313 CMR 4.00 INTERBASIN TRANSFER

Section:

4.01: General Provisions

(1) Purpose. 313 CMR 4.00 delineates the river basins of the Commonwealth and establishes application the procedures and criteria upon which the Water Resources Commission shall base its determination of the applicability, iInsignificance, or approval or denial of any proposed action to increase over the Ppresent rRate of iInterbasin tTransfer of waters or wastewater as prescribed in M.G.L. c. 21, §§ 8B through 8D inclusive, and are promulgated pursuant to the authority in said chapter. Subject to statutory exemptions, M.G.L. c. 21 §§ 8B through 8D requires that the Commission base its review of the proposed action to increase over the pPresent rRate of iInterbasin tTransfer of water or wastewater on: a thorough assessment of the environmental effects of the proposed Interbasin Transfer,; whether the steps taken by the pPerson using the water to be transferred to requesting the transfer has made all reasonable efforts to identify and develop all Viable Sources in the Receiving Area;, and undertakewhether there is an effective water conservation and management programs in place in the Receiving Area., and upon a thorough review of the environmental effects of the proposed interbasin transfer. – These regulations apply to Aany pPerson who (i) proposes an action to cause an increase over in the pPresent rRate of iInterbasin tTransfer of the surface or groundwater of a rRiver bBasin, shall comply with 313 CMR 4.00, as shall or (ii) any person who proposes to make any capital improvement which could reasonably be expected to increase the capacity to transfer water out of a dDonor bBasin.

4.02: Definitions

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

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

~~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 through 8D, 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;~~
~~(b) construction or enlargement of reservoirs to store water transferred or to be transferred from a donor basin;~~
~~(c) construction or increase of capacity of transfer facilities, such as pumps, pipelines, tunnels or other conveyance facilities in the donor basin;~~
~~(d) construction or increase of capacity of water 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 provision of the Massachusetts General Laws, Special Acts, Judicial Decree, regulatory agency rule, or operating rule of water supplier;~~
~~(f) structural change in a wastewater system that causes an increase in the transfer out of a donor basin;~~

~~Exempt from Water Resources Commission review are the following actions:~~
~~(g) replacement of pumps or pipes of similar 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 is not directly 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) prior to 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 prior to the effective date of the act.~~

Commission means the Massachusetts Water Resources Commission.

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.

Decision means a majority roll call vote of the Commission at a public meeting to take action on any matter relating to its duties pursuant to M.G.L. c. 21, §§ 8B through 8D, and the rules and regulations established hereunder.

Donor Basin means the basin from which the water or wastewater is 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, 310 CMR 36.40-36.42 or authorized by law to provide a necessary and adequate water supply during any situation or event, natural or man-made, which causes or threatens to cause damage to a water supply system that could disrupt normal water supply functions. These connections could include interconnections to other existing public water supply systems, connections to obtain water directly from a new source, or connections to obtain greater amounts of water from an existing source than currently authorized under the Act. ~~and shall include connections to other existing 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.~~

Hydraulic Capacity means the maximum daily amount of water or wastewater that can pass through an existing authorized Transfer System.

Insignificant~~ or Insignificance~~ ~~Increase~~ means an increase in an Interbasin Transfer that ~~which~~ has been determined by the Commission~~.~~, based upon the impact to the Donor Basin, as insufficient to invoke the provisions of the Act ~~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 insignificance or insignificant mean an increase ~~over~~ of one million gallons per day or more ~~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 for other similar purposes not related to water supply use.~~

Interbasin Transfer means any transfer of the surface water ~~and~~or groundwater~~s~~, including the transfer of wastewater and local water supply sources as wastewater, of the Commonwealth outside of its~~a~~ ~~r~~River ~~b~~Basin as defined in 313 CMR 4.03. If a city or town partially situated

within a ~~r~~River ~~b~~Basin takes waters from that basin, then the extension of its water or wastewater services to a portion of the same city or town outside the basin shall not be deemed an ~~i~~Interbasin ~~t~~Transfer ~~of water~~.

~~Local Water 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.

Massachusetts Water Conservation Standards means measures approved by the Commission that set statewide goals and provide guidance for water conservation and efficiency.

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.

NPDES means National Pollution Discharge Elimination System.

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.

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 the 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 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 the 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 a Transfer Facility or 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 found to be Insignificant or approved by the Commission through the process outlined in 313 CMR 4.08 and 313 CMR 4.09 after the effective date of the Act;
- the Hydraulic Capacity within the former Boston Harbor Basin (now the Neponset River Basin; Mystic River Basin; and Weymouth and Weir Rivers Basin) and within the former South Coastal Basin (now the South Coastal Shores Basin, and; North and South Rivers Basin) that was designed, approved by the appropriate permitting authorities, or constructed, but not subject to the Act, prior to (*DATE OF REGULATIONS*); and
- a legally binding contract that limits the use of the full Hydraulic Capacity of the system.

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 of Interbasin Transfer. In calculating the Present Rate of Interbasin Transfer for a wastewater conveyance system, said rate includes that amount of wastewater generated from a water supply source within the River Basin from which the wastewater will be transferred.

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.~~

Receiving Area means the location where compliance is evaluated under the Act by Criterion (2) related to Viable Sources, Criterion (3) related to water conservation measures, and Criterion (4) related to a comprehensive forestry management program. For transfers of water supply,

Receiving Area means the area into which the water is transferred for use, and is thereby receiving the water supply service. For transfers of wastewater, Receiving Area means the area whose wastewater is collected for discharge out of basin, and is thereby receiving the wastewater service.

Regional Water Supply System means a water supply system that substantially serves or proposes to substantially serve two or more municipalities.

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 and as shown in the River Basin map in Appendix A. For purposes of hydrologic calculations, contributing upstream drainage areas, including those outside the Commonwealth, may be considered. 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 ~~r~~River ~~b~~Basins described in 313 CMR 4.00. 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 ~~r~~River ~~b~~Basins adopted by the Water Resources Commission as a part of 313 CMR 4.00.

Significant Increase means a transfer of water or wastewater over the Present Rate of Interbasin Transfer, sufficient in size or impact so as to invoke the provisions of the Act.

Transfer Facilities or Transfer Systems mean those structures including pumps, pipelines, tunnels, valves, and other conveyance facilities, that facilitate~~s~~ the movement of water or wastewater from one basin to another and across a 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 standards promulgated by the Department of Environmental Quality Engineering 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.~~ Viable Source means a water source or wastewater service alternative that meets the current regulatory requirements of the permitting authorities, and is environmentally sound, technologically feasible and cost-effective.

