313 CMR 4.00 INTERBASIN TRANSFER

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4.01: General Provisions

(1) Purpose. 313 CMR 4.00 delineates the river basins of the Commonwealth and establishes the procedures and criteria upon which the Water Resources Commission shall determine the applicability, Insignificance, approval or denial of any proposed action to increase the Present Rate of Interbasin Transfer of water or wastewater. Subject to statutory exemptions, M.G.L. c. 21 §§ 8B through 8D requires that the Commission base its review of the proposed action to increase the Present Rate of Interbasin Transfer of water or wastewater on: a thorough assessment of the environmental effects of the proposed Interbasin Transfer; whether the Person requesting the transfer has made all reasonable efforts to identify and develop all Viable Sources in the Receiving Area; and whether there is an effective water conservation and management program in place in the Receiving Area. These regulations apply to any Person who (i) proposes an action to cause an increase in the Present Rate of Interbasin Transfer of the surface or groundwater of a River Basin, or (ii) proposes to make any capital improvement which could reasonably be expected to increase the capacity to transfer water out of a Donor Basin.

4.02: Definitions

7Q10, or a Seven-Day Ten-Year Flow means the lowest seven (7) consecutive day average flow that occurs (on average) once every ten (10) years.

Act means the Interbasin Transfer Act, M.G.L. c. 21, §§ 8B-8D inclusive.

Commission means the Massachusetts Water Resources Commission.

Contingency Plan means a written plan establishing operating procedures for adequately handling water supply emergencies, such as contamination of water supply sources or seasonal

or drought related shortages of water supply. The plan shall include provision for emergency supply in the event of a sudden loss of existing sources and of a progressively stringent schedule for limiting water use during seasonal and extended dry periods.

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

Donor Basin means the basin from which the water or wastewater is transferred.

EEA means the Massachusetts Executive Office of Energy and Environmental Affairs.

Effective Date of the Act means March 8, 1984.

Emergency Connection means any connection, either approved under M.G.L. c21G, §§ 15 and 16, 310 CMR 36.40-36.42 or authorized by law to provide a necessary and adequate water supply during any situation or event, natural or man-made, which causes or threatens to cause damage to a water supply system that could disrupt normal water supply functions. These connections could include interconnections to other existing public water supply systems, connections to obtain water directly from a new source, or connections to obtain greater amounts of water from an existing source than currently authorized under the Act.

Hydraulic Capacity means the maximum daily amount of water or wastewater that can pass through an existing authorized Transfer System.

Insignificant or Insignificance means an increase in an Interbasin Transfer that has been determined by the Commission, based upon the impact to the Donor Basin, as insufficient to invoke the provisions of the Act, provided that in no case shall insignificance or insignificant mean an increase of one million gallons per day or more.

Interbasin Transfer means any transfer of the surface water or groundwater, including the transfer of wastewater and local water supply sources as wastewater, of the Commonwealth outside of its River Basin as defined in 313 CMR 4.03. If a city or town partially situated within a River Basin takes waters from that basin, then the extension of its water or wastewater services to a portion of the same city or town outside the basin shall not be deemed an Interbasin Transfer.

MEPA means the Massachusetts Environmental Policy Act (M.G. L. c. 30 §§ 61 and 62 to 62H inclusive).

MEPA Compliance means fulfilling the requirements of M.G. L. c. 30, §§ 61 and 62 to 62H inclusive, and the rules and regulations promulgated thereunder, 301 CMR 11.00.

Massachusetts Water Conservation Standards means measures approved by the Commission that set statewide goals and provide guidance for water conservation and efficiency.

Metering means the installation of water use measuring devices on all permanent water supply services, including master meters, source meters, treatment plant meters and purchased water meters.

NPDES means National Pollution Discharge Elimination System.

Ninety-five Percent (95%) Exceedance Flow means a low flow condition in a stream that is exceeded ninety-five percent of the time, using a minimum of a ten (10) year period of record. This statistic is based on mean daily flows.

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

Present Rate of Interbasin Transfer means the Hydraulic Capacity of a Transfer Facility or Transfer System which was authorized, constructed or useable without additional installation of facilities or changes in any authority or operating rule prior to the Effective Date of the Act. The present rate shall also include:

- the Hydraulic Capacity of Transfer Systems which, although not fully constructed and/or useable, had achieved MEPA Compliance and final design approval by the Department of Environmental Protection under the provisions of M. G. L. c. 111, as of the Effective Date of the Act;
- the Hydraulic Capacity of a transfer system found to be Insignificant or approved by the Commission through the process outlined in 313 CMR 4.08, 313 CMR 4.09, and 313 CMR 4.10, after the effective date of the Act; and
- a legally binding contract that limits the use of the full Hydraulic Capacity of the system.

If withdrawal constraints contained in any provision of the Massachusetts General Laws, Special Acts, Judicial Decree, regulatory agency rule, contract or operating rule of a water supplier prevented the use of the Hydraulic Capacity as of the Effective Date of the Act, the lesser amount shall be deemed the Present Rate of Interbasin Transfer. In calculating the Present Rate of Interbasin Transfer for a wastewater conveyance system, said rate includes that amount of wastewater generated from a water supply source within the River Basin from which the wastewater will be transferred.

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

Receiving Area means the location where compliance is evaluated under the Act by 4.09(3)(b) Criterion (2) related to Viable Sources, 4.09(3)(c) Criterion (3) related to water conservation measures, and 4.09(3)(d) Criterion (4) related to a comprehensive forestry management program. For transfers of water supply, Receiving Area means the area into which the water is transferred for use, and is thereby receiving the water supply service. For transfers of wastewater, Receiving Area means the area whose wastewater is collected for discharge out of basin, and is thereby receiving the wastewater service.

Regional Water Supply System means a water supply system that substantially serves or proposes to substantially serve two or more Receiving Areas.

River Basin means a geographic area within the Commonwealth determined by a body of water and its surrounding drainage area as described in 313 CMR 4.03 and as shown in the River Basin map in Appendix A. For purposes of hydrologic calculations, contributing upstream drainage areas, including those outside the Commonwealth, may be considered. The Commission, upon request or by its own action, shall make a written determination of the precise location of the boundary line of one of the River Basins described in 313 CMR 4.00. In making this determination, the Commission shall consult the report "Hydrologic Characteristics of Massachusetts Streams" published as a cooperative project by the U.S. Geological Survey and the Massachusetts Water Resources Commission, and other such reports or studies as may be pertinent.

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

Significant Increase means a transfer of water or wastewater over the Present Rate of Interbasin Transfer, sufficient in size or impact so as to invoke the provisions of the Act.

Transfer Facilities or Transfer Systems mean those structures including pumps, pipelines, tunnels, valves, and other conveyance facilities, that facilitate the movement of water or wastewater from one basin to another and across a town line. A Transfer Facility or System can also include a source of water supply which is ultimately transferred out of basin as wastewater.

Viable Source means a water source or wastewater service alternative that meets the current regulatory requirements of the permitting authorities, and is environmentally sound, technologically feasible and cost-effective.

