

Chilson-Eagle Lake Water Users Questions and Answers

The Town of Ticonderoga, through a court enforced consent decree, must discontinue the use of Gooseneck Pond as a water source for those properties along Eagle Lake through Chilson Hill by June 2025. By June 14, 2021 a final map, plan and report is due to the New York State Department of Health, the United States Environmental Protection Agency, and the United States Department of Justice for a proposed new water system or systems to serve Chilson and Eagle Lake. In response to this consent decree, the Town has held several informational meetings in an attempt to inform the users of the Gooseneck Water System of the consent decree and the suggested alternatives available to them.

The cost to construct a suitable replacement water system is estimated to be extremely high. The lowest cost alternative proposed by the Town approaches \$8.4 million which, if no offsetting grants are obtained, could result in an annual debt cost of \$2,700 per year for 30 years plus maintenance and usage fees. Due to COVID-19 and New York State's economic situation, there was no grant funding rounds in 2020. Recently, in 2021, the State has started to release some of these grant programs and the Town is in talks with funding agencies as of the sending of this Q & A.

The following is a list of relevant and routinely asked questions related to the potential formation of a Chilson-Eagle Lake district and replacement water system along with specific project constraints as outlined by the consent decree and engineering analysis.

The questions and answers provided have been compiled through the ongoing dialogue with members of the Chilson and Eagle Lake communities and the Town Board, Town Attorney and Town Engineers on this project. If additional questions are asked that warrant response this will be updated.

Questions and answers are grouped by relevance.

Q1. Does Gooseneck Pond legally have to be abandoned as a drinking water source and when?

ANSWER: Yes. Before June 24, 2025 Gooseneck Pond must and will be abandoned as a drinking water source in accordance with Section II, Part 1.S of the Consent Decree between the Town and the United States Department of Justice, the United States Environmental Protection Agency and the New York State Department of Health. No users connected to the existing water line will be serviced from Gooseneck after that date.

Q2. What is the timeline for the Gooseneck-Eagle Lake drinking water solution?

ANSWER: Taken directly from the Consent Decree:

CHILSON/EAGLE LAKE

By **June 14, 2021**, submit final map, plan, and report for the Eagle Lake - Chilson Water System Improvements.

By **June 15, 2022**, begin final design of Eagle Lake - Chilson Water System Improvements.

By **May 24, 2023**, submit final plans, designs, and specifications for the Eagle Lake - Chilson Water System Improvements including the construction schedule designed to achieve the final deadline of June 24, 2025 for these improvements.

By **September 27, 2023**, advertise for bids for Eagle Lake - Chilson Water System Improvements.

By **November 28, 2023**, award contract for Eagle Lake - Chilson Water System Improvements.

By **January 10, 2024**, issue notice to proceed for Eagle Lake - Chilson Water System Improvements.

By **June 24, 2025**, complete construction of Eagle Lake - Chilson Water System Improvements, and fully decommission Gooseneck Pond as a drinking water source.

- Q3. Once Gooseneck Pond is decommissioned as a drinking water source by June 24, 2025, what will be the Town's responsibility regarding the maintenance of the dam?

ANSWER: Ultimately, the Town in conjunction with DEC will need to take the necessary steps to safely return this prior drinking water source back to its natural state. As of today, the details as to the responsibility for this action are not certain. However DEC has made it known that it owns the dam and the Town would work with DEC in that regard.

In any event and to dispel a recurring myth, **there is no intention** that if the Town did have any costs incurred, that these costs would be paid solely by the Chilson or Eagle Lake users. If such a cost were to arise, then the Town Board believes that all water users who benefitted from Gooseneck would pay any such cost. However and again, DEC has made it clear to the Town that DEC owns the Dam and the Town Board does not plan to change that stance with DEC.

- Q4. The Map, Plan and Report, which is to be submitted to the State by June 14, 2021: What is it? And what does it contain?