For wastewater transfers, including those triggered by the development of local water supplies that are transferred out of basin as wastewater, Viable Source includes alternatives which can treat, reuse, and/or discharge wastewater within the basin of origin, and can meet the requirements for approval by the Department of Environmental Protection or other regulatory agency.

For water supply transfers, Viable Source means a source which can provide drinking water that meets the current water quality standards and water management requirements promulgated by the Department of Environmental Protection, and which can be used while

preserving reasonable instream flow using the same criteria provided to evaluate impacts on the Donor basin listed in 313 CMR 4.09(3)(e).

~~Water Services means water supply and wastewater conveyance facilities.~~

4.03: Delineation of River Basins

River Basins are those basins more particularly described below, and which are generally shown on the River Basin Map (Appendix A):

~~(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 River, Kinderhook Creek and Bashbish Brook being generally shown as Basin 1a, 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.~~

~~(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 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 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.~~

~~(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 14a 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.~~

~~(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.

(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.

(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 drainage 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.

(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.

(21) South Coastal Basin. The South Coastal 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 coastal rivers and streams draining into the Atlantic Ocean south of Basin 19c and north of Basin 22, being generally shown as Basin 21a and 21b on the River Basin Map.

(22) Cape Cod Basin. The Cape Cod Basin includes 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 theCape 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 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.

(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.

~~(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.~~

~~(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.~~

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

Buzzard's Bay Basin. The Buzzard's Bay Basin includes that area within the Commonwealth of Massachusetts 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 the Taunton River Basin and the Narragansett Bay and Mount Hope Bay Shore Basin, and north of the Cape Cod Basin and the Islands Basin. 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.

Cape Cod Basin. The Cape Cod Basin includes all of the Cape Cod peninsula southeast of the Cape Cod Canal surrounded by Vineyard Sound, Nantucket Sound, Buzzard's Bay, Cape Cod Bay or the Atlantic Ocean. Only 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.

Charles River Basin. The Charles River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Charles River. 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.

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.

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.

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.

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.

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.

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.

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.

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 River, Kinderhook Creek and Bashbish Brook.

Ipswich River Basin. The Ipswich River Basin includes that area 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 the Parker River Basin and north of the North Coastal Basin. 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.

Islands Basin. The Islands Basin includes the islands of Nantucket, Martha's Vineyard and the Elizabethan Chain. Only 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.

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

Merrimack River Basin. The Merrimack 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 Merrimack River. 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.

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 Connecticut River.

Mystic River Basin. The Mystic River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Mystic River and other coastal drainages emptying into Boston Harbor south of the North Coastal Basin and north of the Charles River Basin. In areas where these tributaries and river 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.

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 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 the Ten Mile River Basin and north of the Buzzard's Bay Basin. 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.

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.

Neponset River Basin. The Neponset River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Neponset River. In areas where these tributaries and river 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.

North and South Rivers Basin. The North and South Rivers Basin includes 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 the Weymouth/Weir Rivers Basin and north of the South Coastal Shores Basin. 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.

North Coastal Basin. The North Coastal Basin includes that area within the Commonwealth of Massachusetts 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 the Mystic

River Basin; excluding the Merrimack, Parker and Ipswich River Basins. 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.

Parker River Basin. The Parker River Basin includes that area 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 the Merrimack River Basin and north of the Ipswich River Basin. 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.

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.

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.

South Coastal Shores Basin. The South Coastal Shores Basin includes that area which by virtue of its topography contributes surface water to the coastal rivers and streams draining into the Atlantic Ocean south of the North and South Rivers Basin and north of Cape Cod Basin. 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.

Taunton River Basin. The Taunton River Basin includes that area which by virtue of its topography contributes surface water to the tributaries and mainstem of the Taunton River. 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.

Ten Mile River Basin. The Ten Mile 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 Ten Mile River southeast of the Blackstone River Basin, west of the Taunton River Basin, and north of the Narragansett Bay and Mount Hope Bay Shore Basin. 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.

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 the Charles River Basin and north of the North and South Rivers Basin excluding the Neponset River Basin. 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.

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.

4.04: Projects Subject to 313 CMR 4.00

An increase in the Present Rate of Interbasin Transfer shall mean any change that increases the ability to transfer water out of the donor basin, including but not limited to the following actions:

(1) drilling of production wells in the Donor Basin from which the water is transferred out of basin either as water supply or wastewater;

(2) construction or enlargement of reservoirs or storage facilities to store water transferred or to be transferred from a Donor Basin if such construction causes an increase in the ability to transfer water from the Donor Basin;

(3) construction of, or increase in the Hydraulic Capacity of Transfer Facilities or a Transfer System which causes an increase in the ability to transfer water or wastewater from the Donor Basin;

(4) construction of, or increase in capacity of water or wastewater treatment plants where such plants increase the ability to transfer water out-of-basin for use;

(5) changes in any constraints on Interbasin Transfer in any provision of the Massachusetts General Laws, Special Acts, Judicial Decree, regulatory agency rule, or operating rule of a water supplier or wastewater service provider;

(6) any other structural change in a water or wastewater system that causes an increase in the ability to transfer out of a Donor Basin.

4.05: Exemptions

For the purposes of 313 CMR 4.00, the following activities are not considered an increase in the Present Rate of Interbasin Transfer:

(1) extending water or wastewater services within a city or town and between two or more River Basins, as long as the transfer does not cross the municipal boundary;

(2) replacing pumps or pipes of equivalent or smaller conveyance capacity;

(3) restoring reservoirs to original storage capacity;

(4) renovating existing wells and testing of new well sites;

(5) constructing Transfer 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 out of the Donor Basin and provided further that streamflow in the Donor Basin is not adversely affected;

(6) replacing existing wastewater Transfer Facilities if they do not exceed the operational capacity as determined by the Department of Environmental Protection prior to the effective date of the Act or approved or found to be insignificant by the Commission in accordance with the Act and these regulations;

(7) installing and using water supply and wastewater facilities, which although not fully constructed and/or useable, had achieved MEPA Compliance and approval by the Department of Environmental Protection prior to the effective date of the Act;

(8) expansion within an existing water supply or wastewater system that does not cause an increase in the Present Rate of Interbasin Transfer, and does not involve the addition of a Receiving Area that was not included in the original design and approval;

(9) transfer of wastewater that was previously authorized to be transferred from one River Basin to a second River Basin, and is now being proposed for transfer into a third River Basin; and

(10) using an Emergency Connection, as defined in 313 CMR 4.02, provided that the period of occurrence does not exceed six months of any calendar year and the water supplier fulfills the criteria of the Department of Environmental Protection.

