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Pursuant to M.G.L. c. 30A, the MA Department of Environmental Protection (MassDEP) has proposed amending the Water Resources Management Program Regulations (310 CMR 36.00) to add a condition to Water Management Registrations that would restrict nonessential outdoor water use by registrants during times of drought declared by the Secretary of Energy and Environmental Affairs. This regulatory amendment would better align water use during times of drought with the Massachusetts Drought Management Plan, as updated in 2019.

To date, MassDEP has held two virtual hearings on the proposed amendment on July 7 and 16, 2021, and held a public comment period from June 11 to July 26, 2021, requesting written comment. MassDEP received over 371 comments. All unique comments are included below. Numerous copies of one comment were submitted as part of an email campaign. A copy of the comment is included here with a list of names of those who participated in the email campaign.

SENATOR GOBI, A

AMHERST DPW WATER DIVISION

BURLINGTON DPW

CAMBRIDGE WATER DEPT

DEDHAM-WESTWOOD WATER DIST

FOXBOROUGH WATER DEPT

HAMILTON, TOWN OF

LEOMINSTER, CITY OF

LYNNFIELD CENTER WATER DIST

MANCHESTER-BY-THE-SEA

MONSON

MWRA

NEEDHAM, TOWN OF

NORTH READING WATER DEPT

READING, TOWN OF

SALEM-BEVERLY WATER SUPPLY BOARD

SPRINGFIELD SWSC

STOCKBRIDGE, TOWN OF

WELLESLEY DPW

WINCHESTER, TOWN OF

WORCESTER DPWP

ASSOCIATED INDUSTRIES OF MASSACHUSETTS (AIM)

BACK RIVER WATERSHED ASSOCIATION

BLACKSTONE RIVER VALLEY NAT. HERITAGE CORRIDOR

CENTER FOR ECOLOGICAL, ECONOMIC & ETHICAL EDUC.

CHARLES RIVER WATERSHED ASSOCIATION

CONNECTICUT RIVER CONSERVANCY

ENVIRONMENTAL LEAGUE OF MASSACHUSETTS (ELM)

GREEN INDUSTRY ALLIANCE

IPSWICH RIVER WATERSHED ASSOCIATION

MA ASSOCIATION OF LAWNCARE PROFESSIONALS

MASS AUDUBON SOCIETY

MASSACHUSETTS RIVERS ALLIANCE

MASSACHUSETTS MUNICIPAL ASSOCIATION (MMA)

MASSACHUSETTS WATER WORKS ASSOCIATION (MWWA)

NATIVE FISH COALITION

OARS FOR THE ASSABET, SUDBURY & CONCORD RIVERS

THE NATURE CONSERVANCY IN MASSACHUSETTS

UTILITY CONTRACTORS ASSOC. OF NEW ENGLAND (UCANE)

WATER SUPPLY CITIZENS ADVISORY COMMITTEE (WSCAC)

ARRICALE, M

ARSNOW, B&E

BEAUVAIS, C

BOUDREAU, J

CARTER, J

COMEAU, J

COMB, D

DAY, M

EVANS, K

FATES, L

FOWLER-WHEATON, D

GERO, A

HARITON, J

HOUSING, T

JOSEPHSON, I

KASTORF, K

KELLY, J

LAUENSTEIN, P

LINDQUIST, K

LOYER, A

MACNULTY, K

MACKIN, K

MESSANGER, P

NAPIORKOWSKI, L

NELSON, E

PETRIE, C

PRIES, T

RENN PARKER, L

RUBICHINUK, S

SANDULLI, C

SAUNDERS, P

SCHNEIDER, J

SLOZAK, D

STATZ, I

TAPPAN, S

TROTSKY, S

WALES, P

WARNER, N

WHITING, B

WILKING, J

WINTHROP, S

WOODCOCK, C

YEMMA, C

IDENTICAL EMAIL SUBMITTED BY INDIVIDUALS

ABRAHAM, B; ALDRICH, C; ALEXANDER,S; ALLEN, M; ALLEN, S; ALLMAN, M; AMOROMENA; AMROD, D; ANDOLORO, B; ARDITO, G; ARTIN, T; ASHTON, S; ATTILA, D; AUGER, J; BARRY, K; BARRY, M; BASILE, D; BELCASTRO, B; BENGSTON, L; BENOIT, M; BERBE, G; BERTANO, S; BEVES, P; BIASE, M; BLEVINS, P; BOBE, P; BOIS, M; BOND, L; BONUALAS, M; BORNEUF, J; BOUSQUEST, C; BRAOUDAKIS, S; BRENNER, J; BREWER, J; BROCIOUS, P; BURGER, W; BURGIO, A; BURNS, C; BURRIDGE, J; BURYER, N; BUSNACH, N; BUTLER, E; CANTY, K; PUTO, M; CARNEY-FELDMAN, C; CARR, B; CARROLL, D; CARSON, M; CHAMBERS, P; CLARK, S; CLEERE, E; CLING, M; COLLAR, M; CONNOLLY, JP; CONROY, L; COOK, D; COS, S; CRYSTALS13; CUSHING, M; DALCAIS, S; DARLINGTON, B; DAVISON, K; DELOMA, E; DENIS, L; DENUNZIO, B; DESTEFANO, N; DICKINSON-ADAMS, E; DILLON, D; DIRUSSO, D; DONAHUE, S; DONALDSON, A; DOUCETTE, J; DOWD, J; DOWNING, C; DOWNING, R; DRAGON, D; DRAPER, B; DUNKIN, S; DUNN, T; DUPREY, R; DURAN, P; ELDER, D; FEFFRON, J; FERRARA, L; FERRARO, M; FIGHERA, L; FITZGERALD, L; FITZGERALD, L; FLEMING, M; FLEMING, M; FLORIO, F; FLOWERS, B; FOLEY, S; FORMAN, J; FOSKETT, M; FOSSA, W; FOTOS, J; FOX, H; FOX, S; FRAY, A; FREEMAN, L; GARCIA, J; GARESCHER, M; GERSHANOFF, M; GHENOIU, P; GISWOLD, T; GITSCHEIR, J; GOODSPEED, H; GOSBEE, C; GOSLANT, C; GRAY, R; GREENSPAN, K; GREINKE, P; GRIMES, C; GRONDON, M; GUARNIERI, T; HACKMAN, S; HADCROFT, J; HALL, M; HARRIS, P; HARTZ, S; HDZ, M; HEGARTY, E; HENRIQUES, C; HENRIQUES, H; HENRY, W; HESEMEYER, K; HESS, R; HIGGINS, L; HOFFMAN, D; HOLLINRAKE, M; HOUCK, H; HOWELL, L; HRICIK, J; HUBBARD, K; HUFNAGL, G; HUGHES, A; HUNKLER, L; HUNT, M; JONES, P; KAFKA, M; KAHIGIAN, P; KAUFMAN, M; KEHAS, A; KEISER, J; KELLERMAN, T; KENNER, K; KENT-BERMAN, M; KEOPFER, A; KING, T; KLASS, N; KOCH, J; KRYNICKI, K; LANDA, D; LANGE, M; LARSEN, J; LAUBNER, S; LEBRON, L; LELAND, L; LILLING, G; LINCOLN, S; LOHMAN, J; LONG, J; LONGEVER, J; LONGYEAR, S; LORD, C; LOTITO, M; LOWMAN, B; LYONS, K; MACGREGOR, H; MAGUIRE, J; MARINEAU, J; MARTIN, C; MARTINS-FERNANDEZ, A; MASTRANDREA, D; MATER, R; MAZZONE, A; MCCOLL, M; MCRAE, N; MEDINA, K; MEDSKA, V; MENDELSOHN, C; MESTINA, J; MILETTA, L; MILLER, C; MILLER, C; MILLER, D; MILLER, M; MILLER, R; MILLER, S; MIREAULT, K; MOORE, J; MORRIS, B; MOSER, J; NETTLESHEIM, C; NEVILLE, P; NICOLAS, J; NILLSON, D; NOONAN, J; OSBORNE, C; PANICIOCCO, S; PAPPANO, R; PAPSCUN, A; PAXTON, G; PESKIN, L; PHILLIPS, R;

POLONKA, J; POMERANTZ, F; PREFONTAINE, E; PROVOST, C; PRYBYSZ, S; QUINTANA, P; RADKO, D; RAFFERTY, P; REGEN, H; REILLY, M; REITER, D; RICE, B; RIGBY, C; RIPP, R; RIVERA, J; RODACK, S; RODAR, J; ROSE, E; ROSS, L; RUGGIERO, J; RUMRILL, J; RUSSO, B; RUSSO, M; RYLE, K; SADE, J; SANDEL, N; SCHNEEBELI, C; SCHWEFEL, J; SEVILLA, C; SHAPIRO, D; SHORT, M; SILVERSTEIN, S; SKOLNICK, K; SLOAN, E; SMITH, C; SMITH, K; SMOCK, A; SMUDIN, C; SPECK, C; STEIN, D; STEIN, V; STEINER, AL; STERN, R; STEWART, S; STRAUSS, A; STRICKLAND, J; TELPIN, L; TENDLER, M; THALER, G; TOWNER, E; TURBUSH, H; TUSSING, K; VADNAIS, K; VALENTINE, J; VICTOR, S; VILLA, C; VILLANOVA, M; WAINE, L; WALD, S; WALLER, S; WASHINGTON, C; WEEMS, S; WEINER, M; WERNER, E; WERNER, K; WHITNEY, E; WILEY, K; WILLIAMS, F; WILLIAMS, L; WLAKER, C; WOLONGEVICZ, P; WOLSLEGEL, T; WOODS, K; WOOLLEY, N; WRIGHT, S; ZALL, M; ZUCKERMAN, A; ZYLA, A



The Commonwealth of Massachusetts MASSACHUSETTS SENATE

Chair

JOINT COMMITTEE ON
HIGHER EDUCATION

Vice Chair

JOINT COMMITTEE ON
REDISTRICTING

and Middlesex District

STATE HOUSE, ROOM 413A
BOSTON, MA 02133-1054

Tel: (617) 722-1540 Fax: (617) 722-1078 Anne.Gobi@MAsenate.gov www.MAsenate.gov

July 22, 2021

Martin Suuberg, Commissioner Massachusetts Department of Environmental Protection One Winter Street Boston, MA 02108

Dear Commissioner Suuberg,

I am writing today with regards to the proposed amendment to the Water Resources Management Program Regulations (310 CMR 36.00) of the Commonwealth of Massachusetts. I want to express my concerns over the proposed amendment and the impact it could have on communities, like those I represent. While I am cognizant of our collective need to preserve natural resources, especially water; I have concerns when that preservation is done on a one-size-fits-all basis.

My two primary concerns regarding the proposed amendment would be the addition of the definition for Multi-Year Drought Storage, and a set of uniform requirements regarding non-essential water use during department declared drought conditions. This definition requires a reservoir storage of three times the registrants authorized withdrawal and any required release. Some of the communities I represent would have difficulty satisfying this requirement either in terms of space or capability. I feel the non-essential watering restrictions and drought conditions that would be imposed by the Department do not consider current drought regulations that many of these communities already have in place. And, further, they remove any local control in a department declared drought situation, stripping a local community of its ability to keep its residents safe.

I strongly request the department consider meeting with representatives of communities with their own water departments to get input on how these regulations could be made to better assist them in their regular activities.

I thank you for your time and consideration of my comments.

Sincerely,

Anne M. Gobi State Senator

ALLE Gob;



AMHERST Massachusetts

OFFICE OF THE SUPERINTENDENT OF PUBLIC WORKS 586 SOUTH PLEASANT STREET AMHERST, MA 01002 TEL. 413-259-3050 FAX 413-259-2455

June 4, 2021

Department of Environmental Protection Water Management Act Program One Winter Street Boston, MA 02108 Attn: Registration Renewal Forms

RE: Amherst DPW Water Division Registration #10600802

To whom it may concern,

The Town of Amherst DPW Water Division is requesting renewal of its Registration (#10600802) for water withdrawal under the Massachusetts Water Management Act (WMA). We have completed the Registration Renewal Request Form, which is attached to this letter.

The Town of Amherst would like to express their concern over submitting this renewal application prior to the finalization of the proposed changes to 310 CMR 36.00 regarding conditioning registrations. Although, the draft regulations have been issued, the review and comment period is just beginning and the Town has not had the opportunity to fully review or comment on the draft regulations, and have no idea what the final required conditions on our registration will be.

The Town is submitting this application to be in compliance with the Registration Renewal filing deadline, however, we want it to go on record that we object to any conditions which stand to infringe upon our legally entitled water withdrawal volumes.

Respectfully,

Guilford Mooring

Superintendent of Public Works



Department of Public Works

June 14, 2021

Re: Burlington 3048000

Registration #31504801

Dear Sir/Madam,

We are filing for our renewal of our registration. It is our understanding that MassDEP is intending to condition our Registration, however, it very much concerns us that we are being asked to submit this renewal when we will not know the exact conditions until we see the draft regulations. We want to be in compliance with the Registration Renewal filing deadline, but we also want to go on record that we object to any conditions which stand to infringe upon our legally entitled volumes. To that end, we are seeking a renewal of our permit but retain any rights we have or may have regarding any imposed conditions about which we have not been made aware prior to our renewal being filed.

We look forward to reviewing the new proposed regulations along with any proposed conditions. It would seem to us that in the event MassDEP is considering new conditions that we be permitted to review and comment on same first, prior to implementation. Indeed, it would seem that any conditions which are not now known by us should not go into effect until a new renewal year and after review of the conditions.

<u>Reg</u>ards,

Russell Makiej

Driniking Water Treatnment Manager





City of Cambridge Executive Department

July 21, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection – Water Management Program One Winter Street, 5th Floor Boston, MA 02108

Re: Water Management Act (WMA) Regulations - Comments on Proposed Regulations to Condition Water Registrations

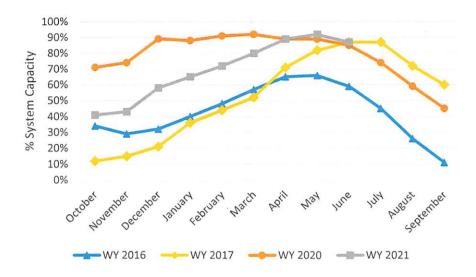
To whom it may concern:

Using the current MA Drought Management Plan, adopted in 2019, as a universal basis for conditioning municipal water registrations is not an effective means of preserving or protecting our water resources. Each water system is unique and in Cambridge this certainly holds true. We have our own independent water source and also are a full member of the MWRA for both water and wastewater. Cambridge has a redundant water system (the MWRA) which is unique in eastern Massachusetts.

Our water reservoir system is small but very resilient and the overly sensitive MA Drought Management Plan could have a negative impact on our system.

As an example: during the first year after implementation of the MA Drought Management Plan (2020), there were several months of State declared drought where the Cambridge water system was well within its ten-year averages. Even with the drought declarations in 2020 the Cambridge System reached its full capacity in May (2021), well before the late June/early July precipitation, and we are currently spilling into the Charles River to maintain safe operating levels. Please see the chart below comparing the drought years with 2020 and 2021.





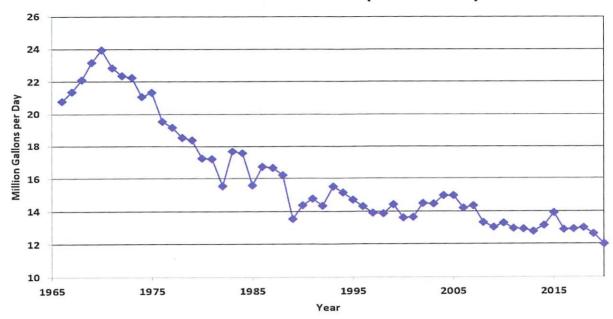
Additionally, the City of Cambridge operates three in-series surface water supply reservoirs to provide the City's daily demand. In the summer and fall, dam releases from the Cambridge Reservoir in Waltham travel approximately 2.84 miles south via the Hobbs and Stony Brooks to the Stony Brook Reservoir on the Weston/Waltham town boundaries. From the Stony Brook Reservoir, water is piped to Fresh Pond in Cambridge via approximately 7.5 miles of underground conduit. For Cambridge, demand reduction during times of drought would translate into a 1:1 or greater reduction in dam releases from the Cambridge Reservoir, resulting in less water in 2.84 miles of Hobbs Brook and Stony Brook tributaries without increasing Stony Brook Dam releases to the Charles River. The presumption that there is a net environmental benefit from demand reduction does not necessarily apply to the Cambridge water supply system and could in fact have unintended negative environmental impacts to tributary streams conveying water supply flows and to their eco-systems.

With the drought of 2015, 2016 and 2017 the Cambridge Water Department enhanced its water conservation efforts. We promoted routine conservation practices through webpage updates and direct mailings with a myriad of materials included with bills. We enhanced our water conservation promotion with daily tweets and seasonal bill stuffers in the spring and fall and added cable TV announcements. We have made water conservation a consistent message to our customers using all media forms, regardless of need. This is and continues to be a very effective means of reducing or maintaining our water demand with an increasing population.

The City has also been proactive in reducing demand. Starting in 2015, the City initiated the installation of smart irrigation systems in municipal systems and discussed water conservation efforts with Cambridge universities which led to their implementation of ultralow flow toilets (0.8 gallons per flush).

Please see the graph which depicts a reduction in daily demand from 24 MGD in 1970 to 12 MGD in 2020.

Historical Finished Water (1966 - 2020)



- The past ten years (2010-2019) our water use has averaged 81% or 13.04 Million Gallons (MG) per day of our Water Management Act Registration of 16.16 Million Gallons
- Population has increased 13% from 2010: 105,162 to 2019(est.): 118,927
- Our *per capita* water use is 45 gallons per day per person. The Massachusetts State Standard is 65 gallons/capita/day

In conclusion:

Water registrations should not be conditioned under any circumstances.

Cambridge believes that the one-size-fits-all drought conditions that MassDEP seeks to impose would most certainly infringe upon Registrants' entitlement to their existing withdrawals by unnecessarily limiting their ability to use that water during a drought to best meet local needs. The Water Management Act (WMA) affords Registrants with blanket entitlement which they have used responsibly, including when managing local drought conditions, notwithstanding their right to the full registered volume at all times.

If the proposed regulation changes move forward despite our strong objection, Cambridge and many other water systems would be much better served by having the ability to implement their own, *state-approved*, *system-specific* Drought Management Plan (DMP), rather than being governed by general drought indicators.

Truly Yours,

Louis A. DePasquale, City Manager

Stephen S. Corda, Managing Director, Cambridge

Water Department

LEAHY & RICHARDSON

ATTORNEYS AT LAW

339 WASHINGTONSTREET DEDHAM MASS. 02026 (781)326-8331 FAX 326-0355 E-mail ejr339@verizon.net

EDWARD J. RICHARDSON

JOSEPH M. LEAHY(1917-1997)

June 7, 2021

Eileen M. Commane Executive Director Dedham-Westwood Water District 50 Elm Street Dedham MA 02026

Re: Renewal of Water Management Act Registration

Dear Eileen:

This is a follow up to our conversation this week regarding the renewal of the registration under the Water Management Act and the extent to which the Dedham Westwood Water District (DWWD) was exempted from regulations adopted by the DEP subsequent to the inclusion of the DWWD within registration under the Act.

I reviewed the documents which you sent to me and I believe that the DWWD should include this opinion letter with the renewal of registration and state as follows:

"We understand MassDEP is intending to condition our Registration, however, it very much concerns us that we are being asked to submit this renewal when we will not know the exact conditions until we see the draft regulations. We want to be in compliance with the Registration Renewal filing deadline, but we also want to go on record that we object to any conditions which stand to infringe upon our legally entitled volumes."

This takes the position that the DWWD wishes to retain the volume limits to which it had been historically entitled.

Sincerely.

Edward J. Richardson

EJR/dpc



Board of Water and Sewer Commissioners

TOWN OF FOXBOROUGH

70 ELM STREET FOXBOROUGH, MASSACHUSETTS 02035

Michael P. Stanton, Chair Richard M. Pacella, Jr., Vice-Chair Robert T. Garber, Clerk

Robert B. Worthley Superintendent Telephone 508-543-1209 Fax 508-543-1227

July 12, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection – Water Management Act Program One Winter Street, 5th Floor Boston, MA 02108

RE: Proposed Amendments to 310 CMR 36.00 – Conditions on WMA Registrations VIA EMAIL TO: dep.talks@mass.gov

To Whom It May Concern:

I am a member of Massachusetts Water Works Association (MWWA) and wish to submit the following written comments to the Massachusetts Department of Environmental Protection (MassDEP) regarding the proposed changes to the Water Management Act Regulations, 310 CMR 36.00. Wise water use is important, especially during times of drought, but promulgating statewide regulations on Registrants that do not recognize the unique characteristics of every water system is unnecessary. I support the comments that are being submitted by MWWA, and like MWWA, urge MassDEP to withdraw these proposed regulations.

The Water Management Act proposes these amendments in order for the water restriction map to show that every Town in a Drought Region has the same level of restriction, with consistency as a desired goal. However, as can be seen in the map of the Southeast Drought Region, (below), the borders of the drought regions are drawn around town borders, not around the watersheds from which the Towns are drawing. A blanket restriction based on Drought Regions can adversely affect a Town that is withdrawing water from a completely different watershed. Restricting them will not achieve the goal of helping that Drought Region. There should not be blanket restrictions based upon Drought Regions. Just as the conditions in each Town are unique, so are the conditions in each watershed. The conditions in the Charles River watershed can be completely different than those in Buzzards Bay, yet they are in the same Drought Region, and the proposal would impose the same level of restrictions. The level of restrictions should be based on a water supplier's ability to provide water, and not based on the entire Drought Region.

As the water supplier in the Town of Foxborough, we have had to be self-reliant and work to protect our supply, in order to ensure essential water needs were met for health and sanitation, and pressure is maintained for fire protection. While the Town of Foxborough has several interconnections, the pressures at these interconnections only allow water to flow *from* Foxborough to our neighbors. In times of shortage, Foxborough has increased the level of Non-Essential Use Restrictions. When the levels in storage fell to the point that essential use was going to be in jeopardy due to fallen capacity and multiple sources off line, Foxborough requested a Declaration of Water Supply Emergency, and, with that, all nonessential water use had to cease. A regulation was not needed to limit nonessential water use.

While Foxborough had an all-out water ban, our neighbors did not. Again, operational conditions vary from community to community, and these conditions should be the driving force for setting the level of water restrictions. It should not be based upon how the water restriction map looks.

With the MWRA being exempt, and the exemption for golf courses, the proposal is already inconsistent. The Massachusetts Drought Management Plan has very sensitive metrics, many of which are not water supply related, nor directly related to our capacity to supply our customers, even during times of drought.

As can be seen below in the April 15 letter, a Level 2 Significant Drought was declared in the Southeast Drought Region. The Town of Foxborough implemented hand-held hose restrictions due to the drought declaration, even though Foxborough had recently activated several brand new replacement wells, and did not have any supply issues. We received backlash from the community as to how there could be a shortage, with the new wells online. Many questioned whether or not we had mismanaged our sources, after noticing that other communities had not instituted the same level of restrictions. Foxborough contacted Water Management, and learned this level of restriction was only a *suggestion*, and that Foxborough's standard Two Days a Week restriction was consistent with our Water Management Act Permit.

Another concern is that the proposal does not address private wells. Again, it is the question of consistency. Residents, who have the resources to do so, put in and use irrigation wells, and have green grass. The residents without the necessary money to install irrigation wells end up with burnt, dead and crunchy lawns. All the while, the irrigation wells are removing water from the aquifer.

When a drought level is declared while a water supply does not have capacity issues, the resulting loss of revenue is concerning. Leak detection, water main and meter replacement programs, for example, are expensive. Loss of revenue puts us further behind. It is not as simple as "Just raise the rates.", and "There are ways to raise rates that don't affect the most vulnerable.".

The Foxborough Water Department believes it has been shown that the proposed regulations will not foster water system resiliency, and will, in fact, be detrimental, by limiting revenues needed to maintain and upgrade our water system. The Foxborough Water Department requests MassDEP rescind these draft regulations, as they are both unnecessary and counterproductive, and instead work with MWWA and Public Water Systems on the creation of system-specific drought plans and other measures that will yield more meaningful and tangible results toward increasing water system resiliency.

Sincerely,

Robert Worthley

Water Superintendent, Town of Foxborough

CC:

Senator Edward Markey Senator Elizabeth Warren US Congressman Jake Auchincloss



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker Governor

Karyn E. Polito Lieutenant Governor Kathleen A. Theoharides Secretary

> Martin Suuberg Commissioner

To:

Registered and Permitted Users Under the Water Management Act

Date:

April 15, 2021

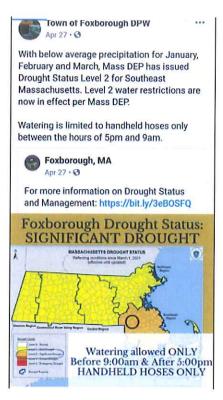
Subject:

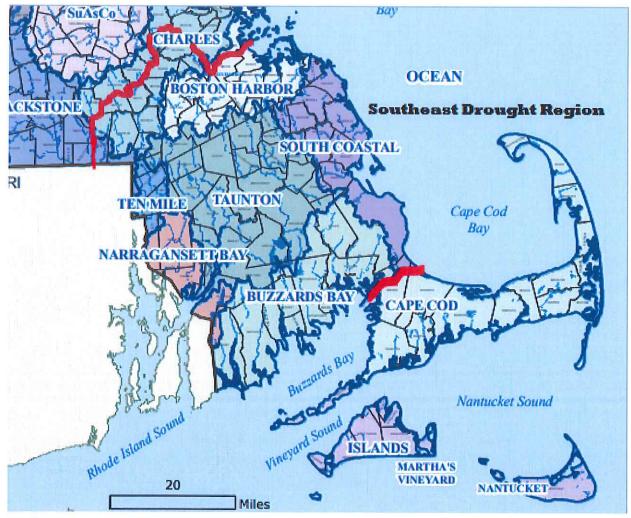
Massachusetts Drought Advisory Status

On April 9, 2021, Secretary of Energy and Environmental Affairs Kathleen Theoharides issued a Level 1 - Mild Drought declaration for the Western, Connecticut River Valley, Central, Northeast, and Cape Cod Drought Regions, and issued a Level 2 - Significant Drought declaration for the Southeast Drought Region based on advice from the Massachusetts Drought Management Task Force. The Islands Drought Region, which includes Nantucket and Martha's Vineyard, remains at Level 0 - Normal.

The attached Massachusetts Drought Alert from the Executive Office of Energy and Environmental Affairs summarizes Massachusetts' drought status as of April 9, 2021. The Massachusetts Drought Management Plan, updated in 2019, (https://www.mass.gov/doc/massachusetts-drought-management-plan/download) presents the criteria used to evaluate conditions when issuing a drought declaration, and presents Massachusetts' seven drought regions and five drought levels (Level 0 - Normal, Level 1 - Mild Drought (formerly Advisory), Level 2 - Significant Drought (formerly Watch), Level 3 - Critical Drought (formerly Watch) and Level 4 - Emergency Drought)

Level 2 (Significant Drought): Outdoor water is banned, except that watering ornamentals and flower gardens with drip irrigation, hand-held hose or watering cans may be permitted.







J. Raymond Miyares Thomas J. Harrington Christopher H. Heep Donna M. Brewer Jennie M. Merril Bryan Bertram Ivria Glass Fried Alexandra B. Rubin Ethan B. Dively Maurica D. Miller Rian Rossetti

June 9, 2021

By Email (kathleen.baskin@mass.gov)

Kathleen Baskin
Assistant Commission
Department of Environmental Protection
Bureau of Water Resources
1 Winter Street
Boston, MA 02108

Re: Town of Hamilton Renewal Registration Statement

Dear Kathy:

The Town of Hamilton is submitting the attached renewal registration statement in accordance with the requirements of the *Water Management Act* (WMA), *M.G.L.* c.21G, §5, but wishes to emphasize its position that it has the right, under that section, to continue the existing withdrawals specified in the registration statement for a further period of ten years without conditions.

The Town is concerned that the Department's proposed WMA regulations, published on June 2, 2021, contain significant additions to 310 CMR 36.07, Registration Conditions, including requiring restrictions on "Nonessential Outdoor Use" during declared droughts. Those conditions would not be a valid exercise of the Department's authority because (1) conditions infringing upon registration rights are unlawful under the WMA; and (2) the Department has failed to comply with the procedural requirements of M.G.L. c. 21G, § 3 in developing its proposed regulations.

The Department's Proposed Regulations Would Infringe upon the Town's Registration Rights.

In Water Dep't of Fairhaven v. Dep't of Env't Prot., 455 Mass. 740, 751 (2010), the SJC ruled that the Department can place conditions on WMA registrations only if (1) it first adopts regulations authorizing the conditions; and (2) the conditions do not "infringe" on registrants' right to withdraw water. The Department's proposed regulations do not meet the second requirement because they will impose conservation measures that are not materially distinguishable from those that were invalidated in Fairhaven. While the Court did not expressly determine whether the

Department's conservation measures would have infringed upon registrants' withdrawal rights if they had been imposed via regulation, *id.* at 749 ("[T]he conservation measures imposed on the plaintiff registrants as 'registration conditions' <u>might</u> have been lawful if they had been imposed by regulation on all registrants....") (emphasis added), it did make clear that "limiting a registrant's water use to less than the existing withdrawal" <u>would</u> infringe those rights. *Id.*

Restrictions on water uses that the Department deems to be "nonessential" clearly have the effect of "limiting [the Town's] water use to less than the existing withdrawal," and therefore infringe upon the Town's registration rights, in contravention of the *Fairhaven* holding.

The *Fairhaven* ruling reaffirms an important distinction between permitees (who must abide by conservation restrictions) and registrants. The latter were withdrawing water in the period 1981-85, and are entitled by their registration statements to withdraw no more water today than they were then. Permittees, in contrast, have received permission to undertake new withdrawals that did not exist in 1981-85. It makes sense that these new withdrawals came with strict conditions. This is not "substantial inequity" as some have alleged; it is the intentional policy of the *Water Management Act* and the law of the Commonwealth.

We note that, as recently as 2017, the Department found that it was not necessary to impose conservation conditions on registrants:

Based on the number of registered-only public water systems, their current water use and irrigation practices, and uncertainty around how conditions would be applied to regional water systems, it has been and remains for now the department's determination that imposing water conservation conditions on registrations would likely result in little actual water savings.

Registered-only water systems have not increased their demands in 35 years and most have significantly reduced their demand over time.... Imposing water conservation conditions on registered-only systems...will remove their incentive to keep their overall demand below their registered volume.

Department of Environmental Protection, Response to Massachusetts Rivers Alliance Request for Adoption of Rules (Sept. 22, 2017) at 9-10.

II. The Department Has Failed to Comply with M.G.L. c. 21G, § 3 in Developing Its Proposed Regulations.

The available public information about the development of the Department's new regulatory proposal and the proposal's publication on June 2 suggests that the proposed regulations not only would be substantively unlawful, but also have been developed without following the procedure prescribed by the WMA. *M.G.L.* c.21G, §3 requires that any such proposal be

developed "after consultation with" and "with the advice of" the Water Resources Management Advisory Committee. That Committee is required to "review the <u>development</u> of . . . regulations for water resources management and shall . . . supply recommendations concerning <u>methods</u> by which existing water management practices and <u>the laws regulating them</u> may be supplemented and improved and their administration financed." <u>Id.</u> (emphasis added). The statute clearly indicates that the Advisory Committee is to be consulted on the rulemaking process, not just on the rules themselves.

For the Department to have the necessary consultation with the Advisory Committee, the Committee itself must have in fact deliberated such that it can provide its substantive opinions. As a public body, the Advisory Committee cannot deliberate to form such an opinion except at a meeting that complies with the *Open Meeting Law. M.G.L.* c.30A, §20.

Nor can this procedural error be erased by hastily reconvening the Committee, holding a meeting in conformance with the *Open Meeting Law*, and obtaining a vote on the Department's fully-formed regulations. Rather, as noted, the WMA requires that the regulations be developed "after consultation with" the Committee—not before—and "with [its] advice," not merely its rubber stamp.

III. Conclusion.

Because the proposed regulations would be both substantively and procedurally unlawful under the WMA, The Town submits its renewal registration statement with the expectation that it will not be subject to any conditions imposed by such regulations.

Thank you for your continued courtesy in connection with this matter.

Sincerely,

Miyares and Harrington LLP Town Counsel Town of Hamilton

J.Raymond Miyares

cc: J. Domelowicz, Town Manager



DEPARTMENT OF PUBLIC WORKS

City of Leominster, Massachusetts 01453

109 Graham Street Tel: (978) 534-7590 • Fax: (978) 534-7599



July 26, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection – Water Management Act Program One Winter Street, 5th Floor Boston, MA 02108

RE: Proposed Amendments to 310 CMR 36.00 - Conditions on WMA

Registrations

VIA EMAIL TO: dep.talks@mass.gov

To Whom It May Concern:

I am a member of Massachusetts Water Works Association (MWWA) and wish to submit the following written comments to the Massachusetts Department of Environmental Protection (MassDEP) regarding the proposed changes to the Water Management Act Regulations, 310 CMR 36.00. Wise water use is important, especially during times of drought, but promulgating statewide regulations on Registrants that do not recognize the unique characteristics of every water system is unnecessary. I support the comments that are being submitted by MWWA, and like MWWA, urge MassDEP to withdraw these proposed regulations.

Our water system is registered for 4.94 Million Gallons per Day. Our historical use over the last five years has been approximately 3.80 to 4.10 MGD.

While not required to by any regulatory mandate, our system has an established program for when our reservoir capacity levels reach 70% or lower we institute an odd/even water ban until the reservoir levels rise above this capacity again. This has worked well in the past and we have not had any capacity issues within our water system using this method. We have been able to manage our water supply appropriately, and therefore conditions placed upon our Registration are unnecessary.

Imposition of mandatory water use restrictions upon a regional drought declaration is inappropriate for a number of reasons. The Massachusetts Drought Management Plan has very sensitive metrics, many of which are not water supply-related nor directly related to our capacity to supply our customers, even during times of drought. The City of Leominster Water Division has provided ample water seamlessly through the droughts in 2016 and 2020, due to the fact our water system has 100 percent

redundancy for the amount of water needed to supply our residents. While MassDEP is providing an exemption from following the MA Drought Management Plan, the criteria for exemption, especially the requirement for multi-year storage of no less than three times a Registrants authorized withdrawal, makes it such that only one Public Water System in the state will likely qualify for an exemption. Surface water and/or groundwater Public Water Systems should have the ability to create system-specific drought management plans that reflect their system's capacity and have response actions that are tied to various trigger points for their system. If the proposed regulations are adopted, we urge MassDEP to modify the criteria so that all Public Water Systems who follow industry standards for drought planning and preparedness can also submit a plan for exemption.

The proposed regulations will cause a financial hardship for our utility and may impact our ability to undertake other infrastructure improvements that could more meaningfully enhance our water system's resiliency.

Our core responsibility as water suppliers is to provide the most essential service to our customers - clean, safe drinking water. We are environmental stewards of the water resources in our communities for without adequate protection of the resources, we would not be able to provide the service we do. We also must adhere to rigorous water quality standards established under the Safe Drinking Water Act (SDWA) to ensure protection of public health. We play a key role in providing fire protection within the community; and for that reason, storage reservoirs must be kept full and system pressure maintained. We must constantly balance water quality and quantity demands, especially during the summer months. We would urge the Department to consider the unintended water quality consequences that could occur should we have to comply with arbitrary conditions restricting water use. We have had issues with disinfection byproducts in the past and with added restrictions this may exacerbate this problem.

Finally, in the *Fairhaven*¹ case, the Supreme Judicial Court affirmed that MassDEP could not infringe upon the Registrants' entitlement to existing withdrawals. The drought conditions that MassDEP seeks to impose would most certainly infringe upon our entitlement to our existing withdrawals by limiting our ability to sell that water during a drought. Also, Section 3 of MGL 21 G requires consultation with the Water Resources Management Advisory Committee which MassDEP has not done since members of the Committee have not been appointed by the governor.

¹ Water Dep't of Fairhaven v. Dep't of Env't Prot., 455 Mass. 740, 751 (2010)

The City of Leominster Water Division believes it has been shown that the proposed regulations will not foster water system resiliency, and will, in fact, be detrimental by limiting revenues needed to maintain and upgrade our water system. The City of Leominster Water Division requests MassDEP rescind these draft regulations as they are not necessary and counter-productive, and instead work with MWWA and Public Water Systems on the creation of system-specific drought plans and other measures that will yield more meaningful and tangible results toward increasing water system resiliency.

Sincerely,

Mark F. Piermarini, P.E.

Assistant Director of Public Works

cc: Mayor Dean Mazzsarella, City of Leominster

Senator John Cronin

Representative Natalie Higgins



Lynnfield Center Water District 83 Phillips Road

Lynnfield, Massachusetts 01940 Phone +1.781.334.3901

Commissioners: Joseph T. Maney, Chairman Anders F. Youngren Jack D. Adelson

Superintendent: John V. Scenna

Department of Environmental Protection (DEP) Water Management Program One Winter Street, 5th Floor Boston, MA 02108

Re: Registration Renewal Forms

June 15, 2021

Mr. Duane LeVangie,

Enclosed please find executed Registration Renewals for 31716401 (Ipswich) and 31816401 (North Coastal) from the Lynnfield Center Water District. Please feel free to contact me at any time if you have questions with either of the two registration renewals or the information contained herein.

We understand MassDEP is intending to amend water management program regulations and possibly condition our Registration. However, it very much concerns us that we are being asked to submit this renewal when we will not know the exact conditions until we see the final regulations. We want to be in compliance with the Registration Renewal filing deadline, but we also want to go on record that we remain concerned in regard to any conditions which stand to infringe upon our entitled volumes through these registrations.

Over the last year, LCWD has invested greatly in conducting capital studies and approving capital project expenditures that will assist the District in improving both water quality and increase supply capacity with additional sources. We thank the DEP for your assistance in these endeavors to date and look forward to working with you to review final design plans and approach.

We equally look forward to continuing to work with the DEP in this process and in the renewal of our registered withdrawal.

1 IMU distri

hn Scenna, Superintendent, LCWD

cc.

Joseph Maney, Chairman, Board of Commissioners



MANCHESTER-BY-THE-SEA

DEPARTMENT OF PUBLIC WORKS TOWN HALL, 10 CENTRAL STREET

Manchester-by-the-Sea, Massachusetts 01944-1399 Telephone (978) 526-1242 FAX (978) 526-2007

July 26, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection – Water Management Act Program One Winter Street, 5th Floor Boston, MA 02108

RE: Proposed Amendments to 310 CMR 36.00 – Conditions on WMA Registrations VIA EMAIL TO: dep.talks@mass.gov

To Whom It May Concern:

I am the responsible party of the Manchester by the Sea Public Water System 3160000 as well as a member of Massachusetts Water Works Association (MWWA) and wish to submit the following written comments to the Massachusetts Department of Environmental Protection (MassDEP) regarding the proposed changes to the Water Management Act Regulations, 310 CMR 36.00. Wise water use is important, especially during times of drought, but promulgating statewide regulations on Registrants that do not recognize the unique characteristics of every water system and is unnecessary. I support the comments that are being submitted by MWWA, and like MWWA, urge MassDEP to withdraw these proposed regulations.

While not required to by any regulatory mandate, our system has an established an aggressive increasing block rate structure that promotes conservation and keeps our use within our registered limits. While this system works well for us, it is not for everyone. Furthermore, to undo it would have serious unintended consequences to all of our rate payers in the form of higher rates at the lower tiers. Along with subsidizing the lower tiers, the increased rates at higher tiers are figured into our capital planning. Consequently, capital planning would likely be paused and critically delayed. Being one of the oldest town and systems in Massachusetts, the majority of our system was installed in the late 1800's. It is imperative that our capital projects continue as scheduled.

Imposition of mandatory water use restrictions upon a regional drought declaration is inappropriate for a number of reasons. The Massachusetts Drought Management Plan has very sensitive metrics, many of which are not water supply-related nor directly related to our capacity to supply our customers, even during times of drought. Even in the drought of 2020 and 2016 our reservoir levels remain stable. While we watch these levels constantly, had there been a reason, we would not have hesitated to issue restrictions on our own at the Town level. We fully support having a local drought management plan and are hoping DEP and the State may make funding of these studies a priority, with or without passing the proposed conditions. While

MassDEP is providing an exemption from following the MA Drought Management Plan, the criteria for exemption, especially the requirement for multi-year storage of no less than three times a Registrants authorized withdrawal, makes it such that only one Public Water System in the state will likely qualify for an exemption. Surface water and/or groundwater Public Water Systems should have the ability to create system-specific drought management plans that reflect their system's capacity and have response actions that are tied to various trigger points for their system. If the proposed regulations are adopted, we urge MassDEP to modify the criteria so that all Public Water Systems who follow industry standards for drought planning and preparedness can also submit a plan for exemption.

