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FOR IMMEDIATE RELEASE
October 15, 2019

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CONCORD PREVAILS IN LITIGATION AGAINST LITTLETON AND ACTON OVER NAGOG POND WATER RIGHTS

CONCORD, MA— Concord recently prevailed in a long-running legal battle with Littleton and Acton regarding water rights to Nagog Pond. On October 11, 2019, Judge Jennifer S.D. Roberts of the Massachusetts Land Court awarded summary judgment to the Town of Concord resolving a dispute among the towns as to which statutory authority governed the water withdrawal rights from Nagog Pond, which has been a source of public drinking water for Concord since it took the pond via eminent domain in 1909.

Littleton and Acton argued that a provision in an 1884 Act, which gave Concord rights to Nagog Pond, reserved withdrawal rights for the two towns where the pond is located. Concord argued its withdrawal rights were superior to any provisions of the 1884 Act, because it held a Registration from Massachusetts Department of Environmental Protection under the 1985 Water Management Act, which grandfathered Concord's historic withdrawal rights.

In her written Decision, Judge Roberts confirmed that the Water Management Act was “a comprehensive statute that was designed to address a state-wide problem – the preservation and allocation of water resources” without regard for municipal or other political boundaries. The Judge noted that, while composing the Water Management Act, the Legislature was concerned with pre-existing rights created by approximately 650 prior special acts regarding water withdrawals, like the 1884 Act, but she also affirmed that the legislature “chose to address that concern by registering existing water withdrawals and continuing those registrations, upon timely renewal, ‘forever’.” Based on the legislative history, Judge Roberts concluded the “1884 Act is repugnant to and inconsistent with” the Water Management Act and that any rights granted to Littleton and Acton under the 1884 Act were extinguished.

The Land Court's Decision to uphold Concord's Registration to withdraw water from Nagog Pond will allow Concord's investment in the construction of a new state-of-the-art water treatment facility to go forward without a lingering concern that Littleton and Acton might attempt to usurp Concord's perfected withdrawal rights at Nagog Pond.

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