



STATE OF RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
BUREAU OF ENVIRONMENTAL PROTECTION
235 Promenade Street, Suite 220
Providence, RI 02908-5767

April 4, 2021

Edward D. Warzycha
Interim Town Manager
Town of Coventry
1670 Flat River Road
Coventry, RI 02816

Soscia Holdings, LLC
c/o Douglas Soscia
6 Silver Maple Drive
Coventry, RI 02816

Re: Flat River Reservoir

Dear Mr. Warzycha and Mr. Soscia,

The Department of Environmental Management (“DEM”) has reviewed the documents provided by Mr. Soscia and considered the arguments he has raised in his January 20, 2021 electronic communication to DEM (copy enclosed) regarding the lease between Soscia Holdings, LLC and the Town of Coventry (the “Lease”) and the consent agreement executed between Quidnick Reservoir Company and DEM in 1995 (the “Agreement”).

DEM also reviewed Rhode Island General Laws (“RI Gen Laws”) Chapter 46-18 titled *Damages from Milldams*, RI Gen Laws Chapter 46-19 titled *Inspections of Dams and Reservoirs*, RI Gen Laws Section 2-1-18 titled *Freshwater Wetlands*, and the State regulations promulgated pursuant to these laws.

Agreement and Lease

In 1994, a lease (“1994 Lease”) was entered into between the Town of Coventry (“Town”) and Quidnick Reservoir Company (“Quidnick”), which is referenced in the Agreement. In 2009, Quidnick and the Town entered a new lease (“2009 Lease”) that replaced the 1994 Lease. The 2009 Lease, with a term through 2024, was assigned and transferred from Quidnick to Soscia Holdings, LLC (“Soscia Holdings”) in March 2020.

The 2009 Lease makes no specific reference back to the 1994 Lease that it replaced.

A term in the Agreement states that the Agreement “shall become null and void and of no further force and effect” upon either the expiration or termination of the 1994 Lease.

DEM has concluded that the 1994 Lease was terminated upon the execution of the 2009 Lease, and for this reason the Agreement is null and void and of no further force and effect.

Mill Dam Act

It has been accepted law in Rhode Island for generations that the *Mill Dam Act 46-18-1 et. seq.* only applies when a dam is built and maintained for mill purposes. Dams that once powered a mill, but where the mill purpose has been abandoned, are not subject to the protections, or presumably the liabilities, of the Mill Dam Act. See *Mowry v Sheldon*, 2 R.I. 369, 376 (1852), and *Howe v Norman*, 13 R.I. 488, 492 (1882). The Flat River Reservoir Dam at issue here no longer serves a mill, and therefore the Mill Dam Act is not applicable.

Freshwater Wetlands Act and Dam Safety Act and Applicable State Regulations

Even if the Mill Dam Act were applicable to this dam, and DEM contends it is not based on the above, that Act does not provide immunity from the *Freshwater Wetlands Act 2-1-21 et. seq.* (“FWW Act”) and the *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act (250-RICR-150-15-1)* (“Wetland Rules”), or from the *Dam Safety Act 46-19-1 et. seq.* (“Dam Safety Act”) or the *Rules and Regulations for Dam Safety (250-RICR-130-05-1)* (“Dam Safety Rules”), and such an interpretation would run counter to the purposes of both regulatory schemes, which were passed after the Mill Dam Act.

The FWW Act and Wetland Rules specifically include exceptions to their applicability, including certain provisions for dams. If the General Assembly had intended for the Mill Dam Act to provide some exception to the freshwater wetland (“FWW”) regulatory scheme, it could have expressly outlined such an exception. Indeed, exceptions exist in both the FWW Act and Wetland Rules, so the lack of an exception for so-called mill dams is telling in its omission.

Not only is the Mill Dam Act not referenced in the FWW Act or Wetland Rules as an exception, but both the FWW Act and Wetland Rules are clear in their applicability to all dams in the state, with distinctions based only on hazard levels, not on the use or purpose that the dam serves. The Wetland Rules acknowledge that some wetlands are created by dams and goes on to regulate those dam-created wetlands in the same manner as naturally occurring wetlands.

A freshwater wetland (“FWW”) permit is required from DEM under the Wetland Rules for even most seasonal drawdowns in excess of “normal water elevations.”