Our core responsibility as water suppliers is to provide the most essential service to our customers - clean, safe drinking water. We are environmental stewards of the water resources in our communities for without adequate protection of the resources, we would not be able to provide the service we do. We also must adhere to rigorous water quality standards established under the Safe Drinking Water Act (SDWA) to ensure protection of public health. We play a key role in providing fire protection within the community; and for that reason, storage reservoirs must be kept full and system pressure maintained. We must constantly balance water quality and quantity demands, especially during the summer months. We would urge the Department to consider the unintended water quality consequences that could occur should we have to comply with arbitrary conditions restricting water use.

Finally, in the Fairhaven1 case, the Supreme Judicial Court affirmed that MassDEP could not infringe upon the Registrants' entitlement to existing withdrawals. The drought conditions that MassDEP seeks to impose would most certainly infringe upon our entitlement to our existing withdrawals by limiting our ability to sell that water during a drought. Also, Section 3 of MGL 21 G requires consultation with the Water Resources Management Advisory Committee which MassDEP has not done since members of the Committee have not been appointed by the governor.

The Town of Manchester by the Sea believes it has been shown that the proposed regulations will not foster water system resiliency, and will, in fact, be detrimental by limiting revenues needed to maintain and upgrade our water system. Manchester requests MassDEP rescind these draft regulations as they are not necessary and counter-productive, and instead work with MWWA and Public Water Systems on the creation of system-specific drought plans and other measures that will yield more meaningful and tangible results toward increasing water system resiliency.

If you have any questions or would like additional information about our resources, feel free to contact me at damc@manchester.ma.us or by phone at 978 526-1242.

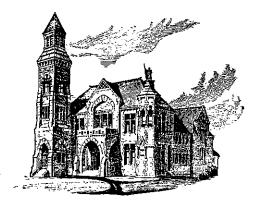
All the Best.

Charles J. Dam

Director of Public Works

Cc: Greg Federspiel, Town Administrator, Nate Desrosiers – Town Engineering

¹ Water Dep't of Fairhaven v. Dep't of Env't Prot., 455 Mass. 740, 751 (2010)



SELECT BOARD

110 Main Street Monson, Massachusetts 01057

Telephone: 413-267-4100

Fax:

413-267-3726

Website:

www.monson-ma.gov

July 8, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection - Water Management Act Program One Winter Street, 5th Floor Boston, MA 02108

RE: Proposed Amendments to 310 CMR 36.00 - Conditions on WMA

Registrations

VIA EMAIL TO: dep.talks@mass.gov

To Whom It May Concern:

We, the members of the Monson Selectboard and the Monson Water & Sewer Commission, wish to submit the following written comments to the Massachusetts Department of Environmental Protection (MassDEP) regarding the proposed changes to the Water Management Act Regulations, 310 CMR 36.00. Wise water use is important, especially during times of drought, but promulgating statewide regulations on Registrants that do not recognize the unique characteristics of every water system is misguided. We support the comments that are being submitted by Massachusetts Water Works Association (MWWA), and like MWWA, urge MassDEP to withdraw these proposed regulations.

From MassDEP's registration renewal statement from 2021, Monson's allocated registered withdrawal amount is 0.92 MGD (million gallons per day) or 336.49 MGY (million gallons per year) as established in 1986. That is the maximum we are allowed to pump from our aquifer, the Chicopee River Water Basin.

| Year | Total Pumped | % of Max | RGPCD* | Water Rate |
|--------|--------------|----------|--------|-----------------|
| 1987 | 237.2 MG | 70% | _ | \$0.75/1000 gal |
| 1997 | 206.1 MG | 61% | | \$1.32/1000 gal |
| 2007 | 172.2 MG | 51% | 58 | \$3.70/1000 gal |
| 2016** | 145.3 MG | 43% | 53 | \$4.85/1000 gal |
| 2020** | 128.9 MG | 39% | 51 | \$5.60/1000 gal |

While not required to by any regulatory mandate, our system has significantly reduced our water usage over the decades. This has been accomplished by multiple efforts including pipeline replacements, aggressive leak detection, plumbing fixture improvements, public education and natural conservation via the water rate. Our water system has gone from using primarily a single well to supply the Town in 1987 to now operating four wells to meet a lower demand in 2021 thereby reducing the environmental impact and increasing our resiliency. Variable frequency drives at two of the four wells provide flexibility and the ability to tune their output for maximum wire to water efficiency. All four wells have large diameter well casings but downsized pumps which equates to lower pumping velocities and extended well and pump life. We instituted a Water Supply Protection District Bylaw and Impervious Surface limitations to help protect our sources and maintain and improve our aquifer recharge capability. In short, the Chicopee River Basin is in much better shape now than it was 30 years ago and in 1986 it was already considered a low stress basin. There is no environmental science to justify conditioning our registrations and restricting water use in our community. We have been able to manage our water supply appropriately, and therefore conditions placed upon our Registration are unnecessary.

Imposition of mandatory water use restrictions upon a regional drought declaration is inappropriate for a number of reasons. The Massachusetts Drought Management Plan has very sensitive metrics, many of which are not water supply-related nor directly related to our capacity to supply our customers, even during times of drought. Monson's pumping and drawdown data from 2016 and 2020 demonstrate normal levels and an over-abundancy of capacity. While MassDEP is providing an exemption from following the MA Drought Management Plan, the criteria for exemption, especially the requirement for multi-year storage of no less than three times a Registrants authorized withdrawal, makes it such that only one Public Water System in the state will likely qualify for an exemption. Surface water and/or groundwater Public Water Systems should have the ability to create system-specific drought management plans that reflect their system's capacity and have response actions that are tied to various trigger points for their system. If the proposed regulations are adopted, we urge MassDEP to modify the criteria so that all Public Water Systems who follow industry standards for drought planning and preparedness can also submit a plan for exemption.

The proposed regulations will cause a financial hardship for our utility and may impact our ability to undertake other infrastructure improvements that could more meaningfully enhance our water system's resiliency. As an exercise, the water rate for FY2021 was re-calculated with the mandatory restrictions in place from the beginning of April to the end of September. The billed usage estimates dropped from 90 MG to 77 MG (a difference of 13 MG) and left a budget shortfall of \$72,000 at the present water rate of \$5.60/1000 gal. To recoup that shortfall a rate increase of \$0.95/1000 gal (17% increase to \$6.55!) would be required. The major issue with that scenario is once our registration is conditioned the rate increase would be mandatory as we cannot deficit spend and if the possibility of a drought declaration exists, we must account for it. That is a huge increase for our ratepayers for no gain in services, no infrastructure improvement and as we pointed out earlier, no quantifiable environmental benefit which

in turn could build resentment to future needed increases for infrastructure or water treatment systems.

The core responsibility of water suppliers is to provide the most essential service to their customers - clean, safe drinking water. We are environmental stewards of the water resources in our community for without adequate protection of the resources, we would not be able to provide the service we do. We also must adhere to rigorous water quality standards established under the Safe Drinking Water Act (SDWA) to ensure protection of public health. We play a key role in providing fire protection within the community; and for that reason, storage reservoirs must be kept full and system pressure maintained. We must constantly balance water quality and quantity demands, especially during the summer months. Disinfection by-product compliance has never been an issue in Monson. However, with water restrictions we will be entering uncharted territory. We have 1.5 MG of water storage and without our normal summer usage we may be faced with the ludicrous scenario of restricting water use due to a drought declaration and simultaneously flushing water from hydrants to maintain water quality compliance. We would urge the Department to consider the unintended water quality consequences that could occur should we have to comply with arbitrary conditions restricting water use.

Finally, in the Fairhaven¹ case, the Supreme Judicial Court affirmed that MassDEP could not infringe upon the Registrants' entitlement to existing withdrawals. The drought conditions that MassDEP seeks to impose would most certainly infringe upon our entitlement to our existing withdrawals by limiting our ability to sell that water during a drought. Also, Section 3 of MGL 21 G requires consultation with the Water Resources Management Advisory Committee which MassDEP has not done since members of the Committee have not been appointed by the governor.

We, the Monson Selectboard and Monson Water & Sewer Commission, believe we have shown that the proposed regulations will not foster water system resiliency, and will, in fact, be detrimental by limiting revenues needed to maintain and upgrade the Town of Monson's water system. We respectfully request MassDEP rescind these draft regulations as they are not necessary and counter-productive, and instead work with MWWA and Public Water Systems on the creation of system-specific drought plans and other measures that will yield more meaningful and tangible results toward increasing water system resiliency.

Sincerely,

Monson Selectboard

trecial/

Monson Water & Sewer Commission

Water Dep't of Fairhaven v. Dep't of Env't Prot., 455 Mass. 740, 751 (2010)

cc: Senator Anne Gobi Representative Brian Ashe

MASSACHUSETTS WATER RESOURCES AUTHORITY

Chelsea Facility
2 Griffin Way
Chelsea, Massachusetts 02150

Frederick A. Laskey Executive Director

July 26, 2021

Telephone: (617) 242-6000 Facsimile: (617) 305-5990

Martin Suuberg, Commissioner
Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Water Management Program,
One Winter Street, 5th floor,
Boston, MA 02108

Submitted electronically via: <u>dep.talks@mass.gov</u>, Subject Line: WMA Regulations Subject: Proposed Amendments to 310 CMR 36.00 – Conditions on WMA Registrations

Dear Commissioner Suuberg:

Thank you for the opportunity to review and comment on MassDEP's proposed revisions to the Water Management Act (WMA) regulations (310 CMR 36). The changes are designed to require more uniform mandatory restrictions on non-essential water use based on regional triggers in the Massachusetts Drought Response Plan.

The Massachusetts Water Resources Authority (MWRA) provides drinking water from the Quabbin and Wachusett Reservoirs in central Massachusetts to customers in 53 communities spanning several of the state's drought regions. When the WMA registrations were determined based on demand in the early 1980's, the MWRA system was withdrawing an average of just over 312 million gallons per day (mgd) and thus is registered for that amount. MWRA's current water withdrawals are now less than 200 mgd, about a 35 percent reduction, despite adding eight additional communities to the MWRA water system, and several hundred thousand additional residents after the enactment of the Water Management Act.

MWRA supports and appreciates that MassDEP has recognized that water suppliers can have very different circumstances, and has provided some flexibility in its approach to managing drought. MassDEP's approach identifies one key characteristic that would suggest that a water system would perform very differently during drought conditions than the typical system in its geographic region – the amount of reservoir capacity to store water during wetter years for use during drier periods. MWRA's sources meet the specific proposed definition of Multi-Year Drought Storage contained in in the draft regulations at 310 CMR 36.3.

The draft regulations allow systems meeting the storage requirements to manage their systems during drought using their local drought plans. MWRA believes that its MassDEP-approved drought plan meets the proposed specific requirements of 310 CMR 36.7(2)(c)3 in the draft regulations.

While all systems with only WMA registrations are using less water now than when the WMA was passed nearly 40 years ago, another important characteristic not mentioned in the proposed regulation is the degree to which any system is below its reliable (or "safe") yield. Water systems with demand below their individual safe yield would, by definition, be expected to perform well in droughts as severe as the drought of record used in determining that safe yield. For example, MWRA's safe yield of 300 mgd is based on the 1960's drought of record. This factor, combined with its large multi-year reservoir storage volumes and conservative drought response plan, is what would allow the MWRA system to successfully weather a drought as severe as that of the 1960's. Modeling of a system's safe yield also offers a water supply the opportunity to evaluate how climate change might affect the system's performance in the future. Modeling of the MWRA system conducted cooperatively with the Water Research Foundation and the National Center for Atmospheric Research (NCAR) suggests that MWRA's large multiyear reservoirs would allow MWRA's safe yield to actually increase slightly under future climate conditions.

On a more narrow note, MWRA notes that the language in 310 CMR 36.7(2)(c)4. Seems to incorrectly include a reference to 310 CMR 36.7(2)(c)3. thereby inadvertently eliminating the provisions allowing the use of local drought plans by systems meeting the multi-year drought storage definition. MWRA recommends that this be corrected by changing the language as follows:

4. Restrictions at least as restrictive as those in 310 CMR 36.07(2)(c)1. and 2. through 3. shall remain in place until the Secretary returns the drought level to "Normal."

If MassDEP needs clarification on any of these comments, MWRA would be happy to provide additional detail or respond to any questions. Feel free to contact me directly or Stephen Estes-Smargiassi at smargias@mwra.com.

Sincerely,

David W. Coppes, PE Chief Operating Officer

Cc: Fred Laskey, Executive Director

Rebecca Weidman, Director of Environmental and Regulatory Affairs



TOWN OF NEEDHAM

TOWN HALL Needham, MA 02492-2669

TEL: (781) 455-7500

FAX: (781) 449-4569

July 26, 2021

By email: dep.talks@mass.gov

Massachusetts Department of Environmental Protection Bureau of Resource Protection Water Management Program One Winter Street, 5th floor Boston, MA 02108

Dear Department Staff:

The Town of Needham hereby submits its comments on the Department's proposed *Water Management Act* (WMA) regulations, published June 2, 2021, containing significant additions to 310 CMR 36.07, Registration Conditions, including requiring restrictions on "Nonessential Outdoor Use" during declared droughts. These regulations represent a significant change for the Department, which, less than four years ago, determined that placing water conservation restrictions on registrants would "likely result in little actual water savings" and, at worst, "remove their incentive to keep their overall demand below their registered volume." Department of Environmental Protection, Response to Massachusetts Rivers Alliance Request for Adoption of Rules at 10 (Sept. 22, 2017). Some of the factors that gave rise to the Department's 2017 determination, as well as some additional ones, lead us to conclude that the proposed regulations should not be adopted in their current form.

I. The Department Has Failed to Comply with M.G.L. c.21G, §3 in Developing Its Proposed Regulations.

The available public information suggests that the proposed regulations were developed without following the procedures prescribed by section 3 of the WMA, which requires that any such proposal be developed "after consultation with" and "with the advice of" the Water Resources Management Advisory Committee. That Committee is required to "review the <u>development</u> of...regulations for water resources management and shall...supply recommendations concerning <u>methods</u> by which existing water management practices and <u>the laws regulating them</u> may be supplemented and improved and their administration financed."

For the Department to have the necessary consultation with the Advisory Committee, the Committee itself must have, in fact, deliberated such that it can provide its substantive opinions. As a public body, the Advisory Committee cannot deliberate to form such an

opinion except at a meeting that complies with the *Open Meeting Law. M.G.L.* c.30A, §20. To the Town's knowledge, no such meeting has taken place.¹

II. The Department's Proposed Regulations Would Infringe upon the Town's Registration Rights.

In *Water Dep't of Fairhaven v. Dep't of Env't Prot.*, 455 Mass. 740, 751 (2010), the Supreme Judicial Court ruled that the Department can place conditions on WMA registrations only if (1) it first adopts regulations authorizing the conditions; and (2) the conditions do not "infringe" on registrants' right to withdraw water.² Under the *Fairhaven* decision, the Department cannot impose water conservation restrictions on Needham's WMA Registration Statement, at least as long as the Town is not exceeding the withdrawal volumes that it is entitled to under its registration. Yet the introduction of water restrictions in the Department's proposed regulations at 310 CMR 36.07(2)(c) purport to do just that.

The SJC recently reaffirmed the central holding of the Fairhaven decision in *Town of Concord v. Water Dep't of Littleton*, 487 Mass. 56, 61 (2021). In that decision, the Court explained that, "[i]f a registrant timely filed a registration statement and renewals, the registrant was entitled to existing withdrawals." (emphasis added). "By registering and timely renewing, a registrant 'may continue forever to withdraw water at the rate of its existing withdrawal [at the time of its initial registration statement],' except in the case of a declared water emergency." *Id.* at 61-62 (citing *Fairhaven*).

These SJC decisions highlight an important distinction between permittees (which must abide by conservation restrictions) and registrants. The latter are entitled by their Registration Statements to withdraw no more water today than they were in the period from 1981-85.³ Permittees, in contrast, have received permission to undertake new withdrawals that did not exist in 1981-85. It makes sense that these new withdrawals came with strict conditions. To that end, "[w]ithdrawal by registration is treated very differently from withdrawal by permit." *Fairhaven*, 455 Mass. at 747. But the proposed regulations fail to honor this distinction.

III. The Proposed Regulations Are Inconsistent with the Executive Office's Overall Strategy for Creating Resilience as the Climate Changes.

¹ This procedural error be erased by convening the Committee, holding a meeting in conformance with the *Open Meeting Law*, and obtaining a vote on the Department's fully formed regulations. Rather, the WMA requires that the regulations be developed "after consultation with" the Committee—not before—and with its active participation and advice.

² While the Court did not expressly determine whether the Department's conservation measures would have infringed upon registrants' withdrawal rights if they had been imposed via regulation, 455 Mass. at 749 ("[T]he conservation measures imposed on the plaintiff registrants as 'registration conditions' might have been lawful if they had been imposed by regulation on all registrants…") (emphasis added), it did make clear that "limiting a registrant's water use to less than the existing withdrawal," even by regulation, would infringe those rights. *Id.*

³ MassDEP, Fact Sheet: Water Management Act – Registration and Permitting, available at https://www.mass.gov/service-details/fact-sheet-water-management-act-registration-and-permitting.

Putting aside, for the moment, the Department's procedural issue and its noncompliance with the holdings in the *Fairhaven* and *Concord* decisions, the Town does not understand how the proposed regulations are an appropriate strategy for dealing with droughts brought about by climate change. According to EEA's Climate Clearinghouse for the Commonwealth⁴:

[C]ommunities, sectors and individuals have the ability to address many climate-related risks, reduce negative impacts, and take advantage of possible opportunities that may arise from the changing climate.

Planning for climate change is much like any other planning for any other effort, it is a process. Typically, the process includes these steps:

- 1. Determine your focus
- 2. Determining risks and vulnerabilities
- 3. Identifying and selecting options [to] address risks and vulnerabilities
- 4. Formulate an implementation plan
- 5. Implement
- 6. Assess results.

The Clearinghouse asks communities to "assess…how to create resiliency as the climate changes (adaptation)," but the regulations do not ask public water suppliers to do that at all. Instead, they immediately compel public water suppliers to force their customers to undertake strategies that will inevitably exacerbate the impacts of drought and do nothing to promote resiliency.

According to the Clearinghouse⁸:

Registered-only water systems have not increased their demands in 35 years and most have significantly reduced their demand over time.... Imposing water conservation conditions on registered-only systems...will remove their incentive to keep their overall demand below their registered volume.

Response to Massachusetts Rivers Alliance Request for Adoption of Rules at 10.

⁴ Resilient MA, Plan Development, available at https://resilientma.org/actions/planning

⁵ *Id*.

⁶ The Department's confidence in these strategies is certainly called into question by the broad and sweeping exceptions built into the proposed definition of "nonessential outdoor water use," which seeks to classify water uses based on the Department's view of their necessity, rather than based on their environmental impact.

⁷ As noted, as recently as four years ago, the Department itself acknowledged that subjecting registrants to conditions similar to permit conditions, along with being unnecessary, could even increase usage by incentivizing registrants to apply for permits.

⁸ Resilient MA, Take Action, available at https://resilientma.org/actions

Climate change is among the greatest environmental challenges of this generation, with potentially profound effects on the economy, public health, water resources, infrastructure, coastal resources, energy demand, natural resources, and recreation. The Commonwealth of Massachusetts is committed to doing its part to mitigate and adapt to this challenge, recognizing the necessity of engaging in adaptation planning today by taking a close look at strategies that could help the state become more resilient and ready to adapt to climate change as it occurs.

Clearly, achieving climate change resiliency is far more complicated than placing restrictions on water uses that the Department deems to be non-essential. The proposed regulations represent only the same strategy that the Department has pushed on WMA permittees for years.⁹

For the foregoing reasons, the Town of Needham respectfully requests that the Department abandon its proposed regulations and utilize the extra time afforded by the Governor's COVID 19 Executive Order 42 to work with communities to develop resiliency plans that follow the leadership of the Executive Office of Energy and Environmental Affairs, as expressed in its Climate Clearinghouse for the Commonwealth.

Thank you for your courtesy and attention to these comments.

the Pr

Town Manager

cc:

Ray Miyares, Esq.

Carys Lustig, Director of Public Works

Select Board

⁹ https://www.mass.gov/doc/water-use-restrictions-map/download. Indeed, Needham gave up its WMA permit in 2018, thereby lowering its overall authorized water withdrawals, precisely because it wished to avoid the onerous and cumbersome water ban requirements set forth in its permit.



J. Raymond Miyares Thomas J. Harrington Christopher H. Heep Donna M. Brewer Jennie M. Merrill Bryan Bertram Ivria Glass Fried Alexandra B. Rubin Ethan B. Dively Maurica D. Miller Rian Rossetti

June 9, 2021

By Email (kathleen.baskin@mass.gov)

Kathleen Baskin
Assistant Commission
Department of Environmental Protection
Bureau of Water Resources
1 Winter Street
Boston, MA 02108

Re: Town of Needham Renewal Registration Statement

Dear Kathy:

The Town of Needham is submitting the attached renewal registration statement in accordance with the requirements of the *Water Management Act* (WMA), *M.G.L.* c.21G, §5, but wishes to emphasize its position that it has the right, under that section, to continue the existing withdrawals specified in the registration statement for a further period of ten years without conditions.

The Town is concerned that your letter of May 3 states:

The Department is proposing to amend the WMA regulations before December 31, 2021, to include restrictions on nonessential outdoor water use for registered withdrawals during times of a declared drought. These restrictions will be included as a condition in the renewed Registration Statement for applicable withdrawals.

The proposed regulations, published on June 2, 2021, contain significant additions to 310 CMR 36.07, Registration Conditions, including requiring restrictions on "Nonessential Outdoor Use" during declared droughts. Those conditions would not be a valid exercise of the Department's authority because (1) conditions infringing upon registration rights are unlawful under the WMA; and (2) the Department has failed to comply with the procedural requirements of M.G.L. c. 21G, § 3 in developing its proposed regulations.

I. The Department's Proposed Regulations Would Infringe upon the Town's Registration Rights.

In Water Dep't of Fairhaven v. Dep't of Env't Prot., 455 Mass. 740, 751 (2010), the SJC ruled that the Department can place conditions on WMA registrations only if (1) it first adopts regulations authorizing the conditions; and (2) the conditions do not "infringe" on registrants' right to withdraw water. The Department's proposed regulations do not meet the second requirement because they will impose conservation measures that are not materially distinguishable from those that were invalidated in Fairhaven. While the Court did not expressly determine whether the Department's conservation measures would have infringed upon registrants' withdrawal rights if they had been imposed via regulation, id. at 749 ("[T]he conservation measures imposed on the plaintiff registrants as 'registration conditions' might have been lawful if they had been imposed by regulation on all registrants....") (emphasis added), it did make clear that "limiting a registrant's water use to less than the existing withdrawal" would infringe those rights. Id.

Restrictions on water uses that the Department deems to be "nonessential" clearly have the effect of "limiting [the Town's] water use to less than the existing withdrawal," and therefore infringe upon the Town's registration rights, in contravention of the *Fairhaven* holding.

The *Fairhaven* ruling reaffirms an important distinction between permitees (who must abide by conservation restrictions) and registrants. The latter were withdrawing water in the period 1981-85, and are entitled by their registration statements to withdraw no more water today than they were then. Permittees, in contrast, have received permission to undertake new withdrawals that did not exist in 1981-85. It makes sense that these new withdrawals came with strict conditions. This is not "substantial inequity" as some have alleged; it is the intentional policy of the *Water Management Act* and the law of the Commonwealth.

We note that, as recently as 2017, the Department found that it was not necessary to impose conservation conditions on registrants:

Based on the number of registered-only public water systems, their current water use and irrigation practices, and uncertainty around how conditions would be applied to regional water systems, it has been and remains for now the department's determination that imposing water conservation conditions on registrations would likely result in little actual water savings.

Registered-only water systems have not increased their demands in 35 years and most have significantly reduced their demand over time.... Imposing water conservation conditions on registered-only systems...will remove their incentive to keep their overall demand below their registered volume.

Department of Environmental Protection, Response to Massachusetts Rivers Alliance Request for Adoption of Rules (Sept. 22, 2017) at 9-10.

II. The Department Has Failed to Comply with M.G.L. c. 21G, § 3 in Developing Its Proposed Regulations.

The available public information about the development of the Department's new regulatory proposal and the proposal's publication on June 2 suggests that the proposed regulations not only would be substantively unlawful, but also have been developed without following the procedure prescribed by the WMA. *M.G.L.* c.21G, §3 requires that any such proposal be developed "after consultation with" and "with the advice of" the Water Resources Management Advisory Committee. That Committee is required to "review the <u>development</u> of . . . regulations for water resources management and shall . . . supply recommendations concerning <u>methods</u> by which existing water management practices and <u>the laws regulating them</u> may be supplemented and improved and their administration financed." <u>Id.</u> (emphasis added). The statute clearly indicates that the Advisory Committee is to be consulted on the rulemaking process, not just on the rules themselves.

For the Department to have the necessary consultation with the Advisory Committee, the Committee itself must have in fact deliberated such that it can provide its substantive opinions. As a public body, the Advisory Committee cannot deliberate to form such an opinion except at a meeting that complies with the *Open Meeting Law. M.G.L.* c.30A, §20.

Nor can this procedural error be erased by hastily reconvening the Committee, holding a meeting in conformance with the *Open Meeting Law*, and obtaining a vote on the Department's fully-formed regulations. Rather, as noted, the WMA requires that the regulations be developed "after consultation with" the Committee—not before—and "with [its] advice," not merely its rubber stamp.

III. Conclusion.

Because the proposed regulations would be both substantively and procedurally unlawful under the WMA, The Town submits its renewal registration statement with the expectation that it will not be subject to any conditions imposed by such regulations.

Thank you for your continued courtesy in connection with this matter.

Sincerely,

Miyares and Harrington LLP Town Counsel Town of Needham

J.Raymond Miyares

cc: K. Fitzpatrick, Town Manager



Town of North Reading Massachusetts

Department of Public Works

July 26, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection – Water Management Act Program One Winter Street, 5th Floor Boston, MA 02108

RE: Proposed Amendments to 310 CMR 36.00 – Conditions on WMA Registrations VIA EMAIL TO: dep.talks@mass.gov

To Whom It May Concern:

The Town of North Reading has historically been a leading partner in the efforts to maintain the ecological health of the upper lpswich River basin. The Town continues in these efforts, including the recent conversion to purchasing 100% of its municipal water supply from out-of-basin sources.

However, the Town has significant concerns with respect to the impacts the changes that have been proposed to the Water Management Act (310 CMR 36.00) will have on our ability to supply water to the community.

Background:

North Reading, having no municipal sewer at this time, has developed predominantly as a residential community. As of 2021, the tax base in North Reading is approximately 88% residential. On site wastewater disposal systems significantly limit the types of commercial and industrial businesses that may locate in North Reading.

Given the lack of sewer, the water supply is also primarily residentially driven, with no large water using industries available to help offset the cost of providing water to the customers of the North Reading Water Department. The water rates in North Reading — both currently and historically — have been among the highest in the Commonwealth.

Since the adoption of the Water Management Act, the Town of North Reading has taken a number of steps with respect to its water supply to reduce its impact on the Ipswich River basin and help protect both water quality and flows in the headwaters of the river, including:

- Applying for and receiving the first Interbasin Transfer Act permit in the Commonwealth
 for a drinking water supply in 1991, allowing the Town to import up to 1.5 MGD from
 the Merrimack River basin into North Reading through the Town of Andover;
- Adopting an Aquifer Protection District bylaw in 1996, providing protection for the aquifer areas supplying North Reading's municipal wellfields, as well as protecting the aquifers of neighboring Towns that extend into North Reading;
- Taking an active role in the studies conducted in the 1990's by USGS, MassDEP, MassDCR, the Ipswich River Watershed Association and the Ipswich River municipal water suppliers;
- Adopting an increasing block rate structure (also known as conservation pricing), adding a third tier in 2007;
- Developing a drought Management Plan consistent with State guidance in 2013;
- Applying for and receiving a second Interbasin Transfer Act permit in 2020, allowing the Town to import up to 3.0 MGD from the Merrimack River basin into North Reading from the Town of Andover; and
- Converting to purchasing 100% of the municipal water supplied in North Reading from the Town of Andover in 2020.

It should be noted that since the studies conducted on the Ipswich River in the 1990's – which identified water withdrawals in the three upper watershed communities of Reading, North Reading and Wilmington as having a significant impact of river flows in the upper reaches of the watershed – each of the headwater communities has reduced the volume of water withdrawn from the watershed:

- Reading changed their source of water supply from being 100% supplied from in-basin sources to being 100% supplied by the MWRA;
- North Reading ceased using their in-basin sources and is now being 100% supplied from the Town of Andover, which has its sources in the Merrimack River basin; and
- Wilmington has become partially supplied by the MWRA.

Further North Reading currently makes use of on-site wastewater disposal systems (i.e., septic systems) to return virtually all of the non-irrigation water use in Town to the Ipswich River aquifer. As such, North Reading "deposits" a minimum of approximately 1.4 million gallons per day into the aquifer, with this volume increasing during the summer months.

Concerns:

North Reading shares many of the same concerns expressed at the Public Hearings by the Massachusetts Water Works Association (MWWA), the City of Springfield, and others relative

to the impacts the proposed changes to the Water Management Act will have on the operation of the Water Department and its ability to supply safe and affordable drinking water to the Town of North Reading.

More specifically, those concerns relative to North Reading include:

A. The impact to rate payers: As noted above, North Reading already has among the highest water rates in the commonwealth, consisting of a three tiered, increasing block rate structure. Using 2020 water use, and projecting the limitations on non-essential outdoor watering included in the proposed regulations, North Reading projects a net loss of \$413,000 would result from implementing the restrictions. This represents approximately 9.2% of the total revenue generated by the North Reading Water Department if FY21.

A common thought is that water suppliers can simply increase the water rates to offset any loss in revenue due to conservation. However, the impacts resulting from the proposed changes will be felt the most by those who already practice conservative outdoor watering. This is even more dramatic in communities like North Reading that have increasing block rate structures. The higher volume water users — by paying a higher unit cost for their water — effectively pay a higher share of the water expenses than the lower volume users. It should be noted, these are also the people who are most able to afford the higher water bills resulting from their choice to irrigate their lawns.

Enforcing one day per week or zero day per week non-essential watering will cause those highest residential water bills to decrease, but will have the disproportionate opposite impact on the lower volume users. The lower volume user, even though they use the same volume of water as in past years, will be required to pay a higher cost per unit volume, and thus a higher water bill. The reward for being water conscious will be higher water bills.

B. The increase in the use of private wells: Implementing the proposed modifications to the regulations will drive residents to install private wells in order to water at the frequency they deem appropriate. Residents and businesses typically do not look to the public water supplier as their source of information relative to lawn irrigation practices. Residents will follow the advice of the people they consider to be the "experts" in this field in order to determine which course of action to follow. If they are advised by those experts that their lawns will not survive without adequate watering, they will take the steps necessary to provide adequate watering.

As North Reading draws all its municipal water supply from outside the Ipswich River basin, while the entire Town is located within the basin, any increase in the use of private wells will have the effect of causing a net loss to the watershed.

C. The staff impact: The North Reading Water Department has reduced staffing over the past few years, associated with transitioning to being 100% supplied with water from Andover. As such, there is limited staff available to take on the new roles associated with implementing, educating and enforcing the restrictions called for in the modified regulations. Successfully implement these changes will require additional staff and resources beyond those currently dedicated to water conservation, and such additional staff will further impact the water rates.

Based on the above, North Reading believes the proposed modifications will lead to a net negative impact on flows in the headwaters of the Ipswich River basin, while creating a negative economic burden on the rate payers of the North Reading Water Department. As such, the North Reading Water Department would respectfully request that the modifications be paused to consider the concerns expressed.

Sincerely,

Mark E. Clark

Water Superintendent

North Reading Water Department

Mark & Clark



Office of the Town Manager 16 Lowell Street Reading, MA 01867

781-942-9043

townmanager@ci.reading.ma.us www.readingma.gov/town-manager

To: Massachusetts Department of Environmental Protection

From: Town of Reading Date: July 26, 2021

RE: Reading Coalition for Prevention and Support

CC: Town Counsel Ray Miyares

By email: dep.talks@mass.gov

Massachusetts Department of Environmental Protection Bureau of Resource Protection Water Management Program One Winter Street, 5th floor Boston, MA 02108

Attention: WMA Regulations

Dear Department Staff:

The Town of Reading hereby submits its comments on the Department's proposed *Water Management Act* (WMA) regulations, published June 2, 2021, containing significant additions to 310 CMR 36.07, Registration Conditions, including requiring restrictions on "Nonessential Outdoor Use" during declared droughts.

These regulations represent a significant about-face for the Department, which, less than four years ago, determined that placing water conservation restrictions on registrants would, at best, "likely result in little actual water savings" and would, at worst, "remove their incentive to keep their overall demand below their registered volume." Department of Environmental Protection, Response to Massachusetts Rivers Alliance Request for Adoption of Rules at 10 (Sept. 22, 2017). Some of the factors that gave rise to the Department's 2017 determination, as well as some additional ones, lead us to conclude that the proposed regulations should not be adopted in their current form.

I. The Department Has Failed to Comply with M.G.L. c.21G, §3 in Developing Its Proposed Regulations.

The available public information suggests that the proposed regulations were developed without following the procedures prescribed by section 3 of the WMA, which requires that any such proposal be developed "after consultation with" and "with the advice of" the Water Resources

Management Advisory Committee. That Committee is required to "review the development of...regulations for water resources management and shall...supply recommendations concerning methods by which existing water management practices and the laws regulating them may be supplemented and improved and their administration financed."

For the Department to have the necessary consultation with the Advisory Committee, the Committee itself must have, in fact, deliberated in order to provide its substantive opinions. As a public body, the Advisory Committee cannot deliberate to form such an opinion except at a meeting that complies with the *Open Meeting Law. M.G.L.* c.30A, §20. To the Town's knowledge, no such meeting has taken place.¹

II. The Department's Proposed Regulations Would Infringe upon the Town's Registration Rights.

In Water Dep't of Fairhaven v. Dep't of Env't Prot., 455 Mass. 740, 751 (2010), the Supreme Judicial Court ruled that the Department can place conditions on WMA registrations only if (1) it first adopts regulations authorizing the conditions; and (2) the conditions do not "infringe" on registrants' right to withdraw water.² Under the Fairhaven decision, the Department cannot impose water conservation restrictions on Reading's WMA Registration Statement, at least as long as the Town is not exceeding the withdrawal volumes that it is entitled to under its registration. Yet the introduction of water restrictions in the Department's proposed regulations at 310 CMR 36.07(2)(c) purport to do just that.³

The SJC recently reaffirmed the central holding of the *Fairhaven* decision in *Town of Concord v. Water Dep't of Littleton*, 487 Mass. 56, 61 (2021). In that decision, the Court explained that, "[i]f a registrant timely filed a registration statement and renewals, the registrant was <u>entitled</u> to existing withdrawals." (emphasis added). "By registering and timely renewing, a registrant 'may continue forever to withdraw water at the rate of its existing withdrawal [at the time of its initial registration statement],' except in the case of a declared water emergency." *Id.* at 61-62 (citing *Fairhaven*).

These SJC decisions highlight an important distinction between permittees (which must abide by conservation restrictions imposed by DEP) and registrants. The latter are entitled by their Registration

¹ This procedural error cannot be erased by convening the Committee, holding a meeting in conformance with the *Open Meeting Law*, and obtaining a vote on the Department's fully formed regulations. Rather, the WMA requires that the regulations be developed "after consultation with" the Committee—not before—and with its active participation and advice.

² While the Court did not expressly determine whether the Department's conservation measures that were challenged in that case would have infringed upon registrants' withdrawal rights if they had been imposed via regulation, 455 Mass. at 749 ("[T]he conservation measures imposed on the plaintiff registrants as 'registration conditions' might have been lawful if they had been imposed by regulation on all registrants...") (emphasis added), it did make clear that "limiting a registrant's water use to less than the existing withdrawal," even by regulation, would infringe those rights. *Id*.

^{&#}x27;As noted below, the Town is already subject to orders and conditions imposed outside of the WMA registration process, resulting in water restrictions that are in place year-round. Thus, the proposed regulations will have very little practical impact on water management in Reading, other than to add to the Town's administrative and paperwork burden.

Statements to withdraw no more water today than they were in the period from 1981-85.⁴ Permittees, in contrast, have received permission to undertake new withdrawals that did not exist in 1981-85. It makes sense that these new withdrawals came with strict conditions. To that end, "[w]ithdrawal by registration is treated very differently from withdrawal by permit." *Fairhaven*, 455 Mass. at 747. But the proposed regulations fail to honor this distinction.

III. The Proposed Regulations Are Inconsistent with the Executive Office's Overall Strategy for Creating Resilience as the Climate Changes.

Putting aside, for the moment, the Department's procedural missteps and its noncompliance with the holdings in the *Fairhaven* and *Concord* decisions, the Town does not understand how the proposed regulations are an appropriate strategy for dealing with droughts brought about by climate change. According to EEA's Climate Clearinghouse for the Commonwealth⁵:

[C]ommunities, sectors and individuals have the ability to address many climaterelated risks, reduce negative impacts, and take advantage of possible opportunities that may arise from the changing climate.

Planning for climate change is much like any other planning for any other effort, it is a process. Typically, the process includes these steps:

- 1. Determine your focus
- 2. Determining risks and vulnerabilities
- 3. Identifying and selecting options [to] address risks and vulnerabilities
- 4. Formulate an implementation plan
- 5. Implement
- 6. Assess results

The Clearinghouse asks communities to "assess...how to create resiliency as the climate changes (adaptation)," but the regulations do not ask public water suppliers to do that at all. Instead, they immediately compel public water suppliers to force their customers to undertake strategies that will inevitably exacerbate the impacts of drought and do nothing to promote resilience.

⁺ MassDEP, Fact Sheet: Water Management Act — Registration and Permitting, available at https://www.mass.gov/service-details/fact-sheet-water-management-act-registration-and-permitting.

⁵ Resilient MA, Plan Development, available at https://resilientma.org/actions/planning.

⁶ Id

⁷ The Department's confidence in these strategies is certainly called into question by the broad and sweeping exceptions built into the proposed definition of "nonessential outdoor water use," which seeks to classify water uses based on the Department's view of their necessity, rather than based on their environmental impact. The Town questions whether it is appropriate for the Department to be engaging in such forms of social engineering.

⁸ As noted, as recently as four years ago, the Department itself acknowledged that subjecting registrants to conditions similar to permit conditions, along with being unnecessary, could even increase water usage by incentivizing registrants to apply for permits.

According to the Clearinghouse9:

Climate change is among the greatest environmental challenges of this generation, with potentially profound effects on the economy, public health, water resources, infrastructure, coastal resources, energy demand, natural resources, and recreation. The Commonwealth of Massachusetts is committed to doing its part to mitigate and adapt to this challenge, recognizing the necessity of engaging in adaptation planning today by taking a close look at strategies that could help the state become more resilient and ready to adapt to climate change as it occurs.

Clearly, achieving climate change resiliency is far more complicated than placing restrictions on water uses that the Department deems to be non-essential. The proposed regulations represent only the same strategy that the Department has pushed on WMA permittees for years¹⁰ with little obvious impact on low-streamflow watersheds.

IV. Conditioning Registration Statements Will Do Little or Nothing to Improve Water Management in the Town of Reading

The WMA's purposes are laid out in *M.G.L.* c.21G, §3, and include water management and conservation for the purpose of ensuring "an adequate volume and quality of water for all citizens of the commonwealth, both present and future." By prescribing a single water management strategy for all communities, however, the proposed regulations squander the Department's opportunity to take advantage of the unique circumstances of each community.

In the case of Reading, the Town's water management practices are prescribed by:

- An Administrative Consent Order, dated August 1, 2006, as amended;
- The Town's Interbasin Transfer Permit, approved July 12, 2007;
- The Town's current Renewal Registration Statement¹¹ effective January 1, 2008; and

Registered-only water systems have not increased their demands in 35 years and most have significantly reduced their demand over time.... Imposing water conservation conditions on registered-only systems...will remove their incentive to keep their overall demand below their registered volume.

Response to Massachusetts Rivers Alliance Request for Adoption of Rules at 10.

[&]quot;Resilient MA, Take Action, available at https://resilientma.org/actions

¹⁰ MassDEP, Current Municipal Water Use Restrictions, available at https://www.mass.gov/doc/water-use-restrictions-map/download.

While the conditions set forth in the Department's "approval" of Reading's Renewal Registration Statement were invalidated by the *Fairhaven* decision, compliance with those conditions nevertheless appears to be compelled by the Administrative Consent Order.

The Town's Contract with the MWRA presently in effect, 2016-2026

The combined effect of these restrictions is that Reading already imposes year-round restrictions on outdoor water use. ¹² At best, therefore, the Department's proposed regulations will be superfluous, as they will have no discernible effect on the Town's water management practices. However, to the extent there is any impact from these regulations, it will be to complicate and confuse the Town's implementation of its water conservation efforts and to increase the Town's already substantial administrative and paperwork burden.

* * *

For the foregoing reasons, the Town of Reading respectfully requests that the Department abandon its proposed regulations and utilize the extra time afforded by the Governor's COVID 19 Executive Order No. 42 to work with communities to develop resilience plans that follow the leadership of the Executive Office of Energy and Environmental Affairs, as expressed in its Climate Clearinghouse for the Commonwealth.

