



April 26, 2007

Water Resources Commission
Attention: Michele Drury
Department of Conservation and Recreation
Office of Water Resources
251 Causeway Street
Boston, MA 02114

Subject: Testimony on the WRC Staff Recommendation on the application of the Town of Wilmington for admission to the MWRA water supply system for partial water supply service

The Town of Wilmington is applying for partial water service from the MWRA. The WRC staff have done an extensive review and analysis and produced a thought provoking response to the February/March comments offered on Wilmington's ITA application. The Response to Comments and the Recommendation raise questions about the interaction of the ITA and WMA, about the scope of WRC jurisdiction under the ITA and the value of the ITA's Local Water Resources Plan versus the provision of the more complete Comprehensive Water Resources Management Plan (CWRMP) under DEP jurisdiction, among other matters.

The Wilmington recommendation provides some conflicts and perhaps even contradictions which should be considered by the WRC, especially when considered in conjunction with Reading's twice applying under the ITA (see discussion regarding taking the long view, below). The Response to Comments and Staff Recommendation fail to allow the relevance under the ITA of the negative consequences of rehabilitation of two old receiving-basin wells, in the Wilmington case, which if developed for high pumpage could deplete flows in two sub-basins, but accepted, in the Reading case, that an ITA request was appropriate solely to bolster a beleaguered basin which could not support the impact of current well withdrawals on streamflows.

While the Act's requirements are invoked to deny the relevance of some actions in the receiving basin, the ITA implementation fails in its donor watershed responsibility to acknowledge and propose a remedy to the continued inadequacy of downstream release management, especially in dry years, in the donor watersheds. Neither the DCR nor the MWRA will be eager to act without some significant encouragement from the WRC!

We also urge the WRC to consider when it may be appropriate to apply more stringent requirements on an ITA applicant and not limit its own jurisdiction to DEP's authority under the Water Management Act. The WRC should rather be asking the DEP to incorporate stricter standards for source approvals or WMA permits that result from ITA requests because such requests should remain infrequent and rigorously conditioned actions. In all ITA approvals, new water should be confined primarily to essential uses, not to the balancing of uses more typical of Water Management Act permits, for example. The WRC should uphold the summer water use limitations of the calendar year method that Wilmington has selected, regardless of the outcome of Wilmington's appeal to an Administrative Law Judge or by "any subsequent WMA permit restrictions issued by DEP"; and regardless of the adequacy of the donor basin sources. Although some argue that this would result in a different set of standards for some DEP permits in the Ipswich Basin, we argue in response, that not all communities in that basin are undertaking an interbasin transfer to provide themselves water. Strictness under WRC's broad authority would affirm the Commonwealth's water policy and the intent of the ITA.

The Staff's Wilmington Recommendation unnecessarily limits the ITA's potential focus: It could incorporate a broader definition of water resources management by recognizing within its recommendation and vote, the integration of stormwater, wastewater, and source water management programs and strategies to which a community has committed under other state requirements, such as in Wilmington's Comprehensive Water Resources Management Plan. Although identified in the Wilmington Recommendation, its stormwater and wastewater management proposals are virtually ignored.

Part of the impetus for making application to the MWRA, whether in the case of Wilmington or Reading, was to relieve Ipswich River flow problems. Although the ITA does not overtly recognize the pre-existing condition of the applicant-basin as a qualifying reason to apply (Reading is the first applicant to make such an argument), the outcome of the WRC's review and approval should, at a minimum, ensure that an ITA approval will provide a long-term comprehensive blueprint for protecting and preserving the receiving basin's resources in addition to its emphasis in limiting donor basin incursions. The ITA process should assure that a community's water situation is dire enough and its options extreme enough for the state to entertain an interbasin transfer as part of a resource management solution. The WRC and the DEP need not require identical conditions for their independent approvals, but should cooperate on strict standards when an ITA is involved and not relinquish, conflict with nor weaken the other's jurisdiction and goals.

In the Wilmington case, the WRC should require that all reports, whether to DCR, USGS, or DEP also be provided to the WRC, such as non-point source management projects and studies of outdoor water use and rain harvesting as discussed under Criterion #3. As data from pilot studies in applicant communities become available they should be considered as viable recommendations or next steps in the five-year review period following approval, and for subsequent applicants under the ITA process. Wilmington should be required to report on progress to restore, protect and use current failed water sources over the long-run. These sources may some day be viable and contribute to specified local uses, which have, to date, been dismissed as too expensive. Is the WRC proposing to drop its oversight after five years – we certainly hope it does not.

Finally, we have commented on numerous occasions on the application of Wilmington to the MWRA, on its CWRMP development and its sewer expansion plans over recent years. The WRC process under the Interbasin Transfer Act is quite remarkable in that it allows very individualized and publicly scrutinized decisions, comparable to and in some cases more visible than the MEPA process because the discussions take place in real time. WRC agency members, whose actions may have contributed to an ITA request, sit together with public members and meeting attendees and discuss the issues. WSCAC appreciates this process, the efforts to implement the ITA and the opportunity to participate in the exercise of the Commission's power to review regulations, and to develop, review and approve state water policies.

Very truly yours,

Eileen R. Simonson
Co-Executive Director