



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

Meeting Minutes for May 9, 2013

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

Minutes approved June 20, 2013

Members in Attendance:

Kathleen Baskin	Designee, Executive Office of Energy and Environmental Affairs (EEA)
Marilyn Contreas	Designee, Department of Housing and Community Development (DHCD)
Jonathan Yeo	Designee, Department of Conservation and Recreation (DCR)
Bethany Card	Designee, Department of Environmental Protection (MassDEP)
Gerard Kennedy	Designee, Department of Agricultural Resources (DAR)
Jack Buckley	Designee, Department of Fish and Game (DFG)
Todd Callaghan	Designee, Massachusetts Office of Coastal Zone Management (CZM)
Thomas Cambareri	Public Member
Raymond Jack	Public Member
Paul Matthews	Public Member

Members Absent

John Lebeaux	Public Member
Bob Zimmerman	Public Member

Others in Attendance:

Jennifer Pederson	Mass. Water Works Association
Roger Hill	Town of Foxborough
Linda Hutchins	DCR
Jim McGovern	Irrigation Association of New England
Stephanie Kruel	Boston Conservation Commission
Lexi Dewey	Water Supply Citizens Advisory Committee
Duane LeVangie	MassDEP
Tim Simmons	DFG, Div. of Fisheries & Wildlife, Natural Heritage & Endangered Species Program
Anne Carroll	DCR
Becky Weidman	MassDEP
Marilyn McCrory	DCR
Bruce Hansen	DCR
Anne Carroll	DCR
Vandana Rao	EEA
Erin Graham	DCR
Laila Parker	DGF, Div. of Ecological Restoration
Sara Cohen	DCR
Michele Drury	DCR

Baskin called the meeting to order at 1:00 p.m.

Agenda Item #1: Executive Director's Report

Baskin announced that, as part of the next update of the Water Conservation Standards, Water Resources Commission staff have established a work group to examine the topics of water audits, leak detection, and metering. At the request of the Massachusetts Water Works Association, the work group will review the leak detection methodology developed by the American Water Works Association. She invited commissioners who are interested in participating in the work group to contact her. The meeting is scheduled for May 16 at 1:00 p.m. at the offices of MassDEP at One Summer Street in Boston (*Ed. note:* this meeting has been rescheduled to May 30 at 1:00 p.m.). She added that the work group will provide periodic updates to the commission.

Hansen provided an update on the hydrologic conditions for April 2013. Statewide, rainfall in April was just under fifty percent of normal, with almost no rainfall occurring in most of the state during the last three to four weeks. He noted that small ponds and intermittent streams in many areas are starting to dry up, and fire danger is increasing. Groundwater levels are above normal on Cape Cod and below normal in the western region. Streamflows are below normal in many areas, while reservoir levels are mostly in the normal range. The Drought Monitor shows the central region of the state in a moderate drought. The rest of the state, except for Cape Cod and the Islands, is abnormally dry. The Standardized Precipitation Index values for the central, Connecticut Valley, and western regions are at the watch level, as defined in the Massachusetts Drought Management Plan. However, the Drought Outlook indicates normal conditions through July.

Baskin noted that the monthly hydrologic conditions report is a major source of guidance for the Drought Management Task Force, which is scheduled to meet on May 23. WRC staff will inform the commission about the outcome of that meeting.

Baskin announced that the next meeting of the Water Resources Commission will take place on June 6, a week earlier than usual.

Baskin acknowledged the participation of commission members in the morning's retreat and training. She summarized the priority areas identified by commission members, including education and the importance of connecting with municipalities and the public, who are critical in supporting decisions on water resources and water infrastructure and financing; considering wastewater not as a waste but as a commodity; and moving the Sustainable Water Management Initiative (SWMI) beyond Water Management Act regulations and into other policies. She invited those in attendance to forward thoughts on these or other topics that can be brought to the commission for policy discussions.

Agenda Item #2: Vote on the Minutes of April 2013

Baskin invited motions to approve the meeting minutes for April 11, 2013. Cambareri requested a correction to the dollar amount of the grant mentioned on page 6 of the minutes. The correct number should be \$3.35 million in funding for the wastewater study being undertaken by the Cape Cod Commission and others.

V	A motion was made by Contreas with a second by Card to approve the meeting minutes, as
O	amended, for April 11, 2013.
T	
E	The vote to approve was unanimous of those present, with one abstention (Buckley).

Agenda Item #3: Vote on the Massachusetts Drought Management Plan

Baskin noted that updates to the Drought Management Plan were discussed in detail at the October 2012 meeting of the Water Resources Commission. She noted the major substantive changes to the plan were the addition of the Keetch-Byram Drought Index as an indicator of fire potential; the addition of a new appendix (Appendix F) to assess how historic droughts would have been classified using current criteria; and a rewrite of section 7.8, which describes the role of the Department of Fish and Game during a drought.

