

April 14, 2023

Cotuit Fire District  
Chairperson of the  
Cotuit Board of Water Commissioners  
4300 Falmouth Rd. (Route 28)  
Cotuit, MA 02635

Dear Chairperson and Water Commissioners:

I am a year-round resident and property owner in Cotuit at 1135 Old Post Road, as well as 1174 Old Post Road.

I write to you in opposition to the Cotuit Water Department's Proposal to implement a policy to provide 20,000 gallons of "free" water per year to each of its member households. Most respectfully, the proposal is ill-conceived and misapprehends basic economic and legal considerations at hand. While the motivations behind the notion of "free" water as a "universal human right" may be altruistic, the proposed Policy exceeds the scope of the Water Commissioners' authority and is not well-grounded in law. Moreover, the so-called "free" water is not, in fact, "free" and should be expected to result in material economic shortfalls in Water Department billing revenue which will, no doubt, result in further rate hikes and/or real estate tax increases to finance this folly.

As drafted, the proposed policy is a political manifesto or academic piece, completely unmoored from the actual duties and authority of the Cotuit Board of Water Commissioners. If you strip away the surplusage in the proposed policy relating to pronouncements of international and constitutional law, and focus on items that are within the wheel-house of the Cotuit Board of Water Commissioners, it is unclear what the proposed policy is, or is intended to accomplish. Are the Commissioners proposing to raise revenue because there is a revenue shortfall or an anticipated capital need?; Are the Commissioners trying to assist residents in the District with financial need? Are the Commissioners trying to improve water quality in Cotuit (and, if so, how would this proposal advance that goal)? Are the Commissioners attempting to effectuate water conservation (and, if so, how would this policy promote that goal)? Are the Commissioners attempting to promote access to water, generally, and, if so, is there a problem with accessibility of water in Cotuit and how will this proposed policy alleviate any perceived need for greater access? On these issues, the current proposal is either unintelligible or completely silent.

Below are detailed comments on the proposed policy:

**I. The Water Commissioners are without Legal Authority to Implement the Proposed Policy**

**a. The Water Commissioners Lack Legal Authority To Make Policy Pronouncements On Matters Of "Universal Human Rights."**

In the Proposed Policy, the Cotuit Board of Water Commissioners proposes to recognize as a "Policy" that water access is a "universal human right." The scope of authority of the Cotuit

Water Commissioners is defined by the Cotuit Fire District By-Laws. The authority conveyed by the By-Laws on the Board of Water Commissioners does not include the authority to make policy pronouncements on matters of international law. The proposed policy states that:

*“As a consequence of this recognition [that water access is a so-called “universal human right”], the Water Commission declares that an annual minimum volume of water (20,000 gallons per year) shall be provided free of charge.”*

(emphasis added). The claimed justification for providing free water, i.e. that “free” water is a “universal human right” is arbitrary and capricious and exceeds the scope of the Board’s legal authority.

**b. The Proposed Free Water Policy is Not Consistent with the Water Commissioners’ Duty under the District By-Laws to “fix just and equitable prices and rates for the use of the water . . .” and Exceeds the Scope of Their Legal Authority**

The Water Commissioners’ legal authority to act must be found in its own By-Law. The By-Law at issue in this case, limits the Water Commissioners’ authority to regulating water use and rate-setting. Giving away water for “free” is not rate setting; it is the antithesis of rate setting. The water in possession of the Cotuit Fire District is a commodity or asset of the Cotuit Fire District and the Cotuit Water Commissioners lack legal authority to give that asset away for free. Accordingly, the proposed Policy exceeds the scope of the Water Commissioners’ authority.

