SUMMARY OF FEDERAL AND STATE ENVIRONMENTAL STATUTES PROTECTIVE

OF THE LOWER FARMINGTON RIVER AND SALMON BROOK

There are many federal and State environmental statutes that offer some form of protection to the Lower Farmington River and Salmon Brook. Only the most significant and relevant of these have been reviewed here.

At the Federal Level

While enacted at the federal level by the U.S. Congress, many components of the statutes described below are administered at the State and local level.

The federal **Clean Water Act** (CWA) was created to restore and maintain the chemical, physical and biological integrity of the nation's surface waters. To accomplish this objective, the CWA sets forth both regulatory and non-regulatory means of addressing point and nonpoint sources of water pollution. Among other things, the CWA:

- requires states to adopt surface Water Quality Standards to manage waterbodies according to defined goals based on designated uses and criteria;
- requires states to adopt an anti-degradation policy to protect existing uses, and prohibit the lowering of high quality surface waters, except under certain conditions, following specified procedures;
- establishes the National Pollution Discharge Elimination System (NPDES), a regulatory program, which requires municipal, industrial and other facility "point source" dischargers to obtain a discharge permit from the appropriate authority. (In Connecticut, this program is administered by CT DEP.). Stormwater point sources are also regulated under NPDES, including: discharges from municipal storm sewer systems in urbanized areas above a certain census size; stormwater associated with many kinds of industrial activities; and runoff from construction sites disturbing more than one acre. Nine out of the ten towns within the Wild & Scenic Study Area fall under the CT DEP's NPDES "General Permit for Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems" (MS4 GP).
- requires the federal government to obtain a Section 401 Water Quality Certification from the state in which they are issuing a license or permit which may result in a discharge to waters of the United States, to ensure that the discharge is consistent with the CWA as well as any state ambient water quality standards.
- requires any project that would discharge dredged or fill material into "waters of the United States" to receive a Section 404 permit from the U.S. Army Corps of Engineers;
- provides a non-regulatory approach to address nonpoint sources of surface water pollution. Funding is available to States and other entities through the federal CWA 319 grant program for the development and implementation of nonpoint source management programs. Over the years, CT DEP has used the funds in its 319 grant program to support many Agency and non-Agency projects focused on addressing nonpoint source issues throughout the State. Among other things, 319 funds were used to assist another program within the CT DEP to develop the "2004 Connecticut Stormwater Quality Manual". This manual is intended as a planning tool and design guidance document to be used by the regulated and regulatory communities involved in stormwater quality management within Connecticut.

In addition to the key components described above, the CWA includes other elements aimed at protecting and improving surface water quality. Recent judicial decisions appear to be expanding the interpretation and application of the CWA to include more activities that have the potential to impact water quality.

The **National Flood Insurance Act** established the National Flood Insurance Program (NFIP) which enables property owners in participating communities to purchase federally subsidized insurance to

protect against flood losses. NFIP is administered by the Federal Emergency Management Agency (FEMA), under the Department of Homeland Security. CT DEP is designated as the State NFIP Coordinating Agency.

In order to qualify for this program, a community must enter into an agreement with the Federal government, and adopt and enforce a floodplain management ordinance to reduce future flood risks to new construction in areas of highest risk called Special Flood Hazard Areas (i.e. – 100 year floodplain). While the primary goal of NFIP is to protect against flood losses and prevent new development from increasing flood threat, it does not necessarily discourage development from taking place within floodplains. However, NFIP does encourage communities to engage in better floodplain management, and also allows municipalities to adopt more restrictive ordinances than the minimum regulatory requirements of the Federal government. In addition states can require more stringent measures than those of NFIP. The State of Connecticut recently adopted new requirements with regard to "compensatory flood storage and equal conveyance" which establishes a higher regulatory standard that is more protective of floodplains.

The **Wild and Scenic Rivers Act** (WSRA) provides the strongest protection available for free flowing rivers or river segments. The WSRA protects designated rivers or those under study from any federally assisted or licensed dam, diversion, channelization, hydroelectric facility or other water resource development project that would have a direct and adverse effect on the river's free flowing condition or its Outstandingly Remarkable Values (described as Outstanding Resource Values or ORVs in the Management Plan). The river segments being studied for potential inclusion in the National Wild and Scenic Rivers System are protected by the WSRA during the study, but this protection expires three years after submission of the Final Study Report to Congress, if Congress does not add the river segments into the system in the meantime. See Chapter 5 of the Management Plan for more information on the WSRA.

