~~12/31/86~~ *DRAFT Revision April 2014*

313 CMR 4.00 INTERBASIN TRANSFER

Section:

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4.01: General Provisions

(1) Purpose. 313 CMR 4.00 delineates the river basins of the Commonwealth and establishes application procedures and criteria upon which the Water Resources Commission shall base its determination of applicability, insignificance or approval or denial of any proposed action to increase over the present rate of interbasin transfer of waters as prescribed in M.G.L. c. 21, §§ 8B-8D inclusive, and are promulgated pursuant to the authority in said chapter. M.G.L. c. 21 requires that the Commission base its review, subject to statutory exemption, of the proposed action to increase over the present rate of interbasin transfer on the steps taken by the person using the water to be transferred to make all reasonable efforts to identify and develop all viable sources in the receiving area, undertake effective water conservation and management programs, and upon a thorough review of the environmental effects of the proposed interbasin transfer. Any person who proposes an action to cause an increase over the present rate of interbasin transfer of the surface or groundwater of a river basin shall comply with these rules and regulations, as shall any person who proposes to make any capital improvement which could reasonably be expected to increase the capacity to transfer water out of a donor basin.

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4.02: Definitions

Act means M.G.L. c. 21, §§ 8B-8D inclusive, the Interbasin Transfer Act

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Action of the Commission means a majority roll call vote of the Commission at a public meeting on any matter relating to its duties pursuant to M.G.L. c. 21, §§ 8B-8D inclusive, and the rules and regulations established thereunder.

Action to increase over the present rate of interbasin transfer means any change that increases the ability to transfer water out of the donor basin.
Actions include, but are not limited to:

(a) drilling of production wells in the donor basin including wells from which the water is pumped within the donor basin but transferred out of basin as wastewater;

(b) construction or enlargement of reservoirs or storage facilities to store water transferred or to be transferred from a donor basin;
(c) construction of or increase ~~of~~ in capacity of transfer facilities, such as pumps, pipelines, tunnels or other conveyance facilities which result in an increase in the ability to transfer water or wastewater from ~~in~~ the donor basin;
(d) construction of or increase ~~of~~ in capacity of water or wastewater treatment plants where such plants increase the ability to transfer water out ~~-~~ of ~~-~~ basin for use;
(e) changes in any ~~withdrawal constraints contained in any~~ provisions of the Massachusetts General Laws, Special Acts, Judicial Decree, regulatory agency rule, or operating rule of a water supplier that could cause an increase in the ability to transfer;
(f) any other structural change in a water or wastewater system that causes an increase in the ability to transfer out of a donor basin;
(g) increase in the hydraulic capacity of a transfer system including but not limited to pipes and pumps.

~~Exempt from Water Resources Commission review are the following actions~~
For the purposes of 313 CMR 4.00, the following activities do not fall within the definition of Action to increase over the present rate of interbasin transfer:

(g) replacement of pumps or pipes of ~~similar~~ equivalent or less conveyance capacity;
(h) restoring reservoirs to original storage capacity;
(i) renovating existing wells and testing of new well sites;
(j) constructing conveyance facilities in the donor basin if the sole purpose is to provide redundancy, provided that any increase in capacity cannot be used to increase the ability to transfer water, ~~on an annualized basis,~~ out of the donor basin and providing further that ~~instantaneous~~ streamflow in the donor basin is not ~~directly~~ adversely affected;
(k) replacing existing wastewater conveyance facilities as long as they do not exceed the operational capacity ~~(including surcharge capacity~~ as determined by the Department of Environmental ~~Quality Engineering)~~Protection prior to the ~~….~~ effective date of the ~~a~~Act or approved or found to be insignificant by the Commission through the process outlined in 313 CMR 4.04 after the effective date of the Act~~and providing the facilities conform to a currently approved 303 basin plan~~;
(l) the installation and use of water supply and wastewater facilities, which although not fully constructed and/or useable, had achieved MEPA compliance and approval by the Department of Environmental ~~Quality Engineering~~Protection prior to the effective date of the A~~a~~ct.
(m) expansion of an existing water supply or wastewater system within the originally designed, constructed and approved transfer capacity.

Commission means the Water Resources Commission.

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Contingency Plan means a written plan establishing operating procedures for adequately handling water supply emergencies, such as contamination of water supply sources or seasonal or drought related shortages of water supply. The plan shall include provision for emergency supply in the event of a sudden loss of existing sources and of a progressively stringent schedule for limiting water use during seasonal and extended dry periods.

Donor Basin means the basin of origin for the water or wastewater that is to be transferred.

EEA means the Massachusetts Executive Office of Energy and Environmental Affairs

Effective Date of the Act means March 8, 1984.

Emergency Connection means any emergency connection either approved under M.G.L. c ~~40~~21G, §§ ~~40~~ 15 and ~~41A~~ 16 and associated regulations 310 CMR 36.41 – 36.43 or authorized by law to provide a necessary and adequate water supply and shall include connections to other existing water supply systems, the obtaining of water directly from a new source, or the obtaining of greater amounts of water from an existing source. Such emergency connections shall not invoke the provisions of M.G.L. c. 21, §§ 8C and 8D and regulations promulgated thereunder, provided that the period of occurrence does not exceed six months of any calendar year and they fulfill the criteria of the ~~Division of Water Supply of the~~ Department of Environmental ~~Quality Engineering~~Protection.

Hydraulic Capacity means the maximum daily amount of water or wastewater that can pass through an existing authorized interbasin transfer system, including but not limited to pumps, valves, pipelines, and tunnels.

Insignificant Increase means an increase which has been determined by the Commission~~.~~, based upon the impact to the donor basin, as insufficient to invoke the provisions of M.G.L. c. 21, §§ 8C and 8D~~to have a minor impact on the donor basin pursuant to the criteria contained in 313 CMR 4.00~~, provided that in no case shall an increase over one million gallons per day be deemed insignificant.
~~The Commission may, upon request, consider an increase to be insignificant when the transfer is to be temporary, of short duration and conducted to facilitate the construction, maintenance or repair of a public utility, for flood control purposes, for public safety purposes or other similar purposes not related to water supply.~~

Interbasin Transfer means any transfer of the surface and groundwaters, including wastewater, of the Commonwealth outside a river basin. Interbasin transfers also include local water supply sources that are transferred out of basin as wastewater. If a city or town partially situated within a river basin takes waters from that basin, extension of water services to a portion of the same city or town outside the basin shall not be deemed an interbasin transfer of water.

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~~Local Water Resources Management Plan means a comprehensive water resources management plan which has been adopted, or is in the process of being adopted, pursuant to regulations promulgated by the Water Resources Commission (313 CMR 2.00) and administered by the Division of Water Resources of the Department of Environmental Management.~~

MEPA means the Massachusetts Environmental Policy Act (M.G. L. c. 30 §§ 61 and 62 to 62H inclusive).

