



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

Meeting Minutes for August 9, 2018

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

Minutes approved October 11, 2018

Members in Attendance:

Vandana Rao	Director of Water Policy, Executive Office of Energy and Environmental Affairs (EEA)
Linda Balzotti	Designee, Department of Housing and Community Development (DHCD)
Anne Carroll	Designee, Department of Conservation and Recreation (DCR)
Doug Fine	Designee, Department of Environmental Protection (MassDEP)
Michelle Craddock	Designee, Department of Fish and Game (DFG)
Todd Callaghan	Designee, Massachusetts Office of Coastal Zone Management (CZM)
Tom Cambareri	Public Member
Vincent Ragucci	Public Member
Kenneth Weismantel	Public Member

Members Absent:

Hotze Wijnja	Designee, Department of Agricultural Resources (DAR)
Marcela Molina	Public Member

Others in Attendance:

Erin Graham	DCR
Marilyn McCrory	DCR
Gabby Queenan	Massachusetts Rivers Alliance
Joy Duperault	DCR
Viki Zoltay	DCR
Michele Drury	DCR
Emily Myron	The Nature Conservancy
Liz Walk	Office of Rep. Carolyn Dykema
Jennifer Sulla	EEA
Jen Pederson	Massachusetts Water Works Association
Sara Cohen	DCR
Gerald Clarke	Town of Dover, BOH Chair
John Scannell	DCR

Rao called the meeting to order at 1:04 p.m.

Agenda Item #1: Executive Director's Report

Rao stated that we are in the clear on the drought. We were getting into a dry period and were beginning to get concerned but have emerged from it and we will hear more during the hydrologic conditions report.

Rao reported that DEP has been working in the Cape Region for several years on nutrient issues, mostly nitrogen related. Since the 208 plan was released DEP and Cape communities have been

looking at alternatives to addressing these nutrient issues. Sewering is one option but very expensive. The communities were interested in looking at other non-traditional alternatives. DEP has been looking at how to permit smaller alternative wastewater treatment projects in an adaptive and flexible manner. They have been developing a watershed permitting approach in Pleasant Bay. The permit is a 20 year permit which allows the flexibility to adapt within the permit period if a chosen approach doesn't work.

Fine concurred with Rao's summary and added that the permit provides the opportunity for a variety of non-traditional alternatives, it has monitoring built in to allow evaluation, and it is enforceable. He noted there is not much like this approach in the country, so it is being watched by others, particularly NY and CT for Long Island Sound. Because it is a watershed permit it can cross multiple communities.

Cambareri stated that this is very innovative permitting which allows the towns to still come up with their own plans but also allows them to collaborate across communities on a single permit and to access SRF loans. Fine added that they can access zero interest SRF loans, and that the type of alternative technologies eligible includes package treatment, shellfish for bioextraction and permeable reactive barriers. Weismantel asked for a copy of the permit and Fine said he could provide a link for Rao to distribute. Rao is working on a guidance document as a compendium to this program to help communities understand how to undertake this process and what the requirements are. It will provide a step by step guide and a clear picture of what DEP is looking for. Fine stated that all of Cape Cod is eligible to adopt this approach. Pederson asked if EPA is issuing the permit. Fine responded that this is a DEP permit but they are working with EPA, and EPA approved the 208 Plan which initiated this effort.

Agenda Item #2: Hydrologic Conditions and Drought Update

Zoltay provided an update on the hydrologic conditions for July 2018. She reported that last month conditions were pretty dry but rains in the second half of July eased conditions. Precipitation was at or above average in all regions except for the Southeast and Cape and Islands regions which received less than July average but still remained normal for both indices. Streamflows were below normal for the first half of the month, and have remained normal or above normal following mid-month rain storms. The Central and Connecticut River regions experienced flows above the 90th percentile, while the Southeast had one gage below normal. For groundwater, 8 wells were below normal, with 1 in the Southeast below the 10th percentile. Conversely, 11 wells including 5 in the CT River Valley and 3 in the Cape and Islands region were above the 90th percentile. All reservoirs remain normal. The U.S. Drought Monitor shows the Southeast and Cape and Islands regions as Abnormally Dry. The NOAA forecast predicts above normal temperature and equal chances of below normal, normal or above normal precipitation for August, and over the three month outlook there is no drought expected.

Agenda Item #3: Presentation on the Interbasin Transfer Act Process "Refresher"

Rao introduced the presentation reminding everyone that we just went through a very lengthy and robust process to update our regulations which were approved by the Commission 8 months ago. With the Ashland Interbasin Transfer application before us we wanted to go through the main highlights for review and to make sure everyone has the same level of understanding.

