

YARMOUTH WATER DISTRICT
REQUEST FOR PROPOSALS FOR PURCHASE OF WATER RESOURCES LAND
DEXTER LANE
June 1, 2018

1. Introduction

The Yarmouth Water District (“YWD”) issues this Request for Proposals (“RFP”) seeking Proposals from qualified persons and entities to purchase Water Resource Land owned by it located on Dexter Lane in the Town of North Yarmouth (the “Property”) upon the satisfactory negotiation of terms and the concurrence of the Board of Trustees of YWD, and subject to certain contingencies and conditions imposed by Maine statute and regulations on the sale of Water Resource Land.

Proposals submitted in response to this RFP will be evaluated by YWD staff, and the YWD Board of Trustees will select a proposal on or by Tuesday, July 10, 2018.

The YWD Board of Trustees will accept the Proposal from a Proposer whose Proposal: is responsive to this RFP, is most advantageous to YWD, and is in the best interests of the public. The Proposer whose Proposal is selected by the YWD Board of Trustees shall execute a Purchase and Sale Agreement in a form substantially similar to that attached hereto as Attachment A.

YWD reserves the right to reject any or all proposals submitted for any reason, to retain all proposals submitted, and to use any ideas in a proposal regardless of whether that proposal is selected.

Closing on the purchase of the Property is contingent upon the following as imposed by State law: YWD customers not filing a petition with the Maine Public Utilities Commission (“PUC”) to suspend, investigate and review YWD’s decision to accept the Proposer’s Proposal and sell the Property; the Town of North Yarmouth waiving its assignable Right of First Refusal to purchase the Property under the same price, terms and conditions that are offered by the Proposer; compliance with State law for any sale below market value; and the passage of at least eight months after YWD’s provision of notice of intent to sell to the PUC.

YWD will not reimburse responding persons or entities for any expenses incurred in preparing the Proposal.

2. Description of Yarmouth Water District

Contact Person: The Proposer’s principal contact with YWD will be Superintendent Robert MacKinnon or a designated representative who will coordinate the assistance to be provided by YWD.

Population: YWD serves approximately 3,000 accounts. YWD's chartered territory is the Towns of North Yarmouth and Yarmouth.

Fiscal Year: YWD's Fiscal Year begins January 1 and ends on December 31.

Services: Domestic water and fire protection.

Payroll: Total payroll of approximately \$467,000 for 9 full-time employees and 7 officers (stipends).

Organization: Office and administration, water supply and quality, water transmission and distribution, metering and cross-connection; five-member municipally-elected board of trustees.

3. Schedule:

Request for Proposal issued	June 1, 2018
Proposal submittal deadline	June 22, 2018 at 4:00 PM
Proposals Opened	June 25, 2018 at 9:00 AM
Select Proposal	July 10, 2018
Enter into Purchase and Sale Agreement	July 27, 2018
Closing.....	If customers do not petition and Town waives exercise or assignment of its statutory right of first refusal, or does not seek an extension of that right, and the PUC issues any applicable approval, between December 10 and December 31, 2018.

4. Proposal Requirements

Proposals should provide the following:

- Transmittal Letter briefly stating the Proposer's intended use of the Property;
- Proposer's Sealed Dollar Bid to purchase the Property

For consideration, the Proposal must be received by YWD by 4:00 PM. on Friday, June 22, 2018. Proposals should be addressed to:

Dexter Lane Proposal
Yarmouth Water District
181 Sligo Road

Yarmouth, ME 04096
Attention: Robert MacKinnon

Proposals received after 4:00 PM, June 22, 2018 will be considered late and will not be considered.

5. The Property and Sale Requirements and Contingencies and Conditions

A. The Property. The Property is located on Dexter Lane in the Town of North Yarmouth and is shown on the Town of North Yarmouth Tax Map 7 as Lot 45. YWD acquired the Property when it acquired the assets and liabilities of the North Yarmouth Water district in 1990 by P.& S.L. 1989, c. 111. The North Yarmouth Water District had acquired the Property as three lots from the Cumberland Center Water Company. The Property contains approximately 11.28 acres in area (the Town of North Yarmouth's assessment card lists it at 14 acres) and its current assessed value for 2018 is \$123,900.

The Property had been used as a water source, but has not been so used in more than 60 years. It is not needed by YWD as a primary or backup water source. Because YWD has determined that the Property is surplus property, it has notified the Maine Public Utilities Commission (PUC) of its intent to sell Water Resource Land as required by Title 35-A M.R.S. §6109 and Chapter 691 of the PUC's Rules. The PUC received that notice of intent on April 9, 2018 and docketed it as Docket No. 2018-00090. Copies of §6109, Chapter 691, and the PUC's May 2, 2018 Procedural Order in Docket No. 2018-00090 are attached to this RFP, and Proposers are directed to review those documents to acquaint themselves with the specific requirements of State law.

