



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

Meeting Minutes for May 8, 2014

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

Minutes approved July 10, 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)
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)
Laila Parker	Designee, Department of Fish and Game (DFG)
Raymond Jack	Public Member

Members Absent

Todd Callaghan	Designee, Massachusetts Office of Coastal Zone Management (CZM)
Thomas Cambareri	Public Member
John Lebeaux	Public Member
Paul Matthews	Public Member
Bob Zimmerman	Public Member

Others in Attendance:

John Pike	Conservation Law Foundation
Fabiola de Carvalho	Town of Framingham
Jen Pederson	Massachusetts Water Works Association
Michele Drury	DCR
Pine DuBois	Jones River Watershed Association
Pam Heidell	Massachusetts Water Resources Authority
Vandana Rao	EEA
Rich Zingarelli	DCR
Linda Hutchins	DCR
Erin Graham	DCR
Peter Weiskel	U.S. Geological Survey
Richard Friend	MassDEP
Lexi Dewey	Water Supply Citizens Advisory Committee (WSCAC)
Andreae Downs	Wastewater Advisory Committee (WAC)
Sara Cohen	DCR
Margaret Van Deusen	Charles River Watershed Association
Marilyn McCrory	DCR

Baskin called the meeting to order at 1:07 p.m.

Agenda Item #1: Executive Director's Report

Baskin noted that hydrologic conditions are generally normal, and the hydrologic conditions report for April would be sent at a later date and posted on the commission's web site.

Card provided an update on the revisions to the Water Management Act regulations, noting that draft regulations are available for public comment, and the deadline for comments has been extended to July 10, 2014. Six public hearings have been scheduled and are currently in progress.

Yeo reported on the American Water Works Association's Sustainable Water Management Conference in Denver, Colorado. He commented that the water conservation, efficiency, and management programs in Massachusetts – including the Sustainable Water Management Initiative, Water Management Act, and Interbasin Transfer Act – are very ambitious compared to programs in other states.

Baskin announced that the June meeting of the Water Resources Commission will take place on the first Thursday, June 5, in order to avoid a conflict with the annual international conference of the American Water Works Association, which will take place in Boston from June 8 through June 12. She added that an additional WRC meeting may be scheduled for June 19 to allow additional time for discussion of the revisions to the Interbasin Transfer Act regulations. The next regularly scheduled WRC meeting will be July 10.

Agenda Item #2: Vote on the Minutes of March and April 2014

Baskin invited a motion to approve the meeting minutes for March 13, 2014.

V	A motion was made by Card with a second by Contreas to approve the meeting minutes for March 13, 2014. The vote to approve was unanimous of those present.
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Baskin invited a motion to approve the meeting minutes for April 10, 2014. McCrory called attention to one addition to the list of exhibits at the end of the document.

V	A motion was made by Yeo with a second by Card to approve the meeting minutes for April 10, 2014, as amended. The vote to approve was unanimous of those present, with one abstention (Jack).
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Agenda Item #3: Presentation: Recent Changes to the National Flood Insurance Program – Mapping and Insurance

Baskin introduced Richard Zingarelli of DCR's Flood Hazard Management Program (FHMP). Zingarelli explained that his office serves as the state coordinating office for the National Flood Insurance Program (NFIP) and works with the Federal Emergency Management Agency (FEMA) to help communities with all aspects of the NFIP.

Zingarelli explained the three key elements of the NFIP: insurance, mapping, and regulations. He provided details on how the NFIP works and requirements for communities to participate, including regulating development within mapped flood zones. He explained that most NFIP

requirements are met in Massachusetts through the state building code and wetlands regulations.

Zingarelli explained that insurance is based on flood insurance studies and flood insurance rate maps (FIRMs) produced by FEMA. These identify areas most subject to flooding and where flood insurance is required; they are also used to calculate premiums. He summarized key changes to flood insurance maps. He highlighted two changes having to do with the way flood elevations are calculated, noting that these have resulted in some controversy in coastal areas. He noted that flood maps do not include projections of future climate change.

He outlined different levels of updates in the maps, from conversion to a digital format, to redelineation of flood hazard boundaries, to a full study resulting in new flood zones and flood elevations. He outlined the timeline and steps in updating the maps, noting the map revision process generally takes three years to complete. He noted there are both formal and informal opportunities for communities to challenge FEMA's maps. Baskin asked where the state becomes involved in this process. Zingarelli responded that the state coordinating office performs a review of maps at each stage in the timeline to identify obvious problems; he noted that this is a review for quality but does not constitute a full technical review.