Thank you for your courtesy and attention to these comments.

Respectfully submitted,

Robert W. Lelacheur, Jr. of

Town Manager

¹² These year-round mandatory outdoor water use restrictions have been in effect since 2007. Outdoor water use is restricted Monday through Sunday to 4am-9am and 5pm-8pm, even numbered properties on even days of the month and odd numbered properties on odd days of the month. There is no restriction on hand-held watering devices.



J. Raymond Miyares Thomas J. Harrington Christopher H. Heep Donna M. Brewer Jennie M. Merrill Bryan Bertram Ivria Glass Fried Alexandra B. Rubin Ethan B. Dively Maurica D. Miller Rian Rossetti

June 14, 2021

By Email (kathleen.baskin@mass.gov)

Kathleen Baskin
Assistant Commission
Department of Environmental Protection
Bureau of Water Resources
1 Winter Street
Boston, MA 02108

Re: Town of Reading Renewal Registration Statement

Dear Kathy:

The Town of Reading is submitting the attached renewal registration statement in accordance with the requirements of the *Water Management Act* (WMA), *M.G.L.* c.21G, §5, but wishes to emphasize its position that it has the right, under that section, to continue the existing withdrawals specified in the registration statement for a further period of ten years without conditions.

The Town is concerned that the Department's proposed WMA regulations, published on June 2, 2021, contain significant additions to 310 CMR 36.07, Registration Conditions, including requiring restrictions on "Nonessential Outdoor Use" during declared droughts. Those conditions would not be a valid exercise of the Department's authority because (1) conditions infringing upon registration rights are unlawful under the WMA; and (2) the Department has failed to comply with the procedural requirements of M.G.L. c. 21G, § 3 in developing its proposed regulations.

I. The Department's Proposed Regulations Would Infringe upon the Town's Registration Rights.

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Department's conservation measures would have infringed upon registrants' withdrawal rights if they had been imposed via regulation, *id.* at 749 ("[T]he conservation measures imposed on the plaintiff registrants as 'registration conditions' <u>might</u> have been lawful if they had been imposed by regulation on all registrants....") (emphasis added), it did make clear that "limiting a registrant's water use to less than the existing withdrawal" <u>would</u> infringe those rights. *Id.*

Restrictions on water uses that the Department deems to be "nonessential" clearly have the effect of "limiting [the Town's] water use to less than the existing withdrawal," and therefore infringe upon the Town's registration rights, in contravention of the *Fairhaven* holding.

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We note that, as recently as 2017, the Department found that it was not necessary to impose conservation conditions on registrants:

Based on the number of registered-only public water systems, their current water use and irrigation practices, and uncertainty around how conditions would be applied to regional water systems, it has been and remains for now the department's determination that imposing water conservation conditions on registrations would likely result in little actual water savings.

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Department of Environmental Protection, Response to Massachusetts Rivers Alliance Request for Adoption of Rules (Sept. 22, 2017) at 9-10.

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developed "after consultation with" and "with the advice of" the Water Resources Management Advisory Committee. That Committee is required to "review the <u>development</u> of . . . regulations for water resources management and shall . . . supply recommendations concerning <u>methods</u> by which existing water management practices and <u>the laws regulating them</u> may be supplemented and improved and their administration financed." <u>Id.</u> (emphasis added). The statute clearly indicates that the Advisory Committee is to be consulted on the rulemaking process, not just on the rules themselves.

For the Department to have the necessary consultation with the Advisory Committee, the Committee itself must have in fact deliberated such that it can provide its substantive opinions. As a public body, the Advisory Committee cannot deliberate to form such an opinion except at a meeting that complies with the *Open Meeting Law. M.G.L.* c.30A, §20.

Nor can this procedural error be erased by hastily reconvening the Committee, holding a meeting in conformance with the *Open Meeting Law*, and obtaining a vote on the Department's fully-formed regulations. Rather, as noted, the WMA requires that the regulations be developed "after consultation with" the Committee—not before—and "with [its] advice," not merely its rubber stamp.

III. Conclusion.

Because the proposed regulations would be both substantively and procedurally unlawful under the WMA, The Town submits its renewal registration statement with the expectation that it will not be subject to any conditions imposed by such regulations.

Thank you for your continued courtesy in connection with this matter.

Sincerely,

Miyares and Harrington LLP

Town Counsel

Town of Reading

J.Raymond Miyares

cc: R. LeLacheur, Town Manager

SALEM AND BEVERLY WATER SUPPLY BOARD

ALAN F. TAUBERT, JR, P.E. – EXECUTIVE DIRECTOR BRADLEY E. PERRON – DEPUTY DIRECTOR 50 ARLINGTON AVENUE, BEVERLY, MA 01915-1035 Tel. (978) 922-2600 Fax (978) 921-4584

July 26, 2021

VIA EMAIL TO: dep.talks@mass.gov

Ms. Elizabeth McCann Water Management Act Program MassDEP One Winter Street, 5th Floor Boston, Massachusetts 02108

Re:

Proposed Amendments to 310 CMR 36.00 -

Conditions on WMA Registrations

Dear Ms. McCann:

The Salem and Beverly Water Supply Board (the "Board") hereby files the following objections to the Massachusetts Department of Environmental Protection's ("MassDEP's") proposed amendments to the Water Management Act regulations (310 CMR 36.00) to impose drought restriction conditions on all Water Management Act registrants.

We have reviewed the comments of the Massachusetts Water Works Association and agree with the points made by them.

In the case of the Board, our enabling legislation further protects streamflow by prohibiting operation of the Ipswich River diversion during the dry period from June through November. We supply our customers from our reservoir system during that period, thereby preserving flow in the River. Requiring the Board to implement mandatory restrictions on nonessential water use, without recognizing this important environmental restriction would be inappropriate.

We believe that this restriction alone provides a basis for allowing the Board to develop its own drought management plan. Such a plan, which could rely on the current level of storage, demand, historical operations and other factors, could provide for phased implementation of drought management practices. For example, if the Northeast Region were declared to be in drought level 1, but the Board had considerable water in storage, and knew that it was likely to recover, it might then issue a drought alert. The alert might say that the region is experiencing a shortfall in precipitation and restrictions might be necessary soon. Of course, if the Board were already experiencing a significant storage deficit, then other actions would need to be taken, similar to those contemplated by the proposed regulation. And, of course, the plan would be subject to MassDEP approval.

Ms. Elizabeth McCann Water Management Act Program MassDEP July 26, 2021 Page Two.

In filing these objections, the Board does not waive its entitlement to withdraw its full registered volume, nor its right to object to any proposed requirements that would infringe upon the Board's historical registered volume.

Without limiting the foregoing, the Board does not waive its right to continue to object to proposed changes in the Regulations under 310 CMR 36.00 *et seq*.

Sincerely,

Alan F. Taubert, Jr., P.E.

Executive Director



POST OFFICE BOX 995 SPRINGFIELD, MASSACHUSETTS 01101-0995 413-452-1300

July 26, 2021

Ms. Elizabeth McCann
Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Water Management Program
One Winter Street, 5th Floor
Boston, MA 02108

RE: Proposed Amendments to 310 CMR 36.00 – Conditions on WMA Registrations (Submitted by Email to dep.talks@mass.gov)

Dear Ms. McCann:

The Springfield Water and Sewer Commission (Commission) submits the following written comments to supplement verbal comments provided during the public hearings on July 7 and 16, 2021.

The Commission is one of the largest public water suppliers in the Commonwealth, serving approximately 250,000 people in the lower Pioneer Valley. The Commission's primary drinking water supply at Borden Brook and Cobble Mountain Reservoirs, and its emergency drinking water supply at Ludlow Reservoir, are both registered-only systems under the Water Management Act (WMA). The Commission's core mission to the public is to provide a safe, uninterrupted supply of drinking water to its ratepayers.

The Commission is fully supportive of <u>science-based</u> decision making relative to the implementation of water restrictions as they relate to protecting the capacity of public water supplies. However, we have several concerns with the rationale and the specific language proposed for amending the Water Management Act Regulations (310 CMR 36.00).

1. Registration Conditions (310 CMR 36.07(2)(c)1) – Regional Drought Determination is Inconsistent With Actual Supplies and System-Specific Characteristics

The Commission believes the proposed regulations are both unnecessary and are wholly inconsistent with the trends in registered withdrawals of many public water supplies, including the Commission's. The proposed amendments to 310 CMR 36.07 (2)(C) would require that water registrants implement restrictions on Non-essential Outdoor Water Use when a "drought declaration by the Secretary for the drought region where the registrant's withdrawals are located..." This regional one-size fits all regulation is not appropriate for the Commission's supply, nor other supplies in the Commonwealth, which all have unique water system characteristics.

In the specific case of the Commission, we provide water to our customers from two surface water reservoirs, Borden Brook Reservoir and Cobble Mountain Reservoir, which has a water registration for



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withdrawal of 39.1 MGD. For the last 15 years or more we have generally withdrawn 30-35 MGD, consistently below the withdrawal limit. Consider Figure 1 below, showing the decline in the Commission's registered withdrawals since 2005:

Cobble Mountain Reservoir Withdrawal 2005-2020

45

40

39.1 MGD Registered Volume Limit

35

30

40

205

205

2006

2007

2008

2009

2010

2011

2012

2013

2014

2015

2016

2017

2018

2019

2020

Figure 1: Cobble Mountain Reservoir Withdrawals 2015- 2020

Figure 1 depicts a *growing* margin of safety between authorized withdrawals and actual use. Since the current reservoir system came online in 1931 the Commission has never had to implement a water restriction because of drought and low reservoir levels. Our watershed and reservoir system is very resilient. Consider specifically the most recent drought years of 2016 and 2020. Reservoir levels did not fall below 64.7% and 64.0%, respectively, in either of those years, with no water use restrictions necessary. The Commission's Residential Gallons Per Capita Day (RGPCD) has also remained below recommended state conservation standards. In 2016, the RGPCD was 62.9, which was only 2% higher than the RGPCD in 2018 (61.6), a non-drought year. Based on the above data, it is clear that the Commission is able to manage its water supply effectively both historically and in more recent conditions influenced by climate change.

The Commission relies on the important science-based analyses specific to our water supply system when implementing non-essential outdoor water restrictions. The Commission maintains a system



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specific Drought Management Plan (DMP), which was completed by an engineering consultant. The DMP provides a framework for response to drought conditions, including the use of water restrictions. The DMP includes a drought risk analyses that estimates the probability of system failure under a variety of future conditions based in part on the available hydrologic record and the use of simulation tools. At current consumption rates, the capacity of Cobble Mountain Reservoir is a 15-24 month supply without any inflow. The Commission's DMP demonstrates that our reservoir is able to meet full demand during extreme multi-year drought scenarios.

The proposed regulations based on a regional drought determination method will lead to drought declarations and non-essential watering restrictions when our supply is ample. An example of this potential scenario just occurred in April 2021. During that time a Level 1 drought in the Connecticut River Valley was declared by the Commonwealth. Yet as of the first week in May, when that declaration was still in effect, Cobble Mountain Reservoir was full at 95%. Under the proposed regulatory changes, the Commission would have needed to advise its customers that only one day/week watering would be allowed, despite having a two-year supply available in the reservoir.

We strongly recommend that the MassDEP consider requiring all water registrants develop system-specific DMP to determine when it is appropriate to implement water restrictions based on system-specific characteristics. This regulatory change could occur as an amendment to the Drinking Water Regulations (310 CMR 22.02(13)) that would add a DMP to be incorporated in Emergency Response Plans, which all water systems must maintain.

2. Registration Conditions (310 CMR 36.07(3)) – Multi-Year Drought Storage Definition Is Not Science-Based

As mentioned above, registered withdrawals from our system have been steadily *decreasing* since 1986, making these new conditions on our WMA registration seem unnecessary. In addition, despite the intent behind these regulations to "level the playing field," the proposed regulations also offer a seemingly arbitrary exemption that is tailored to perhaps only one public water system in the state.

The proposed regulatory changes (310 CMR 36.03(3) states: "A registrant who withdraws only surface water supplies with sufficient Multi-Year Drought Storage, as determined by the Department may implement nonessential outdoor water use restrictions in accordance with an accepted drought management plan instead of the restrictions described in 310 CMR36.07(2)(c)1." In the definition section of the proposed amendments (310 CMR 36.03), "Multi-Year Drought Storage" is defined as a "...reservoir capacity of not less than three times a registrant's authorized withdrawal and any release...." The Commission has one of the largest, most robust water supplies in the state and yet our system does not meet that criteria. The proposed Amendment language is moot because it applies to no water suppliers, or very, very few.



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MassDEP has never provided the technical basis for this definition requiring three times the registrant's withdrawal, and it does not appear to be based upon any known standard, risk analysis, or scientific evidence. MassDEP's state Drought Management Plan refers to AWWA's M60 Drought Preparedness and Response Manual. The M60 standard states capacity is just one factor of consideration for creation of a drought plan, which should also include seasonal inflows and inter-annual variability of supply storage, but there is no mention in the M60 of a three-times withdrawal supply of water in order to be considered drought resilient. The exemption provided in the proposed regulations also does not factor in full and seasonal inflows, which are a critical factor in understanding the anticipated supply in relation to demand.

The Commission own DMP uses both historical and synthetic scenarios to help predict the next 24 months of storage and includes system-specific triggers. Included in the plan is a Drought Forecasting Tool, which uses real-time reservoir data inputs to run thousands of simulations to predict future storage. During the 2020 drought, this tool illustrated that Cobble Mountain Reservoir remained in "Normal" conditions throughout the year. Normal conditions means that there are zero scenarios that the reservoir will drop to the historic low (30% full) in the next 90 days. Cobble Mountain Reservoir holds 15-24 months of supply without any inflow and is an inter-year reservoir, meaning that storage carries over into the next year and one bad year will not lead to failure. With the tools created through the DMP development process, we are now more prepared than ever to respond to droughts with our updated plan.

The storage requirement of no less than three times the authorized withdrawal for an exemption appears to be of dubious purpose or value. The Commission instead recommends that MassDEP require that all drought management plans follow the technical standards found in the M60 manual in order to qualify for an exemption.

3. Impacts to financial stability and social inequities

One aspect of the purported rationale for adding new conditions to WMA registrations is to "ensure both an adequate volume and quality of water to assure...continued economic stability during times when water supplies are stressed by drought." As illustrated in the example from April above, under the new regulations, adequate volumes may already be in place when non-essential water use restrictions must be enacted – situations that will lead to adverse economic impacts, or instability for the Commission, when water supplies are *not* actually stressed by drought. The proposed regulations do not meet the stated goal and do economic harm to the Commission and the communities we serve.

The sale of water is the primary source of the Commission's revenues. We receive no funding from state or local tax revenues, and direct federal and state funding/grants are extremely limited. Revenues from rates are necessary to fund the costs of supplying drinking water and wastewater services to the public. Unlike other business sectors, the Commission cannot scale down its workforce or infrastructure during times when revenue is down – the costs to run a public water system are largely fixed. In addition to



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operations, the Commission also uses revenue from rates to fund a comprehensive capital improvement program to upgrade its aging infrastructure. Upgrades serve to make the system more resilient to the multiple risks presented by extreme weather patterns and climate change. This includes upgrading the West Parish Filters Water Treatment Plant at a cost of \$167+ million.

Each fiscal year the Commission sets rates to cover the required budget for operational needs and debt service, and uses consumption trends to project revenues. With these new proposed regulations, rates will either need to be raised on a contingency basis to account for the potential of more frequent seasonal water use restrictions, or rates will need to be raised the following fiscal year to make up for revenue shortfalls. In either scenario, ratepayers will now be asked to pay more for their water but receive no meaningful benefit either in terms of conservation or infrastructure improvement.

The Commission evaluated scenarios of how restricted seasonal water use may impact revenues for its system, and found that while water conservation savings would be minimal, the negative financial impacts could be significant. Using consumption rates during the 2016 drought, if residential water consumption were reduced by 10%¹, approximately 200 MG of water would have been saved between June and November of that year. This equates to roughly 1.1 MGD, which is not very impactful in terms of water conservation. However, the lost revenue equates to approximately \$3.1 million (at FY21 rates), which represents (roughly) a 5% rate increase. If Level 3 or 4 restrictions were enacted, the revenue shortfall could be as high as \$6.3 million.

Another consideration is that even if the drought was fairly short-lived and did not last from June-November, the lost opportunity to collect revenue from seasonal usage could be even more impactful if wet weather returns. This is the scenario in summer 2021, with a "drought" in April that would have triggered Level 1 non-essential water use restrictions followed by one of the wettest Julys on record. The loss of revenue caused by the unnecessary restrictions would have only compounded the later loss of revenue due to the unusually wet weather that lowered outdoor water use – and again, no meaningful water conservation benefit would have been realized in exchange.

The potential negative economic impacts are critical to recognize because many of the Commission's customers are low-income and reside in EPA-designated Environmental Justice (EJ) areas. Among our customer base, seasonal water consumption rises among homeowners or other entities able to afford it, essentially supplementing the rates of everyone else. If rates must rise on all to account for lost revenues due to more frequent "droughts," our lowest income residents will shoulder the highest burden, which (as pointed out in the comment letter submitted by MWWA) is contrary to the intent of Governor Baker's climate bill signed in March 2021. Even worse, the rate increases would not be tied to improvements to infrastructure resiliency or services – instead, they would merely be accounting for the

¹ American Water Works Association, 1992. Drought Management Planning. AWWA finds that targets of 10% to 20% reduction are goals during high outdoor water use months and can be used for planning purposes.



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lost revenues. Over time this could lead to greater resistance to raising rates, or delaying or cancelling much-needed capital projects.

Public comments from those supportive of the proposed regulations often counter that imposing tiered rates – where those who consume more pay more – is a solution to the revenue lost due to nonessential water use restrictions. But this simplistic viewpoint does not take into account the economic variations among regions. In areas where economic competitiveness and opportunity are higher, such as Metro Boston, businesses, industry, and homeowners may be more willing (and able) to accept paying higher rates for higher levels of water consumption. But in areas that are working hard to revitalize their economies, such as the Springfield region, tiered water rates could serve to dampen economic competitiveness, sending prospective newcomers elsewhere despite otherwise having the advantage of an ample, high-quality water supply. The lost opportunity and economic revitalization would again primarily impact the lowest-income residents.

4. Proposed regulations present adverse water quality impacts

MassDEP has stated this proposed regulation is to "assure public health and safety." Yet these Amendments will adversely impact water quality negatively impacting public health. This is critical problem for our water system, which has had sporadic elevated disinfection byproducts (DBPs), specifically haloacetic acids (HAA5).

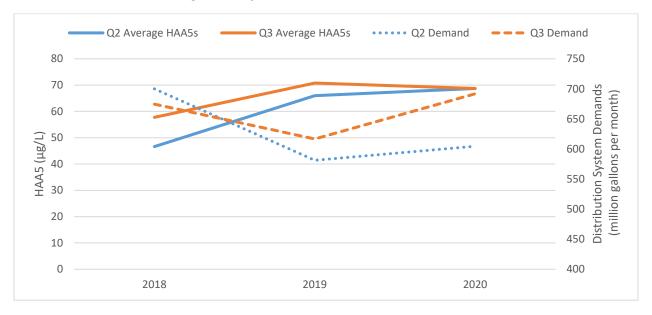
Water age in a water system increases when consumption demand drops. DBPs develop when chlorine interacts with organics in the water, and the DBPs increase with water age. In addition, during the summer months the organics in drinking water increase correlating to elevated DBPs. More extreme precipitation events have also led to higher organics levels in our reservoir.

Reducing water age is one of the main strategies to limit formation of DBPs in the distribution system. On the following page is an illustration (Figure 2) showing the relationship between water demand and levels of HAA5. The correlation is clear – as water demand increases, water age decreases and HAA5 levels are mitigated.



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Figure 2 – System Demand and HAA5 Formation



If we are required to restrict water use during dry periods, even when our reservoir is at no risk of depletion, to protect public health we will have to flush the water that we are "conserving" due to water restrictions out into the street. This does not make any logical sense for our system and does not result in any water conservation.

The impacts will be two-fold: first, revenue will be lost on water not used because of restrictions that will be flushed to lower water age and maintain water quality. Second, the Commission would need to enforce water use restrictions while simultaneously (and visibly) flushing water from hydrants to storm drains on city streets. During summer months the Commission typically flushes 1.1 MGD. This is about the same amount of water that would have been conserved in 2016 if drought restrictions were in place and water consumption was decreased by 10%. To compensate for the lack of water flowing to outdoor water uses, we would have to increase flushing by double, to 2.2 MGD, to maintain favorable conditions in the distribution system. Some customers already contact the Commission each summer to report flushing as a "waste," not understanding the role of flushing in water quality. The resulting confusion and resentment among the customer base could make enforcing future water use restrictions (particularly if water supplies really are stressed) more contentious.

5. Proposed Amendments Undermine System-wide Climate Resiliency

We recognize that some public water systems in other areas of the state are experiencing stressed supplies. Yet the "one size fits all approach" these regulations present seem ill-suited to areas like ours with vastly different watersheds and development patterns. For our system, renewing aging



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infrastructure is critical to achieving resiliency and service reliability in the face of *all* climate risks. Reducing climate risk expands beyond drought – infrastructure must be able to withstand more extreme weather, treatment plants must meet new regulations that arise out of new environmental conditions, and utilities must maintain affordability for its customer base. Climate resiliency embodies equity considerations as well, since often the oldest infrastructure is located within Environmental Justice communities, making those residents more vulnerable to loss of essential services.

The Commission's 20-year capital improvement program was adopted to build resiliency and ensure service reliability. In order to accelerate critically needed projects while maintaining affordability, the Commission has obtained highly competitive federal WIFIA and state SRF loans — which will need to be repaid. By restricting the use of water unnecessarily, these proposed amendments will undermine the very funding needed to achieve system-wide resiliency with little to no meaningful benefit in exchange.

6. Conclusion

The Commission understands the importance of water conservation, and supports water use restrictions that are system-specific and science-based. The proposed amendments, however, are flawed as crafted and will not achieve their stated purpose of protecting public water supplies. We offer the following for consideration:

- Require that each water supplier prepare a system specific Drought Management Plan, rather than rely on a broad-based, regional drought declaration. This could be required by revising the Drinking Water Regulations (310 CMR 22.00).
- The definition of Multi-Year Drought Storage appears to lack scientific rigor and does not appear
 to be based on science or any water system operational best practices. It also appears that no
 registered water suppliers meet this definition, except for one very large system. As stated
 above, we recommend requiring an individual DMP for each water supplier, negating the need
 for the term Multi-Year Drought Storage.
- The proposed Amendments would result in financial hardships to the Commission and our customers. Restricting water use, based on regional factors, would result in about a \$3M reduction in water revenues just for Level 1 or 2 restrictions, during times when our water supply does not need to restrict water use based on our system-specific DMP.
- The proposed Amendments would result in an increase in water age and in system DBPs. There is also the potential to create public perception issues by requiring (unnecessary) water use restrictions, while we are flushing hydrants in various locations through the distribution system to reduce water age and reduce DBPs.



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The Commission appreciates the opportunity to comment on the proposed amendments to the WMA Regulations and trust that these will be thoughtfully considered. Please contact me directly with any questions.

Sincerely,

Joshua D. Schimmel Executive Director

Springfield Water and Sewer Commission

CC: Commissioner Martin Suuberg, MassDEP

By email: dep.talks@mass.gov

Massachusetts Department of Environmental Protection Bureau of Resource Protection Water Management Program One Winter Street, 5th floor Boston, MA 02108

Attention: WMA Regulations

Dear Department Staff:

The Town of Stockbridge hereby submits its comments on the Department's proposed Water Management Act (WMA) regulations, published June 2, 2021, containing significant additions to 310 CMR 36.07, Registration Conditions, including requiring restrictions on "Nonessential Outdoor Use" during declared droughts. These regulations represent a significant about-face for the Department, which, less than four years ago, determined that placing water conservation restrictions on registrants would "likely result in little actual water savings" and, at worst, "remove their incentive to keep their overall demand below their registered volume." Department of Environmental Protection, Response to Massachusetts Rivers Alliance Request for Adoption of Rules at 10 (Sept. 22, 2017). Some of the factors that gave rise to the Department's 2017 determination, as well as some additional ones, lead us to conclude that the proposed regulations should not be adopted in their current form.

I. The Department Has Failed to Comply with M.G.L. c.21G, §3 in Developing Its Proposed Regulations.

The available public information suggests that the proposed regulations were developed without following the procedures prescribed by section 3 of the WMA, which requires that any such proposal be developed "after consultation with" and "with the advice of" the Water Resources Management Advisory Committee. That Committee is required to "review the <u>development</u> of…regulations for water resources management and shall…supply recommendations concerning <u>methods</u> by which existing water management practices and <u>the laws regulating them</u> may be supplemented and improved and their administration financed."

For the Department to have the necessary consultation with the Advisory Committee, the Committee itself must have, in fact, deliberated such that it can provide its substantive opinions. As a public body, the Advisory Committee cannot deliberate to form such an opinion except at a

meeting that complies with the *Open Meeting Law*. *M.G.L*. c.30A, §20. To the Town's knowledge, no such meeting has taken place.¹

II. The Department's Proposed Regulations Would Infringe upon the Town's Registration Rights.

In Water Dep't of Fairhaven v. Dep't of Env't Prot., 455 Mass. 740, 751 (2010), the Supreme Judicial Court ruled that the Department can place conditions on WMA registrations only if (1) it first adopts regulations authorizing the conditions; and (2) the conditions do not "infringe" on registrants' right to withdraw water. Under the Fairhaven decision, the Department cannot impose water conservation restrictions on Stockbridge's WMA Registration Statement, at least as long as the Town is not exceeding the withdrawal volumes that it is entitled to under its registration. Yet the introduction of water restrictions in the Department's proposed regulations at 310 CMR 36.07(2)(c) purport to do just that.

The SJC recently reaffirmed the central holding of the Fairhaven decision in *Town of Concord* v. Water Dep't of Littleton, 487 Mass. 56, 61 (2021). In that decision, the Court explained that, "[i]f a registrant timely filed a registration statement and renewals, the registrant was <u>entitled</u> to existing withdrawals." (emphasis added). "By registering and timely renewing, a registrant 'may continue forever to withdraw water at the rate of its existing withdrawal [at the time of its initial registration statement],' except in the case of a declared water emergency." *Id.* at 61-62 (citing *Fairhaven*).

These SJC decisions highlight an important distinction between permittees (which must abide by conservation restrictions) and registrants. The latter are entitled by their Registration Statements to withdraw no more water today than they were in the period from 1981-85.³ Permittees, in contrast, have received permission to undertake new withdrawals that did not exist in 1981-85. It makes sense that these new withdrawals came with strict conditions. To that end, "[w]ithdrawal by registration is treated very differently from withdrawal by permit." *Fairhaven*, 455 Mass. at 747. But the proposed regulations fail to honor this distinction.

III. The Proposed Regulations Are Inconsistent with the Executive Office's Overall Strategy for Creating Resilience as the Climate Changes.

¹ This procedural error be erased by convening the Committee, holding a meeting in conformance with the *Open Meeting Law*, and obtaining a vote on the Department's fully formed regulations. Rather, the WMA requires that the regulations be developed "after consultation with" the Committee—not before—and with its active participation and advice.

² While the Court did not expressly determine whether the Department's conservation measures would have infringed upon registrants' withdrawal rights if they had been imposed via regulation, 455 Mass. at 749 ("[T]he conservation measures imposed on the plaintiff registrants as 'registration conditions' <u>might</u> have been lawful if they had been imposed by regulation on all registrants...") (emphasis added), it did make clear that "limiting a registrant's water use to less than the existing withdrawal," even by regulation, <u>would</u> infringe those rights. *Id*.

³ MassDEP, Fact Sheet: Water Management Act — Registration and Permitting, available at https://www.mass.gov/service-details/fact-sheet-water-management-act-registration-and-permitting.

Putting aside, for the moment, the Department's procedural missteps and its noncompliance with the holdings in the *Fairhaven* and *Concord* decisions, the Town does not understand how the proposed regulations are an appropriate strategy for dealing with droughts brought about by climate change. According to EEA's Climate Clearinghouse for the Commonwealth⁴:

[C]ommunities, sectors and individuals have the ability to address many climate-related risks, reduce negative impacts, and take advantage of possible opportunities that may arise from the changing climate. Planning for climate change is much like any other planning for any other effort, it is a process. Typically, the process includes these steps:

- 1. Determine your focus
- 2. Determining risks and vulnerabilities
- 3. Identifying and selecting options [to] address risks and vulnerabilities
- 4. Formulate an implementation plan
- 5. Implement
- 6. Assess results

The Clearinghouse asks communities to "assess…how to create resiliency as the climate changes (adaptation)," but the regulations do not ask public water suppliers to do that at all. Instead, they immediately compel public water suppliers to force their customers to undertake strategies that will inevitably exacerbate the impacts of drought and do nothing to promote resiliency. 7

According to the Clearinghouse8:

Registered-only water systems have not increased their demands in 35 years and most have significantly reduced their demand over time.... Imposing water conservation conditions on registered-only systems...will remove their incentive to keep their overall demand below their registered volume.

Response to Massachusetts Rivers Alliance Request for Adoption of Rules at 10.

⁴ Resilient MA, Plan Development, available at https://resilientma.org/actions/planning

[,] *Id.*

⁶ The Department's confidence is these strategies is certainly called into question by the broad and sweeping exceptions built into the proposed definition of "nonessential outdoor water use," which seeks to classify water uses based on the Department's view of their necessity, rather than based on their environmental impact. The Town questions whether it is appropriate for the Department to be engaging in such forms of social engineering.

⁷ As noted, as recently as four years ago, the Department itself acknowledged that subjecting registrants to conditions similar to permit conditions, along with being unnecessary, could even increase usage by incentivizing registrants to apply for permits.

⁸ Resilient MA, Take Action, available at https://resilientma.org/actions

Climate change is among the greatest environmental challenges of this generation, with potentially profound effects on the economy, public health, water resources, infrastructure, coastal resources, energy demand, natural resources, and recreation. The Commonwealth of Massachusetts is committed to doing its part to mitigate and adapt to this challenge, recognizing the necessity of engaging in adaptation planning today by taking a close look at strategies that could help the state become more resilient and ready to adapt to climate change as it occurs.

Clearly, achieving climate change resiliency is far more complicated than placing restrictions on water uses that the Department deems to be non-essential. The proposed regulations represent that same strategy that the Department has pushed on WMA permittees for years.⁹

IV. Conditioning Registration Statements Will Do Little or Nothing to Improve Water Management in the Town of Stockbridge.

The WMA's purposes are laid out in M.G.L. c.21G, §3, and include water management and conservation for the purpose of ensuring "an adequate volume and quality of water for all citizens of the commonwealth, both present and future." By prescribing a single water management strategy for all communities, however, the proposed regulations squander the Department's opportunity to take advantage of the unique circumstances of each community.

In Stockbridge's case, the Town's entire registered volume is withdrawn from Lake Averic, a surface water source that may be deemed by the Department to have sufficient Multi-Year Drought Storage under the criteria of the proposed regulations. It would therefore possibly be able to take advantage of the provisions of 310 CMR 36.07(c)(3), which allow the Town to devise its own drought management plan. But that plan would be subject to the Department's approval, and would have to implement "nonessential outdoor water use restrictions."

Stockbridge's bylaws already give the Town the authority to impose water use restrictions, including limiting the operation of automatic sprinklers, prohibiting the filling of swimming pools, and allowing outdoor watering only on alternating odd/even days or prohibiting outdoor watering altogether. The Town's flexibility to implement one or more of these measures may not be accepted by the Department as "functionally equivalent" to the restrictions of the Department's stock plan under 310 CMR 36.07(c)(1) because they may allow for some uses the Department's plan prohibits even during the mildest stages of drought, such as outdoor watering more than once a week. However, these measures are sufficient for Stockbridge. Because of Lake Averic's ample supply, the Town has not needed to implement water restrictions in the 18 years that the bylaw has been in effect, including during the declared drought periods of July 2016 through February 2017,

⁹ https://www.mass.gov/doc/water-use-restrictions-map/download.

May through November 2020, and February through June of this year. Based on this experience, Stockbridge doubts very much that there is any need for it to adopt the restrictions set forth in 310 CMR 36.07(c). Instead, the lesser restrictions that the Town is already empowered to impose will almost certainly be adequate, especially in light of Stockbridge's steadily declining population. It would certainly be a hard sell to convince the voters of the Town to give the Board of Sewer and Water Commissioners the authority to impose more stringent restrictions than those that have proved to be unnecessary for nearly two decades.

Even if Stockbridge did find a need to impose new restrictions, it is hardly obvious that the ones mandated in the proposed regulations would be appropriate for the Town. Rather, for example, since a small number of hotels and motels account for more than 10% of the Town's water usage, it may be more appropriate to look for reductions from these users, instead of prohibiting homeowners from mitigating the impacts of a drought.

But, in Stockbridge's case, the focus of resiliency planning should be preserving and enhancing Lake Averic so that the effects of climate change on the Town's water supply can be largely avoided. The water restrictions proposed by the Department would likely do nothing to reduce the Town's vulnerability to climate change, and will almost certainly fail to improve the Town's climate change resiliency.

* * *

For the foregoing reasons, the Town of Stockbridge respectfully requests that the Department abandon its proposed regulations and utilize the extra time afforded by the Governor's COVID 19 Executive Order 42 to work with communities to develop resiliency plans that follow the leadership of the Executive Office of Energy and Environmental Affairs, as expressed in its Climate Clearinghouse for the Commonwealth.

Thank you for your courtesy and attention to these comments.

Respectfully submitted,

(Manue/// Ca

Roxanne McCaffrey, Chair Board of Selectmen

Donald Schneyer, Chair

Board of Sewer and Water Commissioners

DEPARTMENT OF PUBLIC WORKS

20 MUNICIPAL WAY • WELLESLEY, MA 02481-4925

DAVID A. COHEN DIRECTOR

TELEPHONE (781) 235-7600 FACSIMILE (781) 237-1936 DPW@WELLESLEYMA.GOV

July 26, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection – Water Management Act Program One Winter Street, 5th Floor Boston, MA 02108

RE: Proposed Amendments to 310 CMR 36.00 – Conditions on WMA Registrations VIA EMAIL TO: dep.talks@mass.gov

To Whom It May Concern:

On behalf of the Town of Wellesley Department of Public Works' Water & Sewer Division, I submit the following comments regarding proposed changes to the Water Management Act Regulations, 310 CMR 36.00.

The Wellesley Water & Sewer Division (Public Water Supplier ID #3317000) has worked since 1884 to provide clean, safe water in sufficient quantity and with sufficient pressure for the ongoing health and safety of our customers and of our community. We endeavor to be a leader and partner in our region in support of protecting of the environment and promoting wise water use, especially during times of drought. In this spirit we urge you to reconsider the proposed WMA changes that we believe will not achieve their intended purpose and will have unintended negative impacts on public water suppliers.

Promulgating statewide regulations that ignore the unique characteristics of each water system is problematic on a number of fronts. We support the comments that are being submitted by Massachusetts Water Works Association (MWWA) that explain our shared concerns. Along with the MWWA, we urge MassDEP to withdraw these proposed regulations.

I submit the follow reasons why the proposed regulations are not suitable, not effective, and potentially counter-productive to the overall public health and safety goals of public water suppliers including the Town of Wellesley.

OUR WATER USE IS ALREADY WELL BELOW OUR REGISTERED LIMIT

Our water system is registered for 2.62 million gallons per Day. Since 2010, our annual average use from our local supplies has been **approximately 1.87 million gallons per day, well under our registered volume**. Although our summer demand is typically much higher than our winter demand, we are a partial MWRA community, and the water that we purchase from the MWRA is our primary means to meet our summer water demand. Since most of our summer water use is

supplied by the MWRA, it makes much more sense for us to follow whatever drought management plan the MWRA may need to enact based upon the conditions of their supply. In the summertime, restrictions placed on us based on any other criteria are flawed if they don't acknowledge the status of the MWRA supply.

LOCAL CONSERVATION AND DROUGHT MANAGEMENT PLANS MAKE MORE SENSE

We appreciate the sentiment of creating a "level playing field," while also having plans in place that are easy to understand and implement. However, each system has unique characteristics that need to be considered to make any plan most effective. Storage capacity, pumping capacity, condition of infrastructure, existing treatment techniques, community usage patterns and requirements, and other factors should all be considered in customizing plans for a particular system.

We are very mindful of all water use in Wellesley, especially when other communities may be experiencing challenges or restrictions. We are committed to being a good neighbor and ensuring that our water is not wasted, and that use does not negatively impact our upstream or downstream neighbors. Since most of our increased summer water demand is service from the MWRA, there is virtually no significant additional stress to local waterways and aquifers. The restrictions in the proposed regulations would therefore not be effective in accomplishing the stated goals. Obviously, if the MWRA were experiencing some type of supply issue, we would need to work with them to adopt whatever restrictions might be required, whether or not restrictions on our registration compelled us to do so.

Even though we do not currently fall under any regulatory mandate, Wellesley has an established program for water conservation that has evolved over time and is implemented when warranted due to local conditions. In the past several years, we have asked for voluntary restrictions when our supplies were stressed. For example, in 2016 we asked for voluntary reductions from our **highest users**. In 2020 we asked for voluntary reductions from **all users**. In both cases, these measures were successful in helping us avoid the need for mandatory restrictions and helped us ensure that we could provide sufficient supply to our customers.

This year, we enacted **mandatory restrictions** to offset supply reductions caused when one of our treatment plants was required to go offline due to elevated levels of PFAS6. We have so far avoided additional restrictions (helped along by some additional rainfall this year), and we believe our current restrictions will pave the way for expanding our general conservation efforts as we move forward. The Town has the authority to adopt further restrictions and will choose to do so if, but only if, actually needed.

AN EXEMPTION SHOULD BE AVAILABLE FOR THOSE WITH AN ACCEPTABLE DROUGHT MANAGEMENT PLAN

While MassDEP is offering the possibility of an exemption from its proposed regulatory requirements, the criteria for exemption—especially the requirement for multi-year storage of no less than three times a Registrant's authorized withdrawal—make that offer illusory: Only one public water system in the state will likely qualify.

Public water systems should have the ability to create system-specific drought management plans that reflect their capacity and have response actions that are tied to various locally appropriate trigger points. At a minimum, therefore, local drought preparedness and response plans that address actual local need should qualify registrants for exemption from the proposed regulations.

POTENTIAL UNINTENDED HEALTH AND SAFETY CONSEQUENCES

Our core responsibility as water suppliers is to provide the most essential service to our customers - clean, safe drinking water. We are environmental stewards of the water resources in our communities and, without adequate protection of our resources, we would not be able to provide the service we do. We take this very seriously and we adhere to rigorous water quality standards established under the *Safe Drinking Water Act* to ensure protection of public health. We play a key role in providing fire protection within the community; and for that reason, storage reservoirs must be kept full and system pressure maintained, whether or not MassDEP requires us to curtail our customers' water usage and whether or not such a curtailment helps us to achieve our water management objectives.

We must constantly balance water quality and quantity demands, especially during the summer months. We therefore urge the Department to consider the unintended water quality consequences—particularly related to the age of water in our system—that could occur should we have to comply with sudden conditions restricting water use. It would be most unfortunate to have to expand our hydrant flushing program to respond to water quality issues caused by reduced flow at the same time that we are enforcing water restrictions. This unintended consequence of the proposed restrictions would not only result in wasted water, but would also erode our customers' confidence in our conservation message.

FINANCIAL IMPACTS

While not our primary concern, it is still important to understand the financial impacts of the proposed restrictions on our customer—and especially upon those customers that can least afford to pay the on-going fixed costs of operating our system.

The proposed regulations will create unnecessary shifts in our revenue structure, which we count on to make continued investments in infrastructure improvements to improve system reliability and and resiliency, while spreading the costs equitably among all users by asking our highest users to pay higher rates for the additional water they use.

We have no objection to adopting restrictions when they will have beneficial effects on our supply or on the surrounding environment. However, we strongly oppose putting in place restrictions that potentially have no effect on either our supplies or the natural environment.

SUPREME JUDICIAL COURT AFFIRMED THAT WITHDRAWALS COULD NOT BE INFRINGED UPON

Finally, in the *Fairhaven*¹ case, the Supreme Judicial Court affirmed that MassDEP cannot infringe upon the Registrants' entitlement to existing withdrawals. The drought conditions that MassDEP seeks to impose do, in fact, infringe upon our entitlement to our existing withdrawals by limiting our ability to sell that water during a drought. Also, *M.G.L.* c.21, §3 requires

¹ Water Dep't of Fairhaven v. Dep't of Env't Prot., 455 Mass. 740, 751 (2010).

consultation with the Water Resources Management Advisory Committee before DEP can adopt any regulations under the *Water Management Act* (WMA). To our knowledge, MassDEP has not yet done so.²

IN CONCLUSION, THE WELLESLEY WATER & SEWER DIVISION believes it has been shown that the proposed regulations will not foster water system resiliency, and will, in fact, be detrimental by limiting revenues needed to maintain and upgrade our water system. We request that MassDEP withdraw these proposed regulations as they are not necessary and will be counterproductive. Instead, we ask that the Department work with MWWA and Public Water Systems on the creation of system-specific drought plans and other measures that will yield more meaningful and tangible results toward increasing water system resiliency.