B. Sale Requirements, Contingencies and Conditions. Under State law and PUC Rules regarding the sale of Water Resource Land, a water district shall provide the PUC with at least eight months' notice of intent to sell such land, and notice must be published. Once a proposal is selected and a purchase and sale agreement is negotiated:

(1) The water district is to hold a meeting, with at least 14 days' mailed notice to each customer and published public notice, to describe the property, to provide customers with information regarding the proposed sale, and to answer questions about the sale. Customers may file their disapproval with the PUC and if the lesser of 15% or 1,000 customers disapprove, the PUC may suspend, investigate and review the proposed sale.

(2) The town in which the Water Resource Land is located has at least 90 days to accept or reject the negotiated offer to purchase, since that town has an assignable right of first refusal ("ROFR") to purchase such property. That town may apply to the PUC to seek an extension of that 90-day period.

(3) Any sale or transfer of Water Resource Land at a price below market value requires the District to certify, or provide evidence to the PUC, that the land will

be transferred subject in perpetuity to such easements or deed restrictions, enforceable at law, to restrict the land to the uses specified in Title 35-A M.R.S. §6109 (retaining or protecting natural scenic or open-space values, assuring property availability for recreational or open-space use, protecting natural resources, or maintaining or enhancing water quality)

After the public hearing, if no customer petition is filed, the Town waives its ROFR, the PUC approves of any easements or deed restrictions for sale below market value (if applicable), and at least eight months passes after the PUC receives notice of intent to sell Water Resource Land (unless the PUC shortens this period for good cause shown), then YWD may close on the purchase of that Water Resource Land.

Therefore, these State-mandated events and deadlines are contingencies and conditions in any acceptance by YWD of a Proposal under this RFP.

6. Sealed Dollar Bid

Proposals shall include a sealed dollar bid (“Bid”) for purchase of the Property. YWD will not be responsible for expenses incurred in preparing and submitting the sealed dollar bid.

The Bid must include the name of the person or entity submitting the Bid and a certification that the person signing the proposal is empowered to submit the Bid.

ATTACHMENT A

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made as of _____, 2018 (the “Effective Date”) by and between **YARMOUTH WATER DISTRICT**, a quasi-municipal nonprofit organization, chartered by the state of Maine with a place of business in Yarmouth, Maine (“Seller”), and **<PURCHASER’S NAME>**, a _____ with a place of business in **<_____>** (“Purchaser”).

1. PURCHASE AND SALE. Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey and Purchaser agrees to purchase and pay for all of Seller’s rights and interests in and to the following property (the “Premises”):

The land located at ____ Dexter Lane, in the Town of North Yarmouth, County of Cumberland, and State of Maine, as more particularly described in **Exhibit A** attached hereto and by this reference incorporated herein, together with all other rights, privileges, easements and appurtenances thereto, including without limitation, Seller’s right, title and interest in and to all air rights, water rights, easements, rights-of-way and other interests in, on, under or to any land, highway, alley, street or right-of-way abutting, adjoining or used in connection with said parcel.

2. PURCHASE PRICE.

(a) The purchase price for the Premises (the “Purchase Price”) is \$_____ and shall be payable as follows:

(i) \$<____>, which shall be paid to <____> (“Escrow Agent”) on or within three business days after the Effective Date, which amount (the “Deposit”) shall be held and disbursed by Escrow Agent in accordance with the provisions hereof and shall be applied as part payment of the Purchase Price at Closing (as hereinafter defined); and

(ii) The balance of the Purchase Price, subject to adjustment as provided herein, which shall be paid by Purchaser at Closing by certified, cashier’s or treasurer’s check or checks made payable to Seller or by electronic wire transfer in accordance with wiring instructions provided by Seller within a reasonable time prior to the Closing.

(b) Escrow Agent shall promptly place the Deposit in a segregated, non-interest-bearing account at an FDIC-insured financial institution.

3. ADJUSTMENTS AND COSTS.

(a) The following items shall be prorated, adjusted and paid as follows:

(i) All applicable real estate taxes, common area charges, association dues, and other charges and assessments affecting the Premises shall be apportioned between Seller and Purchaser as of the Closing Date (as hereinafter defined). Seller shall be responsible for all such items for the period prior to and including the Closing Date. If the amount of any of such items has not been determined as of the Closing Date, such amounts shall be allocated using the best available data and the same shall be subject to reallocation in accordance with the procedure set forth in subsection (b) below.

(ii) Each party shall pay its one-half share of the real estate transfer tax in accordance with Maine law.

(iii) Each party shall pay any costs and expenses incurred by such party in connection with the transactions contemplated by this Agreement not adjusted as set forth in this Section or otherwise provided for herein.

(b) No later than one year after the Closing Date, either party may present to the other party a recalculation of any and all amounts due under Section 3(a) above that were not capable of being ascertained as of the Closing Date, taking into consideration such matters as receipt of current year tax bills and the like. The parties shall make the appropriate adjusting payment between them within 30 days after delivery of any such recalculation.

