



# THE COMMONWEALTH OF MASSACHUSETTS

## WATER RESOURCES COMMISSION

100 CAMBRIDGE STREET, BOSTON MA 02114

---

To: MA Water Resources Commission  
From: WRC Staff  
Re: Interbasin Transfer Act Regulations (313 CMR 4.00) Proposed Areas for Revision  
Date: 10 April 2014

---

The Water Resources Commission (WRC) staff, as members of an inter-agency work group comprising the Executive Office of Energy and Environmental Affairs, MA Department of Conservation and Recreation, MA Department of Environmental Protection (MassDEP), and MA Department of Fish and Game, have reviewed the Interbasin Transfer regulations and propose that the following changes be made:

**1. Separate Procedures for Determination of Applicability and Determination of Insignificance:** The original regulations have these two processes combined, but the information required for each is very different. In 2001, the WRC approved language for its Interbasin Transfer regulations which separated these processes and also stated that it would consider any information provided by anybody, with regards to the applicability of potential transfers.

**2. Tailored Insignificance Requirements and Criteria for Different Types of Transfers:** The Commission typically receives requests for determination of insignificance for:

- Wastewater transfers
- Groundwater transfers
- Transfers mainly impacting a lake or reservoir

Because the current regulations address all requests for determination of insignificance as though they involved direct river withdrawals, which are rarely proposed, the information required and the criteria used to evaluate transfers are not always relevant to the proposed project. WRC staff proposes the following improvements to the criteria for evaluating whether interbasin transfers are insignificant, including:

- Developing criteria that are better suited to the type of transfer being evaluated
- Updating the criteria to a use statistic that is more accurate at lower flow levels, but is still very protective (5% of the 95th percentile flow)

**3. Pathways to Insignificance for Small Transfers:** Last month, WRC staff proposed three levels of review under a determination of insignificance, based on the size of the transfer. To simplify matters, staff has eliminated the proposal for a middle tier (between 10,000 and “xx,xxx” gallons per day) and is now proposing two levels of review: The proposed regulatory language reads:

313 CMR 4.04(4)

*(j) If the proposed transfer is less than or equal to 15,000 gallons per day, after review of the information submitted, the Commission, may, at its discretion, and upon its action, find the transfer to be insignificant without further analysis.*

Transfers greater than 15,000 gallons per day would be required to meet the criteria outlined last month to obtain a determination of insignificance (not greater than 5% of the 95<sup>th</sup> percentile flow for transfers primarily derived from streamflow, or that the cumulative annual amount of the additional flow to be transferred in all cases, is not greater 1% of the annual 45-inch rainfall on the drainage area of the water body or 5% of the drought year inflow to the water body for transfers primarily derived from lakes, ponds, reservoirs, or other impoundments).

**4. Local Water Resources Management Plan:** Staff proposes to eliminate the requirement of a Local Water Resources Management Plan from the receiving community. Not required by the Act, the need for a plan was included in the regulations in the mid-1980's when water suppliers were not developing comprehensive plans for their water supplies. Since then, staff has found that most water suppliers have extensive planning programs and there is not much "value added" to requiring these plans for the evaluation of a proposed interbasin transfer.

**5. River Basins:** Basins which had previously been called out as contributing areas of the South Coastal Basin and the Boston Harbor Basin have been distinguished as separate River Basins.

**6. Consolidated Donor Basin/Regional Water Supply Regulations:** Staff proposes that the regulations include a procedure for larger regional water supply systems proposing to expand their service areas to new communities or water districts. These regional systems would submit an application to transfer an amount of water from the donor basin for WRC approval. The regional suppliers would be responsible for meeting the criteria of the Act that apply to donor basin withdrawals. Receiving communities, who may not be identified at the time of a regional supplier's application, could then apply for admission to the regional system separately and non-concurrently. The exact regulatory language is still under discussion, but staff proposes that this process would include a streamlined pathway for receiving communities that have water conservation programs and are proposing to purchase less than 1 million gallons per day (mgd) from a supplier that has received approval of its donor basin application. Receiving communities purchasing greater than 1 mgd would be responsible for meeting the criteria under the Act applying to receiving areas only and would be able to rely on the availability of the previously approved donor basin application.

**7. Other Proposed Changes**

- Minor edits to make the language clearer
- Add definitions of receiving area and viable in-basin sources for wastewater transfers according to guidance previously developed by WRC
- Add requirement to advertise public hearings in electronic media that is generally available in both the donor and receiving areas. Eliminate the requirement to advertise public hearings in newspapers.

Additionally, over the course of the regulation review, the inter-agency work group identified potential policy and guidance changes that would be appropriate for consideration and approval by the Commission.

**Potential Future Policy/Guidance Changes:** Potential future policy and guidance proposals from WRC staff could include:

- Update 2003 Interbasin Transfer Guidebook and the 1999 Performance Standards
- Eliminate the third public hearing on the Staff Recommendation to shorten the approval timeline; adopted as WRC policy in 1998, the third public hearing is not required by the Act and is typically poorly attended
- Develop a protocol for use in determining the potential viability of in-basin sources in “flow depleted” areas using recent U.S Geological Survey science