



November 16, 2022

*Via email*

Commissioner Martin Suuberg  
MassDEP, Water Management Program  
1 Winter Street, 5<sup>th</sup> Floor  
Boston, MA 02108  
dep.talks@mass.gov

**Re: Comments on Proposed Water Management Act Regulation Revision**

Dear Commissioner Suuberg:

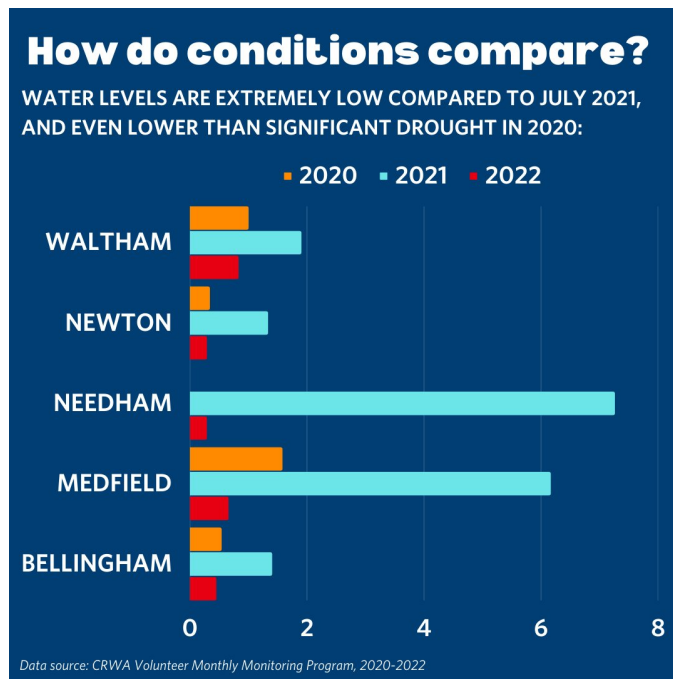
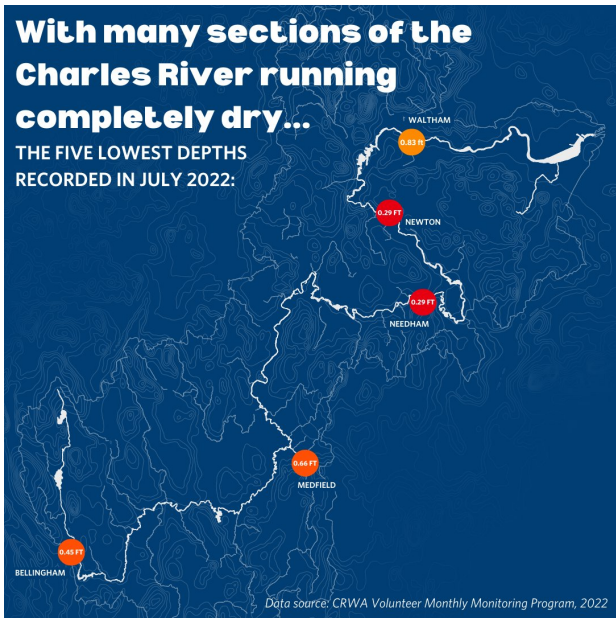
Charles River Watershed Association (“CRWA”) submits the following comments on the Massachusetts Department of Environmental Protection’s (“DEP”) proposed revisions to the Massachusetts Water Management Act (“WMA”) regulations, 310 CMR 36.00. CRWA’s mission is to protect, preserve, and enhance the Charles River and its watershed through science, advocacy, and the law. CRWA has a long history of working with DEP and our watershed communities on water management issues, including implementation of the WMA.

CRWA strongly supports the proposed regulations that would impose conservation conditions on registrations in order to restrict non-essential outdoor water use by registrants during periods of drought. CRWA has long advocated for this, including by supporting Massachusetts Rivers Alliance’s 2017 petition to DEP to condition registered withdrawals.<sup>1</sup> The proposed regulations are a critical first step toward adequately protecting our water bodies and water supplies. We urge DEP to adopt the proposed regulations, which will further strengthen the regulations in order to fully protect the Charles River and all waters of the Commonwealth while ensuring adequate water supply to meet our health and safety needs into the future.

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<sup>1</sup> CRWA, Re: Massachusetts River Alliance’s Petition to MassDEP to Condition Registered Withdrawals (Sept. 12, 2017).