4. TITLE AND SURVEY.

(a) Seller shall convey the Premises to Purchaser by good and sufficient quitclaim deed with covenant (the “Deed”), in accordance with the Maine Statutory Short Form. Title to the Premises shall be subject to zoning and land use restrictions, any state of facts that would be shown by a current ALTA/ACSM land title survey of the Premises, such municipal real estate taxes for the current tax year as are not due and payable as of the Closing Date and any exceptions accepted or waived (or deemed to be waived) by Purchaser pursuant to Section 4(b) (collectively, “Permitted Exceptions”). Purchaser shall be responsible for the cost of any title insurance premium imposed in connection with any title insurance policy issued to Purchaser.

(b) Purchaser shall notify Seller in writing within 30 days of the Effective Date (the “Title Review Period”) of any matter affecting title to the Premises and existing of record revealed by Purchaser’s examination or review of the same and of any matter that would be shown by a current ALTA/ACSM land title survey of the Premises, that Purchaser finds objectionable (individually and collectively referred to herein as an “Exception” or the “Exceptions”). With respect to any Exception that is created after the Effective Date, Purchaser shall notify Seller within 10 days of becoming aware of such Exception, but in any event prior to the Closing Date. If Purchaser gives Seller timely written notice of any Exception (such written notice to be referred to herein as a “Notice of Objection”), then Seller shall elect by giving Purchaser written notice (the “Response

Notice") within five business days of the date it receives the Notice of Objection, but in any event prior to the Closing Date, either to (i) attempt to cure such Exception, in which event Seller shall have 30 days from the date of the Response Notice (the "Cure Period") to attempt to cure any such Exception; or (ii) decline to attempt to cure such Exception. If Seller elects not to attempt to cure such Exception, or if, having elected to attempt to cure such Exception, Seller is unable to do so within the Cure Period after the exercise of commercially reasonable efforts (which in no event shall be deemed to obligate Seller to pay any sum of money), then Purchaser shall elect by giving Seller written notice (the "Decision Notice") within five business days of the Response Notice or within five business days of the expiration of the Cure Period, as the case may be, either to (i) accept the Premises subject to the uncured Exception, in which event the uncured Exception shall be deemed a Permitted Exception; or (ii) terminate this Agreement and have the Deposit returned to it, in which event all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except as provided below and except with respect to obligations that are expressly stated herein to survive the termination of this Agreement. If Purchaser does not give a Notice of Objection within the Title Review Period with respect to any matter that exists of record in the applicable registry of deeds as of the Effective Date or that could reasonably be ascertained from any current ALTA/ACSM land title survey of the Premises, then Purchaser shall be deemed to have waived its right to object to any and all such matters that exist as of the Effective Date and such matters shall be deemed Permitted Exceptions. In all events, except if Purchaser elects to terminate this Agreement as set forth herein, Seller shall be required to pay or otherwise remove at or prior to Closing (i) any liens affecting the Premises which secure Seller's obligation to pay a monetary amount if such liens were voluntarily created by Seller's affirmative grant; and (ii) any tax liens or amounts due for prior year taxes, sewer liens covering any period of time prior to Closing and subsequent to Seller's acquisition of the Premises, liens for special assessments or other municipal liens for any work done during any period of time prior to Closing and subsequent to Seller's acquisition of the Premises and any mechanics' liens. Notwithstanding the foregoing, if any Exception arises after the date of this Agreement as a result of any act or omission of Seller in violation of this Agreement, Purchaser may exercise all remedies available to it, in law or in equity, against Seller for breach of this Agreement.

c. If the Purchase Price is below market value, the District must certify, or provide evidence to the Maine Public Utilities Commission, that the land will be transferred subject in perpetuity to such easements or deed restrictions, enforceable at law, to restrict the land to the uses specified in Title 35-A M.R.S. §6109, which easements or deed restrictions shall be placed in the Deed.

5. ITEMS TO BE DELIVERED TO PURCHASER FROM SELLER.

No later than the second business day after the Effective Date, Seller shall deliver to Purchaser, at Seller's expense, the following items, if any, in Seller's possession relating to the Premises: copies of all title policies, surveys, all environmental reports, assessments or other information pertaining to the environmental condition of the Premises, or any drawings or similar records pertaining to the Premises.

6. SUBJECT TO CONTINGENCIES, RIGHT OF FIRST REFUSAL.

A. This Agreement is subject to the right of ratepayers of the Seller to file a complaint with the Maine Public Utilities Commission demanding a review of Seller's decision to enter into this Agreement, pursuant to 35-A M.R.S. §6109(5) and Chapter 691 of the regulations of the Maine Public Utilities Commission. Seller's obligations hereunder are expressly contingent upon ratepayers not filing petitions with the Maine Public Utilities Commission in sufficient numbers to require that body to review the Seller's decision to sell the Property to the Purchaser.

