



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

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**Meeting Minutes for April 10, 2014**

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

*Minutes approved May 8, 2014*

**Members in Attendance:**

Kathleen Baskin	Designee, Executive Office of Energy and Environmental Affairs (EEA)
Marilyn Contreas	Designee, Department of Housing and Community Development (DHCD)
Anne Carroll	Designee, Department of Conservation and Recreation (DCR)
Bethany Card	Designee, Department of Environmental Protection (MassDEP)
Catherine deRonde	Designee, Department of Agricultural Resources (DAR)
Mark Tisa	Designee, Department of Fish and Game (DFG)
Todd Callaghan	Designee, Massachusetts Office of Coastal Zone Management (CZM)
Thomas Cambareri	Public Member
John Lebeaux	Public Member

**Members Absent**

Raymond Jack	Public Member
Paul Matthews	Public Member
Bob Zimmerman	Public Member

**Others in Attendance:**

Bruce Hansen	DCR
Jen Pederson	Massachusetts Water Works Association
Lexi Dewey	Water Supply Citizens Advisory Committee
Michele Drury	DCR
Mary Griffin	DFG
Jonathan Yeo	DCR
David Ferris	MassDEP
Sara Cohen	DCR
Jeff Barbaro	U.S. Geological Survey
Linda Hutchins	DCR
Erin Graham	DCR
Vandana Rao	EEA
John A. Pike	Conservation Law Foundation
Martha Morgan	Nashua River Watershed Association
Margaret Van Deusen	Charles River Watershed Association
Julia Blatt	Massachusetts Rivers Alliance
Pam Heidell	Massachusetts Water Resources Authority
Ann Lowery	MassDEP
Fabiola de Carvalho	Town of Framingham
Marilyn McCrory	DCR

Baskin called the meeting to order at 1:05 p.m.

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

Baskin welcomed Mary Griffin, Commissioner of the Department of Fish and Game. Baskin announced that Commissioner Watson of the Department of Agricultural Resources (DAR) had appointed Catherine deRonde as his designee to the Water Resources Commission. She thanked Gerard Kennedy, formerly the DAR designee, for his long and dedicated service to the commission.

Hansen provided an update on the hydrologic conditions for March 2014. Rainfall in March was a little above normal statewide, varying from 130 percent of normal in the Central Region to 79 percent of normal in the Cape Cod and Islands Region. A snowpack remains in the northern Connecticut River valley and Monadnock Hills, but is fast disappearing. Soil moisture is above normal, but fire danger will remain a concern on days with low humidity and gusty winds. Groundwater levels are below normal in some areas, and streamflows are below normal in the central region and Connecticut River valley area. Some reservoirs are reporting percent-full levels that are slightly below normal. The Drought Monitor indicates no drought or dry conditions in Massachusetts. The Standardized Precipitation Index values are in the normal range for all regions, and the seasonal drought outlook indicates no drought conditions in Massachusetts through June.

Baskin announced that revisions to the Water Management Act regulations are available for public comment. Card outlined outreach efforts, including public notices and six public meetings scheduled at locations throughout the state. She added that all materials, including draft regulations and draft guidance, are available on MassDEP's website (*Ed. note*: see link under Exhibits at the end of this document), and public comments will be accepted through June 10.

**Agenda Item #2: Vote on the Minutes of December 2013 and January 2014**

Baskin invited motions to approve the meeting minutes for December 2013 and January 2014.

V O T E S	<p>A motion was made by Card with a second by Cambareri to approve the meeting minutes for December 12, 2013. The vote to approve was unanimous of those present (Lebeaux not present for vote; Tisa abstained).</p> <p>A motion was made by Card with a second by Cambareri to approve the meeting minutes for January 9, 2014. The vote to approve was unanimous of those present (Lebeaux not present for vote; Tisa abstained).</p>
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**Agenda Item #3: Revisions to MassDEP Regulations: Sewer Extension and Connection Permitting (314 CMR 7.00) and Operation and Maintenance (314 CMR 12.00)**

Baskin introduced Ann Lowery and David Ferris of MassDEP to present proposed revisions to the sewer extension and connection permit regulations and operation and maintenance regulations. Lowery noted that MassDEP will return to the Water Resources Commission in the future for a discussion of revisions to water quality certification regulations.