Sincerely,

David A. Cohen, Director

1) avre A Cohn

Town of Wellesley Department of Public Works

cc: Jeffrey P. Wechsler, Chair, Town of Wellesley Board of Public Works

Meghan Jop, Town of Wellesley Executive Director of General Government Services

Senator Rebecca Rausch

Senator Cynthia Stone Creem

Representative Alice Hanlon Peisch

² This procedural error be erased by convening the Committee, holding a meeting in conformance with the *Open Meeting Law*, and obtaining a vote on the Department's fully formed regulations. Rather, the WMA requires that the regulations be developed "after consultation with" the Committee—not before—and with its active participation and advice.



MIDDLESEX COUNTY, MASSACHUSETTS

DEPARTMENT OF PUBLIC WORKS

15 LAKE STREET WINCHESTER, MASSACHUSETTS 01890

FAX (781) 721-7119

July 26, 2021

Via Email to: dep.talks@mass.gov
Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Water Management Act Program
One Winter Street, 5th Floor
Boston, MA 02108
Attention: WMA Regulations

Re: Proposed Amendments to 310 CMR 36.00 - Conditions on WMA Registrations

To Whom It May Concern:

We write on behalf of the Town of Winchester's Department of Public Works concerning the Massachusetts Department of Environmental Protection's ("DEP" or the "Department") proposed changes to 310 CMR 36.00, the Massachusetts Water Resources Management Program Regulations (the "Draft Regulations"). As the Town's Water & Sewer Operations Manager and a member of Massachusetts Water Works Association ("MWWA"), as well as the Chair of the Town of Winchester Select Board, we offer the following comments on the Draft Regulations and their particular effect on the Town.

Water conservation efforts are vital in the fight against climate change, and public water systems like those managed by the Town of Winchester constantly face pressure to balance meeting demand and conserving use. The Town is concerned that the nonessential outdoor water use restrictions in the Draft Regulations, which would apply to all registrants, will inherently miss the mark by failing to acknowledge characteristics unique to each water system. The Department has expressed a desire for consistency in water conservation efforts across the Commonwealth, but the Draft Regulations do this at the expense of allowing municipalities to tailor drought management responses to specific watershed conditions and municipal-specific infrastructure without imposing overly burdensome tradeoffs. Accordingly, the Town agrees with the comments submitted by MWWA, and urges DEP to revise the Draft Regulations to allow for greater flexibility in water conservation measures, customized to specific watersheds and local conditions.

The Winchester water system is registered to withdraw 1.06 million gallons per day (MGD), and is primarily served by three reservoirs in series that feed into each other. This reservoir system allows for the Department of Public Works to monitor and manage the three separate reservoirs to best take advantage of the inflow and storage capabilities. Town operators have successfully balanced community demand and conservation efforts, and even in times of drought, we have not exceeded our water

withdrawal registrations. The Town is concerned that the Draft Regulations will, in effect, restrict the Town's ability to use the existing registered withdrawals to which it is entitled. The Department "by regulation, may impose conservation measures on all water users, including registrants, but those conservation measures may not deny registrants their entitlement to existing withdrawals (for instance, by limiting a registrant's water use to less than the existing withdrawal." Water Dep't of Fairhaven v. Department of Envtl. Prot., 455 Mass. 740, 748-749 (2010). We are concerned that the drought restrictions that DEP seeks to impose would infringe upon the Town's ability to use its authorized and registered withdrawals by limiting residents' water use and by limiting the Town's ability to sell that water during a drought, so long as such uses are within existing withdrawal limits.

We foresee the following management problems in the Draft Regulations and offer suggestions for revisions. Overall, the Draft Regulations' nonessential outdoor water use provisions (310 CMR 36.07(2)(c)) would restrict the Town's ability to flexibly manage and maintain its reservoirs, at a time when the Town should be able to adapt its management of those systems to the challenges presented by climate change. The Draft Regulations would impose drought restrictions by "drought regions" (roughly organized by county), not by watershed, and when such drought conditions apply, registrants would be subject to a uniform set of nonessential outdoor water use restrictions regardless of supply conditions within a watershed, current reservoir storage levels, or existing water conservation efforts that municipalities have imposed. 310 CMR 36.07(2)(c)(1).1 A municipality may only avoid these requirements if it has an "accepted drought management plan" in place with the Department, as well as "sufficient Multi-Year Drought Storage." 310 CMR 36.07(2)(c)(3). This Multi-Year Drought Storage requires "reservoir capacity of not less than three times a registrant's authorized withdrawal and any required release." 310 CMR 36.03. In effect, this provision requires a registrant to set aside three years' worth of storage, which is a requirement that likely can only be fulfilled by one Public Water System in the state, the Massachusetts Water Resources Authority ("MWRA"). Further, the "accepted drought management plan" exception in 310 CMR 36.07(2)(c)(3) does not offer a true alternative approach because 310 CMR 36.07(2)(c)(3)(4) states that the alternative "accepted drought management plan" must contain "restrictions at least as restrictive in 310 CMR 36.07(2)(c)(1)," which are the uniform drought management restrictions that would otherwise apply. In this way, the Draft Regulations still require municipalities to implement 310 CMR 36.07(2)(c)(1), rather than allowing for flexibility.

We suggest that DEP revise the Draft Regulations at 310 CMR 36.07(2)(c)(3) in four ways:

- 1. First, this section for alternative drought management plans should apply to all registrants, not only those who withdraw from surface water supplies.
- 2. Second, drought management plans should reflect each system's water capacity and describe how a municipality would manage its water infrastructure depending on trigger points specific to each system and the municipalities' infrastructure. We suggest that 310 CMR 36.07(2)(c)(3)(b) be revised such that nonessential outdoor water use restrictions are one potential method, but not a required method, of drought management. Conservation may be achieved in other ways.
- 3. Third, the Department should lower the Multi-Year Drought Storage requirement to less than three times a registrant's authorized withdrawal. We agree that some measure of drought storage is appropriate to ensure that sufficient reserves are available, however, three times the

¹ Citations in this letter refer to citations as shown in the redline of the Draft Regulations, available at https://www.mass.gov/doc/310-cmr-3600-proposed-revisions-redline-strikeout/download.

authorized withdrawal is an unreasonably high storage requirement and one that is nearly impossible for systems other than the MWRA to achieve. DEP should allow municipalities to demonstrate what storage level is appropriate for the system and existing infrastructure over an established length of a serious drought, based on estimated water usage within the municipal system.

4. Fourth, we suggest that the restrictions in the individualized drought management plan need not be "at least as restrictive as those in 310 CMR 36.07(2)(c)(1) through (3)," so long as DEP concludes that the measures in the plan result in the same level of water conservation as the restrictions in 310 CMR 36.07(2)(c)(1) through (3). In other words, a drought management plan could provide the same level of water conservation through different methods.

Finally, public confidence, understanding, and participation are critically important to successful water conservation and management. The imposition of restrictions on Town water resources, when on the ground conditions within the watershed or the Town may not indicate a drought, will make it difficult for municipalities to garner public support for the Draft Regulations and public trust surrounding the wisdom of water conservation efforts. Further, the practical effects of the Draft Regulations may make it more difficult for the Town to secure funding for other essential climate change and water pollution prevention efforts. Like other municipalities, the Town funds stormwater capital improvements through collection of fees from the Town's Water and Sewer Enterprise Fund. Reductions in nonessential outdoor water use due to the Draft Regulations would result in decreased revenue for the Water and Sewer Enterprise Fund. This reduced source of funding may delay the completion of stormwater capital improvements that are also climate change and water pollution priorities for U.S. EPA and DEP. In this way, the Draft Regulations may hinder, or at the very least impact, municipal spending for other long-term climate change and water conservation efforts.

For these reasons, the Winchester Water Department requests the DEP revise the Draft Regulations, and instead work with MWWA and municipalities to create system-specific drought plans and other measures to help increase system resiliency. Thank you for your time and attention to these comments. We look forward to continuing a productive dialogue with the Department regarding water management, conservation, and sustainability in Winchester.

Sincerely,

James Gibbons

Water & Sewer Operations Manager

-Docusigned by: Susan Verdicchio

OF0400DF400F467

Susan Verdicchio, Chair

Town of Winchester Select Board

ecc: Senator Patricia Jehlen, Massachusetts State Senate

Senator Jason Lewis, Massachusetts State Senate

Representative Michael Day, Massachusetts House of Representatives-

DEPARTMENT OF PUBLIC WORKS AND PARKS

18 East Worcester Street Worcester, Massachusetts 01604

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K. Russell Adams, P.E., Engineering Robert C. Antonelli, Jr., Parks, Recreation, & Cemetery

Jarrett B. Conner, Administration & Finance

Edward M. Augustus, Jr., City Manager

July 26, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection – Water Management Act Program One Winter Street, 5th Floor Boston, MA 02108

RE: Proposed Amendments to 310 CMR 36.00 – Conditions on WMA Registrations VIA EMAIL TO: dep.talks@mass.gov

To Whom It May Concern:

The City of Worcester Department of Public Works & Parks, Water Supply Division offers the following comments on MassDEP's proposed changes to the Water Management Act Regulations at 310 CMR 36.00. These changes would add conditions to Water Management Act (WMA) registrations which have heretofore been unconditioned, other than measuring and reporting requirements, since the inception of the WMA in 1986. For a full accounting and comprehensive review of all of our concerns with the proposed regulatory changes we refer you to comments submitted by the Massachusetts Water Works Association.

The City of Worcester holds two registrations under the WMA with one covering withdrawal points in the Blackstone Basin and the other in the Nashua Basin. The City also has a permit for additional withdrawals from the Nashua Basin and is therefore already subject to potential permit conditions related to times of drought. While Worcester may not be directly impacted by these regulatory changes owing to our permit, we remain concerned about the precedent being set (i.e., conditioning registrations) and the purpose of these proposed changes.

The proposed regulatory changes are unnecessary, will fail to produce any meaningful outcomes and may be detrimental to the operation of public water systems. Any new regulatory initiative should only be advanced in order to solve a problem that is otherwise unsolvable and the results of such an effort should be meaningful outcomes that support the purpose of the regulation. The benefits of regulations should also outweigh the costs or risks imposed by the new rules. MassDEP's proposed regulations to condition WMA registrations fail on all three counts.

The proposed rules do not solve any problems. In fact, the rules appear designed to address a problem that does not exist, that being, registered-only water systems are flagrantly wasting water and must be controlled through regulation. MassDEP's own data clearly shows that registered-only systems are virtually the same as, if not slightly better than, permitted systems in terms of water use efficiency measures (i.e., RGPCD, %UAW). Nothing suggests that

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registered-only systems are more likely to have water supply issues during a drought. Registered-only systems continue to use less water than they did 36 years ago and that indicates that they are managing their water supplies effectively.

The proposed rules will not produce meaningful outcomes. Rules designed to address a non-existent problem cannot result in an improvement in anything. These regulations are a solution in search of a problem, designed to appease advocates and satisfy a distaste for lawn watering. Banning lawn watering following a state declaration based on a new formula for drought determinations that assures an almost annual drought is about optics and perceptions, not science, sound public policy or effective solutions.

The benefits of the regulations will not outweigh the costs and risks to public water systems, communities and their ratepayers. There will not be any benefits to be seen but there will be costs and revenue loss associated with the unnecessary restrictions on outdoor water use when the state declares a drought.

Worcester's recent history in dealing with drought illustrates our perspective. The drought of 2016 was the most severe faced by the City since the 1960's. Worcester implemented its Drought Management Plan, which uses reservoir storage as a trigger and implements water use restrictions in a stepwise fashion with each step having more severe limits on water use. The City started with an advisory, then implemented odd-even lawn watering limits and finally an outright ban on lawn watering and other outdoor water use. Implementation was labor-intensive and came at the expense of other programs and operational needs. Public education, press releases, reports, inspections and handling numerous inquiries was a full time job for two middle managers and part time for a multitude of staff. Our goal was to reduce demand so that existing supplies could be maintained until normal rainfall returned but to also assure that combined reservoir storage did not go below 50% capacity. While these efforts did reduce demand, the drought continued and it was the lack of rainfall, not excessive water use, which ultimately prompted the City to activate its emergency supply and purchase water from MWRA. This is an assured supplemental source of water to our reservoirs, rather than an uncertain decrease in withdrawals from our reservoirs that was necessary to keep the Worcester reservoir system at reliable operational levels.

Looking back at 2016, what if we had banned lawn watering altogether earlier in the summer? Would that have markedly improved our situation by September? Analyzing the data and assuming our summer use for June, July and August was equal to our average winter use, a very unrealistic and unachievable scenario, it was found that by September 1, 2016 the reservoir system would have been at 61% capacity versus the 55% actually experienced. This marginal improvement, in an extreme case, suggests a lawn watering ban as envisioned in the proposed regulations, would have served little purpose in Worcester while creating a revenue shortfall over \$2 million and adding to even more staff diversions and related costs. Other urban areas across Massachusetts would likely see similar outcomes since lawn watering may be a revenue booster during dry years but limiting lawn watering would not have very much bearing on available water supply. Keep in mind that Worcester, even with watering bans, is still supplying about 20 million gallons per day.

Moving forward to 2021, a much less severe drought was affecting the area. Worcester reservoirs were 95% full on April 1, 2021 despite a very dry month of March, 99% full on May 1,

July 26, 2021 MassDEP Page 3

2021 and 104.2% full June 1, 2021, the highest June 1st capacity since 1989. Yet the Commonwealth had declared central Massachusetts to be in a level 1 drought in May. With the proposed regulations in effect the City of Worcester would have been implementing severe lawn watering restrictions despite having reservoirs 99% full! This would be inexplicable to the public, the very people for whom we, as public servants, are working. Water systems, like Worcester's are unique and management of these systems is best achieved through local plans, not statewide declarations.

Finally, the repeated narrative that these regulations are needed to level the playing field is simply breathtaking. This may be one of the least credible statements from state officials that I can recall. It begins with the false notion that registered only systems are poor water managers who must be controlled through regulations. Then criteria is manufactured that allows only one water system to get an exemption from these regulations and that system happens to be the single largest registered-only system in the state. How can that be done followed by a claim these regulations level the playing field? I do not believe MWRA should be subject to these regulations as they have an effective drought plan and a lawn watering mandate would accomplish nothing for them. But there are other systems in that same position who should also be able to implement their own plans based on their own local circumstances. MassDEP is strongly urged to change these regulations and allow use of local drought triggers and local drought plan implementation.

Thank you for the opportunity to comment. Please contact me if you have any questions.

Sincerely,

Philip D. Guerin

Director of Water & Sewer Operations





July 22, 2021

By email to dep.talks@mass.gov

Massachusetts DEP Bureau of Resource Protection - Water Management Program One Winter Street, 5th Floor Boston, MA 02108

Attention: WMA Regulations

RE: Comments to Proposed Amendments to 310 CMR 36.00 – Conditions on Water Management Act Registrations

To Whom It May Concern:

Associated Industries of Massachusetts (AIM) is pleased to comment on the above proposed regulations. The proposed regulations, which primarily make changes to the drought management requirements for facilities which currently have Water Registrations were released on June 2, 2021. Comments are due by July 26, 2021.

AIM is the largest general trade association in Massachusetts. AIM's mission is to promote the prosperity of the Commonwealth of Massachusetts by improving the economic climate, proactively advocating fair, and equitable public policy, and providing relevant, reliable information and excellent services. While Water Registrations held by industrial users are generally exempt from these proposed regulations since their water use would be considered essential to their business, other AIM members are not exempt. Additionally, virtually all AIM members have an interest in this issue since it may impact the price of water and limit their ability to expand their operations.

The Regulatory Process Should be Suspended in Order to Include Additional Stakeholder Input and Analysis and Consider Possible Alternatives to this Rulemaking

Originally, the proposed regulations were on a fast track to become final by December 31, 2021. This was because the existing 10-year Water Registrations are expiring, and new regulations would need to be adopted by then or else changes would have to wait another 10 years, when the Registrations renewed again.

Since the release of these proposed regulations, DEP has determined that Covid-19 Order 42 tolls existing Water Registrations for an additional 462 days and now they will not expire until April 7, 2023.

As a result, we urge DEP to carefully consider comments to these proposed regulations and conduct more thorough stakeholder outreach before any changes to the Registrations are made. In fact, if DEP uses the time wisely and works with Public Water Systems on effective drought management plans cooperatively, DEP may find that they don't have to issue new regulations at all. This alternative partnership approach may, in fact, result in a better outcome.

Since the current active Registrations will remain unchanged until April 2023, delaying will in no way harm the environment. Oddly, if DEP continues with their current schedule, regulations that are final in December 2021 will not be applicable to Registrants for nearly 18 months, an enormous amount of time. Certainly, a robust partnership working on viable solutions would be better than releasing regulations that may be outdated by the time they are applicable.

AIM fully understands the need to conserve water, even before droughts happen. However, given the importance of these regulations and their impact on businesses and municipalities, this review and ultimate regulation need to be fact-based and defensible. Therefore, we believe a delay with a robust stakeholder process will result in a better regulatory framework and better protection for the environment as any new requirements will be based on even more updated information.

Water Use Has Generally Declined Since Last Registration Allowing Flexibility

It is abundantly clear that since the last time Water Registrations were issued that water use by Registrants has declined, with some registered withdrawals at zero as they have interconnected to the MWRA system. This trend of water savings is likely to continue, particularly with the enactment of water saving code updates (supported by AIM) in the recently signed *An Act Creating a Next-generation Roadmap for Massachusetts Climate Policy* (Chapter 8 of the Acts of 2021). This recent enactment shows that Massachusetts is taking water quality and water use seriously.

This decline in water use should be considered in developing the final regulatory process. In fact, it should be considered in the analysis as to whether to issue regulations at all. Virtually no Registrants are using their full allotment, which changes the data assumptions.

<u>The Definitions of Non-essential Uses in Section 36.03 Needs to be Expanded to Eliminate</u> Confusion and Business Disruption

The proposed definition is as follows.

Nonessential Outdoor Water Use means uses that are not required:

- (a) for health or safety reasons.
- (b) by statute or regulation.
- (c) to produce food, including vegetable gardens, and fiber.
- (d) for the maintenance of livestock.
- (e) to meet the core functions of a business including but not limited to:

- 1. plant nurseries as necessary to maintain stock.
- 2. golf courses as necessary to maintain greens and tees, and limited fairway watering per 310 CMR 36.07(2)(c)2.a. through d.
- 3. golf courses with an event venue as part of the core business, when limited to watering by hand-held hose or drip irrigation as necessary to maintain gardens, flowers, and ornamental plants.
- 4. professional washing of exterior building surfaces, parking lots, driveways and/or sidewalks as necessary to apply surface treatments such as paint, preservatives, stucco, pavement, or cement during construction, reconstruction, or renovation work.
- (f) for irrigation of public parks and public recreation fields; or
- (g) to establish a new lawn as necessary to stabilize soil in response to new construction or following the repair or replacement of a Title 5 system.

AIM recognizes the difficulty in predicting what types of businesses will be operating in Massachusetts over the next 12 years. However, Section (e) only lists a few core business functions, and two are specific to golf courses. While the section does say that the core business functions are not limited to just those listed, we think there is still enough uncertainty in this section that some businesses could be impacted if droughts become more common or more common out of normal drought months. The vagueness in this section could be used to stop activities that some people may have assumed were considered core or essential.

For instance, while golf courses are mentioned, other entertainment venues, such as ski resorts are not. Neither are water parks nor temporary event structures that use water - perhaps temporary pools or sprinklers during hot weather.

Similarly, while snowmaking at a ski resort in the winter could be deemed essential, would that also mean snowmaking for an ancillary activity in non-slope areas would also be essential, since it is essential to the resort experience? And what if a ski area has year-round activities, requiring the use of water for summer events, or wants to add water park type features?

What if a golf course or non-ski area decides to try snowmaking for some special event? For instance, in recent years, Fenway Park, clearly a summer venue, was used for skiing activities, blurring the line between typical and non-typical event activities. The reason we raise this issue is that the Massachusetts drought plan has very sensitive metrics which deemed parts of the Commonwealth to be in a drought condition during November/December of 2020 and again in March 2021, non-summer months when these activities could be occurring. It is conceivable that there may be questions about such activities being "essential" and allowed during a "drought" and we think removing any ambiguity would help enormously.

In fact, this section is arguably one of the most important in the proposed regulation as it could lead to lawsuits, noncompliance, or surprise curtailment of business. Therefore, it needs to be expanded for clarity. As time goes on, the line between "seasonal" business operations will

likely change and DEP needs to encourage stakeholder input to offer companies certainty for their investments.

<u>Unnecessarily Curtailing Seasonal Water Use Will Lead to Revenue Shortfalls, Inhibiting</u> Investment in the Water System

Businesses in Massachusetts depend on reliable water service, especially those that rely on water as a core to their business function like pharmaceutical and biotech companies. The quality and quantity of water resources in Massachusetts has made Massachusetts a desirable location to attract those businesses. It is a fact that decreasing the amount of water that can be sold by a municipality will lead to lower revenues. That means less ability to invest in the water system infrastructure or clean contaminated sources, such as those contaminated with Per- and polyfluoroalkyl substances (PFAS). Clean water is clearly a public health issue, but it is also an economic advantage for the Commonwealth.

Seasonal water use (primarily summer) brings more marginal revenue to the town, since most water systems have high fixed costs covered by average year-round demand. And this seasonal use is normally paid by customers who can afford such use – in effect subsidizing others. Further, with new requirements surrounding PFAS contamination, water revenues for continued investment are likely to become far more important.

While seasonal rates are an option, in fact such rates have the same revenue impact as limiting water use – in that they could lead to lower revenues. That is because as water rates rise, some customers will in fact reduce their water use. Losing this increased revenue will require an increase in water rates to pay for the lost revenue and we are concerned that increases could be disproportionately targeted to commercial customers to keep rates lower for residents. Further it should be noted that these increases will be needed just to maintain the status quo, not to further improve water infrastructure.

This does not mean of course that DEP should allow systems to waste water just for the purpose of increasing revenue. But it does mean that DEP needs to get the balance right with drought conditions specific enough that they are targeted to address real water quality or water system capacity concerns in the specific areas.

Further, we believe that most water systems already use their water wisely and have their own specific restrictions, as it is in their best interest to provide their customers with adequate high-quality water for decades. A one size fits all approach may not work. It is best to provide municipalities with the flexibility to develop their own restrictions which work for their local populations and local circumstances.

The irony is that while municipal water supplies may be subject to new restrictions, those who can afford private wells are not regulated, and many times they draw from the same source.

Summary

Climate change is bringing new challenges to everyone and as the weather gets more unpredictable and hotter, changes in the way water is needed or used will likely be subject to more debate. AIM applauds DEP's foresight to help everyone conserve this precious resource. Not one drop of water should be wasted by anyone, particularly in areas where droughts are likely or environmental concerns persist.

However, there are real world impacts to the residents and businesses that are subject to changing rules.

DEP can get this right because we believe that every stakeholder – municipalities, businesses and the environmental community wants to get it right and in fact needs to get it right to avoid unintended consequences that may hurt customers or the environment.

The best option at this time is for DEP to retract these proposed regulations and establish a new schedule which takes the tolling period into account and begin a robust stakeholder process. That delay will not harm the environment yet will be the best way to prepare for a decade or more of responsible water use.

Thank you for the opportunity to comment on these proposed regulations.

Should you have any questions please do not hesitate to contact me.

Sincerely yours,

Robert A. Rio, Esq.

Senior Vice President and Counsel

Robert A Ros

Government Affairs

(DEP)

From: UD

Sent: Monday, July 26, 2021 5:03 PM

To: DEP Talks (DEP)

Subject: WMA Regulations as Good Stewards

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

To Mass Dep Regulators,

As President of the Back River Watershed Association (BRWA) I am pleased to offer our comments regarding the Massachusetts Water Resources Management Program Summary of Amended Regulations 310 CMR.36. and Proposed Revisions. BRWA supports the amendment to the WMA regulations to include a new condition on registrations that would restrict nonessential outdoor water use by registrants during times of drought. declared by the Secretary of Energy and Environmental Affairs. Also this proposed regulatory action will better align water use during times of drought with the Massachusetts Drought Management Plan, which was updated in 2019. We agree that the amendment will help ensure both an adequate water volume and quality of water to assure public health and safety and continued economic stability during times when water supplies are stressed by drought, and an appropriate balance among competing water uses and protection of natural resources such as streamflow, wetlands, fisheries, and wildlife habitat during drought. Such nonsensical outdoor water use include lawn watering, filling swimming pools, washing cars by hose, and washing down buildings, parking lots, driveways, and sidewalks are among activities that should be restricted.

As water registrations applications are being renewed for 2020-2021 the new proposed amendment will be a important step forward streamflow protection and water sustainability for our watersheds and communities as we compact the threats of increased and server drought due to Climate Change. Massachusetts must prepare for the challenge of water security with water conservation measures before the next drought occurs.

The Weymouth Back River was designated an Area of Critical Environmental Concern in 1982, about 950 acres), and it's part of the Boston Harbor and Weir Watersheds. The Back River Watershed is 12.87 square miles and extends into the towns of Abington, Braintree, Hingham, Holbrook, and Rockland. The Weymouth population is approximately 54,000 and the community is experiencing significant development projects throughout the town of Weymouth for decades. The demand for water use has increased greatly especially because of the development of the former Naval Air Base, managed by the Southfield Redevelopment Authority. The demand for Weymouth's water for this project is approximately 245,000 MGD. The project, Union Point has been delayed and plagued with many problems and the water and sewer issues need to be resolved by the new master developer Brookfield Properties. They have mentioned new water sources from MWRA or Aquaria Plant in Dighton via Brockton. There is also discussions for potential options for a permanent waste water treatment facility on site or municipal sewer from the three towns depending on their capacities.

The Back River Watershed Association has advocated for drinking water quality and quantity for the community and to support our amazing environmental resources, fisheries, beautiful Back River Trails and parks, beaches, ponds, rivers, lakes and more.

The Back River supports a highly productive estuary with one of Massachusetts's most productive Herring Runs. Thanks to the dedication of our herring wardens, volunteers and support of the town we have made restoration to the five fish ladders and improvements to our herring run flood control area in Jackson Square. The annual herring migration each spring at Whitman's Pond is the spawning habitat critical to the survival of the herring. Competing water uses from

Whitman's Pond (South Cove), Weymouth's secondary water supply, to supplement Weymouth's primary water supply Great Pond have been an issue that is part of Weymouth's water management by the Department of Public Works. The Washington Street Pumping Station must not pump water out of South Cove to Great Pond during the herring in migration end of March - early June for the health of the fish and to prevent fish kill in the pumps as seen in the past. This coordination is between the Weymouth Herring Wardens, Mass Division of Fisheries and Weymouth DPW. BRWA is working with the town to remove the Old Swamp River(SNUP Dam) at Libby Park for increasing herring migration at that location and the Mill River.

Thank You.

Linda J DiAngelo, President Back River Watershed Association





July 7, 2021

Comment from the Blackstone River Valley National Heritage Corridor regarding the Proposed Amendment to the Massachusetts Water Resources Management Program Regulations (310 CMR 36.00)

The Blackstone River Valley National Heritage Corridor, Inc., (BHC) works with community partners to preserve and promote the Valley's historic, cultural, natural, and recreational resources for current and future generations. Blackstone River Valley National Heritage Corridor, Inc. (BHC) is a nonprofit 501 (c)(3) corporation, successor of the former federal commission for the Blackstone River Valley National Heritage Corridor. BHC is committed to the long-term vitality and pride of the region by partnering with municipalities, nonprofits, businesses and residents to restore, retain and reinvigorate the Valley by providing support and services throughout the 25 Massachusetts and Rhode Island towns and cities of the National Heritage Corridor. Therefore our comments will focus on the Blackstone River watershed.

At first glance, the Blackstone River seems completely ordinary. It is not very long or very wide. But along the banks of the Blackstone, the American Industrial Revolution was born, and the Blackstone became known as America's "hardest working river."

The Blackstone was formed about 10,000 years ago during the last Ice Age. A massive glacier slowly made a U-shaped valley with a flat bottom and steep walls. As it melted, the glacier became the first waters of the Blackstone River.

The Blackstone travels about 48 miles from its headwaters in Worcester, MA, to the Pawtucket Falls in Pawtucket, RI. During the Blackstone's journey it drops 438 feet, about 9 ½ feet every mile. The river's steady drop made it a great source for waterpower. Dams were built across the river to squeeze that drop into a waterfall at a single point. Water was taken out of the river just above the dams and run into the mills. In the mills, the weight of the water dropping over waterwheels provided the power to run the mills. The dams also created ponds or reservoirs that gave the mills a supply of water all year long.

By the mid-1800s, the Blackstone River and its tributaries were home to over one hundred mills and mill villages, making it one of the busiest industrial areas in the United States. But industrialization caused problems. Pollution flooded the river, especially heavy metals that kept dye from washing out of cloth. These heavy metals sank into the river bottom and are still a source

of pollution in the river today. The river also became a dumping ground for trash. By the 1960s, the Blackstone was one of the most polluted rivers in the United States.

However, the local people did not stand by and let their river be a sewer. A grassroots group, later named ZAP!, worked hard to stop further pollution of the river and to remove the garbage that others had dumped. Their work paid off, and the river's health keeps getting better.

Each year, generally in August, the flow of the Blackstone River is reduced as drought conditions become more acute. This has a negative impact of wildlife in and near the river and significantly reduces recreational opportunities for residents and visitors to the Blackstone Valley.

During those periods, we believe it is in the public interest, for protection of endangered species, and to support ongoing efforts to improve water quality in the Blackstone, that greater control – based on science – is necessary. As river flows ebb, the concentration of pollutants becomes even more concentrated and withdrawal of water for non-essential purposes aggravates the quality of the water.

Therefore, on behalf of the Blackstone River Valley National Heritage Corridor, Inc., we respectfully urge the Department of Environmental Protection to adopt the proposed amendment to the Massachusetts Water Resources Management Program Regulations (310 CMR 36.00)

Sincerely,

RICHARD T, MOORE

Board Chair, Blackstone Heritage Corridor, Inc.

670 Linwood Avenue, Unit 10

Whitinsville, MA 01588

617-413-7734



July 22, 2021

Richard Chase MassDEP Bureau of Water Resources - Watershed Planning Program 8 New Bond Street Worcester, MA 01606

Dear Mr. Chase:

Additional Comment from the Blackstone River Valley National Heritage Corridor regarding the Proposed Amendment to the Massachusetts Water Resources Management Program Regulations (310 CMR 36.00)

The Blackstone River Valley National Heritage Corridor, Inc., (BHC) works with community partners to preserve and promote the Valley's historic, cultural, natural, and recreational resources for current and future generations. Blackstone River Valley National Heritage Corridor, Inc. (BHC) is a nonprofit 501 (c)(3) corporation, successor of the former federal commission for the Blackstone River Valley National Heritage Corridor. BHC is committed to the long-term vitality and pride of the region by partnering with municipalities, nonprofits, businesses and residents to restore, retain and reinvigorate the Valley by providing support and services throughout the 25 Massachusetts and Rhode Island towns and cities of the National Heritage Corridor.

Upon further review, the Blackstone Heritage Corridor submits these comments in addition to our comments of July 7, 2021.

The good news is that we are currently not in a drought throughout most of the state, but with the rapidly changing conditions we face, that situation is no doubt temporary. Therefore, we do strongly support the proposed amendment to the WMA regulations that would add a new condition to registrations that would restrict nonessential outdoor water use by registrants during times of drought declared by the Secretary of Energy and Environmental Affairs. In addition, we agree with and support the following comments provided by the Massachusetts Rivers Alliance:

DEP must create a more comprehensive water management system that is preventative rather than reactive. Conditioning water registrations during drought is the minimum of what DEP could do to protect our water resources from excessive withdrawals. Water conservation should occur in advance of a drought, not just when the impacts of drought are already here.

- * Specifically, DEP should add water conservation requirements for withdrawals in severely stressed sub-basins, defined by DEP as groundwater and/or biological category 4 and 5. Regulating registrations only during drought in these highly impacted areas is too late and will do little to improve their condition. It is unconscionable that registrations in these sub-basins will remain exempt from common sense standard water conservation under DEP's proposed regulation under most circumstances
- * This step is long overdue, and has limited scope. These regulations only apply to nonessential outdoor water use for registered-only public water withdrawals above 100,000 MGD. This sector of withdrawals certainly should be required to conserve water during droughts, as permittees are already required to do, however MassDEP must think bigger.
- * Allowing 24 months to implement these regulations is too long a delay. Our state is likely to experience more extremely dry conditions before then, which could be mitigated by these conservation measures.
- * Failure to promulgate at least these regulations, if not stronger measures, would violate the Water Management Act and Public Trust Doctrine. MassDEP must act swiftly and comprehensively in order to comply with current law. Mass Rivers petition in 2017 stated this, and in the years since, our state has experienced record low stream flows, demonstrating the dire need for water management reform.

Thank you for considering our comments. Please contact us if you have any questions.

Sincerely,

Donna Williams, Member, BHC Board of Directors Richard T. Moore, Chair, BHC Board of Directors

Blackstone River Valley National Heritage Corridor, Inc.' Linwood Mill, 670 Linwood Avenue Whitinsville, MA 01588 (508) 234 - 4242

Center for Ecological Economic and Ethical Education

Post Office Box 946 Ipswich, MA 01938 Phone: (978) 356-2188 (w) or 617-605-3150 (c) email: ecologicaleconomics@yahoo.com

9 July 2021

MA Department of Environmental Protection (DEP): Bureau of Resource Protection –Water Management Program One Winter Street, 5th floor Boston, MA 02108

Attention: WMA Regulations

Dear People:

I am writing you today in support of the proposed amendments to the Water Management Act to increase some of the conditions for water removal registrations during times of drought. Being from Ipswich, MA, I am particularly concerned about the ongoing vulnerability of the Ipswich River, which was recently declared one of the most endangered Rivers in America due to excessive water withdrawals. Tighter regulation of water withdrawals and registrations is quite critical to protecting this river.

Your requirement of only limited conservation restrictions on discretionary outdoor water use, however, in my opinion is inadequate. Strong conservation measures should be implemented well before any official declaration of drought conditions, and all of these water conservation measures should be applied statewide to protect these threatened water resources.

There have been two recent droughts that have represented dire threats to rivers such as the Ipswich River. It is up to MA DEP to protect our critical water resources. So please do so with stronger regulations than proposed.

Thank you for considering my comments,

Frederic B. Jennings Jr., Ph.D.



July 26, 2021

Via email

Commissioner Martin Suuberg MassDEP, Water Management Program 1 Winter Street, 5th Floor Boston, MA 02108 dep.talks@mass.gov

Re: Comments on Proposed Water Management Act Regulation Revision

Dear Commissioner Suuberg:

Charles River Watershed Association ("CRWA") submits the following comments on the Massachusetts Department of Environmental Protection's ("DEP") proposed revisions to the Massachusetts Water Management Act ("WMA") regulations, 310 CMR 36.00. CRWA's mission is to protect, preserve, and enhance the Charles River and its watershed through science, advocacy, and the law. CRWA has a long history of working with DEP and our watershed communities on water management issues, including implementation of the WMA.

The proposed regulations would impose conservation conditions on registrations in order to restrict non-essential outdoor water use by registrants during periods of drought. CRWA has long advocated for this, including by supporting Massachusetts Rivers Alliance's 2017 petition to DEP to condition registered withdrawals.¹ The proposed regulations are a critical first step toward adequately protecting our water bodies and water supplies. We urge DEP to adopt the proposed regulations with the additional recommendations discussed below, which will further strengthen the regulations in order to fully protect the Charles River and all waters of the Commonwealth while ensuring adequate water supply to meet our health and safety needs into the future.

Droughts are becoming more frequent and impacts are getting worse, posing a significant threat to the health of the Commonwealth's waters and our economy.

Droughts harm both water quality and quantity, posing significant threats to communities and ecosystems throughout the Commonwealth. In 2016-2017, we experienced the worst drought to hit Massachusetts since the 1960s, with ground and surface water levels reaching record lows for several consecutive months and widespread crop loss.² In 2020, we again experienced one of the hottest and driest periods on record, with drought conditions lasting from June until early December and the United States Department of Agriculture

¹ CRWA, Re: Massachusetts River Alliance's Petition to MassDEP to Condition Registered Withdrawals (Sept. 12, 2017).

² Mass. Exec. Off. Energy and Env'tl Aff. ("EEA"), Massachusetts Drought Management Plan (2019), https://www.mass.gov/doc/massachusetts-drought-management-plan/download.

("USDA") declaring every county in Massachusetts a 'drought disaster area' due again to widespread crop loss.³

Climate predictions indicate that the Commonwealth will continue to see increases in the occurrence and severity of droughts in the coming years.⁴ Specifically, climate change is expected to exacerbate naturally-occurring droughts by increasing evaporation rates due to higher temperatures and lengthening periods without precipitation between rainfall events.⁵ When rainfall does occur, it will be more intense, quickly running off of our expansive amounts of impervious surfaces before it can be absorbed back into the ground.⁶ The forecasted reduction in snowfall will also reduce groundwater recharge.⁷ As a result, we must adapt to a "new normal" where drought is more common, and protect our water resources accordingly.

The good news is that Massachusetts has taken significant steps in recent years to improve drought awareness and response. In 2018, the Commonwealth adopted the State Hazard Mitigation and Climate Adaptation Plan ("SHMCAP") in response to Governor Baker's Executive Order 569 on climate change.⁸ The SHMCAP acknowledges the importance of building long-term drought resilience in Massachusetts, projecting that by the end of the century, consecutive dry days will increase by 18% and average summer precipitation will decrease.⁹ To address this, Massachusetts updated its Drought Management Plan in 2019,¹⁰ creating a systematic approach to assessing drought severity and impacts, including by directing the Drought Management Task Force to collect drought data and provide appropriate guidance for responding to droughts.¹¹

The currently-proposed regulations are a reasonable step towards better protecting Massachusetts' water sources during periods of drought.

Registrants, whose withdrawal limits are based on their extraction rates from 1981-1985—long before climate change impacts were widely understood—currently are not subject to water conservation conditions and have few obligations when it comes to reporting on their withdrawals.¹² In the absence of conservation requirements, registrants can continue to extract

³ See USDA, USDA Designates Three Massachusetts Counties as Primary Natural Disaster Areas, (Oct. 29, 2020), https://www.fsa.usda.gov/news-room/emergency-designations/2020/ed_2020_1029_rel_0246.

⁴ EEA, SHMCAP at 4-48 (2018),

https://www.mass.gov/files/documents/2018/10/26/SHMCAP-September 2018-Full-Planweb.pdf.

⁵ *Id.*; National Integrated Drought Information System, *Flash Drought*, https://www.drought.gov/what-is-drought/flash-drought (last visited May. 24, 2021).

⁶ Mass. Drought Mgmt. Plan at 9.

⁷ Id.

⁸ Mass. Exec. Order. No. 569 (Sept. 16, 2016), https://www.mass.gov/executive-orders/no-569-establishing-an-integrated-climate-change-strategy-for-the-commonwealth.

⁹ SHMCAP at 5.

¹⁰ Mass. Drought Mgmt. Plan at 7.

¹¹ Id.

¹² See 310 CMR 36.04-11.

water at volumes up to their legal right even when environmental conditions indicate that less water should be extracted, making water sources more vulnerable during droughts and periods of water scarcity.

Further, watersheds span municipal boundaries, and many communities in Massachusetts rely on shared water sources. The current lack of conservation conditions on registrants creates inequities, as some communities who are required by permit to conserve water will nevertheless be negatively impacted by neighboring communities who continue to withdraw at unsustainable rates. For example, in the Ipswich watershed, the disparate regulatory treatment of users has precipitated community conflict and threatens adequate water conservation during droughts.¹³

In times of necessity like those posed by drought, DEP must exercise its authority to impose conservation conditions on registrants so as to protect other users. Restricting activities like watering lawns, washing cars, and filling swimming pools are imminently reasonable requests when there is increased stress on water supplies. These water conservation conditions will better protect our water sources, ensuring that adequate amounts of water are available for both in-stream uses and drinking water supplies.

The proposed regulations do not infringe upon the essential water needs of registrants. Customers of registered water suppliers would still be allowed to use water indoors as they normally do. Water use for health and safety reasons and to meet core business functions would also not be affected by the proposed regulations, nor would activities like food production. While we acknowledge that water suppliers facing competing demands are rightfully focused on funding to operate and upgrade their systems, such funding should not come at the expense of healthy and sustainable water sources. We urge DEP to work with water suppliers to find solutions to fully fund their operations and keep rates affordable while also protecting our waters. Water conservation coalitions and other support service providers can help water suppliers comply with these regulations at little additional cost.

In addition to the proposed regulations, DEP should go further in protecting our water sources to ensure resilience in the face of climate change and increased drought.

Allowing 24 months from renewal of registration statements to implement these regulations is too long a delay.

The regulations should take effect sooner than 24 months after issuance of the registration statement. This is especially important now that registration renewals have been extended until April 2023. We are likely to experience more extreme dry conditions over the next four years, which could be mitigated by these conservation measures if they are implemented sooner.

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¹³ American Rivers, America's Most Endangered Rivers (2021).