All dams are further regulated by DEM under the Dam Safety Act and Dam Safety Rules. Again, neither the Dam Safety Act or Dam Safety Rules make any reference to the Mill Dam Act or to so-called mill dams being specially excepted from regulation by virtue of being mill dams, and again, there are other exceptions provided for by statute and regulation, so the General Assembly and DEM, in crafting those laws and rules, clearly knew how to provide for exceptions and would have provided for a mill dam exception if one had been intended.

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Flat River Reservoir Dam

On May 11, 2020, RT Group, Inc. performed a visual inspection of the dam on behalf of Soscia Holdings and provided a report of the findings to DEM. On July 2, 2020, DEM sent a letter to Soscia Holdings on DEM's review of the report (copy enclosed). DEM concluded that the major components of the dam are in fair condition.

The major components of the dam are the embankment, the spillway and the low-level control structure. The condition of the major components of a dam are subjectively rated by DEM as good, fair or poor. Good is defined as meeting minimum guidelines, where no irregularities are observed, and the component appears to be maintained properly. Fair is defined as a component that requires maintenance. Poor is defined as a component that has deteriorated beyond a maintenance issue and requires repair; the component no longer functions as it was originally intended. Condition ratings of Fair or Poor warrant lowering the water level behind a dam only as necessary to maintain or repair the dam.

The Dam Safety Rules define two conditions that may warrant lowering the water level behind a dam.

First, in accordance with Part 1.1(A)(4), whenever the findings of the visual inspection reveal, in the opinion of DEM, that the dam may be unsafe. In such a situation, it may be necessary to lower the water level to perform a detailed investigation of the dam.

Second, in accordance with Part 1.12 (A), whenever DEM determines that a dam is unsafe. In such a situation, it may be necessary to lower the water level in whole or in part to make the dam safe.

Conclusion

It is DEM's opinion that the above referenced laws and rules require maintenance of water levels and water releases at historic norms (as described in the Lease and the Agreement) except as necessary for the dam safety reasons discussed above, provided that the raising or lowering of the water level is done in a manner that is consistent with the above referenced laws and rules.

At present, DEM has no information to support that any of these dam safety reasons apply to the dam, and therefore DEM believes that there is no safety reason that would require the lowering of the water level to make the dam safe.

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Town of Coventry and Soscia Holdings LLC

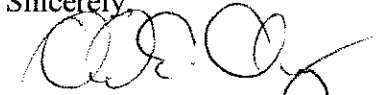
April 4, 2021

As this summer may result in similar drought conditions as this past one, the Town and Soscia Holdings should consider applying to DEM for a FWW permit to operate the dam in a different manner than what is described in the Lease and in the Agreement for the benefit of the people who use the reservoir.

If this is of interest, DEM can hold a pre-application meeting to better define what would be required as part of the application.

Lastly, please be advised that pursuant to Section 2-1-23 of the FWW Act, a person who knowingly or recklessly alters a freshwater wetland, buffer, floodplain or other jurisdictional area without a permit or approval from DEM or knowingly or recklessly alters a freshwater wetland, buffer, floodplain or other jurisdictional area in violation of State regulations is liable for a penalty up to \$10,000 for each violation. Depending on the specific facts involved, DEM may determine that failing to comply with the water levels and water releases described in the Lease and in the Agreement are multiple violations.

Sincerely,



David E. Chopy, Administrator
DEM Office of Compliance and Inspection

encs.: January 20, 2021 electronic communication from Soscia Holdings to DEM
July 2, 2020 letter to Soscia Holdings from DEM on the dam inspection report

cc. Janet Coit, Director, DEM
Terry Gray, Deputy Director, DEM
Mary Kay, Assistant Director and Chief Legal Counsel, DEM
Susan Forcier, Deputy Chief Legal Counsel, DEM
Ryan Mulcahey, Legislative Liaison / Policy Advisor, DEM
Ron Gagnon, Administrator, DEM
Tricia Jedele, Chief, Office of the Attorney General
Senator Lou Raptakis
Senator Gordon Rogers
Representative George Nardone
Representative Mike Chippendale
Representative Thomas Noret
Representative Sherry Roberts
Marc Lemoi, President, Johnson's Pond Civic Association
Nicholas Gorham, Esquire, Town of Coventry Solicitor

Chopy, David (DEM)