Drury stated that we have a fairly new Commission and haven't had a full ITA review since 2007. The Act and Regulations have specific criteria for evaluation: the Act has 5 criteria and the

original Regulations added 2 more (one of which was rescinded in the recent regulation update). Any application must meet these criteria or show they are in the process of meeting them to be approved. If they are in the process of meeting the criteria the Commission can condition the approval to ensure that the criterion is met before any water is transferred. Drury then introduced the criteria and explained how each is evaluated.

(<https://www.mass.gov/files/documents/2018/08/17/interbasi-transfer-act-refresher-full%20review.pdf>)

Criterion 1: Completion of MEPA

The following 3 criteria are specific to the Receiving Basin

Criterion 2: They must show that they have investigated and developed any viable local sources.

Criterion 3: Water Conservation. They must show that they have installed all practical water conservation measures. If an applicant has not fully addressed this Criterion, but is in the process of addressing, the Commission can condition the approval to require that the Criterion has been met, before allowing the transfer to occur. We use the Massachusetts Water Conservation Standards as well as the Interbasin Transfer Performance Standards, which are in the process of being updated.

Criterion 4: This criterion is not used that often. If an applicant has surface water sources they must have a forestry management plan to increase yield to reservoirs. The Commission takes a step further and requires that the plan must balance environmental needs, water enhancing needs and natural beauty of the watershed. These additional requirements help provide balance to a plan and prevent options such as clearcutting which could increase yield but would not protect the environment or natural beauty.

The following 3 criteria are specific to the Donor Basin

Criterion 5: Must leave a reasonable instream flow in the donor basin. Some prior approvals have been conditioned to include shut off thresholds to ensure reasonable instream flow. Mansfield and Foxborough are examples.

Criterion 6: For groundwater transfers. The applicant must provide a good pumping test report. Current practice has been to work with DEP to get all needed information from the pumping tests. The revised Regulations also outline all the information needed to evaluate impacts of groundwater transfers.

Criterion 7: The Commission must look at cumulative impacts of transfers including all past, present and known future transfers.

Callahan asked a question about viability. A water source may be viable for water supply but may harm a species. Would this be considered viable and who makes the determination? Drury responded that environmental impacts are part of the evaluation of viability and we advise applicants to look at the reasonable instream flow criteria, which does include impacts to species. We will not make them develop a local source that impacts a resource. Also, we work closely with DEP and rely heavily on their opinion. If DEP won't permit a source because of impacts to a species under new source approval, then we will not accept it. The Commission also considers economic viability, and there is guidance in our performance standards to help applicants evaluate economic viability.

Callahan asked what a pump test is. Drury and Fine responded that a pump test is conducted to figure how much yield can be obtained by a well and what the nearby hydrologic impacts are in terms of drawdown. DEP also looks at water quality as part of the pump test.

Drury then summarized the process, including timelines, hearing requirements and scopes. The timelines are regulated deadlines that must be met.

Weismantel asked about hearing times and locations for Ashland. Drury responded that the details were included in the Commission's packet and Weismantel then acknowledged that he saw them there.

A hearing on the staff recommendation is not required in the Act or the Regulations but was added by the Commission as a policy to allow more opportunity for public comment on the staff recommendation. The only way the deadlines can be extended is by agreement of all parties.

Once the Commission makes a decision we have 30 days to file it with the Secretary of State for publication in the MA Register. It must also be noticed in the Environmental Monitor and the decision is sent to the proponents and affected communities.

Pederson asked whether the economic guidance piece for viable sources exists. Drury replied that there is guidance in the performance standards and we will be reviewing it soon to see if it needs to be updated.

Fine asked what the relationship is between the Secretary's MEPA Certificate and our process. Drury replied that we use the EIR as our application so it should include all the information we need. Sometimes the Certificate indicates that additional information is needed. If additional information is needed it can be provided during our process and once received the Commission can accept the application as complete to start the time clock for review.

Weismantel asked if it matters in the donor basin whether the water is registered or permitted. Drury replied that it does not matter for the ITA process. The ITA predates the Water Management Act.

Agenda Item #4: Discussion of Staff Duties

Rao introduced the discussion on duties of the staff and what would constitute a duty. Commissioner Weismantel has brought up staff duties several times in the past and requested clarification around delegation of duties to staff. We have looked into the background and history of the relationship between the staff and the Commission and will walk the Commission through where and how staff have been given authority to conduct work on behalf of the Commission.

The WRC was established through the Acts of 1956, Chapter 620 Section 11, which states that the Commission may employ and utilize the services of technical and clerical employees of the Commonwealth. The Act casts a broad net to include all Commonwealth employees within the Environmental Secretariat or any other state agency that may be pertinent. That broad authority was clearly established in the 1950s. Over time the Commission duties have been trimmed down and moved to other agencies, but certain key functions have been maintained with the staff, now housed at DCR within the Office of Water Resources (OWR). OWR is still tasked among its

many duties to act as staff to the Commission, and this is one of their primary responsibilities. The Commission reaffirmed this relationship in 1989 when, at a regularly scheduled meeting they recognized and acknowledged the assistance of then DEM now DCR in supporting the work of the Commission and recommended the relationship continue. This nexus has been established in statute over the years as well as being reaffirmed and confirmed by the Commission at its own meetings. The critical value and expertise that OWR provides has been the backbone of the Commission's work.