She discussed the relationships among the entities involved in drought determination. She explained that having the Water Resources Commission formally adopt the Drought Management Plan gives official recognition to the Drought Management Task Force by a government body that is knowledgeable about drought conditions and the effects of drought on various areas, including agriculture, fisheries, and water supply. She added that the Massachusetts Emergency Management Agency (MEMA) relies on the Water Resources Commission and the agencies for scientific guidance on defining the criteria for drought conditions. MEMA has the authority to act in drought emergency conditions. In turn, she noted that the Water Resources Commission is supported by the Drought Management Task Force, whose membership includes state and federal agencies and private entities.

Baskin invited a motion to adopt the Massachusetts Drought Management Plan. A motion was made by Matthews with a second by Jack to approve the Massachusetts Drought Management Plan.

Yeo commented that Massachusetts Water Resources Authority (MWRA) system has its own drought management plan, which defines other criteria for determining drought conditions for areas served by the MWRA water supply system. He suggested substituting a different map or adding an explanation to the map of the MWRA system in Appendix C.

Baskin commented that, with the commission's approval, it is acceptable to make minor, nonsubstantive updates to the plan after the vote. She pointed out that a few changes to contact names listed in Appendix A would also be made before the final plan is published.

Pederson commented that the reservoir index lacks information on the length of time reservoirs are below normal. She added that the Massachusetts Water Works Association would like to work with DCR staff to address this issue. Baskin responded that the Drought Management Task Force should be consulted on this issue, and, as a substantive change, this should also be discussed by the Water Resources Commission before any changes are made. She added that the Drought Management Plan is a working document, and the commission should expect periodic updates.

Cambareri suggested that the Drought Management Plan acknowledge the role of the Water Resources Commission. Baskin agreed to review the language currently in the plan and make any needed changes at the time of the next update. She expressed concern that the technical changes to the plan be adopted so that these can be implemented when the Drought Management Task Force next deliberates on May 23.

V	A motion was made by Matthews with a second by Jack to approve the Massachusetts
O	Drought Management Plan.
T	
E	The vote to approve was unanimous of those present.

Agenda Item #4: Presentation: Draft Dam and Seawall Regulations

Baskin introduced John Clarkeson of the Executive Office of Energy and Environmental Affairs. Clarkeson provided a brief overview of the law, MGL c. 29 §2III, which was adopted on January 10, 2013, creating a fund to provide grants and loans for repair or removal of dams and sea walls. He distributed the draft regulations and the schedule for public hearings on the regulations, which begin May 21. He outlined key features of the law, including the use of funds, eligibility for funding, application process, and priorities for funding approval. Final regulations are expected by July 22, 2013, and applications for the first round of funding are due by August 29, 2013.

He noted that the law addresses an important funding need and described the recommendations of several state agency reports on dams and coastal structures. He noted that the funding need is far greater than the funding available of \$20.1 million. Yeo clarified that the new law does not provide funding for the repair of dams that are the responsibility of state agencies.

Clarkeson described the mechanism by which the available funding and interest on loans will be split evenly, with fifty percent to be allocated to dams and fifty percent to sea walls and levees, as prescribed in the law. He described the three categories of projects and the entities eligible for funding. Local government bodies and charitable organizations are eligible to apply for funding for both dam and seawall projects, while private owners are eligible to apply for funding of dam projects only. He outlined funding priorities specified in the law, noting that public safety is the highest priority. He discussed the interest rate on low-interest loans. He invited submittal of written comments on the regulations by May 29.

In response to a question from Callaghan, Clarkeson indicated a decision about who will manage the funding program has not yet been made, though the funds will be housed at EEA. Other questions and discussion concerned interest rates, the allocation of interest from loans to dam projects and seawall projects, and whether the timeframe for receiving and incorporating public comment was realistic. Clarkeson responded that some constituent groups have provided input already on the draft regulations.

Baskin encouraged those in attendance to submit comments on the regulations.

Agenda Item #5: Discussion: Witch Pond, Foxborough, Massachusetts

Baskin noted that the state agencies had met to discuss the issues related to the Witch Pond wells and agreed that MassDEP should work with the town on issues pertaining to the Water Management Act before a staff recommendation on the Interbasin Transfer approval is brought to the Water Resources Commission for discussion.