From: Johnson's Pond <johnsonspndri@gmail.com>
Sent: Wednesday, January 20, 2021 1:33 PM
To: Chopy, David (DEM); Gray, Terry (DEM); Coit, Janet (DEM)
Cc: Ed Warzycha
Subject: Re: [EXTERNAL] : Re: Consent Agreement and Complaints about dropping water in Johnson's Pond
Attachments: image001.png; image003.png

To whom it may concern;

Soscia Holdings LLC is concerned about the level of DEM's involvement in the private affairs of our company. In particular, we have researched the right or authority which DEM possesses to dictate our compliance or non-compliance with respect to the Lease we have with the Town of Coventry and with respect to our right to operate the milldam without DEM's involvement, especially our right to determine water levels in Johnson's Pond achieved through the operations of the milldam which we own.

We thought we would set forth some of the facts we have learned which give rise to our concerns.

In July of 1995 the Town of Coventry and the prior owners of the milldam (which we purchased) entered into a Lease containing many terms including water levels in Johnson's Pond which the parties sought to achieve at different times of the year through the operation of the gate at the milldam.

Apparently, an administrative action was commenced by DEM against the prior owners concerning the operation of the DAM. Prior to reaching a final determination on the issues presented by the administrative action, a Consent Order was entered into by the parties. The prior owner consented to DEM's jurisdiction only for the purposes of the Consent Agreement (see paragraphs 2 and 3 of the Consent Agreement). The Consent Agreement also dealt with the mandatory water levels in Johnson's Pond through operation of the milldam. The Consent Agreement became null and void and of no force and effect upon expiration of the Lease between the Town of Coventry and the prior owners. (See paragraph 20)

The Lease with the Town expired in 2009. A new Lease was entered into by the prior owners with the Town containing different terms. It is our understanding that DEM was made aware of the expiration of the prior Lease and that a new Lease with the Town was entered into.

In order to avoid any uncertainty, in accordance with paragraph 20 of the Consent Agreement, and in the event DEM did not receive proper notice of the expiration of the Lease with the Town of Coventry, please consider this a written communication of the fact that the Lease with the Town of Coventry which was the subject of the Consent Order entered in to by the prior owners of the milldam and DEM expired in 2009. According to its own the terms, the Consent Order is null and void and of no force and effect.

Our research indicates that DEM has no jurisdiction or authority to intrude or interfere with our operation of the DAM at this time. The following facts detail our conclusion:

1. R.I.G.L. §46-18-1 clearly indicates that as owners of the milldam that we purchased from the prior owners we are entitled to maintain the milldam to our "advantage without molestation". No exception is made to this statute, nor are we aware of any other authority contradicting the terms of the statute.
2. We have examined various deeds of owners of land adjacent to Johnson's Pond. The deeds reserve to us the rights of flowage of the water contained in

Johnson's Pond. We purchased those rights from the prior owner of the milldam. DEM's actions interfering with our exercise of those rights with respect to the owners of the adjacent properties would constitute a taking without just compensation, a clear violation of our constitutional rights.

3. We have had inspections of the milldam reviewed and accepted by your agency. Those inspections indicate that certain deferred maintenance issues exist, but clearly set forth our company's risks in the maintenance and operation of the dam. We have been attempting to address the maintenance issues of the milldam with the Town of Coventry per the terms of our Lease. During the course of our efforts to resolve the Dam issues with the Town of Coventry, we continue to be aware of your admonitions with respect to our risks in connection with our operation of the Dam. We are aware that increased water pressure on the dam increases the risk of failure. Your request for increased water levels is inconsistent with your attempts to address the possibility of a milldam failure, thereby asking us to increase the risk of which you have advised us.

Although you have authority to ensure milldam safety, your authority cannot be exercised in a manner which increases any risk while we are attempting to have the Town perform its obligations under the Lease.

Notwithstanding the foregoing, we wish to determine any statutory or legal activity upon which your agency relies in your attempt to control our operation of the milldam before we cooperate any further. If you believe our analysis is not well founded, please advise us to the statute or legal basis upon which you rely in making your requests.

We await your reply before we determine whether or not we should honor your latest or any future request.

