

313 CMR: DIVISION OF WATER RESOURCES

313 CMR 4.00: INTERBASIN TRANSFER

Section

- 4.01: General Provisions
- 4.02: Definitions
- 4.03: Delineation of River Basins
- 4.04: Determination and Application Procedures
- 4.05: Criteria for Evaluation of Application for Approval
- 4.06: Hearing and Decision Making Procedures
- 4.07: Miscellaneous Provisions

4.01: General Provisions

(1) Purpose. 313 CMR 4.00 delineates the river basins of the Commonwealth and establishes application procedures and criteria upon which the Water Resources Commission shall base its determination of insignificance or approval or denial of any proposed action to increase over the present rate of interbasin transfer of waters as prescribed in M.G.L. c. 21, §§ 8B through 8D inclusive, and are promulgated pursuant to the authority in said chapter. M.G.L. c. 21 requires that the Commission base its review of the proposed action to increase over the present rate of interbasin transfer on the steps taken by the person using the water to be transferred to undertake effective water conservation and management programs, and upon a thorough review of the environmental effects of the proposed interbasin transfer. Any person who proposes an action to cause an increase over the present rate of interbasin transfer of the surface or groundwater of a river basin shall comply with 313 CMR 4.00, as shall any person who proposes to make any capital improvement which could reasonably be expected to increase the capacity to transfer water out of a donor basin.

4.02: Definitions

Action of the Commission means a majority roll call vote of the Commission at a public meeting on any matter relating to its duties pursuant to M.G.L. c. 21, §§ 8B through 8D, and the rules and regulations established thereunder.

Action to increase over the present rate of interbasin transfer means any change that increases the ability to transfer water out of the donor basin. Actions include, but are not limited to:

- (a) drilling of production wells in the donor basin;
- (b) construction or enlargement of reservoirs to store water transferred or to be transferred from a donor basin;
- (c) construction or increase of capacity of transfer facilities, such as pumps, pipelines, tunnels or other conveyance facilities in the donor basin;
- (d) construction or increase of capacity of water treatment plants where such plants increase the ability to transfer water out-of-basin for use;
- (e) changes in any withdrawal constraints contained in any provision of the Massachusetts General Laws, Special Acts, Judicial Decree, regulatory agency rule, or operating rule of water supplier;
- (f) structural change in a wastewater system that causes an increase in the transfer out of a donor basin;

Exempt from Water Resources Commission review are the following actions:

- (g) replacement of pumps or pipes of similar conveyance capacity;
- (h) restoring reservoirs to original storage capacity;
- (i) renovating existing wells and testing of new well sites;
- (j) constructing conveyance facilities in the donor basin if the sole purpose is to provide redundancy, provided that any increase in capacity cannot be used to increase the ability to transfer water, on an annualized basis, out of the donor basin and providing further that instantaneous streamflow is not directly affected;
- (k) replacing existing wastewater conveyance facilities as long as they do not exceed the operational capacity (including surcharge capacity as determined by the Department of Environmental Quality Engineering) prior to the effective date of the act and providing the facilities conform to a currently approved 303 basin plan;

313 CMR: DIVISION OF WATER RESOURCES

4.02: continued

(l) the installation and use of water supply and wastewater facilities, which although not fully constructed and/or useable, had achieved MEPA compliance and approval by the Department of Environmental Quality Engineering prior to the effective date of the act.

Commission means the Water Resources Commission.

Contingency Plan means a written plan establishing operating procedures for adequately handling water supply emergencies, such as contamination of water supply sources or seasonal or drought related shortages of water supply. The plan shall include provision for emergency supply in the event of a sudden loss of existing sources and of a progressively stringent schedule for limiting water use during seasonal and extended dry periods.

Effective Date of the Act means March 8, 1984.

