



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

Meeting Minutes for October 9, 2014

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

Minutes approved November 13, 2014

Members in Attendance:

Kathleen Baskin	Designee, Executive Office of Energy and Environmental Affairs (EEA)
Marilyn Contreas	Designee, Department of Housing and Community Development (DHCD)
Anne Carroll	Designee, Department of Conservation and Recreation (DCR)
Ann Lowery	Designee, Department of Environmental Protection (MassDEP)
Catherine deRonde	Designee, Department of Agricultural Resources (DAR)
Mary Griffin	Department of Fish and Game (DFG)
Todd Callaghan	Designee, Massachusetts Office of Coastal Zone Management (CZM)
Thomas Cambareri	Public Member
Raymond Jack	Public Member
John Lebeaux	Public Member
Paul Matthews	Public Member

Members Absent

Bob Zimmerman	Public Member
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Others in Attendance:

Pine duBois	Jones River Watershed Assn.
Jen Pederson	Massachusetts Water Works Assn.
Michele Drury	DCR
Marilyn McCrory	DCR
Erin Graham	DCR
Bruce Hansen	DCR
Vandana Rao	EEA
Richard Friend	MassDEP
Beth McCann	MassDEP
Shi Chen	MassDEP
Tim Purinton	DFG
Wayne Castonguay	Ipswich River Watershed Assn.
Laila Parker	DFG
Julia Blatt	Massachusetts Rivers Alliance
Karilyn Heisen	CDM Smith
David Glater	Greater Boston Trout Unlimited
Peter Weiskel	U.S. Geological Survey
Sara Cohen	DCR
Jim McGovern	Irrigation Assn. of New England
Linda Hutchins	DCR
Rebecca Weidman	MassDEP
Lealdon Langley	MassDEP
Duane LeVangie	MassDEP
Lexi Dewey	Water Supply Citizens Advisory Committee

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

Agenda Item #1: Executive Director's Report

Baskin reminded the commission that registration is still open for the Water Resources and Sustainability Symposium on October 23, 2014, in Boxborough, Massachusetts, being sponsored by the New England Water Works Association. She noted the keynote speaker, Mary Ann Dickinson of the Alliance for Water Efficiency, is well respected and nationally known.

Baskin announced that the Drought Management Task Force will be convened at a meeting on October 17 to review conditions from July through September 2014 and evaluate whether conditions warrant a drought declaration.

Baskin noted the passing of Emerson Chandler, a former Executive Director of the Water Resources Commission. She recalled Mr. Chandler's distinguished career and contributions to open space acquisition, public access, and water resources protection.

Lebeaux arrives.

Hansen provided an update on the hydrologic conditions for September 2014. Rainfall in September totaled 1.44 inches, or thirty-seven percent of normal, with variation across the regions ranging from 20 percent in the Southeast to 46 percent in the Cape Cod and Islands region. Soil moisture was in the normal range, though fire danger is increasing across the state. Groundwater levels were below normal in the Southeast region. Streamflows were below normal in the Northeast and Southeast regions, with some daily flows setting new record lows for the period of record. Reservoir levels were generally in the normal range, with the exception of small reservoirs in the Southeast, which were very low.

The Drought Monitor shows a moderate drought in the Southeast region, and abnormally dry conditions in the northeast, east central, Cape Cod and Islands, and far western areas of the state. Drought conditions are expected to continue. The Standardized Precipitation Index shows Cape Cod and the Islands in the Advisory level for the six- and twelve-month SPI values.

Hutchins reported on the update of Precipitation-Frequency Estimates for the Northeastern States, which are published as NOAA Atlas 14, Volume 10. She noted that this is the first update of the Atlas for New England and New York in more than thirty years. The National Weather Service's Hydrometeorological Design Studies Center is seeking comment on the draft through a peer review web page at http://hdsc.nws.noaa.gov/hdsc/pfds/peer_review/. She noted that Massachusetts has provided data from its rainfall network data base, has done research to gather data on extended periods of record for certain stations, and is working with the U.S. Geological Survey and National Weather Service to identify additional data points needed to fill in data gaps. Comments are due November 16, 2014, and the target date for publication is September 2015.

Matthews arrives.

Baskin noted that precipitation frequencies have shifted, and the definition of a 100-year, 24-hour storm has changed.

Agenda Item #2: Vote on the Minutes of September 2014

Baskin invited motions to approve the meeting minutes for September 11, 2014.

V	A motion was made by Jack with a second by Lebeaux to approve the meeting minutes for
O	September 11, 2014.
T	
E	The vote to approve was unanimous of those present.