4.06~~4: Determination and Application~~General Procedures

~~(1) General Procedures~~

~~(a) The~~ Any proponent~~s~~ of an ~~proposed~~ action that~~e~~ causes an increase ~~over~~ in the P~~p~~resent ~~r~~Rate of ~~an i~~Interbasin ~~t~~Transfer is~~are~~ encouraged to discuss the~~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 ~~c~~Compliance before public hearings are held under the Act or the Commission takes any action on the proposal.~~holding of hearings or the approval or denial of an increase over the present rate of interbasin transfer of water or wastewater.~~

(1) ~~(b) It is the expressed intention of the Commission that t~~The type and depth of information submitted for Commission review of a proposed action to increase ~~over~~ the ~~p~~Present ~~r~~Rate of ~~i~~Interbasin ~~t~~Transfer shall be at a level sufficient to allow for the Commission to fully exercise its responsibility under the provisions of the Act~~M.G.L. c. 21, §§ 8C and 8D~~ and the regulations promulgated ~~t~~hereunder. To the extent possible, the proponent should utilize existing data and the best available science~~,~~ including, as appropriate, analyses and methodologies currently used in other regulatory jurisdictions;~~, 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.~~

(2) ~~(c)~~ If a MEPA ~~Ee~~environmental ~~Impact Report~~review is required under the MEPA 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 r~~R~~eport. ~~Where feasible and desired by the parties,~~ In such cases, joint scoping sessions with the MEPA Office, and Commission staff ~~and the proponent shall~~ should be held; ~~.~~and

(3) ~~(d)~~ A ~~p~~Person proposing an action to increase ~~over~~ the ~~p~~Present ~~r~~Rate of ~~i~~Interbasin ~~t~~Transfer may request a determination that the proposal would cause an ~~i~~Insignificant increase as provided in 313 CMR 4.0~~0~~8, 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~~ 313 CMR 4.09 and 313 CMR 4.10~~of 313 CMR 4.00~~.

4.07~~5(2) Request for~~ Determination of Applicability ~~and/or Insignificance~~.

~~(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 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 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.~~

(1) Procedures for a Request for Determination of Applicability

(a) Whenever a Person is proposing an action that has a reasonable likelihood to increase the Present Rate of Interbasin Transfer, the Commission may, at the request of the proponent or at its own initiative, request information concerning said action and determine whether the action is subject to the Act (Determination of Applicability). The Commission may require the proponent to submit a request for a determination of applicability in accordance with 313 CMR 4.07. 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, 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 under these regulations.

(b) When requesting a Determination of Applicability, 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 the Department of Conservation and Recreation, Office of Water Resources, 251 Causeway Street, Boston, MA 02114.

(c) 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, the Commission shall render a Decision and reasons therefore, and publish said Decision in the Environmental Monitor.

(2) Information Required to Act Upon a Request for Determination of Applicability
The proponent shall include in the request:
(a) A description of the proposed project;

(b) The River Basin of origin of the water supply;

(c) The River Basin into which the water or wastewater will be transferred;

(d) The River Basin of discharge for the wastewater; and

(e) The municipality(ies), water districts or sewer districts involved in the project.

(3) Criteria for Determination of Applicability
The Commission shall consider the following criteria, in determining if the transfer of water or wastewater constitutes an increase in the Present Rate of Interbasin Transfer:
(a) The project causes a transfer across both a municipal boundary and a basin boundary;

(b) The project involves an action listed in 313 CMR 4.04 of these regulations or otherwise increases the ability to transfer water or wastewater; and

(c) The project is not subject to the exemptions listed in 313 CMR 4.05 of these regulations.

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4.08 Determination of Insignificance

(1) Procedures for a Request for Determination of Insignificance
(a) A request for determination of insignificance of a proposed action to increase the Present Rate of Interbasin Transfer can be made either at the request of the proponent or at the Commission's own initiative;

(b) When requesting 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 Water Resources Commission Staff, Department of Conservation and Recreation, Office of Water Resources, 251 Causeway Street, Boston, MA 02114; and

(c) 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 a Decision of the Commission. The determination and reasons therefore shall be published in the Environmental Monitor.

(2) ~~(3)~~Information Required ~~by the Water Resources Commission~~ to Act Upon a Request for Determination of Insignificance~~.~~

(a) All requests for determination of insignificance must include the following information:

1. ~~(a)~~ Name, address, email address and telephone number of the proponent;~~.~~
2. ~~(b)~~ Name of the project and a brief description of it;~~.~~
3. ~~(c)~~ Any applicable federal or state identification number including the ~~EO~~EEA MEPA File Number (if any);~~.~~
4. ~~(d)~~ An approximate timetable for the project;~~.~~
5. ~~(e)~~ The increase in Present Rate of ~~I~~Interbasin ~~T~~Transfer made possible by the proposed action presented as annual average daily capacity and ~~stated in millions of gallons per day on an annualized basis and in terms of increases in~~ maximum daily capacity (expressed as gallons per day);~~.~~
6. ~~(f) Any change in the period and/or amount to be withdrawn and transferred or stored in reservoirs including the percent of the instantaneous flows to be withdrawn from the donor river and the impact, if any, on the 95% exceedance flow, or the 7Q10 flow if used in the formulation of a program of pollution abatement.~~The name and location of the sources of the proposed Interbasin Transfer delineated on a map of sufficient detail to show the major River Basin lines of the affected area(s), any potentially affected water bodies, the name of the communities, sections of communities, water district(s) or sewer district(s), as applicable, the wastewater discharge point, and special resource values potentially affected by this transfer, as described in 313 CMR 4.08(3)(f) of these regulations;

~~(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.~~

~~(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.~~

7. In the case of temporary transfers, the purpose for which the water is to be transferred, the duration and amounts; and
8. Other information which may be requested by the Commission in specific instances.

(b) For a transfer with a maximum daily capacity of less than or equal to 10,000 gallons per day, after review of the information requested in 313 CMR 4.08(2)(a)-(1) through 313 CMR 4.08(2)(a)(8), the Commission, may make a Decision that the transfer is insignificant without requiring the information and analyses described in 313 CMR 4.08(2)(c) and 313 CMR 4.08(2)(d). If the Commission requires further analysis of a transfer with a maximum daily capacity of less than or equal to 10,000 gallons per day, the proponent shall provide the information requested in CMR 4.08(2)(c) and 313 CMR 4.08(2)(d), as appropriate.