Any Policy enacted by the Water Commissioners must be rationally related to a legitimate policy goal of the Water Commission, as well as within the scope of their legal authority. To the extent that the proposed Policy is intended to promote “access to clean” water, (Proposal Page 1, ¶8) , there is no rational nexus between the proposal to give away 20,000 gallons of free water per year / per household and that would advance the issue of “clean water” or “access to clean water”. There is not a scintilla of evidence or information provided that there is any on-going lack of clean water, or lack of access to clean water, in Cotuit. Accordingly, the free water proposal is arbitrary, capricious and lacks any rational nexus to the free water proposal’s stated purpose to promote “clean water” or “access to clean water.” To the extent that the purpose of the Proposed Policy, is water conservation, the Policy does not so state. In any event, giving away “free” water, in any amount, does not appear to be rationally linked to water conservation. As a result, the proposed Policy is arbitrary and capricious, as well as in excess of the Board’s legal authority.

**II. There Is No “Universal Human Right” To Free Water**

In promoting the proposed “free” water initiative, Water Commissioners rely on a non-binding Resolution of the United Nations General Assembly adopted on July 28, 2010 in support of its assertion that free water is a “universal human right.” The Water Commissioners fail to point out that United States of America **did not vote in favor of** the United Nations Resolution that the Water Commissioners reply upon. John Sammis, then U.S. Minister Counselor to the U.N. Economic and Social Council explained the United States’ **refusal** to support the

Resolution as follows: **“This resolution describes a right to water and sanitation in a way that is not reflective of existing international law; as there is no “right to water and sanitation” in an international legal sense as described by this resolution.”** See Attached Article (emphasis added). Furthermore, the U.N. Resolution cited by the Water Commissioners was geared toward populations in third world nations that do not have access to clean drinking water for reasons including, but not limited to: that the same water source is used for human drinking, bathing, cooking, cleaning, clothes washing, defecation, livestock use and the like and/or because there has been a deprivation of access to clean water due to acts of war. The third world conditions that were the focus of the U.N. Resolution simply do not exist in the Cotuit. The reliance on the non-binding U.N. Resolution, and associated guidelines, is simply inapposite to the issue of water-rate structure and water usage in the Village of Cotuit.

Even assuming *arguendo* that there were a “universal human right” to free water, there is no rational nexus between the Cotuit Water District giving out 20,000 of gallons of free water per household per year in Cotuit and the advancement of human rights either “universally”, or even locally in Cotuit. There is not a scintilla of evidence or information provided that there is any on-going deprivation of human rights in Cotuit as it relates to access to water. Accordingly, the “free” water proposal in Cotuit is arbitrary, capricious and lacks any rational nexus to the proposal’s stated purpose to promote universal human rights.

**III. There Are Significant Distinctions Between Legal Rights And Basic Human Needs That The “Free” Water Proposal Fails To Recognize or Appreciate the Legal Consequences of**

Paragraph 4 of the proposed “free” water policy states that there is a “right to free water.” There is no such legal right. Water is indisputably a basic human need. There is, however, a material distinction between “rights” and basic human “needs.” Rights are available equally to all under constitutions and laws. Rights can generally be thought of intangible freedoms such as the right be free from unlawful discrimination; the right to be free from taxation without representation; the right to be free from prior restraints on speech; and the right to be free from unlawful search and seizure. These intangible rights are not commodities and cannot be bought, sold or given away for free.

There is no legal right to receive commodities, assets or tangible things, even if they represent a “basic human need” like food, water, or housing. Due to state and federal programs designed to assist people with financial need, there are many laws enacted that provide benefits to financially eligible people to receive public benefits, or subsidies, for necessities such as food, water and shelter due to a demonstrated financial need. Such benefits, are not correctly characterized as legal “rights” because they are available to a limited class of qualifying individuals and they do not represent a guaranty of availability of those public resources and are subject to availability of funding.

**IV. If The Cotuit Water Commissioners Declare Free Water A “Right”, The District Cannot Arbitrarily Cap The Right At 20,000 Gallons Per Household Per Year; Rights Are Free To All.**

The “free” water proposal confuses and conflates “rights” and “needs” and seeks to provide 20,000 gallons in free water to residents per year as a matter of legal “right” without regard to any demonstration of financial need. If, indeed, water is a “right” or “universal human right” (which it clearly is not), it must be given to all residents for free in a non-discriminatory fashion. The Cotuit Fire District’s proposed policy is internally inconsistent because on the one hand, it professes a “right to free water” while simultaneously purporting to charge for the same water that it professes to be “free” as a matter of right.