**Agenda Item #3: Vote: Revisions to 401 Water Quality Certification Regulations
(314 CMR 9.00)**

Baskin introduced Lealdon Langley of the Massachusetts Department of Environmental Protection (MassDEP). Langley distributed a summary of revisions to the 401 Water Quality Certification regulations (314 CMR 9.00). He noted that the commission had received a summary of changes to the regulations at its September meeting, that the regulations have been through the public comment process, revisions have been made in response to comment, and all other needed approvals have been received. He highlighted changes to the regulations (see minutes of the September 11, 2014, meeting at <http://www.mass.gov/eea/waste-mgmt-recycling/water-resources/preserving-water-resources/partners-and-agencies/water-resources-commission/ma-water-resources-commission-meetings.html>).

Comments, questions, and responses:

- How are fees handled where review processes for different regulations are being combined? Response: the change is revenue neutral.
- No additional changes to the regulations were made since the redline version that was reviewed at the September 11, 2014, commission meeting.
- Jack suggested substituting the word “changes” for “raises” in the section on dams.
- The regulations will be promulgated October 24, 2014. MassDEP is planning workshops in mid-November, at which application forms for the revised regulations will be available.

Baskin invited a motion on the regulations.

V	A motion was made by Lowery with a second by Matthews to approve the updated
O	401 Water Quality Certification regulations (314 CMR 9.00).
T	
E	The vote to approve was unanimous of those present.

Lowery added that the Wetlands Protection Act regulations are also expected to be final by October 24, 2014, and will include changes for severe weather emergency declarations. Griffin thanked MassDEP for its collaboration on updating the regulations to facilitate completion of ecological restoration projects.

**Agenda Item #4: Discussion: Revisions to the Water Management Act Regulations
(310 CMR 36.00)**

Baskin noted that the governor’s office has approved release of a redline version of the changes to the Water Management Act regulations, and documents will be posted today on MassDEP’s website (at <http://www.mass.gov/eea/agencies/massdep/water/regulations/wma-swmi-reg-reform-documents.html>). She outlined the documents distributed at today’s meeting (see list of exhibits at the end of these minutes). She introduced Duane LeVangie of MassDEP.

LeVangie reviewed the revisions made to the public comment draft of the regulations dated March 26, 2014, and explained why these revisions were made. Most of these were minor or administrative changes, such as changes made to clarify intent, correct numbering, or provide consistent nomenclature.

LeVangie also summarized major changes to the Water Management Act Permit Guidance Document:

- clarified requirements of public water suppliers for conservation
- clarified requirements for the functional equivalency plan
- added conservation measures for other types of permit holders (e.g., cranberry growers, golf courses)
- clarified protocols for fish sampling and assessment required for site-specific studies
- clarified criteria for determining the feasibility of alternative sources
- added upstream returns to the hierarchy of mitigation actions
- clarified optimization requirements for cranberry growers

LeVangie noted that the guidance document is an evolving, working document. He described the timeline and next steps for the regulations, including a 30-day review by the legislature, a vote on the regulations by the Water Resources Commission, review by the Water Management Act Advisory Committee, and anticipated promulgation in November 2014.

Lowry and Griffin thanked staff and stakeholders who have worked on the Sustainable Water Management Initiative and its committees, noting the robust public engagement process and wide array of public comments provided.

Comments, questions, and responses:

- What is the intent of adding “due to the influence of the ocean” to Sec. 36.05(3)?
Response: to clarify that the exemption for brackish or saline water does not apply to waters influenced by other factors, such as road salts.
- Jack, Matthews, and Cambareri expressed concern about having enough time to review all the documents, given the complexity and comprehensive nature of the information.
- Contreas requested guidelines that would help commission members understand the process for implementing the requirements in the regulations.
- The Cold Water Fisheries (CWF) regulations are moving through the public comment and review processes simultaneously with the Water Management Act (WMA), and the CWF regulations will be reviewed at the next meeting of the Fish and Wildlife Board.
- Pederson expressed concern about the proposal to split coastal basins into subbasins and the effect on public water suppliers with sources in those subbasins. Response: any change to the definition of basins must occur in the Interbasin Transfer Act (ITA) regulations. EEA is looking at the implications for existing infrastructure.
- Pederson expressed opposition to expediting the approval of the WMA regulations and requested that the commission delay its vote until its next regularly scheduled meeting on November 13. She noted that the WMA Advisory Committee is scheduled to meet after the commission’s vote scheduled for October 21. Lowery acknowledged that the timing is not ideal, but added that there is no legal requirement for the Advisory Committee to advise MassDEP before MassDEP comes to the commission for a vote.

