



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

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**Meeting Minutes for January 3, 2023**

Meeting conducted remotely via Zoom meeting platform, 2:00 p.m.

*Minutes approved April 13, 2023*

**Members in Attendance:**

Vandana Rao	Designee, Executive Office of Energy and Environmental Affairs (EEA)
Linda Balzotti	Designee, Department of Housing and Community Development (DHCD)
Kathleen Baskin	Designee, Department of Environmental Protection (MassDEP)
Tyler Soleau	Designee, Massachusetts Office of Coastal Zone Management (CZM) (left meeting at 3:30)
Anne Carroll	Designee, Department of Conservation and Recreation (DCR)
Todd Richards	Designee, Department of Fish and Game (DFG)
Hotze Wijnja	Designee, Department of Agricultural Resources (DAR)
Thomas Cambareri	Public Member (arrived 2:09)
Christine Hatch	Public Member
Vincent Ragucci	Public Member
Kenneth Weismantel	Public Member
Samantha Woods	Public Member

**Members Absent**

**Others in Attendance:**

Jaimye Bartack, Springfield Water and Sewer Commission  
Kate Benson, Division of Ecological Restoration  
Julia Blatt, Mass Rivers Alliance  
Sarah Bower, Mass Rivers Alliance  
Richard Bradley, GIA  
Julie Butler, Mass DEP  
Wayne Castonguay, Ipswich River Watershed Association  
Timothy Cauley, Superintendent South Hadley Fire Dist. No. 2  
Sara Cohen, DCR Office of Water Resources  
Stephanie Cooper, MassDEP  
Vanessa Curran, DCR Office of Water Resources  
Lexi Dewey, WSCAC  
Danielle Dolan, Mass Rivers Alliance  
Andrea Downs, Wastewater Advisory Committee  
Pine duBois, Jones River Watershed Association  
Jason Duff, DCR Office of Water Resources  
Erin Graham, DCR Office of Water Resources  
Kristin Kolick, Correnti Kolick LLP  
Duane LeVangie, MassDEP  
Nadia Madden, DCR Office of Water Resources  
Jen Pederson, Mass Water Works Association  
Brad Perron, Salem and Beverly Water Supply Board

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Read Porter, EOEEA  
Katie Ronan, MWRA  
Josh Schimmel, Springfield Water and Sewer Commission  
Thomas Shea, Longmeadow MA  
Kara Sliwoski, DCR Office of Water Resources  
Alan Taubert, Salem and Beverly Water Supply Board  
Rebecca Weidman, MWRA  
Robert Worthley, Foxborough Water Department  
Viki Zoltay, DCR Office of Water Resources

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Rao called the meeting to order at 2 p.m.

**Agenda Item #1: Welcome and Introductions**

Rao announced that the meeting was being recorded for the purpose of meeting minutes and all votes would be taken by roll call. She invited those who wish to speak during the meeting to indicate this in the chat window. Members and attendees introduced themselves.

**Agenda Item #2: Executive Director's Report**

Rao introduced Tyler Soleau as the new representative from CZM, taking over for Todd Callaghan who has been with us for over ten years. Tyler is the Assistant Director of CZM. He will include CZM staff in meetings, as needed. Rao thanked Todd for representing CZM for over a decade and providing invaluable feedback on key projects such as the Aquaria Interbasin Transfer Decision. Rao wished everyone a Happy New Year and reported that there is no Hydrologic Conditions report today but it will be presented at our regular January meeting.

**Agenda Item #3: Presentation and VOTE: Water Management Act Regulations (310 CMR 36.00) Revisions, 2023**

Rao began by thanking Commissioners for their participation in this special meeting and their time in reviewing the package within such a short timeframe. She reminded everyone that they had seen these proposed revisions to the regulations at WRC meetings on several previous occasions, including a lengthy presentation at the October 2022 meeting, and that the revisions in part reflect the work of the WRC on the state's Drought Management Plan (DMP) which the WRC previously approved. Conditions in the DMP that have to do with restrictions during drought are a clear policy decision that the WRC has set. DEP is now incorporating these into their regulations. The WRC has gotten a very good preview of these proposed changes at several previous meetings, nonetheless Rao apologized for the short timeline for review of the materials and acknowledged everyone's efforts to review the materials and attend today.

