



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

Meeting Minutes for October 21, 2014

One Winter Street, Boston, MA, 2:00 p.m.

Minutes approved December 11, 2014

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)
David Cash	Department of Environmental Protection (MassDEP)
Catherine deRonde	Designee, Department of Agricultural Resources (DAR)
Mary Griffin	Department of Fish and Game (DFG)
Thomas Cambareri	Public Member
Raymond Jack	Public Member
John Lebeaux	Public Member
Paul Matthews	Public Member
Bob Zimmerman	Public Member

Members Absent

Todd Callaghan	Designee, Massachusetts Office of Coastal Zone Management (CZM)
----------------	---

Others in Attendance:

Martin Suuberg	EEA
Mettie Whipple	Eel River Watershed Assn.
Michele Drury	DCR
Blake Lukis	Massachusetts Water Works Assn.
Ann Lowery	MassDEP
Richard Friend	MassDEP
Karen Crocker	MassDEP
Erin Graham	DCR
Marilyn McCrory	DCR
Duane LeVangie	MassDEP
Becky Weidman	MassDEP
Aaron Weieneth	AECOM
Suzanne Sullivan	Ipswich River Watershed Assn.
Karilyn Heisen	CDM Smith
Shi Chen	MassDEP
Vandana Rao	EEA
Tom Philbin	Massachusetts Municipal Assn.
Sara Cohen	DCR
Wayne Castonguay	Ipswich River Watershed Assn.
Laila Parker	DFG/Div. of Ecological Restoration
Beth McCann	MassDEP
Julia Blatt	Massachusetts Rivers Alliance
Bethany Card	MassDEP
Beth Riportella	MassDEP
Margaret Van Deusen	Charles River Watershed Assn.
Tim Purinton	DFG

Baskin called the meeting to order at 2:04 p.m.

Baskin introduced Martin Suuberg, EEA's Undersecretary for Environment, who offered welcoming remarks on behalf of Secretary Maeve Valley Bartlett. He noted that the Water Management Act (WMA) regulations will implement the Sustainable Water Management Initiative (SWMI) framework. He added that SWMI has been a multi-agency, multi-stakeholder effort, begun in January 2010, and he thanked all involved for the considerable time devoted and their critical input on the SWMI framework and WMA regulations. He described the public process and noted that, going forward, the agencies will give careful and thoughtful attention to implementation issues. He requested a vote to approve the WMA regulations.

Cash commented on the complex nature of the issues. He reiterated appreciation for the contributions of various stakeholders over almost five years. He noted that the result reflects a balancing of interests. He outlined major improvements represented by the regulations, including a new methodology for determining safe yield, the incorporation of streamflow criteria, the baseline concept, new permit review categories, and new minimization and mitigation requirements. He invited continued collaboration on the guidance documents. He added that the agencies will continue to leverage funding to help communities move forward. He expressed hope for an affirmative vote.

Agenda Item #1: Executive Director's Report

Baskin announced that, based on advice from the Drought Management Task Force, which met on October 17, 2014, Secretary Valley Bartlett has declared a Drought Advisory for southeastern Massachusetts and Cape Cod and the Islands, effective October 1, 2014, and based on data from July through September.

Agenda Item #2: Vote on Revisions to the Water Management Act Regulations (310 CMR 36.00)

Baskin invited questions or requests for clarification from Commission members on the regulation package.

Jack requested clarification on the use of the word "support" in the definition of Cold Water Fisheries Resources. Griffin clarified that the new Cold Water Fisheries regulations will require the presence of cold water fish and, in response to comments, a process and time for response have been added to allow reconsideration of the designation of a particular resource.

Contreas requested that MassDEP provide guidance to communities as soon as possible on the information communities must provide in order for MassDEP to review the impact of the Water Management Act regulations on municipalities and public water systems, as required by section 52 of the Environmental Bond. Lowery responded that MassDEP will conduct both individual and general outreach to public water suppliers about the cost information communities will be asked to provide. Weidman added that MassDEP will also work with the Water Management Act Advisory Committee to gather information and guide development of the report. Contreas requested a progress report to the commission before the end of the year. Matthews expressed appreciation for the robust nature and transparency of the public process. He expressed concern about the timeline and requested justification for voting at today's meeting.

He made a motion that the matter be held until the commission's November 13 meeting. Lebeaux seconded the motion. Baskin invited discussion of the motion.