- DuBois expressed a number of concerns:
 - about grandfathering of capacity in the ITA and of registrations in the WMA, adding that grandfathering perpetuates poor decisions of the past;
 - how the exemption for withdrawals of brackish or saline water will affect the WMA permit for the Aquaria desalination project in Dighton, Massachusetts; LeVangie explained that conditions in the project's ITA approval would remain in effect even if the WMA permit were eliminated;
 - that the bottled water industry be considered for regulation under the WMA;
 - that the proposed revision, "taking into consideration the ability of the applicant to meet demand," does not help the resources.
- Baskin confirmed that a commission vote is not required on the permit guidance document
- Blatt and Castonguay commended the robust nature of the public process. Both expressed strong concern that registered water supplies (thirty to thirty-five percent of withdrawals) are not covered by the WMA regulations. Blatt requested an opportunity to continue engaging with the agencies on the guidance on mitigation and feasibility.
- Castonguay requested that the commission commit to establishing a process for applying conservation standards to water withdrawals not governed by WMA permits.
- Griffin observed that the regulations represent a positive step toward improving environmental conditions.

Baskin noted the considerable amount of time devoted to this process by the public and the agencies. She acknowledged the short time frame for review before the vote scheduled for October 21, but noted that a draft of the regulations has been available for many months.

Agenda Item #5: Update: Water Needs Forecasting

Baskin introduced Anne Carroll of the Department of Conservation and Recreation to provide an update on the schedule for water needs forecasting. Carroll explained the factors affecting the water needs forecasting effort, including a four-year delay resulting from the Permit Extension Act and the availability of updated population data from the 2010 Census. She outlined guidelines for staff to use in determining whether previously completed forecasts will be revisited. In general, if the 2010 Census showed a population change of five percent (plus or minus), compared to population projections used in the forecast, and the resulting water needs estimate changes by 0.1 mgd or greater, the forecast will be revisited. Forecasts may also be completed for public water suppliers who previously received temporary allocations, if their data now meet the criteria for doing forecasts.

Blatt asked about the general trend of the 2010 Census. Carroll explained that, in general, the 2010 Census shows a decline in population for most Massachusetts communities, compared to projections based on the 2000 Census. She added that about twenty water needs forecasts will likely be revisited, based on the guidelines described earlier.

Carroll outlined the anticipated timeline for water needs forecasting and the WMA permit renewal process. She noted that the timeline allows considerable lead time for the process, up to twenty months, before permits expire. She also outlined anticipated dates for outreach meetings planned in each river basin, with the first scheduled for October 30, 2014, for the South Coastal Basin.

Baskin added that staff will regularly update the Commission on the status of water needs forecasting, and public notices will continue to be provided in the *Environmental Monitor*.

Meeting adjourned, 2:45 p.m.

Documents or Exhibits Used at Meeting:

1. WRC Meeting Minutes for September 11, 2014
2. Final Regulations, 314 CMR 9 00, 401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States within the Commonwealth
3. Public Notice: Water Management Permit Renewal Outreach Workshop, October 30, 2014
4. Public Notice: Schedule for Preparation of Water Needs Forecasts for Public Water Suppliers with Water Management Act Permits in the Cape Cod Basin
5. WRC Work Plan FY2015 (Final)
6. Current Water Conditions in Massachusetts, October 9, 2014
7. Handout dated September 30, 2014, from the National Weather Service, Hydrometeorological Design Studies Center, inviting peer review of NOAA Atlas 14 Volume 10: Precipitation-Frequency Estimates for the Northeastern States
8. Handout: Amended EOEEA Regulation Summary: Water Quality Certification Regulations and graphic, "Assessment of Need, Impacts and Regulatory Feasibility Associated with Improvement Dredging in the ACEC"
9. Presentation by Duane LeVangie. Water Management Act (MGL c. 21G) Regulations (310 CMR 36.00) Revisions Update
10. Handout dated October 9, 2014: Water Resources Commission Package: Water Management Act Regulations (list of documents distributed at meeting or available on MassDEP's website)
11. Handout dated October 2014, Summary of the Revised Water Management Act Regulations – 310 CMR 36.00, Massachusetts Department of Environmental Protection
12. Handout: Water Management Act Regulations – 310 CMR 36.00 – Redline version of changes from Draft Public Comment version
13. Handout dated October 2014: Response to Comment – Water Management Act (WMA) (M.G.L. c. 21G) revisions to regulations at 310 CMR 36.00
14. Comment letters related to MassDEP's Draft Water Management Act Regulations (310 CMR 36.00) and Accompanying Guidance Document:
 - from Massachusetts Water Works Association, dated September 29, 2014
 - from NAIOP Massachusetts, dated October 8, 2014
 - from Massachusetts Municipal Association, dated October 9, 2014
 - from The Nature Conservancy, dated October 9, 2014
15. Link to website, "Water Management Act-SWMI Reg Reform Documents for Review": <http://www.mass.gov/eea/agencies/massdep/water/regulations/wma-swmi-reg-reform-documents.html>
16. Presentation by Anne Carroll. Water Needs Forecasting and Water Management Act Permitting Schedule

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