Zingarelli described the status of map revisions in Massachusetts counties, noting that new flood insurance maps will become effective for eighty Massachusetts communities in the summer of 2014. He added that his office is working with these communities on language for bylaws and ordinances they need to adopt. He noted that several communities in Plymouth County are engaged in appealing the maps. He added that there has been some controversy about a model, the so-called "Pacific model," used to calculate wave setup for coastal communities. Some communities have questioned the use of this model, the Digital Integration Method, in coastal studies in New England, but FEMA defends it as appropriate for this area.

Zingarelli outlined the timeline for future map revisions, noting that funding for map updates will be determined by Congress. He described the Biggert-Waters Reform Act of 2012, which was enacted to bring financial stability to the national flood insurance program. He highlighted two major changes: phasing out of existing subsidies of insurance premiums for certain types of policies, while eliminating subsidies for all new policies; and phasing out of grandfathering of insurance policies based on old rate maps. He explained that the Homeowner Flood Insurance Affordability Act of 2014 may eliminate or delay many provisions of the Biggert-Waters Act, but it does not delay finalization of updated flood insurance maps.

Questions concerned grandfathering, local bylaws, and the datum used in mapping. Zingarelli confirmed that the Homeowner Flood Insurance Affordability Act of 2014 would apply grandfathering to primary residential structures in perpetuity, as long as the insurance policy has not lapsed. He highlighted communities, such as Chatham, that have put in place more stringent requirements than those required by the NFIP. Regarding the datum, he explained that the numbers may have changed but not the actual elevations.

Weiskel commented that the U.S. Geological Survey is working with FEMA to redetermine the one percent annual exceedance probability and is working with the Massachusetts Department

of Transportation on calculations of flood magnitude and frequency for Massachusetts, which will help in future mapping.

DuBois commented that FEMA maps are sometimes used inappropriately as planning tools. She noted an urgent need to fill a gap in information needed by communities so they can develop appropriate requirements to account for the effects of climate change. Zingarelli noted that various state agencies will be working with the state's Board of Building Regulations and Standards on updates to the uniform state building code. He explained the complexity of regulating setbacks.

Agenda Item #4: Discussion: Revisions to Interbasin Transfer Act Regulations (313 CMR 4.00)

Baskin provided an overview of efforts since January on updating the Interbasin Transfer Act (ITA) regulations. She noted that the commission has received six comment letters to date on the proposed changes. Baskin introduced Anne Carroll of the Department of Conservation and Recreation.

Carroll reviewed the process of updating the regulations, noting that WRC staff have been making note of potential revisions for the past ten years. She noted discussions at the March and April WRC meetings and outlined meetings with stakeholder groups over the previous month. (Note: see WRC meeting minutes are available 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>). Carroll summarized comments received on the proposed revisions to the regulations, along with the staff recommendation on how to address the comments.

Carroll summarized comments on establishing a tier to allow a finding of insignificance, with limited review, for very small transfers. Some commenters noted that the proposed threshold is not scalable to watershed size and type; the commission needs more information to assess impacts; and the threshold might serve as a disincentive for the proponent to perform offsets. Other commenters called out eelgrass and shellfish beds, fishery resources, and wetland as special resource values. Carroll summarized the staff recommendation, which is to lower the threshold for streamlined review from 15,000 gallons per day (gpd) to 10,000 gpd; require a description of special resource values that may be affected; and incorporate specific special resource values into the regulations.

Van Deusen asked what is accomplished by establishing a tier for very small transfers. Drury explained that the change would reduce processing and review time for both the proponent and agency staff, while not changing the outcome for very small transfers. Discussion ensued about whether the addition of certain special resource values would capture projects needing review, which would allow the higher threshold so that more projects could benefit from a streamlined process. Baskin explained that another proposed change to the evaluation criteria for a full Determination of Insignificance, which uses a more reasonable and more easily measured criterion for assessing impacts on streamflow, will streamline the process and work well with a 10,000 gpd threshold.

Pederson requested clarification on what is covered by "fishery resources." Parker and Drury responded that the language on special resource values is already in the regulations. Carroll

explained that eelgrass and shellfish beds would be listed as resource values of concern, and projects under the proposed threshold would need to address their impacts, if any, on these resource values. Baskin added that the language on special resources will be clarified in the next iteration of proposed revisions. Dewey asked if cumulative impacts had been addressed, and Drury pointed to proposed language in section 4.04(5)(g), “Criteria for Determining Insignificance,” of the draft regulations.

Carroll discussed the proposal to eliminate the requirement for a Local Water Resources Management Plan. Comments expressed concerns about eliminating this important concept and how the change might affect Water Management Act requirements. Carroll summarized the staff recommendation, which is to move forward with eliminating this requirement, while requiring applicants to demonstrate how a proposed transfer supports their long-range water resource plans. Baskin called attention to a handout showing where elements of such plans are currently provided through other programs. Staff also recommend a broader policy discussion by the commission on how to better support long-range water resources management planning.