MEPA Compliance means fulfilling the requirements of M.G. L. c. 30 §§ 61 and 62 to 62H inclusive, and the rules and regulations promulgated thereunder, 301 CMR 11~~0~~.00.

Metering means the installation of water use measuring devices on all permanent water supply services, including master meters, source meters, treatment plant meters and purchased water meters.

Ninety-five percent (95%) exceedance flow means a low flow condition in a stream that is exceeded ninety-five percent of the time, using a minimum of a ten (10) year period of record. This statistic is based on mean daily flows.

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Person means any agency, the federal government, the Commonwealth (or political subdivision thereof), any state, public or private corporation or authority, individual, trust firm, joint stock company, partnership, association, or other entity, and any officer, employee or agent of said person, and any group of said persons.

~~Present Rate of Interbasin Transfer in a Water Supply System means the hydraulic capacity of an interbasin transfer system which was authorized, constructed and useable for water supply purposes without additional installation of facilities or changes in any authority or operating rule prior to the effective date of the act. The present rate shall also include the capacity of systems which, although not fully constructed and/or useable, have achieved MEPA compliance and final design approval by the Department of Environmental Quality Engineering under the provisions of M. G. L. c. 111, as of the effective date of the act. If withdrawal constraints contained in any provision of the Massachusetts General Laws, Special Acts, Judicial Decree, regulatory agency rule, or operating rule of a water supplier prevents the use of the hydraulic capacity as of the effective date of the act, the lesser amount shall be deemed the present rate.~~

~~Present Rate of Interbasin Transfer in a Wastewater Conveyance System means the capacity of an interbasin transfer system which is authorized, constructed and useable for wastewater conveyance purposes without the installation of added facilities prior to the effective date of the act. If a wastewater flow constraint established by the Division of Water Pollution Control, under the provisions of M. G. L. c. 21, prevents~~

~~the use of the hydraulic capacity as of the effective date of the act, the lesser amount shall be deemed to be the present rate.~~

~~Present Rate of a Wastewater Conveyance System is the rate which existed prior to the effective date of the act due to surcharging, rather than the lesser design capacity. If a system, although not constructed and/or useable, has achieved MEPA compliance and approval by Division of Water Pollution Control under the provisions of M.G.L. c. 21 prior to the effective date of the act, its design capacity or its capacity as modified by a flow constraint, whichever is less, shall be deemed to be the present rate.~~

Present Rate of Interbasin Transfer means the hydraulic capacity of an interbasin transfer system which was authorized, constructed or useable without additional installation of facilities or changes in any authority or operating rule prior to the effective date of the Act. The present rate shall also include: the hydraulic capacity of transfer systems which, although not fully constructed and/or useable, had achieved MEPA compliance and final design approval by the Department of Environmental Protection under the provisions of M. G. L. c. 111, as of the effective date of the Act; the hydraulic capacity of a transfer system approved or found to be insignificant by the Commission through the process outlined in 313 CMR 4.04 after the effective date of the Act; or a legally binding contract that limits the use of the full hydraulic capacity of the system. The present rate of interbasin transfer in a wastewater conveyance system includes only that amount of wastewater generated from a water supply source within the river basin from which the wastewater will be transferred. If withdrawal constraints contained in any provision of the Massachusetts General Laws, Special Acts, Judicial Decree, regulatory agency rule, contract or operating rule of a water supplier prevented the use of the hydraulic capacity as of the effective date of the Act, the lesser amount shall be deemed the present rate.

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Rate Structure means the pricing system by which water and sewer services are charged to the user.

Receiving area means the area which makes use of the water supply which has been transferred between basins. In the case of wastewater transfers, except those caused by the development of a local water supply that is transferred out of basin as wastewater, in order to evaluate an application for approval's compliance with the criteria listed in Sections 4.05 (2) and (3) of these regulations, receiving area is defined as the community(ies) or portion of community(ies), receiving the wastewater services, whose wastewater is collected for discharge out of basin via an interbasin transfer.

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River Basin means a geographic area within the Commonwealth determined by a body of water and its surrounding drainage area as defined and determined by the Commission and as described in 313 CMR 4.03. The Commission, upon request or by its own action, shall make a written determination of the precise location of the boundary line of one of the river basins described in these regulations. In making this determination, the Commission shall ~~rely on~~consult the report "Hydrologic

Characteristics of Massachusetts Streams" published as a cooperative project by the U.S. Geological Survey and the Massachusetts Water Resources Commission, and other such reports or studies as may be pertinent.

River Basin Map means the map or maps of the Commonwealth showing the boundaries of the river basins adopted by the Water Resources Commission as a part of 313 CMR 4.00.

Seven-Day Ten-Year Flow (7Q10) means the lowest seven (7) consecutive day average flow that occurs (on average) once every ten (10) years.

Transfer Facilities and Transfer Systems mean those structures which cause water or wastewater to move across a basin and town line. A transfer facility or system can also include a source of water supply which is ultimately transferred out of basin as wastewater.

Viable Sources means a source which can provide drinking water that meets the current water quality and management standards promulgated by the Department of Environmental ~~Quality Engineering~~Protection at a ~~production~~ cost which is reasonable when compared to costs recently incurred elsewhere in the Commonwealth, and which can be used while preserving reasonable instream flow as determined by the same criteria provided to evaluate impacts on the donor basin ~~hereinafter provided~~listed in Section 4.05(5) of these regulations.
For wastewater transfers, including those triggered by the development of local water supplies that are transferred out of basin as wastewater, viable sources means cost-effective, technologically feasible, environmentally sound wastewater treatment systems which treat, reuse, and/or discharge wastewater within the basin of origin, and have been approved by the Department of Environmental Protection or other regulatory agency.

Water Services means water supply and wastewater conveyance facilities.

4.03: Delineation of River Basins

(1) Hudson River Basin. The Hudson River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Hoosic, Kinderhook Creek and Bashbish Brook being generally shown as Basin 1~~a, 1b, and 1c~~ on the River Basin Map.

(2) Housatonic River Basin. The Housatonic River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Housatonic River being generally shown as Basin 2 on the River Basin Map.

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(3) Deerfield River Basin. The Deerfield River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Deerfield River above its confluence with the mainstem of the Connecticut River, being generally shown as Basin 3 on the River Basin Map.

(4) Westfield River Basin. The Westfield River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Westfield River above its confluence with the mainstem of the Connecticut River, being generally shown as Basin 4 on the River Basin Map.

(5) Farmington River Basin. The Farmington River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Farmington River being generally shown as Basin 5 on the River Basin Map.

(6) Connecticut River Basin (Mainstem). The Connecticut River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries (exclusive of tributaries delineated as separate River Basins) and mainstem of the Connecticut River, being generally shown as Basin 6 on the River Basin Map.

(7) Millers River Basin. The Millers River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Millers River above its confluence with the mainstem of the Connecticut River, being generally shown as Basin 7 on the River Basin Map.

