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June 30, 2014

Mr. Wayne MacCallum, Director
Division of Fisheries and Wildlife
100 Hartwell Street, Suite 230
West Boylston, MA 01583

**RE: Comments on Proposed Regulations (321 CMR 5.00) regarding
Coldwater Fish Resources**

VIA Electronic Mail

Dear Mr. MacCallum:

On behalf of Massachusetts Water Works Association (MWWA), I would like to submit the following written comments regarding the Division of Fisheries and Wildlife's proposal to establish regulations defining Coldwater Fish Resources (CFR). MWWA represents over 1,100 water professionals throughout Massachusetts whose mission is to ensure the public health and safety of the Commonwealth's residents through safe and sufficient supplies of drinking water.

These regulations come about in part due to the Executive Office of Energy and Environmental Affairs Sustainable Water Management Initiative, components of which are being rolled into the Massachusetts Department of Environmental Protection's (MassDEP) Water Management Act (WMA) regulations, 310 CMR 36.00. The WMA permits govern water withdrawals in Massachusetts; there are currently about 190 water supply permits that will be affected by the regulations. MassDEP is proposing new requirements for water suppliers with WMA permits to minimize the impact on coldwater fisheries resources in their subbasins. We have concerns about these increased requirements for water suppliers.

While we appreciate that DFW is codifying into regulation how they will define CFR and the criteria and procedures for designating and/or



evaluating CFR so that it will be clear to the regulated community, we do want to offer some concerns on the proposed regulation, 321 CMR 5.00.

The regulations afford the opportunity to designate a CFR using stream survey and inventory protocols; we would like to know what the process is for determining the protocols and what the procedures are for amending the protocols? In looking at DFW's website, it appears the protocols were last updated in May of 2014 but we did not see that was a public process. We believe if DFW is not currently soliciting outside stakeholder input when updating the protocols it should.

The regulations appear to designate some non-native species as CFR, what is the rationale behind protecting non-native species? MWWA believes DFW should be concentrating only on protecting native species and therefore we request that DFW remove any non-native species listed in the definition of Coldwater Fish in 321 CMR 5.02.

The preamble indicates that DFW has been documenting the presence of coldwater fisheries since the 1940s. We do not think it is appropriate to rely on very old records to support a cold water fishery designation given the drastic changes (both positive and negative) that have occurred in our waterways since 1940. We would suggest that any records older than 25 years be disregarded for coldwater fishery designation. Waters with records older than 25 years should be deemed "not assessed" and not be designated a coldwater fishery until a new assessment is conducted.

MWWA notes that the preamble to this regulation states its applicability to MassDEP's Water Management Act regulations but we are also aware that there are CFR considerations within MassDEP's Surface Water Quality Standards. Will DFW be working with MassDEP to apply this definition to the Water Quality Standards as well?

The proposed regulations designate a water as CFR based on the presence of a single specimen of cold water fish. Given the regulatory implications under the proposed WMA and potentially under the Surface Water Quality Standards, a CFR designation should be based on presence of a viable population of coldwater fish, not a single specimen. DFW should issue accompanying guidance with public input from fisheries biologists, ecologists and qualified scientists as to what constitutes a viable population.

We appreciate that DFW is providing the opportunity to designate or reconsider a designation of a CFR, but the regulations state that biological information must be supplied. MWWA thinks it needs to be made clear in these regulations what data DFW will be looking for. DFW should outline exactly what will be expected of a person who wants to make a request. MWWA requests DFW amend these regulations accordingly.

The draft regulations also state that a request to designate or evaluate CFR status be “reasonably supported,” this language is vague and we request DFW be more specific in the regulations about how it will deem whether a request is reasonably supported.

The regulations state in 5.04 (2) that DFW will notify the requestor of the outcome of the determination, but DFW makes no mention of the timeframe in which the determination will be made. Since conditions in WMA permits are tied to the designation of CFR, it is important that evaluations are made in a timely manner. MWWA requests that the regulations be amended to provide a deadline by which DFW will make the determination. MWWA recommends that the timeframe be within 60-90 days of the request.

The proposed WMA permitting process requires DFW to consult with MassDEP on WMA permit applications. We are concerned that lack of adequate staffing could lead to delays in permitting. Does DFW believe it has enough staff to participate in these reviews? If not, then additional staff should be added before MassDEP promulgates their regulations. We also question whether DFW will be making determinations and providing consultations from headquarters or will it be left to the district offices? MWWA believes there should be certain point people identified so that water suppliers will know who to interact with and ask questions to as it relates to CFR considerations.

Finally, we know that CFR are impacted by lots of factors beyond water withdrawals, what is DFW doing to assess the impacts of climate change and other anthropogenic factors on the resources?

We appreciate the opportunity to provide you with these written comments and would be happy to meet with you further to discuss any of our comments.

Sincerely,

A handwritten signature in black ink that reads "Jennifer A. Pederson". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer A. Pederson
Executive Director

Cc: Jack Buckley, Deputy Director of Administration, DFW
Bethany Card, Assistant Commissioner, MassDEP BRP
Anne Carroll, Director, DCR Office of Water Resources