Emergency Connection means any emergency connection either approved under M.G.L. c. 40, §§ 40 and 41A or authorized by law to provide a necessary and adequate water supply and shall include connections to other existing supply systems, the obtaining of water directly from a new source or the obtaining of greater amounts of water from an existing source. Such emergency connections shall not invoke the provisions of M.G.L. c. 21, §§ 8C and 8D and regulations promulgated thereunder, provided that the period of occurrence does not exceed six months of any calendar year and they fulfill the criteria of the Division of Water Supply of the Department of Environmental Quality Engineering.

Insignificant Increase means an increase which has been determined by the Commission to have a minor impact on the donor basin pursuant to the criteria contained in 313 CMR 4.00, provided that in no case shall an increase over one million gallons per day be deemed insignificant. The Commission may, upon request, consider an increase to be insignificant when the transfer is to be temporary, of short duration and conducted to facilitate the construction, maintenance or repair of a public utility, for flood control purposes, for public safety purposes or for other similar purposes not related to water supply use.

Interbasin Transfer means any transfer of the surface and groundwaters, including wastewater, of the Commonwealth outside a river basin. If a city or town partially situated within a river basin takes waters from that basin, extension of water services to a portion of the same city or town outside the basin shall not be deemed an interbasin transfer of water.

Local Water Management Plan means a comprehensive water resources management plan which has been adopted, or is in the process of being adopted, pursuant to regulations promulgated by the Water Resources Commission (313 CMR 2.00) and administered by the Division of Water Resources of the Department of Environmental Management.

MEPA Compliance means fulfilling the requirements of M.G.L. c. 30, §§ 61 and 62 to 62H inclusive, and the rules and regulations promulgated thereunder, 301 CMR 10.00.

Metering means the installation of water use measuring devices on all permanent water supply services.

Person means any agency, the federal government, the Commonwealth (or political subdivision thereof), any state, public or private corporation or authority, individual, trust firm, joint stock company, partnership, association, or other entity, and any officer, employee or agent of said person, and any group of said persons.

4.02: continued

Present Rate of Interbasin Transfer in a Water Supply System means the hydraulic capacity of an interbasin transfer system which was authorized, constructed and useable for water supply purposes without additional installation of facilities or changes in any authority or operating rule prior to the effective date of the act. The present rate shall also include the capacity of systems which, although not fully constructed and/or useable, have achieved MEPA compliance and final design approval by the Department of Environmental Quality Engineering under the provisions of M.G.L. c. 111, as of the effective date of the act. If withdrawal constraints contained in any provision of the Massachusetts General Laws, Special Acts, Judicial Decree, regulatory agency rule, or operating rule of the water supplier prevents the use of the hydraulic capacity as of the effective date of the act, the lesser amount shall be deemed the present rate.

Present Rate of Interbasin Transfer in a Wastewater Conveyance System means the capacity of an interbasin transfer system which is authorized, constructed, and useable for wastewater conveyance purposes without the installation of added facilities prior to the effective date of the act. If a wastewater flow constraint established by the Division of Water Pollution Control, under provisions of M.G.L. c. 21, prevents the use of the hydraulic capacity as of the effective date of the act, the lesser amount shall be deemed to be the present rate.

Present Rate of a Wastewater Conveyance System is the rate which existed prior to the effective date of the act due to surcharging, rather than the lesser design capacity. If a system, although not constructed and/or useable, has achieved MEPA compliance and approval by the Division of Water Pollution Control under the provisions of M.G.L. c. 21 prior to the effective date of the act, its design capacity or its capacity as modified by a flow constraint, whichever is less, shall be deemed to be the present rate.

Rate Structure means the pricing system by which water and sewer services are charged to the user.

Receiving Area means the area which makes use of the water supply which has been transferred between basins.

River Basin means a geographic area within the Commonwealth determined by a body of water and its surrounding drainage area as defined and determined by the Commission and as described in 313 CMR 4.03. The Commission, upon request or by its own action, shall make a written determination of the precise location of the boundary line of one of the river basins described in 313 CMR 4.00. In making this determination, the Commission shall rely on the report "Hydrologic Characteristics of Massachusetts Streams" published as a cooperative project by the U.S. Geological Survey and the Massachusetts Water Resources Commission, and other such reports or studies as may be pertinent.

