



The
OPEN
SPACE



Council

P.O. Box 275, Brookhaven, NY 11719

September 12, 2016

To: NYS Committees on Health and Environmental Conservation
Richard N. Gottfried, Member of Assembly, Chair, Committee on Health
Steve Englebright, Member of Assembly, Chair, En Con Committee
Kemp Hannon, Senator, Chair, Committee on Health
Thomas F. O'Mara, Senator, Chair, En Con Committee

From: Karen Blumer, representing Open Space Council

Re: NYS Health and Environmental Conservation Committees Hearing
on Water Quality and Contamination

Good day Honorable members of the New York State Legislature. My name is Karen Blumer. I represent the non-profit organization Open Space Council, which considers issues throughout Long Island but works mainly in the Town of Brookhaven. OSC administers a legacy fund for a major subwatershed flowing into a national estuary, the Great South Bay. That Fund is the Carmans River Watershed Trust Fund.

We thank you for this opportunity to comment on what is possibly the most critical issue for our survival on Long Island — the destiny of our waters.

To begin with, we might suggest to you that you consider the framework in which you have cast this hearing. "Water Quality." This suggests a lack of systems understanding and a strong bias. There is no way we can have an intelligent conversation about LI water and its crisis, by separating water quality from the entire system. Water quality and the aquifer are intimately bound; they cannot be separated — hydrologically, ecologically or legally. This is supported by good caselaw. Such a fragmented orientation may reflect the heart of our failed LI water challenge. We will argue that the problem lies not in broken agencies but in a **fragmented, broken governance system**.

We are in a water crisis on Long Island. This is not news. This is why we are here. We may be approaching a tipping point, a true State of Emergency on Long Island. We may very well be headed toward a 120-mile Flint, Michigan-LI, NY if we do not turn things around, very quickly. We suggest that we start that reversal today.

The fact is that we are in serious water jeopardy, far greater than anyone has projected. The last major analysis by Suffolk County Health Department Comprehensive Report depended on data ending in 2008, adding patches of 2013 data. Trends of a water decline have been brewing, and at least on someone's radar, for over half a century. Simply look for yourselves at the major LI water reports — sixteen of them, some of them your own State reports, beginning in 1969, and some minor ones even before that. They are all available on the Suffolk County Water Authority website, thanks to the effort of LICAP, the Nassau-Suffolk bi-County Long Island Commission on Aquifer Protection. You will see a trajectory not headed upwards but in a precipitous downward steady-state decline in water quality and quantity. Hence our reason for being together today. Again, we express our gratefulness for convening this forum.

In the shadow of this unspeakable decline, it is important for us all to understand a basic concept in our governance that is **never** discussed. **This, for us, appears to be the most critical understanding in working toward a water solution. That is: the State does not own our water.** I probably should repeat that: **New York State does not own our waters.** Nor do the Counties, nor the federal government nor the municipalities. **We own our water.** Under the ancient, sovereign law of the Public Trust, we are the rightful owner-beneficiaries of this natural, life-supporting asset.

Under Public Trust Law, the State and its agencies serve as our Trustees. As Trustees, you are responsible for the preservation of our assets. By all evidence after a half-century of severe decline and mismanagement of water on Long Island, you have failed us and are continuing to fail us. Put into Trust language, this is over half a century of bankrupted water asset that **we** own.

So let us look at what has happened over 50 years, continuing to this moment. Essentially, it is very simple. We are operating under a **broken system**. It is **so broken**, that there is not one agency, one regulatory arm, one government, or one stakeholder that can escape from it alive.

We anticipate much agency bashing today at this hearing. However, we feel it may be horribly misdirected. It is not our agencies but rather the broken system in which they are forced to operate which is the real cause of confused, uncoordinated, and failing water management. It is your, and our, job to begin a path today to reverse that trajectory. It is up to you whether you — each one of you individually and collectively as our Trustees — will work with us, or continue working against us. That is your choice.

We are in need of a sea change, a transformative paradigm for the way our waters are managed. Absent that, we should all just pack it in and go home now. So we are asking you to explore with us what that would entail. You can simply forget about all the rules, laws, regulations and policy that you have invited us to comment on as focus for this Hearing. They are meaningless if they continue operating in a broken system. We need a sea change and the leadership to make that come about.

