



MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard • Baltimore MD 21230
410-537-3000 • 1-800-633-6101 • www.mde.maryland.gov

Larry Hogan
Governor

Ben Grumbles
Secretary

Boyd Rutherford
Lieutenant Governor

September 16, 2015

William R. Walsh, President
VA/MD American Water
2223 Duke Street
Alexandria, VA 22314

Dear Mr. Walsh:

Enclosed please find the fully executed Consent Agreement between the Maryland Department of the Environment and the Maryland American Water Company.

Thank you and we look forward to working together to bring this project to fruition. If you have any questions, please contact me at (410) 537-3702 or by email at saeid.kasraei@maryland.gov.

Sincerely,

Saeid Kasraei
Administrator
Water Supply Program

Encl: Consent Agreement

cc Barry O'Brien
Nancy Young
Virginia Kearney



CONSENT AGREEMENT BETWEEN
MARYLAND AMERICAN WATER COMPANY
AND
THE MARYLAND DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION

This Consent Agreement ("Agreement") is entered into, by the State of Maryland, Maryland Department of the Environment (MDE or Department), pursuant to the powers, duties, and responsibilities vested in and imposed upon the Secretary of the Environment by Title 1, Title 5 Subtitle 5 and Title 9 Subtitles 2 and 5 of the Environment Article, Annotated Code of Maryland, as delegated to the Director of the Water Management Administration (the "Administration") and Maryland American Water Company (Maryland American), a corporation of the State of Maryland.

WHEREAS, Pursuant to the Maryland Public Utilities Article, Maryland American holds a franchise under which it is responsible for supplying public drinking water for the Greater Bel Air Community in Harford County, Maryland; and

WHEREAS, MDE has the authority under the Maryland Environment Article to carry out policies of the state, including the policy to conserve, protect, and use water resources of the State in accordance with the best interests of the people of Maryland, and control, so far as feasible, appropriation or use of surface waters and groundwaters of the State; and

WHEREAS, Maryland American has a total allocation of 1,762,000 gallons per day on an annual average from three combined Water Appropriation and Use permits: HA1976S015 (Winters Run stream), HA1994G060 (Winters Run well), and HA1996G022 (Bynum Run well) with; and

WHEREAS, in 1996, Maryland American entered into a Water Service Purchase Contract with Harford County for Maryland American to purchase of up to 500,000 gallons per day (gpd) during times of drought; and

WHEREAS, Maryland American's allocation from Winters Run (HA1976S015), includes a flow-by condition that requires that Maryland American regulate its withdrawal so that it does not cause the stream flow immediately downstream of its intake to drop below 9.4 cubic feet of water per second, and no water shall be withdrawn under this permit if the flow of the stream is less than this flow-by; and

WHEREAS, Maryland American and MDE agree that Maryland American's current capacity results in a maximum daily deficit of approximately 1.1 million gallons per day (mgd) during drought conditions when the flow in the Winters Run at the plant intake is at 9.4 cubic feet per second or less. This analysis assumed certain capacities from each of Maryland

American's two production wells and the full availability of 0.5 mgd from Harford County. Recent information indicates that improvements may be needed to both wells and the Harford County interconnection in order for the assumed quantities to be realized; and

WHEREAS, Harford County Health Department in conjunction with the Maryland Department of the Environment had stopped approving building permits for structures knowing that additional demand cannot be supported during drought conditions as a result of the capacity deficit; and

WHEREAS, on October 29, 2014 Harford County and Maryland American amended the 1996 Water Service Purchase Contract to include the ability by Maryland American to purchase an additional 40,000 gpd when needed; and

WHEREAS, as a result of Maryland American's agreement to improve the capacity of its water system to meet its average and maximum demand under drought conditions, the amended purchase agreement between Maryland American and Harford County, and concurrence from MDE, the Harford County Health Department agreed to approve up to 114 additional Equivalent Dwelling Units ("EDU") for Maryland American's service area (each EDU being equivalent to approximately 250 gpd), which is the County's estimated growth for the Bel Air area for the next three years; and