River Basin Map means the map or maps of the Commonwealth showing the boundaries of the river basins adopted by the Water Resources Commission as a part of 313 CMR 4.00.

Viable Sources means a source which can provide drinking water that meets the current water quality standards promulgated by the Department of Environmental Quality Engineering at a production cost which is reasonable when compared to costs recently incurred elsewhere in the Commonwealth, and which can be used while preserving reasonable instream flow as determined by the same criteria provided to evaluate impacts on the donor basin hereinafter provided.

Water Services means water supply and wastewater conveyance facilities.

4.03: Delineation of River Basins

(1) Hudson River Basin. The Hudson River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Hoosic River, Kinderhook Creek and Bashbish Brook being generally shown as Basin 1a, 1b, and 1c on the River Basin Map.

4.03: continued

- (2) Housatonic River Basin. The Housatonic River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Housatonic River being generally shown as Basin 2 on the River Basin Map.
- (3) Deerfield River Basin. The Deerfield River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Deerfield River above its confluence with the mainstem of the Connecticut River, being generally shown as Basin 3 on the River Basin Map.
- (4) Westfield River Basin. The Westfield River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Westfield River above its confluence with the mainstem of the Connecticut River, being generally shown as Basin 4 on the River Basin Map.
- (5) Farmington River Basin. The Farmington River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Farmington River being generally shown as Basin 5 on the River Basin Map.
- (6) Connecticut River Basin (Mainstem). The Connecticut River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries (exclusive of tributaries delineated as separate River Basins) and mainstem of the Connecticut River, being generally shown as Basin 6 on the River Basin Map.
- (7) Millers River Basin. The Millers River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Millers River above its confluence with the Connecticut River, being generally shown as Basin 7 on the River Basin Map.
- (8) Chicopee River Basin. The Chicopee River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Chicopee River above its confluence with the mainstem of the Connecticut River, being generally shown as Basin 8 on the River Basin Map.
- (9) Quinebaug River Basin. The Quinebaug River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Quinebaug River, being generally shown as Basin 9 on the River Basin Map.
- (10) French River Basin. The French River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the French River, being generally shown as Basin 10 on the River Basin Map.
- (11) Nashua River Basin. The Nashua River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Nashua River, being generally shown as Basin 11 on the River Basin Map.
- (12) Blackstone River Basin. The Blackstone River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Blackstone River, being generally shown as Basin 12 on the River Basin Map.

4.03: continued

- (13) Merrimack River Basin. The Merrimack River Basin includes that area within the Commonwealth of Massachusetts lying above mean water which by virtue of its topography contributes surface water to the tributaries (exclusive of tributaries delineated as separate River Basins) and mainstem of the Merrimack River, being generally shown as Basin 13 on the River Basin Map.
- (14) Concord River Basin. The Concord River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Concord River, Sudbury River and Assabet River above its confluence with the mainstem of the Merrimack River, being generally shown as Basin 14a and 14b on the River Basin Map.
- (15) Shawsheen River Basin. The Shawsheen River Basin includes that area which contributes surface water to the tributaries and mainstem of the Shawsheen River above its confluence with the mainstem of the Merrimack River, being generally shown as Basin 15 on the River Basin Map.
- (16) Parker River Basin. The Parker River Basin includes that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstem of the Parker River and other coastal drainages emptying into Plum Island Sound south of Basin 13 and north of Basin 17, being generally shown as Basin 16 on the River Basin Map.
- (17) Ipswich River Basin. The Ipswich River Basin includes that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstem of the Ipswich River and other coastal drainages emptying into Ipswich Bay south of Basin 16 and north of Basin 18, being generally shown as Basin 17 on the River Basin Map.
- (18) North Coastal Basin. The North Coastal Basin includes that area within the Commonwealth of Massachusetts lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstem of all coastal rivers and streams draining into the Atlantic Ocean north of Basin 19a; excluding Basins 13, 16, and 17, and being generally shown as Basin 18 on the River Basin Map.
- (19) Boston Harbor Basin. The Boston Harbor Basin includes that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstems of the Mystic, Neponset, and Weymouth and Weir Rivers and other coastal drainage emptying into Boston Harbor south of Basin 18 and north of Basin 21; excluding Basin 20 and being generally shown as Basin 19a, 19b, and 19c on the River Basin Map.
- (20) Charles River Basin. The Charles River Basin includes that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstem of the Charles River south of Basin 19a and north of Basin 19b and 19c, being generally shown as Basin 20 on the River Basin Map.
- (21) South Coastal Basin. The South Coastal Basin includes that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstems of the North River and South River and of all other coastal rivers and streams draining into the Atlantic Ocean south of Basin 19c and north of Basin 22, being generally shown as Basin 21a and 21b on the River Basin Map.
- (22) Cape Cod Basin. The Cape Cod Basin includes that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstem of all coastal rivers and streams on the Cape Cod peninsula, southeast of the Cape Cod Canal and draining into Vineyard Sound, Nantucket Sound, Buzzard's Bay, Cape Cod Bay or the Atlantic Ocean, being generally shown as Basin 22 on the River Basin Map.