Lowery summarized the overall theme of MassDEP’s regulatory reform initiative, which is to institute changes that streamline the requirements, eliminate duplication of effort, and focus effort on the most important environmental issues. She summarized the major changes to the regulations as a result of public comment. For the sewer extension and connection permitting regulations, she noted that MassDEP will retain authority to issue permits. For the operation and maintenance (O&M) regulations, she noted that new requirements were added to focus attention on issues related to infiltration and inflow, capacity, combined sewer overflows, and sanitary sewer overflows.

Ferris provided details on comments received and changes to these regulations, noting that, of all the regulatory reform proposals, these two regulations received the most public comment. He described the circumstances under which MassDEP will retain authority over permitting sewer extensions and connections. He added that certain provisions of the sewer regulations were moved to the O&M regulations, where they are a better fit. These include notifications related to sanitary sewer overflows and industrial pretreatment requirements. He summarized other changes to the O&M regulations: Requirements for sewer use ordinances remain, but submittal will be required only at MassDEP’s discretion. All municipalities that operate a wastewater treatment facility must submit an infiltration and inflow (I/I) plan and evaluate the capacity of their collection systems; however, if the municipality already has an I/I plan in place, it can substitute that plan for the required plan. Ferris noted that, based on MassDEP’s review of requirements in other states, the revised regulations will change the design storm standard for the I/I plan to a 5-year, 24-hour storm.

Baskin invited comments and questions. Hearing none, she invited motions to approve the regulations.

V O T E	A motion was made by Cambareri with a second by Contreas to accept the revisions to MassDEP’s regulations on sewer extension and connection permitting, 314 CMR 7.00. The vote to approve was unanimous of those present (Lebeaux not present for vote).
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V O T E	A motion was made by Cambareri with a second by Contreas to accept the revisions to MassDEP’s regulations on operation and maintenance, 314 CMR 12.00. The vote to approve was unanimous of those present (Lebeaux not present for vote).
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**Agenda Item #4: Revisions to Interbasin Transfer Act Regulations (313 CMR 4.00)**

Baskin noted that an interagency committee has been working for the past few months on updating the Interbasin Transfer Act regulations. She noted that staff had presented, at the March commission meeting, an overview of the types of changes being considered. She distributed a working draft of the regulations, noting that a vote would not be requested at today’s meeting. She asked commission members to provide feedback on the pace of the discussion and whether they wish to schedule an additional meeting before its next meeting on May 8.

Drury emphasized that the current draft of the regulations is a work in progress. She reviewed the reasons for making changes, including the availability of better scientific information; a desire to incorporate policy and practice based on thirty years of experience in implementing

the regulations; and a desire to streamline the process, where possible, while maintaining the high level of environmental protection mandated by the Act.

Drury reviewed the major changes proposed to the regulations and current policies, starting with revisions to the section on determinations of insignificance. She described a proposal to establish a more streamlined process, a finding of insignificance with no further analysis required, for transfers less than or equal to 15,000 gallons per day. Drury emphasized that such a finding would be at the commission's discretion, meaning that the commission would retain its authority to require a higher level of review. In response to a question from Tisa, Drury affirmed that this discretion would be determined by majority rule.

Van Deusen asked how the commission would exercise its discretion and what information would be required to inform its decision about insignificance. Drury outlined other information required in the regulations, noting that the commission may request as much information as it needs to make a determination. Tisa expressed concern that impacts on cold water fisheries resources should be considered. Carroll responded that information on special resource values is required for review of applications for small transfers, and Drury added that the regulations list the information required for a determination of insignificance.

