

Pathway Through the Interbasin Transfer Act Michele Drury, DCR Office of Water Resources

The Interbasin Transfer Act (MGL Ch 21 Section 8B-8D), which governs water and wastewater transfers between river basins of the Commonwealth, became effective 25 years ago, in 1984. It was passed to address concerns that water was being transferred out of a donor basin to address perceived water supply shortages in another area. The Act requires that before looking to out-of-basin sources, a water supplier must determine if additional water could be found within existing water supply systems through conservation, leak detection, more accurate metering etc. The Act also required that water suppliers identify and develop local sources before seeking an interbasin transfer to augment their water supply.

In the 25 years since the Interbasin Transfer Act (ITA) was passed, the water suppliers of the Commonwealth have done a remarkable job with implementing water conservation measures and in improving metering and leak detection. The ITA alone cannot take credit for this improvement. Other state policies and laws, such as the Water Conservation Standards for the Commonwealth of Massachusetts, the Water Management Act, as well as water suppliers' desire to run an efficient system, have all contributed to making Massachusetts a leader in water supply efficiency. The ITA is rarely triggered, in fact. In the past 25 years, the Water Resources Commission (WRC), which administers the Act, has only reviewed 22 applications for approval and 15 applications for insignificance. Of the applications for approval, 20 were approved and two were denied. Of the applications for insignificance, only one was found not to meet the criteria for insignificance.

Perhaps because the ITA process is so rarely used, and because it is not really a permitting process, but rather a policy approval, many potential applicants are unfamiliar with the process and not really sure what is involved or how an application will be evaluated. This article is meant to clear up some of the confusion that may be out there and to direct potential applicants to resources designed to clarify the process.

What is the Water Resources Commission?

The WRC is a board comprised of the Secretary of Environmental Affairs and the Commissioners of the Department of Environmental Protection, the Department of Conservation and Recreation, the Department of Fish and Game, the Department of Agricultural Resources, and the Under-Secretary of Housing and Community Development; as well as five public members, appointed by the Governor, one of whom must be a representative of the groundwater industry.

The Interbasin Transfer Act Timeline and Requirements

The Act requires that the Massachusetts Environmental Policy Act (MEPA) process be completed before the Commission can hold public hearings or act on an application. Because the ITA requires in-depth analysis of the impacts on the donor basin of a potential transfer, MEPA requires an Environmental Impact Report (EIR) for all significant interbasin transfers. In order to reduce paperwork and review time, and to streamline the process, the WRC uses the EIR as its application. The WRC has developed scopes for the ITA information to be provided in an EIR. These are available at <http://www.mass.gov/dcr/watersupply/intbasin/actionapp.htm>.

The MEPA process has its own requirements and timelines which do add to the ITA timeline, but once MEPA is completed, and the ITA application is complete, by law, the WRC must hold public hearings with 60 days and then is required to make a decision on the ITA application within 60 days of the final public hearing. These timelines can only be altered by the mutual consent of both the Commission and the applicant.

The Act requires “that all reasonable efforts have been made to identify and develop all viable sources in the receiving area of the proposed interbasin transfer” (MGL Ch 21 Section 8D(1)). Therefore, it is expected that an applicant will have done this *before* applying for ITA approval. If a proponent has not done this, the WRC would have to deny the application. That is why it is important that potential applicants do this exploration, analysis and documentation before considering an ITA application.

Most water suppliers have explored for local sources and know that an interbasin transfer is their last resort. The WRC expects that a developable local source must be both economically and environmentally viable. Documentation that all viable local sources have been developed is required. If a local source has been identified and eliminated from consideration, in practice, the WRC usually only requires verification from DEP that this is the case. Some water suppliers are aware of potential viable local sources, but at this time, perhaps, the cost of developing those sources is not feasible. If a source is under consideration, but the economics of it are doubtful, the WRC has developed guidance for determining economic feasibility. This can be found at <http://www.mass.gov/dcr/watersupply/intbasin/docs/finalps.pdf>.

In addition to the viable source and MEPA criteria, the Act and its regulations require compliance with conservation standards, local water resources management plans, maintenance of reasonable instream flow in the donor basin and other environmental criteria.

Meeting the requirements of the Interbasin Transfer Act

There are very clear criteria for evaluation in the Act and regulations, but in order to take these criteria out of the realm of legalese and to explain what specifically would be required to address these criteria, the WRC developed performance standards to give potential applicants clear guidance through the ITA process. These can be found at <http://www.mass.gov/dcr/watersupply/intbasin/docs/finalps.pdf>.

The best way to a smooth and expeditious review under Interbasin Transfer Act is to meet with the WRC staff at the very beginning of planning for a potential interbasin transfer. This will give proponents a better idea of what is required for their particular project. Applicants who worked closely with WRC staff in the past saw their projects approved within four months of providing a complete application. For more information, contact Michele Drury at 617-626-1366 (michele.drury@state.ma.us).