4.03: continued

(23) Islands Basin. The Islands Basin includes that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstems of all coastal rivers and streams on the islands of Nantucket, Martha's Vineyard and the Elizabethan Chain, being generally shown as Basin 23 on the River Basin Map.

(24) Buzzard's Bay Basin. The Buzzard's Bay Basin includes that area within the Commonwealth of Massachusetts lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstem of all coastal rivers and streams emptying into Buzzard's Bay south of Basins 25 and 26, and north of Basins 22 and 23, being generally shown as Basin 24 on the River Basin Map.

(25) Taunton River Basin. The Taunton River Basin includes that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstem of the Taunton River, being generally shown as Basin 25 on the River Basin Map.

(26) Narragansett Bay and Mount Hope Bay Shore Basin. The Narragansett Bay and Mount Hope Bay Shore Basin includes that area within the Commonwealth of Massachusetts lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstems of all coastal rivers and streams emptying into Narragansett Bay and Mount Hope Bay Shore south of Basin 27 and north of Basin 24, being generally shown as Basin 26 on the River Basin Map.

(27) Ten Mile River Basin. The Ten Mile River Basin includes that area within the Commonwealth of Massachusetts lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstem of the Ten Mile River southeast of Basin 12, west of Basin 25, and north of Basin 26, being generally shown as Basin 27 on the River Basin Map.

(28) Massachusetts Coastal Basin. The Massachusetts Coastal Basin includes those areas within the Commonwealth lying below the mean high tide elevation.

4.04: Determination and Application Procedures(1) General Procedures.

(a) The proponents of a proposed action to increase over the present rate of an interbasin transfer are encouraged to discuss their plans with the Commission staff at the earliest possible point in project planning.

While such staff review can be concurrent with MEPA review, the proposal must have achieved MEPA compliance before the holding of hearings or the approval or denial of an increase over the present rate of interbasin transfer of water or wastewater.

(b) It is the expressed intention of the Commission that the type and depth of information submitted for Commission review of a proposed action to increase over the present rate of interbasin transfer be at a level sufficient to allow for the Commission to fully exercise its responsibility under the provisions of M.G.L. c. 21, §§ 8C and 8D and the regulations promulgated thereunder. To the extent possible, the proponent should utilize existing data, such as basin plans being developed pursuant to the Water Resources Commission's Water Resources Planning Regulations (313 CMR 2.00) and U.S. Geological Survey Studies pursuant to M.G.L. c. 21, § 9B.

(c) If a MEPA Environmental Impact Report is required under the provisions of M.G.L. c. 30, §§ 61 to 62H inclusive and the rules and regulations promulgated thereunder, 301 CMR 10.00, the data required to be submitted for Commission review under the provisions of 313 CMR 4.00 should be prepared to the extent possible as a component of the EIR Report. Where feasible and desired by the parties, joint scoping sessions with the MEPA and Commission staff and the proponent shall be held.