The **National Environmental Policy Act (NEPA)** requires federal agencies to incorporate environmental considerations into planning and decision-making with regard to major federal actions significantly affecting the environment. The Council on Environmental Quality was established to oversee NEPA. However, each federal agency undertaking an action is responsible for its own compliance with NEPA.

There are three levels of analysis under NEPA: categorical exclusion determination; preparation of an environmental assessment/finding of no significant impact (EA/FONSI); and preparation of an environmental impact statement (EIS). An EIS is prepared in cases where it has been determined that environmental impacts of the proposed federal action may be significant, or a proposed project is particularly controversial. Preparation of an EA or EIS includes: consideration of alternative actions, evaluation of environmental impacts, and a public participation process. While the goal of NEPA is to undertake federal actions in a more environmentally responsible manner, the process does not necessarily guarantee that the least environmentally damaging alternative will be selected.

Section 10 of the federal **Rivers and Harbors Act** requires any structures or work in, over or under "navigable waters of the United States" to receive a permit from the U.S. Army Corps of Engineers (US ACOE). In general, "navigable waters of the United States" include waters affected by the ebb and flow of the tide, and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Projects are evaluated not only for possible impacts to navigation but to aquatic resources, as well. At the very least, the River and Harbors Act applies to the section of the Farmington River below the Rainbow Dam. It may also apply to sections of the river above the dam, depending on interpretation of the Act, and the history and use of the river.

In addition to Sec. 10 of the River and Harbors Act and associated U.S. ACOE permits, CT DEP separately administers State Coastal Permits which apply to the tidally-influenced portion of the river below Rainbow Dam.

At the State Level

In addition to federal statutes described in the foregoing section, the Connecticut General Assembly has enacted statutes, described below, that are administered at the State and/or local level.

The **Inland Wetland and Watercourses Act** (CGS Sec. 22a–36 to 22a-45)[1] requires the regulation of activities affecting the inland wetlands and watercourses in Connecticut which involve the removal or deposition of material, or any obstruction, construction, alteration or pollution of these natural resources. The CT DEP's role in implementing this Act is to regulate State activities affecting inland wetlands and watercourses, and to provide technical assistance to municipal inland wetland commissions. Most wetland regulation throughout the State occurs at the local level through municipal inland wetland commissions.

The **Water Diversion Policy Act** (CGS Sec. 22a-365 to 22a-370) requires the regulation of activities which cause, allow or result in the withdrawal from, or the alteration, modification or diminution of the instantaneous flow of the waters of the State. The purpose of the Act is to help ensure the balanced use of water resources for human and ecological needs, especially with regard to long-range planning and allocation. There are several different trigger points which would require obtaining a diversion permit, including any new diversions of greater than 50,000 gallons per day. Diversions which existed on or prior to July 1, 1982 are exempt from permitting requirements if these activities were formally registered with CT DEP by July 1, 1983. However, those who failed to register prior to this date, or have modified registered diversions, are subject to permitting requirements.

The **Water Pollution Control Act** (CGS Sec. 22a-14 to 22a-527) has many components, and offers significant water quality protection from specific sources of pollution. Many sections of this Act deal with sewage and associated treatment facilities. Among other things, it addresses the planning, building, operation and regulation of municipal wastewater treatment facilities and associated infrastructure. The Act also creates the Clean Water Fund which provides federal and State monies for loans and grants to municipalities for the planning, construction and upgrade of these facilities and systems. These activities and funding sources are overseen by CT DEP. In addition, the Act establishes authority to regulate subsurface sewage treatment and disposal systems, more commonly known as "septic systems". As a result CT DEP regulates conventional systems with design flows greater than 5,000 gallons per day, community systems that serve more than one household, and alternative treatment systems. Meanwhile, the CT Department of Public Health (CT DPH) regulates conventional systems with flows less than 5,000 gallons per day, under the Public Health Code. CT DPH has delegated conventional systems with flows less than 2,000 gallons per day to local health departments. The Public Health Code requires minimum separating distances between these systems and adjacent land items such as wells and watercourses.

The **Dam Safety** statutes (CGS Sec. 22a-401 to 22a-411) gives CT DEP the authority to regulate the construction, alteration, repair or removal of dams, dikes, reservoirs and similar structures, which by, breaking away or otherwise, may endanger life or property. When making a decision regarding a permit, CT DEP must consider, among other things, impacts to inland wetlands and watercourses. The Act also requires that existing dams, dikes and similar structures be registered and periodically inspected to assure that their continued operation and use does not constitute a hazard to life, health or property. However, CT DEP authority does not extend to dams licensed by the Federal Energy Regulatory Commission.

