularly large property) it may not be required but may be advisable to do so. This amendment to the policy clarifies the flow chart that describes our process of determining the appropriate interest for each project.

### **ANALYSIS**

The Federal Safe Drinking Water Act directs systems which are exempt from filtration to “maximize land ownership and/or control land use within the watershed.” Support of land conservation in the Sebago Lake Watershed helps protect Sebago Lake for the long term. The District’s charter authorizes and empowers it to hold real property.

### **FISCAL REVIEW / FUNDING**

There is no direct fiscal impact.

### **LEGAL REVIEW**

Corporate Counsel has reviewed the proposed Motion and has approved it as to form.

### **CONCLUSION(S)**

These changes to the District’s land conservation policy will help clarify and align the policy with watershed protection principles and considerations, provide a more accurate and defensible approach to assessing the value of conservation easements, and clarify options for required property interests.

### **ATTACHMENT(S)**

Marked version of “Watershed Land Conservation Outside the Two-Mile Limit” policy  
Clean version of “Watershed Land Conservation Outside the Two-Mile Limit” policy

## **Policy:** Watershed Land Conservation Outside the Two-Mile Limit

### **Effective Date:**

~~Supersedes~~Supersedes: Adopted 2007, Amended 2013, 2016, 2019, 2020

**Approved by:** BOT

**Land Conservation Policy (2007):** It is the policy of Portland Water District to support measures to preserve Sebago Lake watershed land in perpetuity and to provide open space for lake-friendly public access. The District acknowledges that it is neither feasible nor necessary to own all land in the watershed. Instead the District will cooperate and partner with organizations and individuals who seek to conserve and manage their watershed lands in a manner that protects water quality and therefore protects the health of drinking water consumers.

**Land Conservation Program (2013):** Toward the goal of supporting Sebago Lake watershed landowners who seek to conserve their land in perpetuity, the District's Board of Trustees will contribute between 0% and 25% of the estimated conservation value for qualifying projects. Proposed projects will be evaluated by staff for their water quality value and staff recommendation for financial support will be considered by the Board on a case-by-case basis.

### **PURPOSE**

The purpose of this policy is to outline the District's approach to protecting the long-term water quality of Sebago Lake through cooperative ~~land conservation~~ partnerships with landowners throughout the watershed.

~~This policy describes the Portland Water District's (The District's) approach to protecting the long-term water quality of Sebago Lake, the source of drinking water for Greater Portland, through cooperative partnerships with landowners throughout the watershed. It furthers the lake protection principles that will guide the implementation of the policy.~~

### **BACKGROUND**

#### **IIA. MULTIPLE BARRIER APPROACH TO SOURCE PROTECTION**

Portland Water District, like many Wwater utilities nationwide, employs a multi-barrier approach to protecting the health of ~~their~~ customers. These barriers include protecting the source, water treatment and disinfection, and monitoring and maintenance of the distribution system. The first and most cost-effective barrier is source protection. When the source is protected, all later protective barriers are more effective, less costly, and easier to establish and maintain.

#### **IIB. MULTI-USE LAKES INVOLVE AN ELEMENT OF RISK**

The most effective source protection strategy is to own and/or control watershed lands, particularly those closest to the water intakes. By owning land and/or keeping it in its natural state, hazardous chemicals and pathogens (disease-causing organisms) are not introduced to the

watershed and therefore cannot contaminate the source. ~~Other source protection strategies which do not include ownership or legal control of land, such as watershed and lake patrols or regulation of land uses, inevitably carry with them a higher element of risk than does direct ownership or legal protection.~~ Allowing land to be developed and then regulating the subsequent human activity can protect a water body but, because chemicals and pathogens are introduced to the watershed ~~in the form of septic systems, heating and other fuels, etc.,~~ there is always a possibility that control measures could fail and contamination of the source could occur.