(c) For a transfer of water supply or a transfer of wastewater triggered by the development of a local water supply, with a maximum daily capacity of more than 10,000 gallons per day, or for a transfer~~s~~ with a maximum daily capacity of less than or equal to 10,000 gallons per day that has been determined by the Commission to need a higher level of review, a request for determination of insignificance must also contain the following information, as appropriate:

1. For all transfers, any proposed flow management provisions, flow protection thresholds or other measures to minimize or offset impacts of the transfer on streamflows;
2. In the case of transfers primarily derived from streamflow, either directly or through groundwater withdrawals, the proposed transfer amount calculated as a percentage of the unimpacted Ninety-five Percent (95%) Exceedance Flow. -All calculations should be made at an appropriate point in the Donor Basin river or tributary thereto;
3. In the case of transfers primarily derived from lakes, ponds, reservoirs or other impoundments either directly or through groundwater withdrawals, the delineated drainage area of the water body and its area in square miles;
4. For transfers of wastewater triggered by the development of a local water supply, evaluation of potential in-basin alternatives for disposal of wastewater, (including Title 5 septic systems), reuse, groundwater and surface water discharges; if available, provide a Department of Environmental Protection-approved comprehensive wastewater management plan or other appropriate document that evaluates these options; and
5. For Interbasin Transfers from sources that are upstream or upgradient of permitted wastewater treatment facilities:
   i. 7Q10 flow(s) used in the NPDES Permits of all wastewater treatment facilities that discharge downstream of transfer source(s);

ii. Recalculated 7Q10 flow(s) that include the proposed transfer;
iii. Description of how the transfer will affect the 7Q10 flow(s) and the permitted wastewater facilities downstream; and
iv. Verification that the permitting authority for the wastewater treatment facilities has been notified of the proponent's intent to transfer water and a copy of that notification.

(d) For a transfer of wastewater with a maximum daily capacity of more than 10,000 gallons per day or for a transfer with a maximum daily capacity of less than or equal to 10,000 gallons per day that has been determined by the Commission to need a higher level of review, except for a transfer of wastewater triggered by the development of a local water supply, a request for determination of insignificance must also contain the following information:
1. Delineation of the areas proposed to receive wastewater service, if applicable, or areas where the capacity of an existing wastewater service is proposed to be enlarged;
2. Evaluation of potential in-basin sources of disposal, (including Title 5 septic systems), reuse, groundwater and surface water discharges; if available, provide a Department of Environmental Protection approved comprehensive wastewater management plan or other appropriate document that evaluates these options;
3. For Interbasin Transfers from sources that are upstream or upgradient of permitted wastewater treatment facilities, the proponent shall provide:
i. 7Q10 flow(s) used in the NPDES Permits of all wastewater treatment facilities that discharge downstream of transfer source(s);
ii. Recalculated 7Q10 flow(s) that include the proposed transfer;
iii. Description of how the transfer will affect the 7Q10 flow(s) and the permitted wastewater facilities downstream; and
iv. Verification that the permitting authority for the wastewater treatment facilities has been notified of the proponent's intent to transfer water and a copy of that notification;
4. For Interbasin Transfers that will discharge wastewater to a permitted wastewater treatment facility, the proponent shall provide:
i. Available capacity of the wastewater treatment facility that is proposed to receive the wastewater; and
ii. 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.

(e) The Commission may consider the information available from all sources and Persons, including other federal, state and local agencies, information arising out of a MEPA filing or review, or on information from the public, when evaluating the project against the Criteria for Determining Insignificance, listed in 313 CMR 4.08(3) herein.

(~~4~~3) Criteria for Determining Insignificance. The Commission shall take into account~~consider~~ the following criteria in determining if a proposed action to increase ~~over~~ the ~~p~~Present ~~r~~Rate of ~~i~~Interbasin ~~t~~Transfer is insignificant:

(a) That the proposed action to increase ~~over~~ the ~~p~~Present ~~r~~Rate of ~~i~~Interbasin ~~t~~Transfer shall not facilitate an increase ~~over~~ of one million gallons ~~a~~per day or greater;~~.~~

(b) For temporary transfers, t~~T~~hat the increase on an annualized basis would be less than one million gallons per day, and would~~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 or wastewater service;~~.~~

(c) In the case of transfers primarily derived from streamflow, ~~That~~ the ~~additional~~ cumulative transfer~~flow~~ including the proposed amount, ~~to be withdrawn is~~ in all cases, is less than 5% of the ~~instantaneous~~ unimpacted Ninety-five Percent (95%) Exceedance ~~f~~Flow as measured at an appropriate point of the ~~d~~Donor Basin river or tributary thereto;~~.~~

(d) In the case of transfers primarily derived from lakes, ponds, reservoirs, or other impoundments, that the cumulative annual amount of the transfer including the proposed amount, in all cases, is less than one percent (1%) of the average annual precipitation on the drainage area of the water body, and less than five percent (5%) of the drought year inflow to the water body;

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

~~(e)~~(f) 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~~, cold-water fisheries as defined in 321 CMR 5.00, river herring, wetlands, ~~an~~ areas of critical environmental concern, ~~a~~ designated scenic rivers, eelgrass and shellfish beds, or areas protected by Article 97 of the Amendments to the Massachusetts Constitution will not be adversely affected;~~.~~

~~(f)~~(g) That consideration has been given to measures to protect instream flows, as described in 4.08(2)(c)1, and where appropriate, any such measures proposed as part of the application; and

(h) 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 ~~d~~Donor B~~b~~asin. The Commission will evaluate the proposed transfer along with previously approved transfers cumulatively against relevant criteria of 313 CMR 4.08.

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4.09: Approval of a Significant Increase in the Present Rate of Interbasin Transfer

Close consultation with Water Resources Commission Staff at the Department of Conservation and Recreation's Office of Water Resources in conjunction with other state environmental agencies is recommended prior to application submittal to ensure that the information provided reflects the conditions of the transfer and the best available science.

(5<u>1</u>) ~~Application for~~Procedures for Approval of a~~n~~ Significant ~~Action to~~ Increase ~~over~~ in the Present Rate of Interbasin Transfer

(a) If the Commission, upon request or upon its own initiative, determines that a proposed action is a Significant Increase under the Act, it shall require submission of an application for approval in accordance with 313 CMR 4.09;

~~(a)~~(b) Proponents of proposed ~~i~~Interbasin ~~t~~Transfer shall complete the application ~~in approved form~~ according to 313 CMR 4.09(2) 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 Water Resources Commission 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 to increase is not insignificant, it shall require submission of an application for approval in accordance with 313 CMR 4.04.~~

(c) The Commission shall publish notice of the receipt of an application for a proposed increase over the Present Rate of ~~i~~Interbasin ~~t~~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 ~~p~~Persons or agencies as it deems necessary to conduct this review;~~.~~

(e) The Commission shall, within 60 days of a determination that the application is complete, or that all requested additional information has been received, or within 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 ~~p~~Present ~~r~~Rate of ~~i~~Interbasin ~~t~~Transfer;~~.~~

(f) During the period in which the Commission must reach a ~~d~~Decision to approve or deny the proposed ~~i~~Interbasin ~~t~~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; and~~.~~

(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.