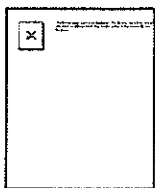
Warmest regards,

Douglas Soscia

Soscia Holdings LLC

On Tue, Jan 19, 2021, 9:53 AM Chopy, David (DEM) <david.chopy@dem.ri.gov> wrote:

Mr. Soscia, good morning. Please provide me with the current water level at the dam. Who is the gatekeeper?



David E. Chopy, Administrator

R.I. Department of Environmental Management

Office of Compliance and Inspection

235 Promenade Street, Suite 220

Providence, Rhode Island 02908

From: Johnson's Pond <johnsonspndri@gmail.com>
Sent: Monday, January 18, 2021 2:41 PM
To: Chopy, David (DEM) <david.chopy@dem.ri.gov>
Subject: [EXTERNAL] : Re: Complaints about dropping water levels in Johnson's Pond

Good Afternoon David. I hope all is well.

Thank you for reaching out to us concerning this matter. We wish to respond to your inquiry with emphasis that we are doing so on a voluntary basis without waiving any rights or submitting to your agency's jurisdiction if it does not exist. We specifically reserve any rights we may have with respect to the operation of the dam or in the water or flowage thereof in connection therewith.

That being said; the gatekeeper is operating the gates based on his experience and unseasonable conditions. A few days prior to your inquiry, the release was slowed. As you know, this is not an exact science.

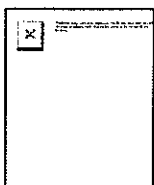
Warmest regards,

Soscia Holdings LLC

On Fri, Jan 15, 2021, 2:44 PM Chopy, David (DEM) <david.chopy@dem.ri.gov> wrote:

Gentlemen, good afternoon. Attached please find photographs sent to me concerning the dropping water levels in Johnson's Pond. The complainant lives on Allison Avenue. The complainant stated that the water level began dropping about 3 weeks ago. What is the status of the water releases? Is there anything going on that you are aware of to account for this drop in water level?

Sincerely,



David E. Chopy, Administrator

R.I. Department of Environmental Management

Office of Compliance and Inspection

#167



STATE OF RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
BUREAU OF ENVIRONMENTAL PROTECTION
OFFICE OF COMPLIANCE AND INSPECTION
235 Promenade Street, Suite 220
Providence, RI 02908-5767

July 2, 2020

Greg Soscia, Member
SOSCIA Holdings, LLC
6 Silver Maple Drive
Coventry, RI 02816

RE: Dam #167, Flat River Reservoir Dam, Coventry

Dear Mr. Soscia:

The Department of Environmental Management (DEM) has completed its review of the May 11, 2020 inspection report prepared by RT Group, Inc. on behalf of SOSCIA Holdings, LLC, as the owner of the dam.

Based on the findings in the report, the condition has been rated good, fair or poor. *Good* is defined as meeting minimum guidelines, where no irregularities are observed, and the component appears to be maintained properly. *Fair* is defined as a component that requires maintenance. *Poor* is defined as a component that has deteriorated beyond a maintenance issue and requires repair; the component no longer functions as it was originally intended. The ratings are as follows:

Embankment	Fair
Spillway	Fair
Low Level Outlet	Fair

Since State law allows for a dam owner to be held liable for any damages caused by the improper operation and/or maintenance of a dam, it is in the owner's best interest to properly operate and maintain a dam. The recommendations section of the report (Section 6. Assessment and Recommendations, page 15) includes work to further improve the condition of the dam. Maintenance of the dam, except for certain cutting or removal of trees, does not require a permit (see Rule 10 of the Rules and Regulations for Dam Safety). However, no repairs or alterations shall be made to an existing dam without prior approval of the DEM.

Part 1.8 of the Dam Safety Regulations requires the owner of a regulated dam to file with DEM a fully completed registration form as provided by DEM. As the new owner of this dam, please update the enclosed registration form and return to DEM at the address or fax number indicated on the form within two weeks of your receipt of this letter.

Please do not hesitate to contact me at 222-1360, extension 7409, if you would like additional information on this matter.

Sincerely,



Stacey Kurbiel Pinto
Senior Engineer

Enc.: Inspection Report
Registration Form

Cc (via email): Marc Pappas, Director, RIEMA
Samantha Richer, Planning Branch Chief/State Floodplain Coordinator, RIEMA
Spencer Peck, Emergency Management Planner, RIEMA
Chief John McDonald, Director, Coventry EMA