(d) A person proposing an action to increase over the present rate of interbasin transfer may request a determination that the proposal would cause an insignificant increase as provided in 313 CMR 4.00, or may apply directly for approval by the Commission of the proposed action to increase over the present rate of interbasin transfer pursuant to the application sections of 313 CMR 4.00.

4.04: continued

(2) Request for Determination of Applicability and/or Insignificance.

(a) The Commission may upon request determine whether a proposed action to increase over the present rate of interbasin transfer is insignificant or not an interbasin transfer as defined herein and thereby not require further application procedures contained in 313 CMR 4.00. A person requesting such a determination shall complete a request for determination of applicability or determination of insignificance in approved form and submit it to the Executive Director, Water Resources Commission, 100 Cambridge Street, Boston, MA 02202.

(b) The Commission shall publish a notice of the request for a determination of applicability or a determination of insignificance in the Environmental Monitor within 31 days of the receipt of such request and send a copy of the notice to the municipalities directly affected. The notice shall contain the date of the Commission meeting or meetings when such request will be considered. Within 90 days of the receipt of the request, or upon receipt of all requested additional information, whichever is later, a determination shall be made by action of the Commission. The determination and reasons therefore shall be published in the Environmental Monitor.

(3) Information Required by the Water Resources Commission to Act Upon a Request for Determination of Insignificance. A request for determination must include the following information:

(a) Name, address and telephone number of the proponent.

(b) Name of the project and a brief description of it.

(c) Any applicable federal or state identification number including the EOE File Number (if any).

(d) An approximate timetable for the project.

(e) The increase in interbasin transfer made possible by the proposed action stated in millions of gallons per day on an annualized basis and in terms of increases in maximum daily capacity.

(f) Any change in the period and/or amount to be withdrawn and transferred or stored in reservoirs including the percent of the instantaneous flows to be withdrawn from the donor river and the impact, if any, on the 95% exceedance flow, or the 7Q10 flow if used in the formulation of a program of pollution abatement.

(g) The purpose for which the water is to be transferred and the time and amounts in the case of temporary transfers.

(h) The name and location of the sources of the proposed interbasin transfer, the name of the communities, sections of communities or water district or other entity which will use the water to be transferred and the wastewater discharge point.

(i) Any proposed flow augmentation provisions, flow protection thresholds or other measures to protect instream flows.

(j) If a transfer of wastewater, state reasons why inbasin disposal is not feasible and include the 303 Basin Plan.

(k) The information requested in 313 CMR 4.04(3)(h) illustrated on a map of sufficient detail to show water bodies and streams.

(l) Other information which may be requested by the Commission in specific instances.

(4) Criteria for Determining Insignificance. The Commission shall consider the following criteria in determining if a proposed action to increase over the present rate of interbasin transfer is insignificant.

(a) That the proposed action to increase over the present rate of interbasin transfer shall not facilitate an increase over one million gallons a day.

(b) That the increase on an annualized basis would be less than one million gallons per day and is to be temporary, of short duration and for a purpose cited in the definition of insignificant increase.

(c) That the additional flow to be withdrawn is in all cases less than 5% of the instantaneous flow as measured at an appropriate point of the donor river or tributary thereto.

(d) That the 95% exceedance flow, or the 7Q10 flow when relied upon in a program of pollution abatement, will not be diminished.