(8) Chicopee River Basin. The Chicopee River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Chicopee River above its confluence with the mainstem of the Connecticut River, being generally shown as Basin 8 on the River Basin Map.

(9) Quinebaug River Basin. The Quinebaug River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Quinebaug River, being generally shown as Basin 9 on the River Basin Map.

(10) French River Basin. The French River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the French River, being generally shown as Basin 10 on the River Basin Map.

(11) Nashua River Basin. The Nashua River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes

surface water to the tributaries and mainstem of the Nashua River, being generally shown as Basin 11 on the River Basin Map.

(12) Blackstone River Basin. The Blackstone River Basin includes that area within the Commonwealth of Massachusetts which by virtue of its topography contributes surface water to the tributaries and mainstem of the Blackstone River, being generally shown as Basin 12 on the River Basin Map.

(13) Merrimack River Basin. The Merrimack River Basin includes that area within the Commonwealth of Massachusetts ~~lying above mean high water~~ which by virtue of its topography contributes surface water to the tributaries (exclusive of tributaries delineated as separate River Basins) and mainstem of the Merrimack River, being generally shown as Basin 13 on the River Basin Map. In areas where the Merrimack River is tidal, those areas lying above the mean high tide elevation are considered part of the Merrimack River basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

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(14) Concord River Basin. The Concord River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Concord River, Sudbury River and Assabet River above its confluence with the mainstem of the Merrimack River, being generally shown as Basin 14~~a and 14b~~ on the River Basin Map.

(15) Shawsheen River Basin. The Shawsheen River Basin includes that area which contributes surface water to the tributaries and mainstem of the Shawsheen River above its confluence with the mainstem of the Merrimack River, being generally shown as Basin 15 on the River Basin Map.

(16) Parker River Basin. The Parker River Basin includes that area ~~lying above mean high water~~ which by virtue of its topography contributes surface water to the tributaries and mainstem of the Parker River and other coastal drainages emptying into Plum Island Sound south of Basin 13 and north of Basin 17, being generally shown as Basin 16 on the River Basin Map. In areas where the Parker River is tidal, those areas lying above the mean high tide elevation are considered part of the Parker River basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

(17) Ipswich River Basin. The Ipswich River Basin includes that area ~~lying above mean high water~~ which by virtue of its topography contributes surface water to the tributaries and mainstem of the Ipswich River and other coastal drainages emptying into Ipswich Bay south of Basin 16 and north of Basin 18, being generally shown as Basin 17 on the River Basin Map. In areas where the Ipswich River is tidal, those areas lying above the mean high tide elevation are

considered part of the Ipswich River basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

(18) North Coastal Basin. The North Coastal Basin includes that area within the Commonwealth of Massachusetts ~~lying above mean high water~~ which by virtue of its topography contributes surface water to the tributaries and mainstem of all coastal rivers and streams draining into the Atlantic Ocean north of Basin 19a; excluding Basins 13, 16, and 17, and being generally shown as Basin 18 on the River Basin Map. In areas where these tributaries and rivers are tidal, those areas lying above the mean high tide elevation are considered part of the North Coastal basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

(19a) Mystic River Basin. The Mystic River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstems of the Mystic River and other coastal drainages emptying into Boston Harbor south of Basin 18 and north of Basin 20; and being generally shown as Basin 19a on the River Basin Map. In areas where these tributaries and rivers are designated as tidal, those areas lying above mean high tide elevation are considered part of the Mystic River Basin, while those lying below mean high tide elevation are considered part of the Massachusetts Coastal Basin.

~~(19) Boston Harbor Basin. The Boston Harbor Basin includes that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstems of the Mystic, Neponset, and Weymouth and Weir Rivers and other coastal drainages emptying into Boston Harbor south of Basin 18 and north of Basin 21; excluding Basin 20 and being generally shown as Basin 19a, 19b, and 19c on the River Basin Map.~~

(19b) Neponset River Basin. The Neponset River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstems of the Neponset River and other coastal drainages emptying into Boston Harbor south of Basin 20 and north of Basin 25 and being generally shown as Basin 19b on the River Basin Map. In areas where these tributaries and rivers are designated as tidal, those areas lying above mean high tide elevation are considered part of the Neponset River Basin, while those lying below mean high tide elevation are considered part of the Massachusetts Coastal Basin.

(19c) Weymouth and Weir Rivers Basin. The Weymouth and Weir Rivers Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstems of the Weymouth and Weir Rivers and other coastal drainages emptying into Boston Harbor south of Basins 19a and 19b and north of Basin 21a, and being generally shown as Basin 19c on the River Basin Map. In areas where these tributaries and rivers are designated as tidal, those areas lying above mean high tide elevation are considered part of the Weymouth and Weir

Rivers Basin, while those lying below mean high tide elevation are considered part of the Massachusetts Coastal Basin.

(20) Charles River Basin. The Charles River Basin includes that area ~~lying above mean high water~~ which by virtue of its topography contributes surface water to the tributaries and mainstem of the Charles River south of Basin 19a and north of Basin 19b and 19c, being generally shown as Basin 20 on the River Basin Map. In areas where the Charles River is tidal, those areas lying above the mean high tide elevation are considered part of the Charles River basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

(21a) North and South Rivers Basin. The North and South Rivers Basin that area which by virtue of its topography contributes surface water to the tributaries and mainstems of the North River and South River south of Basin 19c and north of Basin 21b being generally shown as Basin 21a on the River Basin Map. In areas where these tributaries and rivers are tidal, those areas lying above the mean high tide elevation are considered part of the North and South Rivers Basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

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(21b) South Coastal Shores Basin. The South Coastal Shores Basin includes that area ~~lying above mean high water~~ which by virtue of its topography contributes surface water to ~~the tributaries and mainstems of the North River and South River and of all other~~the coastal rivers and streams draining into the Atlantic Ocean south of Basin ~~19c~~ 21a and north of Basin 22, being generally shown as Basin ~~21a and~~ 21b on the River Basin Map. In areas where these tributaries and rivers are tidal, those areas lying above the mean high tide elevation are considered part of the South Coastal Shores basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

(22) Cape Cod Basin. The Cape Cod Basin includes all of the Cape Cod peninsula southeast of Cape Cod Canal surrounded by Vineyard Sound, Nantucket Sound, Buzzard's Bay, Cape Cod Bay or the Atlantic Ocean, being generally shown as Basin 22 on the River Basin Map. Only areas ~~where these tributaries and rivers are tidal, those areas~~ lying above the mean high tide elevation are considered part of the Cape Cod basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin. ~~that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstem of all coastal rivers and streams on the Cape Cod peninsula, southeast of Cape Cod Canal and draining into Vineyard Sound, Nantucket Sound, Buzzard's Bay, Cape Cod Bay or the Atlantic Ocean, being generally shown as Basin 22 on the River Basin Map.~~