## **IIc. ACTIVITY ANYWHERE IN THE WATERSHED CAN CONTAMINATE**

~~Chemicals and pathogens which are introduced to a drinking water source sometimes do and sometimes do not have a significant impact on water quality in the public water system. This is because some chemicals are diluted or degraded to the point that they are no longer detectable and some pathogens die or lose their ability to infect as they travel through the natural environment before reaching the water intakes. Whether or not this occurs depends on many factors including the characteristics of the chemical or pathogen; the amount introduced; the temperature of the water body; and the travel time and distance between where the contaminant is introduced and the location of the water intakes, etc. Maine's Source Water Assessment Program—a federally mandated program designed to identify risks to water supplies—requires that threats to water quality be identified throughout the watershed of any surface water supply. This program underscores the fact that all land in the watershed contributes in some way to the overall quality of water in the source.~~

## **IIId. REASON FOR A “ZONED” APPROACH TO PROTECTION**

~~A~~Though activity throughout the watershed contributes to the water quality of Sebago Lake, ~~water in a lake,~~ lands closer to the lake in general and closer to the intake in particular are more critical to protect. This is because runoff from nearby lands enters the lake with little opportunity for natural “cleaning.” ~~This principle suggests that, when all watershed lands cannot be absolutely protected, protective efforts should be strongest on lands closest to the point at which water is withdrawn from the lake. Lands further away are also important, but their preservation is less critical. The District has operated with this governing philosophy since its establishment almost a century ago. Since 1908, T~~he District has worked to protect the land around ~~purchased approximately 2500 acres of watershed land surrounding~~ the Lower Bay of Sebago Lake, the site of the water intakes, by purchasing 2,500 acres of land. The District has also ~~and has~~ maintained a Watershed Control Program to minimize the impact of development activities on lands further away.

## **IIe. PROTECTION IS POSSIBLE WITHOUT OUTRIGHT OWNERSHIP**

In 1999 the District adopted a policy for acquisition of lands located within the two-mile, no-bodily contact zone around the water intakes. ~~In summary, T~~his policy states that the District will seek to acquire, from willing sellers, lands located within the two-mile limit which are also within 500 feet of the shoreline and/or are environmentally sensitive. ~~However, e~~Even if all these lands were acquired and returned to their natural state, a great deal of land around Sebago Lake is already developed ~~other lands are or is~~ highly desirable for future development. ~~Therefore additional protection is needed.~~

It is not the goal of the District to own all or even a majority of the land around the lake, and it- ~~This~~ is neither feasible nor necessary. The District is committed to the concept of multiple uses of Sebago Lake and the surrounding watershed, while encouraging lake friendly practices involving responsible development and reasonable, low-impact recreational opportunities. The



~~District seeks To this end, it is deemed appropriate~~ to encourage and facilitate the conservation of lands outside the two-mile limit by owners or organizations who will keep them as much as possible in their natural state. If it is the intent of the landowner, continued use of conserved land as active managed forest is consistent with the District's water quality goals.

### III. LAND CONSERVATION PRINCIPLES

The protection of water quality, which benefits both customers of the District and all other users of Sebago Lake, can be furthered without direct ownership of land but rather through such methods as establishment of conservation easements by homeowners and support for land acquisition by groups and trusts whose mission it is to set aside land in its natural state. When land is purchased and activity restricted to low-impact, lake-friendly uses, most of the significant risks to water quality associated with typical development will be avoided. In addition to this direct benefit, establishment and maintenance of natural areas in the Sebago Lake watershed will have an incalculable educational benefit by bringing conservation-minded individuals into the area and raising public awareness about the value of the lake and watershed.

District support for conservation easements or other types of landowner agreements and contributions to conservation groups seeking to protect watershed lands should be governed by the following five key principles:

1. Conservation of any land within the watershed of Sebago Lake contributes to the long-term protection of lake water quality;
2. Land in the direct watershed of Sebago Lake is more important to conserve than land in the indirect watershed;
3. Land closest to the shoreline of water bodies (rivers, lakes, streams and ponds) is more important to conserve than land further away from water;
4. Land with shore frontage, either on Sebago Lake or on another water body, is more important to conserve than land with no frontage; and
5. Land with natural features (forest, wetlands, aquifers) that are important to water quality is more important to conserve than land without those features.

In addition, there are other important land features that should be considered, including:

- a. Land closer to Sebago Lake is more important to conserve than land further away;
- b. Land likely to be developed is more important to conserve than land not likely to be developed;
- c. Land which will be made available for public access and recreation is more valuable to conserve than land which will not be accessible to the public;

- d. Land which will be acquired to support education/naturalist purposes is more valuable to conserve than land which will not be used for these purposes;
- e. Land which will be acquired with some direct support from the municipality in which the land is located is more valuable than land which is acquired without municipal support;
- f. Land with unique or rare natural features is more valuable to conserve than land without these attributes;
- g. Land on which forest growth will be encouraged on parts that are presently not forested are more valuable to conserve than land on which reforestation is not planned; and
- h. Land which will be acquired as part of a formal conservation plan is more important to conserve than land which is not part of a plan.