The currently-proposed exemption that allows certain registrants to implement their own outdoor water use restrictions in accordance with an accepted drought management plan should be further clarified to ensure adequate water conservation.

The draft regulations would allow qualifying registrants to obtain an exemption from the new water conservation conditions by calculating their own drought stages and establishing conservation conditions through an individual drought management plan. However, as currently written, the proposed regulations may result in conditions that are less protective of water resources than those established by proposed section 36.07(2)(c)(1) in accordance with Massachusetts Drought Management Plan.¹⁴ To ensure adequate water conservation, registrants who qualify for this exemption should be required to propose restrictions that are at least as strict as those established by proposed section 36.07(2)(c)(1). Moreover, a provision should be added to the regulations requiring individual drought management plans to be based on best available local data and updated regularly. These additions would still allow registrants to develop drought management plans that account for their individual circumstances, while establishing a consistent baseline for restrictions on non-essential outdoor water use.

This is particularly important in the Charles River watershed, where water supplied by MWRA represents a significant amount of the registered water use by watershed communities. To qualify for the exemption, MWRA communities should be subject to restrictions at least at strict as those that would be established by proposed section 36.07(2)(c)(1).

There should be greater consistency between the conservation requirements for registrants and permittees.

Greater consistency in the water conservation requirements for registrants and permittees would help address equity concerns, ease regulatory oversight, and protect Massachusetts' waters. As a baseline, the currently-proposed restrictions on non-essential outdoor water use based on drought severity should also apply to permittees as part of the conditions under 310 CMR 36.28. While DEP currently has the authority to condition permits on the implementation of appropriate water conservation measures, the regulations do not currently specify any quantifiable restrictions for non-essential outdoor water use for permittees. Extending the proposed regulations to permittees would establish a minimum conservation requirement for large water users during periods of drought without hindering DEP's ability to impose additional conservation requirements for individual permittees as necessary to protect water sources.

The proposed regulations should also allow DEP to impose additional appropriate water conservation measures on registrants beyond those required during times of drought in order to further promote water conservation and hold registrants to similar standards as permittees.

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 $^{^{14}}$ See proposed 310 CMR 36.07(2)(c)(1); id. at 36.07(2)(c)(3); Mass. Drought Mgmt. Plan.

¹⁵ See 310 CMR 36.28(3)(e).

Over time, registrations should be phased out and all large water users should be required to obtain permits for water withdrawals.

Here in Massachusetts, the practice of allocating permanent entitlements to water in the form of registrations was developed long ago, without any understanding of or accounting for climate change. Today, we have a much deeper understanding of the threats posed by climate change now and in the future, including threats to our water sources. Permanent allocation of set water volumes hinders the flexible water management strategies necessary to ensure protection of our water sources and statewide resilience to climate change. The permit system, on the other hand, has enhanced both data collection and water management efforts. Phasing out current registrations and moving all users to a permitting system would provide DEP with the flexibility needed to protect our water sources for generations to come.

DEP should add water conservation requirements for withdrawals in severely stressed sub-basins, defined by DEP as groundwater and/or biological category 4 and 5.

Regulating registrations only during drought in these highly impacted areas is too late and will do little to improve their condition. It is illogical that registrations in these sub-basins will remain exempt from common sense standard water conservation requirements under DEP's proposed regulation under most circumstances.

Effective water conservation can help avoid drought and minimize its impacts.

Water conservation is one of the most important tools we have to avoid the worst impacts of drought. Conserving water helps ensure that there are sufficient amounts of water in our rivers, streams, and aquifers during times of decreased rainfall.¹⁹ This in turn protects water quality and aquatic habitat, and makes us more resilient even as our water resources are placed under increased stress. Successful water conservation requires that water not be depleted from sources at unsustainable rates in general, and especially during periods of drought.²⁰

Limiting non-essential outdoor water use, i.e., outdoor water use that is not required for health and safety reasons or to meet core business functions, is a basic and effective water conservation measure. The Drought Management Plan provides recommended non-essential outdoor water use restrictions based on drought level.²¹ Although the Plan encourages

¹⁹ EPA, Drought Resilience and Water Conservation: Technical Brief at 1 (2016), https://www.epa.gov/sites/default/files/2016-

¹⁶ See DEP, Fact Sheet: Water Management Act – Registration and Permitting, https://www.mass.gov/service-details/fact-sheet-water-management-act-registration-and-permitting (last visited July 26, 2021).

¹⁷ SHMCAP at 4-48.

¹⁸ Id.

^{06/}documents/epa_drought_technical_brief_may_2016.pdf.

²⁰ See id.

²¹ Mass. Drought Mgmt. Plan at 41. Drought levels range from Level 1 "Mild Drought" to Level 4 "Emergency Drought," and are based on multiple factors such as precipitation, temperature,

appropriate conservation measures, there are currently few enforcement mechanisms to require large water suppliers, particularly those who hold registrations under the WMA, to impose reasonable water conservation measures during periods of drought.²²

The Water Management Act requires conserving water to ensure sustainable use now and in the future.

The Water Management Act was enacted in 1985 for the purpose of protecting the Commonwealth's water supply in the face of growing demand.²³ Prior to the WMA's enactment, a study commissioned by the executive branch found that the Commonwealth's water supply policies in the 1970s were too accommodating to water demands and "if resource and environmental values are to be protected, a new response in the form of managing demand will be required."²⁴ A similar study commissioned by the Legislature called for a more comprehensive and centralized approach to water conservation²⁵ and proposed the adoption of the WMA.²⁶

The purpose of the WMA, as stated under § 3, is to ensure sufficient quality and quantity of water for all citizens now and in the future through the "effective planning and management of water use and conservation in the Commonwealth."²⁷ The WMA requires DEP, after conferring with the Water Resources Management Advisory Committee²⁸ and receiving approval from the Water Resources Commission of EEA,²⁹ to "adopt such regulations as it deems necessary to carry out the purposes of the [WMA].... ensuring, where necessary, a balance among competing water withdrawals and uses."³⁰

To ensure adequate supply for current and future water use, the WMA regulates water withdrawals across Massachusetts.³¹ The WMA primarily addresses the water withdrawals of two types of large water users—registrants and permittees.³² Registrants are those who have a renewable right to withdraw over 100,000 gallons per day (gpd) or over 9 million gallons within

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and streamflow. Drought level is declared by the Secretary of EEA based on a recommendation from the Drought Management Task Force, who reviews all pertinent drought data and considers current impacts.

²² Mass. Drought Mgmt. Plan at 20-26.

²³ See Fairhaven v. DEP, 920 N.E.2d 33, 39 (Mass. 2010).

²⁴ Massachusetts Water Supply Policy Statement: Summary Report at 2 (1978).

²⁵ 1983 Senate Doc. No. 1826.

²⁶ See Fairhaven, 920 N.E.2d at 38.

²⁷ G. L. c. 21G, § 3.

²⁸ The Water Resources Management Advisory Committee collaborates with DEP to review regulations and permitting issues related to the WMA.

²⁹ The Water Resources Commission of EEA works on developing, coordinating, and managing Massachusetts' water policy and planning activities.

³⁰ G. L. c. 21G, § 3.

³¹ DEP, Water Management Act Program, https://www.mass.gov/water-management-act-program (last visited July 2, 2021).

³² See G. L. c. 21G.

any three-month timeframe.³³ This right is given to those users who were active between 1981-1985 and registered by 1988.³⁴ The amount of water registrants are currently entitled to is based on their extraction rates from the years of 1981-1985.³⁵ Since 1988, permits are generally required for users who were not 'grandfathered in' (i.e., do not qualify as registrants) and withdraw over 100,000 gpd or over 9 million gallons within any three-month timeframe.³⁶

It is DEP's responsibility, as the agency assigned with carrying out the WMA, to impose appropriate water conservation conditions on registrants.

Under the WMA, "[DEP] may, by regulation, establish, for any particular water source, a lower threshold volume than that generally applicable in the commonwealth upon findings that such water source is in need of special protection."³⁷ Factors like over-consumption and drought necessitate such special protection for water sources.³⁸

DEP already possesses the regulatory authority to impose water conservation conditions on permittees.³⁹ DEP also has the authority to impose conservation conditions on registrants during the registration renewal process, as confirmed in 2010 by the Supreme Judicial Court of Massachusetts.⁴⁰ In the *Fairhaven* case, the Court held that under § 3 of the WMA, DEP may impose conservation measures on *all* water users, stating that "[DEP] may, by regulation, impose conservation measures on registrants, provided that those measures do not infringe the registrants' entitlement to existing withdrawals."⁴¹ Specifically, the Court found that seasonal withdrawal conditions, like limiting outdoor water use in the summer, would not deny registrants their entitlement and would not be an overreach of DEP's authority, given that the registrants could still withdraw their full entitled quantity of water over the course of the year.⁴² The time has come for DEP to exercise this authority and protect our water sources.

Thank you for considering these comments.

Sincerely,

Heather Miller, Esq.

Leather Miller

General Counsel & Policy Director

³³ DEP, Fact Sheet: Water Management Act - Registration and Permitting.

³⁴ *Id*.

³⁵ *Id*.

³⁶ Id.

³⁷ G. L. c. 21G, § 4.

³⁸ G. L. c. 21G, § 3.

³⁹ See 310 CMR 36.29.

⁴⁰ Fairhaven, 920 N.E.2d 38.

⁴¹ *Id.* at 42.

⁴² *Id.* at 40.



15 Bank Row, Greenfield, MA 01301 413.772.2020 · www.ctriver.org

July 21, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection –Water Management Program One Winter Street, 5thfloor Boston, MA 02108

Attention: WMA Regulations

Submitted via email to dep.talks@mass.gov

Re: Connecticut River Conservancy Comments on Draft Changes to Water Management Act **Regulations 314 CMR 36**

Dear MassDEP,

The Connecticut River Conservancy (CRC) is a nonprofit citizen group established in 1952 as the Connecticut River Watershed Council to advocate for the protection, restoration, and sustainable use of the Connecticut River and its four-state watershed. The Connecticut River and its tributaries (including the Deerfield, Millers, Chicopee, Farmington, and Westfield basins) take up approximately one-third of the land area of Massachusetts. The rivers in our watershed are used as drinking water reservoirs for the two largest municipal systems in the state (MWRA and Springfield Water and Sewer Commission) as well as several smaller systems. Our rivers are also heavily manipulated for hydropower use and flood control, and are also used as cooling water for a dwindling number of power plants, discharge for wastewater treatment, large and small irrigation, and there are many areas that rely on private wells for drinking water. The need to balance societal needs and uses of the water vs. maintaining as natural a river ecology as possible is a key component of our work as a watershed organization. We believe when there are regulations in place that ensures this balance, our quality of life, the environment, and our economy are enhanced.

The proposed changes to 310 CMR 36.07 provide resiliency for public water supplies that are registration holders under the Water Management Act. The requirements are straightforward, are invoked during a drought, and in a normal year would not require any extra work on behalf of the water supply. The change is akin to a loss of income at the household level and making an effort to cut out unnecessary expenses. Curtailing nonessential water use would simply position a water utility to be able to ride out a drought without serious impacts. The proposed change may or may not benefit rivers in a measurable way, but it certainly will benefit communities. The regulatory changes make sense during an era of climate change and should be quickly enacted.

CRC appreciates the opportunity to provide comments. I can be reached at adonlon@ctriver.org or (413) 772-2020 x.205.

Sincerely,

Andrea F. Donlon **River Steward**

frea F. Donlon



Advocacy Collaboration Results

July 26, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection - Water Management Program One Winter Street, 5th floor Boston, MA 02108 Attention: WMA Regulations

To whom it may concern:

Thank you for the opportunity to comment on MassDEP's proposed amendment to the Water Management Act Regulations. ELM has supported imposing conditions on registered water use for years and is pleased to see MassDEP adding a new condition that would restrict nonessential outdoor water use during times of declared droughts.

During the past few years, it has become clearer that we are experiencing more severe impacts from climate change, including prolonged and more frequent droughts. The Commonwealth can no longer exempt registered users from common sense conditions that will help protect streamflow, drinking water supplies and aquatic habitat.

The proposed amendment is a good first step, but we urge MassDEP to go further given the current reality of climate change and the need to not only address current issues but to also anticipate future scenarios. Since water registrations are renewed only every ten years, we need to do all we can now to ensure healthy, resilient water systems during the next decade. We concur with our colleagues at the Mass Rivers Alliance that we need a more comprehensive water management system that is pro-active rather than reacting only to what we are experiencing now. That would mean going beyond conditioning registrations during a drought and adding conservation requirements in severely stressed sub-basins. In addition, MassDEP should shorten the timeframe for when new WMA regulations are implemented—24 months seems overly generous given the serious droughts we experienced in 2016 and 2020.

Thank you again for the opportunity to comment.

Sincerely,

Nancy Goodman Vice President for Policy



July 22, 2021

Duane LeVangie
Massachusetts Department of Environmental Protection,
Bureau of Resource Protection, Water Management Program
One Winter Street, 5th floor
Boston, MA 02108

Re: WMA Regulations

Dear Mr. LeVangie:

I am writing today on behalf of the Green Industry Alliance of Massachusetts which is comprised of the Massachusetts Arborists Association (MAA), the Massachusetts Association of Landscape Professionals (MLP), the Massachusetts Association of Lawn Care Professionals (MALCP), the Irrigation Association of New England (IANE), and the Golf Course Superintendents Association of New England (GCSANE). Our mission is to promote awareness and educate the public and elected officials in the Commonwealth on best practices and professional standards in integrated pest management, lawn care and turf management, landscape design and maintenance, arbor care and irrigation, and golf course care.

We appreciate the opportunity to offer our comments and look forward to working with you to develop regulations that are meaningful and effective. We would like to take a moment to recognize the history we have of working with this Administration on numerous issues, including the fertilizer and nutrient management regulations, the recommendations on outdoor watering in the WRC reports, and the system interruption device regulations, which we are pleased to see being developed.

We recognize and acknowledge these proposed changes are being applied to the Drought Management Plan and we support efforts to conserve water when necessary due to extreme conditions. However, we do see room for improvement and will be offering some detailed suggestions that will make these updates more impactful and modern.

Meaningful & Modern Restrictions

The first observation is that using a 1-day per week restriction is overly burdensome and provides no guarantee that water will be saved. By limiting the days per week such a restriction doesn't directly impact the amount of water being used and doesn't recognize that consumers tend to water more than necessary when limited in just this manner. Limiting the days on its own is an insufficient, ineffective method that does not consider best management practices and the best available technology as suggested in 9.1 (3) of the most recent Water Conservations Standards.

In today's modern world of new technology and controls, DEP regulations should recognize and leverage these tools. A homeowner with a professionally designed and installed irrigation system equipped with smart technology and a system interruption device could easily set their controls to not exceed a net application of 1-inch per week to the landscape over a period of no more than three days per week. Along these lines, we encourage the DEP to allow for flexibility based on the type of irrigation system, as they have done for drip irrigation. These regulations should also be consistent with the statutory definition of a system interruption device and reference the related regulations that are being developed.

Flexibility

The proposed, one-size-fits-all approach for water purveyors is simply not adequate. Individual water systems are varied and they should be able to determine what works best for them – they should be able to develop their own conservation plans as drought will vary from place to place. Water systems should be measured on the outcomes rather than be regulated on how they achieve those goals.

We are pleased to see, in 36.07 (3), the DEP allows certain registrants to "implement nonessential outdoor water use restrictions in accordance with an accepted drought management plan instead of the restrictions described in 310 CMR 36.07(2)(c)1". We support the notion that individual users are best suited to developing plans that meet their own, specific needs and should allow this for any water system.

Plans should also be encouraged to include educational and communication-based tools as a means to achieve greater conservation results. Towns and water systems that have a registration requirement for those with irrigation systems have a direct link to these users and could include them on drought-specific alerts. The Center for Agriculture, Food, and the Environment at UMass Amherst's Extension Turf Program, agrees that "the key to water conservation is education". Ultimately, we believe that DEP would achieve higher compliance with more education and more reasonable/pragmatic requests for users to conserve.

Perspective

While these regulations have received an abundance of input from conservation-centric organizations, we believe it is important that the DEP hears from other stakeholders as well to help them find a balanced approach to conservation. As noted during our oral testimony this is not a binary decision, and we can achieve conservation while utilizing best practices that allow for users to enjoy their outdoor space.

For example, the UMass Amherst Extension Turf Program is recognized as the pre-eminent authority in the Commonwealth on horticultural and turf matters including the benefits of these components of nature. We would respectfully recommend that DEP consult them and work in collaboration with them when developing these policies. This is an important voice that is not being incorporated and which states... "By implementing water conservation techniques as outlined, research has shown that water savings of more than 50% on average can be achieved." Communities or users that can demonstrate compliance with their checklist should be provided additional flexibility.

Conclusion

We all agree that having the Drought Management Plan in place is smart policy and we are not trying to ignore the seriousness of these unpredictable threats. However, we believe that by providing some flexibility based on the use of technology, along with more public education and communication these regulations will improve compliance and more water will be saved.

Thank you for the opportunity to present these comments and we look forward to working with you and answering any questions relative to our suggestions.

Sincerely,

Stephen A. Boksanski Executive & Legislative Agent, Green Industry Alliance



P.O. Box 576 Ipswich, MA01938

July 26, 2021

RE: Water Management Act Regulations Comments: by email

Dear DEP Officials,

I am writing to urge speedy passage of the proposed amendment to the Massachusetts Water Management Act Program Regulations (310 CMR 36.00) to limit discretionary water use during times of drought for some water users. It is imperative that Mass DEP promulgate these regulations this year to make sure registrants are practicing water conservation for the next 10-year renewal of registrations. This is an important first step to creating more resilient communities, but even with this amendment, Massachusetts' water resources will remain at significant risk due to the exemptions that will continue to remain for registrations.

As such, I also urge DEP to go further and condition registrations with the State's standard water conservation conditions as it previously proposed, especially in depleted Rivers and subbasins such as the Ipswich River and its tributaries. Moreover, we ask DEP to embark on a process to do more to restore our state's most depleted watersheds (e.g. GWC and BC levels 4 & 5) and establish measurable goals and a timeline. Not only do we feel that the Water Management Act requires such action, DEP cannot adequately meet its mission without doing so, especially in light of climate change.

My organization, the Ipswich River Watershed Association, works to protect the drinking water supply for more than 350,000 residents and businesses on the North Shore. While there are a number of solutions we can and do work with our residential and municipal partners to implement, we cannot protect our shared water resources without significant improvements to how the state manages our limited freshwater supplies because of the current patchwork of water regulations and inequities in the current system.

This year, recognizing the significant threat excessive water withdrawals have had and continue to have on our river, the national organization American Rivers placed the Ipswich on its Most Endangered Rivers list. In response, Ipswich River Watershed Association immediately launched our #EndangeredIpswich Campaign, which sets forth practical solutions at the individual, municipal and state levels to reign in excessive water use and help our communities work

together on a shared strategy. The State solutions as summarized in this letter are the most important.

At the State level, we urge DEP to quickly pass the current amendment and then begin working proactively with water suppliers, regional planning agencies, municipalities and water suppliers to establish a specific timeline for achieving restoration of all Level 4 and 5 depleted waterways in the state to, at a minimum, Level 3 criteria. Doing so not only creates measurable goals our communities can use to achieve meaningful reductions in non-essential water use, it also would put Massachusetts water policy in line with other states like California and Connecticut, both of which originally modeled their water regimes after our own Sustainable Water Management Initiative (SWMI) but unlike the outcome here in Massachusetts, set specific goals and timetables to improve stressed sub-basins. Here in the Ipswich Watershed, where the vast majority of the basin is in either level 4 or 5, roughly 80% of "regulated" withdrawals are registered-only (assuming that the largest withdrawal, the Salem-Beverly Water Supply Board whose permit has never been implemented is functionally registered) with another at least 10% below-threshold such that more that 90 percent of withdrawals from the Ipswich have no state required conservation requirements at all. Not only is this unfair, this situation causes sever environmental harm, is not in keeping with State law and most importantly puts our collective water resiliency at risk.

We are heading into a future dominated by climate change. Communities in Massachusetts deserve greater certainty about the sustainability of our public water supply and fresh water resources. As the agency charged with administering the state's environmental laws, DEP can and must place a renewed emphasis on restoring endangered rivers like the Ipswich and at the same time working with local community leaders and watershed associations to develop measurable goals, both now and in the future. As U.S. Special Presidential Envoy for Climate John Kerry and Senator Ed Markey both recently said in their remarks on the Ipswich River, "We're all in this together."

Please continue to make the Commonwealth a national leader, by more effectively implementing laws and working together with communities and residents across Massachusetts to increase the resiliency of our water resources.

Thank you for your prompt attention to this matter.

Sincerely,

Wayne Castonguay Executive Director

Ipswich River Watershed Association



July 26, 2021
Duane LeVangie
Massachusetts Department of Environmental Protection
Bureau of Resource Protection, Water Management Program
One Winter St. 5th Floor
Boston, Mass, 02108

Re: Testimony Not in Favor of Water Management Act Regulations

Dear Mr. LeVangie

My name is Karen Connelly. I am the Executive Director of the Massachusetts Association of Lawn Care Professionals. Our members consist of licensed applicators, Lawn Care companies employing licensed applicators, suppliers, manufacturers, schools, educators and the public.

Our message will be brief and simple compared to the rest. It is based upon recognition of the needs of the millions of blades of grass that are in our lives. An appreciation, which came to many people desiring to cope with COVID, that their lawns and yards provide many benefits to them and their families even though they may not know the science behind that.

Among the benefits are Carbon Sequestration, natural air and water filtration, a refreshing area because of the natural cooling and psychological refreshment healthy green grass brings to people and pets.

The adoption of a one size fits all policy that is supposed to sufficiently cover all the climate zones in our state will not work because that does not correspond with the lives and needs of plants, though it may assist in State data retrieval. On any day climate conditions vary greatly between the Berkshires, Cape Cod and Worcester.

A one day per week watering policy has never worked in previous incarnations. People turn on their water as soon as they get home so they do not miss their days or days. The important part of that scenario is that their lawn may not need to be watered on the day or days arbitrarily assigned to them, their town or their street, let alone their yard, but they do it anyway. If they miss "their day" in prevalent drought conditions the lawn can go into dormancy or die. Lawns that are dormant or dead will not be filtering water that will be going back into the aquifer once it is cleansed. Nor will the lawn be sequestering carbon, providing a place for recreation and renewal, filtering dust and particulates, cooling the air, nor any of the other benefits.

Any new water regulations should include conversations with UMass turf researchers and Turf Extension agents regarding how and why grass plants function the way they do. They can show research results from here and in climate zones experiencing severe droughts for longer than that which we experience in MA.

If there is a possibility to extend the date when new policies must be enacted, we are in favor of an extension which will allow for more stakeholder input and the opportunity for those creating the policies to obtain knowledge of plants from UMass, Amherst, the Land Grant University where research is done and many of the professionals working throughout MA have received their education on Turf Management.

Sincerely, Karen T. Connelly Executive Director, MALCP

Policy & Advocacy Team

208 South Great Road, Lincoln, MA 01773 781.259.2172 hricci@massaudubon.org

July 26, 2021

Commissioner Martin Suuberg
Massachusetts Department of Environmental Protection (MassDEP)
Bureau of Resource Protection – Water Management Program
One Winter Street, 5th floor
Boston, MA 02108

Re: Water Management Act (WMA) Regulations (310 CMR 36.00)

Submitted Via Email: dep.talks@mass.gov

Dear Commissioner Suuberg:

On behalf of Mass Audubon, I submit these comments in support of MassDEP's proposal to update the WMA regulations at 310 CMR 36.00 pursuant to MGL Ch. 21G. We support the proposal to require water conservation measures for non-essential water uses by registered water suppliers during state-declared droughts.

The proposed regulatory amendments are essential to ensure full and fair administration of the WMA, with reasonable and appropriate conservation and efficiency in the use of the Commonwealth's precious water resources. These revisions are also necessary to address the impacts of climate change, which is resulting in more frequent and intense droughts. It is consistent with Governor Baker's Executive Order 569 Establishing and Integrated Climate Change Strategy for the Commonwealth.

Mass Audubon was involved in the drafting and legislative process that led to the adoption of the WMA and has been following its implementation since the mid-1980s. We have longstanding concerns regarding the lack of regulations to require efficiency and conservation by registered users. While the law provided for continued use of those water supplies, the lack of even the most basic conservation provisions for their use effectively precludes the WMA purposes of effective and comprehensive water management. Water conservation by all non-essential users during droughts is a minimum, commonsense measure to ensure adequate water for all essential uses and to protect the natural resources that depend on surface and groundwater levels.

We also encourage MassDEP to adopt regulatory changes that would enable the agency to impose conservation standards on water supplies below the 100,000 gallon per day threshold. This is important as more and more non-essential users are constructing private irrigation wells for lawn and landscape irrigation.

Conserved Lands and Water Supplies

It is also important to note the role of conservation lands managed by federal, state, and municipal governments and nonprofit land trusts in protecting water both for water supplies and to support habitat for fish and wildlife. Ironically, water is chronically depleted in many of the rivers, streams and wetlands located on these protected lands, due to excessive withdrawals.

The attached map shows one aspect of the overlap of these two factors – the location of Mass Audubon's wildlife sanctuaries in eastern Massachusetts in relation to groundwater depleted basins.

These lands, conserved for public trust benefits, are degraded by the persistent lack of natural flows and water levels in streams, ponds, vernal pools, and wetlands. Similar issues exist for a wide array of publicly-owned lands such as Department of Conservation and Recreation Forests and Parks, MassWildlife Wildlife Management Areas, municipal conservation lands, National Wildlife Refuges, lands conserved by other land trusts, and lands held directly by water suppliers.

One example is the Ipswich River, declared one of the ten most endangered rivers in the nation by American Rivers¹. Mass Audubon's Ipswich River Wildlife Sanctuary encompasses some 2,000 acres, and eight miles of the main stem of the Ipswich River flow through the sanctuary. The river is bordered by extensive wetlands including silver maple floodplain forest, shrub swamp, wet meadows, cattail marshes, and other wetland types. Several river islands are also located on the sanctuary providing important upland habitat within the wetland matrix. These extensive wetlands as well as the river itself are impacted by water withdrawals that reduce flows in the Ipswich River and impact groundwater levels and therefore base flow to the river.

The Ipswich River basin is one of the most flow-depleted river basins in Massachusetts. The majority of withdrawals are subject only to registrations. Major sections of the river and its tributaries routinely run dry for weeks or months at a time, and scientific studies have shown that this is due primarily to water withdrawals². These issues were brought into sharp focus during the two most recent droughts.

Water Systems Sustainability

One of the comments raised by some water suppliers during the public hearings was concern about loss of revenue from summer water use. However, it is fundamentally unsustainable for water systems to rely on nonessential water sales during droughts. There are other means of addressing the revenue concerns, by adjusting rate structures. Water rates should be fair and equitable, and provide sufficient funding for essential maintenance and improvements to public water supplies. This can be achieved without compromising the integrity of our wetlands, waterways, and groundwater levels.

Conclusion

Water conservation by nonessential water users during declared droughts is a minimum standard, and one that is long overdue. Registration renewals occur only once every ten years, so it is vital that these regulatory reforms be put in place before the current round of renewals. The permit expiration tolling extensions resulting from the pandemic emergency provide more time for MassDEP to finalize the regulations, but we nonetheless urge you to complete the promulgation process expeditiously. This will enable registrants ample time to prepare for implementation.

Sincerely,

E. Heidi Ricci

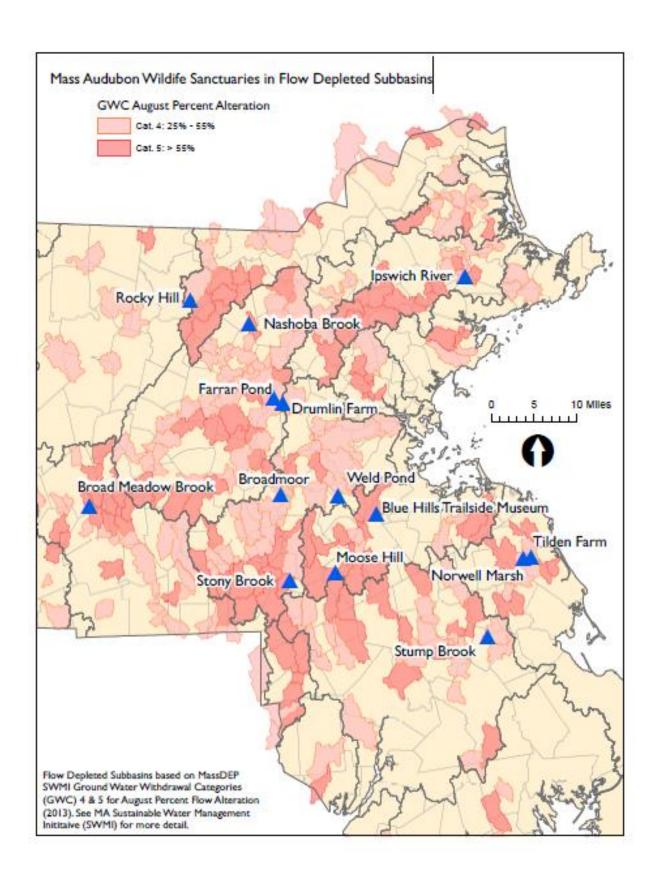
Director of Policy and Advocacy

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Attachment: Mass Audubon Wildlife Sanctuaries in Flow Depleted Subbasins

¹ https://endangeredrivers.americanrivers.org/ipswich-river/

² A Precipitation-Runoff Model for Analysis of the Effects of Water Withdrawals on Streamflow, Ipswich River basin, Massachusetts, Water-Resources Investigation Report 00-4029, Phillip J. Zarriello and Kernell G. Reis, III, U.S Department of Interior, U.S Geological Survey (2000).





Massachusetts Rivers Alliance

2343 Massachusetts Ave, Cambridge, MA 02140 617-714-4272 • www.massriversalliance.org

Massachusetts Department of Environmental Protection Bureau of Resource Protection –Water Management Program One Winter Street, 5thfloor Boston, MA 02108

Re: WMA Regulations

Dear MassDEP,

Thank you for the opportunity to submit comments in support of the proposed Water Management Act regulations. The Massachusetts Rivers Alliance is a statewide non-profit organization dedicated to protecting and restoring the state's rivers and streams, and our eighty member organizations span the state.

Drought has become a serious threat to Massachusetts communities and ecosystems, as you heard from many people in the two public hearings. In 2016, 2020, and now again in 2021, Massachusetts is experiencing record low flows across the state that threaten aquatic life, recreational opportunities, agriculture, and our water supply.

For example, in the fall of 2020 each county was individually declared a "drought disaster area" by the USDA due to drought damage to crops, six communities declared water supply emergencies, and many streams experienced fishkills. Depleting our water resources just for summer lawn watering and other non-essential outdoor watering does not make sense. It's obvious that our current regulations fail to meet the challenge of drought.

In light of that, Mass Rivers is grateful that MassDEP has proposed these new regulations that fit so squarely with the State's Drought Management Plan and the Water Management Act's stated purpose, to *comprehensively manage water withdrawals*.

With drought conditions predicted to get worse, our state needs a coordinated response. It is only fair to subject the last 20% of regulated water withdrawals (184 million gallons per day) to the

same water conservation requirements that permittees are already required to do under the Water Management Act. This is the least we can do to make our water management system resilient.

When water registrations were grandfathered in without conservation conditions in the 1980s, we weren't thinking about climate change in the way we need to now. Adding in water conservation requirements adapts those withdrawals to our reality, and is a step towards meeting our future needs

DEP must create a more comprehensive water management system that is preventative rather than reactive. Conditioning water registrations during drought is the minimum of what DEP could do to protect our water resources from excessive withdrawals. Water conservation should occur in advance of a drought, not just when the impacts of drought are already here. Many of our sub-basins are severely stressed, and yet we continue to withdraw from them.

While we are sympathetic to the needs of water suppliers to fund their operations, this should not happen at the expense of our rivers and water supplies. We simply cannot wait another ten years for the next opportunity to make our water management system more resilient. We urge MassDEP to promulgate the proposed regulations as a first step.

Thank you for this opportunity, and we look forward to working with MassDEP in creating a stronger water management system for the Commonwealth. Please contact katharinelange@massriversalliance.org with any questions.

Sincerely,

Katharine Lange Policy Specialist

Massachusetts Rivers Alliance



July 26, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection – Water Management Program One Winter Street, 5th floor Boston, MA 02108 Attention: WMA Regulations

Delivered Electronically

Dear Commissioner Suuberg,

On behalf of the cities and towns of the Commonwealth, the Massachusetts Municipal Association is writing to provide comments on MassDEP's proposed regulatory changes to 310 CMR 36.00. MassDEP is proposing a new condition on registrations under the Water Management Act that would restrict nonessential outdoor water use during times of drought, when declared by the Secretary of Energy and Environmental Affairs.

The MMA has engaged extensively with our membership on this issue, and we are aware that there is a broad and diverse range of opinion on the proposed changes. Many local officials are supportive of state intervention due to their desire for communities in affected regions to respond to drought conditions in a coordinated manner and in a meaningful way to confront one of the greatest environmental challenges of our time; many have concerns and reservations due to the lack of flexibility or enforceability of a state-imposed mandate; and many are opposed to the draft due to concerns that a one-size-fits all approach will disadvantage communities that are able to manage their water supplies on their own in an environmentally sound manner. All local officials are united in their commitment to preserve and protect the natural water resources of our Commonwealth.

In the comments that follow, we attempt to capture the sum of these interests, and recommend that MassDEP allow for maximum flexibility and establish a framework that ensures true engagement with municipalities and public water suppliers at every stage of action and implementation after promulgation.

The MMA appreciates the stated rationale for the proposed regulatory changes to "ensure an appropriate balance among competing water needs and the preservation of water resources... such as streamflow, wetlands, fisheries and wildlife habitat during drought." Water resources are a common interest held by all, with differing needs and priorities for this wide variety of uses and purposes, including, but not limited to, the provision of public water supplies. We also recognize that climate change has exacerbated weather and environmental conditions, leading to more frequent, prolonged and serious droughts, as well as more powerful and intense periods of precipitation. The MMA's objective is to support the overarching goals of the state's Drought Management Plan and the intentions behind this proposed regulatory change, while maintaining our position that local governments are effective stewards of their natural resources and can make reasoned decisions in support of environmental and public health.

We acknowledge that the proposed conditions are fairly limited in scope, restricting only non-essential outdoor water use during periods of regionally-declared droughts for systems that hold registrations and are not otherwise exempt. MassDEP estimates that this change will affect 63 registered public water suppliers and 87 registered golf courses, whose registrations are up for a 10-year renewal. We also recognize the value of better aligning WMA registrations with the conditions already required for WMA permit holders. Although the MMA represents municipalities as geographic and political entities with fixed boundaries, we understand and appreciate that effective water management often requires a watershed or regional approach.

From some MMA members, we have heard that state-level regulation as proposed for 310 CMR 36.00 is necessary to protect our water resources from depletion, including the opinion that the proposed changes do not go far enough in conserving water in advance of drought conditions. These members strongly believe that placing restrictions on non-essential water use is an important recognition of the varied purposes and uses of this natural resource, and does not privilege one use over another. Further, they have long-standing concerns regarding the sensitive conditions of their watershed regions, and place a premium on coordinated regional approaches to environmental stewardship.

We have also heard serious concerns from other members about the infringement of these restrictions on local control, especially for systems that are withdrawing water below their registered limits. They have expressed that the proposed regulatory change paints a broad brush and does not consider the relative quantity of water supply available to a system at any given time. Moreover, there are revenue loss concerns from limiting water usage, even for uses considered non-essential, for systems that are not at risk of exceeding their allotted withdrawal amounts. Municipalities and their local water utilities face significant financial impact if they are not able to sell water that is available to them based on their WMA registration, revenues that could be used to invest in system upgrades and efficiencies that would further conserve water supply. Again, we encourage MassDEP to apply maximum flexibility in allowing for system-specific drought management plans that account for local conditions. We note that the draft regulations appear to grant golf courses greater flexibility to account for their core business needs, yet does not consider this for public water systems.

We have also heard concerns related to local enforcement of restrictions on non-essential water use, of the challenges inherent in policing usage within one municipality while the same usage is allowed in a neighboring municipality. While a stated interest for adopting the proposed regulatory change is to "level the playing field" between communities, that is not a guaranteed outcome when MWRA communities and those served by private wells are exempt from these conditions. The MMA urges MassDEP to partner with local governments on any enforcement activities that result from promulgation of these regulations.

The MMA and our members appreciate the opportunity to engage in this complex regulatory matter, including through submission of these comments. If you have any questions or require additional information, please do not hesitate to have your office contact me or MMA Legislative Analyst Ariela Lovett at alovett@mma.org at any time.

Sincerely,

Geoffrey C. Beckwith

Executive Director & CEO





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July 26, 2021

Elizabeth McCann, Water Management Act Program **MassDEP** One Winter Street, 5th Floor Boston, MA 02108

RE: Proposed Amendments to 310 CMR 36.00 – Conditions on WMA Registrations

Via Email to: dep.talks@mass.gov

Dear Ms. McCann:

Massachusetts Water Works Association (MWWA) is providing the following written testimony to the Massachusetts Department of Environmental Protection (MassDEP) regarding proposed amendments to the Water Management Act regulations (310 CMR 36.00) to impose drought restriction conditions on all Water Management Act Registrants. MWWA is a non-profit organization representing public water supply professionals. Our members' core responsibility as water suppliers is to provide the most essential service to their customers - clean, safe drinking water. MWWA certainly agrees that water should be used wisely, especially during times of drought, but we object to the assertion that water use needs to be controlled by promulgating statewide regulations on Registrants. Given that MassDEP made its intention known to promulgate regulations less than one year before the Registrations will renew, there has not been much time for meaningful stakeholder engagement, nor we believe, a full evaluation and consideration by MassDEP of the negative effects this regulation might have, and this concerns us very much.

The Executive Office of Energy and Environmental Affairs (EEA) and MassDEP laid out reasons for why they intend to move forward with conditioning the Registrations at a meeting with Stakeholders on January 21, 2021; one reason given was to ensure that water systems are more resilient in the face of climate change and another reason was to "level the playing field" to ensure consistent restrictions across the state when droughts are declared. MWWA is hard-pressed to see how this proposed

regulation accomplishes either of those stated objectives for the following reasons:

- Every Public Water System is unique, and a broad regulation does not consider a system's capacity or ability to serve, even during times of drought
- Water use data does not support the need to condition Registrations
- There are better ways to address climate change concerns
- Conditioning Registrations could have unintended adverse impacts on public health
- Conditioning Registrations will have financial impacts and exacerbate socioeconomic inequities
- The proposed regulations will violate Registrants legal entitlements
- The proposed regulations will not lead to meaningful environmental improvement, and may actually undermine public trust/confidence in drought messaging and water conservation
- The proposed regulations will not "level the playing field"
- There is a better alternative to these regulations which is requiring systemspecific drought management plans

Given these reasons, MWWA respectfully requests MassDEP withdraw these proposed regulations. We submit the following rationales to substantiate our concerns:

Water Systems are Unique

Water suppliers are environmental stewards of the water resources in their communities. Without careful protection of the resources, they would not be able to provide the public service they do. Water systems also must adhere to rigorous water quality standards established under the Safe Drinking Water Act (SDWA) to ensure protection of public health. They play a key role in providing fire protection within the community; and for that reason, storage reservoirs must be kept full and system pressure maintained. They must constantly balance water quality and quantity demands, especially during the summer months. They must be forward-thinking, consider potential future impacts (such as those expected from climatic changes), and have plans in place to better protect their systems. Many of our water systems in Massachusetts have been in existence for over 100 years and are expertly managed.

Water systems vary in their sources, their supply capacity, and their demand. Drought does not impact all water supplies the same, nor does it even impact all streams or groundwater wells within a region in the same way. Many Public Water Systems have adequate supplies, even during times of drought, and rely on the sale of water to be able to fund needed infrastructure improvements, which protect public health and enhance system resiliency. If water systems with ample supply are not able to sell water that they have, it threatens their ability to invest in their system to meet all their required regulatory obligations. Broad-brush regulations like the one being proposed by MassDEP do not recognize the unique nature of our water systems and does not give water systems the flexibility to craft the most appropriate drought response for their system.

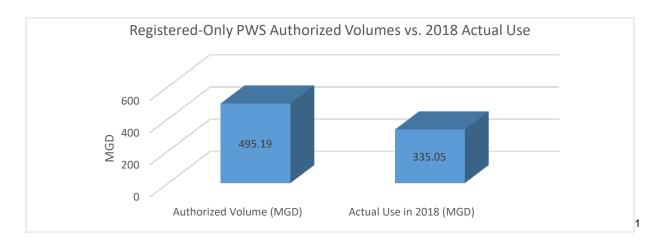
Water Use Data Does Not Support the Need to Condition Registrations

Very often discussions regarding water management in Massachusetts focus on emotional arguments and facts sometimes get lost. To further substantiate our position that conditions on Registrations are unnecessary, we want to present some facts. For Public Water Systems holding only a Registration – the fact is that in 35 years they have not seen their water use increase above Registered volumes and in many instances there have been decreases. They should be applauded for keeping their use below what was authorized in 1986 and not punished by imposition of arbitrary conditions. Water conservation/efficiency is not the same as drought response. The fact that Registrants have been successful in conservation supports the point that they are good stewards of the resource and can be counted on to craft an appropriate response to drought, and they need the flexibility to do so.

