



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

Meeting Minutes for November 13, 2014

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

Minutes approved November 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)
Todd Callaghan	Designee, Massachusetts Office of Coastal Zone Management (CZM)
Raymond Jack	Public Member
Bob Zimmerman	Public Member

Members Absent

Thomas Cambareri	Public Member
John Lebeaux	Public Member
Paul Matthews	Public Member

Others in Attendance:

Marilyn McCrory	DCR
Linda Hutchins	DCR
Jen Pederson	Massachusetts Water Works Association
Bruce Hansen	DCR
Dan Huber	Consultant
Duane LeVangie	MassDEP
Pam Heidell	Massachusetts Water Resources Authority
Veronique Vicard	Citizen
Julia Blatt	Massachusetts Rivers Alliance
Vandana Rao	EEA
Laila Parker	DFG
Sara Cohen	DCR
Andreae Downs	Wastewater Advisory Committee
Lexi Dewey	Water Supply Citizens Advisory Committee
Anne Carroll	DCR
Erin Graham	DCR
Rebecca Weidman	MassDEP
Michele Drury	DCR

Baskin called the meeting to order at 1:00 p.m.

Agenda Item #1: Executive Director's Report

Baskin made the following announcements:

- The Cape Cod Commission is seeking comments on the Section 208 Water Quality Management Plan Update.
- The November meeting of the Drought Management Task Force has been cancelled, and the drought declaration for southeast Massachusetts and Cape Cod remains in effect until further notice.
- The Water Management Act regulations were promulgated on November 7.

DeRonde arrives.

Hansen provided an update on the hydrologic conditions for October 2014. After two months of below-normal rainfall, statewide rainfall in October was 158% of the long-term average for the month. Groundwater levels were generally normal, with a few scattered wells below average. Surface water flows were normal, with a scattering of gages showing above-normal streamflows. Reservoir levels were in the normal range, with a few below normal, including one large reservoir. The Drought Monitor showed some improvement, with abnormally dry conditions in parts of the south central, southeast, and Boston metropolitan areas of the state. The Standardized Precipitation Index is in the normal range. The Drought Outlook forecasts no drought conditions through January. Regarding the drought advisory, Hutchins added that groundwater levels must return to the normal range, and long-term precipitation must be above normal.

Baskin announced that Dave Taylor, long-time state climatologist, had passed away, and his contributions will be missed. Hutchins added that the governor had awarded a citation to Mr. Taylor before his passing, as well as to Robert Lautzenheiser, another long-time state climatologist. Baskin added that the state is hoping to expand the role of state climatologist and plans to post the position, to be based at the University of Massachusetts Amherst.

Agenda Item #2: Vote on the Minutes of October 9, 2014

Baskin invited motions to approve the meeting minutes for October 9, 2014.

V	A motion was made by Contreas with a second by Yeo to approve the meeting minutes for October 9, 2014.
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Agenda Item #3: Update: Revisions to Interbasin Transfer Act Regulations (Regional Model) (313 CMR 4.00)

Baskin called attention to a summary of proposed language for section 4.10 of the Interbasin Transfer Act regulations on expansion of the service area of a regional water supply system. She explained that the concept is similar to that used for the Aquaria desalination project, a previously approved interbasin transfer project (see August 2003 decision on Aquaria at <http://www.mass.gov/eea/agencies/dcr/water-res-protection/interbasin-transfer-act/objectives-and-accomplishments.html>). The concept involves a one-time application for the donor basin, with two or more receiving basin applications, which do not have to be specified at the time of the donor basin application. She added that the purpose of this proposed language is to provide an opportunity to plan into the future for an amount of water that may

be transferred over a long period, while also streamlining the workload for both the regional system and state agency staff.

