

**The Massachusetts Water Resources Commission
Commissioner Handbook**



**Prepared For the Massachusetts Water Resources Commission by:
The Department of Conservation and Recreation
Office of Water Resources
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I. History

The Massachusetts Water Resources Commission (WRC) was formally established in 1956 through the passage of Chapter 620. This act of the legislature established a Division of Water Resources in the Department of Natural Resources under the control of a nine member Water Resources Commission. The Commission was comprised of the Commissioners of the Departments of Natural Resources, Agriculture, Commerce, Public Health, Public Works and the Metropolitan District Commission, as well as three public members. This formal Water Resources Commission was the result of an Ad Hoc committee established by Governor Christian Herter in 1954 to advise him on water resources issues.

In 1966, Chapter 685 established a Division of Water Pollution Control, also housed in the Department of Natural Resources and under the control of the Water Resources Commission. Chapter 685 expanded the WRC's role to include oversight of water quality issues.

The Director of Fisheries and Game and one additional public member were added as WRC members in 1969.

Chapters 21 and 21A of the Massachusetts General Laws (Administration of Government - Department of Environmental Management and Executive Office of Environmental Affairs) incorporated Chapter 620 and Chapter 685.

Chapter 589 of the Acts of 1983 amended Chapter 21 and 21A to reorganize and expand the Commission's responsibilities.

- Section 1 of Chapter 589 moved control of the Division of Water Resources to the Department of Environmental Management (now the Office of Water Resources in the Department of Conservation and Recreation)
- Section 15 moved control of the Division of Water Pollution Control to the Department of Environmental Quality Engineering (now the Department of Environmental Protection – DEP).
- Section 17 moved the Water Resources Commission to the Executive Office of Environmental Affairs.
- Section 18 defined the membership of the Commission:
 - Secretary of the Executive Office of Environmental Affairs (now Energy and Environmental Affairs)
 - Commissioner of the Department of Environmental Quality Engineering (now the Department of Environmental Protection)
 - Commissioner of the Department of Environmental Management (now merged with the Metropolitan District Commission to form the Department of Conservation and Recreation)

- Commissioner of the Metropolitan District Commission (now merged with the Department of Environmental Management to form the Department of Conservation and Recreation)
- Commissioner of the Department of Fisheries, Wildlife and Recreational Vehicles (now the Department of Fish and Game)
- Commissioner of the Department of Food and Agriculture (now the Department of Agricultural Resources)
- Secretary of the Executive Office of Communities and Development (now the Division of Housing and Community Development)
- Six Public Members

Chapter 589 assigns the public members three (3) year terms and requires that they “represent a major type of water user, have demonstrated knowledge in at least one area of water resources management, have a demonstrated interest in statewide water resources issues and an ability to address all issues at a level of expertise commensurate with the commission’s mandate; provided however that one member so appointed shall be a member of the groundwater industry.”

In 2003, the Metropolitan District Commission and the Department of Environmental Management were merged to create the Department of Conservation and Recreation (DCR); this eliminated one agency (*ex officio*) member on the WRC. The Acts of 2003 Chapter 26, §§109 to 111 amended §8A of Chapter 21A to reflect this change. These amendments updated the *ex officio* members of the Water Resources Commission, and eliminated one public member seat.

Currently, membership in the Water Resources Commission consists of:

- Secretary of the Executive Office of Energy and Environmental Affairs
- Commissioner of the Department of Environmental Protection
- Commissioner of the Department of Conservation and Recreation
- Commissioner of the Department of Fish and Game
- Commissioner of the Department of Agricultural Resources
- Under-Secretary of the Department of Housing and Community Development
- Five Public Members, appointed by the Governor

The Director of CZM has a non-voting seat on the Commission.

II. Duties and Responsibilities

The duties of the WRC are outlined in Section 18 of Chapter 589 of the Acts of 1983 to include:

- a) The development of a water resources management policy framework
- b) Coordination of water resources planning and management functions among the environmental agencies
- c) Review and comment on all policies brought before the commission

- d) Annual review and comment on all programs relating to water resources management of the environmental agencies
- e) Establishment of criteria and priorities for all water resources related cooperative programs with the federal government, with any other state, or with any executive office, department, or division of the commonwealth
- f) Development and periodic updating of comprehensive water resources management plans for river basins
- g) Development of water allocation criteria which takes into account demographic, hydrologic, and environmental characteristics
- h) Development of a management information system and data processing capability for water resources information
- i) Development of an education program with an emphasis on long term water resources and wastewater planning and management

Other responsibilities assigned by state statute or regulation include:

- Updating the Massachusetts water policy statement at least one every five years
- Submitting annual budget estimates of funds needed to fulfill the above duties
- Filing an annual report (see MGL, c. 30, ss. 32 and 33)
- Responsibility for reviewing and approving or denying all increases in interbasin transfer (see Chapter 658, Acts of 1983 codified as MGL, c. 21, s8b-8d).
- Approval of water needs forecasts for communities and water districts
- Approval of state Water Conservation Standards

Chapter 658 of the Acts of 1983, the Interbasin Transfer Act (MGL Chapter 21 Sections 8b-8d), specifically gives the Water Resources Commission responsibility for reviewing and approving or denying all increases in interbasin transfer.

Because the Division of Water Pollution Control was once under the control of the Water Resources Commission, the WRC is also responsible for approving water quality regulations promulgated by DEP, e.g.:

- 310 CMR 44 – the Clean Water State Revolving Fund Regulations,
- 310 CMR 9.00 – Water Quality Certification regulations,
- 314 CMR 7.00 – Sewer System Extension and Connection regulations,
- 251 CMR 2.00 – Certification of Wastewater Treatment Plant Operators regulations.

APPENDIX A identifies the programs and policies that have been initiated under the aegis of the WRC.

APPENDIX B contains the relevant laws pertaining to the WRC as briefly noted here.