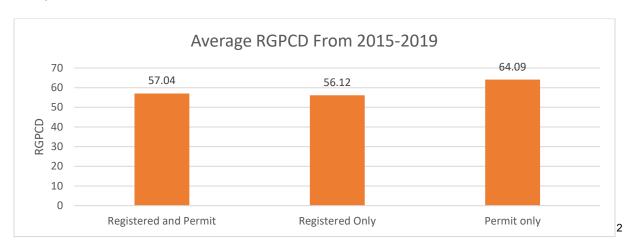
According to data MWWA obtained from MassDEP for calendar year 2018, among the 63 registered-only systems, 63% of the registered volume is held by the Massachusetts Water Resources Authority (MWRA). These figures are based on authorized registered volumes and not actual withdrawals. Does anyone wish to claim that MWRA, whose withdrawals have declined from 313 MGD to 200 MGD since 1986, has been negligent in terms of water conservation? Included in this group are communities like Paxton, North Reading, and Reading that maintain Registrations but no longer use their own sources. Non-MWRA Registered-only systems also include some of the largest surface water systems in the State, including Springfield, Cambridge, Fall River, Holyoke, Lawrence, Lynn, and Pittsfield. These are major economic and residential areas; yet, over the past 35 years, their water use has not increased and, in many instances, has substantially decreased. We provide a few examples for illustration purposes:

| Public Water System | Authorized Volume (MGD) | Actual Use in 2018 (MGD) | Percent below Registration | Basin |
|------------------------|-------------------------------|--------------------------------|----------------------------------|------------|
| Cambridge | 16.16 | 12.96 | 20% | Charles |
| Pittsfield | 13.5 | 7.6 | 43% | Housatonic |
| Wilmington | 2.91 | 1.77 | 39% | Ipswich |
| Lynn Water & Sewer | 2.62 | .96 | 63% | Ipswich |
| Commission | | | | |

Registered-only volumes that are authorized by Public Water Systems amount to 495.19 MGD, yet in 2018 those water systems only used 335.05 MGD or 32% less than in the early 1980's! One must question whether this is a problem needing a regulatory solution?



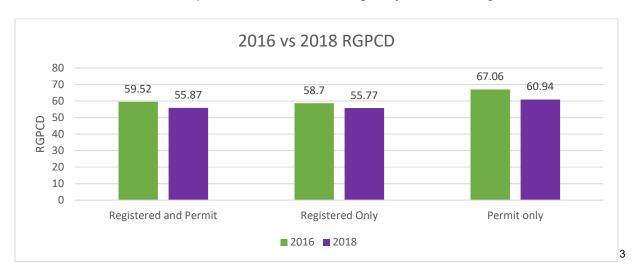
Digging further into the data, the facts show that, while not required to meet the state conservation standards for Residential Gallons Per Capita Day (RGPCD), Registered-only systems are doing, on average statewide, even better than permitted-only or registered/permitted systems. See the following graphs produced by MWWA with data obtained from MassDEP's Water Management Act Program spreadsheets documenting compliance with the conservation standards.



¹ Table generated from data obtained from MassDEP Water Management Act Program for calendar year 2018, File Name: Registered only PWS systems 2018 USE 1-20-2020.xlsx, Email from Duane LeVangie on 1-20-21; Note that after 2018, Needham gave up their permit and became Registered Only and North Chelmsford got a permit and is no longer Registered-only; the figures would only change slightly if those changes had been accounted for.

²² Table generated from data obtained from MassDEP Water Management Act Program for calendar year 2018, File name: MWWA_Request_INFO reg perm rgpcd uaw MGD_02232021.xlsx, Email from Duane LeVangie on 2/23/21

In comparing a drought year (2016) to a non-drought year (2018), the data shows that RGPCD did not substantially increase, as one may have been expected given the drier conditions and the assumption that more watering may be occurring.



The facts show that water use by Registered-only systems <u>is not out of control</u> by the metric the state employs to judge efficiency. It appears that Registrants are effective at conservation generally, are in the best position to respond to local conditions and can be trusted in times of drought to make appropriate decisions.

Better Ways to Address Climate Change Concerns

Public Water Systems are certainly concerned about the impact that climate change could have on the future of our water supplies. We are mindful that we need to replace older infrastructure to maximize efficiency and reduce water system losses. To protect ourselves against climate change, as well as other emerging threats, we should be exploring and protecting future water supply areas and installing redundant sources to enhance water system resiliency. MWWA has been promoting these concepts even before its participation in the Sustainable Water Management Initiative (SWMI). Recent attention on emerging contaminants like Per- and polyfluoroalkyl substances (PFAS) has made this discussion of redundancy much more important. Water Systems with detections above the drinking water standard are having to shut off sources, shift demand to other sources, and look for alternative supplies until permanent solutions can be determined. Use of other groundwater and surface water sources, and installation of new sources does not always mean there will be an increase in water withdrawals. However, these measures do give water systems more flexibility to shift demand to alternative sources when needed.

We recognize that many water suppliers have adequate capacity to serve their customers. However, to foster greater water system resiliency, MWWA has made

³ Table generated from data obtained from MassDEP Water Management Act Program for calendar year 2018, File name: MWWA_Request_INFO reg perm rgpcd uaw MGD_02232021.xlsx, Email from Duane LeVangie on 2/23/21

several recommendations over the years which unfortunately have not been advanced by EEA agencies. Some Public Water Systems may want to install new or redundant sources to give them future flexibility; however, it is sometimes difficult to find suitable locations to site new sources. MWWA tried to have conversations with state officials about water supply development in state forests (perhaps some of the more pristine lands in the Commonwealth) and we were told that discussion is a non-starter. MWWA has objected to Water Management Act permit mitigation measures that would have Public Water Systems releasing water from reservoirs to support downstream aquatic resources as it threatens resiliency. The proposed regulations also require consideration of required releases to be accounted for within the submission of a drought plan for acceptance by MassDEP. As MWWA has stated before, the benefit of a reservoir is storage for times of need – if suppliers release the water it will not be available if they truly need it. It seems counter-intuitive and a threat to system resiliency to release water when it is unknown when the next drought might hit, and yet we still see this practice encouraged by policymakers and even required in permitting decisions. If the Commonwealth wants to ensure water systems are better able to withstand droughts, reservoir releases should be immediately stopped.

If the state and the watershed groups are truly concerned about climate change's impact on water systems, MWWA welcomes constructive dialog on how to develop and fund the infrastructure necessary to withstand future climatic changes. Advancing the search and permitting of new sources and eliminating downstream releases will do more to protect water systems from climate change than the current regulatory proposal.

Adverse Impacts on Public Health

It should be abundantly obvious that operating a Public Water System is complex. Public Water System operators must always be aware of unintended consequences that one action might have on another within the system. While sounding well-intentioned, the proposed restrictions during drought stand to do more harm than they purport to prevent. Water restrictions could increase water age in the system, further exacerbating water quality concerns and compromising compliance with SDWA requirements. Public Water Systems must evaluate water quality trade-offs when considering reducing flows. If they have capacity issues, they may have to make the difficult decision to risk water quality degradation to implement restrictions to meet demands. When no capacity issues exist, implementing restrictions that risk water quality degradation do not make sense.

Public Water Systems must be in compliance with SDWA requirements. When demands drop in the distribution system, water age increases, and disinfection by-product (DBP) formation increases. Controlling DBP formation presents a complex challenge for some water systems and may require a multi-pronged approach around operational changes and treatment process adjustments. Water age is an important consideration. As MassDEP is well aware, DBP exceedances over the Maximum Contaminant Level (MCL) result in Tier 2 Public Notification to consumers with the

following language: "People who drink water containing HAA5 in excess of the MCL over many years may have an increased risk of getting cancer." Such a notice is obviously concerning and alarming to consumers, and no utility wants to be in the position of exceeding DBP thresholds and having to send such a Public Notice if it is preventable. MWWA believes the proposal to restrict water use solely based on regional drought triggers, will have a detrimental water quality impact, and erode public confidence in the system.

There is a real-world example of how water age impacts a system using the Springfield Water & Sewer Commission (SWSC) as a case study. Figure 1 shows the inverse relationship of the haloacetic acid (HAA5) results in the two warm-weather quarters (Q2 and Q3) and the system demands in the months of sampling for SWSC. With greater demands the water age decreases and the HAA5s have less time to increase, and therefore the levels can be mitigated.

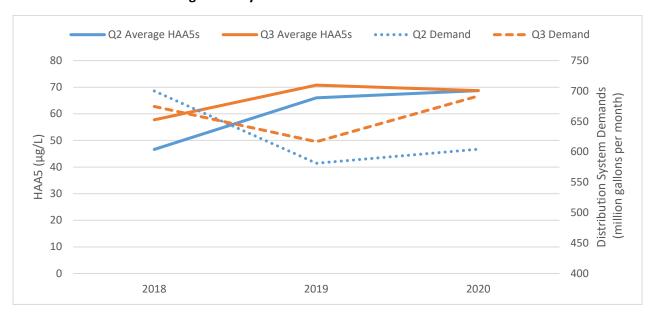


Figure 1 – System Demand and HAA5 Formation

However, sudden decreases in demand can have negative impacts on water quality in the distribution system. These impacts are typically mitigated through flushing of the distribution system. If these regulations are adopted and restrictions are required, some systems may have to run hydrants to flush the system to maintain water quality. In such a scenario, there is no water savings occurring through the restrictions, because the water is being flushed, yet there will be lost revenue (which may be needed to fund solutions to resolve the public health issue).

Regular, targeted flushing is an important method in controlling DBP formation in the distribution system, as well as maintaining adequate residual disinfection for microbial control. Figure 2 shows the formation curve for total trihalomethanes (TTHMs), showing levels versus water age. The figure shows the results of laboratory testing on finished

water to investigate the increase of TTHMs over time, but also the impact of the initial chlorine dose on the formation of TTHMs.

The TTHM levels at the oldest water age (168 hours, or 7 days) represent the extents of the distribution system in dead ends. Through flushing of these dead ends, the water age could be reduced and DBPs decreased. For example, if the water age decreases from 7 days to 5 days (120 hours), the TTHMs could be reduced from around 100 micrograms per liter (ug/L) to 90 ug/L, or a 10 percent reduction.

At the same time, the flushing would also increase the chlorine residual at the extents of the distribution system. If the water system were previously dosing chlorine to try and maintain an adequate chlorine residual in these areas, the flushing could allow for a decrease in chlorine dosing. As seen in the figure below, a 0.5 milligram per liter (mg/L) reduction in chlorine dose resulted in a decrease in the TTHM levels at the oldest water age from around 100 ug/L to 80 ug/L, a 20 percent reduction.

A combination of both water age reduction and chlorine dose reduction could result in a further decrease in DBPs. If restrictions are implemented, flushing would need to be increased to maintain water quality.

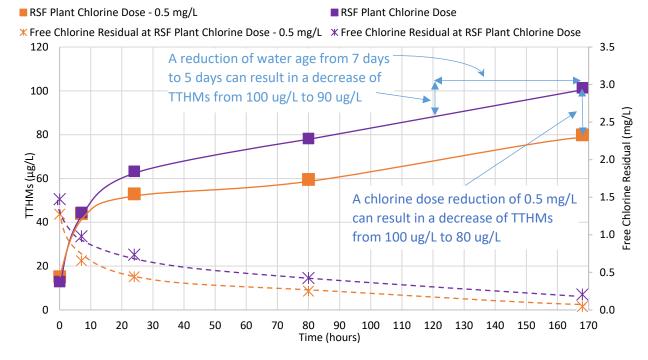


Figure 2 – TTHM Formation with Water Age and Varying Chlorine Dose

Some Registrants do impose restrictions in order to manage their supply appropriately, but drought considerations must be balanced with other public health concerns and Registrants who know the actual demand placed upon their systems are in the best position to evaluate the balance and trade-offs.

The two scenarios depicted above show the complexity systems encounter when addressing simultaneous compliance for two competing regulatory programs. Forcing more frequent water use restrictions can have negative public health implications that must be carefully considered by MassDEP. Further, having to increase flushing to better control water quality creates customer service challenges for the Public Water System as they are telling customers they cannot use water, yet they have to increase flow out of hydrants (which is very visible) to adequately flush the system. Public confidence in the management of the water system can be called into question.

Financial Impacts Exacerbating Socioeconomic Inequities

The next important point that cannot be ignored if these regulations are adopted is that financial impacts will be incurred. Much of a Public Water System's budget covers fixed costs that are not impacted much by usage (labor, materials, equipment to maintain the system). Given Registered-only Public Water Systems will not be able to predict when droughts might occur, they will have to budget for drought conditions each year to ensure they have the funds necessary to cover fixed costs. This is especially troubling when the region might be experiencing a drought, but the water system may have ample supply. During a recent Water Resources Commission meeting, Vandana Rao questioned the presumption that there would be a financial impact, saying it really is no different than what would happen in a wet year when water use is down. What Dr. Rao neglected to consider is that revenues generated in dry years provide the buffer for rate stabilization in wet years. If water systems do not have that additional revenue that might normally occur in a dry year because they have restrictions, that will further jeopardize rate stabilization funds.

To get a clear picture of the financial impact the proposed conditions would have, the Town of Monson re-calculated their FY 2021 water rate with mandatory restrictions in place from the beginning of April to the end of September. Their billed usage estimates dropped from 90 Million Gallons to 77 Million Gallons and left them with a budget shortfall of \$72,000 at their present water rate of \$5.60/1000 gal. To recoup that shortfall, a rate increase of \$0.95/1000 gal (17% increase to \$6.55) would be required! This would be a huge rate increase for their customers for no gain in services, no infrastructure improvements, and no resulting quantifiable environmental benefit, which in turn could build resentment to future needed increases for infrastructure or water treatment systems.

The Springfield Water & Sewer Commission ran various scenarios on what reductions in summer use might mean for its system. As a very large utility, the financial impact on the system is much more dramatic. Implementing voluntary restrictions (limiting watering by certain days/hours as would be required in a level 1 or 2 drought and assuming a 10% reduction in system demand) would mean a loss of revenue of \$3,108,541.70! Such a loss in revenue would translate to a minimum 5% rate increase. Implementing mandatory restrictions (total ban of non-essential use as would be required in a level 3 or 4 drought, assuming a 20% reduction in system demand) would mean a loss of \$6,377,922.59, translating into a minimum 10% rate increase. And it

should be noted that these increases would be just to balance SWSC's operating budget. If rates are not able to be raised to cover shortfalls in the operating budget, other investments may need to be delayed to future years or even cancelled.

One must ask why should SWSC or the Monson Water Department be forced to try to raise rates on everyone to recoup lost revenue when they have ample supply that they could sell to those who are able to afford non-essential use and avoid these rate increases? This year would be a perfect example of the harmful impact these regulations will have. The Commonwealth was in a Level 1 Drought in several regions beginning in March, and yet in the spring SWSC's Reservoir was only 7.5 inches from spilling over. Clearly SWSC had enough water to satisfy their demands, despite the regional drought declaration.

The Commonwealth just put a much greater emphasis on environmental justice in the new climate bill signed by Governor Baker on March 18, 2021. Lawn watering is a practice generally employed by wealthier homeowners and not by those barely getting by economically. From that perspective, it is apparent that lawn watering produces revenue for the water system from those who can afford it. That revenue is used to operate and improve the system for all water users. It is ironic that many of those clamoring to ban lawn watering are also likely to believe that the wealthy should bear a greater share of community/societal costs. Lawn watering is an excellent example of the wealthy paying more in a way that benefits the less fortunate. In larger urban areas, which make up many of the Registered-only water systems, there are significant environmental justice communities that benefit from improved water systems disproportionately funded by smaller numbers of lawn watering homeowners. Take away the lawn watering revenue and the environmental justice communities will pay more. Springfield is an environmental justice community. As shown above, replacing lost revenue of \$3.1-6.3 million would have a big impact on their ratepayers, many of whom are low-income and can least afford an increase. MWWA urges MassDEP to revisit the proposed regulations through the lens of equity, and we are sure that you will find that increased costs will disproportionately impact those that can ill afford it and runs counter to the Baker Administration's focus on equity and environmental justice.

It is also well-documented that Public Water Systems have huge unmet needs to fund repair and replacement of existing aging infrastructure. The list of regulatory requirements is ever-growing, yet there is really no commensurate funding to help water systems comply. The funding gap widens every time there is a new "ask" from the state/federal government, and most of the burden continues to fall on local ratepayers. When MWWA raises concerns about financial impact restrictions will have, the watershed groups say, "just raise your rates." Clearly those groups do not understand the realities of operating a Public Water System. Public Water Systems are not immune to increases facing other businesses. Healthcare and other indirect costs continue to rise above the rate of inflation. Construction costs have similarly escalated. Pumping, treatment, storage, and distribution facilities are being relied upon to work beyond design lives, increasing repair costs and subjecting water systems to a higher risk of catastrophic failure. With each new regulation, suppliers must again make a choice to

defer maintenance and instead spend on regulatory compliance. Why? Because suppliers cannot just raise rates. If raising rates was an easy exercise, and if all customer bases could easily absorb the costs, water suppliers would do so annually. In most situations, decisions of rate increases fall to an elected governing board whose decision-making must be balanced with meeting water system needs while addressing affordability concerns. In the case of private water utilities, the Department of Public Utilities judges the appropriateness of rates from a consumer advocate perspective and may not approve a requested rate increase if it does not feel it is warranted. To compensate for revenue uncertainty, Public Water Systems will have to try to get the necessary rate increases, or they will have to cut infrastructure investment if raising rates is politically untenable.

Watershed advocates say they are sympathetic to water systems' funding challenges, but rarely, if ever, do we see them at rate hearings supporting Public Water Systems' efforts to raise rates to adequately fund their system. Water suppliers would welcome watershed groups advocacy in their communities to support them in their efforts to have adequately funded systems. Finally, if these regulations are adopted, the Commonwealth must develop a new fund to help Public Water Systems make up for shortfall in revenues due to the implementation of water use restrictions.

Legal Entitlements

Those members of MWWA involved in the original stakeholder negotiations regarding passage of the Water Management Act (WMA) (Mass General Law 21G) back in 1986 know that it was always the intent of the Legislature and MassDEP (then referred to as DEQE) to recognize and authorize these legacy Registered volumes and provide access to them in perpetuity. There are two legal pieces that merit consideration as MassDEP proposes to regulate Registered-only water systems.

In the Fairhaven⁴ case, the Supreme Judicial Court affirmed that MassDEP could not infringe upon the Registrants' entitlement to existing withdrawals. MWWA believes that the drought conditions that MassDEP seeks to impose would most certainly infringe upon Registrants' entitlement to their existing withdrawals by limiting their ability to sell that water during a drought. The WMA affords Registrants with blanket entitlement which they have thus far used responsibly, notwithstanding their right to the full Registered volume at all times.

The second legal point is that Section 3 of MGL 21 G requires consultation with the Water Resources Management Advisory Committee:

"There is hereby established within the department a water resources management advisory committee to provide advice and consultation to the department concerning matters covered by this chapter. The committee shall review the development of standards, rules and regulations for water resources management and shall supply recommendations concerning methods by which

⁴ Water Dep't of Fairhaven v. Dep't of Env't Prot., 455 Mass. 740, 751 (2010)

existing water management practices and the laws regulating them may be supplemented and improved and their administration financed."5

In January and February of 2021 meetings, MassDEP acknowledged that the Advisory Committee is not currently constituted as required by law. MassDEP is referring to the group they assembled to discuss the proposed regulations as the "Water Management Act Stakeholders Group." MWWA questions the legality of MassDEP moving forward with these regulations when members of the statutorily required "Water Resources Management Advisory Committee" have not yet been appointed by the Governor. Per MassDEP's website, it is acknowledged that this is the formal group required by law: "The Water Resources Management Advisory Committee works with MassDEP to review Water Management Act legislation, regulations, and general permitting issues for water withdrawal permits. The Committee was established by M.G.L. c. 21G, section 3 and meets as needed to fulfill its statutory role." These regulations should not be allowed to proceed until the Committee is duly appointed and then consulted per the statute. The legal points were well-articulated by the Town of Hamilton when they submitted their Registration Renewal form which is attached to these comments for the record.

These regulations will not lead to meaningful environmental improvement and may undermine public trust

Much of the public focus on environmental impact to rivers and streams is centered on the Ipswich River. Unfortunately, the Ipswich River Basin is hydraulically challenged. There are large exports of wastewater from the basin and very little of the annual precipitation that falls in the Basin infiltrates into the ground to recharge the streams or groundwater supplies. Evapotranspiration rates are extremely high with 45% of precipitation falling in the Basin evaporating naturally or being taken up by trees or other plants⁷.

The Ipswich River Watershed Association has mounted a new campaign with American Rivers calling for MassDEP to further regulate water withdrawals claiming that more than 90 percent of withdrawals are exempted from any conservation requirement, even during drought. The actual facts belie that myth. In calendar year 2018, the Registered-only Public Water Systems in the Ipswich Basin made up 13.67 MGD of the total 32.81 MGD of authorized volume in the Basin (Reading no longer uses its Registered Volume and North Reading is now fully supplied by Andover, so if you remove those volumes it goes down to 10.14 MGD). So only 31% of authorized use by Public Water Systems is actually "unconditioned." Here is the list of Registered-only water systems in the Ipswich River Basin and their associated authorized volumes:

⁵ https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21G/Section3

⁶ https://www.mass.gov/service-details/massdep-advisory-committees-and-stakeholder-workgroups

⁷ Ipswich Bain Water Management Act Planning Grant FY17

| Public Water System | Authorized Registered Volume |
|-------------------------------------|------------------------------|
| LYNN WATER & SEWER COMMISSION | 2.62 |
| NORTH READING WATER DEPARTMENT | 0.96 |
| PEABODY WATER DEPARTMENT | 3.89 |
| READING DPW | 2.57 |
| TOPSFIELD WATER DEPARTMENT | .43 |
| WENHAM WATER DEPARTMENT | .29 |
| WILMINGTON WATER & SEWER DEPARTMENT | 2.91 |

After the watershed groups filed their petition in 2017 asking MassDEP to condition Registrations, MassDEP embarked on several studies, one was to determine the impact of regulating unregulated withdrawals on the Ipswich and Parker River Basins.

MassDEP's own study⁸ determined there was very little water savings to be gained by regulating currently unregulated withdrawals. MassDEP's cover letter that accompanied the study stated:

"The study found that most of the water withdrawn in each basin is regulated by the WMA program. Specifically:

- 95% of total annual withdrawals in the Ipswich Basin and 80% in the Parker Basin are regulated.
- Irrigation by private wells, golf courses and farms represent 3% of the total annual withdrawals in the Ipswich and 10% in the Parker;
- Lawn watering by below-threshold irrigation withdrawals represent approximately 1.4% of annual withdrawals in the Ipswich and 3.9% in the Parker, during the irrigation season this represents 0.77 MGD in the Ipswich Basin and .23 MGD in the Parker"

MassDEP also presented data⁹ to show the average summer/winter ratio of water use for Public Water Systems in the Parker and Ipswich River Basins over the period of 2009-2016. MassDEP's target is summer water use not be over 120% of winter use. The Registered-only Public Water Systems withdrawing in the Ipswich Basin met that target.

| PWS | 2009-2016 Summer/Winter Ratio (Own Sources in Ipswich Basin) | '09-'16 Avg. RGPCD |
|---|--|-----------------------|
| Lynn | 110% | 53.5 |
| North Reading (was at that time withdrawing from the Ipswich Basin) | 104% | 67.3 |
| Wilmington | 116% | 59.3 |
| Peabody | 117% | 57.3 |

The facts regarding Registrants withdrawing from sources in the Ipswich Basin, do not support Ipswich River Watershed Association's assertion that summer water use is out

⁸ "Inventory of Below WMA Threshold Water Withdrawal Sources in the Ipswich and Parker River Watersheds" completed by Comprehensive Environmental Inc., October 12, 2018.

⁹ Spreadsheets dated Feb 5, 2018, MassDEP, Ipswich & Parker In-Basin Reductions

of control in the Basin. Low streamflows are not a problem that will be solved or even marginally improved by conditioning Registered withdrawals. It is a disservice to all involved, and especially the public, to continue to develop statewide water management policies around a River Basin that has many more challenges than just water supply, and where the facts do not support the need for the regulatory action being proposed.

The Proposed Regulations do not "Level the Playing Field"

MassDEP claims it would be "leveling the playing field" by conditioning the Registrations with restrictions on non-essential use during a drought. However, MassDEP's proposal to condition the Registrations is even more stringent than the requirements in the Water Management Act permits which allow one-day per week watering, even in drought conditions. As MassDEP is well aware, the permit conditions were a negotiated compromise between the regulatory agencies, the water suppliers, and the watershed groups during the SWMI process. Permits are designed by MassDEP to have higher bar to meet given the Public Water System may be asking for increased volume. Water suppliers conceded to a more localized trigger of a seven-day low flow in permits, which when tripped, would only allow one-day per week of watering. This was meant to be more responsive and protective of local environmental conditions than regional drought declarations. Under this new proposal, permitted water systems would retain that condition allowing one-day per week watering, but Registered-only water systems would have to implement hand-held only water restrictions (at Level 2) or outright bans (Level 3 and 4). This shows that consistency in restrictions will not be achieved with the proposed regulatory action.

The proposed regulation also does not address restrictions on private well owners who will still be able to water during times of drought. The regulations will not solve the problem of residents on public water supplies watering during droughts, as those with the financial means to do so will simply install private wells to continue maintaining their private property.

Suggested revisions to proposed changes to 310 CMR 36.00

36.03 - Definitions:

<u>Multi-year Drought Storage:</u> MWWA requests that MassDEP remove the proposed definition for Multi-year Drought Storage for reasons we will enumerate in our comments on section 36.07 (2)(c)(3).

Nonessential Outdoor Water Use:

We note in (e)3. that MassDEP allows golf courses with an event venue to water by hand-held hose or drip irrigation as necessary to maintain gardens, flowers, and ornamental plants. This exemption is appropriate; however, we also believe this same exemption should be provided to other event venues (not tied to a golf course) as they have the same business interests a golf course would in maintaining their landscape for weddings/events. We suggest golf courses be stricken so that event venue stands on its own in that section.

Aside from our suggestion above, MWWA notices there are inconsistencies with MassDEP's proposed definition of Nonessential Outdoor Water Use and MassDEP's long-standing guidance "Restricted Nonessential Outdoor Water Uses" that is used in Water Management Act permitting. MWWA has combined the proposed definition in the draft regulations with the existing guidance and is providing a revised comprehensive definition that allows for uses previously recognized under the existing guidance.

Nonessential Outdoor Water Use

- 1. Means uses that are not required:
 - a) for health or safety reasons;
 - b) by statute or regulation;
 - c) for the production of food, including vegetable gardens, and fiber;
 - d) for the maintenance of livestock;
 - e) to meet the core functions of a business including but not limited to:
 - 1. Plant nurseries as necessary to maintain stock
 - 2. Golf courses as necessary to maintain tees, greens, and limited fairway watering per 310 CMR 36.07(2)(c) 2.a. through d.
 - 3. Golf courses with an event venue as part of their core business and other event venues when limited to watering by hand-held hose or drip irrigation as necessary to maintain gardens, flowers, and ornamental plants
 - 4. professional washing of exterior building surfaces, parking lots, driveways and/or sidewalks as necessary to apply surface treatments such as paint, preservatives, stucco, pavement, or cement in the course of construction, reconstruction, or renovation work;
 - 2. The following uses may be allowed when mandatory restrictions are in place:
 - a) irrigation of public parks and public recreation fields; or
 - b) irrigation to establish a new lawn as necessary to stabilize soil in response to new construction or following the repair or replacement of a Title 5 system; or
 - c) irrigation to establish a new lawn and new plantings during the months of May and September; or
 - d) irrigation of gardens, flowers, and ornamental plants by means of a handheld hose or drip irrigation systems; or
 - e) irrigation of lawns by means of a hand-held hose only; or
 - f) washing of vehicles as necessary for operator safety
- 3. Nonessential outdoor water uses that are subject to mandatory restrictions include:
 - a) irrigation of lawns via automatic irrigation systems or sprinklers;
 - b) filling swimming pools;
 - c) washing vehicles, except in a commercial car wash
 - d) washing exterior building surfaces, parking lots, driveways, or sidewalks

To the extent feasible, all summer outdoor water use should take place before 9 am and after 5 pm when evaporation and evapo-transpiration rates are lower.

Our proposed definition should be adopted, and permits should be amended with the new definition so there is one consistent definition of non-essential outdoor water use.

Registration Conditions: 36.07 (2)(c)(1) states that "no later than 24 months after the issuance statement, the registrant shall establish enforceable restrictions limiting nonessential outdoor water use." It should be noted that changes to bylaws or ordinances sometimes require actions and approvals beyond the purview of the Public Water System. There needs to be recognition that if the Public Water System makes their best effort, and enforceable restrictions are not approved by the local approving authority (i.e., Town Meeting; District Meeting), that the Public Water System will be held harmless. We suggest modifying this to say, "no later than 24 months after the issuance statement, the registrant shall put forward for approval of the governing body enforceable restrictions limiting nonessential outdoor water use."

Registration Conditions: 36.07 (2)(c)(1)(a) through (c) Tying watering restrictions to the Massachusetts Drought Management Plan and regional drought declarations is not appropriate. The Drought Plan is based on many indices that are not water supply related. The Commonwealth was highly criticized by the watershed associations for responding too late to dry conditions in 2016; they argued that the Drought Plan was not responsive enough. This outcry prompted a complete overhaul of the Massachusetts Drought Management Plan. When the changes to the plan were proposed, MWWA commented that the trigger points were too sensitive, and our concerns have been validated. Since the plan was adopted in September of 2019, there have already been three droughts declared (a one-month drought in the Connecticut River Valley in October 2019, a six-month drought beginning June 2020 which progressed to all drought regions and ended in December 2020, and the current drought, declared March 2021); compare that with four droughts that occurred over a 10-year period between 2007-2017 and it is clear Massachusetts will be in "drought" more frequently simply because of the sensitive metrics. MWWA believes moving in and out of drought more frequently, and even month to month, is going desensitize the public to drought conditions and stands to threaten water systems' ability to get their customers to act to reduce water use, if really needed.

Another complicating factor is that most mainstream media regularly report on conditions from the National Drought Monitor. However, the way the Massachusetts indices are ranked, Massachusetts trips a Level 1 drought status when the National Drought monitor is reporting only abnormally dry conditions. It is confusing to the public to hear from meteorologists that there is no drought, when in fact under the MA Drought Plan there is indeed a drought.

Public Water Systems should have their own system-specific drought management plan with triggers and response actions tailored to their system's unique characteristics; we will expound upon this recommendation below.

36.07 (2)(c)(3) provides an exemption for Registrants with an "accepted drought management plan." While we agree with the provision for an exemption, MWWA is concerned with the requirement that in order to submit a Drought Plan for approval and exemption the system must have a minimum of three times their authorized withdrawal in storage (hence our request to remove the "Multi-year Drought Storage" definition). The industry's standard of practice for drought planning and response is American Water Works Association's "M60 Drought Preparedness and Response" manual (M60 manual). AWWA's M60 manual, also referenced in the 2019 Massachusetts Drought Management Plan, presents guidelines on establishing the risk a system faces through a process of forecasting supply in relation to demand. The M60 manual has no reference to three-times storage capacity, or any other storage requirement, for the development of a risk analysis that forecasts supply in relation to demand. The criterion of having no less than three times authorized volume for the exemption makes it such that MWRA will be the only water system who will qualify for this exemption. No one will argue that MWRA should not have an exemption; it has more than adequate storage to sustain its system even during a multi-year drought. However, MWWA strongly believes that, if these regulations move forward, an exemption opportunity must also exist for other surface and groundwater systems with system-specific drought plans.

MWWA asserts that rather than the criteria laid out by MassDEP in this section of the proposed regulation, system-specific Drought Management Plans should be developed in accordance with the standard of practice contained in the M60 manual. While the reservoir storage capacity relative to a system's full annual Registration is important, it is only one of multiple factors necessary to understanding the forecasted supply during drought conditions. Other factors should include the full range of expected inflows observed in the historic record including severe droughts and the seasonal variability of those inflows. Using the methods described by the M60 manual, several reservoir supply systems in Massachusetts can demonstrate meeting their full demand during the most extreme multi-year drought scenarios. If the intention is to alert systems that their forecasted supply is at risk of not meeting the full demand, the regulations should follow the technical standard for that process. The current "Multi-Year Drought Storage" criteria for letting suppliers develop a system-specific analysis is not based on sound risk science or water resources practice.

We request that MassDEP strike the language in 36.07 (2)(c)(3) and replace it with the following:

"A registrant may implement non-essential outdoor water use restrictions in accordance with an accepted drought management plan instead of the restrictions described in 310 CMR 36.09(2)(c)1. The Department will accept system-specific drought plans that are developed in accordance with American Water Works Association's "M60 Drought Preparedness and Response" manual, or other state-endorsed drought plan guidance."

Irrespective of our suggested language change, MWWA believes there are errors in this section as 36.07 (2)(c)(3) provides for the accepted drought management plan instead

of the restrictions described in 310 CMR 36.07 (2)(c)1, yet in 36.07 (2)(c)(3)(4) it states that the "restrictions have to be at least as restrictive as those in 310 CMR 36.07 (2)(c)1 through 3"; but we believe maybe MassDEP meant 310 CMR 36.07 (2)(c)(1) and (2), because (3) does not contain restrictions, that section of the draft regulations provides details of the exemption. If it was meant to reference restrictions no less stringent than those in the MA Drought Plan referenced in 310 CMR 36.07 (2)(c)(1)(a) through (c), MWWA objects to that requirement. Those Registered systems with an accepted drought management plan should be allowed to have restrictions which are tied to local trigger points and have actions specified by the Public Water System to help them meet demand, rather than those prescribed by the MA Drought Plan (that may be odd/even, limited hours of watering, or some scenario other than 1 day per week or hand-held only restrictions). We urge that 36.07 (2)(c)(3)(4) be stricken as it is unnecessary.

MassDEP should allow water suppliers to develop risk analyses for their own systems subject to approval based on the technical standards presented in M60. The resulting rule curves that relate storage level to levels of acceptable or unacceptable risk would be a more data-driven basis for nonessential restrictions.

<u>36.07 (2)(c)(3)(6)</u> states that if a Registrant holds a Registration and a Permit, the Permit language shall be controlling. We do not object to this language but note that by its inclusion there will be differing water use restrictions by Permitted and Registered users, resulting in systems who are Registered-only having more stringent restrictions than the Permitted users. This seems unfairly punitive to Registered-only systems whose use has not increased since 1986. This language also contradicts the Commonwealth's own objective to ensure uniformity of outdoor water use restrictions.

<u>36.07 (5)</u> allows MassDEP to impose "planning, recording, and reporting requirements necessary to implement the condition described in 310 CMR 36.07(2)"; MWWA questions what planning and recording requirements are expected.

There is a better, more meaningful, alternative: System Specific Drought Plans

MWWA opposes MassDEP promulgating regulations to condition Registrations because they are ineffective and ultimately counter-productive for the reasons outlined in our letter. However, we are fully supportive of drought planning and preparedness and would like to offer an alternative regulatory proposal. MWWA would fully support MassDEP moving forward with an amendment to 310 CMR 22.04 (13) to ensure that every Public Water System in the state has a system-specific drought plan as a component of their Emergency Response Plan (to be developed within 5 years of promulgation of the regulation), containing triggers and response actions based on the water system's capacity. MWWA contends that will provide a much more meaningful opportunity to enhance water systems' resiliency to climate change than the current regulatory proposal. Given the recent determination that the Registrations will not expire until April 7, 2023, there is no longer the urgency the State had to pass the regulation amendments by the end of the year so there is time to work with MWWA on our alternative proposal. We are aware that MassDEP intends to promulgate changes

to 310 CMR 22.00 this summer, and so the opportunity exists to include this regulatory amendment in that package, rather than moving forward with the proposed changes to 310 CMR 36.00.

MWWA had been working closely with the Commonwealth to develop guidance for system-specific drought plans in 2018. The state staff became too busy with the development and implementation of the state drought plan and momentum was lost. Together, we must make it a priority to finalize this guidance, and once completed, the state should offer technical assistance and funding to help water systems develop their plans (like the program offered by MassDEP for M36 water audits).

Closing Summary

In closing, MWWA would be remiss if we did not point out the reality, which is Public Water Systems provide the service that residents need and demand. If the EEA and MassDEP are interested in further controlling water use and changing residents' behavior to be more mindful of conservation, they should develop a statewide campaign that educates residents appropriately. It should not be up to each individual Public Water System to have to message and police residents' water use. As we have outlined, the proposed regulations will not achieve their intended goal, but will divert water suppliers' attention and resources away from infrastructure improvements, which will truly make water systems more resilient.

MWWA appreciates the opportunity to present facts and policy considerations to demonstrate that regulations to condition Water Management Act Registrations would infringe on Registrants entitled withdrawals, are not legally permissible, and are not necessary to achieve water conservation, or even useful to the goal of environmental protection. Climate change is not just about being prepared for drought. Other considerations include impacts to water quality, reliability of infrastructure, and disaster preparedness. If there is insufficient or no funding necessary to address all these issues, water supply systems will be compromised. Based on the facts, MWWA has shown how the proposed regulations will not foster water system resiliency, and will, in fact, be detrimental by limiting revenues needed to maintain and upgrade our water systems. MWWA respectfully requests MassDEP rescind these draft regulations as they are not necessary and counter-productive, and instead work with MWWA and the Public Water Systems to pursue measures that will yield more meaningful and tangible results toward increasing water system resiliency.

Sincerely.

Jennifer A. Pederson Executive Director

In Rederso

Enclosure

cc: Bethany Card, Undersecretary, EEA
Vandana Rao, PhD, Director of Water Policy, EEA
Martin Suuberg, Commissioner, MassDEP
Kathleen Baskin, Assistant Commissioner, MassDEP
Duane LeVangie, Program Director-WMA, MassDEP



Native Fish Coalition NativeFishCoalition.org info@NativeFishCoalition.org

Sent via electronic mail

July 26, 2021

Dear Secretary Theoharides and Commissioner Suuberg,

I am writing on behalf of the Massachusetts Chapter of Native Fish Coalition to express our support for the proposed amendment to the Water Resources Management Program Regulations (310 CMR 36.00) to limit outdoor water use during times of drought to provide river flow protections. We also encourage MassDEP to strengthen the proposal to protect the most vulnerable streams to conserve Massachusetts' native fishes.

Native Fish Coalition (NFC) is a nonpartisan, grassroots, donor-funded, all volunteer, 501(c)(3) national non-profit organization dedicated to the conservation, preservation, and restoration of wild native fish. We currently have state chapters in Alabama, Connecticut, Maine, Massachusetts, New Hampshire, Pennsylvania, Vermont and West Virginia representing members, partners, volunteers, supporters and followers.

The need for comprehensive water management regulations cannot be understated, and there is no greater example than the Ipswich River watershed. Outdated laws and a lack of enforceable regulations for many residential, commercial and agricultural water users have contributed to the complete dewatering of sections of the system six times since 1995. Simply stated, aquifers throughout the state are being overdrawn. Water conservation must be a year-round goal and not just in times of drought.

Our coldwater wild native fish are particularly susceptible to aquifer drawdown. If the seepages and springs that many of our wild native fish such as brook trout rely on dry up, it can result in stressed populations or extirpation of local populations that depend on this cold, well-oxygenated water to survive.

Limited water supplies and increased water use, coupled with longer and more severe droughts across the country, have brought us to a key moment for reimagining water policy. We can no longer neglect the recharge of our groundwater supplies. What we do to protect our aquifers over the coming years could serve as a model for improving river health and groundwater policy throughout the country. We encourage you to help Massachusetts become a national leader in preventing the widespread negative impacts of drought by increasing the resiliency of our water resources and protecting and preserving our wild native fishes.

Thank you for your prompt attention to this matter.

Sincerely,

Robert M. Dalton Jr., Chair, Massachusetts Chapter of Native Fish Coalition

CC: NFC National Board, NFC Massachusetts Board

FOR THE ASSABET SUDBURY & CONCORD RIVERS



23 Bradford Street · Concord, MA 01742 978 · 369 · 3956 office@oars3rivers.org

www.oars3rivers.org

July 26, 2021

Mass. Dept. of Environmental Protection
Bureau of Resource Protection—Watershed Management Program
One Winter St., 5th Floor
Boston MA 02108

Attention: WMA Regulations

Re: Comments on proposed Regulation changes to 310 CMR 36.00, Water Management Act

Dear Mr. Levangie:

Thank you for the opportunity to submit comments on the proposed changes to the Regulations under the Water Management Act to add conditions to Registered water sources during times of declared drought.