VanDeusen commented that removing the requirement for such plans may leave a gap that will not necessarily be covered by other programs. Discussion ensued on whether such plans added value or are redundant with information available through other sources. Drury noted that these plans are required only for projects requiring full review under the Interbasin Transfer Act, and such projects must provide the information requested in such a plan as part of their Environmental Impact Report (EIR) requirements. Carroll and Yeo added that staff would confirm that information required in the Local Water Resources Management Plan is provided through the EIR and the Water Management Act and report back to the commission. VanDeusen commented that it is helpful to the reviewing public to have all the information in one place.

Carroll summarized questions and comments on the proposed splitting of certain coastal basins into subbasins. Comments ranged from strong support to questions about grandfathering existing transfers and concerns that this redelineation may trigger ITA review where it had not previously applied. Carroll summarized the staff recommendation, which is to move forward with the splitting, as proposed, while consulting with MassDEP on the implications. Baskin added that the intent is to recognize existing infrastructure as grandfathered. Drury added that the Interbasin Transfer Act applies to any increase over the present rate of transfer, and, therefore, existing transfers would be grandfathered.

Pederson noted efforts to promote regionalization of water treatment in order to reduce costs and expressed concern about the potential addition of review under the ITA. DuBois questioned whether other basins should also be split into subbasins. Baskin responded that there had been considerable discussion about the appropriate scale for basin delineation, and the proposed delineations coordinate well with delineations used by the Water Management Act for determining safe yield.

Carroll summarized a number of comments on the integration with the Sustainable Water Management Initiative (SWMI) – specifically, that SWMI science should be used to inform the viable-source analysis; that the commission should consider allowing mitigation activities

performed as part of Water Management Act permit requirements to double-count those activities as meeting conditions of an interbasin transfer approval; and that ITA decisions could result in unintended consequences for water suppliers subject to WMA and SWMI requirements. She noted that staff recommend reconvening an interagency work group to discuss the issues raised. Baskin invited input on potential scenarios related to the concern about unintended consequences.

Regarding comments addressing the timing and schedule of regulation revisions, Carroll acknowledged the concerns expressed. In response, she noted that WRC staff have been conducting targeted outreach sessions and that the commission's vote to release the regulations for public comment will be postponed until at least June.

DuBois requested clarification on what triggers the Interbasin Transfer Act. Drury explained that an increase in capacity to transfer water from one basin to another triggers the Act. Baskin added that the regulations recognize infrastructure that was in place at the time the act was adopted, and the act is also triggered by a change in operating rules. DuBois expressed concern about a gap in resource protection, noting that the Water Management Act grandfathers, as registered, existing withdrawal volumes that exceed a basin's capacity to supply those volumes. She asked which regulatory entity has jurisdiction over a public water supplier whose withdrawals exceed its registration. Jack and Baskin explained that MassDEP has jurisdiction, under the Water Management Act, and that such withdrawals would require a new WMA permit. Baskin added that Interbasin transfer Act would apply in cases where an increase in capacity results from the installation of larger pipes or pumps.

Pederson expressed concern about the short timeline for review and schedule for the commission's vote. Baskin acknowledged these concerns and concurred with the need to allow enough time for meaningful feedback. She added that an additional formal public comment period will follow the commission's vote on the draft regulations.

Carroll then summarized the concept of a streamlined review process for regional water suppliers, whereby the regional proponent would address the donor basin criteria for the full volume of water to be transferred out of basin to unspecified customers, and those future customers would each address the criteria for receiving basins at the time of transfer. She described several potential pathways for receiving basin communities. She summarized comments on these concepts, noting general support for a one-time review of the impacts of a transfer on the donor basin, and a range of views on the concept of a separate receiving basin pathway for transfers of less than 1 mgd. Comments also ranged widely on reservoir release requirements and on a time limit on the approval of the donor basin criteria.

In response to comments, she noted that staff recommend requiring the same information from all receiving basins, whether the requested transfer is above or below 1 mgd, and adding language to the section on full review that would parallel language in the section on insignificance; this language would require information on measures to protect instream flows. Cohen clarified that this language would apply to all donor basins needing full review.

Carroll discussed the concept of a twenty-year time limit on the acceptance by the Water Resources Commission of the donor basin criteria for a consolidated donor basin application,

with a revisit and potential expiration of that acceptance based on an evaluation of unsold volume and donor basin conditions after ten years. Baskin provided the rationale for these time frames: she explained that twenty years synchronizes with other programs and provides a long-enough planning horizon for the donor, while a check-in after ten years addresses concerns that conditions be monitored.

Yeo commented that a ten-year time frame to revisit approval of a donor basin volume is too short, explaining that a community's decision to join a regional water system takes many years and involves considerable expense. He suggested alternative language that would be incorporated as a condition of the commission's approval of the donor criteria, rather than embedded in the regulations. Drury added that this proposal would allow tracking of trends.

