



THE COMMONWEALTH OF MASSACHUSETTS  
WATER RESOURCES COMMISSION  
100 CAMBRIDGE STREET, BOSTON MA 02114

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**Meeting Minutes for November 8, 2012**

100 Cambridge Street, Boston, MA, 1:00 p.m.

*Minutes approved December 13, 2012*

**Members in Attendance:**

Kathleen Baskin	Designee, Executive Office of Energy and Environmental Affairs (EEA)
Marilyn Contreas	Designee, Department of Housing and Community Development (DHCD)
Anne Carroll	Designee, Department of Conservation and Recreation (DCR)
Bethany Card	Designee, Department of Environmental Protection (MassDEP)
Gerard Kennedy	Designee, Department of Agricultural Resources (DAR)
Laila Parker	Designee, Department of Fish and Game (DFG)
Todd Callaghan	Designee, Massachusetts Office of Coastal Zone Management (CZM)
Thomas Cambareri	Public Member
Raymond Jack	Public Member

**Members Absent**

John Lebeaux	Public Member
Paul Matthews	Public Member
Bob Zimmerman	Public Member

**Others in Attendance:**

Michele Drury	DCR
Bruce Hansen	DCR
Jennifer Pederson	MA Water Works Assn.
Duane LeVangie	MassDEP
Lealdon Langley	MassDEP
Ann Lowery	MassDEP
Davis Scribner	City of Peabody
Erin Graham	DCR
Vandana Rao	EEA
Marilyn McCrory	DCR

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Baskin called the meeting to order at 1:00 p.m.

**Agenda Item #1: Executive Director's Report**

Baskin introduced new commission member Todd Callaghan, designee for the Office of Coastal Zone Management. She noted that Callaghan has been actively involved in reviews of projects that have come before the commission over many years. Callaghan described his duties at the Office of Coastal Zone Management.

Hansen provided an update on the hydrologic conditions for October. Average precipitation for the month was 188 percent of normal, statewide, with the Cape Cod and the Islands region

receiving the lowest amount, at 86 percent of normal. He reported on a major event, Hurricane Sandy, during which wind-driven rain, coupled with astronomically high tides, produced moderate damage and flooding in coastal areas, particularly on Cape Cod and the southeastern part of the state. He reported that data on groundwater levels were not complete because U.S. Geological Survey resources had been diverted to monitoring the effects of the hurricane. Surface water flows were mostly normal, with the exception of the western slopes of the Connecticut River Valley, where surface water flows were above normal. Reservoir levels varied, with large reservoirs reporting below-normal levels for this time of year. Drought indicators show no drought conditions at present and normal conditions in the region through January.

Drury reported on the latest activity related to the sewerage project in the town of Groton, which the Water Resources Commission had determined, at its October meeting, met the criteria for insignificance under the Interbasin Transfer Act. Drury reported that town meeting had rejected the proposed sewerage project based on cost. However, the town hopes to present a plan for phasing in the project at town meeting in January, along with the dam management plan. She explained that the interbasin transfer approval is good in perpetuity, as long as the project does not change. She added that the town must also meet the conditions of approval, even with a phasing plan. Cambareri commented that water quality data is needed to justify the high cost of sewerage.

Baskin provided an update on the Sustainable Water Management Initiative (SWMI). The final framework is being prepared, incorporating comments on the draft framework released in February 2012, and will be posted on EEA's web site in the next few weeks. Release of the final framework will conclude the first phase of the initiative, which included developing a framework for streamflow criteria, safe yield, and permitting guidance. The next phase, which will also include public input, will be writing regulations. Draft regulations are expected to be released for public comment in the January or February time frame, with additional opportunities for public comment during meetings of the Water Resources Commission, which will consider the regulations for approval. Final regulations are expected to be released near the end of 2013. Phase two of the pilot project is ongoing, including discussions of opportunities for mitigation and allocation of funding for implementation. Most of this funding would assist public water suppliers affected by SWMI requirements. Card added that a request for responses on funding opportunities is available on the state's CommPASS web site (<http://www.comm-pass.com/>). LeVangie announced that public meetings on the grant program are scheduled for November in Boston and Worcester.