Legal rights may not be arbitrarily restricted. By way of example, the constitutional right to be free from unlawful search and seizure cannot arbitrarily be limited. One could not lawfully say that this right applies only on Monday and Tuesday, but does not apply during the remainder of the week. A legal right is not capable of such restriction. The proposed “free” water policy seeks to declare a human right to 20,000 gallons per household per year, but not more. The Water Commissioners have not explained why the human right that they envision expires at the 20,000 gallon per household per year milestone. If the Cotuit Water District declares free water a “right” for all, it should be expected to be an un-abridged right and there are financial implications to such a declaration of right that are much broader than those identified by the Board of Water Commissioners in their material. If enacted, this will not be a revenue-neutral proposal as represented and the costs will ultimately be borne by Cotuit taxpayers.

#### **V. The Proposed Policy Does Not Assist People with Demonstrated Financial Need**

To the extent that the Cotuit Water Commissioners want to help Cotuit citizens with a demonstrated need for financial assistance to obtain water, the Proposal at issue does not do this. Curiously, the proposal provides 20,000 gallons of “free” water per year *even to households with great wealth*. The proposed “free” water policy is not directed to individuals with any demonstrated financial need or inability to afford water that might warrant providing water grants or subsidies. A careful reading of the proposed “free” water Policy demonstrates that there is absolutely no effort in the proposed Policy to provide water at reduced costs to Cotuit residents experiencing financial hardship; Cotuit elders on fixed income; or disabled persons in Cotuit with a limited ability, or no ability, to pay. The proposed policy is completely devoid of equitable financial considerations relevant to local residents. The Cotuit Water District has failed to explain how providing 20,000 gallons per year of free water to all residences would advance the interests of economically marginalized individuals living within the village of Cotuit and provide them access to water that they would otherwise be without. Typically, water departments seeking to assist those with financial need offer so-called “life-line” rates or subsidies through programs that allow qualified residents to obtain free or discounted water, after demonstrating an actual financial need through a proper process. Should the Village wish to do this, it would require the approval of a Board other than, or in addition to, the Board of Water Commissioners, and would require proper planning and implementation.

The proposal provides 20,000 gallons of “free” water per year per household, while the water district’s published material states that in Cotuit, “average” or “mean” household uses 70,000 gallons per year. Materials in Support of the Proposal, p. 3. Thus, economically disadvantaged households in Cotuit, who may be in need of financial assistance, would continue to have a significant un-met basic human need for adequate water for their household under this proposal as drafted. Accordingly, the proposal is arbitrary, capricious lacks adequate nexus to any goal to assist those with financial need.

## **VI. There Is No Right To Free Water Under The Federal Or State Constitution, Or Under Any Federal Or State Law**

Legal rights have their foundation in state and federal constitutions, laws, rules and regulations. There is no “right to free water” under any of these and the sources that the Water Commissioners cite do not support this proposition. The Water District has provided a hodge-podge of material in support of the “free” water proposal. The cited material is not explained, is miscited, and in many instances is wholly irrelevant. The material simply does not support their claims of a free water right.

### **a. There Is No Right To Water, Or Free Water, In The United States Constitution.**

The Water Commissioners’ material, at p. 3, acknowledges that a right to free water is not “explicitly” recognized under the federal constitution or any federal law. This phrasing suggests that the Water Commissioners think there is an implicit right in the United States Constitution. There is no such implicit right to free water under the United States Constitution. The only federal legal authority offered in the Water Commissioners’ material is a citation to the Safe Drinking Water Act of 1944 in support of their claim that there is an alleged right to free water. The cited act is a water quality act relating to the prevention of contamination of the public water supply. It does not support the proposition of a right to free water.