4.04: continued

- (e) That special resource values such as endangered species of plants and animals, an area of critical environmental concern, a designated scenic river or area protected by Article 97 of the Amendments to the Massachusetts Constitution will not be adversely affected.
 - (f) The Commission shall consider the cumulative impacts of all past, authorized or proposed transfers on streamflows in the donor basin.
- (5) Application for Approval of an Action to Increase over the Present Rate of Interbasin Transfer.
- (a) Proponents of proposed interbasin transfer shall complete the application in approved form and submit it to the Executive Director, Water Resources Commission, 100 Cambridge Street, Boston, MA 02202.
 - (b) If the Commission, upon request or upon its own motion, determines that a proposed action to increase is not insignificant, it shall require submission of an application for approval in accordance with 313 CMR 4.04.
 - (c) The Commission shall publish notice of the receipt of an application for a proposed interbasin transfer in the Environmental Monitor and send a copy to the municipalities directly affected.
 - (d) The Commission may require such additional information from the proponent or any other appropriate persons or agencies as it deems necessary to conduct this review.
 - (e) The Commission shall, within 60 days of a determination that the application is complete, or that all requested additional information has been received, or within 60 days after MEPA compliance if it is required, whichever is later, conduct public hearings, and within 60 days of completing said hearings shall complete its review and approve or deny the requested action to increase the present rate of interbasin transfer.
 - (f) During the period in which the Commission must reach a decision to approve or deny the proposed interbasin transfer, the proponent, and participating agencies which have jurisdiction by law shall make themselves available at such reasonable times and places designated by the Commission to consult with both the proponent and Commission staff.
 - (g) The review may be extended by written consent of the Commission and the applicant and for a period mutually agreed to.
 - (h) The application shall contain the following parts:
 1. Part I Summary Sheet(s). There shall be a summary sheet(s), written in clear and non-technical language, which shall contain:
 - a. The name of the project.
 - b. Any applicable federal or state identification number, including EOE (MEPA) File Number.
 - c. What other state permits, approvals, or procedures are applicable to this project.
 - d. The name, address, and telephone number of the proponent.
 - e. A brief description of the proposed interbasin transfer.
 2. Description of the Proposed Interbasin Transfer. This part should discuss the nature and extent of the proposal. The description should include:
 - a. An approximate timetable for the project.
 - b. Where applicable, the present transfer system including out-of-basin conveyance capacity, storage capacity, withdrawal constraints or other limiting factors.
 - c. The action to increase over the present rate of interbasin transfer proposed and supporting information showing how the increase was determined. The time and amounts to be withdrawn and transferred or stored in reservoirs, proposed changes in structure and/or changes in withdrawal or transfer constraints.
 - d. The name and location of the sources to be used to increase the interbasin transfer, the name of the communities, sections of communities or water district(s) which will use the water to be transferred and the wastewater discharge point.
 - e. A list of known users whose use could be affected by the proposed transfer.
 - f. The information requested in 313 CMR 4.04(5)(h)2.d. illustrated on a map.

4.04: continued

3. Discussion of the Development of Viable Sources in the Receiving Area. This part should describe the efforts made to identify and develop all viable sources in the receiving area except where the transfer is one which occurs only because an in-basin source is transferred out-of-basin as wastewater. This part needs to be in sufficient detail for the Commission to determine if all reasonable efforts have been made to conduct such identification and development. This discussion should include:
 - a. Location and assessment of existing, abandoned and potential in-basin water supply sources.
 - b. A copy of studies and reports evaluating in-basin sources in the receiving area.
 - c. Costs of developing in-basin sources in the receiving area.
 - d. Impact on in-basin stream flow which should result from the development of in-basin source(s) in the receiving area.
 - e. Feasibility of obtaining additional water supply from water supply agencies in cities, towns or districts within the same basin.
4. Description of Conservation Measures in the Receiving Area. This part should describe all measures to conserve water completed, in progress, or programmed for continuation in the receiving area. Measures to be described shall include:
 - a. The identification of distribution system sources of lost water.
 - b. Leak detection and repair program.
 - c. Metering and meter maintenance program.
 - d. Rate structure.
 - e. Public information program to promote water conservation.
 - f. Contingency plan.
 - g. Measures to protect water supply sources presently serving the receiving area.
5. MEPA Compliance. The application should include, where required, an ENF and all of the information produced in the MEPA process available at the time of the application.
6. Description of Watershed Management Programs. This part should describe existing and proposed watershed forestry management programs on watershed lands presently serving the receiving area and under control of the proponent, with a copy of any applicable forestry watershed plans included.
7. Description of the Instream Flow of the Donor Basin. This part should describe the hydrologic characteristics of the river basin from which the water is to be diverted and any interdependent groundwater regimen. This description should include:
 - a. Annual stream flow based on the areal discharge per square mile for the period of record utilizing data available from streamflow records produced by the U.S. Geological Survey.
 - b. A hydrograph showing potential changes induced by the transfer.
 - c. Impact of the proposed interbasin transfer of surface water on stream flow and on instream water uses.
 - i. Length of stream below the point of withdrawal.
 - ii. Effect on hydraulic characteristics including, but not limited to flood flows, the aquatic base flow, the 95% exceedance flow, the 7Q10 flow if used in a pollution abatement program, stage, velocity, sediment regimen, etc.
 - iii. Indigenous and anadromous fisheries as determined by written reports of appropriate agencies and effects of the proposed interbasin transfer on these fisheries.
 - iv. Wetlands and dependent flora and fauna and effects thereon.
 - v. Effect on water quality recreational uses and aesthetic values.
 - vi. Effect on established riparian uses and uses dependent on recharge from stream flow.
 - vii. Effect on hydropower production.
 - viii. Effect on present and foreseeable water withdrawals and undeveloped rights within the donor basin.
 - ix. Effect on other instream uses present and foreseeable.