Baskin described the process of public comment on the regulations and on the SWMI process over the past five years. Cash asked Matthews why he thought additional time is needed and who had not had the opportunity to weigh in. Matthews expressed concern that not many changes had been made in response to the 160 comments received by MassDEP, and that additional comments had been made in recent letters and at the last commission meeting. Jack added that it would be appropriate to delay a vote until after the legislature's thirty-day review.

Baskin noted that the first presentation to the commission on SWMI occurred in January 2010. She added that the agencies and water suppliers will need time to implement the regulations. She added that the commission's process does not interfere with the legislature's thirty-day review process. Cash acknowledged the importance of the legislative review, adding that the legislature has been briefed throughout the process, have attended the public meetings, and there are no significant changes to the regulations that the legislature is not aware of already. Card outlined outreach to the legislature throughout the revision process.

Suuberg confirmed that the regulations would not be promulgated before the legislature's thirty-day window for review had expired. He said the focus going forward is to make sure the new permitting process works smoothly, that the process is set up to foster engagement of the stakeholders so that decisions are made based on sound information.

Lebeaux questioned the public benefit of approving the regulations at this meeting. Baskin clarified that it is not unprecedented for the commission to discuss and vote on items in less than one month's time.

Griffin made a motion to vote on the regulations and not delay. Baskin responded that the commission would first vote on Matthews' motion before considering other motions.

Griffin echoed comments on the need to move forward with implementation, adding that, from DFG's perspective, the regulations integrate important science and decisions about aquatic life. Cash pointed out that the nature of changes to the document being presented for a vote did not require the kind of additional analysis that might warrant a delay.

Cambareri commented that the regulations had benefitted from a long and arduous process. He noted advances in scientific understanding and analytical tools available since the Water Management Act regulations were first enacted in 1985. He respectfully requested that Matthews withdraw his motion. Matthews declined. Matthews added that a delay would allow the Water Management Act Advisory Committee to share its input. Card responded that the Advisory Committee has been briefed on the regulatory package. Lowery added that the Advisory Committee will serve as an important forum during implementation for improving the Permit Guidance Document.

Griffin withdrew her motion. Baskin invited a vote on Matthews' motion.

V	A motion was made by Matthews with a second by Lebeaux to postpone the vote on the
O	Water Management Act regulations until the Commission's November meeting.
T	
E	The vote to approve was 3 in favor (Jack, Lebeaux, and Matthews) and 8 opposed.

Baskin invited Griffin to offer her motion. Griffin made a motion to accept the regulations as presented to the Water Resources Commission. Cash seconded. Baskin invited discussion of the motion.

Jack commented that he has been involved in the SWMI process since its inception. He noted his personal commitment to conservation. He acknowledged the need for regulations that are responsible and reasonable, and that the WMA regulations are long overdue for revision. He also concurred with the method used to determine baseline, noting that the years selected for analysis coincide with the scientific studies. He stated that his reservations do not have to do with the science, but with the cost impacts of mitigation required for withdrawals over baseline. He expressed disappointment that MassDEP had not made more substantive changes in response to comments, particularly to address cost impacts on the regulated community. He objected to defining impacts based on volume of withdrawals requested, rather than on environmental result, and he objected to the use of a one-to-one ratio for mitigation over baseline.

Zimmerman commented that the impacts of water withdrawals on the environment have not been brought into the regulatory framework. He expressed concern about the safe yield determination and the allowance of minimization to address existing impacts. He stated that the proposed regulations miss an opportunity to make fundamental change by addressing the impacts on instream flow and water quality of wastewater treatment systems and inflow and infiltration to deteriorating pipes. He added that the regulations do not do enough to repair the damage already done to rivers and streams designated as Categories 4 and 5. He expressed concern that mitigation can factor in past activities. He also expressed concern about the effort to delay implementation of the regulations. He warned that the science that has emerged over the last twenty years suggests the need not just to balance competing interests but to restore the natural world.

Baskin invited comments from the public.

Reading comments from a letter from the Eel River Watershed Association, Whipple expressed concern that the regulations would allow over-allocation of water in the Eel River watershed, adding that the river could be pumped dry without violating the regulations as written. She urged that the regulations be further revised to protect the important resources of the Eel River watershed and the Plymouth-Carver aquifer. She expressed concern about the proposed safe yield calculations and the absence of streamflow criteria for groundwater-driven systems.

Lukis noted that comments and concerns of the Massachusetts Water Works Association have been well documented, and he urged a "no" vote on the changes to the regulations.