### **b. There Is No Right To Water, or To Free Water In The Massachusetts Declaration Of Rights (The Constitution Of The Commonwealth Of Massachusetts).**

Contrary to the suggestion in the Water Commissioners’ materials, there is nothing in the Massachusetts Declaration of Rights that supports the contention that there is any human right to free water, nor does it establish free water as a human right.<sup>1</sup> In the Massachusetts Declaration of Rights, there are **no references** to “free water” or a “right to free water” anywhere. There are, however, specific references in Article XLVII of the Massachusetts Declaration of Rights to

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<sup>1</sup> The Massachusetts Declaration of Rights contains the following Articles which may be of relevance:

#### **Article XLVII.**

The maintenance and **distribution at reasonable rates**, during time of war, public exigency, emergency or distress, of a sufficient supply of food and other **common necessities of life** and the providing of shelter, are public functions, and the commonwealth and the cities and towns therein may take and may provide the same for their inhabitants in such manner as the general court shall determine.

#### **Article XCVII.**

Article **XLIX** of the Amendments to the Constitution is hereby annulled and the following is adopted in place thereof: - The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, **water**, air and other natural resources is hereby declared to be a public purpose.

setting “reasonable rates” to be charged for the “common necessities of life” which would include water.<sup>2</sup>

The Water Commissioners’ material, at P. 4, also cites to Article XCVII of the Massachusetts Declaration of Rights in support of its Proposal for a right to free water. This Article to the Commonwealth’s constitution has nothing to do with free water. Much like the Federal Clean Water Act, it speaks to the issue of clean water, in an environmental sense, and the promotion of an environment free from pollutants and encourages the acquisition of open space for *public* purposes. Furthermore, Massachusetts courts have dismissed individuals claims asserting claimed rights under Article 97 of the Massachusetts Declaration of Rights as lacking standing). Capidilupo v. So. Shore Voc. Tech H.S., 2020 Mass. Super. Ct. Lexis 693 (2020) (Kirpilani, J.)(citations omitted).

The laws of the Commonwealth of Massachusetts have long recognized certain water rights such as right of public access where the ocean exists adjacent to a parcel of privately held land. Stated another way, the public cannot be excluded from public bodies of water. None of these rights of the public to physical access and use of public bodies of water can be said to equate to an individual right to be provided free drinking water or free water for residential use. The fact that there is no right to free water is also evidenced in the Massachusetts State Sanitary Code which speaks the requirement for running water, including hot water, in residential dwellings and expressly permits the charges for such water to be passed onto to residential tenants. 105 C.M.R. §410.180.

**The Proposed Gift Of 20,000 Gallons Of “Free” Water Per Household Per Year Is Not “Free”; Is Not A “Revenue-Neutral” Policy; And Ignores Economic Principles Of Elasticity Of Demand In High-Volume Residential Water Usage**

Voters, understandably, often vote in ways that they think will benefit them financially. The siren-song of anything labelled “free” is often irresistible which would be expected to significantly influence a vote. Voters should understand, however, that the “free” water should not be expected to be free under this proposal.

The Water Commissioners’ proposal makes the false claim that implementation of the proposed policy is “revenue-neutral.” Voters should understand that proposal is **only revenue neutral in the event that there is no material decrease in water usage among those households that use 60,000 gallons per year in water or more.** That is because the Water Commissioners plan to pay for the “free” water they would dispense by raising an equal amount of income by substantially raising rates on Cotuit residents who use 60,000 gallons or more per household per year. See proposed policy, P. 1 “Rate increases would be applied to heavy users (above 60,000 gals/ year. . . . The heavy user rate increase would subsidize . . . and would create

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2 The law of the Commonwealth of Massachusetts has long recognized that municipal entities are empowered to charge fees for water provided to their residents. There is an abundance of Massachusetts caselaw approving the charging of reasonable, non-discriminatory water rates for residential customers. See e.g. Morton v. Town of Hanover, 43 Mass. App. Ct. 197 (1997)(discussing legality of water authority imposing fees); Mass. Mun. Wholesale Elec. Co. v. City of Springfield, 49 Mass. App. Ct. 108, 113 (2000)(while enabling statute allows collection of fees for water, it cannot be read to support an inequitable or discriminatory water rate structure).