Card provided an update on MassDEP's discussions with the town of Foxborough on the need for and protocols associated with an emergency declaration. She noted that MassDEP had reviewed additional data provided by the town and determined that the town may not have sufficient capacity to supply water this summer. She outlined conditions the town would have to meet in order to activate the Witch Pond wells. She noted that the town is receptive to the protocols associated with an emergency declaration. Once the town's water commissioners approve the protocols, MassDEP would continue to work with the town to put in place the emergency declaration. Drury added that the provisions of the Interbasin Transfer Act do not apply if a formal emergency declaration is made by MassDEP. Card added that MassDEP can

move forward with an emergency declaration without waiting for an actual emergency to be imminent.

Yeo noted that the existing interbasin transfer approval includes thresholds that trigger closure of the Witch Pond wells, and he requested clarification on how the emergency declaration would affect use of those wells. Card explained that, if conditions trigger shutdown of the wells, in accordance with the Interbasin Transfer approval, the emergency declaration would allow use of the wells, as long as the other protocols are in place.

Yeo commented that an Interbasin Transfer Act approval is a carefully considered permission to transfer water across basins and is to be used as a last resort. He added that an emergency declaration is also an extraordinary permission to bypass the interbasin transfer rules. He asked commission members to keep these points in mind. He also noted that staff has documented additional problems with use of the wells and their impact on habitat. He suggested continued discussion at the commission and with the town about additional thresholds to protect habitat.

In response to a question from Buckley, Card clarified that the emergency declaration is in place for six months; when it expires, the issue would be brought to the commission, if MassDEP concludes that the emergency declaration should be reinstated. She added that MassDEP expects six months will allow sufficient time to address the town's capacity issues. Buckley asked for clarification on the water-use restrictions associated with the emergency declaration. Card and LeVangie confirmed that mandatory restrictions are already in effect in the town's Water Management Act permit, and, with the emergency declaration, a total ban on outside watering would be put in place should the town need to use the Witch Pond wells when the thresholds have been triggered.

Jack commended MassDEP for working with the town on a solution, and he also commended the town for its efforts. He acknowledged that blame for years of neglect of the town's infrastructure do not necessarily rest with Mr. Hill, the current public works director. He strongly urged Hill to explain the significance of the interbasin transfer approval and emergency declaration to the town's water commissioners. Hill explained that he has had these discussions and assured the commission that the town is working on a number of fronts to address the problems, including broader public education, water purchases, and protocols for monitoring the swamp.

Buckley commented that the emergency declaration gives MassDEP extraordinary authority and stated his belief that this authority is being appropriately applied in this situation. He added that a staff recommendation on trigger thresholds is needed at the next commission meeting. Yeo added that science should drive the commission's decision-making, and pointed out that discussions will likely continue over several meetings.

Pederson asked if the town understands requirements for notifying the public about elevated levels of manganese. Card discussed new requirements related to elevated levels of iron and manganese in public drinking water supplies and offered to present information at a future meeting.

Baskin summarized the discussion on the Witch Pond wells. She acknowledged that six months is a short time frame. She noted that the project involves a variety of issues and concerns, and the solution must both address concerns of all the agencies and be feasible for the community. Buckley reiterated his request that a staff recommendation be an urgent priority. Baskin responded that Foxborough will be discussed at the June commission meeting.

Cambareri requested clarification on Buckley's concerns. Buckley explained that a new recommendation will involve extensive discussions, and having a timetable can provide focus in reaching a conclusion as soon as possible. Cambareri deferred to staff to determine when adequate information is available to provide a recommendation. Matthews acknowledged the work involved in reaching a conclusion and urged that sufficient time be allowed for discussions with the town so that the outcome is reached in a deliberative manner.

Agenda Item #6: Presentation: Introduction to the Interbasin Transfer Act

Drury provided background on the Interbasin Transfer Act, which became effective in 1984. She noted that the Water Resources Commission is designated as the administrator of the act, and DCR's Office of Water Resources provides administrative support and technical review of matters related to the act and makes recommendations to the commission, which makes decisions on the act.

Drury discussed the delineation of river basins in Massachusetts, explaining that twenty-eight major basins have been delineated, including the Massachusetts coastal basin, which consists of areas below mean high tide, including estuaries and tidal rivers. She explained that the coastal basin is important in the Interbasin Transfer Act because wastewater transferred to the ocean is never returned to the land. The ocean is also considered a basin for water supply purposes.

Drury reviewed key features of the act. She explained that the act does not prohibit transfers, but does require rigorous environmental review, and, to be approved, projects must meet all applicable criteria outlined in the act. She explained that there is no threshold for review: any transfer across a basin line and town line is subject to the requirements of the act. She added that the act is not a permitting program; instead, it is a one-time approval process of a transfer system's capacity.