Pederson commented that a considerable amount of explanation of SWMI will be needed when draft regulations are released for public comment, and she encouraged Baskin to conduct additional public meetings. She also requested flexibility in timelines for response to the draft regulations, adding that many water suppliers are not yet fully aware of how SWMI will affect them.

Baskin announced that today is the deadline for comments on the Drought Management Plan, and she acknowledged receipt of comments from the Massachusetts Water Works Association and the Massachusetts Emergency Management Agency. The final document is expected in the near future, pending completion of a technical appendix providing historical data on drought parameters.

Baskin announced that the town of North Reading has filed an Environmental Notification Form with the Massachusetts Environmental Policy Act Office. The purpose of the filing is to seek water from the Massachusetts Water Resources Authority to replace all of its sources and to seek a connection to the Greater Lawrence Sewer District for disposal of a portion of its sewage. Baskin added that commission staff is providing technical assistance to the town to facilitate the anticipated application for interbasin transfer.

**Agenda Item #2: Update on Water Management Act Permitting and Water Needs Forecasting**

Baskin introduced Anne Carroll of DCR and Duane LeVangie of MassDEP to provide an update on Water Management Act permitting and the water needs forecasting schedule.

Carroll explained that the Permit Extension Act and its later modification have extended by an additional two years both the Water Management Act (WMA) permitting schedule and the schedule for completing water needs forecasts. Though WMA permits were renewed in some communities, prior to adoption of the Permit Extension Act, other communities received temporary allocations of water, and permit renewals were put on hold in still other communities.

For the benefit of new commission members, Carroll provided background on the water needs forecasting process. She explained that DCR develops water needs forecasts for public water suppliers with Water Management Act permits using a methodology that the Water Resources Commission approved.

Carroll and LeVangie reviewed a proposed timeline for water needs forecasting and WMA permit renewals. The schedule builds in additional time for the water needs forecasting process, in recognition of additional factors communities will be considering as a result of the SWMI process. The process would start approximately eighteen months before the permit expiration date. Milestones include an interagency meeting to discuss water needs and flow levels and biological categories across the basin; an expanded permit renewal workshop with communities, which, in addition to a discussion of the water needs forecasting methodology and the permit renewal process, would incorporate an overview of SWMI principles; community consultations to inform the permit applications; completion of final water needs forecasts; and filing a permit renewal application.

LeVangie reviewed the anticipated schedule, by basin, for WMA permit renewals, noting that most permit expiration dates have been extended four years as a result of the Permit Extension Act. He noted that applications for permit renewal have already been submitted by communities in the Ipswich River, Boston Harbor, and Taunton River basins, and MassDEP issued interim permits in these basins.

Carroll reviewed the anticipated schedule, by basin, for developing new water needs forecasts, starting with the Buzzards Bay Basin. She noted that water needs forecasts may be revisited for communities in basins where permit renewal applications were put on hold as a result of the Permit Extension Act. She explained that the 2010 Census provided more updated information on population than had previously been available, and staff will assess whether the water needs forecasts should be revised for these basins to incorporate new census data. Basins in this category include the Ipswich River, Boston Harbor, Taunton River, South Coastal, Cape Cod, and Islands basins. She added that twelve communities in four basins had previously received temporary allocations of water in their renewed permits because insufficient data were available at the time to develop final water needs forecasts. For these communities – in the Hudson River,

Blackstone River, Charles River, and North Coastal basins – DCR will develop water needs forecasts at the time when MassDEP conducts its five-year review of the permits.

Baskin asked if the communities that received temporary allocations had remedied the deficiencies in the data reported over the past five years. LeVangie replied that some deficiencies still exist, and some of these communities have orders to correct these deficiencies. Baskin requested that a pathway for these communities be put in place to ensure that the identified deficiencies have been addressed by the time of the five-year permit review.

**Agenda Item #3: Presentation: MassDEP Regulatory Reform proposals: Wetlands- and Waterways-related regulations**

Baskin introduced Ann Lowery and Lealdon Langley of MassDEP to provide an update on MassDEP's proposals for streamlining its regulations. Card clarified that today's presentation would focus on proposed changes to the wetlands and waterways regulations, and changes to wastewater regulations would be covered at a future meeting.