WHEREAS, Maryland American and MDE agree that Maryland American needs to attain a reliable source of additional water to meet current and future capacity requirements on or before December 31, 2019; and

WHEREAS, an adequate water supply system is one that is capable of meeting its average demand and its maximum demand under drought conditions. A water system's capacity is determined by evaluating the ability of the sources and treatment facilities to produce water under drought conditions while taking into account the water sources, water storage, and water appropriation and use permits; and

WHEREAS, Maryland American and MDE wish to enter into this Consent Agreement for the purpose of establishing a time line for development of a comprehensive long term solution to Maryland American's water capacity deficit and to resolve any violations to-date under the Environment Article.

NOW THEREFORE, in consideration of the mutual benefits flowing from each to the other, the Maryland American and MDE do hereby agree as follows:

1. In accordance with the terms and conditions set forth in this Consent Agreement, Maryland American shall improve the capacity of its water system to the extent necessary to meet its average demand and maximum demand under drought conditions. Maryland American shall provide data that reasonably demonstrates that this capacity is fully available under drought conditions, as set forth in this Consent Agreement. Maryland American shall meet the milestones and objectives identified in the Compliance Schedule, attached hereto as Exhibit A, and hereby incorporated as if fully set forth herein.

2. Maryland American agrees to report to MDE on a quarterly basis, at the end of each quarter of the year, any and all progress made toward implementing the objectives within the timeframes identified in Exhibit A. If for any reason, no progress has been made, this shall also be reported. Reports should be written and sent via U.S. mail, via email, or via fax to:

Mr. Saeid Kasraei
MDE Water Supply Program
1800 Washington Boulevard, Suite 450
Baltimore, MD 21230
410-537-3157 (fax)
saeid.kasraei@maryland.gov

3. Maryland American and MDE agree to a moratorium on approval for connections, other than the 114 EDUs approved in October 2014, during the period that this Consent Agreement is in effect.
4. Maryland American agrees to pay to MDE stipulated penalties for each day it fails to meet the milestones dates identified in Exhibit A. The stipulated penalties, payable per day for each failure to meet each milestone date, are as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Milestone Date per Day of Violation</u>
1 st to 60 th day	\$ 100
61 st to 120 th day	\$ 250
121 st to 180 th day	\$ 500
After 180 days	\$ 1,000

Stipulated civil penalties shall be paid no later than thirty (30) days following the first day in which MDE sends the Maryland American a demand for payment of the stipulated penalties which have accrued to date together with an explanation for the foundation for the demand. Payments shall be made by tendering checks made payable to: "Maryland Clean Water Fund" c/o Maryland Department of the Environment, P.O. Box 2057, Baltimore, MD 21203-2057.

5. If MDE intends to disapprove any permits that were submitted by Maryland American in accordance with the Compliance Schedule and that were necessary to meet the requirement of this Agreement to provide adequate water capacity to meet average demand and maximum water demand under drought conditions, MDE shall provide written notice of its intention to disapprove such permit and Maryland American may, within fifteen (15) days of receipt of such written notice from MDE, invoke dispute resolution by sending written notice to the MDE project coordinator, stating the specific terms of the MDE permitting action in dispute, and providing copies of the relevant information. Within thirty (30) days of receipt of any such notice of dispute from Maryland American, MDE and Maryland American shall meet by telephone or in person to attempt to reach agreement on the matter in dispute. If the parties cannot reach agreement by consent during this period, MDE shall issue a

final written decision on the dispute. The final decision shall be subject to appeal pursuant to § 5 – 204 of the Environment Article.

