

360 CMR: MASSACHUSETTS WATER RESOURCES AUTHORITY

360 CMR 11.00: CONTINUATION OF CONTRACT WATER SUPPLY

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11.01: Preamble

The purpose of 360 CMR 11.00 is to set forth the process for continued delivery of water by the Massachusetts Water Resources Authority to communities purchasing water from the Metropolitan District Commission or the Massachusetts Water Resources Authority on a contractual basis. This process, which is meant to be cooperative and to reflect obligations to be fulfilled by the Authority as well as by those communities it serves, is necessary to insure the continuation of water supply in a way that fully considers factors specified in St. 1984, c. 372.

11.02: Definitions

Authority shall mean the Massachusetts Water Resources Authority.

Authority water supply system shall mean the waterworks under the control of the Authority.

Contract termination date shall mean the termination date set forth in each individual Water Supply Continuation Agreement.

Demand analysis shall mean the analysis of a community's water needs based on the criteria set forth for Demand Analysis Reports, as described below at 360 CMR 11.08.

Demand management program shall mean a program which addresses any planned or managed change in the manner or extent of use, distribution or sale of water which results in a reduction in consumption, evaporation, or transfer of water.

DEP shall mean the Massachusetts Department of Environmental Protection within the Executive Office of Environmental Affairs.

Enabling act shall mean the enabling act of the Authority, St. 1984, c. 372, as amended.

Full cost pricing shall mean a user charge system which ensures for full recovery of all costs associated with provision of water services, net of other system revenue.

Leak detection shall include but not be limited to a program for investigating and identifying water losses in the water supply or distribution system.

Local body or community shall include but not be limited to the following cities, towns, or districts of the Commonwealth: Cambridge, Canton, Chicopee, Framingham, Leominster, Lynn Water and Sewer Commission, Marlborough, Needham, Northborough, Peabody, Southborough, South Hadley Fire

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District No. 1, Wakefield, Wellesley, Weston, Wilbraham, Winchester, Woburn and Worcester.

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Local source shall mean a water supply source other than MDC/Authority sources which is available for use by a community.

Maximum daily demand shall mean the maximum volume of water required over a consecutive 24 hour period.

MDC shall mean the Metropolitan District Commission.

MDC/Authority sources shall mean the Quabbin Reservoir, the Intake Reservoir on the Ware River at Coldbrook, the Wachusett Reservoir, the open channel of the Wachusett Aqueduct, the Sudbury Reservoir, Stearn's Reservoir, Brackett Reservoir, Foss Reservoir, Spot Pond, Chestnut Hill Reservoir, or any other lake, pond, reservoir, aqueduct, stream, ditch, water course, or other open waters, used by the Metropolitan District Commission as a source or as a tributary to a source of the water it supplies to the Authority.

MGD shall mean million gallons per day.

Prevailing rate shall mean that rate annually adopted by the Authority for the sale of water to communities pursuant St. 1984, c. 372, § 10.

Safe Yield shall mean the maximum withdrawal rate that can be sustained from a water source with an acceptable degree of risk.

Supply analysis shall mean the analysis of a community's present, abandoned and potential new water supply sources based on the criteria set forth for Supply Analysis Reports, as described below at 360 CMR 11.08.

Unaccounted-for water shall mean the water that has been delivered to the distribution system but has not been billed to customer accounts or identified as known, unmetered usage.

User charge system shall mean a system of charging users of the local water system for services supplied.

Water conservation shall mean reduction in water use through the elimination of wasteful or unnecessary water use by the installation of water conserving devices or through technological or behavioral changes, or the detection and repair of leaks.

Water conserving device shall mean a fixture that is either adapted to or replaces an existing fixture, and that reduces the amount of water the original fixture required to accomplish its function without impairing the intended function of the fixture.

Water management plan shall mean a local water resources management plan prepared using WRC guidelines pursuant to the WRC's Water Resource Management Planning Regulations, 313 CMR 2.00. In the event that local water resources management plans are no longer required or approved by the WRC, then the adoption by a community of the water conservation and demand management measures and implementation schedule prepared according to 360 CMR 11.08(3) shall be considered a water management plan.

WRC shall mean the Massachusetts Water Resources Commission within the Executive Office of Environmental Affairs.

11.03: Assurance of Water Supply Continuation

The Authority will negotiate a Water Supply Continuation Agreement with each community that requests a continuation of its purchase of water supply from the Authority water supply system.

