



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

Meeting Minutes for December 11, 2014

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

Minutes approved February 12, 2015

Members in Attendance:

Kathleen Baskin	Designee, Executive Office of Energy and Environmental Affairs (EEA)
Marilyn Contreas	Designee, Department of Housing and Community Development (DHCD)
Jonathan Yeo	Designee, Department of Conservation and Recreation (DCR)
Bethany Card	Designee, Department of Environmental Protection (MassDEP)
Catherine deRonde	Designee, Department of Agricultural Resources (DAR)
Tim Purinton	Designee, Department of Fish and Game (DFG)
Thomas Cambareri	Public Member
Bob Zimmerman	Public Member

Members Absent

Todd Callaghan	Designee, Massachusetts Office of Coastal Zone Management (CZM)
Raymond Jack	Public Member
John Lebeaux	Public Member
Paul Matthews	Public Member

Others in Attendance:

Marilyn McCrory	DCR
Bruce Hansen	DCR
Michele Drury	DCR
Linda Hutchins	DCR
Jen Pederson	Massachusetts Water Works Association
Pam Heidell	Massachusetts Water Resources Authority
Sara Cohen	DCR
Laila Parker	DFG/Div. of Ecological Restoration
Kristin Divris	MassDEP
Margaret Van Deusen	Charles River Watershed Association
Peter Weiskel	U.S. Geological Survey
Vandana Rao	EEA
Duane LeVangie	MassDEP
Becky Weidman	MassDEP
Anne Carroll	DCR

Baskin called the meeting to order at 1:05 p.m.

Agenda Item #1: Executive Director's Report

Hansen provided an update on the hydrologic conditions for November 2014. Rainfall for the month was 4.8 inches, statewide (120% of normal). There was some variation across the state, with below-normal values in the Connecticut Valley and western region. Groundwater levels

are generally in the normal range statewide. Some streamflows rose to above normal in early December and remain there. Some have had minor flooding. Reservoirs were generally normal in early December, with some a little above normal. Drought indices indicate normal conditions and no drought likely to develop through February.

Baskin said that recent conditions are above or at normal for all of the indices in the Drought Management Plan. Therefore, the Drought Management Task Force has recommended to the Secretary of EEA that the Drought Advisory be lifted as of December 1. The Drought Advisory for the southeastern region and Cape Cod and the Islands was therefore in effect from October 1 to November 30, 2014.

Weidman introduced Kristen Divris, the new climate-change circuit rider for DEP's Bureau of Resource Protection. She added that DEP welcomes input on this new program. The focus will be on providing assistance to drinking water and wastewater facilities statewide with adaptation to climate change. Baskin noted that the job posting for state climatologist, to be housed at the University of Massachusetts Amherst, is being advertized widely.

In response to a previous request from Contreas, Card provided an update on reporting requirements for communities under the updated Water Management Act regulations. Card explained that DEP is required to prepare a report to the Legislature by 2017 on the impact to communities of the costs of complying with the updated regulations. DEP intends to first identify information that already exists in various DEP programs and then work with permittees to fill in the gaps. DEP will also consult with the WMA Advisory Committee. Contreas commended DEP for looking at available information and asked that DEP keep communities and water suppliers informed, in a timely manner, of the types of information they will need to provide.

Zimmerman arrives.

Cambareri noted that the Cape Cod Commission has been measuring monitoring wells monthly on Cape Cod and thanked USGS for a new real-time ground water monitoring station in Truro. Cambareri added that the comment period on Cape Cod's 208 plan closed November 20th, and the Cape Cod Commission is now revising the report. It has scheduled an environmental summit for the end of February.

Agenda Item #2: Vote on the Minutes of 2014

Baskin invited motions to approve the meeting minutes for October 21, 2014.

V	A motion was made by Cambareri with a second by Card to approve the meeting minutes for October 21, 2014. The vote to approve was unanimous of those present.
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Agenda Item #3: Vote: Interim Policy on Insignificance under the Interbasin Transfer Act

Baskin introduced Michele Drury of the Department of Conservation and Recreation and called attention to a summary of the policy. Drury provided background on the procedures for

determining insignificance under the Interbasin Transfer Act (ITA) and explained why an interim policy is needed.