(2) ~~(h)~~ Application for Approval of a Significant Increase in the Present Rate of Interbasin Transfer.

The application shall contain the following parts:

(a) ~~1. Part I~~ Summary Sheet(s). There shall be a summary sheet(s), written in clear and non-technical language, which shall contain:

1. ~~a~~The name of the project~~;~~

2. ~~b~~Any applicable federal or state identification number, including ~~EO~~EEA (MEPA) File Number~~;~~

3. ~~cWhat~~ A list of other state permits, approvals, or procedures that are applicable to this project~~;~~ and

4. ~~d~~The name, address, email address, and telephone number of the proponent.

~~e. A brief description of the proposed interbasin transfer.~~

(b) ~~2.~~ Description of the Proposed Interbasin Transfer. ~~This part should discuss~~The proponent shall provide a detailed description of the nature and extent of the proposal. The description should include:

~~a.~~1. An approximate timetable for the project~~;~~

~~b.~~2. Where applicable, the present transfer system including out-of-basin conveyance capacity, storage capacity, withdrawal constraints or other limiting factors~~;~~

3. ~~c.~~ A description of ~~T~~the proposed action to increase ~~over~~ the ~~p~~Present ~~r~~Rate of ~~i~~Interbasin ~~t~~Transfer, ~~proposed and~~ supporting information showing how the increase was determined~~.~~, ~~T~~the timinge and amounts to be withdrawn and transferred or stored in reservoirs, proposed changes in structure of the Transfer Facilities and/or changes in withdrawal or transfer constraints~~;~~

4. The reasons for the transfer and an evaluation of how it supports the long-range water resources planning of the applicant;

~~c.~~5. ~~d.~~The name and location of the sources of the proposed ~~to be used to increase the~~ ~~i~~Interbasin ~~t~~Transfer, delineated on a map with sufficient detail showing the major River Basin boundaries of the affected area(s), any potentially affected waterbodies, any special resource values, as described in 313 CMR 4.09(2)(g)1.v. through xii of these regulations, the name of the communities, sections of communities, or water district(s) or sewer district(s), as applicable, ~~which will use the water to be transferred~~ and the wastewater discharge point;

~~e~~6. A list of known entities ~~users~~ whose use could be affected by the proposed transfer~~.~~;

and

7. For all wastewater transfers, the following information should be provided:

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

ii. 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.

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

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~~3.~~ (c) 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:~~

~~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 the 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.~~

The proponent shall provide a description of efforts made to identify and develop viable sources in the receiving area as alternatives to the Interbasin Transfer. The description shall be in sufficient detail for the Commission to determine if all reasonable efforts have been made to identify and develop in-basin alternatives to the proposed transfer that are environmentally-sound, cost-effective, and technologically feasible.

The Viable Sources discussion should include alternatives in the Receiving Area that were 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 treatment or discharge, and/or environmental impacts.

For all wastewater transfers, the proponent shall provide a final Comprehensive Wastewater Management Plan, or other appropriate study and include a discussion of the feasibility of implementing wastewater reuse in accordance with 314 CMR 20.00.

(d) ~~4.~~ Description of Conservation Measures in the Receiving Area. The proponent shall provide a detailed description of ~~This part should describe~~ all measures to conserve water that have been completed, are in progress, or are programmed for continuation in the ~~r~~Receiving ~~a~~Area. These measures should comply with the Massachusetts Water Conservation Standards.

1. In the case of water supply transfers and wastewater transfers triggered by the development of a water supply source, the proponent shall provide a detailed description of the following ~~M~~measures ~~to be described shall include~~:

~~a.~~i. ~~The i~~Identification of distribution system sources of ~~lost~~ unaccounted-for water~~;~~;

~~b.~~ii. Leak detection and repair program~~;~~;

~~c.~~iii. Metering and meter maintenance program~~;~~;

~~d.~~iv. Rate ~~s~~Structure~~;~~;

~~e.~~v. Public information program to promote water conservation~~;~~;

~~f.~~vi. Contingency ~~p~~Plan for limiting use of water during seasonal or drought shortages~~;~~ and

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vii. ~~g.~~Measures to protect water supply sources ~~presently~~ currently serving the ~~r~~Receiving ~~a~~Area.

2. In the case of wastewater transfers, the proponent shall provide a detailed description of the following measures:
   i. An approved Infiltration/Inflow reduction program or Sewer System Evaluation Study that has been developed in accordance with the Department of Environmental Protection's regulations at 314 CMR 12.04;
   ii. An Operation and Maintenance plan for the wastewater system completed in accordance with 314 CMR 12.04(1); and
   iii. In cases where the proponent has control over the water supply system, the proponent shall provide a detailed 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.

(e) ~~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.

(f) ~~6.~~ Description of ~~Watershed~~ Comprehensive Forestry Management Programs. For water supply transfers and wastewater transfers triggered by development of a water supply source, the proponent shall provide a detailed description of ~~This part should describe~~ existing and proposed ~~watershed~~ comprehensive forestry management programs ~~on~~ for surface water supply source watershed lands ~~presently~~ currently serving the ~~r~~Receiving ~~a~~Area and under the control of the proponent, with a copy of any applicable comprehensive forestry ~~watershed~~ management plans included. The plan should be approved by the Department of Conservation and Recreation or other appropriate agency.

(g) ~~7~~Description of the Instream Flow of the Donor Basin. The proponent shall provide a detailed description of ~~This part should describe~~ the hydrologic, hydrogeologic and ecological characteristics of the ~~r~~River ~~b~~Basin from which the water is to be ~~diverted and any interdependent groundwater regimen.~~transferred, including any relevant relationships between surface water and groundwater.