One of the issues Commissioner Weismantel was most concerned about was the role of staff at public hearings. Hearings are purely to gather information from any member of the public. No deliberations occur and no decision of the Commission is made at public hearings. Since the enactment of the Interbasin Transfer Act, the Commission has held about 60 public hearings, all conducted by staff. On several occasions Commissioners have attended. The meetings are open to all but there is no requirement that Commissioners attend as no decision is required. Based on the review just described, we have concluded that we are on solid ground regarding the role of the staff and relationship with the Commission wherein duties to the staff are clearly delegated. There is precedent in statute, but additionally, changes were made in the recent revisions to the ITA Regulations by adding to our definition of the Commission. The phrase "or WRC staff as appropriate" was added to make sure it is very clear that staff are entrusted with this responsibility.

Rao went on to state that we also did our own legal review on this issue and asked EEA Counsel, Jennifer Sulla, to report the findings. Sulla reported that the legal perspective mirrors what has been done historically. The original statute that created the Commission sets forth that the WRC can rely on the various Commonwealth agencies for technical and clerical support. Additionally, this has been affirmed at WRC meetings over the years. Most currently we intentionally changed the definition of Commission to include staff as appropriate to take into account this relationship. Original question that led to this discussion was whether a quorum of the Commission needs to be present at public hearings on the ITA. The regulations are specific in their definition of a Decision. A Decision needs to happen at a Commission meeting by roll call vote with a quorum of Commissioners present. At a public hearing, the Commission does not take any action, so in particular it does not make any Decisions. Commission members are welcome to attend public hearings but no quorum is required and there is no roll call vote. In conclusion, the law and what has been done historically match.

Weismantel requested that the Commission find today that it is appropriate that we continue to find that our existing procedures that staff conduct public hearings on behalf of the Commission. Drury noted that we could not take a formal vote because it was not noted on the agenda, but we could get a sense of the Commission. Sulla noted that the whole discussion will be reflected in the minutes which will memorialize it. Cambareri thanked Weismantel for bringing the issue up and stated that he agreed the approach was appropriate. Rao noted that this review helped us go back in history and was also helpful for newer Commission members who may not have the benefit of the history.

Agenda Item #5: Presentation on Natural Hazards, Climate Change and DCR

Rao introduced Joy Duperault, Director of the DCR Flood Hazard Management Program. MA has been very actively engaged on climate change and adaption, and is currently undergoing a process of developing a State Hazard Mitigation Plan that also has Climate Adaptation as part of its approach to hazard mitigation. It is a combined plan that is a first in the nation. It came out of an Executive Order which among other things tasked each agency with looking at their vulnerability to climate change and how they can adapt. Joy's presentation today will address the DCR perspective on climate change.

Duperault started by summarizing the process of how the executive order and state plan requirements were combined into one plan and she provided the working definition of climate change. She went on to describe climate drivers, including natural hazards and what their impacts could be. She briefly discussed the ways that climate change is being measured. She reviewed how several of the natural hazards such as inland flooding are being impacted by climate change. Duperault then focused on DCR's approach to identifying and ranking vulnerability to hazards, setting goals and objectives to minimize vulnerability and developing strategies to address each. She described DCR's agency assessment and survey process including survey elements and results, and future DCR steps and actions. Duperault ended by providing links to resources and data.

Cohen asked how the process just described for DCR fit into the larger process. Duperault replied that each agency had to conduct their process and produce a report. These will all be included in the overall plan but they vary greatly in level of detail due to varying size and complexity of each agency. Rao asked for some examples of DCR strategies. Duperault replied that one example is to incorporate future conditions into design plans, such as plans for the Amelia Earhart Dam. Another example is to develop a new communications tool with the public regarding climate change. Callahan asked what design number was used for future conditions. Duperault replied that generally the plan used the median projections for sea level rise with a planning horizon to 2070. Every agency has to select specific design trends based on economic considerations, life of the project, etc. Callahan stated that communities within the state are choosing different numbers for design. Duperault suggested that may be due to lifespan of the project or other site specific details.

Meeting adjourned, 2:32 p.m.

Documents or Exhibits Used at Meeting:

1. Public Hearing Notice: Ashland Interbasin Transfer Request
2. Interbasin Transfer Act project status report, 25 July 2018
3. July 2018 Hydrologic Conditions in Massachusetts

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, 8th floor, Boston, MA 02114.