(23) Islands Basin. The Islands Basin includes the islands of Nantucket, Martha's Vineyard and the Elizabethan Chain, being generally shown as Basin 23 on the River Basin Map. Only areas ~~where these tributaries and rivers are tidal, those areas~~ lying above the mean high tide elevation are considered part of the Islands basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.
~~that area lying above mean high water which by virtue of its topography contributes surface water to the tributaries and mainstems of all coastal rivers and streams on the islands of Nantucket, Martha's Vineyard and the Elizabethan Chain, being generally shown as Basin 23 on the River Basin Map.~~

(24) Buzzard's Bay Basin. The Buzzard's Bay Basin includes that area within the Commonwealth of Massachusetts ~~lying above mean high water~~ which by virtue of its topography contributes surface water to the tributaries and mainstem of all coastal rivers and streams emptying into Buzzard's Bay south of Basins 25 and 26, and north of Basins 22 and 23, being generally shown as Basin 24 on the River Basin Map. In areas where these tributaries and rivers are tidal, those areas lying above the mean high tide elevation are considered part of the Buzzards Bay basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

(25) Taunton River Basin. The Taunton River Basin includes that area ~~lying above mean high water~~ which by virtue of its topography contributes surface water to the tributaries and mainstem of the Taunton River, being generally shown as Basin 25 on the River Basin Map. In areas where the Taunton River is tidal, those areas lying above the mean high tide elevation are considered part of the Taunton River basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

(26) Narragansett Bay and Mount Hope Bay Shore Basin. The Narragansett Bay and Mount Hope Bay Shore Basin includes that area within the Commonwealth of Massachusetts ~~lying above mean high water~~ which by virtue of its topography contributes surface water to the tributaries and mainstems of all coastal rivers and streams emptying into Narragansett Bay and Mount Hope Bay Shore south of Basin 27 and north of Basin 24, being generally shown as Basin 26 on the River Basin Map. In areas where these tributaries and rivers are tidal, those areas lying above the mean high tide elevation are considered part of the Narragansett Bay and Mount Hope Bay Shore basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

(27) Ten Mile River Basin. The Ten Mile River Basin includes that area within the Commonwealth of Massachusetts ~~lying above mean high water~~ which by virtue of its topography contributes surface water to the tributaries and mainstem of the Ten Mile River southeast of Basin 12, west of Basin 25, and north of Basin 26, being generally shown as Basin 27 on the River Basin Map. In areas where these tributaries and rivers are tidal, those areas lying above the mean high tide

elevation are considered part of the Ten Mile River basin, while those lying below the mean high tide elevation are considered part of the Massachusetts Coastal basin.

(28) Massachusetts Coastal Basin. The Massachusetts Coastal Basin includes those areas within the Commonwealth lying below the mean high tide elevation.

4.04 Determination and Application Procedures

(1) General Procedures

(a) The proponents of a proposed action to cause an increase over the present rate of an interbasin transfer are encouraged to discuss their plans with the Commission staff at the earliest possible point in project planning. While such staff review can be concurrent with MEPA review, the proposal must have achieved MEPA compliance before the holding of hearings or the approval or denial of an increase over the present rate of interbasin transfer of water or wastewater.

(b) It is the expressed intention of the Commission that the type and depth of information submitted for Commission review of a proposed action to increase over the present rate of interbasin transfer be at a level sufficient to allow for the Commission to fully exercise its responsibility under the provisions of M. G. L. c. 21 §§ 8C and 8D and the regulations promulgated thereunder. To the extent possible, the proponent should utilize existing data and the best available science~~,~~ including, as appropriate, that currently used by the state in other regulatory processes. ~~s uch as basin plans being developed pursuant to the Water Resources Commission's Water Resources Planning Regulations (313 CMR 2.00) and U.S. Geological Survey Studies pursuant to M.G. L. c. 21 § 9B.~~

(c) If a MEPA ~~E~~environmental ~~Impact Report~~review is required under the provisions of M.G.L. c. 30, §§ 61 to 62H inclusive and the rules and regulations promulgated thereunder, 301 CMR 1~~0~~1.00, the data required to be submitted for Commission review under the provisions of 313 CMR 4.00 should be prepared to the extent possible as a component of the ~~EIR~~ environmental review report. ~~Where feasible and desired by the parties, j~~Joint scoping sessions with the MEPA Office, ~~and~~ Commission staff and the proponent ~~shall~~ should be held, if required.

(d) A person proposing an action to increase over the present rate of interbasin transfer may request a determination that the proposal would cause an insignificant increase as provided in 313 CMR 4.00, or may apply directly for approval by the Commission ~~of the proposed action to increase over the present rate of interbasin transfer~~ pursuant to the application sections of these regulations.

(e) When requesting a determination of applicability or a determination of insignificance, the proponent shall submit the request to the Executive Director, Water Resources Commission, Executive Office of Energy and Environmental Affairs, 100 Cambridge Street, Suite 900, Boston MA 02114 and to WRC Staff, DCR Office of Water Resources, 251 Causeway Street, Boston, MA 02114.

(f) The Commission shall publish a notice of the request for a determination of applicability or a determination of insignificance in the Environmental Monitor within thirty-one (31) days of the receipt of such request and send a copy of the notice to the municipalities directly affected. The notice shall contain the date of the Commission meeting or meetings when such request will be considered. Within ninety (90) days of the receipt of the request, or upon receipt of all requested additional information, whichever is later, a determination shall be made by action of the Commission. The determination and reasons therefore shall be published in the Environmental Monitor.

(2) Request for Determination of Applicability ~~and/or Insignificance.~~

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~~(a) The Commission may upon request determine whether a proposed action to increase over the present rate of interbasin transfer is insignificant or not an interbasin transfer as defined herein and thereby not require further application procedures contained in 313 CMR 4.00. A person requesting such a determination shall complete a request for determination of applicability or determination of insignificance in approved form and submit it to the Executive Director, Water Resources Commission, 100 Cambridge Street, Boston, MA 02202.~~

~~(b) The Commission shall publish a notice of the request for a determination of applicability or a determination of insignificance in the Environmental Monitor within thirty-one (31) days of the receipt of such request and send a copy of the notice to the municipalities directly affected. The notice shall contain the date of the Commission meeting or meetings when such request will be considered. Within ninety (90) days of the receipt of the request, or upon receipt of all requested additional information, whichever is later, a determination shall be made by action of the Commission. The determination and reasons therefore shall be published in the Environmental Monitor.~~

(a)Whenever a person is proposing an action that has a reasonable likelihood to increase the present rate of interbasin transfer, the Commission may, upon the request of the proponent or upon its own motion, request information concerning the action and determine whether the increase is subject to M.G.L. c. 21, §§ 8B - 8D as defined herein. The Commission may require the proponent to submit a request for a determination of applicability in accordance with 313 CMR 4.04(2). The Commission may base its determination on the information available to it from all sources and persons, including other federal, state and local agencies, information arising out of a MEPA filing or review pursuant to M.G.L. c. 30, §§61 - 62H, or on information from the public. If the Commission determines that an action is not subject to the Act, as defined herein, the action will not require further review according to the procedures contained in these regulations.