III. Meetings

The WRC meets monthly. Meetings minutes are recorded for approval by the Commission. *Ex officio* members can appoint a designee or alternate to attend and vote on their behalf. Public members cannot have another person vote on their behalf. The meetings are chaired by the Secretary of Energy and Environmental Affairs or his/her designee. Meeting materials are distributed to members (via mail and/or e-mail) approximately 10 days prior to each meeting.

WRC meetings are subject to the Massachusetts Open Meeting law (M.G.L Chapter 30 A §11A ½)

IV. Application of the State Ethics Laws to the Water Resource Commission membership

Water Resources Commissioners are considered state employees and therefore are governed by the Massachusetts Conflict of Interest Law. Among other things, this law prohibits Commissioners from:

- Asking for or accepting anything in exchange for doing their jobs
- Accepting any gift worth \$50 or more from anyone with whom they have official dealings
- Hiring, promoting or otherwise participating in the employment of their immediate family or spouse's immediate family
- Taking any official action that will affect the financial interests of their immediate family or spouse's immediate family
- Taking any official action affecting their own financial interests
- Representing anyone but their public employer, in any matter in which the public employer has an interest
- Disclosing confidential information, data, or material that has been gained or learned as a public employee
- Taking any action that could create an appearance of impropriety
- Using their official positions to obtain unwarranted privileges or special treatment for themselves or anyone else
- Using public resources for political or private purposes
- Taking a job after leaving public service, involving public contracts or any other particular matter in which they have participated as a public employee.

For more information on the Conflict of Interest Law, please see <http://www.mass.gov/ethics>.

V. Programs and Accomplishments

Over the years the WRC has been involved in developing, approving and adopting or endorsing several Massachusetts laws, standards, policies and regulations.

In 2004 the Massachusetts Water Policy was developed by Energy and Environmental Affairs. The Water Resources Commission is undertaking several tasks in the Water Policy, including:

- Develop a Stress Framework (reclassify basin stress levels)
- Update of the Water Conservation Standards (implemented 2006)
- Develop a Streamflow Policy

The Massachusetts Water Policy can be found at:

http://www.mass.gov/Eoeea/docs/eea/water/waterpolicy_2004.pdf.

For more recent WRC Policies and Publications, please see the website¹.

The WRC also reviews Interbasin Transfer Act applications. For a list of the Interbasin Transfer Act applications reviewed by the WRC, including the decisions rendered, please see <http://www.mass.gov/dcr/waterSupply/intbasin/obj-acc.htm>. In 1999, the WRC adopted Performance Standards to give applicants a clear pathway for addressing the criteria of the Interbasin Transfer Act and its regulations. The Performance Standards can be found at <http://www.mass.gov/dcr/waterSupply/intbasin/docs/finalps.pdf>.

In addition, in the late 1980's and early 1990's the WRC developed basin plans for 20 of the Commonwealth's river basins. The completed plans are listed below:

| Full Plans | Streamlined Plans |
|---|---------------------------------------|
| Blackstone River Basin 1989 | Ten Mile River Basin 1992 |
| Cape Cod Basin 1994 | Concord (SuAsCo) River Basin 1992 |
| Charles River Basin 1989 | Deerfield River Basin 1992 |
| South Coastal Basin 1991 | Weymouth/Weir River Basin 1991 |
| Taunton River Basin 1991 (update 1997) | Westfield/Farmington River Basin 1992 |
| Housatonic River Basin 1999 | Millers River Basin 1992 |
| Neponset River Basin 1991 (update 1995) | Mystic River Basin 1991 |
| Hudson River Basin 1989 | Quinebaug River Basin 1990 |
| Ipswich River Basin 1987 | North Coastal Basin 1990 |
| Buzzards Bay Basin 1995 | Chicopee River Basin 1992 |

¹

<http://www.mass.gov/?pageID=eoeesubtopic&L=5&L0=Home&L1=Air%2c+Water+%26+Climate+Change&L2=Preserving+Water+Resources&L3=Water+Resource+Protection+Agencies+%26+Partners&L4=Water+Resources+Commission&sid=Eoeea>

Some of them included an in-depth analysis of the basins' water needs and resources; some took a more stream-lined approach, providing only water needs forecasts (demand projections) for basin communities and a brief discussion of basin hydrology. The basin plans incorporated water needs forecasts, approved by the WRC, for communities. Approved water needs forecasts are used by DEP in permitting under the Water Management Act. For more information on the Water Management Act (WMA) program (administered by DEP), please see: <http://www.mass.gov/dep/index.htm>. The WRC recently updated its methodology for developing water needs forecasts. (See: http://www.mass.gov/Eoeea/docs/eea/wrc/water_needsforecast.pdf). Using this methodology, WRC Staff develops water needs forecasts for communities which renew or apply for a WMA permit in the future.

The WRC also oversees the USGS Cooperative program. This program includes operation and maintenance of statewide stream gaging and observation well networks, hydrologic studies of river basins and other research projects related to water quantity, water quality and habitat. This program is described in detail in Appendix A.

Another program overseen by the WRC is the Precipitation Monitoring/Water Conditions Report. DCR maintains a network of precipitation observer stations across the state. Monthly data are stored in a data base for analysis. DCR produces a monthly report on hydrologic conditions in Massachusetts on behalf of the Water Resources Commission. The report includes a summary of precipitation in the state from the rainfall monitoring program, ground water levels, streamflow, water supply reservoirs, fire danger, drought conditions, and long-term weather forecasts. The monthly reports are used by the Massachusetts Drought Management Task Force (DMTF) in considering drought declarations, and DCR staff serve as a technical resource to the DMTF, as well as providing technical support to the Massachusetts Emergency Management Agency (MEMA) during flood events in the state.

For more information about the Massachusetts Water Resources Commission, visit the Commission's website.

Appendix A gives more information about programs under the WRC's authority.