For wastewater transfers, including those triggered by the development of local water supplies that are transferred out of basin as wastewater, Viable Source includes alternatives which can treat, reuse, and/or discharge wastewater within the basin of origin, and can meet the requirements for approval by the Department of Environmental Protection or other regulatory agency.

For water supply transfers, Viable Source means a source which can provide drinking water that meets the current water quality standards and water management requirements promulgated by the Department of Environmental Protection or other regulatory agency, and which can be used while preserving reasonable instream flow using the same criteria provided to evaluate impacts on the Donor Basin listed in 313 CMR 4.09(3)(e).

4.03: Delineation of River Basins

River Basins are those basins more particularly described below, and which are generally shown on the River Basin Map (Appendix A):

Blackstone River Basin. The Blackstone River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Blackstone River.

Boston Harbor Basin. The Boston Harbor Basin includes that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstems of the Mystic, Neponset, and Weymouth and Weir Rivers and other coastal drainage emptying into Boston Harbor south of the North Coastal Basin and north of South Coastal Basin; excluding the Charles River Basin.

Buzzard's Bay Basin. The Buzzard's Bay Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of all coastal rivers and streams emptying into Buzzard's Bay south of the Taunton River Basin and the Narragansett Bay and Mount Hope Bay Shore Basin, and north of the Cape Cod Basin and the Islands Basin. In areas where these tributaries and rivers are tidal, those areas lying above the mean high tide elevation are considered part of the Buzzards Bay basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

Cape Cod Basin. The Cape Cod Basin includes all of the Cape Cod peninsula southeast of the Cape Cod Canal surrounded by Vineyard Sound, Nantucket Sound, Buzzard's Bay, Cape Cod Bay or the Atlantic Ocean. Only areas-lying above the mean high tide elevation are considered part of the Cape Cod basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

Charles River Basin. The Charles River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Charles River. In areas where the Charles River is tidal, those areas lying above the mean high tide elevation are considered part of the Charles River Basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

Chicopee River Basin. The Chicopee River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Chicopee River above its confluence with the mainstem of the Connecticut River.

Concord River Basin. The Concord River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Concord River, Sudbury River and Assabet River above its confluence with the mainstem of the Merrimack River.

Connecticut River Basin (Mainstem). The Connecticut River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries (exclusive of tributaries delineated as separate River Basins) and mainstem of the Connecticut River.

Deerfield River Basin. The Deerfield River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Deerfield River above its confluence with the mainstem of the Connecticut River.

Farmington River Basin. The Farmington River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Farmington River.

French River Basin. The French River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the French River.

Housatonic River Basin. The Housatonic River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Housatonic River.

Hudson River Basin. The Hudson River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Hoosic River, Kinderhook Creek and Bashbish Brook.

Ipswich River Basin. The Ipswich River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Ipswich River and other coastal drainages emptying into Ipswich Bay south of the Parker River Basin and north of the North Coastal Basin. In areas where the Ipswich River is tidal, those areas lying above the mean high tide elevation are considered part of the Ipswich River Basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

Islands Basin. The Islands Basin includes the islands of Nantucket, Martha's Vineyard and the Elizabethan Chain. Only areas lying above the mean high tide elevation are considered part of the Islands basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

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

Merrimack River Basin. The Merrimack River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries (exclusive of tributaries delineated as separate River Basins) and mainstem of the Merrimack River. In areas where the Merrimack River is tidal, those areas lying above the mean high tide elevation are considered part of the Merrimack River Basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

Millers River Basin. The Millers River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Millers River above its confluence with the Connecticut River.

Narragansett Bay and Mount Hope Bay Shore Basin. The Narragansett Bay and Mount Hope Bay Shore Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstems of all coastal rivers and streams emptying into Narragansett Bay and Mount Hope Bay Shore south of the Ten Mile River Basin and north of the Buzzard's Bay Basin, excluding the Taunton River Basin. In areas where these tributaries and rivers are tidal, those areas lying above the mean high tide elevation are considered part of the Narragansett Bay and Mount Hope Bay Shore basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

Nashua River Basin. The Nashua River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Nashua River.

North Coastal Basin. The North Coastal Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of all coastal rivers and streams draining into the Atlantic Ocean north of the Mystic River Basin; excluding the Merrimack, Parker and Ipswich River Basins. In areas where these tributaries and rivers are tidal, those areas lying above the mean high tide elevation are considered part of the North Coastal basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

Parker River Basin. The Parker River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Parker River and other coastal drainages emptying into Plum Island Sound south of the Merrimack River Basin and north of the Ipswich River Basin. In areas where the Parker River is tidal, those areas lying above the mean high tide elevation are considered part of the Parker River Basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

Quinebaug River Basin. The Quinebaug River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Quinebaug River.

Shawsheen River Basin. The Shawsheen River Basin includes that area which contributes surface water to the tributaries and mainstem of the Shawsheen River above its confluence with the mainstem of the Merrimack River.

South Coastal Basin. The South Coastal Basin includes that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstems of the North River and South River and of all other coastal rivers and streams draining into the Atlantic Ocean south of the Boston Harbor Basin and north of the Cape Cod Basin.

Taunton River Basin. The Taunton River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Taunton River. In areas where the Taunton River is tidal, those areas lying above the mean high tide elevation are

considered part of the Taunton River Basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

Ten Mile River Basin. The Ten Mile River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Ten Mile River southeast of the Blackstone River Basin, west of the Taunton River Basin, and north of the Narragansett Bay and Mount Hope Bay Shore Basin. In areas where these tributaries and rivers are tidal, those areas lying above the mean high tide elevation are considered part of the Ten Mile River Basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

Westfield River Basin. The Westfield River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Westfield River above its confluence with the mainstem of the Connecticut River.

4.04: Projects Subject to 313 CMR 4.00

Projects with water or wastewater needs that result in an increase in the Present Rate of Interbasin Transfer are subject to this Act. An increase in the Present Rate of Interbasin Transfer shall mean any change that increases the ability to transfer water out of the Donor Basin, including but not limited to the following actions:

(1) drilling of production wells in the Donor Basin from which the water is transferred out of basin either as water supply or wastewater;

(2) construction or enlargement of reservoirs or storage facilities to store water transferred or to be transferred from a Donor Basin if such construction causes an increase in the ability to transfer water from the Donor Basin;

(3) construction of, or increase in the Hydraulic Capacity of Transfer Facilities or a Transfer System which causes an increase in the ability to transfer water or wastewater from the Donor Basin;

(4) construction of, or increase in capacity of water or wastewater treatment plants where such plants increase the ability to transfer water out-of-basin for use;

(5) changes in any constraints on Interbasin Transfer in any provision of the Massachusetts General Laws, Special Acts, Judicial Decree, regulatory agency rule, or contract or operating rule of a water supplier or wastewater service provider;

(6) any other structural change in a water or wastewater system that causes an increase in the ability to transfer out of a Donor Basin.