1. For all transfers, the description should include data to evaluate the impact of the proposed Interbasin Transfer on streamflow and other hydrologic characteristics and on instream water uses and should include, but not be limited, to:
   i. A daily hydrograph of a sufficient period showing the potential changes induced by the transfer and a table of the daily streamflow for the same period with and without the proposed additional withdrawal, with the percent reduction in daily streamflow due to the Interbasin Transfer;
   ii. An analysis of changes in the duration, frequency and magnitude of flood flows and low flows, and a description of the effects on the Ninety-five Percent (95%) Exceedence Flow;

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iii. An analysis of effects on the 7Q10 flows used in NPDES permits for all wastewater treatment facilities that discharge downstream of the transfer source(s), including 7Q10 flow(s) used in the NPDES permits, recalculated 7Q10 flow(s) that include the proposed transfer, a description of how the transfer will affect the 7Q10 flow(s) and the permitted wastewater facilities downstream;
iv. Verification that the permitting authority for any wastewater treatment facilities that discharge downstream of the transfer source(s) has been notified of the proponent's intent to transfer water and a copy of that notification;
v. Changes to other hydrologic characteristics including, but not limited to, stage, velocity, and sediment regimen;
vi. Effects on water levels of nearby reservoirs, lakes, and ponds and the impacts to the magnitude and duration of flow to associated outlet streams;
vii. Effects on indigenous and anadromous fisheries;
viii. Effects on wetlands and dependent flora and fauna;
ix. Effects on water quality, sediment regimen, recreational uses, and aesthetic values;
x. Effects on established riparian uses and uses dependent on recharge from streamflow;
xi. Effects on hydropower production;
xii. Effects on present and foreseeable water withdrawals and undeveloped rights within the Donor Basin;
xiii. Effects on other instream uses, present and foreseeable;
xiv. Any existing studies or other documentation of flow alteration; and
xv. Any proposed flow management provisions, or other measures to minimize impacts of the transfer on streamflows.

2. For all water supply transfers, and wastewater transfers triggered by the development of a water supply source, the proponent shall provide a detailed description of the drainage area above the withdrawal point and the distance of the withdrawal point from the nearest surface water body (including a river, lake, or wetland).

3. In the case of groundwater withdrawals, the following information shall also be provided:
   i. The Department of Environmental Protection approved pumping test report for the proposed source, or, if not a public water supply source, a comparable hydraulic analysis;
   ii. A map of the site showing test wells, observation wells, and the location of geological cross-sections;
   iii. Static water table elevation or potentiometric surface contour map;
   iv. Transient (prior to shut down) water table elevation or potentiometric surface contour map;
   v. Geologic cross-sections including pre- and end of pumping test groundwater levels; and
   vi. 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.

4. In the case of transfers primarily derived from lakes, ponds, reservoirs or other impoundments either directly or through groundwater withdrawals, the proponent shall provide a detailed description of:
   i. Spill or downstream flow data for the impoundment(s) in a reservoir system, if available;
   ii. Reservoir management plan or operating information (including a drought and demand management plan, if used);
   iii. Simulated streamflow impacts based on the current and proposed withdrawal conditions;
   iv. Leakage/seepage analysis (characterize flow downstream of the terminal reservoir during non-spill periods), if available; and
   v. A narrative description of seasonal flow characteristics downstream of the terminal reservoir under current and proposed operating conditions.

5. For wastewater transfers, except those triggered by the development of a local water source that is transferred out of the basin as wastewater, the type of information and analyses required will depend on the circumstances of the wastewater transfer, but shall include, as applicable:
   i. Delineation of the areas proposed to be sewered and the upstream watershed area of the site(s);
   ii. Estimate of the amount of wastewater to be transferred, on both an average annual and peak flow basis;

~~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.~~
~~b. A hydrograph showing potential changes induced by the transfer.~~
~~c. Impact of the proposed interbasin transfer of surface water on stream flow and on instream water uses.~~
~~i. Length of stream below the point of withdrawal.~~
~~ii. Effect on hydraulic characteristics including, but not limited to flood flows, the aquatic base flow, the 95% exceedance flow, the 7Q10 flow if used in a pollution abatement program, stage, velocity, sediment regimen, etc.~~
~~iii. Indigenous and anadromous fisheries as determined by written reports of appropriate agencies and effects of the proposed interbasin transfer on these fisheries.~~
~~iv. Wetlands and dependent flora and fauna and effects thereon.~~
~~v. Effect on water quality recreational uses and aesthetic values.~~
~~vi. Effect on established riparian uses and uses dependent on recharge from stream flow.~~
~~vii. Effect on hydropower production.~~
~~viii. Effect on present and foreseeable water withdrawals and undeveloped rights within the donor basin.~~
~~ix. 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.~~

(h)~~9.~~ Application Requirement Waiver. The Commission may, in appropriate cases, waive certain ~~of the~~ application requirements in these regulations~~313 CMR 4.04~~ not specifically required by state or federal law. It may also require the submission of additional information if needed to reach a ~~d~~Decision in a specific case.

(3)~~4.05:~~ Criteria for Evaluation of Applications for Approval of a Significant Increase in the Present Rate of Interbasin Transfer.

The Commission shall consider the following criteria in making its ~~d~~Decision ~~to approve or deny~~ on a proposed action to increase ~~over~~ the ~~p~~Present ~~r~~Rate of ~~i~~Interbasin ~~t~~Transfer ~~of waters~~.

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

(b) ~~(2)~~ Criterion 2: That all reasonable efforts have been made to identify and develop all ~~v~~Viable ~~s~~Sources in the ~~r~~Receiving ~~a~~Area of the proposed ~~i~~Interbasin ~~t~~Transfer:

(c) ~~(3)~~ Criterion 3: That all practical measures to conserve water have been taken in the ~~r~~Receiving ~~a~~Area, including but not limited to the following:

1. For water supply transfers, and for wastewater transfers triggered by the development of a water supply source,
   a. ~~(a)~~ A written water conservation plan that describes how the proponent complies with the most recent version of the Massachusetts Water Conservation Standards, including, at a minimum:
      i. The identification of distribution system sources of ~~lost~~ unaccounted-for water~~, and where cost effective, the implementation of a program of leak detection~~. The proponent must be in compliance with the Massachusetts Water Conservation Standards for leak detection. Leaks identified as a result of the survey shall be repaired to the greatest extent feasible; ~~and repair.~~
      ii. ~~(b)~~ Metering of all water users in the ~~r~~Receiving ~~a~~Area and a program of meter maintenance, repair or replacement;
      iii. ~~(c)~~ Implementation of ~~r~~Rate ~~s~~Structures which reflect the costs of operation, proper maintenance, proposed capital improvements, and water conservation and which encourage the same~~;~~.
      iv. ~~(d)~~ Public information programs to promote water conservation, the use of water conserving devices, and industrial and commercial recycling and reuse~~;~~. and
      v. ~~(e)~~ Contingency ~~p~~Plans for limiting the use of water during seasonal or drought shortages.

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b. ~~(f)~~ Implementation of land use controls to protect existing water supply sources of the ~~r~~Receiving ~~a~~Area that meet the requirements of the Department of Environmental Protection ~~Environmental Quality Engineering~~ published in 310 CMR 22.20~~.~~ and 22.21.

