



October 9, 2014

Ms. Kathleen Baskin  
Executive Director  
Massachusetts Water Resources Commission  
100 Cambridge Street, 9<sup>th</sup> Floor  
Boston, MA 02114

***Re: Massachusetts Department of Environmental Protection's draft Water Management Act Regulations (310 CMR 36.00) and accompanying Guidance Document***

Dear Ms. Baskin and Members of the Massachusetts Water Resources Commission:

On behalf of the cities and towns of the Commonwealth, the Massachusetts Municipal Association (MMA) is writing to voice our opposition to the Massachusetts Department of Environmental Protection's draft Water Management Act Regulations (310 CMR 36.00), which will be before the Commission for a vote in October.

In addition to the comments the MMA is submitting herein, we commend and support the detailed comments submitted by the Massachusetts Water Works Association, and respectfully urge you to support the analysis submitted by both organizations.

The MMA was involved in the Sustainable Water Management Initiative (SWMI) stakeholder group because the communities of the Commonwealth are burdened by many water resource mandates. It was our hope that the process would embrace a holistic approach to the issue of water management, and focus on solutions that would generate positive environmental outcomes balanced with the recognition that taxpayers and municipalities have limited resources at their disposal. Unfortunately, we are deeply disappointed that the regulations, as drafted, do not move Massachusetts any closer to an integrated policy, and instead focus solely on further regulating water withdrawals through a policy shift that places aquatic habitat as the top priority.

We believe the proposed changes would dramatically increase costs associated with permitting and mandated mitigation measures, reduce revenues and limit economic growth across the state – an extraordinary change in public policy and outcomes, with no meaningful way to measure or monitor improvement or actual progress. Modeled progress is not a reliable or valid way to determine whether the proposed regulations would be effective.

The fact is that the current regulations are working and there is no need to consider the drastic changes proposed. Investment in municipal water systems, use restrictions and conservation measures implemented by cities and towns have dramatically reduced water use in the Commonwealth. Further, the SWMI process has shown that the impact of water withdrawal on streamflow is now much less of a problem than originally thought. There is not sufficient evidence to support the claim that further reductions in water withdrawals would significantly increase fish in streams and rivers.

It is disappointing that the draft regulation places so much emphasis on reducing the availability of the public water supply for our residents and businesses as the primary means of increasing streamflow, and de-emphasizes public health and safety. An example of this is the suggestion that in times of drought, when drinking water is scarce, communities release water from surface reservoirs in order to increase streamflow. The primary purpose of reservoirs is to maintain an adequate water supply for public use, health and safety, not to increase streamflow.

The draft regulations do nothing to address large-scale watershed planning and ignore the more substantial environmental impacts of impervious cover, dams, and nutrient pollutants on water quality, which we believe have a much greater impact on aquatic life. Watershed-based planning is the only way to achieve sustainable water management. Evaluations could be made on a watershed basis and mitigation measures could be prioritized on the basis of what would have the most beneficial results. Such an approach would allow our municipalities to target their limited financial resources for the best environmental outcomes. A good example of the benefits of such planning is demonstrated in the Taunton River Watershed Plan, which is integrating multiple aspects of water management. Basing the state permitting process on a command-and-control approach to limit water supplies is unbalanced and ignores other more feasible and productive ways to protect fish, such as improving water quality (by reducing nutrient pollutants and other steps), restoring stream habitats, removing or limiting impervious surface cover, removing unneeded and undesirable dams, as well as traditional water conservation and stormwater management programs and initiatives, just to name a few examples.

We are also concerned with the proposal outlined in the document titled “Safe Yield and its Components by Water Source” to separate the Boston Harbor basin and the South Coast basin into smaller subbasins for the purpose of determining Safe Yield. If a water supplier has multiple withdrawals within town and the basin is split into two, this could force the supplier to apply for separate permits when previously they only needed one. This action could also trigger Interbasin Transfer Act requirements that are not applicable now. MassDEP should dispense with its plans to break the major basins into smaller ones, and calculate Safe Yield values for the Boston Harbor and South Coast basins at the major-basin scale.

We believe the draft regulations would be ineffective and would burden residents, businesses and municipalities with new and more stringent regulations that would mandate significant costs on local taxpayers and limit economic activity and growth. Massachusetts is currently facing a water infrastructure finance crisis and this is *not* the time to impose new unfunded mandates.

In 2009, the state created a Special Water Infrastructure Finance Commission as a means of developing a long-range plan for the state and its cities and towns to maintain their waterworks. In a preliminary report, the commission determined that Massachusetts’s faces a \$10.2 billion gap in the resources needed to adequately maintain drinking water systems, and an \$11.2 billion shortfall for resources needed to maintain wastewater infrastructure. Our cities and towns will also be facing huge investments to deal with stormwater infrastructure, conservatively estimated by the Commission at approximately \$18 billion over the next 20 years. Communities are grappling these huge financial challenges and must be free to target their limited resources on areas that will have the biggest impact and the largest investment return. Because the draft regulations focus primarily on extreme restrictions on water supply withdrawals and on forcing costly mitigation measures on cities and towns, the proposed changes would severely limit

growth and economic development. The draft regulations would reduce the revenues necessary to maintain the existing infrastructure and thus force dramatic increases in rates paid by taxpayers, residents and businesses.

The cities and towns of Massachusetts have worked hard to pass common-sense legislation that is already having a much greater impact on improving the health of our lakes, rivers and streams than those envisioned in the proposed Water Management Act regulations.