4.05: Exemptions

The following activities are not considered an increase in the Present Rate of Interbasin Transfer:

(1) extending water or wastewater services within a city or town and between two or more River Basins, as long as the transfer does not cross the municipal boundary;

(2) replacing pumps or pipes of equivalent or smaller conveyance capacity;

(3) restoring reservoirs to original storage capacity;

(4) renovating existing wells and testing of new well sites;

(5) constructing Transfer Facilities in the Donor Basin if the sole purpose is to provide redundancy, provided that any increase in capacity cannot be used to increase the ability to transfer water out of the Donor Basin and provided further that streamflow in the Donor Basin is not adversely affected;

(6) replacing existing wastewater Transfer Facilities if they do not exceed the operational capacity as determined by the Department of Environmental Protection prior to the effective date of the Act or approved or found to be Insignificant by the Commission in accordance with the Act and these regulations;

(7) installing and using water supply and wastewater facilities, which although not fully constructed and/or useable, had achieved MEPA Compliance and approval by the Department of Environmental Protection prior to the effective date of the Act;

(8) expansion within an existing water supply or wastewater system that does not cause an increase in the Present Rate of Interbasin Transfer, and does not involve the addition of a Receiving Area that was not included in the original design and approval;

(9) transfer of wastewater that was previously authorized to be transferred as water or wastewater from one River Basin to a second River Basin, and is now being proposed for transfer into a third River Basin; and

(10) using an Emergency Connection provided that the period of occurrence does not exceed six months of any calendar year and the water supplier fulfills the criteria of the Department of Environmental Protection.

4.06: General Procedures

Any Person proposing an action to increase the Present Rate of Interbasin Transfer is encouraged to discuss its plans with the Commission staff at the earliest possible point in project planning. While such staff review can be concurrent with MEPA review, the proposal must have achieved MEPA Compliance before public hearings are held under the Act or the Commission takes any action on the proposal.

(1) The type and depth of information submitted for Commission review of a proposed action to increase the Present Rate of Interbasin Transfer shall be at a level sufficient to allow for the Commission to fully exercise its responsibility under the provisions of the Act and the

regulations promulgated hereunder. To the extent possible, the Person proposing an action to increase the Present Rate of Interbasin Transfer should utilize existing data and the best available science including, as appropriate, analyses and methodologies currently used in other regulatory jurisdictions;

(2) If a MEPA environmental review is required under the MEPA provisions and the rules and regulations promulgated thereunder, 301 CMR 11.00, the data required to be submitted for Commission review under the provisions of 313 CMR 4.00 should be prepared to the extent possible as a component of the environmental review report. In such cases, joint scoping sessions with the MEPA Office and Commission staff should be held; and

(3) A Person proposing an action to increase the Present Rate of Interbasin Transfer may request a determination that the proposal would cause an Insignificant increase as provided in 313 CMR 4.08, or may apply directly for approval by the Commission pursuant to 313 CMR 4.09 and 313 CMR 4.10.

4.07 Determination of Applicability

(1) Procedures for a Request for Determination of Applicability

(a) Whenever a Person is proposing an action that has a reasonable likelihood to increase the Present Rate of Interbasin Transfer, the Commission may, at the request of the Person proposing an action to increase the Present Rate of Interbasin Transfer or at its own initiative, request information concerning said action and determine whether the action is subject to the Act (Determination of Applicability). The Commission may require the Person proposing an action to increase the Present Rate of Interbasin Transfer to submit a request for a determination of applicability in accordance with 313 CMR 4.07. The Commission may base its determination on the information available to it from all sources and Persons, including other federal, state and local agencies, information arising out of a MEPA filing or review, or on information from the public. If the Commission determines that an action is not subject to the Act, as defined herein, the action will not require further review under these regulations.

(b) When requesting a Determination of Applicability, the Person proposing an action to increase the Present Rate of Interbasin Transfer shall submit the request to the Executive Director, Water Resources Commission, Executive Office of Energy and Environmental Affairs, 100 Cambridge Street, Suite 900, Boston MA 02114 and to the Department of Conservation and Recreation, Office of Water Resources, 251 Causeway Street, Boston, MA 02114.

(c) The Commission shall publish a notice of the request for a determination of applicability in the Environmental Monitor within thirty-one (31) days of the receipt of such request and send a copy of the notice to the municipalities directly affected. The notice shall contain the date of the Commission meeting or meetings when such request will be considered. Within ninety (90) days of the receipt of the request, or upon receipt of all requested additional information, whichever is later, the Commission shall render a Decision and reasons therefore, and publish said Decision in the Environmental Monitor.

(2) Information Required to Act Upon a Request for Determination of Applicability
The Person proposing an action to increase the Present Rate of Interbasin Transfer shall include in the request:

(a) A description of the proposed project;

(b) The River Basin of origin of the water supply;

(c) The River Basin into which the water or wastewater will be transferred;

(d) The River Basin of discharge for the wastewater; and

(e) The municipality(ies), water districts or sewer districts involved in the project.

(3) Criteria for Determination of Applicability
The Commission shall find that the following criteria have been satisfied, in determining if the transfer of water or wastewater constitutes an increase in the Present Rate of Interbasin Transfer:

(a) The project causes a transfer across both a municipal boundary and a basin boundary;

(b) The project involves an action listed in 313 CMR 4.04 of these regulations or otherwise increases the ability to transfer water or wastewater; and

(c) The project is not subject to the exemptions listed in 313 CMR 4.05 of these regulations.

4.08 Determination of Insignificance

(1) Procedures for a Request for Determination of Insignificance

(a) A request for determination of Insignificance of a proposed action to increase the Present Rate of Interbasin Transfer can be made either at the request of the Person proposing an action to increase the Present Rate of Interbasin Transfer or at the Commission's own initiative;

(b) When requesting a determination of Insignificance, the Person proposing an action to increase the Present Rate of Interbasin Transfer shall submit the request to the Executive Director, Water Resources Commission, Executive Office of Energy and Environmental Affairs, 100 Cambridge Street, Suite 900, Boston MA 02114 and to Water Resources Commission Staff, Department of Conservation and Recreation, Office of Water Resources, 251 Causeway Street, Boston, MA 02114; and

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

(2) Information Required to Act Upon a Request for Determination of Insignificance

(a) All requests for determination of Insignificance must include the following information:
1. Name, address, email address and telephone number of the Person proposing an action to increase the Present Rate of Interbasin Transfer;
2. Name of the project and a brief description of it;
3. Any applicable federal or state identification number including the EEA MEPA File Number;
4. An approximate timetable for the project;
5. The increase in Present Rate of Interbasin Transfer made possible by the proposed action presented as annual average daily capacity and maximum daily capacity (expressed as gallons per day);
6. The name and location of the sources of the proposed Interbasin Transfer delineated on a map of sufficient detail to show the major River Basin lines of the affected area(s), any potentially affected water bodies, the names of the communities, sections of communities, water district(s) or sewer district(s), as applicable, the wastewater discharge point, and special resource values potentially affected by this transfer, as described in 313 CMR 4.08(3)(f) of these regulations;
7. In the case of temporary transfers, the purpose for which the water is to be transferred, the duration and amounts; and
8. Other information which may be requested by the Commission in specific instances.