ANSWER: A map, plan and report (or 'MPR') is essentially the document that lays out how a new district is going to function and what a project is going to look like. For

example, towns can have lighting districts, stormwater districts, water districts, sewer districts, parking districts, etc. Each MPR lays out the boundaries, how the district will be charged, and any project that is involved. It is the legal document that forms a district.

Legally, a map plan and report contains the following:

- (i) must be prepared by a competent engineer, duly licensed by the state of New York;
- (ii) must define the boundaries of the proposed district;
- (iii) must provide a general plan of the proposed water system;
- (iv) must outline the proposed method of operation;
- (v) must identify the source of water supply;
- (vi) must describe the lands, streams, water or water rights to be acquired therefore;
- (vii) must describe the mode of constructing the proposed water works and the location thereof, including reservoirs, water purification or treatment works, water mains, distributing pipes and hydrants.
 - i. if, however, the supply of water to be used in said water district is to be purchased from a municipal or other corporation, or any person, then said map and plan shall set forth and show only the water mains, distributing pipes, hydrants, reservoirs, if any, and location of each, and in addition, though not technically required until the hearing phase on a map, plan and report, it is customary to include the following (but NOTE that these are not required to be in a map, plan and report);
- (viii) must provide a description of the boundaries of the proposed district in a manner sufficient to identify the lands included therein as in a deed of conveyance (i.e., a legal description of the district);
- (ix) must describe the improvements proposed;
- (x) the maximum amount proposed to be expended for the improvement;
- (xi) must describe the estimated cost of hook-up fees, if any;
- (xii) must specify the cost of the district, or extension, to the typical property and, if different, the typical one or two family home;
- (xiii) must specify the proposed method of financing to be employed.

Q5. I have heard that I am a “contract user” for water service. What does that mean?

ANSWER: A contract user, also commonly referred to as an “out-of-district user” means that you are not located within a municipal water district and therefore receive water through the use of an agreement (i.e. a contract).

Let’s go back to the discussion of a map, plan and report, and what it means for your area. There is currently, no MPR for the Chilson and Eagle Lake area, therefore, all water users are, by definition “contract users.” As such, any property that is serviced by municipal water and that is not in a district, as in this instance, receives water by “contract”.

Whereas a district user receives water service that cannot generally ever be permanently terminated (suspension for non-payment is another discussion), on the contrary the Town can decide to terminate any contractual relationship at any time and the services would be terminated accordingly. As an example, over the years some contract users, for whatever reason, have decided they no longer wanted water and terminated their service. However, a district user does not have that right. Once you are in the district, absent an act of the Town Board, and absent an act of the New York State Legislature and Governor where a district still owes debt, you cannot get out of a district.

Q6. Why didn't I know I am not in a district?

ANSWER: At the time you acquired your property, knowledge of the property being in a district would have been reviewed by whoever represented you (i.e. broker, lawyer, etc.). It is common that many people do not investigate this, but that does not change the fact that the property is not in a district. Not being in a district renders a user an "out-of-district" or contract user, here the terms are synonymous.

Q7. What is the process for approving a new water district?

ANSWER:

- a. There are two different ways a district could be formed. Either by petition of the property owners, or by action of the Town Board.
 - i. Petition process: A petition for a water district requires the signatures of the owners of 50% of the assessed value of the district, and if there are resident owners (i.e., owners where the property is their principal residence), the petition must also be signed by the owners of 50% assessed value of those resident owners.
 - ii. Town Board resolution: The Town Board can authorize an expenditure for a map, plan and report, subject to a permissive referendum. A permissive referendum allows, in certain circumstances, for the public to challenge a resolution made by the elected officials. The resolution would be put to a vote by the qualified electors of the town by following a specific procedure. If the district is ultimately formed, the cost of the map, plan and report becomes a cost of the district (i.e., reimbursed to the Town's general fund). If the district is not ultimately formed, the general fund pays the cost of the district.
- b. Once the map, plan and report is completed, the Town Board then issues an 'order' setting the public hearing on the map, plan and report.
- c. Now, if the water district is a 'high cost district' [which without any offsetting grants awards the proposed district(s) would be], then the approval of the NYS Office of State Comptroller would be required. The 2021 cost threshold for OSC approval for water districts is \$887 per year. See <https://www.osc.state.ny.us/local->