In explaining the rationale for adding this lower tier, Drury noted that many requests for very small transfers are made by entities that do not have the ability to implement offsets, which would allow them to meet the criteria for insignificance. She added that the current requirements do not produce a significant benefit compared to the work involved in meeting the extensive requirements for a full review. She emphasized that the determination of insignificance at this lower tier would not be automatic, and would still require the applicant to provide information and would require a vote by the commission.

Morgan asked if offsets would still be required. Drury clarified that offsets are not required by the Interbasin Transfer Act, but applicants are encouraged to implement offsets, in accordance with the commission's offsets policy, in order to minimize or eliminate a transfer. Pike requested examples. Drury responded that many interbasin transfer requests involve transfers of wastewater in cases where suitable wastewater disposal options are not available in the town. Carroll and Drury noted project examples outlined at the commission's March meeting.

Lebeaux commented that the proposed change presumes that any transfer of 15,000 gallons per day or less is significant, and would only be determined to be insignificant by a majority vote of the commission. Drury confirmed, adding that the commission is not giving up authority on these small transfers.

Continuing the discussion of insignificance, Drury described a second tier, which would apply to transfers greater than 15,000 gallons per day (gpd) but less than one million gallons per day (mgd), with the latter being the cutoff mandated by the Act. She explained that the interagency work group decided to eliminate a middle tier, which had been proposed previously.

She outlined the proposed changes to the criteria for evaluating whether a transfer is insignificant at this tier. The first, a change in one of the statistics used, provides a more accurate estimate at low flow levels than the statistic currently used, while still being very

protective of the environment. The second change provides criteria for evaluating transfers other than river withdrawals, such as transfers of wastewater, groundwater, and water from lakes and reservoirs, and she outlined the criteria for each. In addition, proposed measures to protect or enhance streamflow could be considered. Another change enhances the criterion for evaluating cumulative impacts of transfers.

Pike expressed concern that once a transfer is approved, it is committed forever, even if circumstances change, such as intensification of drought conditions. Baskin confirmed that approvals by the Water Resources Commission are in perpetuity. Drury and Hutchins explained that the proposed criteria for evaluating transfers use statistics based on the drought of record, which is the severe multiyear drought of the 1960s. Yeo added that water withdrawals are also subject to review under the Water Management Act permitting process. Pike reiterated his concern that approvals are forever.

Morgan expressed concern about requirements for releases from reservoirs, commenting that even with required releases, flows in the Nashua River are far from being in a natural state. Baskin reiterated that all determinations of insignificance would still require a level of review, and approval would not be automatic. Once they are approved, however, no further review or conditions are required.

Van Deusen requested clarification on how the thresholds for the tiers were selected. Drury explained that, in the Interbasin Transfer Act (ITA), 1 mgd has always been the threshold above which a transfer is considered significant. Baskin added that the current regulations have only one category for insignificance, less than 1 mgd. The proposed change carves off another tier, less than 15,000 gpd. In addition, the proposed change uses a different statistic for the criterion for flow alteration when the transfer is above 15,000 gpd but below 1 mgd.

Van Deusen asked how the proposed criterion for wastewater, groundwater, and river intake transfers – less than 5% of the unimpacted/unaffected 95<sup>th</sup> percentile flow – will work with the biological categories and groundwater withdrawal categories established in the Sustainable Water Management Initiative (SWMI) framework, and if a transfer could cause greater impacts to resources. She noted that a major concern is summer streamflows. Carroll responded that the interagency work group tested the numbers using previous projects, and found it would be highly unlikely that transfers meeting the proposed criterion would result in a change in SWMI category. She noted that the proposed metric is more protective than the smallest flow alteration allowed in the SWMI framework. Regarding seasonal issues, Drury added that a project would have to meet this criterion *every day* during the period of record, and if it doesn't, the regulations would require a higher level of review.

Drury outlined three criteria for determining insignificance that will not change.