(b) The Commission shall publish a notice of the request for a determination of applicability in the Environmental Monitor within thirty-one (31) days of the receipt of such request and send a copy of the notice to the municipalities directly affected. The notice shall contain the date of the Commission meeting or meetings when such request will be considered. Within ninety (90) days of the receipt of the request, or

upon receipt of all requested additional information, whichever is later, a determination shall be made by action of the Commission. The determination and reasons therefore shall be published in the Environmental Monitor.

(c) In requesting a determination of applicability, the proponent shall include:

1. A description of the proposed project;
2. The basin of origin of the water supply;
3. The basin of discharge for the wastewater; and
4. The municipality(ies), water districts or sewer districts involved in the project.

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(3) Request for Determination of Insignificance

(a) The Commission may, upon the request of the proponent or upon its own motion, determine whether a proposed action to increase over the present rate of interbasin transfer is insignificant.

(b) The Commission shall publish a notice of the request for a determination of insignificance in the Environmental Monitor within thirty-one (31) days of the receipt of such request and send a copy of the notice to the municipalities directly affected. The notice shall contain the date of the Commission meeting or meetings when such request will be considered. Within ninety (90) days of the receipt of the request, or upon receipt of all requested additional information, whichever is later, a determination shall be made by action of the Commission. The determination and reasons therefore shall be published in the Environmental Monitor.

(~~3~~4) Information Required by the Water Resources Commission to Act Upon a Request for Determination of Insignificance. A request for determination of insignificance must include the following information:

(a) Name, address, email address and telephone number of the proponent.

(b) Name of the project and a brief description of it.

(c) Any applicable federal or state identification number including the ~~EO~~EEA (MEPA) File Number (if any).

(d) An approximate timetable for the project.

(e) The increase in interbasin transfer made possible by the proposed action stated in millions of gallons per day on an annualized basis, in gallons per minute- and in terms of increases in maximum daily capacity.

(f) The name and location of the sources of the proposed interbasin transfer, the name of the communities, sections of communities, water district(s) or sewer district(s), as applicable, and the wastewater discharge point.

(g) In the case of temporary transfers, the purpose for which the water is to be transferred, the duration and amounts.

(h) The information requested in 313 CMR 4.04(4)(f)and/or (m) illustrated on a map of sufficient detail to show any potentially affected water bodies.

(i) Other information which may be requested by the Commission in specific instances.

(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.

All other requests for determination of insignificance must submit the information requested below:

For water supply transfers, a request for determination of insignificance must contain the information in (a) through (i), either (k) or (l) below as appropriate for the location of withdrawal point, and (m).

(k~~f~~) In the case of transfers primarily derived from streamflow, either directly or through groundwater withdrawals, provide ~~A~~any change in the ~~period and/or amount~~streamflow magnitude and frequency of the water body from which the ~~to be withdrawn and~~ transfer~~red or stored in reservoirs including the~~ is proposed, calculated as a percentage of ~~the instantaneous flows to be withdrawn from the donor river and the impact, if any, on~~ the unimpacted ninety-five percent (95%) exceedance flow, ~~or~~ and the change in the 7Q10 flow for the river, if used in the formulation of a program of pollution abatement.

(l) In the case of transfers primarily derived from lakes, ponds, reservoirs or other impoundments either directly or through groundwater withdrawals, provide the delineated drainage area of the water body and its area in square miles.

(m) Any proposed flow augmentation provisions, flow protection thresholds or other measures to minimize or offset impacts of the transfer on streamflows.

For wastewater transfers: a request for determination of insignificance must contain the information in (a) through (i) and the following:

(n) Delineate the areas proposed to receive wastewater service, if applicable, or areas where the capacity of an existing wastewater service is proposed to be enlarged.

(o) Evaluation of potential in-basis sources of disposal, including Title 5, reuse, groundwater, and surface water discharges; if available, provide a DEP-approved comprehensive wastewater management plan (CWMP) or other appropriate document that evaluates these options.

(p) The amount to be transferred calculated as a percentage of the unimpacted ninety-five percent (95%) exceedance flow, and the change in the 7Q10 flow for the river, if used in the formulation of a program of pollution abatement.

(q) For wastewater transfers triggered by the development of a local water supply that is transferred out of basin as wastewater: a request for determination of insignificance must include the information in (a) through (p), as applicable.

~~(g) The purpose for which the water is to be transferred and the time and amounts in the case of temporary transfers.~~

~~(h) The name and location of the sources of the proposed interbasin transfer, the name of the communities, sections of communities or water district or other entity which will use the water to be transferred and the wastewater discharge point.~~

~~(i) Any proposed flow augmentation provisions, flow protection thresholds or other measures to protect instream flows.~~

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~~(j) If a transfer of wastewater, state reasons why inbasin disposal is not feasible and include the 303 Basin Plan(k) The information requested in 313 CMR 4.04(3)(h) illustrated on a map of sufficient detail to show water bodies and streams.~~
~~(l) Other information which may be requested by the Commission in specific instances.~~(r) The Commission may consider the information available to it from all sources and persons, including other federal, state and local agencies, information arising out of a MEPA filing or review pursuant to M.G.L. c. 30, §§61 - 62H, or on information from the public, when evaluating the project against the Criteria for Determining Insignificance, listed in 313 CMR 4.04(5) herein.

(~~5~~4) Criteria for Determining Insignificance. The Commission shall consider the following criteria, as appropriate, in determining if a proposed action to increase over the present rate of interbasin transfer is insignificant:

(a) That the proposed action to increase over the present rate of interbasin transfer shall not facilitate an increase ~~over~~ of one million gallons per day or greater.

(b) ~~-~~That the increase on an annualized basis would be less than one million gallons per day and is to be temporary, of short duration and ~~for a purpose cited in the definition of insignificant increase~~ conducted to facilitate the construction, maintenance or repair of a public utility, for flood control purposes, for public safety purposes or other similar purposes not related to water supply.

(c) In the case of transfers primarily derived from streamflow, ~~T~~that the additional flow to be ~~withdrawn~~ transferred, ~~is~~ in all cases, does not result in a ~~less than~~ five percent (5%) or greater depletion of the ~~instantaneous~~ unimpacted ninety-five percent (95%) exceedance flow as measured at an appropriate point of the donor river or tributary thereto. In the case of transfers primarily derived from lakes, ponds, reservoirs, or other impoundments, the cumulative annual amount of the additional flow to be transferred in all cases, is not greater than one percent (1%) of the annual forty-five (45) inch rainfall on the drainage area of the water body or five percent (5%) of the drought year inflow to the water body.~~-~~

(d) That the ~~ninety-five percent (95%) exceedance flow, or the~~ 7Q10 flow when relied upon in a program of pollution abatement~~,~~ will not be significantly diminished or prolonged.