1. ~~Land with shoreline, either on Sebago Lake or on other lakes or rivers, is a higher priority than land with no frontage.~~

- ~~• Within the watershed, land closer to Sebago Lake or intakes is a higher priority than similar land further away.~~
- ~~• Land with shoreline, either on Sebago Lake or on other lakes or rivers, is a higher priority than land with no frontage.~~
- ~~• Land that provides natural water treatment (forest/wetlands) is a higher priority than similar land that does not.~~
- ~~• Land that is underlain by significant sand and gravel aquifers is higher priority than similar land that is not.~~
- ~~• District support for properties that include agricultural easements will only be considered for the non-agricultural portions of the property.~~
- Other considerations:
  - ~~• Land in the direct watershed of the lake is a higher priority than land in the indirect watershed.~~
  - ~~• Land which is likely to be developed is a higher priority than land not likely to be developed.~~
  - ~~• Land which is to be made accessible for lake friendly public access is a higher priority than similar land which is not to be made accessible.~~
  - ~~• Support for the land preservation initiative by the municipality in which the land resides is an important consideration.~~
  - ~~• Land which will be purchased for public education or naturalist purposes (nature trails, for example) is a higher priority than lands which will be simply preserved.~~

- ~~Land with unique or rare natural features is a higher priority than more typical watershed land.~~
- ~~Land which will be available for the District's and other regional environmental education programs is a higher priority than land which will not be accessible for this purpose.~~
- ~~Land projects that promote forest growth on non-forested land.~~
- ~~Land prioritized by land conservation assessments.~~
- ~~Land purchases which are mostly financed by non-District resources are a higher priority than those mostly or entirely paid for by the District.~~

#### **IV. POLICY STATEMENT**

It is the policy of Portland Water District to support measures to conserve Sebago Lake watershed land in perpetuity and to provide open space for lake-friendly public access. The District acknowledges that it is neither feasible nor necessary to own all land in the watershed. Instead the District will cooperate and partner with organizations and individuals who seek to conserve and manage their watershed lands in a manner that protects water quality and therefore protects the health of drinking water consumers.

#### **V. LAND CONSERVATION PROGRAM**

Toward the goal of supporting Sebago Lake watershed landowners who seek to conserve their land in perpetuity, the District's Board of Trustees will contribute between 0% and 25% of the conservation value of the transaction for qualifying projects.

Projects proposed by land trusts or individual property owners for consideration will be evaluated by staff for their water quality value using an approved evaluation methodology which is consistent with the land conservation principles outlined in Section III of this policy. Staff will assign a value and make a recommendation to the Board for financial support. A recommendation will be considered by the Board on a case-by-case basis. The Board reserves the right to choose not to support a project or support a project at a level different than that recommended by staff.

#### **VI. WATER QUALITY-BASED CONTRIBUTIONS**

The overarching goal of the District's Land Conservation Program is to protect the water quality of Sebago Lake. This is best accomplished by conserving forested lands and associated wetlands within the watershed. Forests naturally treat runoff and are especially important when they are adjacent to development and other nearby land uses that could harm water quality.

The District calculates a contribution to a conservation project based on the water quality value of the protected parcel(s). Using a method which considers characteristics important to protecting water quality, District staff evaluates each project and provides a recommended funding level to the Board. The contribution is a percentage of the appraised value, ~~the District's calculated value,~~ or the amount requested by the land trust, whichever is lowest.

Appraisals must be conducted by a State-certified general appraiser and must conform to the Uniform Standards of Professional Appraisals Practices (USPAP). The fair market value of a conservation easement is determined by a "before and after" appraisal, which provides the fair market value of the easement property before the conservation easement is placed and the fair market value of the easement

property after the conservation easement is placed on the property. The difference in the two values is the value of the conservation easement. Higher percentages are recommended by staff for proposals with greater water quality protection value.

