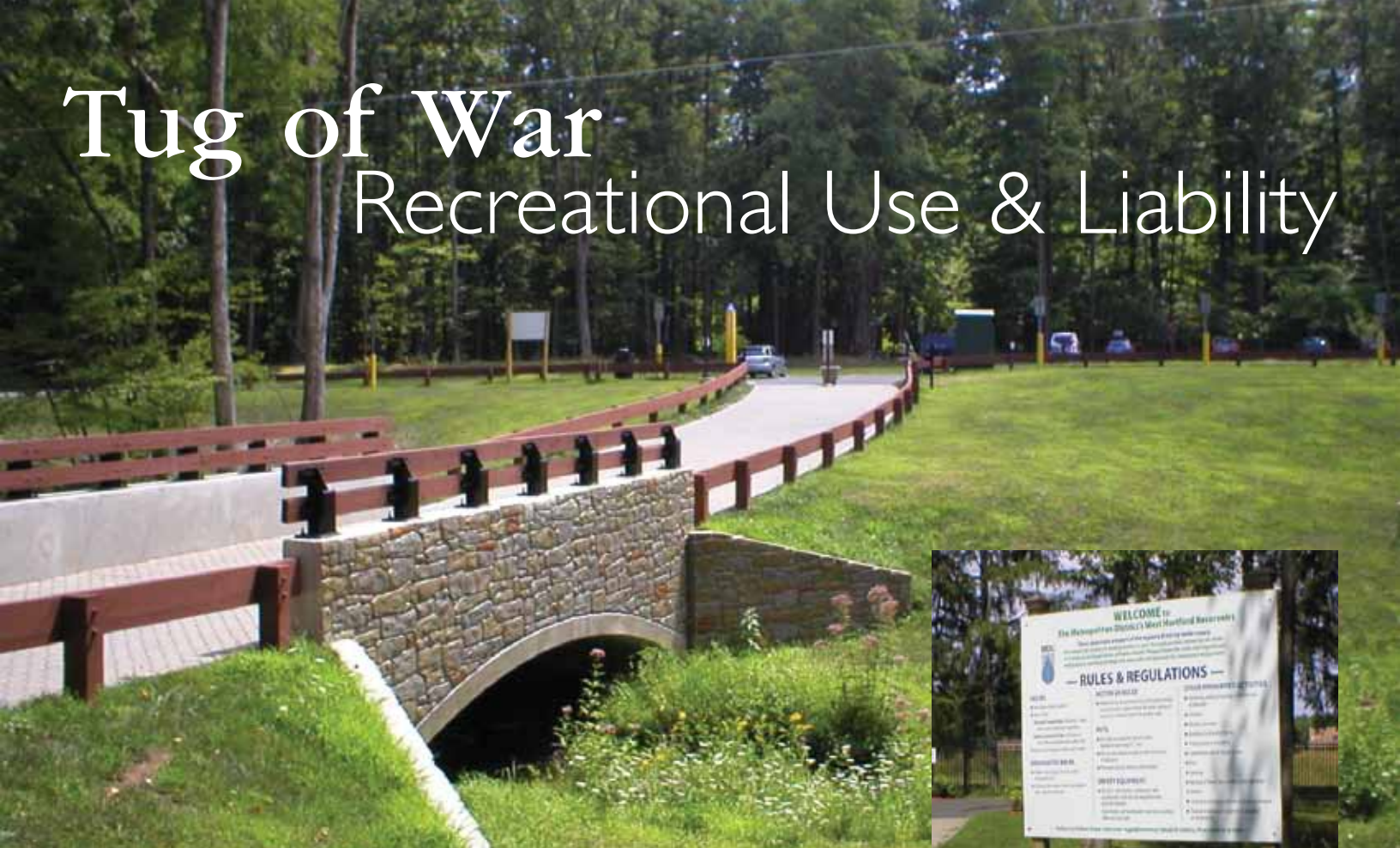


Tug of War

Recreational Use & Liability



Closing a loophole in Connecticut's recreational use law is expected to be an issue when the legislature convenes in January. It is an issue that water utilities should pay close attention to.

As stewards of the state's water resources, water companies maintain some of the most beautiful lands in the state. Many water companies give people the opportunity to enjoy these lands by allowing certain recreational activities, such as hiking, biking and boating. But recently, a Connecticut superior court awarded \$2.9 million in damages to a plaintiff who was injured when her bike hit a steel gate on a trail by a reservoir owned by the Metropolitan District. The *Blonski v. Metropolitan District* decision, which may be appealed, has raised questions regarding whether and under what circumstances a water company can be held liable for injuries occurring on their property.

A group called "Save the MDC Trails" has been formed and is collecting signatures for a petition asking the legislature to amend the state statute to provide an exemption from personal injury lawsuits for towns and cities that allow people free access to their land if it is reasonably maintained. Area lawmakers are also calling for a change in the law.

Recreational use liability and whether towns or other entities should be immune from liability have been hot button issues at the state Capitol for years. The debate generally pits trial lawyers against municipalities in a tug of war between the rights of injured plaintiffs and the costs to cash-strapped towns. Given the debate over the years and the complex nature of liability statutes and case law, closing the loophole may be a complicated affair.

Continued on page 4



TUG OF WAR – RECREATIONAL USE & LIABILITY

The state's Recreational Land Use Act currently provides immunity to private landowners and utilities that make all or a portion of their land available to the public without charge. However, the protection enjoyed by private landowners does not extend to municipalities, under the 1996 Connecticut Supreme Court decision in *Conway v. Hilton*. In this decision, the state Supreme Court held that municipalities and their employees are not "owners" under the Recreational Land Use Act and are not entitled to immunity from liability provided by that act for injuries sustained on land they make available to the public without charge for recreational purposes.

Under the Act, private landowners who make all or part of their land available to the public without charge, rent or fee or other commercial service for recreational purposes owe no duty of care to keep the land safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure,



of care by the owner or (3) assume responsibility for or incur liability for any injury caused by the owner's act or omission. The statutory immunity from common law liability, however, does not apply to (1) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity or (2) injuries suffered in any case where the landowner charges people who use the land for recreational purposes.


For water companies, there is another immunity provision in the public health statutes. Under Section 25-43c, the commissioner of public health may issue a private, municipal



water companies may issue permits to individuals to engage in such recreational activities and to charge a fee for the permit.

This is where the other immunity provision comes into play. Under Section 25-43c(e) of the Connecticut General Statutes, "No water company shall be liable in damages except with respect to willful or wanton conduct for injury or property damage to any person who enters upon its lands or waters under the provisions of this section."

Clearly, water companies will have a tremendous stake in discussions regarding how to amend the state's Recreational Land Use Act to ensure that individuals may continue to enjoy recreational activities on these lands without increasing liability and litigation costs for water companies.

For more information on this issue, please contact CWWA's Betsy Gara at gara@gmlobbying.com. 

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or activity on the land to those entering for recreational purposes. Further, any landowner who invites or permits any person to use his land for recreational purposes without charge, rent, or fee or for other commercial service, does not thereby: (1) make any representation that the land is safe for any purpose, (2) confer upon the person using the land for recreational purposes a legal status entitling him to a duty

or regional water company a permit authorizing recreational activities on storage and distribution reservoirs and on the watersheds of such storage and distribution reservoirs or within aquifer protection areas. Typically, permitted activities include hiking, biking, fishing and some types of boating. (Note: Section 25-43c(b) limits boating on reservoirs to boats owned by the water company.) Under this provision,