2. For wastewater transfers,
   a. An active program to reduce sources of inflow and infiltration in the Donor Basin;
   b. Metering of existing wastewater transfers at location(s) sufficient to document wastewater flows out of basin. Use of regional sewer meters that document wastewater flows out of basin is acceptable where these meters are in place;
   c. An Operation and Maintenance manual for the wastewater system completed in accordance with 314 CMR 12.04; and
   d. For wastewater transfers where the proponent has control over the water supply system, a program for implementing a water conservation program based on the Massachusetts Water Conservation Standards. In cases where the proponent does not have control over the water supply system, the proponent must have made reasonable efforts to coordinate with the water supplier to implement a water conservation program based on the Massachusetts Water Conservation Standards.

~~(d)~~ ~~(4)~~ Criterion 4: For water supply transfers, and for wastewater transfers triggered by the development a water supply source, ~~T~~that a comprehensive forestry management program which balances water yields, wildlife habitat, biodiversity and natural beauty has been implemented on any watershed lands of surface water sources ~~presently~~ currently serving the ~~r~~Receiving ~~a~~Area and under control of the proponent ~~has been implemented~~.

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~~a.~~(e) ~~(5)~~ Criterion 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 ~~i~~Interbasin ~~t~~Transfer on the streamflow dependent ecosystems and water uses and the potential to affect instream values as listed in 313 CMR 4.09(2)(g), ~~to~~ includinge:

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~~(a)~~1. ~~Length of 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);

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~~(b)~~2. Effects on flood flows, intermediate flows and low flows, considering existing flow alteration;~~.~~

~~(c)~~3. Effects on groundwater and surface water elevations;~~.~~

~~(d)~~4. Significance of indigenous and anadromous fisheries and fauna and effects thereon;~~.~~

~~(e)~~5. Significance of wetlands and dependent flora and fauna and effects thereon;~~.~~

~~(f)~~6. Effects 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, fisheries, eelgrass, shellfish beds and areas protected under Article 97 of the Amendments to the Massachusetts Constitution;.

(g)7. Effects on established riparian uses and uses dependent on recharge from stream flow;.

(h)8. Effects on hydropower production.;

(i)9. Effects on other water withdrawals and undeveloped rights within the dDonor bBasin;. and

(j)10. Effects on other instream uses.

(f) (6) Criterion 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 4.09 (2)(g)5(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.

(g) (8) Criterion 7: The Commission shall consider the cumulative impacts of all past, authorized or proposed transfers on streamflows, groundwater and surface water levels in the dDonor bBasin.

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4.10: Approval of an Action to Increase the Present Rate of Interbasin Transfer Due to the Expansion of the Service Area of a Regional Water Supply System

The following procedure is available for a Regional Water Supply System seeking to increase its Present Rate of Interbasin Transfer of water by expanding its service area to new communities or water districts. The Commission may allow such a system to file an application that allows the Commission to evaluate and approve criteria applicable to the Donor Basin separately from criteria applicable to the Receiving Area. The Regional Water Supply System must have control over the water supply sources in the Donor Basin, but may not have control over existing water supply management actions in the Receiving Area.

(1) Procedures for Approval of a Significant Increase over the Present Rate of Interbasin Transfer Due to the Expansion of the Service Area of a Regional Water Supply System

(a) The provisions of 313 CMR 4.10 shall apply only to a Regional Water Supply System, as defined in 313 CMR 4.02;

(b) Donor Basin or Receiving Area proponents of a proposed Interbasin Transfer shall complete the application and submit it to the Executive Director, Water Resources Commission, Executive Office of Energy and Environmental Affairs, 100 Cambridge Street, Suite 900, Boston, MA 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;

(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 accepting the Donor Basin application as complete, or within sixty (60) days after MEPA Compliance if it is required, whichever is later, conduct a public hearing in the Donor Basin community, and within sixty (60) days of completing said hearing shall complete its review and issue a Decision on the Donor Basin criteria;

(f) The Commission shall, within sixty (60) days of accepting the Receiving Area application as complete, or within sixty (60) days after MEPA Compliance if it is required, whichever is later, conduct a public hearing in the Receiving Area community, and within sixty (60) days of completing said hearing shall complete its review and issue a Decision on the requested action to increase the Present Rate of Interbasin Transfer;

(g) During the period prior to the Commission's Decision on 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;

(h) The review may be extended by written consent of the Commission and the proponent for a mutually agreed upon period;

(i) The Donor Basin portion of the application may be submitted to the Commission for a Decision prior to the Receiving Area portion(s) of the application. A Decision for one portion of the application does not assure that the other portion(s) of the application will be approved;

(j) Following the Commission's Decision to approve the donor basin portion of the application, the Regional Water Supply System must provide an annual report to the Commission listing the Receiving Areas which have joined its system, by date, and the amounts of water (both average day and maximum day) that it is contractually obligated to supply to each of these Receiving Areas until the amount of water described in the approved Donor Basin portion of the application has been fully allocated;

(k) Receiving Area portions of the application may be reviewed concurrently or after the Commission determines that the Donor Basin portion of the application meets the applicable criteria listed in these regulations. The Donor Basin applicant need not have identified all of the Receiving Areas of the Interbasin Transfer;

(l) Receiving Area portions of the application may be submitted to the Commission separately and non-concurrently from each other;

(m) Ten Year Review

i. Ten (10) years after the Decision to approve the Donor Basin portion of the application, if the Regional Water Supplier has not allocated all of the approved Increase over the Present Rate of Interbasin Transfer, the supplier shall file a report, with the Commission, describing any changes pertinent to Donor Basin criteria that may have occurred since the original Decision. The Commission shall provide notice in the Environmental Monitor that the report has been received. If the Commission takes no action on the report within six months of receipt, the original approval shall continue under its existing terms; and

ii. If the Commission determines, based on the submitted report or any other available information, that conditions in the Donor Basin have significantly changed or that the Donor Basin criteria could no longer be met with the project as proposed, after conducting a public hearing in the Donor Basin as described in 313 CMR 4.11 (1) and (2), the Commission shall revise the approval of the Donor Basin portion of the application for the unallocated portion of water, provide it in writing to the Donor Basin applicant and file the revised approval in accordance with 313 CMR 4.11(3).

(n) In the event that twenty (20) years after the Decision to approve the Donor Basin portion of the application, the Water Resources Commission has not approved the allocation of the entire amount of the water originally approved under the Donor Basin application or does not have a pending application from a Receiving Area for approval, the approval of any unallocated water, excluding the amount requested in a pending application, shall expire. Once the Commission has made a Decision(s) on any pending Receiving Area application(s), the availability of any remaining unallocated amount of the water associated with the Donor Basin application shall also expire.