11.04: Abandonment of Local Sources

No community shall abandon any local source and substitute for it water from MDC/Authority sources unless DEP has declared that the local source which is to be or has been abandoned is unfit for drinking and cannot be economically restored for drinking purposes.

11.05: Contents of Water Supply Continuation Agreements

Water Supply Continuation Agreements are designed to provide for the purchase of specified volumes of water, stated on the basis of agreed-upon annual water volume and maximum daily water volume, for up to a ten-year period. A community's purchase of water will be made at the annually adopted prevailing rate for each year of the agreement period. The agreement will set forth finalized schedules agreed upon by the community and the Authority. The agreement will contain dispute resolution procedures as set forth at 360 CMR 11.14.

11.06: Requesting Water Supply Continuation

To begin the water supply continuation agreement negotiation process, a community shall file a letter requesting continuation of its purchase of water supply with the Authority. The letter should state the volume of water on a maximum annual and maximum daily volume basis that the community expects to purchase during each year of the ten-year period following the community's contract termination date. The letter may be filed with the Authority at any time, but must be filed no later than 180 days before the community's contract termination date.

11.07: Supplementary Report

In order to enable the negotiation of a water supply continuation agreement, each community shall submit a supplementary report. The community shall file the supplementary report with the Authority within 60 days after filing the letter requesting water supply continuation. If the Authority possesses any of the information required by a supplementary report, it will give that information to the community before the community prepares the report.

The supplementary report will contain:

- (1) a Demand Analysis Report;
- (2) a Supply Analysis Report;
- (3) a Water Management Plan that has been approved by the WRC and adopted by the community or its equivalent, as defined in 360 CMR 11.00;
- (4) either a copy of the ordinance for protection of local water sources that the community has enacted or a proposed schedule for the enactment of such an ordinance;
- (5) either a detailed description of the local user charge and accounting system that the community has adopted or a proposed schedule for the adoption of revisions, if any, to such a system; and
- (6) a proposed schedule for the evaluation, development and use of potentially feasible new local water supply sources identified in the Supply Analysis Report.

The Authority will promptly acknowledge receipt of the supplementary report and within 30 days of receipt will inform the community whether the supplementary report is complete. Any identified deficiencies should be promptly remedied by the community. The Authority will promptly provide any information it possesses which may assist the community in remedying any deficiencies.

11.08: Contents of Supplementary Report

- (1) A Demand Analysis Report will be filed on a form to be provided by the Authority and will contain the following information:
- (a) an estimate, on a total annual volume and average and maximum daily volume basis, of the amount of water that the community will require for the ten-year period following its contract termination date, the basis for the estimated demand and the source for the estimate;
 - (b) an estimate, also on a total annual volume and average and maximum daily volume basis, of the portions of water required during the proposed ten-year agreement period that are to be obtained from both MDC/Authority sources and from existing or proposed local sources. This same information shall also be provided, to the extent possible, for the five-year period following the end of the proposed ten-year agreement period;
 - (c) an explanation of the seasonal and daily use factors built into the total annual volume requested for the proposed ten-year agreement period and an estimate of both the domestic and non-domestic and unaccounted-for components of this annual volume;
 - (d) any existing local projections of water need after the 15-year period following the community's contract termination date;
 - (e) identification of all water users consuming greater than 20 million gallons a year;
 - (f) a written analysis of existing or anticipated trends, seasonal variations or other special characteristics of population or employment which should be taken into account in determining water demand for the community;
 - (g) available projections of demographic and employment information for the proposed ten-year agreement period;
 - (h) local water use and demand information for the five-year period preceding the community's contract termination date, including:
 1. total annual water use and the amounts used from both local sources and from MDC/Authority sources;
 2. maximum daily demand information for each year; and
 3. an estimate of and the components of the annual volume of unaccounted-for water; and
 - (i) a summary of the current and planned local demand management programs the community will implement during the proposed ten-year agreement period, including a discussion of efforts to reach a goal of no more than 10% unaccounted-for water. An estimate of the potential average daily volume of water to be saved through these programs shall also be provided.
- (2) A Supply Report will be filed on a form to be provided by the Authority and contain the following information:
- (a) a yield analysis of currently used and emergency back-up local sources, indicating seasonal variations that would expand/limit what can be drawn;
 - (b) identification of any excess capacity that is now or might be sold to the Authority or other users;
 - (c) current water quality data, treatment required, and problems present or foreseen;
 - (d) an assessment of local source vulnerability to contamination, including results of any sanitary surveys undertaken;
 - (e) copies of any available studies prepared by or for the community addressing the impacts of the 1986 Amendments to the Safe Drinking Water Act, and EPA regulations promulgated thereunder, on the community's existing local sources, including the quantity of available sources and any treatment necessitated by the new regulations;
 - (f) a map that delineates the watershed or recharge area of each ground and surface water source, together with a statement of acreage owned by the community and management practices of the community such as a local forest and vegetative management plan for support of water management and increased yield;
 - (g) identification of the basin location(s) of source(s) and of wastewater disposal sites for the community;
 - (h) a description of any potential improvements to the local water supply system to increase available supply and a discussion of both the associated technical issues and the projected costs of such improvements. Such improvements may include, but are not limited to, treatment, storage, pumping or pipeline capacity;