a revenue neutral position for the Department”).<sup>3</sup> Therefore, the Policy is revenue-neutral **only if no high volume water consumer in the above 60,000 gallons per year plus rate categories reduces consumption below their currently assigned rate tier**. If consumers drop out of their currently assigned rate tiers, revenues will decrease commensurately, and the Cotuit Water Commissioners will not collect the \$183,175.07 necessary to implement the Policy in a revenue neutral way.<sup>4</sup> The Policy would then be implemented at a financial deficit. Financial deficits are, of course, ultimately covered by an increase in taxes payable to the Cotuit Fire District and/or an increase in water rates or fees charged to the consumer or through a depletion of cash reserves on hand.

It is not reasonable for the Water Commissioners to assume that the high-volume water users will not react to the substantial rate increases and materially reduce water consumption. The proposed Policy does not consider the economic concept known as “elasticity of demand”. When using water for household purposes, certain base usage is considered to be relatively inelastic. This means that even in the face of extremely high-water prices, consumers will likely continue to brush their teeth, shower, flush their toilets and wash clothes. Their water use for these purposes is considered to be “inelastic”. By contrast, studies have shown that water demand among high volume consumers of water reflects significant elasticity in relation to price at the higher levels of consumption. For example, in response to increase in price in the Cotuit Water District, high level water consumers may elect not to wash their car or boat; may not wash their dog; may choose not to fill kiddie pools or built-in pools with water; may not rinse off their patios or outdoor furniture when pollen falls in abundance; may choose not to garden (with attendant watering); may shut off their irrigation systems and the like. To the extent water consumers choose to engage in these activities, they may choose to do so sparingly. This represents elasticity of demand for these non-essential water uses. Additionally, high volume water consumers may elect to withdraw from the municipal water market, in whole or in part, by installing private wells on their property which are not served by the Cotuit public water supply. This is another example of elasticity of demand relative to the public water supply that would result in reduced revenues, particularly at the highest rates of water consumption. Additionally,

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<sup>3</sup> There are three (3) tiers of excess water usage under the proposed Policy, each with a correspondingly higher rate structure assigned to each tier. See Page 7 of the Proposal. The Proposed rate increases are expected to raise a total of \$183,175.07 in new revenue to offset the \$183,000 value of “free” water the Commissioners plan to give away. The Proposal expects to raise \$31,468. in revenue from households with an annual usage between 60,000 and 100,000 gallons. They expect to raise \$84,204. From those household in the 100,00 to 200,000 gallon per year rate tier. The proposal plans to raise \$57,502 from those who use more than 200,000 gallons of water per year.

<sup>4</sup> The fact that overall water usage in the Village of Cotuit is elastic (not stagnant in amount) is evidenced by the data provided by the Water Commissioners at P. 7 of their material. This data shows that total water usage in the village has been on the decline from years 2018 to present, ranging from a high of 206,656,000 gallons in 2018 to a low in 2021 of 202,034,000 gallons. I have excluded from this analysis 2020, the year of the Covid-19 pandemic shut down which represents a statistical anomaly in an otherwise steady decline in Cotuit Water District Water usage. The year 2020 represents a departure from the documented downward trend of water usage in Cotuit presumably due to residents being required to isolate at home, work from home, students being schooled from home and non-resident homeowners taking shelter during the pandemic in their Cotuit homes. P. 7 of the Proposed Policy materials. The total usage in Cotuit for the year 2022 is not reflected in the materials provided by the water commissioners.

in years when there is excess and abundant rainfall, this can operate to reduce excess water usage and impact demand.