4.04: continued

8. Where water is used and then transferred as wastewater to another basin, the reasons for such a wastewater transfer shall be stated. If covered by a 303 Basin Plan, it shall be submitted for consideration.

9. The Commission may, in appropriate cases, waive certain of the application requirements in 313 CMR 4.04 not specifically required by state or federal law. It may also require the submission of additional information if needed to reach a decision in a specific case.

4.05: Criteria for Evaluation of Applications for Approval

The Commission shall consider the following criteria in making its decision to approve or deny a proposed action to increase over the present rate of interbasin transfer of waters.

(1) That an environmental review pursuant to M.G.L.c. 30, §§ 61 and 62H, inclusive, if required, has been complied with for the proposed increase.

(2) That all reasonable efforts have been made to identify and develop all viable sources in the receiving area of the proposed interbasin transfer.

(3) That all practical measures to conserve water have been taken in the receiving area, including but not limited to the following:

- (a) The identification of distribution system sources of lost water, and where cost effective, the implementation of a program of leak detection and repair.
- (b) Metering of all water users in the receiving area and a program of meter maintenance.
- (c) Implementation of rate structures which reflect the costs of operation, proper maintenance, proposed capital improvements and water conservation and which encourage the same.
- (d) Public information programs to promote water conservation, the use of water conserving devices, and industrial and commercial recycling and reuse.
- (e) Contingency plans for limiting use of water during seasonal or drought shortages.
- (f) Implementation of land use controls to protect existing water supply sources of the receiving area that meet the requirements of the Department of Environmental Quality Engineering published in 310 CMR 22.20.

(4) That a comprehensive forestry management program which balances water yields, wildlife habitat and natural beauty on watershed lands presently serving the receiving area and under control of the proponent has been implemented.

(5) That reasonable instream flow in the river from which the water is transferred is maintained. The Commission shall take into consideration in determining reasonable instream flow the impact of the proposed interbasin transfer on the streamflow dependent ecosystems and water uses to include:

- (a) Length of stream below the point of withdrawal.
- (b) Effects on flood flows, intermediate flows and low flows.
- (c) Effect on groundwater and surface water elevations.
- (d) Significance of indigenous and anadromous fisheries and fauna and effects thereon.
- (e) Significance of wetlands and dependent flora and fauna and effects thereon.
- (f) Effect on water quality, recreational uses, aesthetic values, areas of critical environmental concern and areas protected under Article 97 of the Amendments to the Massachusetts Constitution.
- (g) Effect on established riparian uses and uses dependent on recharge from stream flow.
- (h) Effect on hydropower production.
- (i) Effect on other water withdrawals and undeveloped rights within the donor basin.
- (j) Effect on other instream uses.