B. This Agreement also is subject to the right of first refusal (the "ROFR") held by the Town of North Yarmouth (the "Town") or its assignee pursuant to 35-A M.R.S. § 6109(5) and Chapter 691 of the Regulations of the Maine Public Utilities Commission. Seller's obligations hereunder are expressly contingent upon the Town or its assignee declining to exercise the ROFR. If the Town or its assignee elects to exercise the ROFR, the Escrow Agent shall return the Deposit to the Purchaser, the obligations of Purchase and Seller hereunder shall terminate, and this Agreement shall have no further force or effect.

7. FEASIBILITY PERIOD.

(a) The Premises are being conveyed in an "as is" condition. Commencing on the Effective Date and ending on the date that is 45 business days thereafter (the "Feasibility Period"), Purchaser shall have the right to satisfy itself that matters such as title, soils, zoning, environmental matters, market feasibility, financing, and other criteria determined by Purchaser are acceptable to Purchaser, in its sole discretion. During the Feasibility Period, Purchaser and its agents shall have the right, at Purchaser's sole cost and expense, and at Purchaser's sole risk, to perform such inspections and tests of the Premises and to perform such other analysis, inquiries, and investigations as Purchaser shall deem necessary or appropriate. All such entries shall be at reasonable times and after at least 24 hours' prior notice to Seller or Seller's agent. Purchaser shall indemnify and hold Seller harmless from any liens arising out of Purchaser's entry and inspection.

(b) Purchaser shall have the right to unilaterally terminate this Agreement at anytime prior to the end of the Feasibility Period. Upon such termination, the Deposit shall be returned to Purchaser and thereupon neither party shall have any further rights or obligations to the other hereunder, other than such rights and obligations that are expressly stated herein to survive the termination of this Agreement.

8. REPRESENTATION AND WARRANTIES.

(a) Seller represents and warrants to Purchaser that the following are true and correct as of the date of this Agreement and will be true and correct as of the Closing:

(i) Seller is a quasi-municipal, nonprofit organization chartered by the State of Maine;

(ii) Seller has the right, power and authority to enter into this Agreement or to perform its obligations hereunder, without the joinder of any other party.

(b) Purchaser represents and warrants to Seller that the following are true as of the Effective Date and will be true as of the Closing:

(i) Purchaser is a <____>, duly organized and validly existing under the laws of the <____> of <____>;

(ii) Purchaser has the right, power and authority to enter into this Agreement or to perform its obligations hereunder; and

(iii) The execution and delivery of this Agreement, the consummation of the transaction herein contemplated, and the compliance with the terms of this Agreement will not violate any provisions of the Articles of Incorporation, Operating Agreement, Bylaws or similar instrument of Purchaser nor conflict with, or with or without notice or the passage of time, or both, result in a breach of, any of the terms or provisions of or constitute a default under any indenture, mortgage, loan agreement or instrument to which Purchaser is a party or by which Purchaser is bound, or any applicable governmental regulation or any judgment, order or decree of any court having jurisdiction over Purchaser.

(c) All representations and warranties set forth in this Section shall survive the Closing. If either party discovers that any representation or warranty to the other party is untrue or incorrect in any material respect, it shall promptly notify the other party and the party having made the untrue or incorrect representation or warranty shall indemnify and hold harmless the discovering party for all claims, losses, liabilities, including reasonable attorneys' fees, incurred by the discovering party as a result of such untrue or incorrect representation or warranty.

9. COVENANTS AND AGREEMENTS OF SELLER. Seller covenants and agrees with Purchaser that between the Effective Date and the Closing:

(a) Other than its obligations under the ROFR, Seller shall not dispose of any interest in the Premises; shall not mortgage, pledge or subject to lien and other encumbrances any interest in the Premises; shall not enter into any other agreement relating to the Premises that would affect the sale or survive the Closing;

(b) Other than its obligations under the ROFR, Seller shall not take any action or fail to take any action that would cause any Exception, would cause the Premises not to conform with the provisions of this Agreement, would cause any statements set forth

in Section 8(a) to be untrue or incorrect, or would otherwise cause Seller to be unable to perform its obligations under this Agreement.

10. CLOSING.

(a) If the ratepayers do not contest the Agreement, the ROFR is not exercised, and any Maine Public Utilities Commission approval of a below market value purchase that may be necessary is issued, then the consummation of the transactions contemplated hereby (the “Closing”) shall take place at the offices of Perkins Thompson, One Canal Plaza, Portland, Maine, on the first business day that is not less than 15 days after the Seller receives written notice that the Town or its assignee has declined to exercise the ROFR, but in any event not less than 15 days after the end of the Feasibility Period, or at such later date as determined pursuant to Section 4 herein (the “Closing Date”).