Castonguay thanked the agencies for an open and transparent process, but expressed disappointment that the baseline numbers and exemptions for WMA registrations will not help

the Ipswich River. He noted that the Water Conservation Standards, currently being revised with the help of a task force including both water suppliers and environmental advocates, will therefore not apply to many water withdrawals. He noted ongoing problems that will not be addressed in the Ipswich River watershed because of these exemptions, including high unaccounted-for water, nonessential water use, and some of the lowest water rates in the state. He requested that the Commission commit to establishing a process whereby all water withdrawals will be subject to compliance with the state's Water Conservation Standards.

Sullivan commented that the proposed regulations will not address the problem of the drying up of headwaters streams, such as Martins Brook in the Ipswich River watershed. She noted that she has been working to restore flows to the watershed for more than twenty years and expressed disappointment that the proposed regulations will not address issues affecting the town of Wilmington and the Ipswich River watershed. She cited recent photos showing a dry river bed, and urged the agencies to go back to the drawing board.

Philbin acknowledged the hard work of all involved in the process. He noted that the Massachusetts Municipal Association has worked with environmental advocates on various issues. He expressed concern that so few changes had been made to the regulations in response to comments and requested that the vote be delayed another two weeks. He requested that the Water Management Act Advisory Committee have the opportunity to weigh in before the commission's vote.

Cash acknowledged the dedication that all involved have brought to the process. He commended agency staff for working to address concerns about both costs and ecosystem protection. He commented that the regulations represent a big step forward, and he expressed confidence that they strike a balance by reducing both costs and environmental impacts. He urged an affirmative vote on the regulations.

Other comments from commission members:

- Jack commented that the process has been beneficial in forging relationships that will help to resolve issues in the future.
- Lebeaux noted the participation of Shrewsbury in a SWMI pilot project and expressed concern that not all of the town's concerns were answered to their satisfaction.
- Matthews expressed concern about allowing time to address commentary made in recent weeks. He lauded the goals of the regulations, but expressed concern about implementation.

Baskin repeated Griffin's motion and invited a vote.

V	A motion was made by Griffin with a second by Cash to adopt the revisions to the regulations at 310 CMR 36.00, Massachusetts Water Resources Management Program.
O	
T	
E	
	The vote to approve was 8 in favor and 3 opposed (Jack, Lebeaux, and Matthews).

Baskin thanked all involved for their work throughout the initiative and for the many thoughtful comments. She invited continued collaboration on implementation.

Meeting adjourned, 3:34 p.m.

Documents or Exhibits Used at Meeting:

1. Revisions to MassDEP Regulations: 310 CMR 36.00, Massachusetts Water Resources Management Program (Water Management Act): documents available at <http://www.mass.gov/eea/agencies/massdep/water/regulations/wma-swmi-reg-reform-documents.html>:
 - 310 CMR 36.00: Summary of Proposed Draft Regulation, October 2014
 - 310 CMR 36.00: Clean version - October 2014
 - 310 CMR 36.00: Redline from Current Version, October 2014
 - 310 CMR 36.00: Response to Comments Redline version, October 2014
 - 310 CMR 36.00: Response to Comments, October 2014
 - 310 CMR 36.00: Water Management Act Permit Guidance, October 2014
2. Summaries of the Sustainable Water Management Initiative Grant Projects (available at <http://www.mass.gov/eea/agencies/massdep/water/watersheds/sustainable-water-management-initiative-swmi.html>)
3. Notice dated September 30, 2014, from NOAA regarding Peer Review of NOAA Atlas 14 Volume 10: Precipitation-Frequency Estimates for the Northeastern States
4. Interbasin Transfer Act project status report, September 29, 2014
5. Correspondence to Water Resources Commission regarding Draft Water Management Act Regulations (310 CMR 36.00):
 - (via email) October 14, 2014, from Massachusetts Water Works Association
 - October 15, 2014, from The General Court of Massachusetts, signed by Representatives Cory Atkins, James Arciero, Thomas A. Golden, Jr., David M. Nangle, and Senator Michael Barrett
 - (via email) October 17, 2014, from Paul Matthews, public member, Water Resources Commission
 - October 20, 2014, from Massachusetts Rivers Alliance, Charles River Watershed Association, and Neponset River Watershed Association
 - (via email) October 20, 2014, from Suzanne Sullivan, Wilmington, Massachusetts
 - (via email) October 20, 2014, from Neponset River Watershed Association
 - October 21, 2014, from Eel River Watershed Association

Agendas, minutes, and meeting documents are available of the web site of the Water Resources Commission at www.mass.gov/eea/wrc under "MA Water Resources Commission Meetings."