Appendix A.
WRC Program Information

1. The Interbasin Transfer Act

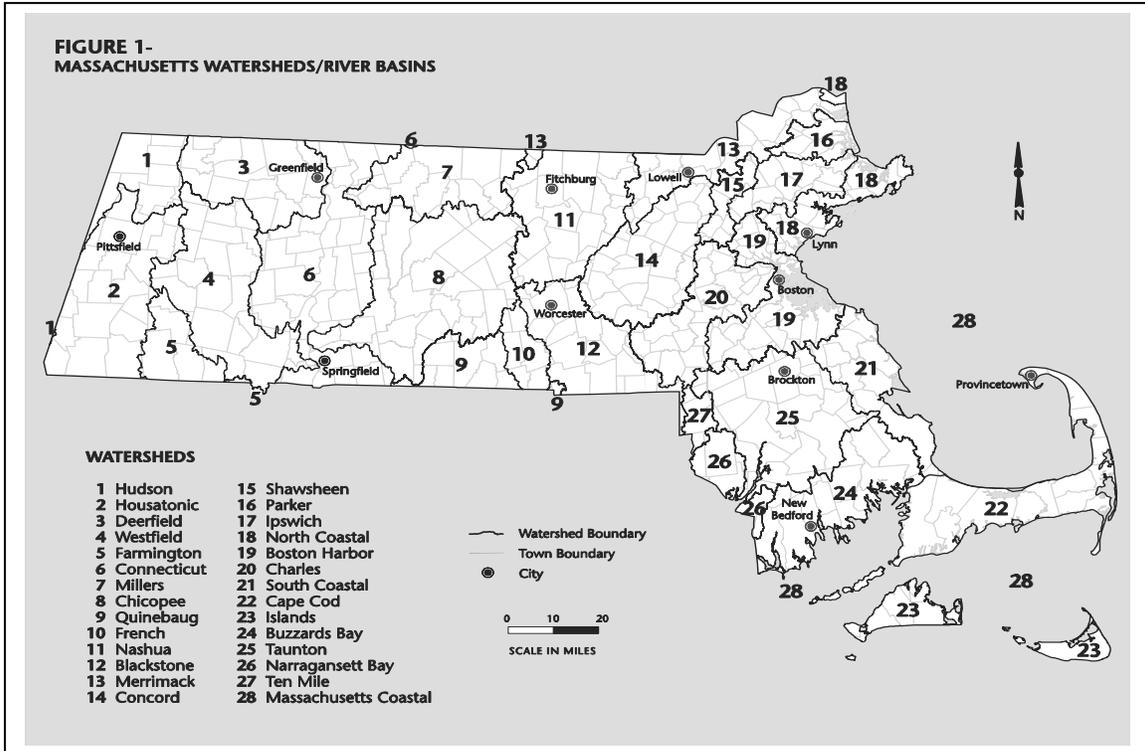
**Relevant Legislation: M.G.L. Chapter 21 §§ 8B to 8D
313 CMR 4.00**

The Interbasin Transfer Act became effective in March 1984. The legislature specifically gave the administration of the Act to the Water Resources Commission. The Department of Conservation and Recreation’s Office of Water Resources conducts the technical and administrative review of applications under the Act and makes recommendations to the Commission to approve or deny applications.

The Act was originally introduced as “An Act to Protect the Connecticut River”. This was due to the (then) Metropolitan District Commission’s (now the Massachusetts Water Resources Authority – MWRA) proposal to divert water from the Connecticut River to the metropolitan Boston water supply system and concerns that additional water could be found within the water supply system through measures such as conservation, leak detection, and more accurate metering. There were also concerns that the practice of permanently transferring water out of the basins of origin could deplete these basins. Any water transferred out of a river basin, either for water supply or wastewater treatment purposes, is no longer available to replenish the donor basin’s rivers, aquifers, lakes or wetlands. This can result in chronic low flows and potentially damage fisheries, wetlands, water-based recreation, and other water-dependant resources in the donor basin. It can also impact the availability of water supply. The Interbasin Transfer Act now applies to all water and wastewater transfers between the 28 river basins of the Commonwealth, including the Massachusetts Coastal basin (which is defined as the areas of water lying below the mean high tide elevation). See Figure 1.

The Interbasin Transfer Act does not prohibit interbasin transfers, but requires that rigorous environmental and water supply management standards are met before the transfer can be approved. The water-dependant resources of the donor basin cannot be adversely impacted. The Act was not set up as a typical permitting program, it is a one-time approval. The Act regulates the **capacity** of the transfer system (i.e., the “ability” to transfer water).

For more information on how the Interbasin Transfer Act is applied, please see:
<http://www.mass.gov/dcr/waterSupply/intbasin/docs/Guidebook.pdf>



2. Watershed Protection and Flood Prevention Act Program (PL 566)

**Relevant Legislation: M.G.L. Chapter 21 §§ 9-15
Public Law 566 (Federal)**

This program was established to prevent loss of lives and to reduce damage caused by floods through a cooperative effort between the Department of Conservation and Recreation (DCR, formerly the Department of Environmental Management) and the U.S. Department of Agriculture Natural Resources Conservation Service (formerly the Soil Conservation Service). It is housed in DCR. The program resulted in the construction of thirty-two (32) flood control structures within the Commonwealth. These projects are multi-purpose and provide flood control, passive recreation, wildlife habitat, open space preservation and reservoirs for public water supply. DCR is responsible for the operation and maintenance of twenty-five of these watershed reservations with oversight responsibilities for the other seven.

The WRC was involved at the inception of the program in the 1960's, under its duties related to cooperative programs with the federal government. The Legislature took the land by eminent domain in the name of the Commonwealth of Massachusetts, Water Resources Commission. Since the completion of the last structure in 1990, the program has been administered by DCR's Dam Maintenance Program.