Pike asked if a transfer would be allowed from a SWMI "category five" basin. Drury responded that such a transfer could be allowed, but it would have to meet all the criteria and pass review. Card added that a basin classified as SWMI category five can still be permitted for additional withdrawals under the Water Management Act. Griffin urged the commission to use its discretion in evaluating transfers, since a category one basin may have special resources such as

coldwater fisheries. Drury emphasized that the commission can require full review if there is concern about resource values.

Van Deusen requested clarification that if one applicant met the criteria for insignificance, but its approved transfer “used up” the flow allowed by the criterion, so that later applicants would not be able to meet the criteria for insignificance. Drury confirmed that later applicants would require a higher level of review.

Callaghan asked if special resource values, such as shellfish beds, are codified. Drury confirmed that certain resources are listed in the regulations, and consultation with other agencies about their resource concerns is an important part of the review.

Drury next described a proposal to eliminate the requirement for a local water resources management plan, explaining that the required plan is redundant with planning that communities already do.

Drury then described a proposed consolidated donor basin application – a new process for allowing regional water suppliers to request approval for a specified volume of transfer without having to identify receiving basin recipients. She emphasized that the details on this streamlined process remain to be worked out. The seller would have to address environmental criteria for the donor basin once. The receiving basin application process would also be streamlined, with future purchasers being required to meet criteria applicable to the volume being requested. Receiving-basin communities requesting transfers less than 1 mgd would have to meet conservation requirements.

Pederson requested clarification on requirements for the receiving basin. Drury confirmed that communities in receiving basins requesting transfers greater than or equal to 1 mgd would have to go through a full review process and meet all the criteria for receiving basins. Carroll added that the only flexibility in the Act for streamlining lies with transfers less than 1 mgd.

Van Deusen asked for the rationale for streamlining the receiving basin application, adding that this is counter to the commonwealth’s policy to “keep water local.” She suggested that the regulatory language tie receiving basin transfers to a good environmental outcome, rather than being based on a first-come-first-served approach. Drury explained that, for transfers under 1 mgd, the Act allows the commission to find such a transfer insignificant, with fewer of the criteria being applicable, if the commission is confident that the impacts to the donor basin are acceptable. Carroll added that the Act emphasizes protection of the donor basin. The first step in the proposed process would be for the donor basin to demonstrate that transfers of the requested volume would not have an unacceptable environmental impact on the donor basin. She added that conservation in the receiving basins was viewed as the best way to minimize the amounts of transfer.

Pederson asked why, if the donor basin can handle an approved amount of transfer, the receiving basins would have to go through hoops to get that water. Drury explained there are two concerns in the Interbasin Transfer Act: protecting the donor basin and ensuring that the receiving basin is using its resources wisely, so that an interbasin transfer is a last resort. Card added that there are instances where, despite the best efforts of the receiving basin, the

preferred option would be for the receiving basin to obtain water from out of basin. The goal would be to make a streamlined pathway available while keeping environmental protections in place. Drury emphasized that transfers would have to remain within the amount approved for the donor basin; any transfer exceeding the preapproved volume would become a new interbasin transfer subject to a determination by the commission on the level of review required.

Van Deusen expressed concern about approval in perpetuity of the amount for the donor basin and suggested adding a time limit on interbasin transfer approvals to account for unanticipated changes, such as climate change. Drury responded that interbasin transfer approvals are not permits, and legal counsel has advised that approvals cannot have a sunset provision. However, she noted that conditions and monitoring provisions can be attached to approvals, and these can result in changes to operating conditions, such as shutting off wells when certain thresholds are exceeded.

Heidell asked about a situation where approvals to receiving basins exhaust the amount approved for a donor basin, but the donor basin's demand remains below the total amount approved for transfer. Would the unused demand be available to transfer? Drury responded that the unused demand is nevertheless committed to receiving basins, and, therefore, the donor basin would have to initiate a new interbasin transfer process.