Rao introduced DEP Deputy Commissioner for Planning and Policy Stephanie Cooper who introduced her team. Stephanie thanked all those in attendance for their time and attention and reiterated that these revisions go hand in hand with the updates to the Drought Management Plan. DEP is seeking to make WMA registrants more consistent with the DMP. This will give us more tools in the toolbox to respond to drought in the Commonwealth. DEP went through two rounds of comments on these revisions. Draft regulations were out for comment in 2021 and

again in 2022. 2022 revisions included updates to basin dates due to the Governor's Covid-19 Order's impact on permit expiration dates. There were two public hearings this fall, with approximately 880 comments received during the two comment periods. Changes and adjustments were made in response to key comments heard. Registrations are due to be renewed this April, which is part of why this special meeting today has been requested so that these proposed changes can be incorporated into the registrations. Cooper then introduced Kathy Baskin. Baskin asked the WRC to support Mass DEP's proposed changes to the WMA regulations which address a serious situation with respect to drought which is becoming more frequent and severe. Baskin introduced Duane LeVangie to present what was changed between draft and final revisions in response to public comment.

Presentation slides can be accessed at: <https://www.mass.gov/doc/massdep-water-management-act-regulations-310-cmr-3600-revisions/download>.

LeVangie stated that he will go over what has changed since he last presented to the WRC in October 2022. The proposed revisions most impact those registered-only public water suppliers and golf courses that do not have any requirements in times of drought. Changes are limited to four sections of the regulations:

- 1) Two definitions added: Multi-Year Drought Storage and Nonessential Outdoor Water,
- 2) 36.07 Registration Conditions,
- 3) 36.17 Effective Dates and Expiration Dates for Permitting by Water Source, and
- 4) 6.43 Orders, Violations and Penalties.

Most comments received were on items 1 and 2, which are the focus of today's presentation. The intent of these revisions is to get the registrations in alignment with the MA Drought Management Plan. The DMP has seven regions, so the claims that this is a one size fits all are not accurate. The requirements are outlined in 36.07 Registration Conditions and reflect the State's recommendations for nonessential outdoor water-use in Table 10 from the MA DMP. There is also an alternative restriction pathway for registered-only public water suppliers that are supplied entirely by surface water sources with significant storage as defined in the revisions to the regulations. The alternative approach requires that the public water supplier develop a Drought Management Plan that is accepted by DEP. The Plan must include certain elements outlined in the regulations. The regulation revisions also outline nonessential outdoor water use restrictions that will be applied to registered golf courses during times of drought, not unlike the conditions applied to golf courses with permits.

LeVangie outlined the extent of the public process for these revisions which included:

Part One-2021

- 1/21 & 2/25 WMA Stakeholder Mtgs
- 6/11 to 7/26 Public Comment Period
- 7/7 & 7/16 Public Hearings
- 7/8 WRC Mtg

Part Two-2022

- 6/29 & 7/13 & 10/25 Advisory Committee Mtgs
- 10/5 to 11/18 Public Comment Period
- 10/27 & 10/28 Public Hearings
- 10/13/2022 & 1/3/2023 WRC Mtg

In summary, the 2021 revisions received 324 comments and the 2022 revisions received 524 comments.

LeVangie concluded by summarizing the key changes MassDEP made between the draft that was presented to the WRC in October 2022 and the current version. The three main areas were:

- Providing more details in the definition of Nonessential Outdoor Water Use,
- Establishing “Multi-Year Drought Storage” criteria for developing a system-specific analysis, and
- Outlining a process for developing nonessential use restrictions based on an accepted Drought Management Plan (DMP).

The definition of nonessential outdoor water use was revised to allow for the irrigation of splash pads, swimming pools, and the washing of boats and marine equipment. It also clarified that irrigation of public parks should be done before 9 AM or after 5 PM but was allowed. Irrigation of public and private recreational fields before 9 AM or after 5 PM and irrigation of publicly funded shade trees and trees in the right of way were also allowed uses.

The multi-year drought storage definition was changed from 3 times to 2 times the sum of a registrant’s authorized withdrawal and any required releases, and the provision that this amount does not require an emergency declaration or order for use was removed.

The process for developing an alternative drought management plan option was revised to clarify that applicants would have two years to submit a plan after the date of promulgation. The public water supplier will be required to update this plan in ten years, at the time of registration renewal. An outline for the required elements of a plan is included in the regulations.

Rao opened discussion to Commissioners who have questions or comments. Woods asked how many public water supplies would meet the multi-year exemption. LeVangie replied that their internal analysis indicates that MWRA, Springfield, and Winchester may be able to meet the criteria. Woods asked if any of those three have downstream release requirements. LeVangie responded that they are only aware of MWRA’s release requirements. Woods further inquired about the language of “accept” a drought plan. What does this mean? LeVangie clarified that DEP does not have to accept a plan if it does not meet the specifications in the regulations. Woods highlighted that modeling how much water you will have in your reservoir and how actions impact that can be complicated and asked will DEP be able to evaluate the assumptions used and approve them? Woods expressed concern that there is not a public process for this review and acceptance. Rao added that WRC staff are also a technical resource for this work. Woods emphasized that she would like more robustness in the public process around acceptance of these plans.