3. Well Driller Program

Relevant Legislation: M.G.L. Chapter 21 § 16

In 1956 the General Court charged the Division of Water Resources, in the Department of Natural Resources (now the Office of Water Resources in the Department of Conservation and Recreation) with the protection, conservation, and control of the Commonwealth's natural resources, including "underground waters".

The General Court specifically assigned to the Division the responsibility for oversight of underground waters by requiring well diggers and drillers to register with the Division, and to submit well completion reports. The WRC was involved at the inception of the program because Division of Water Resources staff reported to the Commission at that time.

The purpose of the Well Driller Registration Program is to protect the Commonwealth's groundwater resources from impairment by ensuring that all wells are drilled, constructed, altered, and decommissioned properly. This is achieved by:

- Requiring qualified and experienced well drillers to be registered with the Office of Water Resources.
- Requiring registered well drillers to comply with federal, state, and local regulations to protect public health and consumer protection interests.
- Aiding state and local authorities in establishing accountability in carrying out permit conditions by linking fines, suspension, and revocation of registration to code violations.

For more information see, <http://www.mass.gov/dcr/waterSupply/welldrill/>

4. Flood Hazard Management Program

Relevant Legislation: M.G.L. c.21, §9
EXECUTIVE ORDER NO. 149
Public Law 90-448, as amended (Federal)

This program is the State Coordinating Agency for the National Flood Insurance Program (NFIP) under an agreement with the Federal Emergency Management Agency (FEMA), providing technical assistance to local communities to evaluate the effectiveness of floodplain management procedures and to upgrade them where necessary. Specific zoning, site plan review and flood level data recommendations are made to local permitting officials in order to maintain a community's eligibility for federal flood insurance. Workshops, review of local by-laws, and assistance in reviewing proposed projects in a floodplain are conducted with local officials.

In 1978, Executive Order 149 established the Water Resources Commission as the state coordinating agency for the NFIP. The Executive Order designates the WRC as the NFIP coordinating agency because "the Massachusetts Water Resources Commission is the state agency responsible for state level programs for flood prevention, flood control, and

flood protection, as provided by M.G.L. c.21, §9". The Flood Hazard Management Program, at that time part of the Department of Environmental Management and now the Department of Conservation and Recreation, has fulfilled that role for the Commission since 1980.

For more information see: <http://www.mass.gov/dcr/stewardship/mitigate/>

5. USGS Cooperative Program

Relevant Legislation: M.G.L Chapter 21: Section 9B.

M.G.L. Chapter 21: Section 9B designated DEM Division of Water Resources (now DCR Office of Water Resources) as the administrator of the state's contribution to the U.S. Geological Survey Cooperative Program. The WRC is involved under its duties related to cooperative programs with the federal government. The program originally included detailed ground water, aquifer, and related hydrological studies. The studies were intended to include aquifer identification, assessment of ground water quality and yield, and providing technical assistance to localities to solve ground water problems.

In recent years, the USGS Cooperative Program has expanded to include maintenance and operation of a statewide stream gaging network; a network of ground water observation wells, hydrologic studies on the river basin scale, and topical studies such as the role of river flow on aquatic habitat.

6. Army Corps of Engineers Assistance to States Program

Relevant Legislation: Section 22 of the 1974 Federal Water Resources Development Act

Under Section 22 of the 1974 Federal Water Resources Development Act, the Corps of Engineers provides assistance to states, local governments and other non-federal entities in the preparation of comprehensive plans for the development, utilization, and conservation of water and related land resources.

The individual states and entities determine the needed planning assistance. In Massachusetts, the Water Resources Commission is charged with recommending projects to be funded. The Corps then accommodates as many studies as possible within the funding allotment.

Typical activities studied under this program are flood control, water supply, water conservation, water quality, hydropower, erosion, methodology to evaluate a wetland or other resource, and navigation. Studies vary in scope from environmental investigations for an individual reservoir to a comprehensive study to establish a State Water Budget.

The Corps has not requested additional projects from Massachusetts since 2003, due to a backlog of existing projects and limited funding for new projects.

For more information, see <http://www.saw.usace.army.mil/Floodplain/Section%2022.htm>

7. Board of Registration of Operators of Drinking Water Supply Facilities

Relevant Legislation: M.G.L CHAPTER 13 § 66B.

The Board of Registration of Operators of Drinking Water Supply Facilities regulates and licenses all operators of local water distribution and treatment facilities to ensure that the highest safety standards are adhered to in the treatment and distribution of drinking water. The goal of the Board is to assure that there is a pool of qualified candidates to work in the water supply industry in Massachusetts.

The Board encourages licensees to maintain a high level of competence in the industry and assists them in enrolling in seminars and training programs. The Board holds high standards of quality and service in the industry for the protection of the public's health and safety. The Board offers nine levels of licensure: from basic employment to management in drinking water facilities.

Membership on the Board of Registration of Operators of Drinking Water Supply Facilities consists of the commissioner of DEP (or designee), who acts as chairman, the commissioner of public health (or designee), the chairman of the Water Resources Commission (or designee) and four members appointed by the governor. DCR Staff has been representing the WRC on the Board.

Appendix B

Laws Relating to the Massachusetts Water Resources Commission

WATER RESOURCES COMMISSION ENABLING ACT

M.G.L. Chapter 21A §§ 8A to 8F

Section 8A. There shall be established within the executive office of environmental affairs the water resources commission hereinafter in this section and in sections eight B to eight F, inclusive, called the commission, which shall consist of the secretary of the executive office of environmental affairs, the commissioner of the department of environmental protection, the commissioner of the department of conservation and recreation, the commissioner of the department of fish and game, the commissioner of the department of food and agriculture, and the director of housing and community development, all of whom shall serve ex officio, and 5 persons to be appointed by the governor.