The **Aquifer Protection** statutes (CGS Sec. 22a-354ato 22a-354bb) protect major public water supply wells (wells serving 1,000 + people) from contamination by regulating land uses in mapped aquifer protection areas. Implementation of the Aquifer Protection Act is delegated to the municipalities and carried out through municipal regulations. The regulations prohibit development of new high-risk land use activities

[1] CGS = Connecticut General Statutes

in aquifer protection areas, and require existing high-risk activities in these areas to register and follow best management practices. CT DEP provides oversight, training, and technical assistance to municipal aquifer protection agencies. Four of the ten municipalities within the Wild & Scenic study area have mapped preliminary and/or final Aquifer Protection Areas.

The **Flood Management** statutes (CGS Sec. 25-68b to 25-68n) cover a number of flood-related activities, including the requirement that all state actions in or affecting floodplains, or impacting natural or man-made storm drainage facilities, receive CT DEP approval in the form of a "Flood Management Certification" permit, or an exemption from such approval. In making a decision to approve or reject a state agency's flood management certification, CT DEP must consider whether the proposed activity is consistent with state standards and criteria for preventing flood hazards to human life, health or property and with the provisions of the National Flood Insurance Program (NFIP) and municipal floodplain regulations; does not adversely affect fish populations or fish passage; and does not promote intensive use and development of flood prone areas.

Stream Channel Encroachment Lines statutes (CGS Sec. 22a-342 to 22a-349a) require CT DEP to regulate the placement of encroachments and obstructions riverward of stream channel encroachment lines, to lessen the hazards to life and property due to flooding. Stream Channel Encroachment Lines (SCEL) have been established for about 270 linear miles of riverine floodplain throughout the State, and are shown on SCEL maps which are on file in the Town Clerk's office in the affected town. In making a decision on a SCEL permit application, CT DEP must consider the impact of proposed activities on the floodplain environment, including wildlife and fisheries habitats, and on flooding and the flood hazards to people and property posed by such activity. The SCEL statutes pre-dated many other federal and State flood and floodplain management programs that were subsequently established. A 2010 report which CT DEP was required to submit to the Connecticut General Assembly reviewed and evaluated the Agency's permit programs. In this report, CT DEP recommended that the SCEL statutes be repealed because more recent federal and State programs basically cover the same ground, and because slightly differing jurisdictional boundaries between SCEL and federal FEMA flood zones has created some confusion. However, until repealed, SCEL remains in effect, and includes a couple of short stretches of the Farmington River.

The **Structures, Dredging and Fill Act** (CGS Sec. 22a-359 to 22a-363f) and **Tidal Wetlands Act** (CGS Sec. 22a-28 to 22a-35) require CT DEP to regulate all activities conducted in tidal wetlands and in tidal, coastal or navigable waters in Connecticut. This is the basis of Connecticut's Coastal Permit Program. The major objectives of the permit program are to avoid or minimize navigational conflicts, encroachments into the state's public trust area, and adverse impacts on coastal resources and uses, consistent with the Connecticut Coastal Management Act. Because the Connecticut River is tidally influenced as far north as Enfield and Suffield, the municipalities along the river corridor are considered "coastal towns", including Windsor. As a result, Coastal Permits apply to the section of the Farmington River below the Rainbow Dam which is tidally influenced by the Connecticut River.

The **Soil Erosion and Sediment Control Act** (CGS Sec. 22a-325 to 22a-329) serves to protect rivers from sedimentation impacts associated with construction and new developments. The Act requires municipalities to adopt regulations that: provide for proper soil and erosion control; ensure that a soil and erosion sediment plan be submitted with applications for development for any project cumulatively disturbing more than ½ acre of soil; and guarantee that these plans be certified by the municipality or Soil and Water Conservation District for compliance with the regulations. Intended to prevent soil from moving off-site, the Act can be very effective when vigorously implemented by towns. It also encourages towns to regulate stormwater runoff. To assist municipalities with these requirements, the Act directs the Connecticut Council on Soil and Water Conservation to develop guidelines for soil and sediment control for land that is being developed. These guidelines are to outline methods and techniques for minimizing erosion and sedimentation, based on the best available technology. In addition, the guidelines are to

include model regulations that can be used by municipalities to comply with the Act. CT DEP and the individual Soil and Water Conservation Districts are required to make these guidelines available to the public. The most recent version of these guidelines is the "2002 Connecticut Guidelines for Soil Erosion and Sediment Control".

In addition to the State environmental laws described above, the Connecticut General Statutes also designate certain powers to municipalities for land use planning, zoning and subdivision regulation. Since most land use decisions are made at the local level, these municipal powers have important environmental implications. Local land use planning and regulation is reviewed for each of the towns within the proposed Wild & Scenic area in a separate section of this document.