(2) 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

(a) The Donor Basin portion of the application is subject to 313 CMR 4.06, 313 CMR 4.09 (2)(a), 313 CMR 4.09(2)(b), 313 CMR 4.09(2)(e), CMR 4.09(2)(g)(1) through CMR 4.09(2)(g)(4), and 313 CMR 4.09(2)(h); and

(b) The Receiving Area portions of the application is subject to 313 CMR 4.06, 313 CMR 4.09(2)(a) through 313 CMR 4.09(2)(f), and 313 CMR 4.09(2)(h).

(3) Criteria for Evaluation of 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

The Commission shall consider the following criteria in making its Decision to approve or deny a proposed action to increase the Present Rate of Interbasin Transfer.

(a) The Commission shall determine whether the Donor Basin portion of the application meets the criteria listed under 313 CMR 4.09(3)(a), and 313 CMR 4.09(3)(e) through 313 CMR 4.09(3)(g); and

(b) The Commission shall determine whether the Receiving Area portion of the application meets the criteria listed under 313CMR 4.09(3)(a) through 313 CMR 4.09(3)(d).

4.11:06 Hearing and Decision Making Procedures

(1) Public Hearings. Before a Decision of the Commissionacting to approve or deny a proposed action to increase over the pPresent rRate of iInterbasin tTransfer of water or wastewater is made, the Commission shall hold two (2) public hearings. The public hearings shall take place after compliance with MEPA and Chapter 30 of the Massachusetts General Laws. One (1) hearing must be held in the dDonor Basin community where the immediate source of the iInterbasin tTransfer is located and one (1) hearing must be held in the rReceiving aArea 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 thant 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 dDonor and rReceiving aAreas. Such notice shall be mailed provided 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 iInterbasin tTransfer is being reviewed, a summary of the facts concerning the proposed iInterbasin tTransfer, the time and place of the hearing, the manner by which the public may make their views known.

(3) Filing Commission Decision. Within 30 days of final Decisionaction by the Commission it shall file a written report of the findings and justifications of its dDecisions to approve or deny the proposed action to increase over the pPresent rRate of iInterbasin tTransfer of water or wastewater with the clerks of the House of Representatives and the Senate, and with the Secretary of State for publication in the Massachusetts Register. This report shall also be sent to the project proponent and the affected Donor Basin and Receiving Area communities.

(4) M.G.L. c. 30A. All proceedings under 313 CMR 4.00 shall be subject to the provisions of M.G.L. c. 30A.

4.1207: Miscellaneous Provisions

(1) Interbasin Transfer Data. The Commission may require any pPerson transferring water or wastewater out of a dDonor bBasin 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.~~

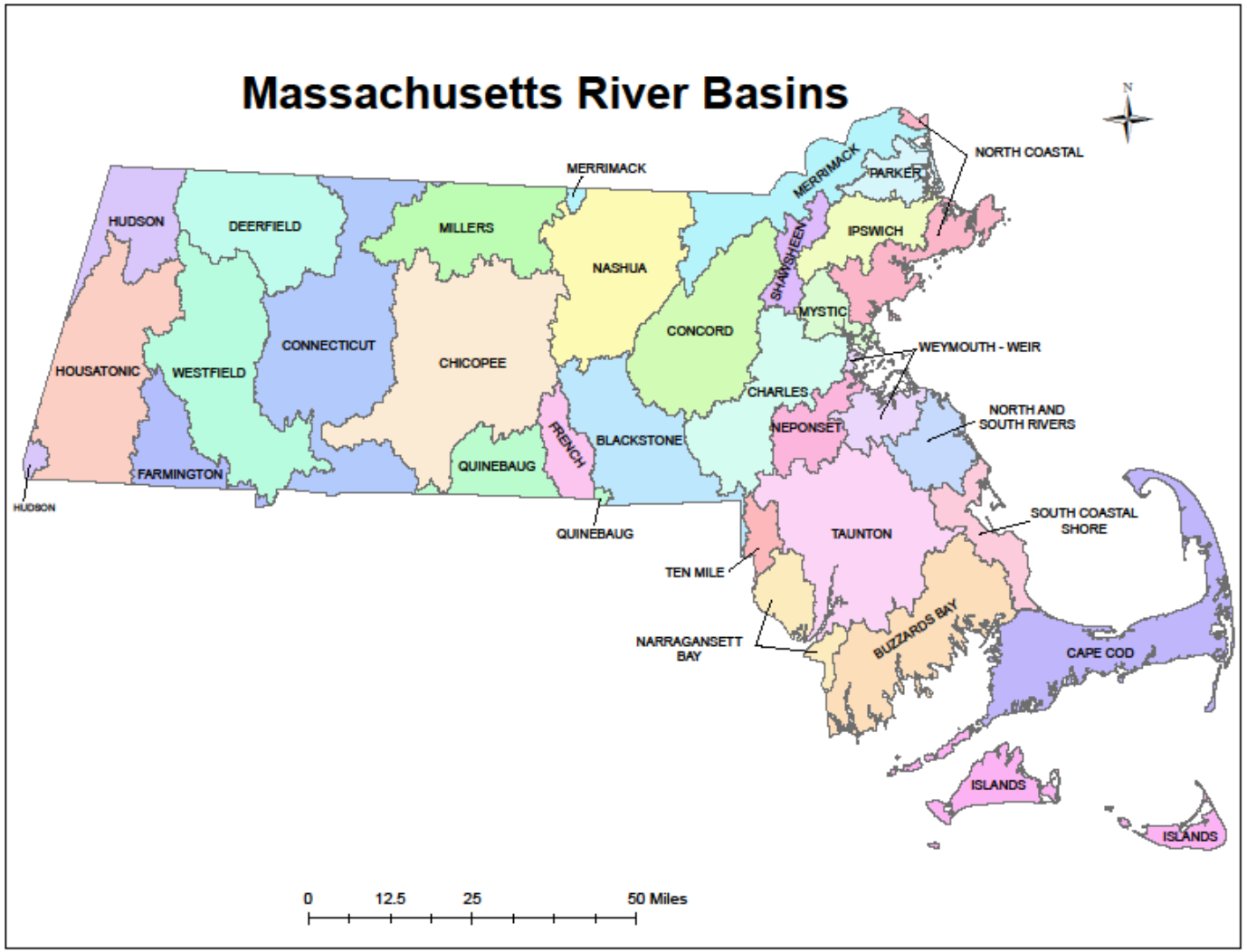
(~~5~~4) Effective Date. 313 CMR 4.00 shall become effective upon their promulgation pursuant to M.G.L c. 21, § 8D.

(~~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 judg~~e~~ment 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 ~~p~~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.

Appendix A : Massachusetts River Basins Map


Massachusetts River Basins
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