Woods asked about boat washing and expressed concern about people that are very particular about daily washing of their boats with drinking water which could amount to a lot of water. Woods asked if limits could be set. LeVangie replied that if communities are having trouble keeping up with demand, they can curtail washing with a local drought plan. Woods followed that this could cause confusion if state and local restrictions differ. Baskin replied that the state tried to carefully thread the needle by acknowledging the need for boat washing for public safety.

Hatch asked whether the change to a 2-year threshold for exemption was more, or less conservative. LeVangie clarified that it is less conservative; lowering it from 3 to 2 years could allow at least 2 more systems to potentially meet the exemption. Baskin and Rao added that requiring 2 years of storage was important because we have seen multi-year droughts.

Wijnja noted that the drought level 4 restrictions for golf courses was listed as TBD and asked what the process would be. LeVangie replied that at this level it would be a Governor's declaration of a State of Emergency so DEP did not want to assume what the restrictions would be.

Richards noted that including emergency use as part of storage may not be wise. He understands the recreation and ball fields allowances but thinks they should be on a tiered use limitation approach like golf courses. Richards would like language that addresses the impact of releases on the hatchery and the ecology of the Swift River in the MWRA drought plan. Richards concluded by stating that he does not believe a discussion and vote should be requested in the same meeting. Baskin and Rao noted they heard his concern.

Woods asked if there was any opportunity to make language changes at this point. Baskin replied that this is an up or down vote, so there is no ability to change the regulations at this point in the process. Rao followed that Richards and Woods comments are very well taken and as DEP puts out guidance and works with the water suppliers the comments we hear here will be taken into consideration. Rao further responded that the changes we heard today reflect the detailed discussion that we had at the October 2022 WRC meeting.

Cambareri stated that he had been on the WRC since 2012 and was surprised to see this meeting come up. He asked why any registrant could not submit a drought plan to meet the intent of the regulations. LeVangie responded that you must have a whole lot of storage to be eligible. Therefore, it was limited to registered-only suppliers with only surface water sources; groundwater suppliers would not have sufficient storage in times of drought. Baskin added that MassDEP is today seeking to put forth regulations that align with and are consistent with the MA Drought Management Plan, while recognizing that in some cases there may be systems with such a large amount of water that they could do something different and still be protective. Cambareri asked why no groundwater systems are eligible and Baskin replied that groundwater storage is more sensitive to the impacts of a drought and would not be able to store water like a very large reservoir. Cambareri asked whether DEP had looked at the safe yields of the Cape aquifers. Baskin replied that none of the Cape towns will be impacted by these revisions because they have Water Management Act permits. Rao responded that we did indicate previously that there may be a need for a special meeting to cover these revisions and apologized if Cambareri had not heard this.

Ragucci asked whether most of the issues raised in the comment period are reflected in the final version. LeVangie replied that they heard all comments, and the majority were addressed. Ragucci replied that it was his impression that many of the comments were addressed.

Weismantel asked everyone to reflect on the significance of what this regulation will do. While not a reason to vote against this, it will increase the cost of water during drought. It may have an impact on seniors and the poorer members of our community. Rao responded that these concerns can be addressed by having the right rate structure that anticipates revenue shortfalls and builds in resilience. Rao stated that WRC staff have been actively engaged in this topic for a while and we can continue to engage with and support the water supply community on this.

Cohen added that she has been part of a national conversation on this topic through participating on the AWWA rates and charges subcommittee. The national conversation is around developing approaches to rates and rate structures that are fair and sustainable and send the right message during drought. She hopes to learn more about minimizing negative rate impacts on vulnerable customers while improving revenue resilience during drought.

DuBois noted that this is hard for her. The first drought she experienced was in 1980 so it feels like the conversation has been going on forever. Never except for a couple of months in the spring does DEP allow Brockton to let flow go to the Jones River. The whole regulatory structure (especially watering golf courses) does not make any sense to her. She stated that we are missing the mark and need to aim at the entire ecosystem. There is a lot of waste going on and they are getting away with it because we let them, and we should not. Rao thanked DuBois for her passion and for bringing these important issues to light.