(b) The following shall occur at the Closing, each being a condition precedent to the others and all being considered as occurring simultaneously:

(i) Seller shall execute, have acknowledged and delivered to Purchaser the Deed, said Deed being subject only to the matters described in Section 4 and to any Exceptions accepted by Purchaser;

(ii) Purchaser shall deliver to Seller the balance of the Purchase Price by certified, cashier’s or treasurer’s check made payable to Seller or by electronic wire transfer as required by Section 2(a); and

(iii) Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.

11. SELLER’S REMEDIES. If Purchaser defaults in performing its obligations hereunder prior to or at the Closing, and Seller has performed or tendered performance of its obligations hereunder, Seller’s sole remedy shall be to terminate this Agreement and retain the Deposit as liquidated damages. The parties acknowledge that Seller’s damages because of Purchaser’s default hereunder are difficult to ascertain and that the amount of the Deposit represents a reasonable estimate of Seller’s damages.

12. NOTICES. All notices and other communications required or permitted under this Agreement must be in writing and shall be deemed duly served if sent by personal delivery and receipted for, sent by FedEx or other nationally recognized overnight courier service, or mailed by registered or certified mail, return receipt requested, addressed, if to Seller, at the address of Seller set forth below with a copy sent to the address below or such other address as Seller shall have last designated by notice in writing to Purchaser and, if to Purchaser, at the address of Purchaser set forth below with a copy sent to the address below or such other address as Purchaser shall have last designated by notice in writing to Seller. Any such notice shall be deemed effective upon receipt.

If to Seller: Robert MacKinnon, Superintendent
Yarmouth Water District
181 Sligo Road
Yarmouth, ME 04096

with a copy to: James N. Katsiaficas, Esq.
Perkins Thompson
One Canal Plaza
P.O. Box 426
Portland, ME 04112

If to Purchaser:

[REDACTED]

with a copy to:

[REDACTED]

13. MISCELLANEOUS.

(a) It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement. Any reference herein to time periods of less than seven days shall be computed to exclude Saturdays, Sundays, and legal holidays, and any time period provided for herein which ends on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next business day.

(b) This Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, personal representatives, successors and assigns.

(c) It is understood and agreed that all understandings, agreements, warranties or representations, either oral or in writing, heretofore between the parties hereto are merged into this Agreement, which alone fully and completely expresses the parties' agreement with respect to the transactions covered hereby. This Agreement may not be modified in any manner except by an instrument in writing signed by Seller and Purchaser.

(d) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maine without regard to or application of its conflicts of law principles.

SELLER:
YARMOUTH WATER DISTRICT

By: _____
Print Name: _____
Its: _____

PURCHASER:
<PURCHASER'S NAME>

By: _____
Print Name: _____
Its: _____

ESCROW AGENT JOINDER

The undersigned Escrow Agent hereby acknowledges receipt of the \$<_____> Deposit and a copy of this Agreement and agrees to act as Escrow Agent hereunder and to hold account for and deliver such Deposit in accordance with the terms of this Agreement. Escrow Agent joins in this Agreement for the limited purpose set forth above and is not a party to this Agreement and need not be joined in any Amendment hereto.

ESCROW AGENT:

<ESCROW AGENT'S NAME>

Date: _____

By: _____

Print Name: _____

Its: _____

EXHIBIT A

Legal Description of Land

A certain lot or parcel of land with any improvements and fixtures thereon, situated in the Town of North Yarmouth, County of Cumberland and State of Maine, and being the same premises conveyed to North Yarmouth Water District by deed from Cumberland Center Water Company dated September 5, 1957 and recorded at the Cumberland County Registry of Deeds in Book 2372, Page 367.

Together with all of the grantor's right, title and interest in and to the rights reserved in a certain deed from the said Cumberland Center Water Company to George E. Baston dated December 15, 1926 and recorded at said Registry of Deeds in Book 1261, Page 386.

Meaning and intending to describe the property conveyed by deed of North Yarmouth Water District to Yarmouth Water District, dated December 31, 1990 and recorded at said Registry of Deeds in Book 9433, Page 56.

Maine Revised Statutes
Title 35-A: PUBLIC UTILITIES
Part 6: WATER
Chapter 61: GENERAL PROVISIONS AND
RATES

§6109. Sale of land by consumer-owned water utility

The following provisions govern the sale or transfer by a consumer-owned water utility of land or property owned by that water utility for the purposes of providing a source of supply, storing water or protecting sources of supply or water storage, including reservoirs, lakes, ponds, rivers and streams, land surrounding or adjoining reservoirs, lakes, ponds, rivers or streams, wetlands and watershed areas. [1989, c. 685, (NEW); 1989, c. 733, §1 (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

1. Notice of proposed sale. A consumer-owned water utility shall, at least 8 months prior to the sale of land under this section, give notice of that proposed sale to the commission. The utility shall provide additional notice as prescribed by rule by the commission as follows.