(b) For a transfer with a maximum daily capacity of less than or equal to 10,000 gallons per day, after review of the information requested in 313 CMR 4.08(2)(a)(1) through 313 CMR 4.08(2)(a)(8), the Commission may make a Decision that the transfer is Insignificant without requiring the information and analyses described in 313 CMR 4.08(2)(c) and 313 CMR 4.08(2)(d). If the Commission requires further analysis of a transfer with a maximum daily capacity of less than or equal to 10,000 gallons per day, the Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide the information requested in CMR 4.08(2)(c) and 313 CMR 4.08(2)(d), as appropriate.

(c) For a transfer of water supply or a transfer of wastewater triggered by the development of a local water supply, with a maximum daily capacity of more than 10,000 gallons per day, or for a transfer with a maximum daily capacity of less than or equal to 10,000 gallons per day that has been determined by the Commission to need a higher level of review, a request for determination of Insignificance must also contain the following information, as appropriate:
1. For all transfers, any proposed flow management provisions, flow protection thresholds or other measures to minimize or offset impacts of the transfer on streamflows;
2. In the case of transfers primarily derived from streamflow, either directly or through groundwater withdrawals, the proposed transfer amount calculated as a percentage of the unimpacted Ninety-five Percent (95%) Exceedance Flow. All calculations should be made at an appropriate point in the Donor Basin river or tributary thereto;

3. In the case of transfers primarily derived from lakes, ponds, reservoirs or other impoundments either directly or through groundwater withdrawals, the delineated drainage area of the water body and its area in square miles;
4. For transfers of wastewater triggered by the development of a local water supply, evaluation of potential in-basin alternatives for disposal of wastewater, including Title 5 septic systems, reuse, and groundwater and surface water discharges; if available, provide a Department of Environmental Protection-approved comprehensive wastewater management plan or other appropriate document that evaluates these options; and
5. For Interbasin Transfers from sources that are upstream or upgradient of permitted wastewater treatment facilities:
   i. 7Q10 flow(s) used in the NPDES Permits of all wastewater treatment facilities that discharge downstream of transfer source(s);
   ii. Recalculated 7Q10 flow(s) that include the proposed transfer;
   iii. Description of how the transfer will affect the 7Q10 flow(s) and the permitted wastewater facilities downstream; and
   iv. Verification that the permitting authority for the wastewater treatment facilities has been notified of the Person's proposed action to increase the Present Rate of Interbasin Transfer and a copy of that notification.

(d) For a transfer of wastewater with a maximum daily capacity of more than 10,000 gallons per day or for a transfer with a maximum daily capacity of less than or equal to 10,000 gallons per day that has been determined by the Commission to need a higher level of review, except for a transfer of wastewater triggered by the development of a local water supply, a request for determination of Insignificance must also contain the following information:
1. Delineation of the areas proposed to receive wastewater service, if applicable, or areas where the capacity of an existing wastewater service is proposed to be enlarged;
2. Evaluation of potential in-basin sources of disposal, including Title 5 septic systems, reuse, and groundwater and surface water discharges; if available, provide a Department of Environmental Protection approved comprehensive wastewater management plan or other appropriate document that evaluates these options;
3. For Interbasin Transfers from sources that are upstream or upgradient of permitted wastewater treatment facilities, the Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide:
   i. 7Q10 flow(s) used in the NPDES Permits of all wastewater treatment facilities that discharge downstream of transfer source(s);
   ii. Recalculated 7Q10 flow(s) that include the proposed transfer;
   iii. Description of how the transfer will affect the 7Q10 flow(s) and the permitted wastewater facilities downstream; and
   iv. Verification that the permitting authority for the wastewater treatment facilities has been notified of the Person's proposed action to increase the Present Rate of Interbasin Transfer and a copy of that notification;
4. For Interbasin Transfers that will discharge wastewater to a permitted wastewater treatment facility, the Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide:

i. Available capacity of the wastewater treatment facility that is proposed to receive the wastewater; and
ii. Verification that the permitting authority for the wastewater treatment facilities has been notified of the Person's proposed action to increase the Present Rate of Interbasin Transfer and a copy of that notification.

(e) The Commission may consider the information available from all sources and Persons, including other federal, state and local agencies, information arising out of a MEPA filing or review, or on information from the public, when evaluating the project against the Criteria for Determining Insignificance, listed in 313 CMR 4.08(3) herein.

(3) Criteria for Determining Insignificance. The Commission shall take into account the following criteria in determining if a proposed action to increase the Present Rate of Interbasin Transfer is Insignificant:

(a) That the proposed action to increase the Present Rate of Interbasin Transfer shall not facilitate an increase of one million gallons per day or greater;

(b) For temporary transfers, that the increase would be of short duration and conducted to facilitate the construction, maintenance or repair of a public utility, for flood control purposes, for public safety purposes or other similar purposes not related to water supply or wastewater service;

(c) In the case of transfers primarily derived from streamflow, the cumulative transfer including the proposed amount, in all cases, is less than 5% of the unimpacted Ninety-five Percent (95%) Exceedance Flow as measured at an appropriate point of the Donor Basin river or tributary thereto;

(d) In the case of transfers primarily derived from lakes, ponds, reservoirs, or other impoundments, that the cumulative annual amount of the transfer including the proposed amount, in all cases, is less than one percent (1%) of the average annual precipitation on the drainage area of the water body, and less than five percent (5%) of the drought year inflow to the water body;

(e) That the 7Q10 flow, when relied upon in a program of pollution abatement, will not be significantly diminished or prolonged;

(f) That special resource values such as state-listed species and their habitats protected under the Massachusetts Endangered Species Act, cold-water fisheries as defined in 321 CMR 5.00, river herring, wetlands, areas of critical environmental concern, designated scenic rivers, eelgrass and shellfish beds, or areas protected by Article 97 of the Amendments to the Massachusetts Constitution will not be adversely affected;

(g) That consideration has been given to measures to protect instream flows, as described in 4.08(2)(c)1, and where appropriate, any such measures proposed as part of the application; and

(h) The Commission shall consider the cumulative impacts of all past, authorized or proposed transfers on streamflows, groundwater, lakes, ponds, reservoirs, or other

impoundments in the Donor Basin. The Commission will evaluate the proposed transfer along with previously approved transfers cumulatively against relevant criteria of 313 CMR 4.08.

4.09: Approval of a Significant Increase in the Present Rate of Interbasin Transfer

It is recommended that the Person proposing an action to increase the Present Rate of Interbasin Transfer closely consult with Water Resources Commission Staff at the Department of Conservation and Recreation's Office of Water Resources in conjunction with other state environmental agencies prior to application submittal to ensure that the information provided reflects the conditions of the transfer and the best available science.