6. MDE may in its discretion reduce or waive the penalty if it determines that noncompliance is attributed to a force majeure as described below:
Force Majeure:
 - a. Maryland American's obligation to meet any requirement set forth in this Agreement may only be excused to the extent that such a delay is beyond the reasonable control of and without the fault of Maryland American. Circumstances beyond the reasonable control of Maryland American include acts of God; war; riot; civil commotion; sabotage; illegal Federal or State failure to grant any required permit; strike or other labor action; fire; flood; epidemic; quarantine restriction; or embargo; or any other similar event not within the reasonable control of Maryland American. Increased costs or equipment disputes shall not constitute an appropriate justification to excuse noncompliance with any of the terms of this Agreement. In addition, failure to timely apply for a required permit or failure to provide in a timely manner all information required to obtain a permit that is necessary to meet the requirements of this Agreement or failure of Maryland American to approve contracts, shall not be considered force majeure events.
 - b. Maryland American shall notify the Administration in writing within 10 days after it becomes aware, or should have become aware of the event which causes or may cause delay, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Maryland American to prevent or minimize the delay, and the timetable by which those measures will be implemented. Maryland American shall adopt all reasonable measures to avoid or minimize any such delay.
 - c. Failure by Maryland American to comply with the notice requirements of paragraph b. above constitutes a waiver of Maryland American's right to request an extension of Maryland American's obligation under this Agreement based on such incident. The burden of proving that any delay was beyond the control of, and without the fault of, Maryland American is on Maryland American.
7. The Administration's approval of plans and specifications does not in any way warrant that the proposed facility will result in the water system meeting average demand and maximum demand under drought conditions.
8. In the event Maryland American seeks dispute resolution under paragraph 5, the date(s) set forth in the Compliance Schedule shall be extended for a period in accordance with the final decision resulting from dispute resolution.
9. The provisions of this Consent Agreement shall apply to and be binding upon Maryland American and their successors and assigns. Any amendment to this Consent Agreement must be mutually agreed upon in writing by both parties.

10. This Agreement shall remain in effect until MDE gives notice that Maryland American has completed the water supply project and has sufficient capacity to meet average and maximum demand during drought conditions.
11. Nothing in this Consent Agreement shall be construed to limit any authority of MDE to take any enforcement action, issue any orders, enforce any applicable permits, or take any action it deems necessary to protect the public health and comfort or the environment, or to limit any authority MDE has or may hereafter be delegated. In the case that no enforcement action is deemed appropriate, MDE shall maintain records which document the basis for each decision.
12. Maryland American's willingness to enter into this Consent Agreement shall not be viewed as an admission of any past wrong doing or liability.
13. It is the intent of the parties that the provisions of this Consent Agreement are severable and that, should any provisions be declared by a court of law to be invalid or unenforceable, the other provisions shall remain in effect to the maximum extent reasonable.
14. This Consent Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

IT IS SO AGREED AND CONSENTED TO:

9/15/15
Date

Virginia M. Kearney
Virginia Kearney, Acting Director
Water Management Administration

9/3/2015
Date

[Signature]
Maryland American Water Company

Approved as to form and legal sufficiency
this 15 day of September, 2015

Nancy W. Young
Assistant Attorney General

EXHIBIT A
MARYLAND AMERICAN
Compliance Schedule

	Milestone Dates
Submit results of Consultant's Feasibility study to MDE for Review (Milestone Achieved)	February 28, 2015
Authorization of Design Services for the Bel Air Impoundment and participate in a project kick-off meeting(s) with all applicable MDE programs	August 3, 2015
Provide a plan and schedule that will ensure completed permit applications and requests for approvals required by State, federal, and/or local government to be submitted prior to September 30, 2016	August 31, 2015
Make timely and complete application for a Water Appropriation and Use Permit, and, if required by MDE, a Surface Discharge Permit to begin the permitting process	September 30, 2015
Make a Pre-application for a Joint Federal/State Application for The Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland	December 1, 2015
Submit completed documents, plans, specifications and applications required for all permit applications	September 30, 2016
Within 18 months following the receipt of all permits or final decision, if a permit is appealed, required to begin construction of improvements to the water system capacity in accordance with paragraph 1 of this Consent Agreement, construct the water supply project in accordance with the permits, so it is substantially complete and ready for filling	