A. Notice must be given to the municipality or municipalities where the land is located. [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

B. One notice must be given to each of the customers of the consumer-owned water utility in a manner prescribed by the commission. [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

C. Notice must be published in a newspaper of general circulation in the area encompassed by the consumer-owned water utility. [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

[1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR) .]

2. Time of sale. Land subject to the provisions of this section may not be sold within the first 8 months after notice of the proposed sale has been given to the commission unless all or part of that time period is waived by the commission for good cause shown.

[1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR) .]

3. Sale at a price below market value. The trustees of a consumer-owned water utility may sell land to the State, an agency of the State, a municipality or other governmental body, or a private nonprofit organization at a price below market value. Land purchased under this subsection must be used for:

- A. The purposes of retaining or protecting the natural scenic or open-space values of the property; [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]
- B. Assuring the availability of the property for recreational or open-space use; [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]
- C. Protecting natural resources; or [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]
- D. Maintaining or enhancing air or water quality. [1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR).]

The sale of consumer-owned water utility land pursuant to this subsection may not be considered unreasonable or imprudent solely by reason of its sale at a price below market value.

[1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR) .]

4. Rules. The commission may promulgate rules to implement this section, including, but not limited to, rules governing the authority of the ratepayers of the consumer-owned water utility to endorse or prohibit the sale of land by a consumer-owned water utility under this section and to prohibit or endorse any condition of that sale.

[1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR) .]

5. Right of first refusal. The municipality in which the land is located shall have the right of first refusal to purchase any land that lies within that municipality's boundaries and is offered for sale under this section. That right is assignable by the municipality.

[1989, c. 685, (NEW); 1989, c. 878, Pt. F, §4 (RPR) .]

SECTION HISTORY

1989, c. 685, (NEW). 1989, c. 733, §1 (NEW). 1989, c. 878, SF4 (RPR).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.

Office of the Revisor of Statutes

(mailto:webmaster_ros@legislature.maine.gov) • 7 State House
Station • State House Room 108 • Augusta, Maine 04333-0007

Page composed on 11/03/2017

01:35:08.

Chapter 691: SALE OF WATER RESOURCE LAND

SUMMARY: This rule implements 35-A M.R.S.A. § 6109 (1990 Public Laws, Chapter 685). The rule requires an eight month advance notice period whenever a consumer-owned water utility intends to transfer water resource land, and provides an assignable right of first refusal to the municipality or municipalities where the land is located. The rule also provides a mechanism for customers to obtain information about the sale and to obtain Commission review of the sale.

1. Definition

- A. Consumer-Owned Water Utility. "Consumer-owned water utility" means any water utility, as defined in 35-A M.R.S.A. § 6101 (1-A), which is wholly owned by its consumers, including, but not limited to, any municipal or quasi-municipal water district or corporation, municipal water department or the water portion of any utility wholly owned by a municipality or district.
- B. Sale. "Sale" means a conveyance or transfer of title to water resource land from the utility to another person or entity. For the purposes of this rule, "sale" shall also mean an assignment of a property right, a land lease of more than twenty years, a grant of an easement or any other encumbrance of the land, whereby the utility gives up for consideration rights to the use of a substantial part of the land surface. "Sale" does not include a transfer in accordance with or pursuant to statutory or contractual rights which predate the effective date of this rule. "Sale" does not include sales of land or easement to public utilities for public utility purposes. "Sale" does not include transfers to municipalities or state agencies that could be subject to condemnation under eminent domain proceedings.
- C. Transfer. "Transfer" means "sale" as defined above in 1(B).
- D. Utility. "Utility" means a consumer-owned water utility.
- E. Water resource land. "Water resource land" means any land or real property owned by a water utility for the purposes of providing a source of supply, storing water or protecting sources of supply or water storage, including reservoirs, lakes, ponds, rivers or streams, wetlands and watershed areas, and contains greater than five contiguous acres. "Water resource land" does not include any land on which a utility has built a facility that is used exclusively for storing water as part of that utility's transmission and distribution system.

2. Notice of intent to sell

Whenever a consumer-owned water utility intends to sell or transfer water resource land, the utility shall provide the following notices:

- A. Notice to the Commission. At least eight months prior to the sale of water resource land, the utility shall notify the Commission of the utility's intent to sell the land. The notice to the Commission shall contain the following:
 - (i) Legal and physical descriptions and a plot plan of the property to be sold.
 - (ii) A statement explaining the reasons why the utility intends to sell the land.
 - (iii) A statement explaining why the utility no longer needs the land to provide utility service.

The Commission may, in its discretion, request that additional data be provided, in order to fully evaluate the sale under this rule.