(1) Procedures for Approval of a Significant Increase in the Present Rate of Interbasin Transfer

(a) If the Commission, upon request or upon its own initiative, determines that a proposed action is a Significant Increase under the Act, it shall require submission of an application for approval in accordance with 313 CMR 4.09;

(b) A Person proposing an action to increase the Present Rate of Interbasin Transfer shall complete the application according to 313 CMR 4.09(2) and other appropriate guidance and submit it to the Executive Director, Water Resources Commission, Executive Office of Energy and Environmental Affairs,100 Cambridge Street, Suite 900, Boston, MA 02114. In addition, at least two bound copies, and an electronic copy must be submitted to Water Resources Commission Staff, Department of Conservation and Recreation Office of Water Resources, 251 Causeway Street, Boston, MA 02114, and a copy must be placed at the public library(ies) of each of the affected communities;

(c) The Commission shall publish notice of the receipt of an application for a proposed increase over the Present Rate of Interbasin Transfer in the Environmental Monitor and send a copy to the municipalities directly affected;

(d) The Commission may require such additional information from the Person proposing an action to increase the Present Rate of Interbasin Transfer or any other appropriate Persons or agencies as it deems necessary to conduct this review;

(e) The Commission shall, within 60 days of a determination that the application is complete, or that all requested additional information has been received, or within 60 days after MEPA compliance if it is required, whichever is later, conduct public hearings, and within sixty (60) days of completing said hearings shall complete its review and make a Decision on the requested action to increase the Present Rate of Interbasin Transfer;

(f) During the period in which the Commission must reach a Decision to approve or deny the proposed Interbasin Transfer, the Person proposing an action to increase the Present Rate of Interbasin Transfer and participating agencies which have jurisdiction by law shall

make themselves available at such reasonable times and places designated by the Commission to consult with both the Person proposing an action to increase the Present Rate of Interbasin Transfer and Commission staff; and

(g) The review may be extended by written consent of the Commission and the Person proposing an action to increase the Present Rate of Interbasin Transfer for a mutually agreed upon period.

(2) Application for Approval of a Significant Increase in the Present Rate of Interbasin Transfer. The application shall contain the following parts:

(a) Summary Sheet(s). There shall be a summary sheet(s), which shall contain:

1. The name of the project;
2. Any applicable federal or state identification number, including EEA (MEPA) File Number;
3. A list of other state permits, approvals, or procedures that are applicable to this project; and
4. The name, address, email address, and telephone number of the Person proposing an action to increase the Present Rate of Interbasin Transfer.

(b) Description of the Proposed Interbasin Transfer. The Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide a detailed description of the nature and extent of the proposal. The description should include:

1. An approximate timetable for the project;
2. Where applicable, the present transfer system including out-of-basin conveyance capacity, storage capacity, withdrawal constraints or other limiting factors;
3. A description of the proposed action to increase the Present Rate of Interbasin Transfer, supporting information showing how the increase was determined, the timing and amounts to be withdrawn and transferred or stored in reservoirs, proposed changes in structure of the Transfer Facilities and changes in withdrawal or transfer constraints;
4. The reasons for the transfer and an evaluation of how it supports the long-range water resources planning of the applicant;
5. The name and location of the sources of the proposed Interbasin Transfer, delineated on a map with sufficient detail to show the major River Basin boundaries of the affected area(s); any potentially affected waterbodies; the name of the communities, sections of communities, or water district(s) or sewer district(s), as applicable; the wastewater discharge point; and special resource values potentially affected by this transfer;
6. A list of known entities whose water use could be affected by the proposed transfer; and
7. For all wastewater transfers, the following information should be provided:
   i. Available capacity of the wastewater treatment facility to receive the wastewater; and

ii. Verification that the permitting authority for the wastewater treatment facility has been notified of the Person's proposed action to increase the Present Rate of Interbasin Transfer and a copy of that notification.

(c) Discussion of the Development of Viable Sources in the Receiving Area. The Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide a description of efforts made to identify and develop Viable Sources in the receiving area as alternatives to the Interbasin Transfer. The description shall be in sufficient detail for the Commission to determine if all reasonable efforts have been made to identify and develop in-basin alternatives to the proposed transfer that are environmentally-sound, cost-effective, and technologically feasible.

The Viable Sources discussion should include location and assessment of existing, abandoned, and potential alternatives in the Receiving Area that were considered, but rejected. Feasibility of obtaining additional water supply or wastewater services from cities, towns or districts within the same basin should be evaluated. The reason for the rejection of alternatives should be clearly stated and include, but not be limited to: consideration of cost, feasibility of obtaining suitable sites for water supply development or wastewater treatment or discharge, and/or environmental impacts. A copy of any studies or reports evaluating the alternatives should be submitted or referenced.

For all wastewater transfers, the Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide a final Comprehensive Wastewater Management Plan, or other appropriate study and include a discussion of the feasibility of implementing wastewater reuse in accordance with 314 CMR 20.00.

(d) Description of Conservation Measures in the Receiving Area. The Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide a detailed description of all measures to conserve water that have been completed, are in progress, or are programmed for continuation in the Receiving Area. These measures should comply with the Massachusetts Water Conservation Standards.

1. In the case of water supply transfers and wastewater transfers triggered by the development of a water supply source, the Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide a detailed description of the following measures:

   i. Identification of distribution system sources of unaccounted-for water;
   ii. Leak detection and repair program;
   iii. Metering and meter maintenance program;
   iv. Rate Structure;
   v. Public information program to promote water conservation;
   vi. Contingency Plan for limiting use of water during seasonal or drought shortages; and
   vii. Measures to protect water supply sources currently serving the Receiving Area.

2. In the case of wastewater transfers, the Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide a detailed description of the following measures:
   i. An approved Infiltration/Inflow reduction program or Sewer System Evaluation Study that has been developed in accordance with the Department of Environmental Protection's regulations at 314 CMR 12.04;
   ii. An Operation and Maintenance plan for the wastewater system completed in accordance with 314 CMR 12.04(1); and
   iii. In cases where the Person proposing an action to increase the Present Rate of Interbasin Transfer has control over the water supply system, the Person shall provide a detailed description of the supplier's water conservation program. In cases where the Person proposing an action to increase the Present Rate of Interbasin Transfer does not have control over the water supply system, reasonable efforts must be taken to provide a description of the water conservation program in the Receiving Area.

(e) MEPA Compliance. The application shall comply with MEPA and should include, where required, an Environmental Notification Form and all of the information produced in the MEPA process available at the time of the application.

(f) Description of Comprehensive Forestry Management Programs. For increases in the Present Rate of Interbasin Transfer of water, or for wastewater transfers triggered by the development of a water supply source, the Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide a detailed description of existing and proposed comprehensive forestry management programs for surface water supply source watershed lands currently serving the Receiving Area and owned, leased, or otherwise controlled by the applicant, with a copy of any applicable comprehensive forestry management plans included. The plan should be approved by the Department of Conservation and Recreation or other appropriate agency.