Droughts are becoming more frequent and impacts are more significant, posing a real threat to the health of the Commonwealth's waters and our economy. CRWA volunteers found that the Charles River ran completely dry in several spots during the summer of 2022.



Droughts harm both water quality and quantity, posing significant threats to communities and ecosystems throughout the Commonwealth. In 2016-2017, we experienced the worst drought to hit Massachusetts since the 1960s, with ground and surface water levels reaching record lows for several consecutive months and widespread crop loss.<sup>2</sup> In 2020, we again experienced one of the hottest and driest periods on record, with drought conditions lasting from June until early December and the United States Department of Agriculture (“USDA”) declaring every county in Massachusetts a ‘drought disaster area’ due again to widespread crop loss.<sup>3</sup> **In 2022, drought continued, reservoirs dropped, and the Charles River ran dry in several places - as did tributaries such as Fuller Brook in Wellesley.**

Climate predictions indicate that the Commonwealth will continue to see increases in the occurrence and severity of droughts in the coming years.<sup>4</sup> Specifically, climate change is expected to exacerbate naturally-occurring droughts by increasing evaporation rates due to higher temperatures and lengthening periods without precipitation between rainfall events.<sup>5</sup> When rainfall does occur, it will be more intense, quickly running off of our expansive amounts of impervious surfaces before it can be absorbed back into the ground.<sup>6</sup> The forecasted reduction in snowfall will also reduce groundwater recharge.<sup>7</sup> As a result, we must adapt to a “new normal” where drought is more common, and protect our water resources accordingly.

The good news is that Massachusetts has taken significant steps in recent years to improve drought awareness and response. In 2018, the Commonwealth adopted the State Hazard Mitigation and Climate Adaptation Plan (“SHMCAP”) in response to Governor Baker’s Executive Order 569 on climate change.<sup>8</sup> The SHMCAP

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<sup>2</sup> Mass. Exec. Off. Energy and Env’tl Aff. (“EEA”), Massachusetts Drought Management Plan (2019),

<https://www.mass.gov/doc/massachusetts-drought-management-plan/download>.

<sup>3</sup> See USDA, *USDA Designates Three Massachusetts Counties as Primary Natural Disaster Areas*, (Oct. 29, 2020),

[https://www.fsa.usda.gov/news-room/emergency-designations/2020/ed\\_2020\\_1029\\_rel\\_0246](https://www.fsa.usda.gov/news-room/emergency-designations/2020/ed_2020_1029_rel_0246).

<sup>4</sup> EEA, SHMCAP at 4-48 (2018),

<https://www.mass.gov/files/documents/2018/10/26/SHMCAP-September2018-Full-Plan-web.pdf>.

<sup>5</sup> *Id.*; National Integrated Drought Information System, *Flash Drought*,

<https://www.drought.gov/what-is-drought/flash-drought> (last visited May. 24, 2021).

<sup>6</sup> Mass. Drought Mgmt. Plan at 9.

<sup>7</sup> *Id.*

<sup>8</sup> Mass. Exec. Order. No. 569 (Sept. 16, 2016),

<https://www.mass.gov/executive-orders/no-569-establishing-an-integrated-climate-change-strategy-for-the-commonwealth>.

acknowledges the importance of building long-term drought resilience in Massachusetts, projecting that by the end of the century, consecutive dry days will increase by 18% and average summer precipitation will decrease.<sup>9</sup> To address this, Massachusetts updated its Drought Management Plan in 2019,<sup>10</sup> creating a systematic approach to assessing drought severity and impacts, including by directing the Drought Management Task Force to collect drought data and provide appropriate guidance for responding to droughts.<sup>11</sup>

**The currently-proposed regulations are a reasonable step towards better protecting Massachusetts' water sources during periods of drought.**

Registrants, whose withdrawal limits are based on their extraction rates from 1981-1985—long before climate change impacts were widely understood—currently are not subject to water conservation conditions and have few obligations when it comes to reporting on their withdrawals.<sup>12</sup> In the absence of conservation requirements, registrants can continue to extract water at volumes up to their legal right even when environmental conditions indicate that less water should be extracted, making water sources and aquatic resources/habitat more vulnerable during droughts and periods of water scarcity.