Drury explained that a Determination of Insignificance for transfers under 1 mgd is not an “automatic pass” for applicants. Rather, the Water Resources must make a formal determination based on environmental criteria. She explained that the current ITA regulations address every transfer as if it were a direct transfer from a river, whereas most transfers do not fit this scenario. A tool is needed to address interbasin transfers from lakes and ponds. Ideally, the policy would be promulgated through regulations, but, since the process of revising the ITA regulations will take some time, an interim policy is needed.

Drury noted that the proposed surface water criteria have been discussed at previous WRC meetings (see minutes of the March, April, May, and November 2014 WRC meetings at www.mass.gov/eea/wrc). She outlined the new criteria for surface waters, explaining that reservoirs are currently subject to streamflow criteria, which are difficult to apply and do not reflect a system’s capacity. The new criteria propose that transfers must be less than five percent of the drought year inflow and less than one percent of the annual rainfall on the drainage area; these two criteria best reflect the ecological capacity of the donor system. Where appropriate and possible, a third criterion, flow augmentation and/or protection measures, will be considered.

Drury noted that the proposed criteria were developed by an interagency work group. Hutchins added that a significant modeling effort is currently required for very small transfers near reservoirs and that some applicants have no opportunity for mitigation. She explained that the interagency work group reviewed the statistics and tools available and concluded that the proposed criteria for insignificance represent very conservative numbers. She added that the current criteria make no sense in cases where a dam is present.

Drury noted that the new criteria for insignificance were tested on thirty-five water supply reservoir systems and four groundwater withdrawals near impoundments, and were applied to five previously reviewed projects that could not meet the existing criteria for insignificance. Of the latter five, one would have met the new criteria. She noted that the policy is therefore protective of the resources and in the spirit of the Interbasin Transfer Act.

Drury recommended a vote on in the interim policy. She added that the policy will be incorporated into the revised ITA regulations, which would supersede the policy. She noted that precedent exists for the Commission to address situations that are covered by the Act but are not specifically addressed in the regulations. As an example, she noted that the Commission had previously interpreted the regulations to apply to wastewater transfers.

Comments, questions, and responses:

- Zimmerman: what problem is being addressed by the proposed interim policy? Drury responded that the policy addresses interbasin transfers that directly impact lakes or impoundments. Baskin explained that, currently applicants withdrawing from impoundments must create downstream streamflow in order to ensure that their conditions can be compared against the existing criterion.

- Purinton: Is the water body included in the drainage area calculation? Hutchins stated that it is and also clarified the definition of inflow.
- Cambareri commented that the policy seems a reasonable way forward in that it addresses low-tier transfers that require significant time by both the applicants and staff. Drury added that projects that do not meet the proposed criteria would be subject to a full interbasin transfer review.
- Van Deusen called attention to the comment letter from the Charles River Watershed Association and objected to adopting de facto regulations. She also requested that “transfer” in the first bullet (“That the cumulative annual amount of the transfer...”) be made plural by adding an “s.” Baskin agreed with this addition, noting the intent was to reflect the cumulative amount of all transfers.

Baskin invited a motion to approve the interim policy, with the correction requested by Van Deusen. A motion was made by Cambareri with a second by Purinton. Discussion continued on the motion:

- Purinton: Does the Commission have the authority to impose conditions on findings of insignificance? Baskin: no, but the applicant can propose conditions that will help the commission determine that a project meets the criteria for insignificance. Drury cited past projects in Groton and Cohasset as examples, noting that such conditions were then included in a DEP-issued Water Management Act permit.
- Van Deusen: is this authority spelled out in the Act or in the regulations? Drury: if the commission finds a project to be insignificant, then the project is not subject to the Act. Baskin added that such determinations are not made lightly.
- In response to a question from Weiskel, Hutchins clarified that the annualized Q90 criterion (transfer must be less than five percent of the drought-year inflow) was developed as part of the safe yield evaluation and is similar to the drought of 1965 in Massachusetts. Baskin suggested adding a technical footnote to the policy.

Baskin invited a vote on the motion.

V	A motion was made by Cambareri with a second by Purinton to adopt the Interim Policy on Insignificance outlined in the staff memo dated December 11, 2014, as amended.
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Agenda Item #4: Vote: Water Resources Commission Annual Report, FY2014

Baskin noted that a draft of the Commission’s Annual Report for Fiscal Year 2014 had been discussed at the previous meeting. She introduced Anne Carroll of DCR.