[government/required-reporting/town-and-county-special-districts-and-town-improvements](#) . Note that this approval process is a couple month process,

minimum, on its own. If the OSC approves, the Town moves to the next step. If the OSC does not approve, the project must be revisited.

- d. Either by petition or Town Board resolution, once the map plan and report is created, the Town Board, after the public hearing, then answers these questions as part of duly held public hearing, where all of the participants are able to appear and be heard:
- i. whether the notice of hearing was published and posted as required by law and is otherwise sufficient;
 - ii. whether all property and property owners within the proposed district are benefited;
 - iii. whether all benefited property and property owners are included within district;
 - iv. whether formation of the district is in the public interest

Note as well that as part of this process, the Town Board can order changes to the map, plan and report if, for example the Town Board finds that someone was included but not benefitted, or excluded but benefitted. The process would then reset with a new public hearing.

Q8. What is the analysis the Town Board has to review to form a district?

ANSWER: First, as noted above, if the district is formed by petition, the Town Board has to confirm that the following requirements had been met, namely, those who have signed constitute more than 50% of assessed value, and more than 50% of assessed value of resident owners. If the petition meets these two requirements, a public hearing is held and by statute, the Town Board is tasked with making the following determinations:

- Criteria 1. whether all property and property owners within the proposed district are benefited
- Criteria 2. whether all benefited property and property owners are included within district
- Criteria 3. whether formation of the district is in the public interest

Q9. Ok. I get the criteria above, but in reality, what does this mean?

ANSWER: *First, note that all of this discussion is discretionary to the Town Board. That is, all of these decisions are made by the 5 members of the Town Board, and not any one of them individually. Anyone reading this should pay attention to the words "may". "May" means that the Town Board has discretion in this decision.*

We'll discuss:

Criteria 1. Whether all property and property owners within the proposed district are benefited.

Discussion: Back to our discussion above, what if some properties were included in a valid petition against the property owner's wishes? Stated another way, the property owner does not believe they are benefitted by being part of this district. This first criteria allows the Town Board to evaluate the benefit to a property and may make the decision, that a certain property is not going to be benefitted, and therefore should be excluded. If the Town Board takes such action, the MPR may be ordered by the Town Board to be amended to exclude that property owner. So this is a 'safety valve' on the potential for a property owner who is not benefitted to be excluded from a district.

Note, however, that this criteria provides no guarantee, that if a property owner requests to be excluded from a district, that their request will be granted. It is the Town Board's decision, and if the Town Board finds that all properties are benefitted, the properties will be included in the district.

Criteria 2. Whether all benefited property and property owners are included within district.

Discussion: This can be thought of as the 'opposite' of criteria 1. That is, what if a property has been omitted? This is the case where the water line "travels in front of the property" but the property is not included in the district. The Town Board may order the MPR revised (or rejected) because not all benefitted properties have been included.

This can be thought of as the 'safety valve' on someone being omitted for whatever reason- be it with or against their will.

Criteria 3. Whether formation of the district is in the public interest.

Discussion: This is often an 'easier' question for the board to answer, but also can be at times somewhat controversial. The Town as a municipal body will be taking on obligations when it creates a district, so the question here is does the public overall benefit from the formation of this district?

Q10. If a home is currently not connected to the current Gooseneck Water system, will they be required to be included into the new water district?

ANSWER: Based on feedback from the public, only existing contract users are being considered for the new water district. There has not been any interest made to the town to include residents which are not currently being served by the Gooseneck Pond. That being said, if anyone is interested in being included in the new water district, they should contact the town immediately to make their interest known.

