



April 6, 2012

Commissioner Ken Kimmell
MassDEP
One Winter Street
Boston, MA 02108

Re: Comments on Draft Sustainable Water Management Initiative Framework

Dear Commissioner Kimmell:

Thank you for meeting with representatives from NAIOP, the Commercial Real Estate Development Association, and Associated Industries of Massachusetts (AIM) on March 23 to present the Draft Sustainable Water Management Initiative Framework. As you are aware, this was the first formal presentation we have received since SWMI commenced in 2009.

There is no question that a significant amount of time and energy went into the development of this Draft Framework and we appreciate the Department's efforts to create a more predictable Water Management Act (WMA) permitting process. That being said, we do have some specific concerns about the Draft Framework and the impact it could have on economic development and growth in Massachusetts. Our specific comments follow for your review.

Review Thresholds: 5% Alteration Should Not Apply to All Watersheds in Massachusetts

Under the Draft Framework, the centerpiece for incorporating Streamflow Criteria (based on identified Biological Categories) into the WMA's regulations would be a 4-tiered permit review system. Under this tiered system, each permit request by a water supplier or user for groundwater withdrawal subject to the WMA permitting process would be placed in a specific tier, depending on the amount of additional water withdrawal above a baseline level and the presumed impact of the withdrawal on sub-basin biological and streamflow criteria. Per the Draft Framework, this baseline level would typically be the higher of 5-8% above 2003-2005 average use, or 5-8% above 2005 use or registered volumes.

The DEP's proposed 5% threshold for alteration of unimpacted August median flow was selected to distinguish between "large" and "smaller" withdrawals. Exceeding this 5% threshold will result in a more stringent Permit Review Tier for all watersheds throughout the Commonwealth.

We believe that the 5% alteration should not apply as a blanket policy across all watersheds. Though additional withdrawal may warrant mitigation in a stressed watershed, a similar withdrawal in a non-stressed watershed should not categorically be regulated in basins that have a more than adequate water supply, which can handle these additional withdrawals without compromising the safe yield stream flow principles.

In order to accommodate the need for growth and economic expansion within the Commonwealth and limit the economic burden, DEP should focus its regulatory efforts on

protecting those watersheds where there is reasonable concern that the safe yield could be compromised.

In-Depth Cost Benefit Analysis Needed

The current emphasis and underpinning of all aspects of the Draft Framework are based and hinge on aquatic habitat quality and do not sufficiently consider how the program and the costs of required offset/mitigation actions will directly and indirectly affect the future growth of regulated water users. A thorough cost benefit analysis would help assess these impacts. We understand that the pilot program will be done while the regulations are being drafted. We urge the Department to hold off on drafting the regulations until the pilot program is completed, the results are reviewed by all affected stakeholders, including the business community, and more accurate cost estimates are determined and reviewed.

Proposed Mitigation Measures May Not Be Achievable

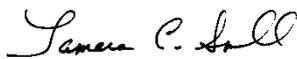
Further, statewide maps of Biological Categories and Flow Levels using results of USGS reports show a vast majority of eastern MA as Biological Category 5 (the most altered/impaired), and while there is some variation in Flow Levels, many sub-basins in eastern Massachusetts are identified as Level 3 and above. Based on this, we question which if any of the many offset/mitigation actions identified by the Draft Framework can actually be used successfully to restore heavily altered Basins (e.g., dam removal and stormwater utilities are politically challenging and very difficult to achieve). There also needs to be a better understanding of the actual and tangible ecological benefits balanced against the costs and feasibility of the offset/mitigation actions.

Ongoing Evaluation of Program Needed

The Department should periodically review this program as it moves forward to determine if it is achieving its stated goals. If in 5 years or sooner, objectively-based reviews show that the aquatic habitat and streamflows are not improved by the program's additionally required mitigation/offset measures or if the program is cost-prohibitive (to regulated water suppliers and users), the program should be discontinued. Ongoing input from the water suppliers and the business community, in addition to environmental advocates, will be critical for a thorough and fair analysis of the success of the program in meeting its stated goals and objectives, as well as the overarching statutory purposes of the WMA.

Thank you for the opportunity to provide comments. Please let us know if additional information is needed.

Sincerely,



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Cc: Kathy Baskin, Executive Office of Energy & Environmental Affairs (EEA)