OARS is a non-profit watershed organization established in 1986 to protect, preserve and enhance the natural and recreational features of the Assabet River, its tributaries and watershed. In 2011 the Sudbury and Concord Rivers, their tributaries and watershed were added to our mission. OARS has some 900 members and has operated a successful quality-controlled, water quality monitoring program with an EPA and MassDEP-approved QAPP since 2000, a biomass monitoring program, a large-scale volunteer annual river clean-up, and a variety of educational workshops, canoe trips and other activities designed to foster enjoyment and good stewardship of the rivers. The federally-designated Sudbury-Assabet-Concord Wild and Scenic River, Great Meadows National Wildlife Refuge, Assabet River National Wildlife Refuge and many state and local parks and protected areas depend on healthy aquatic resources to support the abundant wildlife and recreational opportunities they provide.

Most communities in the 370-square-mile watershed depend directly on groundwater for their drinking water supply, some draw from reservoirs, one draws from the Concord River directly, and a few are connected to the MWRA system. There are many municipal and commercial users with registrations, the subject of this regulatory revision. There are also many small farms, golf courses, and industries that depend on groundwater resources for their economic viability.

Starting in 2016, OARS has attended many meetings of the state's Drought Management Task Force. These early meetings made it very clear that revisions were needed in order to have the state's Drought Management Plan be effective at minimizing the harm wrought by droughts. OARS participated in the review of the revisions and felt they improved the policy significantly; the high-quality data and careful assessment of drought conditions and the resulting declarations should make a significant difference. However, as long as the Governor's declaration of a drought only has regulatory impact on that fraction of large water users with Permits, the Plan will not have the desired impact on the water use of the Commonwealth. We must all recognize that with climate change and continued development and loss of recharge, drought conditions will only get worse, and our communities' small and shallow aquifers will not provide a sustainable source of water for public health, safety, local economies or wildlife in the future. Unless we significantly change how we use water when it is scarce, sustainability will only decrease and the enduring damage will only increase.

During the droughts of 2016 and 2020 many tributaries in the SuAsCo watershed were completely dry. Streams, ponds and rivers in the watershed support listed or threatened water-dependent species. The flow in the Assabet River becomes over 90% effluent from permitted wastewater treatment plants during low flows, and all three rivers become extremely slow moving, shallow and inhospitable to aquatic life. Several water suppliers were stretched to the limit. We note that the discovery of PFAS contamination in the public supplies of several communities has necessitated a shift to the remaining uncontaminated wells despite existing pumping restrictions to protect the environment and sustainability. If this were to occur during a drought, the impacts could be very severe. Amplification of limited water resource availability due to contamination is an additional stressor we will have to adjust to.

We strongly support the proposed changes to the Regulations to meet the purposes of the Water Management Act. These revisions will address the facts on the ground that climate change requires—specific and strong actions to maintain the sustainability of the Commonwealth's water resources—as recognized and required by state policy (e.g., the State Hazard Mitigation and Climate Adaptation Plan of 2018). We understand that these changes will impose new and/or additional stresses on the operations of municipal water suppliers and may require changes in their systems; we hope that the state may assist them in meeting these new needs as well as protecting the most vulnerable residents against economic hardship.

The overarching responsibility of the state is to protect essential water uses, and the proposed restrictions of non-essential uses is absolutely justified so that the Commonwealth has a drought management system that is both *effective* and *equitable*. It cannot be effective unless it is proactive and preventative, taking measures to protect water resources before a drought deepens, and is *consistent* across all major users. There are further steps that need to be taken that are not part of these proposed revisions that we hope DEP will tackle next. That said, these proposed revisions are long overdue and urgently needed and we hope that they will be approved and put into effect in the forthcoming Registration renewals and implemented on an accelerated basis.

Thank you for your work to provide for the sustainable use of our most precious resource. We hope that these comments are useful.

Yours sincerely,

Alison Field-Juma Executive Director

The Nature Conservancy in Massachusetts 99 Bedford St., 5th Floor Boston, MA 02111

Tel (617)532-8300 Fax (617)532-8400

nature.org/massachusetts

July 26, 2021

Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Water Management Regulatory Comment Box
One Winter Street, Fifth Floor
Boston, MA 02108
Attention: Beth McCann

Via email, dep.talks@state.ma.us

Re: Proposed Amendments to 310 CMR 36.00, Water Resources Management Program Regulations

To Whom it May Concern,

Thank you for the opportunity to provide comments in support of the Department of Environmental Protection's (MassDEP) proposed amendments to 310 CMR 36.00, Water Resources Management Program Regulations.

The Nature Conservancy is a global non-profit conservation organization whose mission is to "conserve the lands and waters on which all life depends." Working with the best available science and in collaboration with individuals, local communities, businesses, public agencies, and other nonprofit groups, TNC in Massachusetts is working to avoid the unmanageable and manage the unavoidable impacts of climate change. We proudly represent the ideals of 28,000 members in Massachusetts and more than one million members globally.

TNC has been a core partner in establishing the enabling conditions for the State Hazard Mitigation and Climate Adaptation Plan and the Municipal Vulnerability Preparedness Program, as well as in ensuring nature-based solutions are used by the state to address both climate mitigation and adaptation in policies, plans, and programs. All water is connected, and it is critical that we consider the resilience of our water resources as we all work to build a more resilient Commonwealth. Drought and flash droughts in Massachusetts have increased in duration and frequency in the last few years, and this trend is likely to continue into a further climate altered future.

As indicated in our 2014 comments on amendments to Water Resources Management Program Regulations, we support conservation measures for registered water withdrawals and requirements for all withdrawals in the most impacted basins to minimize existing impacts.

We appreciate that the recently proposed amendments are a step forward, and we urge DEP to act consistently with the Commonwealth's Drought Management Plan and the purpose of the Water Management Act (WMA) by proactively managing our water to avoid drought impacts.

As the impacts of climate change become more severe (and predicted to worsen), it is critical that we act to make our water management systems more resilient, particularly through comprehensive water conservation. If implemented, the proposed regulations will subject an additional approximately 185 million gallons of water per day (20% of all public water withdrawals) to conservation requirements during droughts. This is particularly important for basins like the Ipswich River and the Jones River, which acutely feel the impacts of drought but have a majority of their withdrawals as registrations.

With water registrations up for renewal, now is the time to implement forward-looking climate adaptation policy through these changes. Waiting ten years for the next opportunity could put Massachusetts' human and natural communities at risk.

Again, thank you for proposing these amendments. The Conservancy is committed to continuing to work to ensure that the Administration and Legislature provide EEA agencies with necessary funds from state operating budget and capital resources to implement and manage the WMA and vital activities. We also support the use of public funding and incentives to help water suppliers meet their goals of providing water for people and protecting the environment.

Please contact me at abowden@tnc.org with any questions. Thank you for your consideration.

Olisan a Bowden

Alison A. Bowden

Director, Rivers, Coasts & Oceans



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July 26, 2021

Massachusetts Department of Environmental Protection Bureau of Resource Protection – Water Management Program One Winter Street, 5th Floor Boston, Massachusetts 02108

RE: Proposed Amendments to 310 CMR 36.00, Conditions on Water Management Act Registrations

To whom it may concern:

On behalf of the members of the Utility Contractors' Association of New England ("UCANE"), a trade association comprised of over 250 major contractors and associated business men and women who design, build, finance, insure, bond, and supply materials and equipment to the underground water and sewer construction industry, I am writing to respectfully request that the Massachusetts Department of Environmental Protection (DEP) delay the implementation of any amendments to 310 CMR 36.00, relative to the placement of conditions on registrations under the Water Management Act, until further stakeholder engagement and data analysis is conducted. Given the impact of the COVID-19 pandemic on municipalities and regional water utilities and the fact water conservation efforts appear to be highly successful already, we feel now is not the time for additional regulation.

As you know well, Massachusetts has a significant funding gap in addressing its water infrastructure needs over the next twenty years. The 2012 report of the Massachusetts Water Infrastructure Finance Commission and a 2017 report from the Office of the Auditor found that the Commonwealth and its municipalities have a \$18 billion to \$21 billion funding gap in meeting their drinking and wastewater infrastructure needs. The Massachusetts Clean Water Trust (CWT) has been an invaluable resource in addressing Commonwealth's funding gap. Unfortunately, at the same time we continue to ask our municipalities and regional water utilities to invest in their water infrastructure systems, we fail to recognize the additional hurdles – some more pressing than others – that continue to be placed in their path.

The proposed amendments to 310 CMR 36.00 serve the noble idea of conserving our water resources. However, the regulations, as currently proposed, do not seem to account for the fact that the Commonwealth's water usage – particularly after the COVID-19 pandemic restrictions – is consistently trending in the right direction as a result of a myriad of conservation restrictions and mechanisms that are already in place. As identified in written testimony submitted by the Associated Industries of Massachusetts (AIM) and the Massachusetts Water Works Association (MWWA), the DEP's own data shows that water usage among registered water systems is well-reduced from the allocated amounts as well as the amounts used when conservation efforts were notably weaker in the 1980s.

Further, the proposed regulations appear to utilize a "one-size fits all" philosophy where all water systems are considered the same, regardless of their location in the state. If a water system in western Massachusetts has a potential reduction in available water due to drought conditions, it seems illogical to suggest that a water system in eastern Massachusetts must be held to the same standard when their water sources and capacities are most likely quite different.UCANE appreciates the need for conservation efforts in a time of drought (or to prevent a drought), but forcing all water utilities to adhere to the same usage requirements regardless of source and existing usage seems unrealistic.

Finally, UCANE reiterates the concern that we are currently facing a tremendous water infrastructure funding gap and, despite its intent, the proposed regulations in 310 CMR 36.00 may actually harm municipalities and regional water utilities financially. Our water infrastructure system relies on an outdated and soon-to-be-archaic system of rates based on the volume of water used. The revenue collected from water and sewer rates only pays for operating expenses – not capital needs. In light of the ongoing success of previous conservation efforts led by the DEP and the Massachusetts legislature's recent actions in Chapter 8 of the Acts of 2021, water volumes will continue to drop – meaning that municipal and regional water utilities will continue to see their revenues decline. Without substantial further financial assistance, we may be setting the stage for an environment where water and sewer rates rival those of our mortgages or rent.

UCANE appreciates the work the DEP does every day to protect the Commonwealth's environment. It is a difficult task to balance the variety of competing needs. In this circumstance, UCANE respectfully requests that the DEP delay the implementation of this proposed regulatory amendment until more stakeholder engagement and data analysis occurs.

I appreciate your consideration of these comments. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely.

UTILITY CONTRACTORS' ASSOCIATION

OF NEW ENGLAND, INC.

Jeff Mahoney Executive Director



485 Ware Road Belchertown MA 01007 (413) 213-0454 fax: (413) 213-0537

email: info@wscac.org

July 26, 2021

Elizabeth McCann, Water Management Act Program MassDEP
One Winter Street, 5th Floor
Boston, MA 02108

RE: Proposed Amendments to 310 CMR 36.00-Conditions on WMA Registrations

Dear Ms. McCann,

The Water Supply Citizens Advisory Committee (WSCAC) to the Massachusetts Water Resources Authority (MWRA) is providing comments on MassDEPs proposed amendment to 310 CMR 36.00, the Water Management Act regulations to include a new condition on registrations that would restrict nonessential outdoor water use by registrants during a drought declared by the Secretary of EOEEA.

WSCAC has a seat on the Drought Management Task Force and has provided comments on the updating of the MA Drought Management Plan after the 2016 drought. We support MassDEP's proposed amendment to registrations for the following reasons:

- Aligning WMA registrations to respond to a declared drought as specified in the MA Drought Management Plan will produce a more unified drought response. WMA permits already restrict nonessential outdoor water use from May-October.
- During a declared drought, nonessential outdoor water use should be reduced in order to ensure an adequate supply of water for public health, safety, and protection of natural resources.
 MassDEP's proposed amendment allows for essential uses to continue including agricultural and required uses by statute.
- Massachusetts experienced two significant droughts in 2016 and 2020. The lack of a unified response in 2016 occurred throughout the state. This caused delayed and inadequate public messaging, a lack of drought preparedness at the municipal level and insufficient collaboration between state agencies. There were impacts to public drinking water sources, natural resources, agriculture production and wildfire risk. The updating of the MA Drought Management Plan in 2019, in collaboration with the Drought Management Task Force, is a response to lessons learned after the 2016 drought. We saw improved communication from the state with the flash drought in 2020, yet a lack of unification remains at the municipal level.
- With flash droughts becoming more frequent, conserving water for essential needs during a declared drought is a reasonable and attainable goal for all communities. We know from previous experience that without a unified and timely response, water supply emergency

declarations, crop damage, heightened wildfire risk and low/no flow conditions in rivers and streams can affect towns throughout the state.

While each public water system may have unique characteristics, and larger systems may have a more flexible margin, regulating outdoor nonessential water use during a state declared drought is a significant and achievable way to ensure there is adequate water for critical uses.

During the 2016 drought, MWRA water sales were up 38% for nine partially supplied MWRA water communities. Four additional communities made inquiries about possible emergency connections if the drought continued. As a regional wholesale water supplier with a MassDEP registration of 300 mgd and an approved drought plan, the MWRA would not be included in the new proposed amendment. While MWRA encouraged wise water use during the droughts of 2016 and 2020, fully supplied water customers were not restricted from outdoor water use as reservoir levels were within the Normal range.

In summary, WSCAC appreciates and supports this first step toward coordinating water use in times of drought so that residents and natural resources in the present and future will have an adequate water supply.

Thank you for the opportunity to comment on the proposed amendments to 310 CMR 36.00.

Sincerely,

Lexi Dewey

Executive Director

lesa Devery

WSCAC



From: Michael Arricale <

Sent: Sunday, July 18, 2021 12:47 PM

To: DEP Talks (DEP)
Subject: WMA Regulations

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Please rescind the proposed WMA regulations and allow water systems to maintain local control of and apply local expertise to their water supplies. A one size fits all approach never works. Thank you.

Sent from my iPhone



From: Barbara Arsnow <

Sent: Saturday, July 10, 2021 7:26 AM

To: DEP Talks (DEP)
Cc: Wayne Castonguay

Subject: Amendments to Water Management Act

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During the thirty five years we have lived in Lynnfield, we have experienced numerous droughts, and our aquifer is stressed. The Ipswich River and its watershed must be protected, and the proposed amendments to the Water Management Act are a necessary step in the right direction. It is our hope that the new rules will be enforceable through the penalties outlined in the amendment.

Thank you for your work to protect our water supply.

Barbara and Ed Arsnow

(DEP)

From: Corey Beauvais <

Sent: Saturday, July 24, 2021 8:51 AM

To: DEP Talks (DEP)

Subject: WMA Regulations Comments

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Dear Members,

I am writing to ask you to please NOT declare golf courses and brand new lawns exempt from drought watering restrictions/bans. Our planet's climate crisis is more plain than ever, and it is vitally important that the choices we make be meaningful more than symbolic. Golf courses and lawns are simply not essential and do not deserve to gobble up water when we are experiencing drought.

Thank you, Corey Beauvais TO: dep.talks@mass.gov

FROM: Jackie Boudreau



DATE: 7/10/2021

SUBJECT: WMA Regulations

Thank you for giving me the opportunity to comment on the proposed amendment to the Water Resources Management Program Regulations (310 CMR 36.00). I feel compelled to write because through many drought periods in the South Shore, I have witnessed regular and daily home irrigation systems watering lawns on my way into work at 4am. I am a member of a golf maintenance staff on the south shore, and a primary part of my job is to manage the irrigation system for our golf course. Being a MA DEP water permit holder, our course has managed our system through drought restrictions following state mandates to restrict water use in times of drought.

My comment, then, is that, while I understand a little more than a homeowner about water withdrawals from municipal and underground water sources, I think that homeowners and the general population do not understand that they are using a limited resource. One of the favorite comments that I hear from people who have a home well water system, is that they can water, that the drought restrictions do not apply to them.

What I would like to see the state do is require towns and town water departments to educate all homeowners on how limited water resources actually are, whether it is being drawn from a well or from a municipality. My suggestions for this are public service announcements on tv, mailers from municipal water departments to all homeowners (well or public) explaining that all water comes from underground aquifers, etc., and teaching materials for schools so that future citizens of our area understand water resources before they ever own a home. Also, another level of educating the public would be to offer incentives to change their home landscapes to grasses and plants that use less water.

For the adults that are watering their lawns nightly during a drought, there should be an online reporting system to the municipal water supplier where an address of a home that's being watered during restrictions can be reported. Then some enforcement action can follow to make them shut the water off until the drought restrictions have been lifted. Also, the meters tell a story, too. Water suppliers should be able to tell by the numbers a meter is putting out that a home might be running an irrigation program at night and they can confirm that by the obvious signs of a green lawn next to a dormant one. There are so many ways to know that somebody is watering during drought restrictions.

Then there's the enforcement side. Start with fines, then go to something like an irrigation system boot, like the one that towns put on a car wheel for people who don't pay their parking fines, or charging a resource tax on a property. I'm sure there are plenty of other ideas, but you get the picture. It has been astounding to drive to work at 4am and see the same lawns watering every night during level 2 and level 3 water restrictions, and this is with signs posted throughout towns, stories on local news, etc. Educating the public is a great place to start.

From: Judith Carter

Sent: Monday, July 26, 2021 2:36 PM

To: DEP Talks (DEP)

Cc:

Subject: WMA Regulations

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello -

As a North Shore resident, I strongly support the proposed amendments to the Water Management Act that would condition registrations during drought periods. Last summer, the Ipswich river was reduced to nearly a trickle where it flows near my home in Peabody. It feels like the height of irresponsibility for us as a town to continue to withdraw large amounts of water from this river during such periods of drought. Indeed, I feel that we should be working to lower our withdrawals well before a drought period is declared.

The Ipswich River has been declared one of the most endangered rivers in the US. Surely it is the DEP's responsibility to do all that it can to protect and restore this river. I hope you will begin this process by approving the proposed amendments.

Thank you for your attention -

Judy Carter



From: Joan Comeau <

Sent: Friday, July 23, 2021 3:16 PM

To: DEP Talks (DEP)
Subject: WMA Regulations

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From Joan Comeau



As an organic urban vegetable gardener for over 40 years, I do not water what little lawn that remains. I allow the lawn to go dormant over the summer. As we deplete our reserves of water I feel it is time that water bans include lawns, golf courses and other grassy surfaces when drought occurs.

I carefully conserve water for my vegetable garden. Rain barrels and watering at the root level and during mornings. I use raised beds to assist. I would also like to have permission not a ban on watering my flowers. Last year when the drought hit, my flowers stopped producing pollen and my honey bees had few plants that provided that resource. I had to supplement the bees with sugar water to keep them alive. Otherwise the bees would use their stores for the winter early and not survive the winter. And no pollinators for fruits and vegetables.

While the golf and landscaping business would like us to water grass, grass adds value only to a very small portion of our survivability in a changing climate. I've gardened long enough to know that the last few years have not been typical. We can't afford not to think bigger. Lawns/grass no, flowers yes during drought restrictions.

Joan Comeau



From: Dave Comb <

Sent: Tuesday, July 13, 2021 2:40 PM

To: DEP Talks (DEP)
Cc: Ipswich River
Subject: WMA Regulations

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I am a lifelong user of the ipswich river. I cherish its natural beauty and appreciate the clean water that it delivers to humans and wildlife, not to mention the ecosystem services it provides to our communities (saving Essex County millions of dollars every year). The Ipswich river is currently threatened by development and grandfathered withdrawals in most of the towns that the river flows through. We need better regulations that manage water withdrawals for future generations. I support the proposed amendments to the Water Management Act to condition registrations during drought.

I have witnessed the river during the drought in 2017, where the river stopped flowing to the sea! That was a warning sign for all of us to act responsibly and conserve this magnificent resource that nourishes our communities, wildlife, estuaries and oceans. It is also the responsibility of the DEP to manage our water withdrawals and condition water registrations. Please keep our grandchildren in mind as you make the necessary changes that promote better management of our watershed.

Sincerely but gravely concerned,

Dave Comb

This message contains information which may be confidential and/or protected by attorney-client privilege. Unless you are the addressee, you may not use, copy or disclose to anyone this message or any information contained in this message. If you have received this message in error, please send me an email and delete this message. Thank you.

From: Margaret Day <

Sent: Monday, July 26, 2021 1:59 PM

To: DEP Talks (DEP)
Subject: WMA Regulations

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

To Whom It May Concern:

I am writing to ask that you NOT declare golf courses and brand new lawns exempt from drought water restrictions/bans. Water is necessary for all life and should not be wasted for the pleasure of the extracurricular activity of golfing or for starting new lawns.

Thank you for your consideration on this matter.

Sincerely,

Margaret M. Day

From: Katharine Evans <

Sent: Saturday, July 10, 2021 7:35 AM

To: DEP Talks (DEP)
Cc: Ipswich River

Subject: proposed changes to the Water Management Act

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

10 July 2021

Dear Friends at our Massachusetts Department of Environmental Protection,

I am writing to support the proposed amendments to the Water Management Act (WMA) to condition water withdrawal registrations during drought, changes that are long overdue, and to support making them even stronger.

Our Ipswich River, the longest in eastern Massachusetts, was recently declared one of the Most Endangered Rivers in America, due to its extensive, "grandfathered" water withdrawals. To protect our river, which flows through fourteen communities, we need you to regulate more equitably the registration of these withdrawals -- which are four-fifths of our total, and therefore have by far the greatest impact.

In the most recent years, we have seen that registrations requiring only modest conditions on discretionary outdoor water use are actually harmful, being too little and too late. We have learned that we need to require water conservation far ahead of a declared drought, as now the Town of Ipswich and our surrounding towns do.

For river-water withdrawal registrants, all of the Commonwealth's standard conservation measures should be required, especially here and now.

Drought damage is cumulative, and it will only get worse due to climate change. I believe that access to drinkable, usable water is a universal human right; but now, even in America and in Massachusetts itself, our own local public water supplies are becoming greatly endangered.

It is the responsibility of the Commonwealth's Department of Environmental Protection to exercise your power

to do just that for us all, to protect this basic human right, through equitable, far-sighted regulation. We count on you for this good governance.

I support these proposed changes to the WMA

I support these proposed changes to the WMA and only wish they were even stronger.

Thank you for your consideration.

From: Linda Fates

Sent: Thursday, July 29, 2021 6:12 PM

To: DEP Talks (DEP)
Cc: Wayne Castonguay
Subject: WMA Regulations

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July 29, 2021 Linda G. Fates

Dear DEP,

My apologies for my belated letter to your office. We have been traveling, but the Water Management Act issue is of such pressing importance that I wanted to write in support of the proposed amendments to condition registrations during periods of drought even at the risk of my letter running late.

Under the category of running late, these much and long needed amendments are running extremely late in that we as a State and as forward-looking citizens should have updated the Water Management Act of 1986 years ago to more fairly and responsibly reflect the severe conditions that have threatened the health of the Ipswich River Watershed and the 350,000 people and business that depend on it.

As you already know, this vital water source has been declared one of the ten most endangered rivers in the nation — not a proud distinction, and an even more shocking situation for a MA river when one sees the frightening drought conditions that really poor water management, exacerbated today by climate change, has brought about in western states. When State and municipal leadership opt for short-term solutions to what are truly and quite obviously long-term challenges, the outcome inevitably fails us all.

I've come to appreciate that addressing and correcting the repeated history of over-withdrawals from the Ipswich River Watershed requires a thoughtful, deep understanding of the issues and the courage to step forward to fix what has increasingly become a wildly imbalanced situation. And in fact, as I understand it, correcting the problem is very do-able and very fair to all the communities involved.

The Ipswich River Watershed is not alone in confronting challenges to its long-term health, challenges that could be met far more successfully with basic, simple, non-onerous, conservation requirements. But ALL communities — and all registrants, across the region need to adhere to the State's standard water conservation measures before we experience drought. Two severe droughts in five years - droughts that damaged the river and created major threats to public water supplies. We cannot avoid droughts, and science forecasts increasing incidences of drought, but we can avoid the kind of unhealthy conditions experienced by over-withdrawals and widely uneven conservation practices. The DEP has the authority and responsibility to address this — after all you are the Department of ENVIRONMENTAL

PROTECTION. Please do your job and protect our water resources equitably and with the generations that follow us well in mind.

With optimism and the long view, Linda Fates

Linda G. Fates



 From:
 Deb F-W <</td>

 Sent:
 Monday, July 12, 2021 10:43 AM

To: DEP Talks (DEP)

Cc:

Subject: WMA Regulations

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear DEP,

I am including the "sample letter" below, which explains far better than I could a position I heartily agree with. Plentiful, clean drinking water is something we all seem to take for granted. Please implement the changes that will ensure that the ecosystem that supports humans and wildlife alike can and will continue to do so in the coming years.

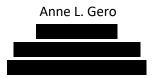
I am writing to support the proposed amendments to the Water Management Act to condition registrations during drought. As you know, the Ipswich River was recently declared one of the most endangered Rivers in America primarily because of water withdrawals. Because registered-only withdrawals make up by far the largest class of water withdrawals in the Ipswich River Watershed, regulating registrations is critical to protecting the River.

However, conditioning registrations to require only modest conservation conditions on discretionary outdoor water use is too little too late to make much of a difference for our River. Not only should water be conserved well before we are in an official drought, all of the States standard water conservation measures should be required of registrants, especially in severely flow-stressed rivers such as the Ipswich.

As you are aware, we experienced two severe droughts in just the last five years. These droughts caused severe damage to the river and threatened local public water supplies and are predicted to increase in the future due to climate change making the situation even more dire. Not only is it the right thing to do, we feel it is the DEP's responsibility to not only condition registrations during drought but to do more to protect our critical water resources in already flow-depleted watersheds.

Thank you for considering my comments,

Deborah Fowler-Wheaton



July 9, 2021

Massachusetts Department of Environmental Protection:

I am a resident of Hamilton, MA, and am writing to support the proposed amendments to the Water Management Act that would condition registrations during drought.

As you may know, Hamilton gets its drinking water supply from the Ipswich River Watershed and each summer imposes water use restrictions on its residents. As required by the terms of its withdrawal permit, those restrictions are imposed every summer regardless of water levels, and are increased even further if the water level goes below a certain point.

The Ipswich River was recently declared one of the most endangered rivers in America primarily because of water withdrawals. Imposing restrictions only on permit holders such as Hamilton have not significantly improved the condition of the Ipswich River Watershed. Registered-only withdrawals make up by far the largest class of water withdrawals in the Ipswich River Watershed. Regulating those registrations is critical to protecting the River.

However, conditioning registrations to require only modest conservation conditions on discretionary outdoor water use is too little too late to make much of a difference for the Ipswich River. Consistent with the conditions imposed on Hamilton, registered only users should be required to conserve water well before we are in an official drought.

I am tired of complying with Hamilton's restrictions only to drive through other towns where residents are allowed to water lawns, wash cars, etc. Residents of Hamilton don't take seriously the Hamilton restrictions or the calls to protect the Ipswich River when they see the uneven application of water restrictions. If DEP is serious about protecting the Ipswich River, it should impose similar conditions on all water users regardless of the historical origins of their water withdrawal rights.

With the increasing impacts of climate change, the condition of the Ipswich River will continue to deteriorate. Now is the time for DEP to take necessary and bold action to protect our endangered waterways for the benefit of the public water supplies as well as the wildlife that depend on the watersheds. DEP is responsible for protecting the watersheds; it would be a failure of that responsibility to permit the existing situation to continue.

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Anne Gero

From: Joel Hariton <

Sent: Tuesday, July 13, 2021 12:48 PM

To: DEP Talks (DEP)
Cc: Ipswich River

Subject: Water Management Act

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July 13, 2021

Joel Hariton

Dear Massachusetts Department of Environmental Protection,

I have lived in Topsfield for over 19 years, and have recognized the importance of a good flow in the Ipswich River during that time. It is critical to wildlife, and human life as we all depend on the river as a source of water when we really need it. Additionally, thousands like me make use of the river and its surrounding reserves for recreational escapes into nature. This provides economic support to Topsfield, and further downstream in Ipswich, the clamming business depends on it.

Accordingly, I never water my lawn, and take all measures to support Topsfield's efforts to conserve water during dry conditions. This would seem fair, and more tolerable, if all towns and cities using water from the Ipswich River shared this burden equitably. That is not the case, and some of us are sacrificing while others overuse water in places where it is not regulated.

So, I am writing to support the proposed amendments to the Water Management Act to condition registrations during drought. As I am sure you know, the Ipswich River was recently declared one of the most endangered Rivers in America primarily because of water withdrawals. Because registered-only withdrawals make up by far the largest class of water withdrawals in the Ipswich River Watershed, regulating registrations is critical to protecting the River.

However, conditioning registrations to require only modest conservation conditions on discretionary outdoor water use is too little too late to make much of a difference for our River. Not only should water be conserved well before we are in an official drought, all of Massachusetts standard water conservation measures should be required of registrants, especially in severely flow-stressed rivers such as the Ipswich.

We experienced two severe droughts in just the last five years. These droughts caused severe damage to the river and threatened local public water supplies and are predicted to increase in the future due to climate change making the situation even more dire. Not only is it the right thing to do, we feel it is the DEP's responsibility to not only condition registrations during drought but to do more to protect our critical water resources in already flow-depleted watersheds.

Respectfully submitted,

Joel Hariton



From: Terra

Sent: Saturday, July 24, 2021 2:18 AM

To: DEP Talks (DEP)

Subject: comments to proposed 310 cmr changes, WMA Regulations

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Regulators,

Thank you for caring for our water and for the opportunity to comment on the proposed changes to the WMA Regulations https://www.mass.gov/regulations/310-CMR-3600-massachusetts-water-resources-management-program#proposed-amendments-public-comment.

I'm sending these comments in before your deadline of Monday 7/26. Please confirm receipt.

My first comment is an overall comment that doesn't seem to be addressed in the existing or propsed regulations, but I feel compelled to say this before I get started. I am concerned that the state is trying to double/triple the rate of residential building without regard to water shortages, the health of the eco-system, increased pollution and other stress on our water. I am told that the state water regulators are not willy nilly handing out increases in withdrawal permits. I hope that's true. Either way, there does not appear to be a comprehensive water study regarding the potential impacts of the proposed growth, such as that proposed in S.871 and H.1448. Therefore, I am greatly concerned.

These bills declare a "need" of over 400,000 new housing units by 2030/2040. But the state is already allowing the building of more than double the number needed to keep up with the birth/death rate. Currently, there are already 6 empty housing units for every homeless person in Massachusetts, and over 30 empty housing units for every homeless person in the US.

These bills, if passed, would facilitate/enable/allow industry to build more than three times what it's already building. Since the water systems are already stressed, I hope you register your opposition to this construction industry sponsored growth plan and its "so-called need" for new housing.

The 400,000 "goal" is not what our communities need, it's what industry "wants". We have to be more focused on need than want. The idea that "if only" we'd allow industry to build "enough" housing, the prices will go down is a trickledown fallacy. In a high demand market, they will never build more than the market will bear. Please see this video which explains how trickle down housing policy, in a high demand market like Boston will never work. https://urldefense.com/v3/__https://www.youtube.com/watch?v=6IWRRKceJbo__;!!CUhgQOZqV7M!zYKAfDTT-t2JKJ7V3J757gCsss9ejjyPXEDLErXxUrA9OGdNggnVlj6QKZzcCP14EA\$ The video was created by housing justice groups in San Francisco and it applies to all high demand markets, including Boston and New York. The point is that it's not a quantity problem, it's a pricing problem. We need to require new building to be sufficiently deed restricted to be affordable for those who are housing insecure.

The rest of the building, beyond what we need, is a waste of precious natural resources, for private profit.

And my specific comments to the proposed WMA Regulations changes.

Page 5. It appears that you are proposing declaring both golf courses and new lawns as "essential".

If so, I wholeheartedly object to this. As Martha Coakley declared in her statement to the casino industry a few years ago, doing business is a private risk, not a public obligation. The casino industry was complaining that the state may decide not to have casinos in Massachusetts after industry players spent so much money chasing the permits. I am against corporate subsidies for non-essential corporations. I am for farm subsidies, because I believe food is essential and is a right. I do NOT believe that playing golf or operating a golf course is essential.

Furthermore, I do not believe that new building should be occurring during a drought that is so extreme that we can't water our existing gardens. New lawns should NOT be exempt from water restrictions/bans. I can understand and support the watering of a new lawn to cover a septic system but not the whole lawn. The message from the state should be to NOT put new lawns in during an extreme drought. Again, I refer to my earlier comment regarding private business risk. The health of our water systems should not suffer because a private developer feels a profit-driven need to put a huge lawn in during an extreme drought.

Page 10. Similar comments as above. I do NOT believe the state should exempt either golf courses, or new lawns for the reasons stated above.

The last thing I have to say is that I wish you would ban new water hook ups during a drought with very few exceptions. New water hookups for for-profit building should NOT continue to be handed out during a drought for the same reasons stated above.

| Thank you again for the opportunity to comment. |
|---|
|---|

Terra

This email is private/confidential property, not to be correlated/shared or machine analyzed without my permission, which I withhold.

From: Irene Josephson <

Sent: Friday, July 9, 2021 2:12 PM

To: DEP Talks (DEP)

Cc:

Subject: Proposed Changes to Water Management Act

Follow Up Flag: Follow up Flag Status: Flagged

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Friends at the Department of Environmental Protection, We urge you to modify and enhance the proposed changed to the Water Management Act.

As citizens of Ipswich we are entitled to the same water rights as someone who lives in another town along the Ipswich River. The concept of "registered" water users is outdated and unfair and we urge you to treat all citizens along the rivers of our state equally by eliminating this category of water withdrawals.

Water allocation in today's changing landscape should be equitable for all towns. Water wealth should be evenly distributed and adaptable to changing conditions and needs. The health of our endangered Ipswich River should also be considered so it's valuable and irreplaceable ecosystem will be protected and enhanced. A consistent and healthy river ecosystem plays a big part in reducing flooding from big storms and changing weather patterns. Registered water users should be eliminated.

At a minimum all residents of the state should be subject to more stringent water restrictions during regional droughts. Water conservation should be a priority at the state level.

We appreciate your consideration.

Sincerely,

Irene and Eric M. Josephson



From: Karl Kastorf < Sent: Saturday, July 24, 2021 6:05 PM

To: DEP Talks (DEP)
Subject: WMA Regulations

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The proposed regulations should impose water conservation conditions on all withdrawals. All includes registered withdrawals and below-threshold withdrawals. Including these drawdowns is a major concern for those of us who live in communities that are at the downstream end of flow-impaired watersheds like the Ipswich and Parker Rivers. These are the most flow-impaired watersheds in New England.

Droughts have become common and with them local water restriction and repeated environmental damage. Prudently lpswich and other downstream communities regularly impose water restriction. Some upstream towns do not. They continue to draw on the river to wash cars and water their lawns. Given that the Commonwealth has seen fit to protect and manage water resources such protection ought to be applied equally to all people and communities in each watershed.

Karl Kastorf

From:

Sent: Friday, July 9, 2021 8:56 AM

DEP Talks (DEP)

To:

Cc:

Subject: WMA Regulations

Follow Up Flag: Follow up Flag Status: Flagged

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Jake Kelly

Dear DEP,

In addition to being Ipswich residents, my wife, our two children, and I live near the Ipswich River. We regularly hike the trails and paddle the River, which provides us with the opportunity to experience the challenges of the River first hand.

Since moving to Ipswich in 2008, we have unfortunately become accustomed to living with the challenges of an inadequate water supply. It seems water restrictions and bans are in effect during most of the year when the weather is warm enough to enjoy the outdoors. Additionally, the lack of water available from the River forces the town to withdraw water from wells that have quality issues, for example, high levels of manganese. Due to these quality concerns, we have installed an expensive filtration system to try and protect our children's and our health.

It has been frustrating and disappointing to see other neighboring upstream communities seemingly unaffected and enjoying unabated use of the limited resources of the River, even during the most challenging periods (extreme drought conditions). Sprinklers running each morning, no restrictions or bans in place, while the Ipswich River literally ran dry. The impact of which was devastating to the ecosystem.

Clearly, the current regulations are not fair, equitable, or adequately protecting the environment and wildlife. We need to change that. All of the State's standard water conservation measures should be required of registrants, especially in severely flow-stressed rivers such as the Ipswich. Now is the time, and we need your unwavering support to make it happen.

Best Regards,

Jake Kelly



 From:
 Paul L

 Sent:
 Friday, July 16, 2021 12:33 PM

To: DEP Talks (DEP)

Subject: Water conservation saves the day!

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

To MA DEP,

Over the past decade or so, the Town of Sharon reduced its water use by about 30%, thanks to our award-winning water conservation program based on <u>steeply ascending block water rates</u>. See attached graph.

It's a good thing we had the foresight to do that. Sharon's Well #4, which has historically provided about 45% of Sharon's drinking water supply, recently turned up with a 90 ppt contamination of PFAS and had to be shut down. Thanks to the success of our water conservation program, we are getting through the crisis with water from our other municipal wells.

In the future, the cost of removing PFAS from Well #4 will be less as a result of water conservation. Note that the Town of <u>Easton has approved \$9.2 million for a PFAS treatment facility</u>. This facility will doubtless have ongoing operating costs after it is built.

Also note that the policies that resulted in Sharon's success with water conservation also worked in Georgetown during a water conservation program sponsored by MA DEP from 2010 to 2013. See attached.

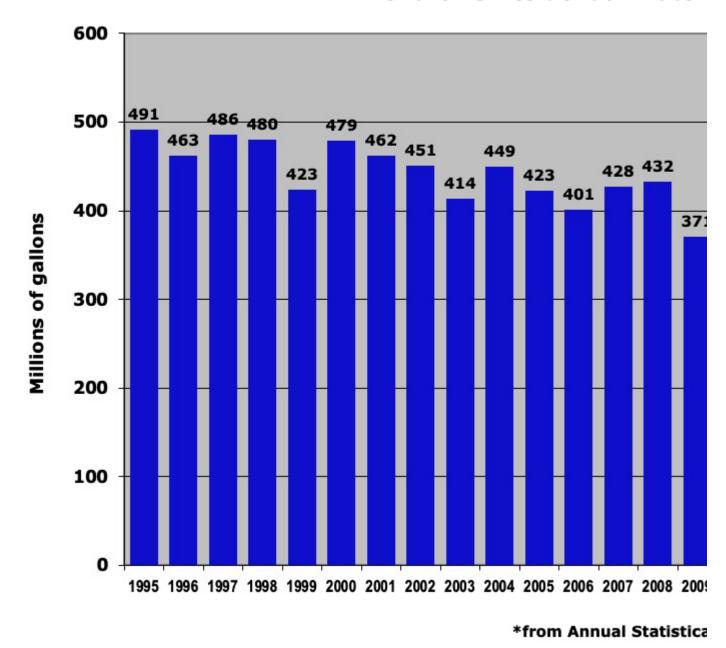
The original concept of conserving in times of plenty in anticipation of harder times is attributable to <u>Joseph in</u> <u>Egypt</u> several thousand years ago.

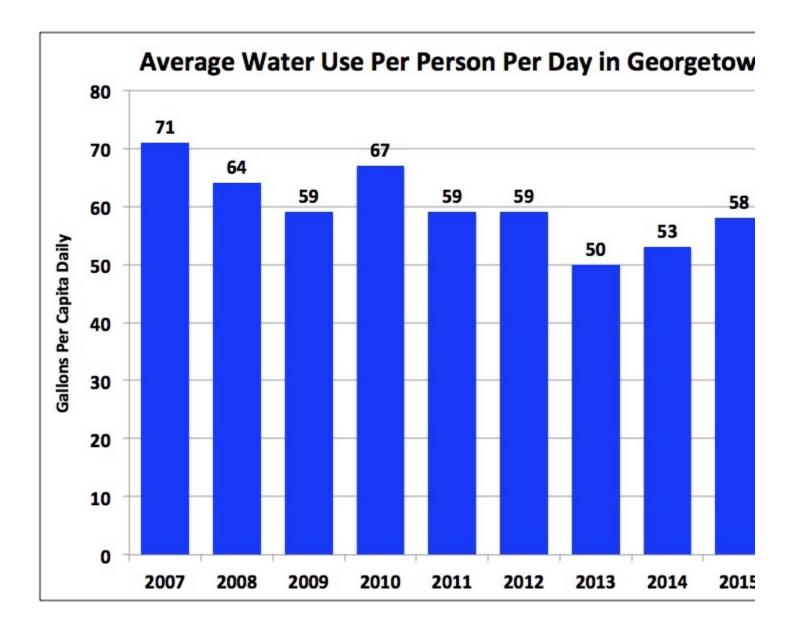
Paul Lauenstein



PS - Since 2013, the Sharon Water Department has increased the fixed portion of the water rates from \$15/quarter to the current \$60/quarter. This has had the effect of reducing the incentive to conserve water. A better approach would be to increase the incentive to conserve water by increasing the usage-based portion of the water rates instead of the fixed fees. The Water Department budget can be stabilized by creating a reserve fund that would increase in dry years when lawn irrigation revenues are higher, and be drawn down in wet years when lawn irrigation revenues are lower.







From: Kathy Lindquist

Sent: Monday, July 26, 2021 9:02 PM

To: DEP Talks (DEP)

Subject: Action on Water Registrations

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July 25, 2021

Katherine Lindquist



Dear DEP,

As climate change stresses our natural resources, it's imperative that action be taken now to protect and preserve the Ipswich River. While people stand up and take notice when the river diminishes to a trickle or, worse, dries up, taking action then is too little too late. Withdrawal rates are simply too high to allow a healthy river ecosystem. We need to remember that we are part of that ecosystem. As the river goes, so goes the wellbeing of our communities.