Q11. I have heard that I can “opt out” of being in a district and therefore will not be in a district. Is that true? Or put another way, “can I be included in a district even if I don’t want to be in a district?”

ANSWER: This is a bit of a lengthy analysis, but the short answer is if, under New York law, certain conditions are satisfied, your property can actually be included in a district with or without your permission. That is why when asked, the answer is “it depends.” Not the best answer of course, but here is how/why:

As applicable to a water district (and discussed above), there are generally two ways a water district is formed. One procedure is for the Town Board to initiate the development of a “map, plan and report” or MPR. That MPR is the formation document for the district. Among other things, the MPR will identify what properties are going to be included in the district (the “Map” portion). The MPR will include a plan for how the water service is going to be supplied (the “Plan” portion), and the MPR will include a report as to the costs to the average user (the “Report” portion). If the MPR is “Town Board” driven, there is a procedure for public hearings, determinations by the Town Board, and a permissive referendum.

The other procedure is a “petition” driven process. That is, a group of property owners desiring the service, in this case water, will sign a “petition” that is accompanied by an MPR. That petition is then submitted to the Town Board to then follow a similar procedure consisting of public hearings and determinations by the Town Board. However, with a petition process there is generally no permissive referendum.

Here is the root of the answer on how someone can be included in a district: the petition is required to be signed by the owners of more than 50% of the assessed value of the district, and if there are resident owners (i.e., owners where the property is their principal residence), the petition must also be signed by the owners of more than 50% assessed value of those resident owners. So if you think of hypotheticals, a petition with an MPR for a water district could include any number of resident and/or non-resident owners if these 50% thresholds are met.

Let’s take the following pure hypothetical:

- A group of owners in Sunny Town want to form a district.
- There are 100 properties in this area, and 60 of the properties are owned by resident owners, the other 40 are second homes.
- The properties are all assessed at \$1,000 each (unlikely of course but it makes the math clearer here!)

Now:

- If the 60 resident owners (who represent 60% of the assessed value) all sign a petition, then if the Town Board proceeded through its determinations and found that all 100 properties are benefitted (a significant simplification of the

Town Board's determinations which are discussed later below), then even if the 40 non-resident owners objected, all 100 properties could be included in the district.

- What happens if 57 out of the 60 resident owners sign the petition, and 3 resident owners don't really want to be part of the district? Legally, again, if the Town Board renders its determinations on the petition finding all properties benefitted, then those 3 properties are "in the district".

What happens if 28 of the resident owners and 40 of the non-resident owners (for a total of 68 owners) sign the petition? The petition would fail as legally insufficient because it did not receive the more than 50% of the assessed value of resident owners to sign the petition.

PLEASE NOTE: It must be kept clear here that this analysis is by assessed value, and not by 1 owner equals 1 vote. For another example, let's change our facts:

Let's take the following pure hypothetical:

- A group of owners in Sunny Town want to form a district.
- There are 100 properties in this area, and 60 of the properties are owned by resident owners, the other 40 are second homes.
- The 60 resident properties are assessed at \$1,000 each, but the 40 non-resident properties are assessed at \$2500 each (again, unlikely of course but it makes the math clearer here!) So the total assessed value of the district is \$60,000 plus \$100,000 = \$160,000.

Now:

- Using the legal criteria we noted above, \$81,000 would satisfy the requirement of achieving more than 50% of the assessed value (i.e. \$160,000) of the district, and \$31,000 would satisfy the requirement of achieving more than 50% of the assessed value of the resident owners (i.e. \$60,000).
- Using our simple math, it would require at least 31 signatures from resident owners to achieve more than 50% of assessed value of resident owners, and the addition of any combination of resident and non-resident signatures to obtain the remaining \$50,000 for a total of \$81,000 in order to meet the other requirement of achieving more than 50% in assessed value.