So this is what we see that is so dysfunctional and broken. We see myriad agencies and bodies, each with a little piece of the water pie — DEC issues groundwater pumping permits, a substantial piece of the pie. However DEC also has myriad other tasks such as jurisdiction over mining, hunting, toxins, and enforcement of all sort. Myriad responsibilities beyond water.

The Health Department is in charge of wastewater and sanitary systems, another substantial piece of the water pie, as we merrily use our sacred drinking water to flush our feces, urine and anything else that gets into the sanitary system, either directly into our drinking water aquifer or, worse, out into our bays without tertiary treatment or to drinking water standards, and, even worse, into our oceans, as if our oceans are infinite. They are not; they are as finite as our bays and our aquifer!

And just a few other pieces of the regulatory pie, the DPW which is in charge of road and other surface runoff. And, possibly the largest piece of the pie — the municipalities through "home rule" which have dominion over zoning, development and land use. The list goes on, endlessly.

This is a hodge-podge of jurisdiction over our waters. Something akin to a regulatory circus. The concept here is that every agency or body has a little piece of the pie, **BUT — and this is the most important message of the day, so please take note — NO ONE IS IN CHARGE of our asset.** As our waters continue to decline precipitously, no one is in charge and our Trustees are absent. Who says no? There is no ONE coordinating body. This is how it's been for half a

century and this is how it continues. How can you continue to allow this to happen and still hold your heads up as our Trustees? This is not a passive act on your part, either. You, as our Trustees, are actively allowing this to continue.

In short, the crux of our water decline exists in a **broken system**. To continue to pass this off as the fault of our agencies or laws is mindless. Really criminal. You are criminally negligent as our water asset approaches bankruptcy, as the basis of life on Long Island slips towards a coma. Our agencies and our waters are at the mercy of a broken system that the NYS Legislature has not only created but is perpetuating.

In short, what is needed here is not technical expertise; we have that. It is **governance**. Our agencies have limited authority, as it should be. They are technicians, biologists, enforcers. They lack the one thing that we are in need of — governance. That is not an issue for our agencies; it is an issue for the Legislature as to how we manage our waters as a coordinated body.

NEED ONE ENTITY

We need one oversight governance entity, independent of any government's budget and any major control by any one of the stakeholder groups — be they water providers, legislators at all levels, environmental advocates, industry, or any others. An entity must include balanced representation by significant stakeholders, with teeth.

What would such an entity look like? That is the question. None of us — be it State or County Legislatures, the Governor, County Executives, environmental advocates, agriculture — can decide this alone.

Some of us have begun working on this solution. We have urged both LICAP and the State's LINAP (Long Island Nitrogen Action Plan) to provide a similar platform. Some of us are working on this problem through one of our three water conservation umbrella groups, the Long Island Water Forum (LIWF), with over eighty affiliate organizations, experts and concerned individuals, a neutral forum designed to bring together many stakeholders, especially in contentious or challenged waters.

We heartily invite you as Legislators to either create your own platform, an ongoing one, different from these formal hearings today, more like an interactive circle. Or get out of your chairs, roll up your sleeves, and join us. The LIWF is beginning a "Seeking a Solution Series" this fall. Some of you may be tapped to join us as panelists or participants in the brain trust we need.

Whatever the entity ends up as, it is clear that there are certain criteria that must be met to cure our LI unmet water needs. The LIWF has been gathering initial suggestions from various corners. We have begun to take a stab at what the basic criteria for such an entity might be. We share them with you here.

We feel the following are some of the criteria that any oversight body must have to transform and reverse the downward tragic trajectory of our waters:

- It will focus on water only. That is its job. Nothing else
- It will be 24/7, professional, and most importantly:
Science based. No voting member on its board will be without a water science background
- It will have teeth and authority
- It will have an income independent of government, kept in a lockbox dedicated

only to water

It will have a balanced decision-making board that will include stakeholders from government, agencies, water providers etc but will not be controlled by any one faction

It will have citizen representation as part of the voting board

It will have Public Trust representation, also, as part of the voting board, to insure that the goals and paradigm of the Public Trust are carried out —mainly, that the fiduciary responsibility of the board will be to us, the owners, in preserving our asset and that water use will be drawn from the interest only, not its principal

These are only initial thoughts. Nothing is bound in stone. The important aspect is that the Entity and its ultimate governance will be the result of consensus from our Long Island community stakeholders and not controlled by any one faction.

THESE ARE SOME OF THE THINGS WE WILL BE UP AGAINST

Creating a new entity which might actually reverse the direction of LI's waters has already met with major resistance.