(e) That special resource values such as state-listed species and their habitats protected under the Massachusetts Endangered Species Act ~~endangered species of plants and animals~~, ~~an~~ areas of critical environmental concern, ~~a~~ designated scenic rivers or areas protected by Article 97 of the Amendments to the Massachusetts Constitution will not be adversely affected.~~,~~ and,

(f) That consideration has been given to measures to protect instream flows, as described in 4.04(4)(m), and where appropriate, any such measures are proposed as part of the application.

(g) The Commission shall consider the cumulative impacts of all past, authorized or proposed transfers on streamflows, groundwater, lakes, ponds, reservoirs, or other impoundments in the donor basin. The proposed transfer will be evaluated cumulatively with authorized and proposed transfers against relevant criteria of this section, in relation to previously approved transfers from the source.

(~~6~~5) Application for Approval of an Action to Increase over the Present Rate of Interbasin Transfer

(a) Proponents of proposed interbasin transfer shall complete the application ~~in approved form~~ according to 313 CMR 4.04(7)(h) and other appropriate guidance, and submit it to the Executive Director, Water Resources Commission, Executive Office of Energy and Environmental Affairs,100 Cambridge Street, Suite 900, Boston, MA ~~02202~~02114. In addition, at least two bound copies, and an electronic copy must be submitted to WRC Staff, Department of Conservation and Recreation, Office of Water Resources, 251 Causeway Street, Boston, MA 02114, and a copy must be placed at the public library(ies) of each of the affected communities.

(b) If the Commission, upon request or upon its own motion, determines that a proposed action is not insignificant, it shall require submission of an application for approval in accordance with this section.

(c) The Commission shall publish notice of the receipt of an application for a proposed interbasin transfer in the Environmental Monitor and send a copy to the municipalities directly affected.

(d) The Commission may require such additional information from the proponent or any other appropriate persons or agencies as it deems necessary to conduct this review.

(e) The Commission shall, within sixty (60) days of a determination that the application is complete, or that all requested additional information has been received, or within sixty (60) days~~.~~ after MEPA Compliance if it is required, whichever is later, conduct public hearings, and within sixty (60) days of completing said hearings shall complete its review and approve or deny the requested action to increase the present rate of interbasin transfer.

(f) During the period in which the Commission must reach a decision to approve or deny the proposed interbasin transfer, the proponent, and participating agencies which have jurisdiction by law shall make themselves available at such reasonable times and places designated by the Commission to consult with both the proponent and Commission staff.

(g) The review may be extended by written consent of the Commission and the ~~applicant~~ proponent and for a ~~period~~ mutually agreed ~~to~~upon period.

(h) The application shall contain the following parts:

1. ~~Part I~~ Summary Sheet(s). There shall be a summary sheet(s), written in clear and non-technical language, which shall contain:
   a. The name of the project.
   b. Any applicable federal or state identification number, including ~~EO~~EEA (MEPA) File Number.
   c. ~~What~~ A list of other state permits, approvals, or procedures that are applicable to this project.
   d. The name, address, email address, and telephone number of the proponent.
   ~~e. A brief description of the proposed interbasin transfer.~~

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2. Description of the Proposed Interbasin Transfer. This part should discuss the nature and extent of the proposal. The description should include:

a. An approximate timetable for the project.

b. Where applicable, the present transfer system including out-of-basin conveyance capacity, storage capacity, withdrawal constraints or other limiting factors.

c. A description of ~~T~~the proposed action to increase over the present rate of interbasin transfer proposed and supporting information showing how the increase was determined. The time and amounts to be withdrawn and transferred or stored in reservoirs, proposed changes in structure and/or changes in withdrawal or transfer constraints.

d. The name and location of the water supply sources to be used to increase the interbasin transfer, or in the case of a wastewater transfer, the source(s) of water which become wastewater, the name of the communities, sections of communities or water or sewer district(s) which will use the water to be transferred or benefit from a wastewater transfer, ~~-~~and the wastewater discharge point.

e. For wastewater transfers, information to be submitted shall include, but not be limited to:

i. The reasons for such a wastewater transfer;

ii. River basin and location of the point of discharge for the wastewater transfer;

iii. Available capacity of the wastewater treatment facility to receive the wastewater; and

iv. Verification that the permitting authority for the wastewater treatment facility has been notified of the proponent's intent to transfer water to that wastewater facility and a copy of that notification.

~~d.~~

~~e.~~f. A list of known users whose use could be affected by the proposed transfer.

~~f.~~g. The information requested in 313 CMR 4.04(~~5~~7)(h)2.d. illustrated on a map.

3. Discussion of the Development of Viable Sources in the Receiving Area. ~~This part should describe the efforts made to identify and develop all viable sources in the receiving area except where the transfer is one which occurs only because an in-basin source is transferred out-of-basin as wastewater.~~ This part needs to be in sufficient detail for the Commission to determine if all reasonable efforts have been made to conduct such identification and development. This discussion should include the water supply and wastewater disposal alternatives considered, but rejected. The reason for the rejection of these alternatives should be clearly stated and may include, but not be limited to, consideration of such things as cost, feasibility of obtaining suitable sites for water supply development or wastewater discharge, and/~~-~~or environmental impacts. ~~:~~

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~~a. Location and assessment of existing, abandoned and potential in-basin water supply sources.~~
~~b. A copy of studies and reports evaluating in-basin sources in the receiving area.~~
~~c. Costs of developing in-basin sources in the receiving area.~~
~~d. Impact on in-basin stream flow which should result from development of in-basin source(s) in the receiving area.~~
~~e. Feasibility of obtaining additional water supply from water supply agencies in cities, towns or districts within the same basin.~~

4. Description of Conservation Measures in the Receiving Area. This part should describe all measures to conserve water completed, in progress, or programmed for continuation in the receiving area. ~~t~~These measures should comply with the Massachusetts Water ~~c~~Conservation Standards.
In the case of water supply transfers, ~~M~~measures to be described shall include:

a. The identification of distribution sources of ~~lost~~ unaccounted-for water.
b. Leak detection and repair program.
c. Metering and meter maintenance program.
d. Rate structure.
e. Public information program to promote water conservation.
f. Contingency plan for limiting use of water during seasonal or drought shortages.
g. Measures to protect water supply sources ~~presently~~ currently serving the receiving area.

In the case of wastewater transfers, measures to be described shall include:

h. An approved Infiltration/Inflow (I/I) reduction program or Sewer System Evaluation Study (SSES) that has been developed in accordance with the Department of Environmental Protection's regulations 314 CMR 12.04.
i. An Operation and Maintenance manual for the wastewater system completed in accordance with 314 CMR 12.04(1).
j. In cases where the proponent has control over the water supply system, a description of the supplier's water conservation program. In cases where the proponent does not have control over the water supply system, reasonable efforts must be taken to provide a description of the water conservation program in the receiving area (as described in Section 4.02 for wastewater transfers).