- B. Notice to municipalities and utilities with charter rights. At the time of notification to the Commission as described in paragraph 2(A) above, the utility shall also notify the municipality or municipalities where the water resource land in question is located and any other utility that has charter rights to any surface water supply directly associated with the water resource land being sold. This notice shall provide the same information as described in paragraph 2(A) above, and shall cite this rule and 35-A M.R.S.A. § 6109. The notice shall also advise the municipality or municipalities that it has an assignable right of first refusal under 35-A M.R.S.A. § 6109(5).
- C. Newspaper notice. Within 30 days of notifying the Commission under paragraph 2(A) above, the utility shall provide newspaper notice of the intended sale in a newspaper of general circulation in the area served by the utility, and a newspaper of general circulation in the area in which the water resource land is located. The notice shall include all of the information specified in paragraph 2(A) above, except for the plot plan, as well as citations to 35-A M.R.S.A. § 6109 and this rule.

Copies of all notices under this paragraph shall be filed with the Commission.

3. Sale at price below market value

- A. Not considered unreasonable. A sale or transfer of water resource land shall not be considered unreasonable or imprudent solely by reason of its sale at a price below market value provided that the utility has fully complied with all provisions of this rule and 35-A M.R.S.A. § 6109.
- B. Use restrictions. Before the sale or transfer of water resource land under this rule at a price below market value, the utility must certify, or provide evidence to the Commission that the land will be transferred subject in perpetuity to such easements or deed restrictions, enforceable at law, as are necessary to restrict the land to the uses specified in 35-A M.R.S.A. § 6109 (3).

4. Providing customers with information regarding the sale and mechanism for obtaining PUC review.

- A. Meeting. Upon the successful completion of negotiations of a sale, the utility shall hold a meeting, the purpose of which is to inform the customers of the price, terms, and conditions of the proposed sale. The meeting shall occur at least 60 days prior to the proposed date of sale or transfer while allowing for ample notice to customers as provided in 4(B) below.
- B. Notice of the meeting. Notice of the meeting shall be made by both of the following methods:
 - (i) By mail. The notice shall be made individually to each customer by regular mail at least 14 days before the meeting.
 - (ii) By publication. The utility shall provide newspaper notice of the meeting in a newspaper of general circulation in the area served by the utility.
 - (iii) The utility shall provide written notice to any other water utility that has charter rights to the surface water supply directly associated with the water resource land being sold.
- C. Content of the notice. Both notices of the meeting shall include the time, date, and purpose of the meeting as well as:
 - (i) A general description of the water resource land that is proposed to be sold.
 - (ii) An explanation of the purpose of the meeting, which is to provide the customers with the opportunity to obtain information regarding the proposed sale.

- (iii) Citation to 35-A M.R.S.A. § 6109 and this rule, and a brief description of the statute.
- D. Method. At the meeting, the utility shall present an explanation of the sale including a description of the water resource land proposed to be sold, why the utility no longer needs the land to provide utility service, the identity of the buyer and the proposed new use of the land, if known, and a description of the price, terms, and conditions that have been negotiated.

The utility shall permit anyone at the meeting to ask questions about the proposed sale and to express their approval or disapproval of the proposed sale. The utility shall also inform those present of their right to file a complaint with the Commission pursuant to section 4(E) of this rule.
- E. Customers may file complaint. If, within 30 days of the meeting, 15% of the customers of the utility or 1,000 customers, whichever is less, file with the utility and with the Commission petitions demanding a review of the utility's decision to proceed with the sale, the Commission shall have the authority to suspend, investigate, and review the decision of the utility with respect to the proposed sale. The complaint alleged in the petition shall be processed by the Commission according to the procedure described in Chapter 110, § 1101 of the Commission's rules.

5. Right of first refusal

- A. Assignable right of first refusal. The municipality in which the water resource land is located shall have an assignable right of first refusal to purchase the water resource land as provided by 35-A M.R.S.A. § 6109(5).
- B. No binding contract for the sale of the water resource land under this chapter shall be concluded with any buyer unless the water resource land has been offered to the municipality or municipalities in which the water resource land is located under the same price, terms, and conditions that have been offered to the other buyer.
- C. Once an offer to the municipality or municipalities has been made under section 5(B) above, the municipality shall have at least 90 days to either accept or reject the offer upon the same terms and conditions of an offer to or from another buyer. The municipality or municipalities may apply to the Commission for an extension of the ninety day period. The Commission, may, in its discretion, approve such an extension for a reasonable period of time.

6. Waiver

Where good cause exists, the Commission, its Administrative Director, or its Assistant Administrative Director may waive any requirement of this rule, provided such waiver does not unduly undermine the purposes of this Rule and is permitted by statute.

7. Violations of this rule

Any claims arising out of a violation of this rule or of the law will follow the proceeds of the sale and will not encumber the land itself.

STATUTORY AUTHORITY: 35-A M.R.S.A. §§ 101-104, 111, 112, 1301, 6109 and 6301

EFFECTIVE DATE:

This rule was approved as to form and legality by the Attorney General on March 11, 1991. It was filed with the Secretary of State on March 11, 1991 and will be effective on March 16, 1991.