(g) Description of the Instream Flow of the Donor Basin. The Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide a detailed description of the hydrologic, hydrogeologic and ecological characteristics of the River Basin from which the water is to be transferred, including any relevant relationships between surface water and groundwater.
   1. For all transfers, the description should include data to evaluate the impact of the proposed increase in the Present Rate of Interbasin Transfer on streamflow and other hydrologic characteristics and on instream water uses and should include, but not be limited, to:
      i. A daily hydrograph of a sufficient period showing the potential changes induced by the transfer and a table of the daily streamflow for the same period with and without the proposed additional withdrawal, with the percent reduction in daily streamflow due to the proposed increase in the Present Rate of Interbasin Transfer;
      ii. An analysis of changes in the duration, frequency and magnitude of flood flows and low flows, and a description of the effects on the Ninety-five Percent (95%) Exceedence Flow;

iii. An analysis of effects on the 7Q10 flows used in NPDES permits for all wastewater treatment facilities that discharge downstream of the transfer source(s), including 7Q10 flow(s) used in the NPDES permits, recalculated 7Q10 flow(s) that include the proposed transfer, a description of how the transfer will affect the 7Q10 flow(s) and the permitted wastewater facilities downstream;
iv. Verification that the permitting authority for the wastewater treatment facilities has been notified of the Person's proposed action to increase the Present Rate of Interbasin Transfer and a copy of that notification;
v. Changes to other hydrologic characteristics including, but not limited to, stage, velocity, and sediment regimen;
vi. Effects on water levels of nearby reservoirs, lakes, and ponds and the impacts to the magnitude and duration of flow to associated outlet streams;
vii. Effects on indigenous and anadromous fisheries;
viii. Effects on wetlands and dependent flora and fauna;
ix. Effects on water quality, recreational uses, and aesthetic values;
x. Effects on established riparian uses and uses dependent on recharge from streamflow;
xi. Effects on hydropower production;
xii. Effects on present and foreseeable water withdrawals and undeveloped rights within the Donor Basin;
xiii. Effects on other instream uses, present and foreseeable;
xiv. Any existing studies or other documentation of flow alteration; and
xv. Any proposed flow management provisions, or other measures to minimize impacts of the transfer on streamflows.

2. For all water supply transfers, and wastewater transfers triggered by the development of a water supply source, the Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide a detailed description of the drainage area above the withdrawal point and the distance of the withdrawal point from the nearest surface water body (including a river, lake, or wetland).

3. In the case of groundwater withdrawals, the following information shall also be provided:
   i. The Department of Environmental Protection approved pumping test report for the proposed source, or, if not a public water supply source, a comparable hydraulic analysis;
   ii. A map of the site showing test wells, observation wells, and the location of geological cross-sections;
   iii. Static water table elevation or potentiometric surface contour map;
   iv. Transient (prior to shut down) water table elevation or potentiometric surface contour map;
   v. Geologic cross-sections including pre- and end of pumping test groundwater levels; and
   vi. Documentation of groundwater modeling, if used, describing input and output data, model calibration, water balance data, and characterization of groundwater and surface water contributing to the pumping wells.

4. In the case of transfers primarily derived from lakes, ponds, reservoirs or other impoundments either directly or through groundwater withdrawals, the Person proposing an action to increase the Present Rate of Interbasin Transfer shall provide a detailed description of:
   i. Spill or downstream flow data for the impoundment(s) in a reservoir system, if available;
   ii. Reservoir management plan or operating information (including a drought and demand management plan, if used);
   iii. Simulated streamflow impacts based on the current and proposed withdrawal conditions;
   iv. Leakage/seepage analysis (characterize flow downstream of the terminal reservoir during non-spill periods), if available; and
   v. A narrative description of seasonal flow characteristics downstream of the terminal reservoir under current and proposed operating conditions.

5. For wastewater transfers, except those triggered by the development of a local water source that is transferred out of the basin as wastewater, the type of information and analyses required will depend on the circumstances of the wastewater transfer, but shall include, as applicable:
   i. Delineation of the areas proposed to be sewered and the upstream watershed area of the site(s);
   ii. Estimate of the amount of wastewater to be transferred, on both an average annual and peak flow basis;

(h) Application Requirement Waiver. The Commission may, in appropriate cases, waive certain application requirements in these regulations not specifically required by state or federal law. It may also require the submission of additional information if needed to reach a Decision.

(3) Criteria for Evaluation of Applications for Approval of a Significant Increase in the Present Rate of Interbasin Transfer. The Commission shall find that the following criteria have been satisfied in making its Decision on a proposed action to increase the Present Rate of Interbasin Transfer.

(a) Criterion 1 – Compliance with MEPA: That an environmental review pursuant to MEPA, if required, has been complied with for the proposed increase.

(b) Criterion 2 – Viable Sources: That all reasonable efforts have been made to identify and develop all Viable Sources in the Receiving Area of the proposed Interbasin Transfer:

(c) Criterion 3 – Water Conservation: That all practical measures to conserve water have been taken in the Receiving Area, including but not limited to the following:
   1. For water supply transfers, and for wastewater transfers triggered by the development of a water supply source,

a. A written water conservation plan that describes how the Person proposing an action to increase the Present Rate of Interbasin Transfer complies with the most recent version of the Massachusetts Water Conservation Standards, including, at a minimum:
   i. The identification of distribution system sources of unaccounted-for water. The Person proposing an action to increase the Present Rate of Interbasin Transfer must be in compliance with the Massachusetts Water Conservation Standards for leak detection. Leaks identified as a result of the survey shall be repaired to the greatest extent feasible;
   ii. Metering of all water users in the Receiving Area and a program of meter maintenance, repair or replacement;
   iii. Implementation of Rate Structures that reflect the costs of operation, proper maintenance, proposed capital improvements, and water conservation and that encourage the same;
   iv. Public information programs to promote water conservation, the use of water conserving devices, and industrial and commercial recycling and reuse; and
   v. Contingency Plans for limiting the use of water during seasonal shortages or droughts.

b. Implementation of land use controls to protect existing water supply sources of the Receiving Area that meet the requirements of the Department of Environmental Protection published in 310 CMR 22.20 and 22.21.

2. <u>For wastewater transfers,</u>
   a. An active program to reduce sources of inflow and infiltration in the Donor Basin;
   b. Metering of existing wastewater transfers at location(s) sufficient to document wastewater flows out of basin. Use of regional sewer meters that document wastewater flows out of basin is acceptable where these meters are in place;
   c. An Operation and Maintenance manual for the wastewater system completed in accordance with 314 CMR 12.04; and
   d. For wastewater transfers where the Person proposing an action to increase the Present Rate of Interbasin Transfer has control over the water supply system, a program for implementing a water conservation program based on the Massachusetts Water Conservation Standards. In cases where the Person proposing an action to increase the Present Rate of Interbasin Transfer does not have control over the water supply system, the Person must have made reasonable efforts to coordinate with the water supplier to implement a water conservation program based on the Massachusetts Water Conservation Standards.

(d) Criterion 4 – Forestry Management Program: For water supply transfers, and for wastewater transfers triggered by the development a water supply source, that a comprehensive forestry management program which balances water yields, wildlife habitat, biodiversity and natural beauty has been implemented on any watershed lands of surface water sources currently serving the Receiving Area and under

control of the Person proposing an action to increase the Present Rate of Interbasin Transfer.