Back to the answer: This is why "it depends." Based on the above you will agree that there are mathematic facts needed in order to answer the question, "Can I be included in a district even if I don't want to be included in a district?" It depends on the math.

Q12. Will there be an opportunity to “opt in” to the new water system? What may happen if an originally excluded property wants to join the district at a later point in time?

ANSWER: No. There is no singular right to “opt in” to a district, if the district is properly formed. Ultimately, the decision to include or not include a property into a water district is based on whether that property would receive benefit (i.e. future water connection, fire protection, etc.). The Town Board would make that decision as part of the Map, Plan and Report.

If a property was deemed to not be included in the district upon its creation and then some years later (for whatever reason, perhaps the property ownership changed) wanted to join the district, a decision would need to be made as to what debt service this property would be responsible for.

For example: Suppose a district was formed with 20 users. It was deemed that 4 other properties would benefit, but they did not want to be included and were granted exclusion. If they later wanted to connect, the connection fee would have to be negotiated between those owners and the Town Board. In the current situation, it is envisioned that this connection fee would not be any less than the costs paid by the existing district users. Thus, as an example, if someone wanted to connect 5 years after the district was formed, then it is anticipated that at a minimum, the connection fee would be equal to the costs paid by the district users over that 5 year period.

Q13. The preliminary engineering report noted that Eagle Lake, like Gooseneck Pond, as a surface water source could potentially be used for water to serve a district. If Eagle Lake is suitable why is Gooseneck being abandoned as a drinking water source?

ANSWER: Cost. Early in the review process it became very clear that the cost of upkeep and maintenance for Gooseneck Pond is cost prohibitive. The dam at Gooseneck Pond would need to be restored. The intake at Gooseneck would need to be restored, and the piping from Gooseneck Pond would need upgrades now as well as maintenance into the future, even if the pipeline were not replaced now as some have suggested. The considerations from a cost-benefit analysis required abandonment of Gooseneck Pond as a drinking water source in the Consent Decree.

Q14. I have heard that there was a grant for Gooseneck Pond that was used as part of the wells project. Is that true?

ANSWER: No. There was never any grant funding actually awarded for Gooseneck Pond. Therefore there was no funding ever diverted to be used toward the wells project. People may have heard about what is called a ‘hazard mitigation grant program’ or ‘HMGP’. An HMGP was awarded for a section of broken pipe downstream of the Chilson reservoir and the replacement under that project remains in service.

Q15. The costs seem high. If pipe installation is the largest driver of the high costs, then why not reuse the existing pipe? It has worked for many years now.

ANSWER: The Town's engineers have reviewed this and there is a potential for use of some portions of the existing pipe, however, the future life expectancy of that pipe cannot be guaranteed.

In general, (1) the pipe is old, (2) was installed at shallow depths which could cause freezing issues, and (3) the water has only flowed in one direction for numerous decades, whereas the flow direction may change for the new system. First, old pipe carries more risk of needing emergency repairs, which can add up to a lot of money versus planned replacement. Second, this old pipe will see less water demand, which makes it highly susceptible to freezing. Currently, the water is always moving in the pipe and unused water is simply emptied into the Chilson Reservoir, which sends the excess water to the Chilson Brook. With the new system, this process of wasting treated water would no longer be done. Several residents asked about sending this excess water to other districts, however the water elsewhere is sufficient and the additional costs to move the water are not feasible for the Town.

Finally, while the direction of water can change in a pipe, there are properties to consider, such as water chemistry, pipe cleaning, and hydraulics before completing this task. Many of you are aware of national issues with drinking water where pipe factors were not considered. A similar evaluation would have to be made here to be sure that long term (in some instances 100 years) of build-up of debris and chemical compounds that right now are fixed in the pipe would not dislodge if the flow was reversed and cause more failures in the pipe, or indeed even chemical changes that might impact the drinking water. Likely no one wants to spend a significant sum only to find out that the pipe cannot be used, or that it prematurely fails requiring another borrowing, another project and higher operations and maintenance costs.