Baskin reviewed the proposed process for regional water supply systems: the regional applicant would have to meet all ITA criteria normally required; the applicant would complete the Massachusetts Environmental Policy Act process, including completion of an Environmental Impact Report; a public hearing would be held; and the Water Resources Commission would vote on whether the ITA criteria have been met. At a later time, applicants in receiving areas would complete the second part of the ITA application. After water has been allocated, it would no longer be available for transfer. The regional system in the donor basin would be required to submit an annual report on the status of allocations. If water is not allocated to receiving areas after ten years, the regional system would review the donor basin criteria and report on any changes. If, after six months, the commission takes no action to revise the interbasin transfer approval, based on new information, then the previous decision would stay in place. If the donor basin criteria are no longer being met, then the commission would revise its approval of the donor basin portion of the application. After twenty years, the approval for the donor basin criteria would expire, with the exception of water that has already been allocated to receiving basins and any pending applications from receiving basins. Baskin outlined requirements of both the donor basin and receiving areas. Drury added that applicants are strongly encouraged to meet with staff early in the process.

Baskin noted that two questions need to be answered with any interbasin transfer proposal: Does the donor basin have water available, and has the receiving basin taken measures (such as exploring all viable sources and implementing water conservation measures) to avoid a transfer? Drury added that the emphasis of the Interbasin Transfer Act is to minimize transfers; they are allowed but should be minimized, where feasible.

Comments and questions from Callaghan, LeVangie, Zimmerman, Pederson, and Blatt addressed the timing of applications, overlap with approvals from other entities, post-approval reporting requirements, the process for receiving areas, whether ITA approvals are in perpetuity, viable sources, and compliance with the Water Conservation Standards. Some highlights of comments and responses include:

- Could MEPA refuse to review the donor basin application until applications from receiving areas are received? Baskin offered to look into this. Applicants still must meet the Interbasin Transfer criteria.
- Do viable sources include reclaimed wastewater – for example, for golf courses? Generally yes, but the proposed consolidated donor basin model applies only to water supplies. Reclaimed water is considered on a case-by-case basis, and staff work closely with MassDEP on this.
- Could there be a streamlined process for the receiving basin applicants? It is anticipated that the receiving basin applicants would file a Notice of Project Change, not a full EIR.
- What evidence is required to demonstrate there are no viable sources in a receiving basin? Agency staff plan to update policy and guidance and consider better tools that are now available, such as the Sustainable Water Management Initiative tool. MassDEP will continue to be an important partner in viable sources review.

- What does compliance with the Water Conservation Standards mean? The ITA requires that “all practical measures to conserve water have been taken in the receiving area.” The ITA Performance Standards outline requirements.
- Pederson expressed concern that any changes in policy be addressed in regulations.
- Blatt expressed concern that, because ITA approvals are in perpetuity, monitoring of compliance with conditions of approvals is important. Baskin responded that ITA decisions are carefully constructed, and compliance has not been an issue. Some conditions may be incorporated into permits, which have enforcement provisions. If necessary, noncompliance issues can be brought to the Attorney General to address.

Baskin invited comments on the proposed language within the next week.

Agenda Item #4: Discussion: Interim Policy on Insignificance under the Interbasin Transfer Act

Baskin explained that the language of the proposed interim policy is excerpted from the draft of the revised Interbasin Transfer Act regulations.

Drury reviewed the Act’s language on insignificance, noting that the Commission can consider a transfer under one million gallons per day insignificant if there are no impacts to the donor basin. She noted that a determination of insignificance is not an automatic “pass,” but involves a formal, though more streamlined, process than the process for a full ITA review.

Drury explained why the proposed interim policy is needed. Recent requests for a determination of insignificance under the ITA have involved surface water bodies, while the criteria for insignificance only address direct river withdrawals; the ITA did not anticipate impacts to a surface water body that is not flowing. Baskin explained that the goal is to identify criteria appropriate to determining the amount of water that could be transferred out of a lake or impoundment and be considered insignificant.

Drury continued explaining that, as part of its review of the ITA regulations, an interagency work group has developed new criteria that would be more relevant to surface waters. These criteria have been discussed at previous Commission meetings (see WRC meeting minutes of March, April, and May 2014) and at several outreach meetings. Drury outlined the proposed criteria for finding transfers from still water to be insignificant: These criteria were that the transfer must be less than five percent of the drought-year inflow, and less than one percent of the annual rainfall on the drainage area, and, where appropriate, flow augmentation and/or protection measures will be considered.