Card noted that she and Lowery had provided a general overview of MassDEP's regulatory reform initiative at the June 2012 meeting of the Water Resources Commission (see meeting minutes and presentation on the [commission](#)'s website). She reviewed the impetus for and guiding principles for these reforms, including reducing staff time on reviews of activities that do not have significant environmental impact, avoiding duplication of oversight with local authorities, providing incentives for desired outcomes and innovations, and improving efficiency, where possible. She emphasized that the intent is to realize efficiencies without reducing environmental protection. She noted that fourteen of the twenty-one proposed reforms are in the water-related programs. She added that the Water Resources Commission will vote on some of these regulatory changes, and the intent of these updates is to inform the commission as far in advance as possible.

Baskin clarified that the commission approves regulations related to the Massachusetts Clean Waters Act and the Water Management Act, and noted that the wetlands and waterways regulations will not come back for commission approval unless they intersect with these other regulations.

Lowery noted that the wetlands and waterways regulatory reform packages have been approved by the offices of the Secretary of Energy and Environmental Affairs and the governor and are being prepared for the public hearing process.

Lowery summarized a modification to the waterways regulations that implements a change to Chapter 91 statute made by the state legislature. The proposed change would allow MassDEP to promulgate a general license for small docks and piers, Individual property owners would then file a certification of compliance with the general license requirements. The process includes opportunities for local review and control. Questions and discussion addressed the reasons for Planning Board authority, the definition of "small," and how cumulative impacts will be considered.

Langley summarized additional modifications designed to eliminate an unnecessary delay in MassDEP review of Chapter 91 licenses for projects subject to review under both the Massachusetts Environmental Policy Act (MEPA) and Chapter 91. The change allows concurrent, rather than sequential review. Questions and discussion focused on how project changes that occur as a result of MEPA reviews will be addressed.

Lowery summarized modifications to wetland regulations that allow two new types of projects to be categorized as “limited projects.” These changes will streamline permitting of access roadways for renewable energy projects in certain inland and coastal wetland areas. Minimization and mitigation of adverse impacts, as well as conformance with erosion and sedimentation control guidelines, will still be required, and sensitive resource areas are excluded from limited project status. Questions and discussion revolved around stream crossings and whether temporary structures would be removed after installation of the renewal energy components. Langley explained that mitigation in the form of removal of roadways was not required because access for maintenance of these facilities may still be needed.

In response to a question about the reason for introducing the proposed changes, Langley explained that the changes are responsive to circumstances that did not exist at the time the regulations were promulgated.

Langley summarized changes to the wetlands regulations that exempt certain minor activities related to highway safety operation and maintenance work and utility work in the buffer zone of wetland resource areas. He explained that the proposal builds on lessons learned from an earlier proposal to institute a “simplified review” process. The changes relieve some of the permitting burden for both Conservation Commissions and project proponents for activities that involve relatively low risk in terms of environmental impact. He added that the changes will also facilitate emergency response to natural disasters and small-scale activities related to roadway safety.

There was some discussion of whether and under what circumstances local authority can impose requirements more stringent than the Wetlands Protection Act. Jack concurred with the intent of the proposed modifications and commented that current regulations, as interpreted by local authorities, are ambiguous, and can make it difficult to perform safety-related maintenance, except in cases of emergencies. Langley confirmed that a local bylaw can be more stringent than state regulations. He added that it is hoped that local authorities will review the proposed changes and make appropriate modifications to local bylaws. He explained that a superseding order of conditions from MassDEP cannot relieve a party from compliance with a local bylaw; only the Attorney General can determine if a local bylaw is consistent with state law.

Jack requested that water and wastewater utilities be included in the definition of “utility.” He also requested that “maintenance” be clearly defined in the regulations. Langley confirmed that the statute currently exempts maintenance of public utilities, which include water, sewer, gas, and electric utilities.

Lowery described proposed changes to three sets of regulations to streamline permitting for short-term testing of innovative technologies in wetlands and waterways. The proposed changes will allow for temporary installation for a period of one year so that the performance of water-dependent technologies can be evaluated.