Blatt commented that the existing three- to eight-month process is not unreasonable for interbasin transfer approvals that are in perpetuity, and she asked what problem was being addressed by the proposed streamlining. Drury responded that, for the donor basin, the changes reduce duplicate analyses and reviews for the same source, and also streamline the workload for staff. However, reviews for the receiving basins are retained, as is the public hearing process.

Dewey requested clarification on the process for a receiving basin if an applicant seeks transfers under 1 mgd multiple times. Drury deferred to the commission but said the commission has the option to require a higher level of review. Pederson stated support for streamlining the process, but expressed concern that communities will not have certainty that they will have a streamlined process. Carroll responded that commission staff have been working with the regulations for thirty years and can give guidance to applicants on the path that is appropriate for their situation. She added that the changes to the section on insignificance clearly lay out the requirements.

Baskin noted that the secretariat has not yet made a decision on whether transfers less than 1 mgd, under the consolidated donor/ regional system process, are insignificant. She added that the process for consolidated donor basin applications would be different from the process for individual applications.

Van Deusen suggested that language be crafted to limit a receiving basin from receiving approvals multiple times, with limited review, for transfers below the threshold for significance. She also expressed concern about how communities use transferred water, particularly during summer months, and she asked the commission to consider how having access to additional water will influence growth patterns over time. Yeo responded that communities that operate

local sources, in addition to receiving supplemental water from the MWRA, are subject to conditions in their Water Management Act (WMA) permits. Van Deusen countered that communities that operate under registrations with no permit are not subject to WMA conditions. Drury noted that such communities would have to meet conservation requirements of the Interbasin Transfer Act.

Morgan requested adding language to section 5B that requires the applicant to evaluate the feasibility of providing downstream releases from reservoirs, as part of the consolidated donor basin process, and to evaluate what happens downstream when water is released. Drury suggested language similar to that in the section on enhancing streamflow.

Drury then outlined four additional proposed changes to the regulations. The first separates requirements for a determination of applicability from those for a determination of insignificance, since these require different information and processes. The second change is to the section that delineates river basins and carves out the subbasins in the Boston Harbor and South Coastal basins; this would be consistent with proposed changes to the Water Management Act, which calculates safe yields for these subbasins.

The third change would eliminate costly legal notices in newspapers, providing public notice through publication in the *Environmental Monitor* and other electronic media and through direct outreach efforts. The fourth change would eliminate the third public hearing, which was adopted in policy in 1998 but is not required by the Act, and has been poorly attended in the past. She added that commission meetings provide an opportunity for public input on staff recommendations, written comments will continue to be solicited, and the requirement in the Act for two public hearings will remain.

There was some discussion of the types of public notices required by other statutes. Contreas suggested solicitations of public comment continue to be published in both the donor and receiving basins. Van Deusen expressed concern that the proposed streamlined review of very small transfers may remove some interbasin transfer applications from the MEPA review process, which may have broader purview.

Drury outlined the next steps for comments on the proposed revisions, potential additional meetings of the commission, a commission vote to proceed, review by the governor's office, and the timeline for public comment and a vote by the commission on the final regulations, anticipated for fall 2014.

Blatt noted a conflict between the regularly scheduled commission meeting on May 8 and a public hearing in the western region on the Water Management Act regulations on the same date. She added that stakeholders in the western region are very interested in both the WMA and ITA regulations and requested some accommodation. Carroll clarified that a vote by the commission on the ITA regulations sends the regulations on to the next step of review by the governor's office and public comment.

Blatt asked the commission to consider continuing its discussion of the ITA regulations in May and delaying its vote until the June meeting. She requested an explanation for the apparent urgency of moving forward quickly. Baskin acknowledged the significant workload associated



with reviewing several important regulations simultaneously. She explained that the current administration has approved working on the ITA regulations, but it is not certain that this window of opportunity will continue. She offered to accommodate constituents in the western region with a special meeting, and encouraged these constituents to attend the May and June commission meetings if at all possible.