For projects that will conserve land using an easement that permits agricultural activity on a portion of the property, the District will use the same method of calculating its contribution, which considers characteristics important to water quality, but will consider contribution for the non-agricultural land to be conserved as part of the transaction. The easement must indicate that the non-agricultural land will be conserved in its existing state (not cleared for fields). Preference will further be given to easements which are limited to organic practices and/or non-livestock activities.

## VII. ACQUISITION OF REAL INTEREST

The overarching purpose of this policy is to conserve watershed lands because forested land is a critical public health barrier. Actions taken under the policy will result in District investment in conserved properties that will be owned and managed by others who agree to conserve the forests on them in perpetuity. The possibility exists that at some future date one or more of the organizations entrusted with this responsibility could become insolvent, cease to exist and/or be unable to meet their stewardship obligations for other reasons. In order that the District's investment in these properties is not lost, a condition of District contribution to certain projects is that the transaction shall result in the District acquiring some form of real estate interest in the conserved property. This could include but not be limited to a conservation easement or a third party right of enforcement of a conservation easement, or deed restriction. The guidelines for acquiring a real estate interest are outlined in Figure 1.

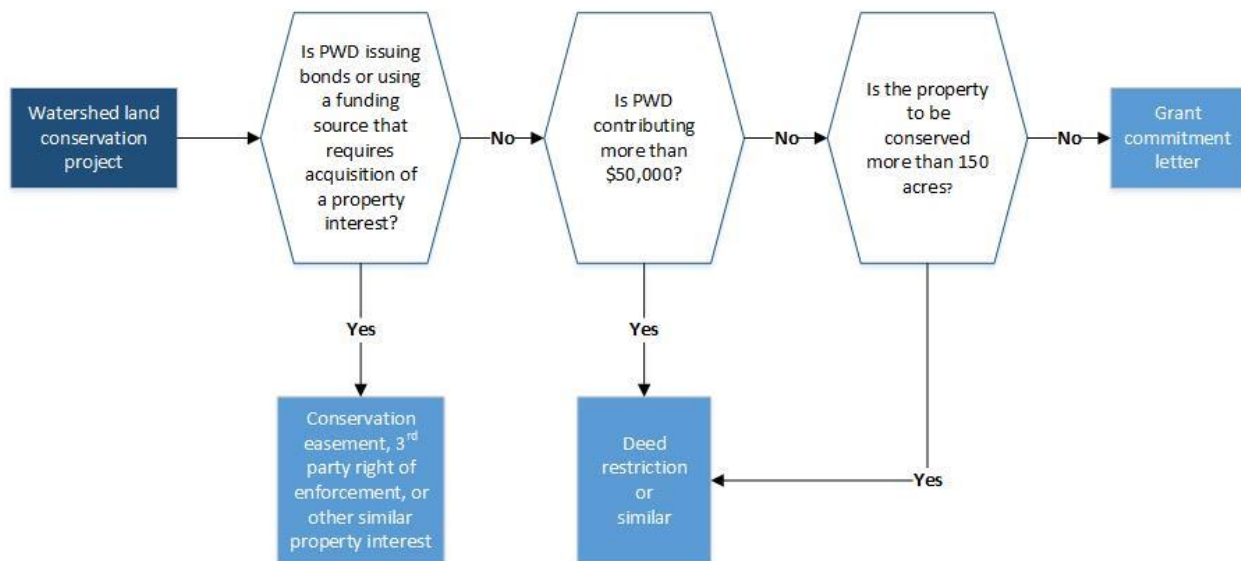
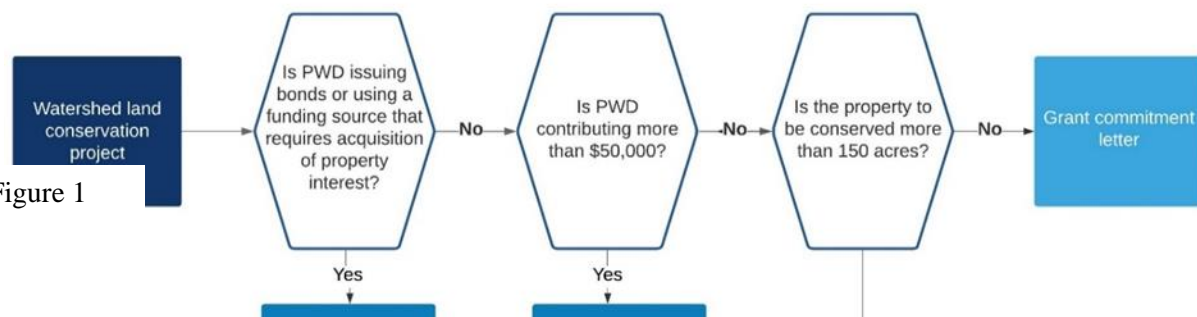