Baskin asked if screening criteria would be provided to guide decision-making. Lowery responded that “innovative technology” is defined, but local authorities still have discretion to rule that a proposal does not meet the piloting provisions. Callaghan asked for further clarification on the discretion available to permitting authorities. Lowery confirmed that either the local authority or MassDEP would review the proposed pilot to ensure the permits provide adequate protection, and if monitoring showed unexpected impacts, immediate removal or

modification of the pilot technology could be required. She added that, beyond the initial term of the permitted pilot, a proponent would have to proceed through standard permitting channels to allow an innovative technology to remain in place.

Callaghan asked how the proposed modifications affect the authority of other state agencies. Baskin concurred with Callaghan that the current review process is useful to reviewers in that it could, as in the case of Aquaria's fisheries exclusion system(s), require extensive testing of new technologies in a laboratory setting and demonstration that the technology will work without causing environmental harm.

Langley confirmed that where cross-jurisdiction review is required, the current approval process would remain in place. Lowery added that the regulations would still require basic information from the applicant on how the technology had been tested and what the anticipated impacts will be.

Callaghan suggested modifying the language to limit application of the proposed changes to renewable energy projects. Lowery responded that MassDEP had considered such limits, but did not want to exclude good ideas. Card added that the regulations still allow a permitting authority to deny an application. She invited those with concerns to submit comments on the draft regulations. Langley noted that, in response to comments from stakeholders, language was added to limit the streamlined permitting process to water-dependent innovative technologies, to address concerns that inappropriate technologies would be installed in wetland resource areas.

Langley described proposed changes to the wetlands regulations intended to facilitate maintenance of stormwater management systems. He explained that some stormwater management systems can take on the characteristics of natural wetlands. Amendments adopted in 2008 clarified that stormwater management systems constructed in compliance with the Wetlands Protection Act are not intended to be regulated as wetland resource areas. Maintenance of these systems was also exempted from regulation. The current reform proposal extends these exemptions to projects constructed after 1996, when the Stormwater Policy was published, in order to provide incentives for improvements to stormwater management systems. A safeguard is a requirement that such systems obtain approvals through the standard permitting process.

In response to a question from Baskin about the timeframe for the regulatory reform proposals, Lowery responded that additional regulatory packages are currently under review by EEA, the governor's office, and the Office of Administration and Finance. Following approvals, public hearings on the draft proposals will be scheduled for the December-to-January timeframe.

Jack expressed his support for reforms that improve efficiency. He commented that delays and extra costs can result when a project requires permits from multiple agencies, noting that each permit has multiple avenues for legal challenges. He requested that a comprehensive permit process be considered for public infrastructure projects to allow coordinated review by multiple permitting authorities.

Meeting adjourned, 2:45 p.m.

**Documents or Exhibits Used at Meeting:**

- Lost Lake Sewering Pond Project, Groton:
  - WRC Decision, October 11, 2012. Request for Determination of Insignificance under the Interbasin Transfer Act, MGL Chapter 21 Sections 8B - 8D. Groton Lost Lake Sewering Pond Project
  - Sewer proposal postponed in Groton.” Lowell Sun, October 16, 2012
- Massachusetts Department of Environmental Protection. October 10, 2012. Regulatory Reform at MassDEP: Progress Update and Plans for Additional Reforms
- Interbasin Transfer Act project status report, 25 October 2012
- Current Water Conditions in Massachusetts, November 8, 2012
- SWMI web page: <http://www.mass.gov/eea/air-water-climate-change/preserving-water-resources/sustainable-water-management/>
- Massachusetts Water Resources Commission. May 2009. Policy for developing Water Needs Forecasts for Public Water Suppliers and communities and Methodology for Implementation. Available at <http://www.mass.gov/eea/docs/eea/wrc/090501-waterneedsforecast-policymethod.pdf>
- Presentation: Water Management Act Permitting and Water Needs Forecasting: Update to the MA Water Resources Commission
- Handout: Wetlands and Waterways Regulatory Reform Proposals: Water Resources Commission, November 8, 2012