She reviewed actions that trigger the act, including a new water supply source that will be transferred out of basin as either water supply or wastewater; enlargement of an existing transfer system; or changes in the operating rules of a transfer system that cause more water to be transferred. She reviewed the three types of transfers –water supply, wastewater, and wastewater transfer triggered by development of a water supply source – and discussed examples of each. She outlined exemptions to the act, including existing systems, intratown transfers, redundant sources, and others, and provided examples of each.

Drury discussed the three levels of review: determination of applicability, determination of insignificance, and application for approval. She discussed the criteria projects must meet for each type of review and timelines for the formal review process.

In response to a question from Callaghan about the application of the approval criteria to wastewater transfers, Drury added that wastewater transfer is a very important factor in interbasin transfers, and the guidebook to the Interbasin Transfer Act provides additional clarification on how the act is applied to wastewater transfers (*Ed. note: the guide and other materials are available at <http://www.mass.gov/dcr/watersupply/intbasin/download.htm>*). Callaghan commented that wastewater transfers may become significant on Cape Cod, as these communities address wastewater collection issues. Cambareri added that the act was adopted before there was a realization that the aquifer on Cape Cod comprises six separate basins. Drury noted that the act does not prohibit transfers, but does require environmental review.

Drury discussed the process for a full application for approval, noting that the eight criteria for approval must be met before a proponent submits an application. She noted that performance standards are available, and these outline how a proponent should address each of the eight criteria in an application for approval. She discussed the application process and timelines for approval in detail. She explained that the formal public review of an interbasin transfer application does not start until the environmental impact review process under the Massachusetts Environmental Policy Act is completed. The commission must render a decision on an application for approval within sixty days of the close of the final public hearing.

Buckley asked if approval is automatic if the commission fails to make a decision within sixty days. Drury responded that this is the advice of legal counsel. Referring back to the Witch Pond wells project, Cohen asked what the consequences would be if Foxborough's water commissioners do not accept the terms of MassDEP's emergency declaration. LeVangie responded that the town is requesting an emergency declaration, and MassDEP will determine the terms. Baskin added that it is hoped the town will find its own numbers compelling.

New Business

Baskin requested a brief update on proposed fertilizer regulations. Card explained that MassDEP and the Department of Agricultural Resources are drafting regulations to implement a new law that bans phosphorus in fertilizer in non-agricultural settings. She explained that there will be some exceptions, and implementing the regulations will enable communities to receive maximum credit under the NPDES stormwater Phase II permit requirements for municipal separate storm sewer systems (MS4s). Card said the regulations are expected to be ready for public comment in summer 2013, and final regulations must be published by January 2014. Kennedy added that the law also requires the development of nutrient management performance standards. Card added that the statute preempts local communities from adopting their own regulations if these are not in place before July 2012. In response to questions from Matthews, Card explained that state agencies are in discussions with the Environmental Protection Agency to make sure that communities receive as much credit as possible under the existing permit. Baskin explained that the commission would not vote on these regulations, but she requested a presentation on the draft regulations for informational purposes.

Meeting adjourned, 3:10 p.m.

Documents or Exhibits Used at Meeting:

- Meeting Minutes for April 11, 2013
- Massachusetts Drought Management Plan, May 1, 2013
- Massachusetts Drought Management Plan, May 1, 2013 (redline version)
- Interbasin Transfer Act project status report, April 25, 2013
- Current Water Conditions in Massachusetts, May 9, 2013
- Executive Office of Energy and Environmental Affairs. Notice of Public Hearings on proposed regulations, 301 CMR 15.00.
- Draft regulations, 301 CMR 15.00: Provisions for Administration of the Dam and Sea Wall Repair or Removal Fund
- Presentation by John Clarkeson. Dams and Seawalls. MGL c. 29 §2III. Available at <http://www.mass.gov/eea/docs/eea/wrc/dam-seawall-regulations.pdf>.
- Presentation by Michele Drury. Introduction to the Interbasin Transfer Act. Available at <http://www.mass.gov/eea/docs/eea/wrc/intro-to-interbasin-transfer-act.pdf>.

- Massachusetts Water Resources Commission and the Executive Office of Environmental Affairs. October 2003. A Guide to the Interbasin Transfer Act and Regulations. Available at <http://www.mass.gov/dcr/watersupply/intbasin/docs/Guidebook.pdf>.
- Massachusetts Water Resources Commission. September 13, 2001. Interbasin Transfer Act Performance Standards Guidance. Available at <http://www.mass.gov/dcr/watersupply/intbasin/docs/finalps.pdf>.
- Massachusetts Water Resources Commission. Information on the Interbasin Transfer Act available at <http://mass.gov/eea/wrc-ita>.