The 5 members appointed by the governor for a term of three years shall each represent a major type of water user, have a demonstrated knowledge in at least one area of water resource management, have a demonstrated interest in statewide water resource issues, and an ability to address all issues at a level of expertise commensurate with the commission's mandate; provided, however, that one member so appointed shall be a member of the groundwater industry. The governor's appointments shall be made with appropriate consideration being given to a list of candidates provided by the secretary of environmental affairs.

In his initial appointments the governor shall designate two members to serve for one year, two for a term of two years and two for a term of three years and their successors shall serve for terms of three years.

Section 8B. The secretary shall be chairman of said commission. The responsibilities and duties of said commission shall include:—

- (a) development of a water resources management policy framework within which the water resource policies, plans and management programs of the several agencies and departments under the secretary shall function;
- (b) coordination of water resources planning and management functions among the several agencies and departments under the secretary;
- (c) review and comment on all policies brought before the commission;
- (d) annual review and comment on all programs relating to water resource management of the several agencies and departments under the secretary;
- (e) establishment of criteria and priorities for all water resource-related cooperative programs with the federal government, with any other state, or with any executive office, department, or division of the commonwealth;

(f) development and periodic updating of comprehensive water resource management plans for river basins, giving consideration to regional and statewide needs and to integration of waste-water management into water resource planning;

(g) development of water allocation criteria which takes into account demographic, hydrologic, and environmental characteristics;

(h) development of a management information system and data processing capability for the central collection, storage and retrieval of water resource management information. Further, the commission may be responsible for dissemination of said information to the several agencies and departments under the secretary, to other state agencies and to the public on request. A fee may be charged for retrieval of information from said system.

(i) development of an education program which encouraged broad public participation at both municipal and regional levels, with emphasis on encouragement of long term water resource and wastewater planning and management by municipalities and by regional planning agencies.

Section 8C. The commission shall further be responsible for updating the Massachusetts water supply policy statement at intervals which shall not exceed five years. The commission shall incorporate any recommendations of municipalities and regional planning agencies as appropriate, and shall include, as appropriate, consideration of coordination of wastewater management, and shall submit a report of its findings to the clerk of the house of representatives and to the clerk of the senate at the completion of each update of the policy statement.

Section 8D. The commission may establish rules and regulations as may be necessary for the proper administration of sections eight A to eight F, inclusive, and shall annually submit to the budget commissioner the estimates required by sections three and four of chapter twenty-nine and shall file an annual report as required by sections thirty-two and thirty-three of chapter thirty.

Section 8E. The commission shall be staffed by a director appointed by the secretary, who shall not be subject to the provisions of chapter thirty-one nor the provisions of section nine A of chapter thirty, and by such technical and clerical staff as the secretary, subject to appropriation, may appoint in order to fulfill the requirements of this chapter. Said technical and clerical staff shall not be subject to the provisions of chapter thirty-one nor the provisions of section nine A of chapter thirty.

Section 8F. The commission shall meet at least once a month, on the second Monday, and may meet more often as the members may determine. The members shall be reimbursed for expenses incurred in connection with their duties and the appointed members of the commission shall, subject to appropriation, receive in addition to their expenses, fifty dollars per day for each day or part thereof of service to said commission.

THE INTERBASIN TRANSFER ACT

M.G. L. Chapter 21 §§ 8B - 8D

Section 8B. The following words and phrases, as used in this section and sections eight C and eight D, shall have the following meanings:--

"Commission", the water resources commission.

"Interbasin transfer", any transfer of the surface and groundwaters, including wastewater, of the commonwealth outside a river basin. If a city or town partially situated within a river basin takes waters from that basin, extension of water services to a portion of the same city or town outside the basin shall not be deemed an interbasin transfer of water.

"Insignificant increase", an increase insufficient to invoke the provisions of section eight C and eight D as determined by the commission; provided, however, that in no event shall an increase over one million gallons per day be deemed insignificant.

"River basin", a geographic area within the commonwealth determined by a body of water and its surrounding drainage area as delineated by the commission.

Section 8C. Any increase over the present rate of interbasin transfers of the surface or groundwater of the river basin shall require the approval of the commission, notwithstanding the provisions of any law to the contrary to increase a present interbasin transfer in addition to such other approvals that may be required by law. Said commission shall file a report of its findings, justifications, and decisions in relation to such approval or disapproval, with the clerks of the house of representatives and the senate, and with the state secretary for publication in the Massachusetts register.

Any emergency connections either approved under the provisions of sections forty and forty-one A of chapter forty, or authorized by a law to provide a necessary and adequate water supply shall be exempt from the provisions of this section for a period not to exceed six months of any calendar year, so long as they fulfill the criteria of the division of water supply of the department of environmental protection.

The provisions of this section and section eight D shall not apply to any insignificant increase over the present rate of interbasin transfers of the surface and groundwater of a river basin. The criteria for determining any insignificance shall be established by the commission based upon the impact to the donor basin.

Section 8D. The commission shall promulgate rules and regulations defining and delineating the river basins of the commonwealth, and establish application procedures and criteria upon which the commission shall base its approval or disapproval of any proposed interbasin transfer of waters. Said criteria shall include but not be limited to the following:--

(1) that all reasonable efforts have been made to identify and develop all viable sources in the receiving area of the proposed interbasin transfer,

(2) that all practical measures to conserve water have been taken in the receiving area, including but not limited to the following:

(a) the identification of distribution system sources of lost water, and where cost effective, the implementation of a program of leak detection and repair;

(b) metering of all water users in the receiving area and a program of meter maintenance;

(c) implementation of rate structures which reflect the costs of operation, proper maintenance and water conservation and encourage the same;

(d) public information programs to promote water conservation, including industrial and commercial recycling and reuse; and

(e) contingency plans for limiting use of water during seasonal or drought shortages;

(3) that an environmental review pursuant to section sixty-one and sections sixty-two to sixty-two H, inclusive, of chapter thirty has been complied with for the proposed interbasin transfer,

(4) that a comprehensive forestry management program which balances water yields, wildlife habitat and natural beauty on watershed lands presently serving the receiving area has been implemented,

(5) that reasonable instream flow in the river from which the water is diverted is maintained, said reasonable instream flow shall be determined by the commission in making its determination of applicability of the proposed interbasin transfer of water.

