

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES

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WETLANDS COUNCIL

2003 TERM

03- 11 WtC

In re: Application of USA Springs for a Large Groundwater Withdrawal Permit Pursuant to
RSA 485-C

**TOWN OF NOTTINGHAM'S APPEARANCE AND STATEMENT OF POSITION IN
THE APPEAL OF THE TOWN OF BARRINGTON**

1. The Town of Nottingham Board of Selectmen, 139 Stage Road, P.O. Box 114, Nottingham, NH, 03290 have the status as a party in the Town of Barrington's Petition to Appeal dated August 20, 2003 under the provisions of Env. Wtc 205.10 (d). Attorneys for the Town of Nottingham Selectmen are E. Tupper Kinder, Nelson Kinder Mosseau & Saturley, P.C., 99 Middle Street, Manchester, NH 03101.
2. The Town of Nottingham Selectmen are responsible for the protection and enforcement of the rights of the Town of Nottingham. The Town of Nottingham's rights are directly affected by the outcome of this appeal because the USA Springs, Inc. application for a large groundwater withdrawal permit will affect the prime wetland immediately adjacent to the Town of Nottingham in the Town of Barrington and other wetlands in the town of Barrington and Nottingham. The decision of DES dated June 12, 2003 declaring that RSA 482-A does not regulate the potential dewatering and consequent destruction of environmentally valuable wetlands through

large groundwater withdrawals, such as the USA Springs, Inc. proposal, directly affects the Town of Nottingham's interest in protecting wetlands in the Town of Nottingham and wetlands which may be affected by activity in the Town of Nottingham. The selectman believe that the DES June 12, 2003 decision unlawfully exposes prime wetlands and other environmentally valuable wetlands to destruction through large groundwater withdrawals without the protections intended by the New Hampshire legislature in RSA 482-A generally, and in RSA 482-A:11(IV) particularly.

3. The Selectmen of the Town of Nottingham have fully participated in the underlying action from which the Town of Barrington has appealed. As is noted in the Town of Barrington's appendix to its appeal, the Town of Nottingham joined in the Town of Barrington's motion for reconsideration by motion dated July 10, 2003 which is attached hereto as attachment A. Further, the Selectmen for the Town of Nottingham have fully participated in the large groundwater withdrawal application of USA Springs, Inc. which has given rise to the DES decision which is the subject of this appeal. Attached hereto as representative of the Board of Selectmen's participation is a letter dated July 15, 2003 with attached comments of the town's consultant Professor Thomas Ballestero. Included in these comments is the statement that there has been no adequate public hearing held to evaluate the impact of the project on Barrington Prime Wetlands as required by RSA 482-A:11(IV).
4. In conclusion, the DES decision holding that the prime wetlands protections do not apply to large groundwater withdrawals is unlawful and unreasonable. It represents a

dangerous and incorrect assumption that the legislative intent to protect prime wetlands by establishing the rigorous standard that the department must find on the basis of “clear and convincing evidence” that the proposed activity will not result in any significant net loss to the prime wetland is not intended to apply to large groundwater withdrawals. This position ignores the expressed intent of the legislature in enacting RSA 482-A:11(IV).

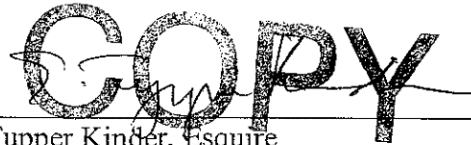
Respectfully submitted,

TOWN OF NOTTINGHAM

By its attorneys,

Nelson, Kinder, Mosseau & Saturley, P.C.

Dated: August 28, 2003



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CERTIFICATE OF SERVICE

I hereby certify that I have on this date mailed, postage prepaid a copy of the foregoing to the following:

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