Figure 1



## **Policy: Watershed Land Conservation Outside the Two-Mile Limit**

### **Effective Date:**

**Supersedes:** Adopted 2007, Amended 2013, 2016, 2019, 2020

**Approved by:** BOT

**Land Conservation Policy (2007):** It is the policy of Portland Water District to support measures to preserve Sebago Lake watershed land in perpetuity and to provide open space for lake-friendly public access. The District acknowledges that it is neither feasible nor necessary to own all land in the watershed. Instead the District will cooperate and partner with organizations and individuals who seek to conserve and manage their watershed lands in a manner that protects water quality and therefore protects the health of drinking water consumers.

**Land Conservation Program (2013):** Toward the goal of supporting Sebago Lake watershed landowners who seek to conserve their land in perpetuity, the District's Board of Trustees will contribute between 0% and 25% of the estimated conservation value for qualifying projects. Proposed projects will be evaluated by staff for their water quality value and staff recommendation for financial support will be considered by the Board on a case-by-case basis.

### **I. PURPOSE**

The purpose of this policy is to outline the District's approach to protecting the long-term water quality of Sebago Lake through cooperative land conservation partnerships with landowners throughout the watershed.

### **II. BACKGROUND**

#### **IIA. MULTIPLE BARRIER APPROACH TO SOURCE PROTECTION**

Portland Water District, like many water utilities nationwide, employs a multi-barrier approach to protecting the health of customers. These barriers include protecting the source, water treatment and disinfection, and monitoring and maintenance of the distribution system. The first and most cost-effective barrier is source protection. When the source is protected, all later protective barriers are more effective, less costly, and easier to establish and maintain.

#### **IIB. HUMAN ACTIVITIES IN THE WATERSHED ADD AN ELEMENT OF RISK**

The most effective source protection strategy is to own and/or control watershed lands, particularly those closest to the water intakes. By owning land and/or keeping it in its natural state, hazardous chemicals and pathogens (disease-causing organisms) are not introduced to the watershed and therefore cannot contaminate the source. Allowing land to be developed and then regulating the subsequent human activity can protect a water body but, because chemicals and pathogens are introduced to the watershed there is always a possibility that control measures could fail and contamination of the source could occur.

### **IIc. REASON FOR A “ZONED” APPROACH TO PROTECTION**

Activity throughout the watershed contributes to the water quality of Sebago Lake. Lands closer to the lake in general and closer to the intake in particular are more critical to protect. This is because runoff from nearby lands enters the lake with little opportunity for natural “cleaning.” Since 1908, the District has worked to protect the land around the Lower Bay of Sebago Lake, the site of the water intakes, by purchasing 2,500 acres of land. The District has also maintained a Watershed Control Program to minimize the impact of development activities on lands further away.

### **IId. PROTECTION IS POSSIBLE WITHOUT OUTRIGHT OWNERSHIP**

In 1999 the District adopted a policy for acquisition of lands located within the two-mile, no-bodily contact zone around the water intakes. This policy states that the District will seek to acquire, from willing sellers, lands located within the two-mile limit which are also within 500 feet of the shoreline and/or are environmentally sensitive. Even if all these lands were acquired and returned to their natural state, a great deal of land around Sebago Lake is already developed or is highly desirable for future development.

It is not the goal of the District to own all or even a majority of the land around the lake, and it is neither feasible nor necessary. The District is committed to the concept of multiple uses of Sebago Lake and the surrounding watershed, while encouraging lake friendly practices involving responsible development and reasonable, low-impact recreational opportunities. The District seeks to encourage and facilitate the conservation of lands outside the two-mile limit by owners or organizations who will keep them as much as possible in their natural state. If it is the intent of the landowner, continued use of conserved land as active managed forest is consistent with the District’s water quality goals.