Carroll highlighted changes that had been made to the draft since the last meeting. She noted that the draft had received all needed internal approvals. She invited comments on the draft and suggestions for next year’s report.

Baskin noted that the purpose of the report is to highlight accomplishments of the commission and to educate the public and Secretary of the Commonwealth about the Commission’s activities. She added that the commission is legally obligated to submit an annual report to the Secretary of the Commonwealth.

Pederson commented on some of the new graphics and thought that quotations from one of the stakeholders could be “polarizing.” She also thought that format revisions made the report harder to read. Baskin offered to replace a figure with a quotation from MWWA. Pederson declined. Discussion of the graphics and stakeholder comments ensued. Zimmerman and Purinton expressed support for the report as presented.

V	A motion was made by Purinton with a second by Zimmerman to approve the Water Resources Commission Annual Report for Fiscal Year 2014 as drafted.
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The vote to approve was unanimous of those present.	

Agenda Item #5: Presentation: Revisions to Interbasin Transfer Act Regulations (313 CMR 4.00)

Baskin highlighted the relevant documents distributed, noting that a vote by the commission on the redline version of the Interbasin Transfer Act regulations would be sought at the January 2015 meeting. She explained that the regulations are undergoing the final stages of review internally and would receive additional review by the new administration. She encouraged all to read the statute as well. Baskin introduced Michele Drury of DCR.

Drury briefly summarized the Interbasin Transfer Act, noting that the Act looks at two important considerations: protection of the environment in the donor basin and efficient use of resources in, and any water transferred to, the receiving area. She noted that proposed changes to the regulations have been in the works for many years and are intended to fill in gaps in the regulations and incorporate the latest scientific information. An interagency work group was convened to draft the changes.

She provided an overview of major changes proposed:

- The processes for a Determination of Applicability and a Determination of Insignificance are separated, and the procedures, information required, and evaluation criteria for each are specified. This change incorporates language previously approved by the Water Resources Commission in 2001.
- The current regulations treat every transfer as if it were a direct withdrawal from a river. Proposed revisions to sections related to insignificance determinations provide criteria better suited to evaluating other types of transfers, including wastewater transfers, groundwater transfers, and transfers from a lake or reservoir. Drury outlined new application requirements and criteria for determining insignificance for each of these types of transfers.
- An option is added to streamline the process for a finding of insignificance for transfers less than or equal to 10,000 gallons per day; if the information provided is not sufficient for such a finding, full review would be required.
- A new streamlined approval process is provided for regional water supplies; this change eliminates duplicate future applications for the same donor basin source. Cumulative impacts will be evaluated all at once. Conditions in the donor basin would be reviewed after ten years, and the approval for any unallocated water would expire after twenty years. This process would apply to any system with more than two customers.
- The requirement for a local water resources management plan would be eliminated; such plans are redundant with other information submitted and other planning efforts;

language has been added to address concerns previously expressed about eliminating this requirement.

- Analyses and other requirements for wastewater transfers are specified; the proposed changes incorporate guidance adopted in 1987.
- The South Coastal basin is split into two basins, and the Boston Harbor Basin is split into three basins. This results in the delineation of three additional basins for a total of 31 basins.

Comments, questions, and responses:

Purinton expressed a need for flexibility in the language for very small transfers; this would be similar to amended language in the Wetlands Protection Act. Such flexibility may be needed when a transfer is proposed to help restore a receiving basin. Drury explained that the Interbasin Transfer Act focuses on protecting the resources of the donor basin. For very small transfers that will benefit a receiving area, a path for approval may be found through offsets.

There was considerable discussion of the regional water supply approval process. Van Deusen expressed concern that the twenty-year time period for approvals is too long and does not take into consideration climate change. Drury and Baskin explained that twenty years was selected recognizing the time needed for capital planning and permitting of such projects; annual reports and the ten-year check-in would allow for reconsideration if conditions in the donor basin change. Van Deusen also expressed concern about whether the regulations would provide the Commission with sufficient authority to change previously approved transfers and to revisit approvals should conditions change between the ten- and twenty-year marks. Carroll and Drury noted that annual reports are required and reviewed, and decisions are written in a way that allows the Commission to modify approvals if necessary. Baskin added that there is potential for the regional, reservoir-driven suppliers to assist in addressing climate-change impacts.