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- (i) an identification of any local sources abandoned or lost to contamination since 1940 including location, historic yield, and the reasons for abandonment;
- (j) a description of any significant sources that were abandoned prior to 1940; and
- (k) an identification of any potentially feasible new local sources with a potential yield of 0.25 mgd for groundwater and 0.5 mgd for surface water sources.

(3) A local Water Management Plan when required by the WRC, that has been approved by the WRC and adopted by the community will be filed with the Authority, together with an identification of steps, which are subject to Authority review and approval, whereby implementation of its water conservation and demand management components will be achieved. Whether or not a Water Management Plan is required by the WRC, an implementation schedule shall be provided that identifies date specific milestones responsible parties and planned and committed funding sources, for each of the following:

- (a) ongoing leak detection and repair, and water system rehabilitation including at a minimum:
 - 1. survey of all parts of the distribution system at least once every two years;
 - 2. sonic leak survey with, at a minimum, listening of all points of direct contact on the main, and with use of ground microphones for long distances between points of direct contact, unless unaccounted-for water use is less than 5%, in which event the Authority may consider hydrant-only listening; and
 - 3. quarterly leak survey reports summarizing leak survey activity, with individual site reports for each suspected leak and completed repair;
- (b) metering of all buildings and other regular uses, including public buildings, and an on-going meter inspection and rehabilitation replacement program;
- (c) a conservation public information and evaluation program, which includes distribution of Authority provided materials to all water users and participation in or use of Authority school programs and industrial conservation programs.
- (d) retrofit of all public buildings with water saving devices such as faucet aerators, low flow showerheads, displacement devices for tank-type toilets and, where possible, low flow toilets; and
- (e) contingency plans to reduce water use in case of drought or emergency as well as a five year schedule for adopting a local drought restriction enforcement ordinance. Model conservation standards are presented in the WRC's Water Conservation Standards for the Commonwealth of Massachusetts. These standards can be used to direct conservation efforts.

(4) If local water sources lying within the community's boundary are used, the community shall file with the Authority either a copy of the ordinance for protection of local water sources that the community has enacted or a proposed schedule for the enactment of such an ordinance. At a minimum, the ordinance shall:

- (a) recite that its purpose is to protect existing and identified feasible water supplies and sources; and
- (b) prohibit uses which may contaminate watershed lands and well protection zones either by limiting private uses of the surrounding areas or by acquisition of the lands by the community; identified uses that potentially threaten water supply sources include, but are not limited to: underground storage tanks and pipelines, landfills, septic systems, the use and storage or deicing and other chemicals, and hazardous waste disposal sites.

If local water sources lying outside of the community boundary are used, the community shall provide a description of all measures in place or projected to be instituted within the five year period following the contract termination date for the protection of those local sources. While the community does not have control over the protection of those local water sources that are outside of its boundary, the community shall attempt, through cooperative steps, to have a protective ordinance enacted in the appropriate community.

(5) Either a detailed description of the local user charge and accounting system that the community has adopted or a proposed schedule for the adoption of revisions, if any, to such a system shall be filed with the Authority; the system shall:

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- (a) incorporate a uniform rate or an alternative structure which provides incentives for water conservation and/or is designed to ensure the affordability of water service to low and/or fixed income persons; and
 - (b) prohibit rate structures that incorporate descending or declining block rates.
- (6) A proposed schedule for the evaluation, development and use of potentially feasible new local water supply sources identified in the Supply Analysis Report shall be filed with the Authority which will reflect consideration of:
- (a) the technical feasibility evaluation process utilized by DEP for the approval of new sources;
 - (b) the economic feasibility for development of those new sources, based on a development cost per million gallons no greater than two and ½ times the prevailing rate as adopted for the first fiscal year of the requested Water Supply Continuation Agreement's term. The development cost will be deflated during the subsequent years of the Water Supply Continuation Agreement's term. The index used to perform this adjustment will be that stated in Engineering News Record; and
 - (c) compliance with all applicable state and federal environmental regulations.