(e) Criterion 5 – Reasonable Instream Flow: That reasonable instream flow in the river from which the water is transferred is maintained. In determining whether reasonable instream flow would be maintained, the Commission shall take into consideration the impact of the proposed action to increase the Present Rate of Interbasin Transfer on the streamflow dependent ecosystems and water uses and the potential to affect instream values as listed in 313 CMR 4.09(2)(g), including:

1. The drainage area of the withdrawal and the distance of the withdrawal point from the nearest surface water body (such as a river, lake, or wetland);
2. Effects on flood flows, intermediate flows and low flows, considering existing flow alteration;
3. Effects on groundwater and surface water elevations;
4. Effects on stage, velocity, and sediment regimen;
5. Significance of indigenous and anadromous fisheries and fauna and effects thereon;
6. Significance of wetlands and dependent flora and fauna and effects thereon;
7. Effects on water quality, recreational uses, aesthetic values, areas of critical environmental concern, state-listed species and their habitats protected under the Massachusetts Endangered Species Act and regulations, fisheries, eelgrass, shellfish beds and areas protected under Article 97 of the Amendments to the Massachusetts Constitution;
8. Effects on established riparian uses and uses dependent on recharge from stream flow;
9. Effects on hydropower production;
10. Effects on other water withdrawals and undeveloped rights within the Donor Basin; and
11. Effects on other instream uses.

(f) Criterion 6 – Impacts of Groundwater Withdrawals: In the case of groundwater withdrawals, the results of pumping tests will be used to indicate the impact of the proposed withdrawal on static water levels, the cone of depression, the potential impacts on adjacent wells and lake and pond levels, and the potential to affect instream values as listed in 313 CMR 4.09 (2)(g).

(g) Criterion 7 – Cumulative Impacts: The Commission shall consider the cumulative impacts of all past, authorized or proposed transfers on streamflows, groundwater and surface water levels in the Donor Basin.

<u>4.10: Approval of an Action to Increase the Present Rate of Interbasin Transfer Due to the Expansion of the Service Area of a Regional Water Supply System</u>

The following procedure is available for a Regional Water Supply System seeking to increase its Present Rate of Interbasin Transfer of water by expanding its service area to new communities or water districts. The Commission may allow such a system to file an application that allows the Commission to evaluate and approve criteria applicable to the Donor Basin separately from criteria applicable to the Receiving Area. The Regional Water Supply System must have control over the water supply sources in the Donor Basin, but may not have control over existing water supply management actions in the Receiving Area.

(1) Procedures for Approval of a Significant Increase over the Present Rate of Interbasin Transfer Due to the Expansion of the Service Area of a Regional Water Supply System

(a) The provisions of 313 CMR 4.10 shall apply only to a Regional Water Supply System, as defined in 313 CMR 4.02;

(b) A Person proposing an action to increase the Present Rate of Interbasin Transfer shall complete the application and submit it to the Executive Director, Water Resources Commission, Executive Office of Energy and Environmental Affairs, 100 Cambridge Street, Suite 900, Boston, MA 02114. In addition, at least two bound copies, and an electronic copy must be submitted to WRC Staff, Department of Conservation and Recreation Office of Water Resources, 251 Causeway Street, Boston, MA 02114, and a copy must be placed at the public library(ies) of each of the affected communities;

(c) The Commission shall publish notice of the receipt of an application for a proposed Interbasin Transfer in the Environmental Monitor and send a copy to the municipalities directly affected;

(d) The Commission may require such additional information from the Person proposing an action to increase the Present Rate of Interbasin Transfer or any other appropriate Persons or agencies as it deems necessary to conduct this review;

(e) For the Donor Basin, the Commission shall,
1. within sixty (60) days of accepting the Donor Basin application as complete, or within sixty (60) days after MEPA Compliance if it is required, whichever is later, conduct a public hearing in the Donor Basin community; and
2. within sixty (60) days of completing said hearing shall complete its review and issue a Decision on the Donor Basin portion of the application;

(f) For the Receiving Area, the Commission shall,
1. within sixty (60) days of accepting the Receiving Area application as complete, or within sixty (60) days after MEPA Compliance if it is required, whichever is later, conduct a public hearing in the Receiving Area community; and
2. within sixty (60) days of completing said hearing shall complete its review and issue a Decision on the requested action to increase the Present Rate of Interbasin Transfer;

(g) During the period prior to the Commission's Decision on the proposed Interbasin Transfer, the Person proposing an action to increase the Present Rate of Interbasin Transfer, and participating agencies which have jurisdiction by law shall make themselves available at such reasonable times and places designated by the Commission so that the Commission may consult with both the Person and Commission staff;

(h) The review may be extended by written consent of the Commission and the Person proposing an action to increase the Present Rate of Interbasin Transfer for a mutually agreed upon period;

(i) The Donor Basin portion of the application may be submitted to the Commission for a Decision prior to the Receiving Area portion(s) of the application. A Decision for one portion of the application does not assure that the other portion(s) of the application will be approved;

(j) Following the Commission's Decision to approve the Donor Basin portion of the application, the Regional Water Supply System must provide an annual report to the Commission listing the Receiving Areas which have joined its system, by date, and the amounts of water (both average day and maximum day) that it is contractually obligated to supply to each of these Receiving Areas until the amount of water described in the approved Donor Basin portion of the application has been fully allocated;

(k) Receiving Area portions of the application may be reviewed concurrently or after the Commission determines that the Donor Basin portion of the application meets the applicable criteria listed in these regulations. The Donor Basin applicant need not have identified all of the potential Receiving Areas of the Interbasin Transfer;

(l) Receiving Area portions of the application may be submitted to the Commission separately and non-concurrently from each other;

(m) Ten Year Review

i. Ten (10) years after the Decision to approve the Donor Basin portion of the application, if the Regional Water Supplier has not allocated all of the approved Increase over the Present Rate of Interbasin Transfer, the supplier shall file a report, with the Commission, describing any changes pertinent to Donor Basin criteria that may have occurred since the original Decision. The Commission shall provide notice in the Environmental Monitor that the report has been received. If the Commission takes no action on the report within six months of receipt, the original approval shall continue under its existing terms; and

ii. If the Commission determines, based on the submitted report or any other available information, that conditions in the Donor Basin have significantly changed or that the Donor Basin criteria could no longer be met by the project as proposed, after conducting a public hearing in the Donor Basin as described in 313 CMR 4.11 (1) and (2), the Commission shall revise the approval of the Donor Basin portion of the application for the unallocated portion of water, provide it in writing to the Donor Basin applicant and file the revised approval in accordance with 313 CMR 4.11(3).

(n) In the event that twenty (20) years after the Decision to approve the Donor Basin portion of the application, the Water Resources Commission has not approved the allocation of the entire amount of the water originally approved under the Donor Basin application or does not have a pending application from a Receiving Area for approval, the approval of any unallocated water, excluding the amount requested in a pending application, shall expire. Once the Commission has made a Decision(s) on any pending Receiving Area application(s), the availability of any remaining unallocated amount of the water associated with the Donor Basin application shall also expire.

(2) Application for Approval of an Action to Increase over the Present Rate of Interbasin Transfer Due to the Expansion of the Service Area of a Regional Water Supply System

(a) The Donor Basin portion of the application is subject to 313 CMR 4.06, 313 CMR 4.09 (2)(a), 313 CMR 4.09(2)(b), 313 CMR 4.09(2)(e), CMR 4.09(2)(g)(1) through CMR 4.09(2)(g)(4), and 313 CMR 4.09(2)(h); and

(b) The Receiving Area portions of the application is subject to 313 CMR 4.06, 313 CMR 4.09(2)(a) through 313 CMR 4.09(2)(f), and 313 CMR 4.09(2)(h).