In response to a question from Van Deusen, Baskin offered to confirm whether the Water Management Act regulations require a local water resources management plan.

There was considerable discussion of the proposed basin redelineations.

- Cambareri suggested that the major groundwater lenses of the Cape Cod Basin also be delineated. Weiskel concurred that the lenses on Cape Cod are somewhat autonomous, and changing patterns of withdrawal and wastewater discharge could have greater impacts because of sea level rise and potential changes in the saltwater/freshwater interface.
- Purinton asked why the North Coastal basin was not also split.
- Pederson expressed concern about how newly delineated basins would affect Water Management Act permitting – specifically, implications for establishing baselines for permits in the newly delineated basins; she also requested clarification on language in Section 4.09(3) referencing compliance with the Massachusetts Water Conservation Standards.
- Heidell requested clarification on how grandfathered Water Management Act registrations might be affected.

Responses by Baskin, Drury, LeVangie and others acknowledged or addressed these concerns.

- The South Coastal and Boston Harbor basins represented more obvious cases for redelineation.
- DEP will allocate permitted withdrawal volumes to the newly delineated basins and will work with WMA permit holders to develop appropriate baselines.
- Capacities are grandfathered; with basin redelineation, DEP would allocate volumes to the appropriate basin.
- The Interbasin Transfer Act is triggered if capacity is increased and the transfer crosses both a basin line and town boundary; exemptions listed in Section 4.05 of the regulations outline activities that are not considered an increase in the present rate of interbasin transfer.
- The Interbasin Transfer Act sets a higher bar for conservation; performance standards and guidance help applicants know what is expected and how they will be evaluated.
- Staff work very closely with applicants to guide them through the process and understand what is necessary for compliance.

Purinton asked if any provisions would allow the commission to revisit an interbasin transfer decision, should errors or omissions be discovered. Drury explained that interbasin transfer applications go through a rigorous review process, including submittal of an Environmental Impact Report through MEPA. Baskin added that if the Commission has technical concerns, language in ITA decisions allows the Commission to make adjustments. Purinton suggested such language or standard conditions be written into the regulations.

Pederson requested clarification on the timeline for revisions to the regulations. Baskin outlined the process and timeline: a vote by the commission to move the regulations to the next step would be requested in January. Following review by the new administration and approval to proceed to public comment, a full public comment period would follow. The regulations would then be brought to the Commission again for review and comment, followed by a vote. Baskin invited comments on the redline version of the regulations within the next week.

Meeting adjourned, 3:00 p.m.

Documents or Exhibits Used at Meeting:

1. WRC Meeting Minutes for October 21, 2014
2. Interim Policy on Insignificance under the Interbasin Transfer Act
3. Water Resources Commission Annual Report, FY2014
4. Revisions to Interbasin Transfer Act Regulations (313 CMR 4.00)
 - a. Interbasin Transfer Act Regulations (313 CMR 4.00) – Summary of changes
 - b. Interbasin Transfer Act Regulations (313 CMR 4.00) – redline version
 - c. Interbasin Transfer Act Regulations (313 CMR 4.00) – clean version
5. Correspondence dated November 21, 2014, from Water Resources Commission to Richard J. Friberg, Jr., regarding the applicability of the Interbasin Transfer Act to a project in Plainville
6. 2015 Meeting Schedule, Water Resources Commission
7. Interbasin Transfer Act project status report, November 24, 2014

8. Presentation by Michele Drury: Interbasin Transfer Act Proposed Major Changes to 313 CMR 4.00
9. Presentation by Michele Drury: Interbasin Transfer Act, Interim Policy on Insignificance.
10. Comment Letter dated December 9, 2014, from Charles River Watershed Association to Water Resources Commission on Draft Interim Policy on Insignificance as Applied to Transfers Primarily Derived from Lakes, Ponds, Reservoirs or Other Impoundments
11. General Laws of Massachusetts. Interbasin Transfer Act. Chapter 21 Section 8B–8D.

Agendas, minutes, and meeting documents are available of the web site of the Water Resources Commission at www.mass.gov/eea/wrc under “MA Water Resources Commission Meetings.”