Baskin outlined changes in conditions, science, and policy that could occur between the time when analysis of the donor basin criteria first takes place and when a receiving basin may seek a transfer that would make it important to periodically take a fresh look at the data.

Heidell commented that a twenty-year time frame is workable for the Massachusetts Water Resources Authority, but anything shorter would be problematic. She noted the MWRA's lengthy admissions process for communities seeking to join the system and other regulatory opportunities for comment on MWRA expansion. She also expressed concern about the proposed criteria on instream flows, commenting that the word "protect" could be construed to have a meaning different from "maintain" reasonable instream flow. She noted MWRA's actions to protect the environment and its cooperation with fishery agencies and others and stated that the ITA regulations were not intended to cover reservoir releases.

Pederson commented that a streamlined review pathway for receiving basins should also be included. She expressed concern that the agencies' response may be influenced by the balance of comments received, adding that the lower number of comments from water supply and wastewater systems should not be interpreted as indicating a lack of interest or concern. Baskin acknowledged this concern and explained that comments are considered in groups, not individually. Card offered to reach out to the Massachusetts Water Pollution Control Association on wastewater issues.

Considerable discussion ensued on the appropriate time limit on WRC acceptance of donor basin criteria. VanDeusen stated that revisiting a decision in ten years is neither onerous nor unreasonable, considering that the proposed consolidated donor basin review process will make it easier to transfer a public resource, and a number of significant changes could occur within a ten-year time frame, including policies and environmental conditions. She noted that the Water Supply Policy has not been updated in decades and could change.

Carroll clarified that the commission's decisions are based on specific criteria in the regulations, and its review of the donor basin in ten or twenty years would be limited to these criteria, which primarily address hydrology and special resources. Baskin reiterated the concepts being considered, including a potential expiration of the acceptance of the donor basin criteria, and a length of time associated with that, and whether or not there should be a check-in along the way. She invited comments on these concepts.

In response to a question from Jack, Baskin outlined potential requirements under other regulatory programs that may be triggered during the proposed twenty-year period for the consolidated donor basin approval. In response to a question from Pederson about impacts on wastewater systems, Drury explained why a consolidated donor basin application is not appropriate for wastewater transfers, since such transfers may involve multiple donor basins.

Pederson expressed support for establishing a streamlined process for the receiving basins seeking less than 1 mgd. Baskin pointed to other opportunities to provide a faster determination process on viable sources in the receiving basin. She added that this would be provided through guidance at first.

Dewey expressed support for the consolidated donor basin concept, but with a reconsideration of data in ten-years, noting unforeseen impacts of climate change. DuBois expressed support for a review of data after ten years, noting that such reviews can trigger river restoration efforts that might not occur otherwise. She requested that the Water Resources Commission incorporate such triggers as conditions in its reviews. Baskin clarified that an increase in transfer triggers a review under the Interbasin Transfer Act. Drury added that the proposal for annual monitoring would be useful in showing trends.

Carroll and Baskin outlined the timeline and key steps in the regulations revision process, including an initial vote on the proposed revisions by the Water Resources Commission, legal and policy review by EEA, review by the governor's office, a public comment period, and a vote by the commission again on the final regulations.

Meeting adjourned, 3:30 p.m.

Documents or Exhibits Used at Meeting:

1. WRC Meeting Minutes:
 - March 13, 2014
 - April 10, 2014
2. Revisions to Interbasin Transfer Act regulations (313 CMR 4.00):
 - 313 CMR 4.00 Interbasin Transfer Act Regulations – redline version from April 11, 2014
 - Comments dated April 18, 2014, from the Massachusetts Office of Coastal Zone Management
 - Comments dated April 22, 2014, from the Massachusetts Water Works Association
 - Comments dated April 28, 2014, from the Massachusetts Water Resources Authority
 - Comments dated April 30, 2014, from the Charles River Watershed Association
3. Interbasin Transfer Act project status report, April 24, 2014
4. Preservation Month 2014 Calendar, listing events at water supply reservoirs and other historic properties: available at <http://www.mass.gov/dcr/presmonth>.
5. Presentation by Rich Zingarelli. National Flood Insurance Program (NFIP) Update: Recent Changes to Mapping and Insurance.
6. Handout: Homeowners Flood Insurance Affordability Act of 2014 (HFIAA)

7. Presentation by Anne Carroll. Interbasin Transfer Act: Proposed Revisions to Regulations.
8. Annotated Outline of the Local Water Resources Management Plan (Appendix B of the Interbasin Transfer Performance Standards)

Agendas, minutes, and meeting documents are available of the web site of the Water Resources Commission at <http://www.mass.gov/eea/air-water-climate-change/preserving-water-resources/partners-and-agencies/water-resources-commission/ma-water-resources-commission-meetings.html>.