(3) Criteria for Evaluation of Application for Approval of an Action to Increase over the Present Rate of Interbasin Transfer Due to the Expansion of the Service Area of a Regional Water Supply System

The Commission shall find that the following criteria have been satisfied in making its Decision to approve or deny a proposed action to increase the Present Rate of Interbasin Transfer.

(a) The Commission shall determine whether the Donor Basin portion of the application meets the criteria listed under 313 CMR 4.09(3)(a), and 313 CMR 4.09(3)(e) through 313 CMR 4.09(3)(g); and

(b) The Commission shall determine whether the Receiving Area portion of the application meets the criteria listed under 313CMR 4.09(3)(a) through 313 CMR 4.09(3)(d).

4.11: Hearing and Decision Procedures

(1) Public Hearings. Before a Decision of the Commission to approve or deny a proposed action to increase the Present Rate of Interbasin Transfer of water or wastewater is made, the Commission shall hold two (2) public hearings. The public hearings shall take place after compliance with MEPA and Chapter 30A of the Massachusetts General Laws. One (1) hearing must be held in the Donor Basin community where the immediate source of the Interbasin Transfer is located and one (1) hearing must be held in the Receiving Area community. Additional public hearings may be required by the Commission prior to its Decision on an application to increase the Present Rate of Interbasin Transfer.

(2) Hearing Notice. Public notice of the hearing shall be published in the Environmental Monitor by the Commission not less than 21 days before such hearing. Notice shall be published in electronic media that is generally available in both the Donor and Receiving Areas. Such notice shall be provided to the appropriate Boards of Selectmen, Mayors, Conservation Commissions, Planning Boards, Water and Sewer Departments, Boards of Health, Commissions or Districts of the directly affected communities, regional planning agencies, water or wastewater citizen advisory committees and watershed associations. Such notice shall include a citation of the authority under which the proposed Interbasin Transfer is being reviewed, a summary of the facts concerning the proposed Interbasin Transfer, the

time and place of the hearing, the manner by which the public may make their views known.

(3) Filing Commission Decision. Within 30 days of the final Decision by the Commission, it shall file a written report of the findings and justifications of its Decision to approve or deny the proposed action to increase the Present Rate of Interbasin Transfer of water or wastewater with the clerks of the House of Representatives and the Senate, and with the Secretary of State for publication in the Massachusetts Register. This report shall also be sent to the Person proposing an action to increase the Present Rate of Interbasin Transfer and the affected Donor Basin and Receiving Area communities.

(4) M.G.L. c. 30A. All proceedings under 313 CMR 4.00 shall be subject to the provisions of M.G.L. c. 30A.

4.12: Miscellaneous Provisions

(1) Interbasin Transfer Data. The Commission may require any Person transferring water or wastewater out of a Donor Basin to provide information concerning the time and amount of said water transferred on a periodic basis which the Commission deems necessary to achieve the purposes of 313 CMR 4.00.

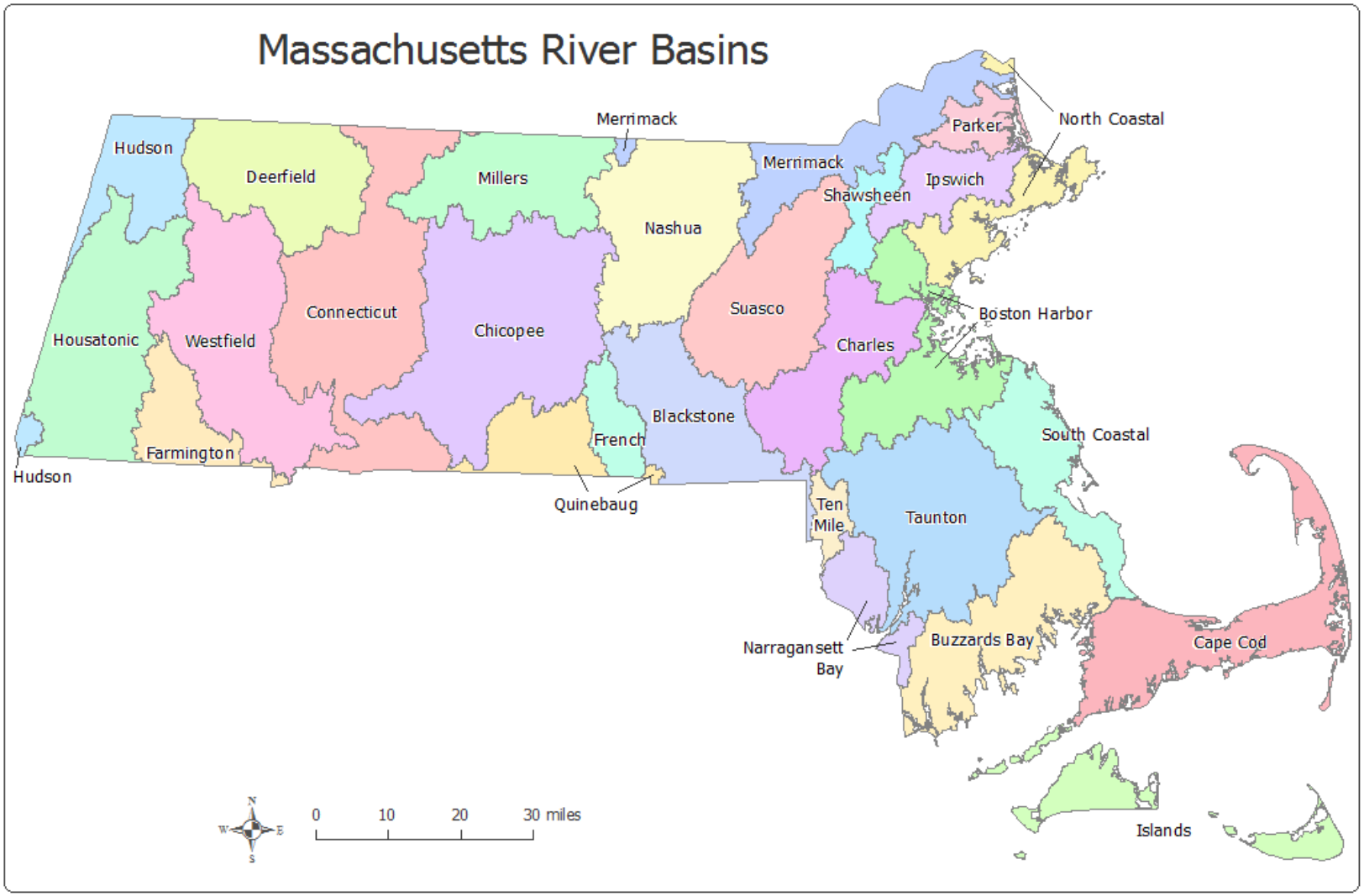
(2) Jurisdiction. 313 CMR 4.00 shall have force and effect within the political boundaries of the Commonwealth of Massachusetts.

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

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

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

REGULATORY AUTHORITY

313 CMR 4.00: M.G.L. c.21, § 8D.

Appendix A: Massachusetts River Basins Map