Further, watersheds span municipal boundaries, and many communities in Massachusetts rely on shared water sources. The current lack of conservation conditions on registrants creates inequities, as some communities who are required by permit to conserve water will nevertheless be negatively impacted by neighboring communities who continue to withdraw at unsustainable rates. For example, in the Ipswich watershed, the disparate regulatory treatment of users has precipitated community conflict and threatens adequate water conservation during droughts.<sup>13</sup>

In times of necessity like those posed by drought, DEP must exercise its authority to impose conservation conditions on registrants so as to protect other users. Restricting activities like watering lawns, washing cars, and filling swimming pools are imminently reasonable requests when there is increased stress on water supplies. These water conservation conditions will better protect our water sources, ensuring that adequate amounts of water are available for both in-stream uses and drinking water supplies.

The proposed regulations do not infringe upon the essential water needs of registrants. Customers of registered water suppliers would still be allowed to use water

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<sup>9</sup> SHMCAP at 5.

<sup>10</sup> Mass. Drought Mgmt. Plan at 7.

<sup>11</sup> *Id.*

<sup>12</sup> See 310 CMR 36.04-11.

<sup>13</sup> American Rivers, *America's Most Endangered Rivers* (2021).

indoors as they normally do. Water use for health and safety reasons, including firefighting, and to meet core business functions would not be affected by the proposed regulations, nor would activities like food production. While we acknowledge that water suppliers facing competing demands are rightfully focused on funding to operate and upgrade their systems, such funding should not come at the expense of healthy and sustainable water sources. We urge DEP to work with water suppliers to find solutions to fully fund their operations and keep rates affordable while also protecting our waters. Water conservation coalitions and other support service providers can help water suppliers comply with these regulations at little additional cost.

**In addition to supporting restrictions on non-essential water use during drought, CRWA:**

- 1. Opposes the proposed blanket exemption for irrigation of public parks and public recreation fields.** CRWA would support a tiered approach, similar to that for golf courses, to reduce water use, keep fields and parks viable, and protect the public investment in these community facilities.
- 2. Opposes the exemption of the Massachusetts Water Resources Authority.** More communities are tying into the MWRA due to contaminated drinking water, and while the Quabbin Reservoir is very large, it is not immune to drought.
  - a. If DEP goes forward with unique requirements or exemption for the MWRA, CRWA suggests establishing a public process for review of alternative drought management plans and allowing for an opportunity to reconsider the special conditions after 10 years.
  - b. This is particularly important in the Charles River watershed, where water supplied by MWRA represents a significant amount of the registered water use by watershed communities. To qualify for the exemption, MWRA communities should be subject to restrictions at least as strict as those elsewhere in the watershed.

**The Water Management Act requires conserving water to ensure sustainable use now and in the future. It is DEP’s responsibility, as the agency assigned with carrying out the WMA, to impose appropriate water conservation conditions on registrants.**

The Water Management Act was enacted in 1985 for the purpose of protecting the Commonwealth’s water supply in the face of growing demand.<sup>14</sup> Under the WMA, “[DEP] may, by regulation, establish, for any particular water source, a lower threshold volume than that generally applicable in the commonwealth upon findings that such

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<sup>14</sup> See *Fairhaven v. DEP*, 920 N.E.2d 33, 39 (Mass. 2010).





water source is in need of special protection.”<sup>15</sup> Factors like over-consumption and drought necessitate such special protection for water sources.<sup>16</sup>

DEP already possesses the regulatory authority to impose water conservation conditions on permittees.<sup>17</sup> DEP also has the authority to impose conservation conditions on registrants during the registration renewal process, as confirmed in 2010 by the Supreme Judicial Court of Massachusetts.<sup>18</sup> In the *Fairhaven* case, the Court held that under § 3 of the WMA, DEP may impose conservation measures on *all* water users, stating that “[DEP] may, by regulation, impose conservation measures on registrants, provided that those measures do not infringe the registrants’ entitlement to existing withdrawals.”<sup>19</sup> Specifically, the Court found that seasonal withdrawal conditions, like limiting outdoor water use in the summer, would not deny registrants their entitlement and would not be an overreach of DEP’s authority, given that the registrants could still withdraw their full entitled quantity of water over the course of the year.<sup>20</sup> The time has come for the DEP to exercise this authority and protect our water sources.

Thank you for considering these comments.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Ryan".

Jennifer Ryan  
Deputy Director of Advocacy

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<sup>15</sup> G. L. c. 21G, § 4.

<sup>16</sup> G. L. c. 21G, § 3.

<sup>17</sup> See 310 CMR 36.29.

<sup>18</sup> *Fairhaven*, 920 N.E.2d 38.

<sup>19</sup> *Id.* at 42.

<sup>20</sup> *Id.* at 40.



**Charles River Watershed Association**

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