Because of the known elasticity of demand at the highest levels of water consumption, prudent water rate setting practices traditionally rely on the relatively inelastic water usage numbers at the lower levels of consumption to set water rates and plan budgets. A known risk of relying disproportionately on revenues from high-volume water consumers to balance a water department budget is that financial deficits will result when the elastic, high-volume demand decreases for non-essential water uses.

The “free” water proposal relies **exclusively** on revenues from high volume customers to offset the costs of the “free” water. Therefore, from an economic standpoint, this proposal should be viewed as at particularly high-risk for revenue shortfall. In the event of even modest, but material, changes in the water usage patterns of among top-tier water consumers, the “free” water proposal will no longer be revenue neutral. The cost of the water given away will not equal projected income received from high volume water consumers. Simple math and economics dictate that as any consumer moves to lower water usage tiers (and correspondingly lower cost / payment categories), a revenue shortfall, which is not contemplated by the proposal, will occur and the claim of “revenue-neutral” will be proven false.

### **The Materials Provided by the Water Commissioners in Support of the Proposed Policy**

I applaud the Water Commissioners for an innovative idea that I do not think has been implemented anywhere else in the Commonwealth to my knowledge. I do not doubt that the Commissioners are well-intentioned in presenting this human rights based proposal. I appreciate that the Water Commissioners are a volunteer public body who are doing a significant public service to invest their time and energy for the benefit of the Cotuit Fire District.

Having said that, I am concerned that the Water Commissioners have published materials to the voting public in support of the proposed Policy that are not legally accurate and that are materially misleading. When the materials assert that the proposal is “revenue neutral,” I think people are inclined to accept such representations in good faith and assume them to be true. These materials, in turn, have been circulated to the local civic association which has re-published some of the representations about “free” water and assertions of an allegedly “revenue neutral” proposed policy. While I assume (but do not know) that the data related to water usage contained in the materials is accurate, the rest of the presented material is not on equal footing. The Commissioners have presented the material to the voters that this policy unequivocally “would create a revenue neutral position for the Department.” Proposed Policy, at ¶8. This conclusory assertion is presented without adequate economic analysis or explanation of the scenarios under which the plan would not be “revenue neutral.” There has been no effort to alert the voters to the fact that the implementation of the policy cannot be revenue neutral if there are certain changes in discretionary, high water volume consumption patterns. The Commissioners should make clear to the voters that their “revenue neutral claim” is based on an un-proven assumption of un-changed water usage patterns at the highest water usage tiers. The Commissioners should make clear to the voters that this is an assumption that may prove to be unfounded. The Commissioners should explain to the voters what their financial plan is to cover financial deficits created by this “free” water program if water usage patterns at the highest



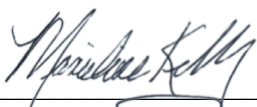
levels do not produce the projected revenues to offset the dispensing of “free” water. It does not appear that there has been an effort to present a balanced statement of pros and cons relative to the proposed policy that would meaningfully educate the voting public on the potential risks and claimed benefits.

### **Conclusion**

Because of the various legal flaws in the Proposal, the substantial factual inaccuracies, and the flawed economic methodology contained in the materials in support of the Proposal disseminated by the Water Commissioners, I respectfully request that the Board of Water Commissioners vote against this proposed Policy. The proposal is manifestly arbitrary, capricious and in excess of this Board’s Authority. If enacted, it is sure to result in costly and needless litigation.

Additionally, I am requesting that this letter be made part of the public record at the hearing to be held on April 18, 2023, and any subsequent hearing on the same subject matter.