Pederson requested clarification on added language on “the ability to transfer” as it relates to storage facilities. Drury explained that the ability to transfer has always been in the regulations, noting that the act regulates on the capacity to transfer. She added that, under the Act, the WRC looks at the “limiting factor” for a transfer, so although there are many things listed under the definition of “ability to transfer,” the WRC will only regulate the action that actually causes an increase in transfer.

Regarding the proposed consolidated donor basin application process, Griffin asked what the receiving basin would be required to show about viable sources if the requested transfer is less than 1 mgd. Baskin replied that the interagency work group has not determined conditions for this streamlined process. Drury described conditions used for the 2003 Aquaria regional water supply project, noting the commission’s interest in water conservation measures. Cohen pointed out that the commission retains the authority to require full review for transfer requests under 1 mgd. Yeo added that a community seeking a transfer from a regional water supplier is likely desperate and has exhausted its in-basin options.

Blatt asked how “reasonable instream flow” under the definition of “viable sources” would be tied to SWMI categories. Drury responded that if a community can obtain a permit for a new source, they would be unlikely to need an interbasin transfer. Baskin added that staff has made a policy recommendation to develop guidance on how to apply the USGS scientific studies used in the SWMI framework in evaluating the viability of a local source.

Van Deusen noted that a major change to ITA regulations, the section on the consolidated donor basin, has not yet been written and asked the commission to delay a vote on the regulations until the June meeting. Baskin responded that she would check with EEA’s regulations logistics staff on the schedule. Pederson asked when the language would be available, and requested an extension of the deadline for comments until at least the close of business on the April 22 deadline. Baskin offered flexibility on accepting comments, and said comments on the consolidated donor basin section would be accepted separately as soon as this section is available. She confirmed that comments will be shared.

Drury noted that the guidance on the regulations will also be updated.

Pederson asked when the Water Management Act regulations would come before the commission for a vote. Card responded that the commission vote would be scheduled after the public comment period has ended, responses to comments have been completed, and a final package has been prepared. She added that MassDEP can provide interim updates as needed.

Meeting adjourned, 3:05 p.m.

**Documents or Exhibits Used at Meeting:**

1. WRC Meeting Minutes:
  - December 12, 2013
  - January 9, 2014
2. Revisions to MassDEP Regulations: documents available at <http://www.mass.gov/eea/agencies/massdep/water/regulations/sewers-and-o-and-m-reg-reform-documents.html>:
  - Summary from MassDEP: Highlights of the Regulatory Reform Changes for Sewer Authorities, March 13, 2014
  - 314 CMR 7.00 Sewer System Extension and Connection Permit Program – redline version
  - 314 CMR 7.00 Sewer System Extension and Connection Permit Program – clean version
  - 314 CMR 12.00 Operation, Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers – redline version
  - 314 CMR 12.00 Operation, Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers – clean version
3. Revisions to Interbasin Transfer Act Regulations (313 CMR 4.00):
  - Interbasin Transfer Act Regulations (313 CMR 4.00) Proposed Areas for Revision
  - 313 CMR 4.00 Interbasin Transfer Act Regulations – redline version
  - 313 CMR 4.00 Interbasin Transfer Act Regulations – without redline
4. Interbasin Transfer Act project status report, March 27, 2014
5. Current Water Conditions in Massachusetts, April 10, 2014
6. Presentation by Michele Drury. Interbasin transfer Act: Proposed Revisions to Regulations
7. Revisions to Water Management Act Regulations: documents available at: <http://www.mass.gov/eea/agencies/massdep/water/regulations/310-cmr-36-00-the-water-management-act-regulations.html>

*Agendas, minutes, and meeting documents are available on the web site of the Water Resources Commission at <http://www.mass.gov/eea/air-water-climate-change/preserving-water-resources/partners-and-agencies/water-resources-commission/ma-water-resources-commission-meetings.html>.*