To ensure the survival of the river and our own future, regulations must put the survival of the river first. Yes, that will mean sacrifices and towns will be unhappy. However, communities will adjust; they must adjust. There is no substitute for fresh water. Water is a finite resource, and it's time that withdrawal rates acknowledge that fact.

Thank you for your time and consideration.

Sincerely, Katherine Lindquist



From: Anne Loyer <

Sent: Sunday, July 25, 2021 9:50 PM

To: DEP Talks (DEP)
Subject: WMA Regulations

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear DEP,

I am writing to support the proposed amendments to the Water Management Act to condition registrations during drought.

As you know, the Ipswich River was recently declared one of the most endangered Rivers in America primarily because of water withdrawals. Low river levels due to drought are killing migrating fish and efforts to restore their habitat. These fish are part of the human food web. We have to take care of our rivers to take care of ourselves.

Because registered-only withdrawals makeup by far the largest class of water withdrawals in the Ipswich River Watershed, regulating registrations is critical to protecting the River. However, conditioning registrations to require only modest conservation conditions on discretionary outdoor water use is too little too late to make much of a difference for our River. Not only should water be conserved well before we are in an official drought, all of the States standard water conservation measures should be required of registrants, especially in severely flow-stressed rivers such as the Ipswich. As you are aware, we experienced two severe droughts in just the last five years. These droughts caused severe damage to the river and threatened local public water supplies and are predicted to increase in the future due to climate change making the situation even more dire. Not only is it the right thing to do, we feel it is the DEP's responsibility to not only condition registrations during drought but to do more to protect our critical water resources in already flow-depleted watersheds.

Thank you for considering my comments, Anne Loyer

From:

Sent: Monday, July 26, 2021 10:23 AM

To: DEP Talks (DEP)

Subject: Proposed changes to WMA.

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello DEP Staff:

I am writing to support the proposed amendments to the Water Management Act to condition registrations during drought. As you may know, our Ipswich River was recently declared one of **the most endangered Rivers in America -** primarily because of water withdrawals. Because registered-only withdrawals make up by far the largest class of water withdrawals in the Ipswich River Watershed, regulating registrations is critical to protecting the River.

However, conditioning registrations to require only modest conservation conditions on discretionary outdoor water use is too little too late to make much of a difference for our River. Not only should water be conserved well before we are in an official drought - all of the States standard water conservation measures should be required of registrants, especially in severely flow-stressed rivers such as the Ipswich.

Recall that we have now experienced **two severe droughts** in just the last five years. These droughts caused severe damage to the river and threatened local public water supplies. They are predicted to increase in the future due to climate change making the situation even more dire. Not only is it the right thing to do, we feel it is the DEP's responsibility to not only condition registrations during drought but to do more to protect our critical water resources in already flow-depleted watersheds.

Thank you for consideration.

Ken MacNulty Board Member & First Vice President Ipswich River Watershed Association

Comments on Proposed Amendments to Water Management Act Regulations – Kerry Mackin

I am writing in support of amending the Water Management Act (WMA) regulations to authorize the Massachusetts Department of Environmental Protection (DEP) to regulate registered withdrawals.

A key purpose of the Water Management Act (WMA) is to protect the natural environment of the Commonwealth's waters, and to provide "reasonable protection" for rivers and their ecosystems. It has clearly not done so in the Ipswich River Watershed and the Parker River Watershed, which are the water sources for the Town of Ipswich, where I am a Water Commissioner. And there are many sub-basins in Massachusetts where withdrawals exceed the thresholds of ecological degradation identified by the U.S. Geological Survey and Mass. Department of Fish and Game during the Sustainable Water Management Initiative (SWMI). In order to protect fluvial species and river ecosystems, rivers must have:

Healthy Rivers have...

- Enough clean water year-round to maintain:
 - Continuous flow at shallow "riffles"
 - Water across entire channel to banks
 - Moderate temperatures (groundwater)
- Connectivity:
- no dry sections, isolated stagnant pools
- no permanent dams (beaver dams ok)
- connected to floodplain
- Complexity:
- Diverse habitats (rapids, riffles, runs, glides, pools)
- And are Dynamic:
- continually reshape their channels





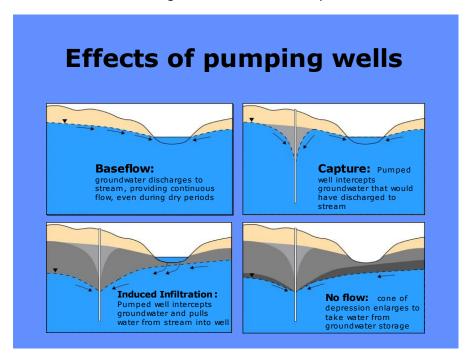
I encourage Mass DEP to regulate registered withdrawals with conditions that promote water conservation. The Supreme Judicial Court ruled it could do so more than a decade ago if it adopted a regulation so stating. This would be an important step in achieving protection of the natural environment of the waters of the Commonwealth. Also, the Supreme Court of the United States ruled years ago that the separation of water quality and water quantity is an artificial distinction

(https://cfpub.epa.gov/watertrain/moduleFrame.cfm?module_id=18&parent_object_id=393) and recent science has found that it also is a factor in increasing greenhouse gas emissions due to higher concentrations of water pollutants.

- All communities drawing water from flow-impaired watersheds and/or sub-basins should be required to implement effective conservation measures, including:
 - Conservation rate structures, including seasonal rates (higher rates in the spring-fall period) and ascending block rate structures (higher rates for those who use higher volumes of water)
 - It would be wise to consider charging a fee for any withdrawals from a flow-impaired source, including both groundwater and surface water withdrawals. Such a fee could encourage conservation and the funds raised could be used by DEP, Mass. Fish and Game and Division of

Ecological Restoration for stream/river flow restoration. Withdrawals that occur during periods when flows are below ecologically safe levels, such as identified by U.S.G.S. in these studies:

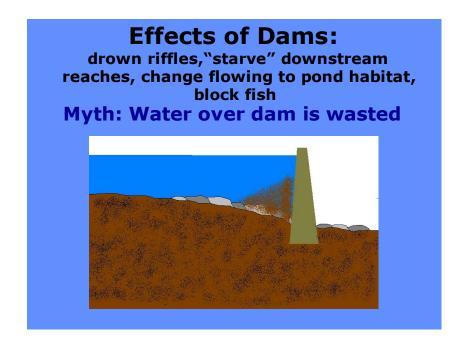
• Groundwater withdrawals are a significant cause of flow depletion, as shown here:



• I would note that I have many photos of the Ipswich River, including photos of fish kills, which are evidence of this impact of groundwater withdrawals.



o I also note that surface water withdrawal from rivers and reservoirs are a major flow-depletion cause. Many of the reservoirs in this region are filled by pumping water from the Ipswich River or other sources, and many reservoirs also have dams that eliminate natural flows into rivers and streams, causing them to dry up.

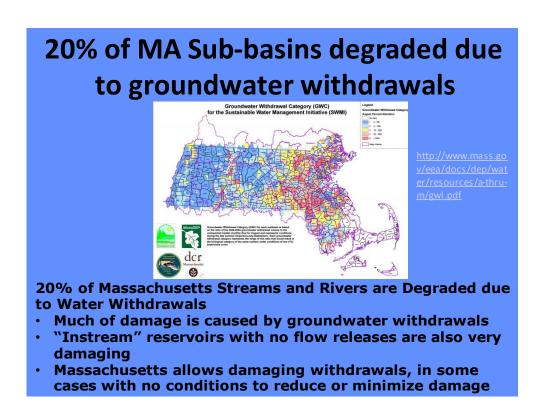


- All water withdrawals from depleted sources should be subject to restrictions and bans on non-essential water uses when flows go below levels needed to sustain aquatic ecosystems. During the drought of 2016 when numerous communities in this region were required to impose watering restrictions or bans, some other communities, including Beverly, Salem and Peabody, did not have restrictions in effect I personally witnessed sprinklers going during extreme low-flow periods in those communities, in some cases resulting in people "watering the pavement," which was very disturbing to people in the other communities that draw water from the same basin. There needs to be more effective measures to address withdrawals during droughts, including earlier non-essential water restriction/ban triggers. Perhaps the Drought Task Force should be assigned to develop more effective triggers and they should be applied on a sub-basin basis.
- New development is a serious issue in regard to water demand, due to the water demand of new
 residents or businesses and also due to the increase in impervious surfaces and the loss of natural areas,
 native vegetation and in some cases adverse impacts on wetlands. Thus, it is important to promote LowImpact Development (LID) and other measures to retain natural vegetation, ground permeability, etc.
- Water suppliers/withdrawers also need to implement Water Use Mitigation Programs, which could be
 done by a community and/or could be done regionally. This in effect requires new development or
 redevelopment to pay a fee to the community water supplier to be used to offset the development's
 water demand by reducing water usage elsewhere in the community (through infrastructure
 improvements, replacement of inefficient fixtures and appliances in public buildings and rebates).
- Another major issue in this region is the fact that there are so many "below-threshold" withdrawals in the Ipswich River Basin, below threshold withdrawals have been estimated at 3-4 million gallons a day during recent drought periods. The WMA has a provision allowing DEP to reduce the threshold in flow-impaired basins/sub-basins. DEP should do so. Also, communities have the authority to apply watering restrictions and bans to non-public water withdrawers. This should be a requirement in all flow-impaired areas of the state, since private withdrawals can deplete aquifers and surface waters as well.
- Another way to promote conservation is to require the installation of EPA Water Sense fixtures and appliances. Water suppliers should provide economic incentives, such as rebates, for the replacement of older, less efficient fixtures and appliances as well. This can be funded via Water Use Mitigation Programs, if needed.
- Providing more education and outreach about water conservation is also important. There are many
 measures to reduce indoor "essential" water demand, including promoting shorter showers with water

- efficient shower heads; using appliances like dishwashers and washing machines with full loads; collecting tap water that is running while water is heating up (or for other reasons) and reusing it for household cleaning; reusing "greywater" for things like plant irrigation, etc.
- There needs to be more accountability for Unaccounted for Water (UAW) and DEP should reapply the
 former definition of UAW, rather than the one that allows water suppliers not to include all the actual
 UAW.

At this point, the natural environment of the waters of the Commonwealth are at great risk due to the fact that water withdrawals are highest during dry periods – especially dry summers. Climate change is causing not only higher temperatures but more frequent and extreme droughts in this region. This represents a major threat to aquatic ecosystems. As noted in the U.S.G.S. study regarding impacts on fluvial species, flow depletion during summer is a major threat to aquatic ecosystems. Water withdrawals should not exceed 25% of the August median flows, nor 10% of January median flows, 10% of April median flow or 15% of October median flows. In fact, the safe yield methodology adopted in 2014 should be revised to address the fact that the [mis-named] safe yield exceeds the thresholds of ecological degradation based on flow statistics provided by the Mass. WRC during SWMI.

Another key point regarding this issue is that the statistics used for determining how much the actual safe yield is should be based on droughts such as the 2016 drought, during which the Ipswich and Parker River both experienced zero flows and extended periods of ecologically damaging low-flows. It would be reasonable to apply USGS's Sustainable Yield Estimator and have them determine the actual safe yield of Mass. Rivers and sub-basins, because as then EEA Under Secretary David Cash admitted during SWMI and former Commissioner Trudy Coxe admitted in the 1990s, DEP made the decision based on its view of political clout rather than science. There are a range of issues that are known to be determined by politics rather than science – which is a threat to our future. Some recent decisions made based on politics rather than science are the source of investigations, such as this: https://www.bostonglobe.com/2021/03/24/nation/epa-review-attacks-science-under-trump/ The DEP decision regarding safe yield is subject to a similar investigation, based on admissions by David Cash and Trudy Coxe and based on the methodology adopted.



Study by USGS and MA DFG showed major damage to Mass Rivers

https://pubs.usgs.gov/sir/2011/5193/



Many Massachusetts rivers and streams are damaged due to effects of imperviousness and/or water withdrawals

Most of eastern Massachusetts rivers and streams are degraded or severely degraded, according to a study of the effects of water withdrawals and imperviousness on river fish

From: Pike Messenger <

Sent: Monday, July 19, 2021 2:21 PM

To: DEP Talks (DEP)

Cc:

Subject: Water Management Act; changes to

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July 19, 2021

Dear Officials, Massachusetts Department of Environmental Protection,

I am writing on behalf of our rivers, especially the Ipswich River and it tributaries. I've been a resident of Middleton in the center of the Ipswich River Watershed since 1963. For over 30 years I've been a member of the Ipswich River Watershed Association (IRWA) and the Essex County Greenbelt Association. From 1995 to 2009 I was Middleton's conservation agent. In 1997 a small group of we Middletonites with the help of the IRWA formed the Middleton Stream Team (MST). The team now has over 30 members. I was a biology teacher for over 30 years before becoming active in the organizations listed. This list I hope bolsters the serious nature of my concerns. I am also a member of the Merrimack River Council, my river as a boy. My playgrounds were the salt marshes, flats, and tidal waters of the then, on ebb tides, stinking Merrimack. The Clean Water Act of 1973 mandated systems that cleaned up the river. I am going on about all this so you'll understand where my concerns for the health of our waters are coming from.

Now my home rivers (Ipswich and its perennial streams under the WPA)) and their watersheds and wildlife habitats are threatened by the excess use of water during droughts. The Town of Middleton's Outdoor Water Restrictions can now be ignored by those with private wells. Sprinklers are seen irrigating lawns midday even during periods of high heat. Let's have all folks within our watersheds acting sensibly to protect this basic resource for all animals and plants during droughts and even at other times. I could go on about road salt run off in winter, the use of unneeded chemicals on lawns, and small and poorly designed culverts cutting up ecosystems. You at DEP know all about this so I won't belabor the need for water and habitat protection further. Please urge passage of the proposed changes to the Water Management Act so that all towns and cities registered must follow the same conservation rules during droughts.

Respectfully,

Pike Messenger

Copy to:

IRWA Senator Bruce Tarr Representative Sally Kerans



From: Mrs. Laura Houston Napiorkowski <

Sent: Saturday, July 24, 2021 5:39 AM

To: DEP Talks (DEP)
Subject: WMA Regulations

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To whom it may concern,

I am writing to ask for golf course and new lawns to be exempt from drought watering restrictions/bans. We all must work together abiding by the same guidelines to reserve our resources.

Thank you, Laura Napiorkowski

Sent from my iPhone

From: EMILY NELSON <

Sent: Friday, July 9, 2021 8:52 AM

To: DEP Talks (DEP)

Cc:

Subject: WMA Regulations

Follow Up Flag: Follow up Flag Status: Flagged

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Date 07/11/21

Name Emily T. Nelson

Address

Dear DEP.

I've lived in Ipswich for just over 21 years and during this time we've experienced two severe droughts since 2016. I believed I was pretty good at water conservation before the first drought but I found out that if I didn't do a lot more we might run out of drinking water here in Ipswich.

I support the proposed amendments to the Water Management Act to condition registrations during drought. The Ipswich River was recently declared one of the most endangered Rivers in America primarily because of water withdrawals. Because registered-only withdrawals make up by far the largest class of water withdrawals in the Ipswich River Watershed, regulating registrations is critical to protecting the River.

However, conditioning registrations to require only modest conservation conditions on discretionary outdoor water use is too little too late to make much of a difference for our River. Not only should water be conserved well **before** we are in an official drought, **all** of the States standard water conservation measures should be **required** of registrants, especially in severely flow-stressed rivers such as the Ipswich.

The droughts Ipswich residents have experienced caused severe damage to the river and threatened local public water supplies. Droughts are predicted to increase in the future because of climate change.

The DEP must condition registrations during drought AND do more to protect our critical water resources in already flow-depleted watersheds.

Thank you for considering my comments,

Emily T. Nelson

From: Catherine Petrie <

Sent: Thursday, July 8, 2021 6:07 PM

To: DEP Talks (DEP)
Subject: Ipswich river

Follow Up Flag: Follow up Flag Status: Completed

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Please support the proposed conditions on water registrations and strengthen the proposal.

Thanks Sent from my iPhone

TRICIA V. PRIES

July 26, 2021

Duane LaVange MassDEP

Via email

Hello Duane -

This is a follow up to my comments during the Public Hearing. It has been awhile since the Sustainable Water Management Initiative meetings. Thank you for continuing the efforts. One issue that came out of the SWMI meetings is the importance of fisheries when you talk about water management. Weymouth's permit has not been reviewed in what appears to be a decade since its expiration.

There are three main points to bring to the conversation about water management:

- The fisheries in the Commonwealth need to be considered users of the water in the watershed when managing water resources. The importance of fisheries is well established and now need to be formally recognized as users of water in a watershed.
 - Weymouth pumps from the Washington Street pump station pumping water from Whitmans Pond
 against, from what I understand, their water permit. When this happens during migration of herring the
 risk is fish will be stranding in the ladders again as they were in 2010. Weymouth was most reluctant to
 declare a ban on outdoor watering and instead caused a significant fish kill.
 - Pumping from the Washington Pump station has occurred during fish migration and spawning resulting
 in many fish and young of the year getting destroying by the pump station. This is another impact to the
 productivity of the Weymouth herring run.

I ask that fisheries specifically be called out at a user of the surface water sources. A town counselor in Weymouth has been heard saying on a number of occasions they wish the herring run didn't exist because it gets in the way of development. This lack of understanding and disregard for natural heritage demonstrates a need for fisheries to be protected at the State level. The herring run is part of the natural heritage of Weymouth and its importance to the greater Boston Harbor ecosystem and the Atlantic Marine Fisheries is well know. Water management efforts need to ensure golf courses and ornamental plantings for pictures you mentioned on your zoom meeting do not supersede the importance of fisheries.

There seems to be competing interests between local agencies and State agencies.

The Division of Marine Fisheries has an interest in the Weymouth herring run considering the Weymouth Herring Run is one of the most productive in the Northeast and Whitmans Pond is, per acre, the most productive spawning grounds. Recently there has been a tremendous investment in the flood control system to ensure herring are not caught in it as they have been over the past decades impacting the productivity of the run.

The Metropolitan Area Planning Commission is pushing for development of housing and variances are granted for 40 (b) housing that results in an inventory that ends up expiring. This gives developers, who otherwise would have no legal grounds to build, variances beyond local ordinances due to state level regulations. I have heard at a number of meetings, they have to approve a project because of the 40 (b) requirements. This is impacting the watershed that is the surface water source for Weymouth and the Weymouth Herring run.

Finally, as a Mayor form of government, local agencies and Boards are given information from the Mayor's office and have no opportunity to question any information manipulating the Town Council and the Conservation Commission. Projects get wired long before they come before any regulatory boards in Weymouth, such as Conservation.

3) Communication from DEP

From an email exchange, inquiring about Weymouth's water, I received a comment from you that at first read is most misleading and has me wondering if the powers that be in Weymouth are reading this statement as they can pump more than the 6.49 MGD.

There is no comment about Allowable Yield in this statement. I understood. Weymouth's capacity to meet daily limits are controlled by the Safe Yield, and in turn the Allowable Yield of the watershed.

"Weymouth's capacity to meet daily limits are controlled by their capacity to treat and supply
water on any single day, which is significantly greater than the 6.49 mgd mentioned. It is my
understanding the Treatment Plant at Great Pond can treat up to 8 MGD on any single day and
the treatment plant for the groundwater wells could treat up to 4 mgd.

Weymouth needs to have their permit reviewed in light of the fast tracking of a number of apartment buildings in Weymouth in Commercial overlay districts. After water is allocated to housing, where is the water for commercial development in order to increase tax revenue to the town? The latest apartment project needs only 14% of the units with only one child before it costs Weymouth, and the affordable housing resulting from the build is far from affordable. When the Planning Department is asked about water capacity, they defer to the Water Department. New England fisheries are commercial industries.

Thanks for all you do. It seems it is the space between agencies that need to be understood as it relates to competing interests between developers, local authorities, local commercial interests for tax revenue and natural heritage. Once fisheries are gone, how do you get them back?

Kind regards,



| From: Sent: To: Cc: Subject: | Lori Renn Parker < > Monday, July 12, 2021 5:54 PM DEP Talks (DEP) WMA Regulations | | |
|---|---|--|--|
| | ed from a sender outside of the Commonwealth of Massachusetts mail or open attachments unless you recognize the sender and know the content is | | |
| 12 July 2021 | ri Renn Parker, | | |
| To the Decision Makers at the Massachusetts Department of Environmental Protection: | | | |
| Ipswich River, which was recently | ents to the Water Management Act to condition registrations during drought. I love the declared one of the most endangered rivers in America. According to the Ipswich Riverary cause is water withdrawals. Regulating registrations is critical to the health of the | | |
| Water should be conserved well before an official drought is declared, and all Massachusetts's standard water conservation measures should be required of all registrants, no exceptions. | | | |
| Having lived for over thirty years in a region that has undergone two prolonged and severe droughts in just the last five years, I have seen firsthand the damage that excessive water withdrawal causes on this vital and beautiful eastern Massachusetts river. I have seen low flow. I have seen fish kills. Those are not signs of a healthy river. | | | |
| The good news is that although humans have a great deal to do with the withdrawals from the Ipswich, we can also take actions to mitigateand someday even eliminatethe consequences of our short-sighted treatment of river water. Our actions and regulations can have real and dire consequences foror they can support and sustainthe natural world in which we live, of which, I believe, we are also stewards. | | | |
| Please do as much as you can to p | protect critical water resources in our vital watersheds, particularly the Ipswich. | | |
| Thank you. | | | |
| Sincerely, | | | |
| Lori | | | |

From: Sandy Rubchinuk <

Sent: Friday, July 9, 2021 1:08 PM

To: DEP Talks (DEP)
Subject: WMA regulations

Follow Up Flag: Follow up Flag Status: Flagged

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July 9, 2021 Sandy Rubchinuk

Dear DEP,

I am a resident of Middleton that only has well water as my drinking water. Water lines do not go down my street and this is also the case for many parts of our town. I utilize rain barrels and a large cistern collecting rain water uphill from my vegetable gardens. As our river and the precious streams that feed into it have gone nearly dry several years, it is too little too late to only conserve AFTER we reach drought stage. You see, the water table falls dramatically when lawns are being watered all summer, those on wells in our town are exempt from following the basic conservation rules that town water users follow, although without any teeth in the town's penalties, they are much ignored also. Our wells are expensive to replace, on a fixed income as retirees it would be a great financial hardship for us have to have a new well drilled. When lawn watering impacts water availability, it may take hours to recharge our well water, and always there is a risk of burning out the pump. We conserve in every way we can, yet one street over, sprinklers run in the hot sun with water running down the street! We worked very hard, a group of us, to pass a water bylaw that would provide equity in water use, it failed at the June 5th 2021 town meeting after we did not receive support from the majority of Select Board members. It seems the state needs to create the rules that will keep water in our river, streams and brooks. Not only during drought but before irreparable damage to fish and many other species. I would also add that "any and all" water users need to follow conservation measures, we all share the same water supply! We must depend on the state, too many value a huge green lawn above drinking water for all. Yet they can have that if they follow drought resistant planting guidelines! Too many just water without any regard for the needs of the plants!

The Ipswich River is one of the most endangered rivers in America. When flowing well it is an asset to recreational loving people, fishermen, bird watchers, and so many others. It increases home values and the landings along the river attract tourists and those seeking serenity. Conditioning registrations to require only small conservation measures will not make a positive enough impact. Water needs to be kept in the river and these measures must be enacted before a drought is official. Regulating registrations is critical to protecting our River. All of the states standard water conservation measures should be required of registrants. Climate change continues to present us with extremes, too much water or too little. The droughts come quicker and do more damage, two severe droughts in the last five years. The DEP must take responsibility, we have tried to educate townspeople, it is frustrating, we need you to condition registrations and do more to protect our critical water resources. The Ipswich River Watershed needs help, please consider my comments and take action to protect it.

Thank You

Sandy Rubchinuk



From: Christine Sandulli <

Sent: Tuesday, July 13, 2021 11:20 AM

To: DEP Talks (DEP)

Cc:

Subject: water management act regulations

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Dear Department of Environmental Protection,

I am writing in support of proposed regulations that would require conservation measures for all water suppliers during droughts. I live on the banks of the Ipswich River, which, as you know, has ben severely impacted by excess water withdrawals and by drought. It has been named one of the most endangered rivers in the nation and, in the past, has been drained dry during dry summers.

Most disheartening for me has been to hear my neighbors say they do not need to conserve water because other cities and towns, such as Beverly, which also use Ipswich River water, do not have to conserve. They feel it is unfair to ask them to do it, and they are right. Only by having uniform regulations that apply fairly to everyone will be able to help protect our water supply.

Please support these fair drought regulations and help me save this river.

Christine Sandulli

From: Patrick Saunders <

Sent: Sunday, July 25, 2021 8:04 PM

To: DEP Talks (DEP)
Subject: Wma Ipswich river

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I am writing to support the proposed amendments to the Water Management Act to condition registrations during drought. As you know, the Ipswich River was recently declared one of the most endangered Rivers in America primarily because of water withdrawals. Because registered-only withdrawals make up by far the largest class of water withdrawals in the Ipswich River Watershed, regulating registrations is critical to protecting the River.

However, conditioning registrations to require only modest conservation conditions on discretionary outdoor water use is too little too late to make much of a difference for our River. Not only should water be conserved well before we are in an official drought, all of the States standard water conservation measures should be required of registrants, especially in severely flow-stressed rivers such as the Ipswich.

As you are aware, we experienced two severe droughts in just the last five years. These droughts caused severe damage to the river and threatened local public water supplies and are predicted to increase in the future due to climate change making the situation even more dire. Not only is it the right thing to do, we feel it is the DEP's responsibility to not only condition registrations during drought but to do more to protect our critical water resources in already flow-depleted watersheds. Patrick Saunders,



From:

Sent: Thursday, July 22, 2021 10:27 AM

To:

DEP Talks (DEP)

Cc: Subject:

WMA Regulations

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July 22, 2021 Judy Schneider

Dear DEP,

I am writing to support the proposed amendments to the Water Management Act to condition registrations during a drought. I live in Middleton and rely upon Ipswich River water for drinking (household) water and recreation. We who rely upon the river can see firsthand the effects of drought on flow. Unfortunately, even in "non-drought" conditions, flow suffers due to the quantity of water withdrawals from the watershed during the summer months. . Because registrations are not currently conditioned as are permits, there is excessive discretionary water use in many communities which directly impacts the river.

I am an avid river kayaker, and last summer there was barely enough water to paddle, and sometimes that water was not flowing, but was pooled. It was so disheartening to see sprinklers running in other communities last summer and earlier this year when conditions were dry, because those communities had no conditions on their water use during a drought.

I think it is the responsibility of DEP to apply conditions to water registrations to <u>protect</u> the Ipswich and other rivers. It is the right thing to do. I don't think uneven application of conditions, that is permits only, protects our water resources. I hope we don't look back years from now and see a missed opportunity to preserve the ecological health of our river systems and remove the Ipswich River from endangered status. Imagine what climate change will disrupt in the coming years.

Thank you for considering my comments,

Judy Schneider

From: david slozak

Sent: Sunday, July 25, 2021 7:54 AM

To: DEP Talks (DEP)
Subject: WMA Regulations I

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

To whom to may concern, We are sending this email in regards to the new changes to the Water Management Act Regulation. We wish to express that we are not in favor of the changes and that we trust the town of Monson's Water and Sewer Commission to manage our system. Sincerely, David & Donna Slozak



From: ingrid statz <

Sent: Monday, July 26, 2021 9:03 AM

To: ingrid statz; DEP Talks (DEP)

Subject: WMA regulations

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To whom it may concern:

I have lived in Monson Mass for over 30 years and have been very proud of the excellent job our water department does. I am an avid gardener with a large greenhouse, a 10,000 gal fish pond and many aquariums, so I need to keep track of how our town handles and treats our water.

In all my years here, we have never had a water restriction, or a boil water order that I remember.. Monson's water usage has declined in recent years, and in 2015 the water department received regional recognition at the public water awards program.

Over 50% of residents also are on private wells, so I am not sure how restricting the water to under 1/2 the residents will benefit the state water supply when there is no shortage in Monson.

I am very concerned that our water department will suffer in their ability to provide the excellent services they have if the state takes over water use regulation when regional drought is declared. I feel it would be harmful to our water department, with the present balance of use vs flushing the system working very well.

Hearing of the proposed regulation has rekindled my thinking about putting my own well in to cover my water needs, vs paying higher rates for the newly restricted town water if the state regulations happen.

I am opposed to statewide water regulation, and feel this needs to be done on a town by town basis, for the towns that are NOT managing their water properly.

Monson is doing an excellent job, and this should not be forced to change via statewide mandates.

Thank you for your attention to this matter.

Sincerely, Ingrid Statz

From: Sarah Tappan <

Sent: Friday, July 9, 2021 11:16 PM

To: DEP Talks (DEP)

Cc: WMA Regulations

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July 9, 2021 Sarah Tappan

Dear DEP,

I am writing to support the proposed amendments to the Water Management Act to further restrict water use during drought.

However, I am concerned that requiring conservation measures on discretionary outdoor water is not enough. Water should be conserved well before we are in a drought and the minimal restrictions should be the baseline even when we are not in a drought situation.

It is the DEP's responsibility to encourage the conservation of water at all times to protect our critical water resources in already flow-depleted watersheds.

Thank you for considering my comments,

Sarah Tappan

From: Sarah Trotsky <

Sent: Wednesday, July 14, 2021 8:11 PM

To: DEP Talks (DEP)

Subject: 310 CMR 36.00: Water Management Act Regulations

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To Whom It May Concern,

I am writing as a concerned citizen of Ipswich, MA to urge you to pass the proposed amendments to the current Water Management Act.

The idea that water is a local issue is an absurd one, as rivers and water resources are not bound by town and city lines. It feels like a losing battle when we in one town (Ipswich) are doing all we can to reduce water usage, and yet on my daily commute along Rte. 133, I pass no drought signs and in fact see a number of automated sprinklers (even when it is raining). To me, this is an equity issue. It isn't fair that some towns, by virtue of their location alongside the same river, don't have to abide by any water restrictions.

If Manchester, MA is concerned about the reduction in their summer water revenue, then raise the summer water rates. Our bill this past month for a family of four water conscientious folks was almost \$200- a hefty reminder of the scarcity of the resource as well as an encouragement to continue to do more. I just wish all communities looked at it the same way.

Best, Sarah Trotsky



From: Sent:

Saturday, July 24, 2021 2:01 PM

To:

DEP Talks (DEP)

Cc:

Subject:

WMA regulations

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To Whom It May Concern,

I wish to support the proposed amendments to the Water Management Act to condition registrations during droughts. The Ipswich River is endangered to more than us human beings. Our anthropocentricity causes us to dismiss the other lives that are lost when the river is low or, as happens during droughts, disappears completely in places. The turtles, fish, and other creatures that depend on the river for their existence add diversity and meaning to our world. Please include them in your thinking for future plans and restrictions regarding the Ipswich River. Thank you. Patience Wales



From: Nancy Warner <

Sent: Saturday, July 10, 2021 9:39 AM

To: DEP Talks (DEP)

Cc: WMA Regulations

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click on links or open attachments unless you recognize the sender and know the content is safe.

To Whom It May Concern

I live and vote in Ipswich MA. I am a volunteer at the Ipswich River Watershed Association. The designation as a Most Endangered River was, sadly, not a surprise but, a wake up call, for all the communities who take water from the River. As the regulations are reviewed, it would seem to me that common sense would need to come into play. Those communities who draw from the River and have no restrictions need to be made to comply with stronger and more restrictive regulations. Water is the one element we must have for life and we have allowed this precious resource to be depleted with little or no attention to the results of our actions.

Those of us who love the River and worry for its health are begging you to help us. Please make this right.

Thank you for your consideration.

Nancy Warner

Nancy Warner Sent from my iPad

From: Bobbi Whiting <

Sent: Tuesday, July 13, 2021 1:39 PM

To: DEP Talks (DEP)

Cc: Wayne Castonguay; Bill Whiting

Subject: WMA Regulations

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July 12, 2021

Department of Environmental Protection Boston, MA

Dear DEP:

We are writing to support the proposed amendments to the Water Management Act conditioning registrations during periods of drought. As you may know, the Ipswich River was recently declared one of the most endangered rivers in America, primarily because of water withdrawals. Because registered-only withdrawals make up the largest class of water withdrawals in the Ipswich River Watershed, regulating registrations is critical to the protection of the River.

The Ipswich is a vital resource for 350,000 state inhabitants who get their drinking water from the River. As our rivers dry up during prolonged droughts such as 2020 and 2016, natural habitats also suffer. Fauna and wildlife are dependent on conservation for their livelihoods too.

Conditioning registrations to require only modest conservation actions on discretionary outdoor water use is to little too late to make much of a difference for our River, but better than leaving regulations as they exist today. Water should be conserved well before we are in an official drought! All of the states' standard water conservation measures should be required of ALL registrants, protecting all of our rivers but especially in severely flow-stressed rivers such as the Ipswich.

The two droughts noted above caused severe damage to the River and threatened local public water supplies. Droughts are predicted to increase in the future due to climate change making the situation even more dire. It is DEP's responsibility to not only condition registrations during droughts but additionally to do more to protect our critical water resources in already flow-depleted watersheds.

Please do the right thing! Fight for our impeccable natural resources before they disappear! Guarantee our state residents sufficient drinking water.

Thank you for considering our thoughts.



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From: Joan Wilking >

Sent: Friday, July 23, 2021 7:09 PM

To: DEP Talks (DEP)
Subject: WMA Regulations

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Dear DEP People,

I am writing to support the proposed amendments to the Water Management Act to condition registrations during drought. As you know, the Ipswich River was recently declared one of the most endangered Rivers in America primarily because of water withdrawals. Because registered-only withdrawals make up by far the largest class of water withdrawals in the Ipswich River Watershed, regulating registrations is critical to protecting the River.

However, conditioning registrations to require only modest conservation conditions on discretionary outdoor water use is too little too late to make much of a difference for our River. Not only should water be conserved well before we are in an official drought, all of the States standard water conservation measures should be required of registrants, especially in severely flow-stressed rivers such as the Ipswich.

As you are aware, we experienced two severe droughts in just the last five years. These droughts caused severe damage to the river and threatened local public water supplies and are predicted to increase in the future due to climate change making the situation even more dire. Not only is it the right thing to do, we feel it is the DEP's responsibility to not only condition registrations during drought but to do more to protect our critical water resources in already flow-depleted watersheds.

This is such an important step to take to insure access to water for all now, and into the future.

Thank you for considering my comments,

Joan Wilking

Sent from my iPhone



From: Susan winthrop

Sent: Friday, July 9, 2021 3:58 PM

To: DEP Talks (DEP)

Cc:

Subject: WMA Regulations

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Dear DEP,

I live along the Ipswich River and am deeply distressed by the lack of conservation measures that are currently in place to protect our river during drought conditions. I am writing to support the proposed amendments to the Water Management Act which would finally condition registrations during drought. But really, something needs to be done BEFORE there is a drought in order to prevent such conditions from occurring in the future. We need all of the states standard water conservation measures to be required of all registrants. How can it be that in Ipswich we have a water ban in May when there are no water bans imposed in Salem or Beverly all summer long?

Our lovely Ipswich River is now one of the most endangered rivers in America. The amendments you are proposing could help turn things around and protect our river and the drinking water it provides to so many people.

Thank you for the work you do to protect our environment.

Susan Winthrop



From: Chris Woodcock < > > > Sent: Tuesday, July 20, 2021 11:22 AM

To: DEP Talks (DEP)
Subject: WMA Regulations

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I am a former (retired) consultant on water rates to municipalities with over four decades of experience. I have worked on the water rates for more than 2/3 of the Commonwealth's population. I understand this issue as well or better than most. I have also held elected and appointed positions in Massachusetts public works offices.

The purpose of my letter is to encourage the strong water conservation measures proposed for Water Management Act registrations. Some (not all and I suspect not even a majority) municipal water suppliers seem to believe they have the right (duty?) to sell as much water as possible in order to "keep rate down". This is absurd. Study after study has shown that water conservation and responsible water use even in times of no drought, save everyone money. If rates go up and use goes down – the WATER BILL will not change. It is just the rate applied to lower water use. This scare tactic is old and should not be given any credence. Further, saving money by avoiding costly water supply augmentation projects is a good thing – not bad.

Supplying water involves energy use. Reducing unnecessary water use also reduces our carbon foot print. It is not just about the availability of water, but the cost to the environment of wasteful water supply.

The Commonwealth should not be put off by the scare tactics of a few water suppliers. The water belongs to us all - not the water departments.

Christopher Woodcock



From: Cheryl Yemma

Sent: Friday, July 9, 2021 3:35 PM

To: DEP Talks (DEP)
Subject: WMA regulations

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July 9,2021 Cheryl Yemma



I am writing to support the proposed amendments to the Water Management Act to condition registrations during drought. Living in Ipswich the past 40 years i have witnessed firsthand the effect of water withdrawals to the point where the Ipswich River has now been declared one of the 10 most endangered rivers in the country. Because registered only withdrawals are the largest class of water withdrawals, regulating this type of withdrawals is critical.

Regulating outdoor water use in the summer which has been in effect for as many summers as i can remember in Ipswich has done little to aleviate the problem. All of the standard water conservation measures should be required of ALL



From: Cheryl Yemma <

Sent: Tuesday, July 13, 2021 7:06 PM

To: DEP Talks (DEP)
Subject: WMA Regulations

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July 13,2021 Cheryl Yemma

Dear DEP,

I am writing to support the proposed amendments to the Water Management Act to condition regulations during drought. Because registered only withdrawals make up the vast amount of depletions to the Ipswich River watershed, regulating these registrations is critical to the future health and viability of the river.

I have lived in Ipswich almost 50 years and the Ipswich River has gotten low in the summer almost every year I've been here. Over the past 15-20 summers the river has gotten very low and in two of the last five years it has suffered from severe summer drought causing substantial damage to the river and threatening local public water supplies. We residents of Ipswich have come to expect that by June first we will not be allowed to water our lawns and only water vegetable and flower gardens by hand prior to 6AM or after 9PM. In the two worst summers we feared for our own drinking water reserves. Global climate change has been very real to us and by all accounts will continue to further threaten the Ipswich River and our precious water supply.

As you may know the Ipswich River has been declared one of the 10 most endangered rivers in the ENTIRE country. A dubious distinction that must be addressed now. Please help us by requiring the registered-only water users to follow basic water conservation measures during State-declared droughts, like we Ipswich citizens have been doing routinely all summer long for over 15 years.

My sincere thanks for considering my position as you address the amendments. Cheryl Yemma

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From: Barbara Abraham <

Sent: Thursday, July 22, 2021 12:06 PM

To: DEP Talks (DEP)
Subject: WMA Regulations

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Secretary Theoharides and other Climate Leaders in the Commonwealth:

I am writing to ask for your help. American Rivers has declared the Ipswich River to be one of America's Most Endangered Rivers® of 2021, due to excessive water withdrawals made worse by climate change and unsustainable land use practices. Several other rivers in Massachusetts are also stressed, at the same time we are heading into an increasingly uncertain future.

I am writing to support the proposed amendment to the Water Resources Management Program Regulations (310 CMR 36.00) to limit outdoor water use during times of drought. It is imperative that DEP promulgate these regulations this year to make sure registrants are practicing water conservation for the next decade, during which we expect drought conditions to continue to worsen. While DEP must do more to fully implement our water laws and remove other exemptions, this is an important first step to creating more resilient communities.

In addition to passing the current amendment, I am therefore asking for your leadership on the following:

Please continue your important work on climate and water at the state level, adhering to the Water Management Act by coordinating water use so that present and future Commonwealth residents have sufficient water resources.

Please work with residents and communities to improve how we use our land and water resources, in creating a more comprehensive water management system that goes beyond restrictions during times of drought. Water conservation should occur in advance of a drought, not just when the impacts of drought are already here. Set goals to restore depleted sub-basins through water conservation requirements for withdrawals defined by DEP as groundwater and/or biological category 4 and 5. Current regulations limit the scope of applicability. Given that the state is likely to continue experiencing extreme drought conditions in the coming years, DEP can and must go further. Thankfully, solutions are abundant.

We can invest in regional water infrastructure improvements, and partner with water suppliers to provide resources to alternatives. We can keep our communities healthy by adhering to the commitments in the Water Management Act and Public Trust Doctrine, by using resilient practices like natural vegetation and other forms of Low Impact Development. We can also grow green lawns and safe spaces for our families that do not need non-essential summer watering, whether the state is officially in a drought or not.

When even a wet region of the country like New England is dealing with severe droughts and chronically depleted rivers, it is above all important for us to collaborate. As U.S. Special Presidential Envoy for Climate John Kerry recently said in his remarks on the Ipswich River, "We're all in this together."

Please continue to make the Commonwealth a national leader, by more effectively implementing laws and working together with communities and residents across Massachusetts to increase the resiliency of our water resources.

Thank you for your prompt attention to this matter.

Sincerely,

Barbara Abraham