For example, we have over 3,000 dams in Massachusetts, approximately one dam for every two miles of streams, and these dams have a dramatic impact on streamflow, water temperature, barriers to fish population and the amount of phosphorus in a waterbody. Municipal officials made the case for the law passed last year to create a dam and seawall fund. The Bartlett Pond Dam in the Town of Lancaster was the first dam removal project to be completed using this fund. The removal has saved the town more than \$600,000 in infrastructure repair costs and native brook trout are already flourishing in the restored area after the dam removal.

Phosphorus runoff from lawn fertilizer and impervious surfaces is now the leading cause of pollution in our waterways, accelerating algae and plant growth, robbing aquatic life of necessary oxygen to survive. The MMA worked with the 495 Partnership for the passage of H. 3027, which also became law last year, limiting the amount of phosphorus in fertilizers. The U.S. Environmental Protection Agency estimated this new law will save Massachusetts communities an estimated \$180 million annually in avoided costs to treat the polluted runoff, and reduce a major waterway pollutant.

If the Commonwealth is serious about seeking meaningful and timely improvement in streamflow, the first priority should be providing funding for infrastructure needs and technical assistance to communities to address issues with impervious cover.

The MMA has also called on our federal and state governments to maintain funding amounts established for infrastructure needs, identify the costs of regulations, and reduce wastewater and stormwater treatment costs. The draft regulations and guidance documents provide no meaningful analysis on how much the implementation and compliance would cost our cities and towns through lost revenues, restrictions on economic growth, and expenses associated with compliance or mitigation measures. Before these draft regulations go any further in the process, we respectfully request a detailed municipal and ratepayer cost analysis of the scope and expense of this looming mandate on cities, towns taxpayers, ratepayers and businesses. This analysis should at a minimum:

- Identify the specific municipalities and public water systems that are likely to be subject to the new permit conditions;
- Identify which of these municipalities/systems will likely need to develop minimization, coldwater fishery or mitigation plans and which permitting tier each will likely fall into;
- Identify which public water suppliers are currently withdrawing from major river basins other than the one in which their service area is located;

- Identify the typical costs or a range of costs for the indirect mitigation projects listed in Table 13 of the proposed Guidance Document;
- Identify the water rate increases needed to meet the affordability thresholds in the cost feasibility guidance for each affected public water supplier;
- Identify typical costs for the additional conservation measures listed in Table 10 of the Guidance Document; and
- Identify additional staffing and costs that the Department, the Massachusetts Division of Fish and Wildlife (DFW) and other state environmental agencies will incur to ensure timely processing of all permits and other administrative actions required of the Commonwealth by these revised regulations.

MassDEP has also failed to take cost considerations into account in a meaningful way. The proposed cost feasibility thresholds are too high and we are concerned that the cost provision resides in the Guidance and not in the proposed regulation. MassDEP should be considering a cap on costs to our communities for minimization and mitigation measures. When the Department develops an appropriate mechanism to consider cost, it should be put into the regulations.

In addition to our well-documented concerns with the proposed regulations, we are also concerned that the current Administration is trying to rush these regulations through the Water Resources Commission without following normal procedures. Past practice has always been for MassDEP to bring a final redline version of regulations to the Commission and explain the changes that were made based on public comment, the Commission is then given a month to review the regulations before voting at the next meeting. It was suggested by MassDEP staff at the September meeting that you will be asked to vote on the regulations at your meeting on October 9, 2014. Because of objections to raised by this disregard for normal procedure for Commission votes, MassDEP has now scheduled a vote for October 21. Why the rush? We ask the Commission to delay the vote at least until the next regularly scheduled meeting on November 6, 2014, or even better, until the incoming Administration has had the opportunity to carefully review this major policy change.

Since the regulations and Guidance document were released as a package for public comment, the Commission should also ask that the final revisions to the Guidance document be presented along with the redline version of the regulations. It has been stated throughout the process that the Guidance contains the details on how MassDEP would implement this new program, and it is necessary for the Commission and the public to see changes that have been made to both before moving forward. The Commission sets water policy for the Commonwealth, and we urge its members to resist pressure to rush the most significant change to the Water Management Act regulations in 25 years.

The communities of Massachusetts take their environmental responsibilities seriously and are already leading the way with innovative strategies to conserve water and manage their water use with nature in mind. For example, to benefit the Ipswich River, the Town of Reading discontinued drawing on municipal wells in the watershed area, and Danvers structured

development fees to provide funds for water conservation projects. Scituate leaders have restricted lawn watering to protect the First Herring Brook, Kingston officials removed a local dam to meet their federal MS4 permit, Plymouth leaders worked with developers to increase the amount of stormwater that returns to the Eel River, Franklin has imposed water use restrictions, and developed and implemented new and innovative stormwater management techniques. There are countless such examples across the Commonwealth. Rather than impose a top-down, rigid and restrictive framework and regulations, state policies should facilitate and incentivize the good work of cities and towns so communities can maintain and expand upon these impressive efforts.

To summarize, the MMA does not support the draft regulations. The new approach suggested by draft regulations would shift the primary focus away from protecting public health and safety and transition to an over-emphasis on increasing fluvial fish and aquatic life. We have serious reservations as noted above, and believe that the draft regulations are incomplete, rely on a costly and burdensome regulatory scheme that would fail to meet its goals, overlook effective and feasible holistic approaches, and in the end, would restrict our economy and burden communities and local taxpayers.

We respectfully ask the Commission to vote **NO** on this regulatory package, and instead ask the next Administration to go back to the drawing board and return to the original intent of SWMI, which was to develop a true plan for a holistic and integrated water management policy for the Commonwealth.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Beckwith", written in a cursive style.

Geoffrey C. Beckwith  
Executive Director

cc: His Excellency Deval Patrick, Governor of the Commonwealth  
The Honorable Maeve Vallely Bartlett, Secretary, EOEEA and Chair, MWRC