Blatt noted that the final version is quite different, and she wished there were more time to address some of the concerns raised today. She agrees with Richards that there should be tiered restrictions for outdoor recreational fields watering. She agrees with Richards, DuBois and Woods who stated that we should be valuing fish and downstream concerns more and these are not reflected here. She agrees with Woods that the term “acceptance” is weaker than “approval” and wants to see a more public process for the systems that develop their own drought management plans. Regarding how water is paid for, she thinks the affordability concerns raised are a canard. Water will not cost any more, the cost will be distributed differently. This does not need to be on the backs of poor people, and it certainly should not be. Finally, with everything we have been experiencing and know about climate change being on the rise, we should be planning for a future with more droughts. Given what we know, three years of storage is not overly conservative, and two years is not conservative enough. With all this said, we should still vote for these revisions because they are an improvement with the alternative being nothing at all, and we can work to further improve them in the future.

Dolan stated that she seconded everything Julia shared. She noted that she respected Ken’s comments around affordability, but water supply has been subsidized for years. There are plenty of opportunities to restructure how we pay, and to reduce our demand so that we are not increasing the burden on those who cannot afford it. She wholeheartedly supports getting this version passed and then working to improve it in the future.

Richards asked LeVangie when the next shot to revise these would be. LeVangie replied that the registrations are a ten-year lifetime. They will expire this April 2023 and will be good to April 2033. Rao added that is not the next time that the WMA regulations could be updated; they can be updated again at any time. LeVangie agreed and noted that the last time the WMA regulations were revised was 2014, so it has been over 8 years.

Pederson echoed concerns around the timing. She said that it is not good government to send this out with substantive revisions and such limited time to review. She asked that the vote be delayed to January 12. She would like to see DEP’s response to comments. She is surprised that as a member of the WMA Advisory Committee she did not see these revisions sooner and would like time to review the comments that are posted at the website. If we do intend to take a vote today it should be a no vote. These revisions will not level the playing field with water restrictions across the state and are not responsive. The major concern is that the process to qualify for a local drought management plan should be open to all public water systems and not just surface water systems. There are groundwater systems that feel they have adequate

storage and should be allowed to develop their own drought plan for acceptance by DEP. Pederson stated that all systems should be allowed this opportunity to present their case to DEP.

Rao replied that Pederson’s point about limited time was noted but she hoped that Duane’s detailed summary of the limited changes was sufficient to address concerns. Rao felt comfortable bringing this package to the WRC because it reflects the work of the WRC. Rao asked for a motion to approve this regulation package, stating that the package is a positive step forward and a commonsense approach to responding to drought. We have been experiencing more drought than ever and it is not going away. We need to be prepared and mindful of the impacts on water supply, infrastructure, and fire danger. Fire danger and the inability to safely respond to it is a major concern. The approach DEP has taken through these regulations by accommodating a lot of the comments takes us in the right direction with more preparation as we see more extreme heat events and flash droughts. For Rao it is a no-brainer that this is taking us in the right direction even if it may not be everything we want.

Hatch asked a clarifying question- is this an up or down vote or is there an opportunity to wait for a vote on January 12 and make changes. Baskin replied that this is an up or down vote. DEP values the input they have received from the WRC. They will be able to consider today’s feedback in the local drought plan process moving forward. Between all DEP staff, they did read every comment and carefully considered them. These regulations are striking the right balance and are protective and responsive to drought, and she hopes that the Commission will support them.

Rao invited a motion to approve the Water Management Act Regulations.

V O T E	A motion was made by Samantha Woods with a second by Vincent Ragucci to approve the Water Management Act Regulations (310 CMR 36.00) Revisions, 2023. The roll call vote to approve was 10 for and 1 (Tom Cambareri) against.
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Rao acknowledged everyone’s critical thinking on this and great comments which really helped DEP shape this package. Baskin seconded the thanks.

V O T E	A motion was made by Ken Weismantel with a second by Linda Balzotti to adjourn the meeting.  The roll-call vote to approve was unanimous of those present.
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Meeting adjourned, 3:42 p.m.

**Documents or Exhibits Used at Meeting:**

1. Summary of the final Water Management Act (310 CMR 36.00) regulation package
2. Final version of regulations with all changes
3. Redline version of all changes from the current 2014 regulations
4. Redline version of all changes made after the October/November 2022 public comment period

*Compiled by: (AC)*

*Agendas, minutes, and other documents are available on the web site of the Water Resources Commission at <https://www.mass.gov/water-resources-commission-meetings>. All other meeting documents are available by request to WRC staff at 251 Causeway Street, 8<sup>th</sup> floor, Boston, MA 02114.*