Drury noted that these criteria are equivalent in level of protection to the streamflow criteria currently in the regulations. She added that multiple criteria were tested on dozens of systems. The new criteria were applied to five previously reviewed projects that did not meet the criteria for insignificance. Of these five, four would also not meet the proposed criteria.

Discussion and questions from Callaghan, Zimmerman, Blatt, Pederson, and Purinton addressed reservoir releases, cumulative impacts, the adoption of policy rather than regulation, and application to wastewater transfers. Highlights of the discussion include:

- How do the new criteria address zero flow downstream? Response: The proposed criteria measure flow at a different location, inflow to the impoundment, and serve as a surrogate for what might have occurred downstream.
- Zimmerman voiced strong objections to continuing to allow zero discharges, noting alternatives such as smart sewerage, water recycling, and strong conservation measures. Discussion: The Interbasin Transfer Act is not a restoration act; its goal is to ensure that degraded conditions do not worsen. The proposed criteria address cases where there is no opportunity for downstream releases, the amount of water to be transferred is very small, and the water is needed for health and safety reasons.
- How are cumulative impacts of small or large transfers handled if they exceed some threshold? Response: cumulative approvals under the Act are tracked, added together, and compared to the cap for cumulative insignificant transfer. The 1986 regulations eliminate a class of unanticipated projects from being considered insignificant. The proposed language provides to these projects appropriate criteria that are equivalent in level of protection to the criteria that apply to a streamflow-oriented project. The intent is to fill a gap in the regulations with this interim policy and eventually promulgate the policy through revised regulations.
- Purinton expressed concern about short-changing the public process by adopting an interim policy rather than amending the regulations. Response: Agreement that amending the regulations is preferred, but the timeline for amending the regulations is uncertain, and an interim policy is needed to address an issue on which the existing regulations are silent.
- Does the Interbasin Transfer Act apply to wastewater? Response: Yes, but this policy would apply only if the impacts were to an impoundment, and other criteria must be met.

In summarizing, Drury noted that criteria relevant to these types of projects do not exist, and that is the problem being addressed by this policy. She invited comments on the interim policy and requested a vote at the December commission meeting.

Agenda Item #5: Discussion: Water Resources Commission Annual Report, FY2014 (Draft)

Baskin noted that the commission is required to submit an annual report to the legislature and secretary of the commonwealth. Carroll reviewed the organization and contents of the report and requested feedback. Comments and questions addressed the structure of the report, the time period it covers, and dissemination of the report. Baskin requested comments by November 21.

Meeting adjourned, 2:30 p.m.

Documents or Exhibits Used at Meeting:

1. WRC Meeting Minutes for October 9, 2014
2. Draft for WRC Discussion: Proposed Interim Policy: Guidelines for the Interpretation of 313 CMR 4.04(3) and 4.04(4), Request for Determination of Insignificance as Applied to Transfers Primarily Derived from Lakes, Ponds, Reservoirs or Other Impoundments. November 13, 2014.
3. Draft Water Resources Commission Annual Report, FY2014

4. Correspondence dated October 22, 2014, from Sen. Richard T. Moore, Massachusetts Senate, to Water Resources Commission regarding vote on draft Water Management Act regulations (310 CMR 36.00)
5. Drought Advisory Announcement, October 28, 2014
6. Interbasin Transfer Act project status report, October 29, 2014
7. Current Water Conditions in Massachusetts, November 13, 2014
8. Draft Language for section 4.10 of the Interbasin Transfer Act Regulations (313 CMR 4.00)
9. Draft Revision, November 5, 2014: 313 CMR 4.00. Interbasin Transfer.
10. Presentation by Michele Drury and Kathy Baskin. Interbasin Transfer Act Regional Supplier Application and Interbasin Transfer Act Interim Policy on Insignificance.

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."