A full evaluation has not been completed, but would be recommended before flow is reversed in the existing pipe. However, ultimately if the re-used pipe were to ever break, it would need to be replaced. If that happened in close proximity to the project, then the costs to the district users could be quite high. The cost of the pipe versus the potential remaining life span of that pipe needs to be considered.

Q16. I would like to see Eagle Lake used as a source and reuse the existing pipe. Is Eagle Lake a viable source?

ANSWER: This has not yet been finalized. There are things that need to be analyzed to make this final determination, such as safe yield of the lake, dam stability, and water quality. Once these are determined, there is also the consideration of protecting the watershed, which could limit some recreational use of the lake. Finally, it was estimated that an Eagle Lake filtration plant, even with reused pipe, would not be a low cost

option. At this point, it would appear that other options are more cost effective and viable.

Though we can continue to pursue options like this when they are suggested, it goes contrary to relying on the engineering firm's professional judgment in evaluating suitable science-based options and then providing us with those recommendations.

Q17. Are there other lower cost alternatives other than the ones proposed?

ANSWER: The Town's engineers have explored a variety of options that resulted in the three (3) options with the lowest cost as described in the preliminary engineering report. Some other alternatives that were discussed at meetings were not further explored because of the higher cost elements as it would not seem prudent to fund research in higher cost alternatives. We are currently working with our engineers to consider modification of these options to reduce the capital costs of the new system.

Q18. Considering the larger spatial separation of some properties, would the costs be significantly less if these homes were put on wells as opposed to laying additional piping? Furthermore, what is the viability in the alternative to drilling wells on all the properties as opposed to creating a new water system?

ANSWER: It is assumed that these two questions are related to one another. This has been discussed and there may be instances for some properties perhaps between Chilson and Eagle Lake that may find it more cost beneficial to them to drill a well. The Town has been researching grants but that grant program has not been funded as of the compiling of this question and answer format. Unfortunately, what we have found is that there is no funding source for the Town to do this under current grant programs. This private well funding would have to be partnered through a local not-for-profit organization. The Town will continue to review this but for the majority of the Eagle Lake-Chilson water users, this is not viable due to site constraints that have been identified with a number of properties.

Q19. Once the Town stops using Gooseneck Pond as a water source, what will become of the existing piping and fire hydrants?

ANSWER: It is expected that the exiting pipes and hydrants would be discontinued or left to perform through their useful lives (i.e. no longer maintained). If a break or deterioration were to occur, it is not expected that the pipe or hydrants would be repaired.

Q20. Will the new water system include fire hydrants?

ANSWER: Yes. Taken from **Section 4.2.4, Distribution System** from the **Preliminary Engineering Report**: *In Alternative 1, approximately 28,900 linear feet of new distribution mains will be installed along Route 74 to replace the aging distribution mains. This new section of pipe will be furnished with a valve every 800 feet and with a hydrant every 500 feet to meet Ten State Standards. In addition, water services will be replaced and meters added for all properties.*

That cost of that fire protection would only cover those who are in the district. As such, in the event of a fire for any out of district user, it is expected that the Town will adopt a set of fees whereby an out of district user would pay for the water usage. This is customary in other municipalities where only part of the municipality is paying for the water. Many insurance policies cover some of this cost but each owner should check with their agent.

Q21. What is the status of the survey sent out last summer to all current contract water users along Chilson and Eagle Lake current users?

ANSWER: The town has received 48 of 110 responses from the survey. The following responses are illustrated on a map posted to the town's website

- i. 12 properties are leaning towards joining the district
- ii. 6 properties are leaning towards a private well
- iii. 30 properties who still remain undecided

With only 45% of responses received it makes moving forward with a viable plan that much more challenging for the Town.