5. MEPA Compliance. The application should include, where required, an Environmental Notification Form (ENF) and all of the information produced in the MEPA process available at the time of the application.

6. Description of ~~Watershed~~ the Comprehensive Forestry Management Programs. For water supply transfers only. ~~T~~this part should describe existing and proposed ~~watershed~~ comprehensive forestry management programs ~~on~~ for surface water supply source watershed lands presently serving the receiving area and under the control of the proponent, with a copy of any applicable comprehensive forestry

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~~watershed~~ management plans included. The plan should be approved by the Department of Conservation and Recreation (DCR) or other appropriate agency.

7. Description of the Instream Flow of the Donor Basin. This part should describe the hydrologic, hydrogeologic and ecological characteristics of the river basin from which the water is to be ~~diverted and any interdependent groundwater regimen.~~transferred, including any relevant relationships between surface water and groundwater.

For water supply transfers, ~~T~~this description should include:

~~a. Annual stream flow based on the areal discharge per square mile for the period of record utilizing data available from streamflow records produced by the U.S. Geological Survey.~~

a. The drainage area above the withdrawal point and the distance of the withdrawal point from the nearest surface water body (river, lake, wetland, etc.).

b. A daily hydrograph for an appropriate period of record showing the potential changes induced by the transfer.

~~b.~~c. A table of the daily streamflow with and without the proposed additional withdrawal, with the percent reduction in streamflow due to the interbasin transfer.

~~c.~~d. Data to evaluate the ~~I~~impact of the proposed interbasin transfer of surface water on streamflow and on instream water uses~~.~~, including but not limited to:

~~i. Length of stream below the point of withdrawal.~~

~~i~~i. Effect on hydraulic characteristics including, but not limited to flood flows, ~~the aquatic base flow,~~ low flows, the unimpacted ninety-five percent (95%) exceedance flow, the 7Q10 flow for the river ~~if used in a pollution abatement program~~, stage, velocity, and sediment regimen~~, etc~~.

ii. Change in the duration, frequency and magnitude of the hydraulic characteristics.

iii. Effects on water levels of nearby reservoirs, lakes, and ponds and the impacts to the magnitude and duration of flow to associated outlet streams.

e. Any existing studies or other documentation of flow alteration.

In the case of groundwater withdrawals, the following information should also be provided:

f. The DEP approved pumping test report for the proposed source, or, if not a public water supply source, a comparable hydraulic analysis.

g. A map of the site showing test wells, observation wells, and the location of geological cross-sections.

h. Static water table elevation or potentiometric surface contour map;

i. Transient (prior to shut down) water table elevation or potentiometric surface contour map.

j. An analysis of streamflow depletion resulting from the proposed schedule and rate of groundwater withdrawal.

k. Geologic cross-sections including pre- and end of pumping test groundwater levels.

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l. Documentation of groundwater modeling, if used, describing input and output data, model calibration, water balance data, and characterization of groundwater and surface water contributing to the pumping wells.

For wastewater transfers, except those triggered by the development of a local water supply that is transferred out of basin as wastewater, the type of information and analyses required will depend on the circumstances of the wastewater transfer, but should include:

m. Delineation of the areas proposed to be sewered;

n. Estimate of the amount of wastewater to be transferred, on both an average annual and peak flow basis;

o. A final Comprehensive Wastewater Management Plan (CWMP), or other appropriate study, which includes evaluation of sources of disposal, including Title 5, groundwater and surface water discharges; and

p. Discussion of the feasibility of implementing wastewater reuse in accordance with 314 CMR 20.00.

q. Available capacity of the wastewater treatment facility to receive the wastewater;

r. Verification that the permitting authority for the wastewater treatment facility has been notified of the proponent's intent to transfer water to that wastewater facility and a copy of that notification.

Close consultation with WRC Staff at DCR's Office of Water Resources is recommended prior to application submittal to ensure that the information provided reflects the conditions of the wastewater transfer.

For all transfers, the description should also include data to evaluate the impact of the proposed interbasin transfer of water on streamflow and on instream water uses including but not limited to:

~~iii~~s. Indigenous and anadromous fisheries as determined by written reports of appropriate agencies and effects of the proposed interbasin transfer on these fisheries.

~~iv~~t. Wetlands and dependent flora and fauna and effects thereon.

~~v~~u. Effect on water quality for recreational uses and aesthetic values.

~~vi~~v. Effect on established riparian uses and uses dependent on recharge from streamflow.

w~~vii~~. Effect on hydropower production.

~~viii~~x. Effect on present and foreseeable water withdrawals and undeveloped rights within the donor basin.

~~ix~~y. Effect on other instream uses present and foreseeable.

~~8. Where water is used and then transferred as wastewater to another basin, the reasons for such a wastewater transfer shall be stated. If covered by a 303 Basin Plan, it shall be submitted for consideration.~~

8. Application Requirement Waiver. The Commission may, in appropriate cases, waive certain ~~of the~~ application requirements in these regulations not specifically required by

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state or federal law. It may also require the submission of additional information if needed to reach a decision in a specific case.

(7) Application for Approval of an Action to Increase over the Present Rate of Interbasin Transfer Due to the Expansion of the Service Area of a Regional Water Supply System More details to follow.

~~9.~~

4.05: Criteria for Evaluation of Application for Approval of an Action to Increase over the Present Rate of Interbasin Transfer

The Commission shall consider the following criteria in making its decision to approve or deny a proposed action to increase over the present rate of interbasin transfer ~~of waters~~.

(1) That an environmental review pursuant to M.G.L. c. 30, §§61 and 62H, inclusive, if required, has been complied with for the proposed increase.

(2) That all reasonable efforts have been made to identify and develop all viable sources in the receiving area of the proposed interbasin transfer:
For water supply transfers, this refers to sources which can provide drinking water that meets the current water quality and management standards
For wastewater transfers, this refers cost-effective, technologically feasible, environmentally sound wastewater treatment systems which treat, reuse, and/or discharge wastewater within the basin of origin.

(3) That all practical measures to conserve water have been taken in the receiving area, including but not limited to the following:
For water supply transfers

(a) The identification of distribution system sources of ~~lost~~ unaccounted-for water~~, and where cost effective, the implementation of a program of~~. A full leak detection survey of the distribution system must be completed in accordance with the most recent Water Conservation Standards for the Commonwealth of Massachusetts. All leaks identified as a result of the survey shall be repaired to the greatest extent feasible. ~~and repair.~~

(b) Metering of all water users in the receiving area and a program of meter maintenance, repair or replacement.

(c) Implementation of rate structures which reflect the costs of operation, proper maintenance, proposed capital improvements, and water conservation and which encourage the same.

