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November 14, 2022

MEPA Office

Attn: Tori Kim

100 Cambridge Street, 10th fl.

Boston, MA 02114

RE: Proposed Revisions to MEPA Regulations - 301 CMR 11.00

Dear Ms. Kim:

Massachusetts Water Works Association (MWWA) is a non-profit organization of 1,400 water supply professionals across the Commonwealth. MWWA appreciated the opportunity to participate in the Massachusetts Environmental Policy Act (MEPA) Office's "Phase 2" regulatory review effort. Public Water Systems in Massachusetts are facing a backlog of infrastructure improvement work. MWWA feels it is important to streamline the MEPA process for critical water infrastructure projects, as well as water supply development projects, and we support efforts that achieve that objective. We do have a few concerns about some of the subjectivity written into the proposed regulation revisions and therefore we wish to highlight the following for MEPA's consideration.

Specifically in the revised definitions, we note MEPA believes that the *"proposed amendments add flexibility to these definitions to allow for case-by-case determinations as to whether a project would qualify for these exemptions from MEPA review"* but that flexibility can also lend itself to subjectivity based on the reviewer. With that in mind, we ask MEPA to revisit the following sections to be sure that the discretion allowed will not introduce so much subjectivity, that it creates unintended hurdles for project proponents.

1. 301 CMR 11.02: "Replacement Project"

Regarding the definition of *"Replacement Project,"* we are uncertain how *"materially"* will be judged? Who will be making this decision

about whether the project trips the material threshold and what criteria will be used to make the decision?

2. 301 CMR 11.02: “Routine Maintenance”

Regarding the definition of “*Routine Maintenance*,” will the new language added “*using primarily the same methods*” mean that water suppliers will have to have even minor changes in methods (for instance, advancements in well cleaning technologies) reviewed before they are allowed to proceed? And when noted “*approved by regulatory agencies*”, which regulatory agencies will be giving such approvals? Does this mean that the Massachusetts Department of Environmental Protection must provide that approval or is it MEPA?

3. 301 CMR 11.03: Review Thresholds (1) Land (b) (3) Disposition or change in use of land or an interest in land subject to Article 97 of the Amendments to the Constitution of the Commonwealth, unless the Secretary issues a written determination that the disposition or change in use is de minimis such that it is unlikely to cause Damage to the Environment and (5) Release of an interest in land held for conservation, preservation or agricultural or watershed preservation purposes, unless the Secretary issues a written determination that the release is de minimis such that it is unlikely to cause Damage to the Environment

We are concerned that the discretion given to the Secretary might make it more difficult for a Public Water System and/or Municipality to convert a conservation property to water supply use depending on the Secretary’s view point about what constitutes “*Damage to the Environment*”. Will there be a new process and filing to determine if a project will cause “*Damage to the Environment?*” We are unclear if appeal procedures are in place if it is necessary for a Public Water System or Municipality to challenge the Secretary’s decision?

We appreciate the opportunity to comment and would be happy to discuss any of our concerns in more detail before you finalize the regulations.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jennifer A. Pederson". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer A. Pederson
Executive Director