The decision of the commission to approve or deny a proposed interbasin transfer shall be determined after at least two public hearings, one of which shall be held in the proposed donor community and one of which shall be held in the receiving community and which shall take place after compliance with said sections sixty-one and sixty-two to sixty-two H, inclusive, of chapter thirty. All proceedings under sections eight C and eight D shall be subject to the provisions of chapter thirty A.

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT; DIVISION OF
WATER RESOURCES (relative to PL 566, the Federal Watershed Protection
and Flood Prevention Act)**

**Chapter 21: Section 9. Powers and duties of division (Now DCR Office of Water
Resources)**

Section 9. The division shall be the agency of the commonwealth having administrative responsibility, according to criteria established by the *(Water Resources) commission*, over programs provided for by the Watershed Protection and Flood Prevention Act 16 USC 1001 et seq. and shall carry out, maintain and operate any works of improvement authorized by said federal act and limited by section fourteen; provided that it shall not be an applicant for assistance under said federal act.

Any employee or agent of said division may, at any reasonable time, enter upon any premises while engaged in the performance of any duties required under sections nine to sixteen, inclusive. The division may negotiate with any property owners such terms, agreements or contracts as may be necessary or convenient in carrying out the duties required under sections nine to sixteen, inclusive.

The term “works of improvement” as used in this section and in sections twelve to fifteen, inclusive, shall mean any undertaking for (1) flood prevention, including structural and land treatment measures, or (2) conservation, development, utilization and disposal of water in watershed or subwatershed areas not exceeding two hundred and fifty thousand acres and including any single structure which provides more than twelve thousand five hundred acre feet of flood-water detention capacity and more than twenty-five thousand acre feet of total capacity. A number of such watersheds when they are component parts of a larger watershed may be planned together when the local sponsoring organizations so desire.

Chapter 21: Section 9A. Acquisition of lands and waters

Section 9A. The division may, subject to the approval of the *water resources commission* and after proper consideration of the criteria established by the *water resources commission*, acquire by purchase, gift, lease, eminent domain, or otherwise lands and waters and easements therein to protect and conserve water impoundment sites and land adjacent to such sites which it deems necessary to meet the water resource needs of the commonwealth for flood control, low flow augmentation, and municipal water supply, provided that the exercise of the power of eminent domain shall be subject to the approval of the board of selectmen in a town or the city council in a city in which the land is located. If such board or council fails to approve or disapprove such proposed taking within ninety days after receipt of written notice of the proposed taking from the division, such board or council shall be deemed to have approved the same. No subsequent transfer or sale of such lands or waters by the division to any agency of the commonwealth or to any city, town, or district shall be made and no construction or water resources improvement thereon shall be undertaken without the approval of the general court. The division may enter into an agreement for the temporary supervision and maintenance of such lands and waters with any appropriate public agency, and may permit temporary compatible private uses subject to such conditions as it may impose. Said lands shall be subject to payments in lieu of taxes as provided in sections thirteen to seventeen, inclusive, of chapter fifty-eight. The division of water resources and its duly authorized agents, without being liable for trespass, shall have the right after giving due notice, accompanied by a detailed plan to enter upon any lands for the purpose of making surveys, test pits, borings and geologic investigation. Any damages to property resulting by the exercise of the aforementioned rights shall be reimbursed by the division to the owner of the property so damaged.

The *water resources commission* may also reimburse a city, town or district for acquisition costs of lands, waters and easements necessary for the development and protection of water impoundments for a regional municipal water supply system, provided that said regional water supply system meets criteria which may be established by the *water resources commission*. For purposes of this section, a regional municipal water supply system shall consist of two or more municipalities.

In the event that said city, town or district does not begin said regional water supply system project as authorized by law within a number of years to be determined by said *commission*, then said city, town or district receiving such reimbursement shall repay all monies at the prevailing interest rates to the commonwealth.

When an impoundment site is acquired under the provisions of this section which has the capacity for future development to meet substantially more than the needs of the cities, towns or districts served by the initial regional water supply system, provisions shall be included in the agreement with the *water resources commission* and in the agreement forming the district which will preserve the opportunity for other cities, towns or districts to later join the district and to share the impounded waters after having participated in the cost of the reservoir enlargement. The *water resources commission* shall enter into an

agreement under this section to facilitate development of a water system to serve the original district and to preserve the opportunity for future expansion of said district.

Chapter 21: Section 10. Repealed, 1983, 589, Sec. 5

Chapter 21: Section 11. Employees; rules and regulations

Section 11. The division may employ such technical and clerical assistance and consultants as may be necessary to fulfill the responsibilities of the division as specified in section nine. The division may establish rules and regulations as may be necessary for the proper administration of sections nine to sixteen, inclusive.

Chapter 21: Section 12. Federal Watershed Protection and Flood Prevention Act; applications for assistance

Section 12. Applications for assistance under the federal Watershed Protection and Flood Prevention Act shall be initiated by the local organization, and may not be initiated by the division. Such applications shall be filed with the division, which may disapprove the same within forty-five days from the date of filing. The division may give approval only to applications submitted by local organizations, but any local or regional voluntary citizens' group, established under chapter one hundred and eighty for the purpose of furthering water conservation and flood prevention, may join with any local organization in making application to the division for assistance under the federal Watershed Protection and Flood Prevention Act. (please see PL 566 Watershed Protection And Flood Prevention Act Program).