11.09: Agreement Negotiations

The Authority will complete its review of the community's supplementary report no later than 30 days after receipt by the Authority of a complete report. Negotiations with the community will be undertaken if necessary. Upon successful completion of negotiations, a water supply continuation agreement will be executed. If negotiations are not necessary, a water supply continuation agreement will be executed upon completion of the Authority's review of the supplementary report.

Water supply continuation agreement negotiations will be necessary only if identified deficiencies in the community's supplementary report have not been reasonably resolved or if proposed schedules in the supplementary report do not reasonably promote substantial progress toward accomplishing the goals that they address.

11.10: Interim Water Supply Orders

(1) If the Authority and a community are unable to negotiate the terms of a water supply continuation agreement by the contract termination date, the Authority may issue an interim water supply order. This order will allow a community to continue receiving its water supply from the Authority at the then effective prevailing rate. The order must be approved by the Authority's Board of Directors. It will cover a period of six months or less and it shall include a statement of maximum allowable daily water volume. The order may set forth reasonable interim schedules that address the factors set forth in the Authority's enabling act as necessary conditions to be met for the continuation of water supply after a community's contract termination date. The order will contain dispute resolution procedures as set forth at 360 CMR 11.14.

(2) Agreement negotiations shall continue during the term of an interim water supply order.

(3) If an agreement has not been reached by the expiration date of the interim water supply order, the Authority may thereafter reissue the order for such periods and under such terms as the Authority deems appropriate. Such a reissuance must be approved by the Authority's Board of Directors.

11.11: Amendments to Agreement for Water Supply Continuation

(1) If a community determines that the water volumes designated in its water supply continuation agreement are insufficient to meet newly projected demand over the period of the Agreement, the community may petition the Authority to amend the Agreement.

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- (2) A petition for agreement amendment will be made by letter and will include:
 - (a) a statement of revised circumstances regarding local demand and/or supply and the impact of those circumstances on the amount of water needed by the community;
 - (b) an assessment of the effectiveness of the community's Water Management Plan;
 - (c) an identification of demand management measures implemented by the community; and
 - (d) any other information deemed necessary by the Authority to determine whether the agreement should be amended.
- (3) The Authority will notify the community of its decision either to grant or deny the community's petition and the reasons therefore in writing within 30 days of its receipt of the petition.

11.12: Financial Assistance for Local Source Development

The Authority will pay the development costs of any new local water supply only if:

- (a) the development of that local source is technically and economically feasible and can be conducted in compliance with all applicable state and federal environmental regulations; and
- (b) The community wherein the local source is located agrees, through an amendment to the Agreement, that the distribution of all water produced by that source shall be subject to the exclusive control and direction of the Authority.

11.13: Full-cost Pricing

All Agreements shall provide that the community will be required to develop and implement a full-cost pricing system within 12 months from the date when all municipalities (other than those communities which are subject to 360 CMR 11.00) listed in St. 1984, c. 374, §. 8(d) of the enabling act have imposed a full-cost pricing system.

11.14: Dispute Resolution Process

- (1) In light of the general legal requirement that those aggrieved by the actions of administrative bodies such as the Authority be given an opportunity to appeal from those actions, the Authority has established an administrative hearing process. That process is set forth in the Authority's Regulations for the Conduct of Adjudicatory Proceedings, 360 CMR 1.00. Any dispute arising between the Authority and a community under the terms of either a water supply continuation agreement or an interim water supply order will be resolved through that administrative hearing process.
- (2) The Authority is allowed by St. 1984, c. 372 to establish reasonable penalties for violation of 360 CMR. Accordingly, the Authority has issued Administrative Penalty Regulations, 360 CMR 2.00. In order to uphold its ability to achieve the goals of the enabling act, the Authority may impose civil administrative penalties pursuant to its Administrative Penalty Regulations if a community consistently and flagrantly violates either a water supply continuation agreement or an interim water supply order.

11.15: Severability

If any provision in 360 CMR 11.00 or any application of a provision is held invalid, it will not effect all other provisions which can be given effect.

REGULATORY AUTHORITY

360 CMR 11.00: St. 1984, c. 372, §§ 6(e), 8(d), 8(e), 8(m) and 26(e).

NON-TEXT PAGE