(6) In the case of groundwater withdrawals, the results of pump tests will be used to indicate the impact of the proposed withdrawal on static water levels, the cone of depression, the potential impacts on adjacent wells and lake and pond levels, and the potential to affect instream values as listed in 313 CMR 4.05(5)(a) through (j).

313 CMR: DIVISION OF WATER RESOURCES

4.05: continued

(7) That the communities and districts in the receiving area have adopted or are actively engaged in developing a local water resources management plan.

(8) The Commission shall consider the impacts of all past, authorized or proposed transfers on streamflows in the donor basin.

4.06: Hearing and Decision Making Procedures

(1) Public Hearings. Before acting to approve or deny a proposed action to increase over the present rate of interbasin transfer the Commission shall hold two public hearings. One hearing must be held in the donor community where the immediate source of the interbasin transfer is located and one hearing must be held in the receiving area. Additional public hearings may be required by the Commission prior to its approval or denial of a proposed action to increase.

(2) Hearing Notice. Public notice of the hearing shall be published in the Environmental Monitor by the Commission not less than 21 days before such hearing. Notice shall be published in at least one newspaper of general circulation in the donor and receiving areas. Such notice shall be mailed to the appropriate Boards of Selectmen, Mayors, Conservation Commissions, Planning Boards, Water and Sewer Departments, Boards of Health, Commissions or Districts of the directly affected communities and regional planning agencies. Such notice shall include a citation of the authority under which the proposed interbasin transfer is being reviewed, a summary of the facts concerning the proposed interbasin transfer, the time and place of the hearing, the manner by which the public may make their views known.

(3) Filing Commission Decision. Within 30 days of final action by the Commission it shall file a written report of the findings and justifications of its decisions to approve or deny the proposed action to increase over the present rate of interbasin transfer with the clerks of the House of Representatives and the Senate, and with the Secretary of State for publication in the Massachusetts Register.

4.07: Miscellaneous Provisions

(1) Interbasin Transfer Data. The Commission may require any person transferring water or wastewater out of a donor basin to provide information concerning the time and amount of said water transferred on a periodic basis which the Commission deems necessary to achieve the purposes of 313 CMR 4.00. Upon review of water consumption trends in the development of river basin plans in the 313 CMR 2.00 planning process, the Commission may advise any supplier of water that a continuation in the pattern of consumption may result in the need for additional sources of supply, pointing out the requirements which must be met if an out-of-basin source is to be utilized.

(2) Jurisdiction. 313 CMR 4.00 shall have force and effect within the political boundaries of the Commonwealth of Massachusetts.

(3) Severability. If any provision of 313 CMR 4.00 or the application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of any part of 313 CMR 4.00 not specifically held invalid, and to this end the provisions of 313 CMR 4.00 are declared to be severable.

(4) Amendments to 313 CMR 4.00. 313 CMR 4.00 may be amended from time to time by the Commission in accordance with the applicable provision of M.G.L. c. 30A. At least once each year the Commission shall review 313 CMR 4.00 and determine whether they continue to properly fulfill their purposes and the requirements of applicable legislation.

(5) Effective Date. 313 CMR 4.00 shall become effective upon their promulgation pursuant to M.G.L. c. 21, § 8D.

313 CMR: DIVISION OF WATER RESOURCES

4.07: continued

(6) Waiver. The Commission may waive in writing any provision or requirement in 313 CMR 4.00 not specifically required by state or federal law when in its judgement strict compliance with such provision or requirement would result in an undue hardship and would not serve to minimize or avoid damage to the environment and in the case of public notice requirements would not be necessary to provide a substantially similar audience of adequate notice in fact. Hardship stemming from a delay in compliance with the law or regulations by the person requesting the waiver will normally not be a sufficient reason for granting such a waiver.

REGULATORY AUTHORITY

313 CMR 4.00: M.G.L. c. 21, § 8D.