Chapter 21: Section 13. Works of improvement; assistance from commonwealth; conditions

Section 13. The division shall require, as a condition to providing assistance from the commonwealth for the installation and operation and maintenance of works of improvement, that local organizations shall (1) assume responsibility for all planning for works of improvement to be constructed within the watershed area, but the local organization may, nevertheless, request, through the division, technical advice from any appropriate agency of the commonwealth; (2) acquire, in the name of the commonwealth, and without cost to the commonwealth, such land, easements or rights of way as will be needed in connection with works of improvement installed with the assistance of the commonwealth; (3) acquire, or provide assurance that landowners have acquired, such water rights, pursuant to the laws of the commonwealth, as may be needed in the installation and operation of the works of improvement; and (4) obtain agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty per cent of the lands situated in the drainage area above each retention reservoir to be installed with the assistance of the commonwealth.

Chapter 21: Section 14. Works of improvement; contracting authority; agents; costs

Section 14. At such time as the United States Secretary of Agriculture and the interested local organization have agreed upon a plan for works of improvement, the division may (1) assume such proportionate share of the nonfederal cost of installing any works of improvement involving federal assistance as it determines to be equitable in consideration of anticipated benefits from such improvements; provided, that no part of the construction cost for providing any capacity in structures for purposes other than flood prevention and features related thereto shall be borne by the commonwealth; and (2) make arrangements, through the local organizations satisfactory to the said Secretary of Agriculture for defraying the costs of operating and maintaining such works of improvement, in accordance with regulations presented by the said Secretary of Agriculture.

In order to carry out the provisions of clause (1) the division shall be the contracting authority for the construction of any works of improvement involving assistance from the commonwealth, but shall designate the appropriate department or departments of the commonwealth or subdivision or subdivisions thereof as the agent or agents of the division for the purpose of making such contracts or performing the work of construction; provided, that whenever the said works of improvement involve stream clearance, channel improvement or construction of dams the division shall designate the division of waterways in the department of conservation and recreation as the contracting agent.

In order to carry out the provisions of the above clause (2) the division is authorized to assume such proportionate share of the costs of operation and maintenance of said works of improvement as it determines to be equitable in consideration of anticipated benefits from such improvements.

In order to insure the continued operation and maintenance of any and all works of improvement that have been installed with the assistance of state funds, the division is authorized and directed to designate as its agent or agents for this purpose the department or departments of the commonwealth or the subdivision or subdivisions thereof which constructed or contracted for the construction of said works of improvement.

Chapter 21: Section 15. Works of improvement; appropriations; federal, state or local funds

Section 15. At such time as the United States Secretary of Agriculture and the interested local organization have agreed upon a plan for works of improvement, and the local organization has met the requirements for receiving assistance from the commonwealth in installing, operating and maintaining the works of improvement as set forth in section fourteen, the division shall request the general court to appropriate such sums of money as are needed to meet (1) the share of the nonfederal cost of installing the works of improvement and (2) the share of the cost of operating and maintaining said works of improvement, which the division proposes to assume under the provisions of section fourteen.

Any funds received from local organizations or any other source, including funds made available by the federal government, shall be in addition to funds made available to the division by the general court.

With respect to all projects for which funds of the commonwealth have been appropriated as partial or total payment of the nonfederal share of the costs of constructing, operating or maintaining the proposed works of improvement, the division shall be the recipient of any federal, state, or local funds appropriated for such projects. Funds made available from any source for a specific project shall be held by the division for said project, and may not be allocated to any other project.

Nothing in this section or in section fourteen shall be construed to prevent or limit a local organization from assuming the full amount of the nonfederal share of the cost of installing any works of improvement.

WELL DRILLER PROGRAM

M.G.L. Chapter 21 § 16

No person shall engage in the business of digging or drilling wells within the commonwealth unless he is registered with the division. Each person intending to engage in said business shall register annually with said division and upon payment of a fee determined annually by the commissioner of administration under the provision of section three B of chapter seven shall be issued a certificate indicating that he is so registered. Each registration shall be in force, unless sooner cancelled, suspended or revoked for violation of this section or any of the rules and regulations established under section eleven, until July first following the year of its issuance. Said registration shall be sufficient authority for any said person to engage in the business of digging or drilling wells anywhere within the commonwealth and no further licensing or registration shall be required; provided, however, that nothing contained herein shall prohibit the appropriate local authority in any city or town from requiring any person engaged in the digging or drilling of private wells to obtain a site permit in accordance with terms and conditions which ensure health and safety and said city or town may charge said person a reasonable fee for said site permit as determined by the city or town.

Within thirty days after completion of any well by digging or drilling, the person engaged in the business of digging or drilling wells shall submit a report to the division setting forth such information as may be required under said rules and regulations.

Whoever engages in the business of digging or drilling wells without being registered or fails to submit a report upon the completion of a well shall be punished by a fine of not more than three hundred dollars.

FLOOD HAZARD MANAGEMENT PROGRAM

EXECUTIVE ORDER NO. 149

By His Excellency
MICHAEL S. DUKAKIS
Governor

PROVISIONS FOR STATE COORDINATION AND PARTICIPATION WITH THE FEDERAL ADMINISTRATION UNDER THE NATIONAL FLOOD INSURANCE ACT OF 1968, AS AMENDED, AND RULES AND REGULATIONS PROMULGATED THEREUNDER.