## **III. LAND CONSERVATION PRINCIPLES AND CONSIDERATIONS**

The protection of water quality, which benefits both customers of the District and all other users of Sebago Lake, can be furthered without direct ownership of land but rather through such methods as establishment of conservation easements by homeowners and support for land acquisition by groups and land trusts whose mission it is to set aside land in its natural state. When land is purchased and activity restricted to low-impact, lake-friendly uses, most of the significant risks to water quality associated with typical development will be avoided. In addition to this direct benefit, establishment and maintenance of natural areas in the Sebago Lake watershed will have an educational benefit by bringing conservation-minded individuals into the area and raising public awareness about the value of the lake and watershed.

District support for conservation easements or other types of landowner agreements and contributions to land trusts or conservation organizations seeking to protect watershed lands should be governed by the following five key principles:

1. Conservation of any land within the watershed of Sebago Lake contributes to the long-term protection of lake water quality;
2. Land in the direct watershed of Sebago Lake is more important to conserve than land in the indirect watershed;

3. Land closest to the shoreline of water bodies (rivers, lakes, streams and ponds) is more important to conserve than land further away from water;
4. Land with shore frontage, either on Sebago Lake or on another water body, is more important to conserve than land with no frontage; and
5. Land with natural features (forest, wetlands, aquifers) that are important to water quality is more important to conserve than land without those features.

In addition, there are other important land features that should be considered, including:

- a. Land closer to Sebago Lake is more valuable to conserve than land further away;
- b. Land likely to be developed is more valuable to conserve than land not likely to be developed;
- c. Land which will be made available for public access and recreation is more valuable to conserve than land which will not be accessible to the public;
- d. Land which will be acquired to support education/naturalist purposes is more valuable to conserve than land which will not be used for these purposes;
- e. Land which will be acquired with some direct support from the municipality in which the land is located is more valuable than land which is acquired without municipal support;
- f. Land with unique or rare natural features is more valuable to conserve than land without these attributes;
- g. Land on which forest growth will be encouraged on parts that are presently not forested are more valuable to conserve than land on which reforestation is not planned; and
- h. Land which will be acquired as part of a formal conservation plan is more valuable to conserve than land which is not part of a plan.

#### **IV. POLICY STATEMENT**

It is the policy of Portland Water District to support measures to conserve Sebago Lake watershed land in perpetuity, to support working forests, and to provide open space for lake-friendly public access. The District acknowledges that it is neither feasible nor necessary to own all land in the watershed. Instead the District will cooperate and partner with organizations and individuals who seek to conserve and manage their watershed lands in a manner that protects water quality and therefore protects the health of drinking water consumers.

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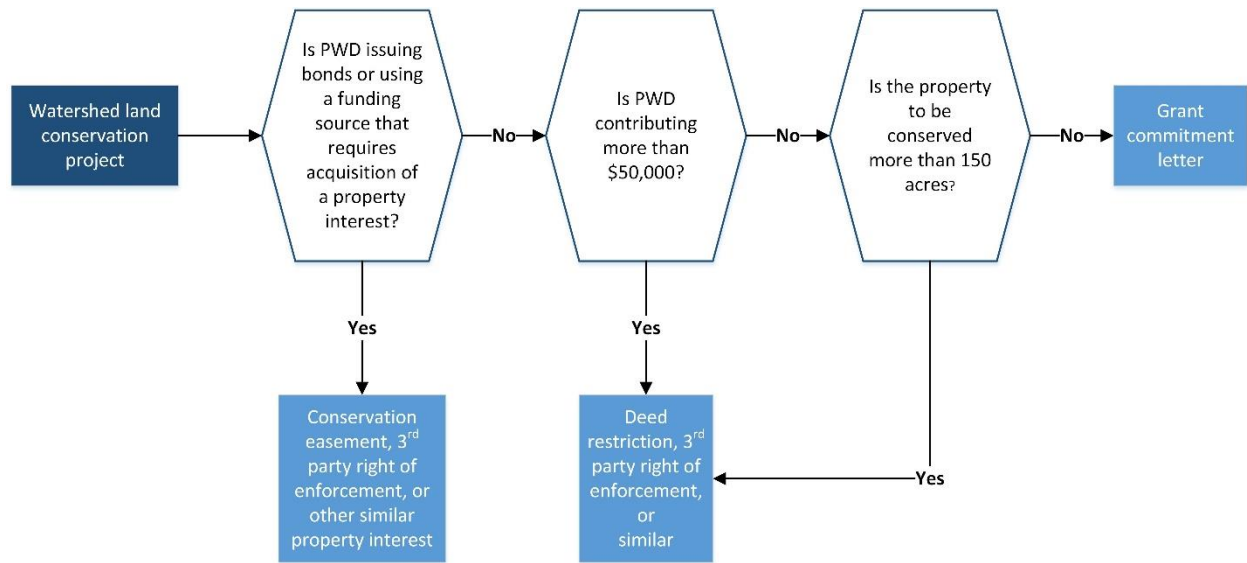