One example exists at LICAP, the Long Island Commission on Aquifer Protection, of which we are a member by virtue of our participation in a number of its water subcommittees. At this bi-County table where officials from many agencies sit — NYS DEC, Nassau and Suffolk Health Departments, bi-county DPW's, county Executive office reps, appointees from both Legislatures, here is the tenor of the conversation.

First, there is a total pressure from the leadership and every single official at the table to **maintain the status quo**. The only exceptions are the two official citizen appointees by the Nassau and Suffolk County legislatures, Sarah Meyland and Jared Hershkowitz, respectively. They actively seek alternatives to what an "entity" might be. Both County Legislatures have mandated that LICAP present solutions in the form of a "yet to be established entity" (Resolution 805-2013). The rest of the table grasps with white knuckles onto keeping all our agencies and government in place, not changing one thing, not giving up one thing, but expecting a different outcome, when it is so clear that without a transformative paradigm, we are all but lost. This is the white-knuckle status quo of the last half century of water mismanagement, the regulatory circus, driving our waters to bankruptcy, of which you are the Trustees.

Within that circus, here is just one of the discussions that occurs at practically every LICAP meeting, to all of our frustration. Although it is a technical one, it is a telling one. It serves as a perfect measure of just how deeply dysfunctional our system of water mismanagement is. The heads of our — your — agencies sit around the table moaning over the fact that, "We can't share data." There is no central database to gather all the excellent data being collected, currently and for decades, as a base from which to analyze the status of our aquifer, our coastal waters, and make science-based decisions about water quantity, equitable distribution, salt water intrusion, water quality, our freshwater streams and saline coastal waters! We have the data, but it can't be shared, analyzed, or used. We have no central database. Here it is 2016 and we are unable to see the daily status of our aquifer. This is unforgivable. Unspeakable.

We need a database and a feed system that is not up to the year, month, day, or hour. We need a central database that is up to the minute, that you as a legislator or I as Johnna Q. Public or the USGS as a central scientific brain can hook into to see how the aquifer is doing. This is not rocket science; this can be done.

Another example is that we **have** decades of data uncompiled, as well as current uncompiled data for our most precious commodity. DEC issues permits regularly for applicants to pump

water, based on their requests that come in as paper applications. PAPER!!! And there it sits, in myriad file cabinets. It is not electronically available. That means DEC is issuing permits for quantity pumping in the dark, without a clue about what the profile of the aquifer looks like, where salt water intrusion may be occurring, where over pumping may be sucking in pollutants, going to whichever well. Unspeakable.

I have not come here, though, to whine but rather to invite you to move to a new world with many of us who are working overtime to bring a new way of managing our LI waters to the surface. Without a transformative change we are lost. Please explore with us.

It will ultimately be up to you, the NYS Legislature, to sponsor and enact the legislation, but not for you to decide. This must be the result of a process, a Brain Trust, many conversations, forums, discussions. Some of us have started on that journey already. Under the LI Water forum, we have gathered six or seven existing governance models already, parts of which could serve well in reversing our half century downward trend.

We are hoping, as of this coming Wednesday, LICAP will have a subcommittee assigned to exploring what an entity could be for our aquifer, as they are mandated by Nassau and Suffolk Counties to do. We have suggested to the State's LINAP that they join the discussion also, with no response yet.

We have lobbied a number of State and County legislators on the creation of such an entity that would work. The result is very positive in some chambers and dismal in others. There are a few leaders who are leaping at the concept of a water trust or entity; there are others who have refused to take a leadership role. Their message to us is — go out and get support from other stakeholders first, from my colleagues, others. Is this *our* job? We wonder. You are the Trustees. For the clean water we want, we will have to have a turn-around. It is up to you to show up at the table in a leadership role.

All our laws and regulations are meaningless unless you address the framework and overall broken system. The one law that you must be devoting yourselves to is a law creating an oversight entity for our LI aquifer and its governance solutions from the groundwater up. In a new entity paradigm, many of the agencies will remain intact or nearly so; they will just be coordinated and can contribute to governance. All the impossible things that are now expected of them, many as decimated, dessicated bodies, will begin to produce fruit rather than toxified waters.

This is a job for us all. Are you up to it, Richard Gottfried, Steve Englebright, Kemp Hannon, Thomas O'Mara?

Thank you and we hope to be working with you on this challenging, transformative task.

Karen Blumer

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