WHEREAS, uneconomic uses of the Commonwealth's flood plains are occurring and the potential for flood losses continues to increase despite substantial efforts to control floods; and

WHEREAS, national, state and local studies of areas and property subject to flooding indicate a further increase in flood damage potential and flood losses, even with continuing investment in flood protection structures; and

WHEREAS, the Commonwealth of Massachusetts has extensive and continuing programs of the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

WHEREAS, the availability of programs for federal loans and mortgage insurance, state financial assistance, and land use planning are determining factors in the utilization of lands; and

WHEREAS, the availability of flood insurance under the National Flood Insurance Program, as provided by the National Flood Insurance Act of 1968, as amended, requires that a state agency be assigned to the coordination of federal, state and local aspects of flood plain, mudslide and flood-related erosion area management activities in the state; and

WHEREAS, the Massachusetts *Water Resources Commission* is the state agency responsible for state level programs for flood prevention, flood control, and flood protection, as provided by M.G.L. c.21, §9;

NOW, THEREFORE, I, MICHAEL S. DUKAKIS, by virtue of the authority vested in me as Governor of the Commonwealth of Massachusetts, do order and direct:

1. The *Water Resources Commission* is hereby designated as the state coordinating agency to assist in the implementation of the National Flood Insurance Program, 24 CFR §1909 et al. (1977) The *Water Resources Commission* is further designated as the state agency to implement the flood plain management criteria for state-owned properties in special hazard areas, as set forth in 24 CFR §1910.12 (1977). Pursuant to this designation, the *Commission* shall encourage a broad and unified effort to prevent uneconomic uses and development of the state's flood plains, and in particular, to alleviate the risk of flood losses to state lands and installations and state-financed or supported improvements. Specifically:

(i.) Under the leadership and direction of the *Water Resources Commission*, all state agencies directly responsible for the construction of all structures, roads or other facilities shall, to the extent possible, avoid the use of flood plains in connection with such facilities. In the event that construction of such facilities in a flood plain cannot be avoided, the floodplain management criteria set forth in 24 CFR §§1910.3, 1910.4, and 1910.5 shall be observed when applicable. Flood-proofing measures shall be applied to existing state facilities where possible in order to reduce the potential for future flood damage.

(ii.) All state agencies responsible for the administration of grant or loan programs, involving the construction of structures, roads, or other facilities shall evaluate potential flood hazards to such facilities and, in order to minimize both the exposure of such facilities to flood damage and the need for future state expenditures for flood protection and disaster relief, shall to the extent possible avoid the use of flood plains for such construction.

(iii.) All state agencies responsible for the disposal of lands or properties shall, prior to disposal, a) evaluate flood hazards in connection with such lands or properties and b) attach such restrictions with respect to their use as are necessary to minimize future state expenditures for flood protection and disaster relief. In carrying out the purposes of this paragraph, each state agency may make allowance for any estimated reduction in fair market value resulting from the incorporation of use restrictions in the disposal documents.

(iv.) All state agencies responsible for programs which affect land use planning, including state permit programs, shall take flood hazards into account when evaluating plans, and encourage land use appropriate to the degree of hazard involved.

2. The *Water Resources Commission* is hereby designated as the agency responsible for making recommendations as to areas in the state eligible for hydrological ratemaking studies as required by the rules and regulations of the Federal Insurance Administration.

Given at the Executive Chamber in Boston this 29th day of November in the year of our Lord one thousand nine hundred and seventy-eight and of the Independence of the United States of America the two hundred and second.

MICHAEL S. DUKAKIS
Governor
COMMONWEALTH OF MASSACHUSETTS

PAUL GUZZI
Secretary of the Commonwealth

USGS COOPERATIVE PROGRAM

M.G.L Chapter 21: Section 9B.

The division shall be the administrator of the state's contribution to the cooperative survey program of the United States Geological Survey, hereinafter referred to as the USGS, for detailed groundwater assessments and related hydrological studies. Said division, with the approval of and according to the criteria established by the *commission*, shall contract or cause a contract to be executed, with the USGS to conduct a ten year program of detailed groundwater appraisals, aquifer assessments, and such other appropriate geologic and hydrologic studies as may be required for the protection of existing sources of groundwater supply and for the identification of new groundwater sources.

Said groundwater survey program shall include aquifer identification and assessments of quality and yield, and direct technical assistance to localities to solve groundwater problems of less than regional scale. Assistance to localities shall be based on criteria and priorities to be established by the *commission* which shall include, but not be limited to, the following: a present or recurrent water supply deficit; areas in which the survey would serve more than one community; communities which have suffered loss of supply due to contamination; communities in which demands are placed on supply systems by state institutions; and local commitment to participation. Direct local assistance shall not exceed five hundred thousand dollars and shall be funded fifty per cent by USGS and fifty per cent by the commonwealth, and the total cost of said program shall not exceed, in the aggregate, five million dollars.

For the purposes of this section, groundwater shall mean water which is below the surface of the earth.

ARMY CORPS OF ENGINEERS ASSISTANCE TO STATES PROGRAM

Please see: **Section 22 of the 1974 Federal Water Resources Development Act**

BOARD OF CERTIFICATION OF OPERATORS OF DRINKING WATER SUPPLY FACILITIES

M.G.L CHAPTER 13 § 66B.

There shall be a board of certification of operators of drinking water supply facilities to insure the proper management, operation and maintenance of public water supply systems. The board shall consist of the commissioner of environmental protection or his designee, who shall be chairman, the commissioner of public health or his designee, the chairman of the *water resources commission* or his designee and four members to be appointed by the governor. Of the appointive members of the board, one shall be a registered professional engineer engaged in the practice of sanitary engineering, one a member of the Massachusetts Labor Organization, one shall be appointed from a list of qualified operators of water supply facilities in the commonwealth which has been recommended by the executive committee of the New England Water Works Association, and the remaining member shall be appointed from a list of qualified

persons recommended by the executive board of the Massachusetts Water Works Association. Each appointive member of the board shall receive his necessary traveling expenses actually incurred in the discharge of his official duties, provided that the expenses of the members of the board, and the expenses of the board, including those of such employees as it may appoint, shall not in any one year exceed its receipts. As the term of office of a member of the board expires, his successor shall be appointed in like manner for a term of four years. Said board shall meet at the call of the chairman and shall by rule establish the minimum qualification which must be possessed by operators of drinking water supply facilities. Said board may prepare and conduct examinations, maintain records and may issue and renew, or suspend or revoke, after hearing and for cause, certification of competency. It may adopt such further rules and regulations not inconsistent with the law as it may deem necessary in the performance of its duties.