(d) Public information programs to promote water conservation, the use of water conserving devices, and industrial and commercial recycling and reuse.

(e) Contingency plans for limiting the use of water during seasonal or drought shortages.

(f) Implementation of land use controls to protect existing water supply sources of the receiving area that meet the requirements of the Department of Environmental

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~~Quality Engineering (now Environmental~~ Protection~~)~~ published in 310 CMR 22.20~~.~~ and 22.21.

(g) A written water conservation plan which describes how the proponent complies with the most recent version of the Water Conservation Standards for the Commonwealth of Massachusetts.

For wastewater transfers

(h) An active program to reduce sources of inflow and infiltration in the donor basin.

(i) Metering of existing wastewater transfers at location(s) sufficient to document wastewater flows out of basin. Use of regional sewer meters which document wastewater flows out of basin is acceptable where these meters are in place.

(j) An Operation and Maintenance manual for the wastewater system completed in accordance with 314 CMR 12.04.

(k) For wastewater transfers where the proponent has control over the water supply system, a program for implementing a water conservation program based on the state water conservation standards. In cases where the proponent does not have control over the water supply system, they must have made reasonable efforts to coordinate with the water supplier to implement a water conservation program based on the state water conservation standards.

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(4) For water supply transfers: That a comprehensive forestry management program which balances water yields, wildlife habitat, biodiversity and natural beauty on watershed lands of surface water sources ~~presently~~ currently serving the receiving area and under control of the proponent has been implemented.

(5) That reasonable instream flow in the river from which the water is transferred is maintained. In determining whether reasonable instream flow would be maintained, ~~T~~the Commission shall take into consideration ~~in determining reasonable instream flow~~ the impact of the proposed interbasin transfer on the streamflow dependent ecosystems and water uses, ~~to~~ includinge:

(a) ~~Length of the stream below the point of withdrawal.~~The drainage area of the withdrawal and the distance of the withdrawal point from the nearest surface water body (such as a river, lake, or wetland).

(b) Effects on flood flows, intermediate flows and low flows, including existing flow alteration and potential effects thereon from the proposed transfer.

(c) Effect on groundwater and surface water elevations.

(d) Significance of indigenous and anadromous fisheries and fauna and effects thereon.

(e) Significance of wetlands and dependent flora and fauna and effects thereon.

(f) Effect on water quality, recreational uses, aesthetic values, areas of critical environmental concern, state-listed species and their habitats protected under the Massachusetts Endangered Species Act and regulations, and areas protected under Article 97 of the Amendments to the Massachusetts Constitution.

(g) Effect on established riparian uses and uses dependent on recharge from stream flow.

(h) Effect on hydropower production.

(i) Effect on other water withdrawals and undeveloped rights within the donor basin.
(j) Effect on other instream uses.

(6) In the case of groundwater withdrawals, the results of pumping tests will be used to indicate the impact of the proposed withdrawal on static water levels, the cone of depression, the potential impacts on adjacent wells and lake and pond levels, and the potential to affect instream values as listed in 313 CMR 4.05(5)(a) through (j).

~~(7) That the communities and districts in the receiving area have adopted or are actively engaged in developing a local water resources management plan.~~

(~~8~~7) The Commission shall consider the cumulative impacts of all past, authorized or proposed transfers on streamflows, groundwater and surface water levels in the donor basin.

4.06: Hearing and Decision Making Procedures

(1) Public Hearings. Before acting to approve or deny a proposed action to increase over the present rate of interbasin transfer the Commission shall hold two (2) public hearings. The public hearings shall take place after compliance with sections 61 and 62 to 62h, inclusive, of chapter 30 of the Massachusetts General Laws. One (1) hearing must be held in the donor community where the immediate source of the interbasin transfer is located and one hearing must be held in the receiving ~~area~~community. Additional public hearings may be required by the Commission prior to its approval or denial of a proposed action to increase.

(2) Hearing Notice. Public notice of the hearing shall be published in the Environmental Monitor by the Commission not less than twenty-one (21) days before such hearing. Notice shall be published in electronic media that is generally available ~~in at least one newspaper of general circulation~~ in both the donor and receiving areas. Such notice shall be mailed to the appropriate Boards of Selectmen, Mayors, Conservation Commissions, Planning Boards, Water and Sewer Departments, Boards of Health, Commissions or Districts of the directly affected communities, ~~and~~ regional planning agencies, water or wastewater citizen advisory committees and watershed associations. Such notice shall include a citation of the authority under which the proposed interbasin transfer is being reviewed, a summary of the facts concerning the proposed interbasin transfer, the time and place of the hearing, the manner by which the public may make their views known.

(3) Filing Commission Decision. Within thirty (30) days of final action by the Commission it shall file a written report of the findings and justifications of its decisions to approve or deny the proposed action to increase over the present rate of interbasin transfer with the clerks of the House of Representatives and the Senate, and with the Secretary of State for publication in the Massachusetts Register.

4.07: Miscellaneous Provisions

(1) Interbasin Transfer Data. The Commission may require any person transferring water or wastewater out of a donor basin to provide information concerning the time and amount of said water transferred on a periodic basis which the Commission deems necessary to achieve the purposes of 313 CMR 4.00.
~~Upon review of water consumption trends in the development of river basin plans in the 313 CMR 2.00 planning process, the Commission may advise any supplier of water that a continuation in the pattern of consumption may result in the need for additional sources of supply, pointing out the requirements which must be met if an out-of-basin source is to be utilized.~~

(2) Jurisdiction. 313 CMR 4.00 shall have force and effect within the political boundaries of the Commonwealth of Massachusetts.

(3) Severability. If any provision of 313 CMR 4.00 or the application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of any part of 313 CMR 4.00 not specifically held invalid, and to this end the provisions of 313 CMR 4.00 are declared to be severable.

~~(4) Amendments to 313 CMR 4.00. 313 CMR 4.00 may be amended from time to time by the Commission in accordance with the applicable provision of M.G.L. c. 30A. At least once each year the Commission shall review 313 CMR 4.00 and determine whether they continue to properly fulfill their purposes and the requirements of applicable legislation.~~

(~~5~~4) Effective Date. 313 CMR 4.00 shall become effective upon their promulgation pursuant to M.G.L c. 21 § 8D.

(~~6~~5) Waiver. The Commission may waive in writing any provision or requirement in 313 CMR 4.00 not specifically required by state or federal law when in its judgement strict compliance with such a provision or requirement would result in an undue hardship and would not serve to minimize or avoid damage to the environment and in the case of public notice requirements would not be necessary to provide a substantially similar audience of adequate notice in fact. Hardship stemming from a delay in compliance with the law or regulations by the person requesting the waiver will normally not be a sufficient reason for granting such a waiver.

REGULATORY AUTHORITY

313 CMR 4.00: M.G.L. c.21, § 8D.