

Administration

Lake Auburn Watershed Commissioners
C/O Mike Broadbent, Secretary
268 Court Street
Auburn, Maine 04210

March 31, 2022

Dear Commissioners:

I write this letter on behalf of the City of Lewiston (“Lewiston”) to bring to your attention a matter of serious concern regarding the potential hazards and threats to the quality of the drinking water of Lake Auburn as a result of the recent action of the City of Auburn to rezone 148 acres off Gracelawn Road in the most critical part of the Lake Auburn Watershed, as defined in the Basic Agreement described below. Lewiston requests that the Lake Auburn Watershed Protection Commission (the “Commission”) take immediate action, as outlined below, as is its obligation under the June 29, 1993 interlocal agreement (the “Basic Agreement”) between and among the City of Lewiston, the Inhabitants of the Town of Turner (“Turner”) and AWD. In particular, Lewiston is requesting that Commission take suitable actions, as outlined below, to “maintain safe and healthy environmental conditions within the Lake Auburn Watershed,” which is one of its underlying purposes when it was created. (Section 1(a) of the Basic Agreement.)

By way of background, I note that the 1873 Private and Special Law of the State of Maine Legislature recognized that Lake Auburn was a valuable source of drinking water for residents of Lewiston and Auburn. The law and three subsequent Private and Special Laws also gave special rights to both Cities to take water from the Lake and to take land to facilitate safely getting the water to residents, including the power of eminent domain.

The impetus for the Basic Agreement was the federal Safe Drinking Water Act of 1974, requiring water filtration, unless the Environmental Protection Agency provided a waiver, through power delegated to the State Department of Health and Human Services. Based on a 1990 Camp Dresser & McKee Study, jointly commissioned by Lewiston and AWD, and as a condition of obtaining a waiver of the filtration requirements provided by the Department of the Health and Human Services, the parties agreed to jointly seek a waiver of the filtration requirement and do the following:

- Construct a disinfection facility
- Provide for water quality monitoring and watershed control activities, including that each City’s utility would take common measures to protect the quality of the water of Lake Auburn
- Implement a Modified Restricted Area around the intake of water from the Lake

As part of its agreement to obtain the filtration waiver, in 1991 AWD adopted By-Laws for the protection of Lake Auburn.

As a prelude to, and a condition of, signing the Basic Agreement, AWD and Lewiston entered into a May 19, 1993 purchase and sale agreement, which provided for the purchase of property in the Watershed area as follows:

- Sale by AWD to Lewiston of ½ interest in 710 acres of the Watershed for \$750,000 and both AWD and Lewiston transferring their interests in the land to the Watershed Commission once created by the Basic Agreement;
- Transfer by Lewiston to the Watershed Commission of 0.12 acres in the Watershed and both AWD and Lewiston transferring their interests in the land to the Watershed Commission once created by the Basic Agreement;
- Payment by Lewiston of \$31,800 to the Watershed Commission; and
- Transfer by AWD of a water main bring water from the Lake to the intersection of Center St. and Lake Auburn Avenue.

Once the Maine Department of Human Service provided the waiver of the filtration requirement, and upon the payment by Lewiston of the amounts described above, and in recognition of the bylaws that AWD had adopted, the parties executed the Basic Agreement. The underlying purpose of the Basic Agreement was to obtain the waiver and permit “the citizens and water consumers in Auburn and Lewiston” to avoid the “cost of meeting filtration requirements (presently estimated at more than \$20,000,000 initially and \$1,500,000 to \$2,000,000 on an annual basis.)” Of course, the costs of building a filtration plant have significantly increased in the last 30 years.

The parties recognized in the Basic Agreement that “land uses and activities within any part of the Watershed could have an effect on the Watershed and on the purity of the water within Lake Auburn, with a corresponding effect on the drinking water supply of the Cities of Auburn and Lewiston.” The Basic Agreement noted that the Lake Auburn Watershed covers approximately 15.31 square miles. The Basic Agreement created the Lake Auburn Watershed Protection Commission, which was empowered to “take, prosecute and resolve legal actions to enforce the provisions of laws and regulations relating to watershed and drinking water protection.” In addition, as discussed above, the Basic Agreement required the AWD to take certain actions to protect the Watershed.

The areas rezoned by the Auburn City Council are within the Watershed, as defined in the Basic Agreement and the AWD bylaws adopted in 1991. Indeed, they are located in the Level 1 Intake Restricted Area, as defined in the AWD Bylaws. As stated in the Bylaws, AWD was granted a legislative Charter by Chapter 60 of the Private and Special Laws of 1923, as amended, which included the “power to adopt by-laws . . . to prevent pollution in the water of Lake Auburn and to preserve the purity of said water, and may prescribe penalties for the violation thereof, which said by-laws shall have the same force and effect as municipal ordinances. . .” (emphasis added) The Auburn City Council cannot alter the rights and obligations of the AWD, the Lake Auburn Watershed Protection Commission and Lewiston to protect the Watershed, as defined under the Basic Agreement.

Currently, the AWD By-laws restrict water-related activities in the Level 1 Intake Restricted Area. The City of Auburn provides complementary land use restrictions through Lake Auburn Watershed Overlay District. See City of Auburn Code of Ordinances sections 60-950 - Sec. 60-954. Until recently, the Lake Auburn Watershed Overlay District encompassed the entire Level 1 Intake Restricted Area but, at its March 22, 2022 meeting, the Auburn Council adjusted the Watershed Overlay Zoning Boundary to exclude 148 acres that are located in the Level 1 Intake Restricted Area. As the By-laws state, the Level 1

Intake Restricted Area is “the most critical area for protection since microbiological, chemical particulate, and other contaminants are most likely to reach the intake from this location.” A portion of the Level 1 Intake Restricted Area now does not have land use restrictions to ensure that particulate and other contaminants do not reach the Lake water, which would imperil the drinking water supply for AWD customers and Lewiston residents. This loophole runs contrary to AWD’s charter and By-laws.

At this point, we request that the Commission study to determine the effects of development in the Watershed, including the property recently rezoned by the City of Auburn, and to recommend to the AWD that it prohibit all development, including additional housing and other associated developments, in the Watershed until the completion of the study and the State Department of Health and Human Services has determined, after a review of the study, that development will not have an adverse effect on the conditions for maintaining a waiver from the filtration requirements. The study should review the effects of both surface water run-off and seepage of water through the ground to ensure that neither could possibly contaminate lake water. In addition, we ask that the Commission recommend to the AWD to adopt suitable and appropriate restrictions on development in the Watershed should some development be deemed acceptable by the study and the State Department of Health and Human Services, after consultation with AWD and the City of Lewiston, so that the waiver from the filtration requirements is not jeopardized.

Please advise me by April 15, 2022 of the actions the Commission will take in response to this request.

Sincerely yours,

Heather Hunter
City Administrator