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 4, 1996

NON-SUBSTANTIVE CHANGES:

March 26, 1999 - converted to MS Word.
November 9, 1999 - citation corrected in § 5(A).

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2018-00090

May 2, 2018

YARMOUTH WATER DISTRICT -
Notice of Intent to Sell Water Resource
Land Pursuant to 35-A M.R.S. § 6109
and Chapter 691 of the Commission's
Rules

PROCEDURAL ORDER

On April 9, 2018,¹ the Yarmouth Water District (District) filed notice of its intent to sell water resource land pursuant to 35-A M.R.S. § 6109 and Chapter 691 of the Commission's Rules (April 9th Filing). In its April 9th Filing, the District summarizes its compliance with the notice requirements in Chapter 691, Section 2. Attached to the District's April 9th Filing are documents that support the District's compliance with Section 2.

The purposes of this Procedural Order are to (1) summarize Staff's understanding of the remaining requirements in section 6109 and Chapter 691 that apply to the District's proposed sale of water resource land and (2) invite the District to comment on Staff's summary of the remaining next steps. Staff's understanding of the District's remaining next steps is as follows.

1. 35-A M.R.S. §§ 6109(1) and (2) and Section 2(A) of Chapter 691 provide that the District must notify the Commission of its intent to sell water resource land at least 8 months prior to the sale. Based on an April 9th filing date, the 8-month notice period would end on or about December 10, 2018.
2. 35-A M.R.S. § 6109(2) and Section 6 of Chapter 691 authorize the Commission waive all or part of this 8-month notice period for good cause shown.
3. 35-A M.R.S. § 6109(5) and Section 5 of Chapter 691 govern the local municipality's right of first refusal regarding the sale of water resource land. Section 5(B) provides:

¹ The District's filing is dated March 29, 2018, but was not received by the Commission until April 9, 2018. The District did not use the Commission's Case Management System (CMS) to make its initial filing in this case. All future filings by the District in this docket, and in for any future proceedings, should be made using CMS. If the District has questions about how to use CMS, it should contact Staff and Staff will assist as needed.

No binding contract for the sale of the water resource land under this chapter shall be concluded with any buyer unless the water resource land has been offered to the municipality or municipalities in which the water resource land is located under the same price, terms, and conditions that have been offered to the other buyer.

Section 5(C) provides:

Once an offer to the municipality or municipalities has been made under section 5(B) above, the municipality shall have at least 90 days to either accept or reject the offer upon the same terms and conditions of an offer to or from another buyer. The municipality or municipalities may apply to the Commission for an extension of the ninety-day period. The Commission, may, in its discretion, approve such an extension for a reasonable period of time.

Staff interprets Sections 5(B) and 5(C) to mean that, in addition to the notice of intent to sell that the District has already provided to the Town of North Yarmouth, the District must provide notice of the "price, terms, and conditions that have been offered to the other buyer" and the Town will have 90 days from the date of that notice to waive or exercise its assignable right of first refusal regarding the water resource land. Staff notes that the District's letter to the Town of North Yarmouth dated March 29, 2018 did indicate that it would provide notice of the details of any proposed sale but did not identify what the specific response period would be.

4. 35-A M.R.S. § 6109(1) Section 4 of Chapter 691 requires the District to provide notice to its customers of (1) the proposed sale of water resource land and (2) the mechanism by which customers may obtain Commission review of the proposed sale. Section 4(A) requires the District to hold a public meeting regarding the proposed sale. Section 4(B) outlines the requirements relating to the notice of the public meeting. Section 4(C) describes the contents of the notice of the public meeting. Section 4(D) outlines actions the District must take during the public meeting. Section 4(E) defines the customer complaint process relating to the proposed sale of water resource land.

Staff's interpretation of the process contemplated in Section 4 of Chapter 691 is that the public meeting and related requirements must happen after the District has negotiated the specific price, terms and conditions of the proposed sale of water resource land with a prospective buyer. Staff therefore believes that holding the public meeting about the District's intent to sell, without the specific terms of the proposed sale would be premature and not in compliance with section 6109 and Chapter 691.

This docket will remain open while the District complies with the above-listed requirements. The District has the option of making sequential filings in this docket as it complies with these steps. Alternatively, the District may wait until the process is complete before filing a comprehensive summary of its compliance with the above-listed procedural steps.

If the District has questions about, or disagrees with, the process outlined in this Procedural Order, it should make a filing in this case identifying its questions and/or disagreement. Staff hopes that raising these procedural issues now will (1) eliminate any confusion which may exist and (2) result in the smooth processing of the District's filing in this case.

Dated at Hallowell, Maine, this 2nd day of May, 2018.

BY ORDER OF THE HEARING EXAMINER

/s/ Chris Simpson

Chris Simpson
Hearing Examiner