Figure 1



## **PLANNING COMMITTEE / AGENDA ITEM SUMMARY**

Agenda Item: 2  
Date of Meeting: December 12, 2022  
Subject: Proposed Revisions of 35-A M.R.S. 6113  
Presented By: Donna Katsiaficas, Corporate Counsel

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### **BACKGROUND**

Presently state statute allows a water utility to use a water supply protection fund for the acquisition of real property interests for the protection of the water supply. What is not clear in the statute is whether a utility can take water protection fund money to give to an entity like a land trust for it to acquire a real estate interest for conservation. It also does not specifically provide for a water utility to obtain a right of enforcement of a conservation easement using such funds. The proposed revision will do both.

Representative Jessica Fay from Raymond has agreed to sponsor the legislation. A copy is attached.

### **ATTACHMENT**

Draft legislation

### §6113. Water supply protection fund

**1. Water supply protection fund.** A consumer-owned water utility may establish a water supply protection fund to which a sum may be credited annually from surplus funds. The annual credit may not exceed 5% of the prior year's total revenue.

[PL 2003, c. 529, §3 (AMD).]

**2. Water supply protection fund maximum.** Except as provided in [subsections 5 and 7](#), the maximum amount that may be accumulated in a water supply protection fund is 15% of the most recent year's annual revenue of the utility or \$100,000, whichever is greater. When the water supply protection fund is at the maximum amount permitted, credit may not be made to the fund from surplus funds.

[PL 1993, c. 30, §1 (NEW).]

**3. Use of water supply protection fund.** Except as provided in [subsection 4](#), a water supply protection fund may be used by a consumer-owned water utility only for the acquisition [, by itself or by the holder of a conservation easement as defined in Title 33 M.R.S.A. section 476 \(2\)](#), of interests— in real property reasonably necessary for the protection of a public water supply, including, but not limited to, the acquisition of conservation easements, access easements,

other permanent interests in land or long-term leases of at least 99 years [and third party rights of enforcement of a conservation easement defined in Title 33 M.R.S.A. section 476 \(4\)](#) .: For purposes of this subsection "protection of public water supply" includes watershed protection, groundwater protection or wellhead protection reasonably necessary to minimize the potential for contamination of the consumer-owned water utility's water supply. If the consumer-owned water utility has adopted a watershed control program pursuant to 40 Code of Federal Regulations, Section 141.71 and that program has been approved by the Department of Health and Human Services, any expenditures from the water supply protection fund pursuant to this section for the purposes of watershed protection must be in conformity with that watershed control program.

[PL 1993, c. 30, §1 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

**4. Withdrawal of money from the fund.** A consumer-owned water utility that has accumulated money in its water supply protection fund may remove money from the fund and return that money to the unappropriated retained earnings account if the utility determines that the removal would be in the best interest of the utility's customers.

[PL 1993, c. 30, §1 (NEW).]

**5. Commission review.** If a consumer-owned water utility needs to accumulate more than the maximum amount allowed in the water supply protection fund to acquire interests as provided in [subsection 3](#), the utility shall obtain the approval of the commission before any sum may be allotted to the fund that would cause the fund to exceed the maximum.

[PL 1993, c. 30, §1 (NEW).]

**6. Accounting treatment of fund.** Money in a water supply protection fund is not considered unappropriated retained earnings for the purpose of [section 6112, subsection 5](#), nor is such money considered in determining reasonable revenue requirements under [section 310](#) or [6104](#).

[PL 1993, c. 30, §1 (NEW).]

**7. Interest.** Except as provided in [subsection 4](#), interest earned on money in a water supply protection fund must remain in the fund and be used solely for the purposes of the fund, notwithstanding the maximum amount permitted in the fund.

[PL 1993, c. 30, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 30, §1 (NEW). PL 2003, c. 529, §3 (AMD). PL 2003, c. 689, §B6 (REV).

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