Very truly yours,



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Marielise Kelly, Esq.  
Gargiulo / Rudnick, LLP, Partner  
Mass B.B.O. #559595  
N.Y. Bar Reg. #2505519  
N.H. Bar #12498

cc:

Scott Horsley, Water Commissioner  
Mark Robinson, Cotuit Water Commissioner  
Chairperson, Cotuit Prudential Committee  
Chairperson, Cotuit Board of Water Commissioners



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## **WHY THE UNITED STATES DID NOT SUPPORT “WATER AS A HUMAN RIGHT” RESOLUTION**

 **Mark Leon Goldberg** (<https://www.undispatch.com/author/mark-leon-goldberg/>)  July 28, 2010

The General Assembly today voted for a resolution that declares that access to water and clean sanitation to be a human right. (<http://www.un.org/apps/news/story.asp?NewsID=35456&Cr=SANITATION&Cr1=>)From the UN News Center:

**Safe and clean drinking water and sanitation is a human right essential to the full enjoyment of life and all other human rights, the General Assembly declared today, voicing deep concern that almost 900 million people worldwide do not have access to clean water.**

**The 192-member Assembly also called on United Nations Member States and international organizations to offer funding, technology and other resources to help poorer countries scale up their efforts to provide clean, accessible and affordable drinking water and sanitation for everyone.**

**The Assembly resolution received 122 votes in favour and zero votes against, while 41 countries abstained from voting.**

That does not sound all that controversial. But apparently, it is. One of those 41 abstentions was the United States, which said it could not support the resolution because, in fact, access to water is *not* an internationally recognized human right. (At least not yet.) In an explanation of the United States vote, John

F. Sammis, U.S. Minister Counselor to the Economic and Social Council, argued that "This resolution describes a right to water and sanitation in a way that is not reflective of existing international law; as there is no "right to water and sanitation" in an international legal sense as described by this resolution."

Notwithstanding the merits of this particular resolution, this kind of back and forth reflects a very natural tension between the General Assembly and the United States. The General Assembly is not a legislative body—the only part of the UN system that can "make law" is the Security Council. But sometimes, the General Assembly pushes the boundaries, and this causes a reflexive retrenchment by big powers like the United States.

Here is the full explanation of vote by Sammis. As you can see, the USA's big objection here is over process, not necessarily substance of the resolution.

Explanation of Vote by John F. Sammis, U.S. Minister Counselor to the Economic and Social Council, on Resolution A/64/L.63/Rev.1, the Human Right to Water, July 28, 2010

Mr. President,

The United States is deeply committed to finding solutions to our world's water challenges. We support the goal of universal access to safe drinking water. Water and sanitation issues will be an important focus at this September's Millennium Development Goal Summit. The United States is committed to working with our development partners to build on the progress they have already made in these areas as part of their national development strategies.

Water is essential for all life on earth. Accordingly, safe and accessible water supplies further the realization of certain human rights, and there are human rights obligations related to access to safe drinking water and sanitation.

The United States supports the work of the UN Human Rights Council's Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. In fact, we co-sponsored the resolution on Human Rights and Access to Safe Drinking Water and Sanitation last September at the Human Rights Council in Geneva. We look forward to receiving the next report of the Independent Expert. We also look forward to a more inclusive, considered, and deliberative approach to these vital issues in Geneva than we have unfortunately experienced on this resolution in New York.

And I would just add to my prepared remarks that these concerns are not alleviated by the fact that just this morning, we have seen an amendment made to what the lead sponsor viewed as the core operative paragraph of the resolution from the floor. This again is an imposition on all of us. We haven't had sufficient time to really consider the implications of this, and I think that it would have been far better, under the circumstances, not to bring this resolution forward for action today.

The United States had hoped to negotiate and ultimately join consensus on this text, on a text, that would uphold and support the international process underway at the Human Rights Council.



Instead, we have here a resolution that falls far short of enjoying the unanimous support of member States and may even undermine the work underway in Geneva. This resolution describes a right to water and sanitation in a way that is not reflective of existing international law; as there is no "right to water and sanitation" in an international legal sense as described by this resolution.

The United States regrets that this resolution diverts us from the serious international efforts underway to promote greater coordination and cooperation on water and sanitation issues. This resolution attempts to take a short-cut around the serious work of formulating, articulating and upholding universal rights. It was not drafted in a transparent, inclusive manner, and the legal implications of a declared right to water have not yet been carefully and fully considered in this body or in Geneva.

For these reasons, the United States has called for a vote and will abstain on this resolution.

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