



Via Email and Mail

January 18, 2005

Elizabeth McCann
Department of Environmental Protection
2nd Floor
One Winter Street
Boston, MA 02108

Re: Final Draft Performance Partnership Agreement 2005-2006

Dear Ms. McCann:

Charles River Watershed Association (CRWA) has reviewed the draft DEP/EPA 05-06 Performance Partnership Agreement (PPA) and submits the following comments.

At the outset, we would like to commend DEP's Bureau of Resource Protection for its web-based Environmental Progress Report (EPR), which embodies the PPA for drinking water, ground and surface water, and wetlands and waterways. The EPR contains a great deal of information in a concise, easily understandable format. The graphs and charts synthesize reams of data and we think the use of hypothetical, or sample, graphs as place holders is useful while this information is developed. We appreciate DEP's candor regarding how it's doing, the gaps in evaluative data, and the data needs going forward. It would be useful, however, to see more detail -- specific milestones and implementation plans in the work plans and we believe this should be included as part of the PPA.

CRWA hopes that the EPR will be expanded to include "place-based" information organized by watershed. Permits, annual reports, violations, streamflow data, etc. in GIS format on the watershed level would be extremely useful to the public, environmental groups, local officials and even we would guess, to DEP.

Despite the breakout of "Clean Water" and "Sufficient water for healthy ecosystems" in the EPR, it does a better job of linking water quantity and quality than the 04-05 PPA did. CRWA believes, however, that the integration of water quantity and water quality issues by DEP should be a specific goal. Improved implementation of the antidegradation provision of the MA Surface Water Quality Standards (WQSs) should be incorporated into all relevant permit programs and decisions. By way of example, while the Water Management Act (WMA) is the primary tool identified by DEP for streamflow protection, recent hearings on DEP's Ipswich basin modified WMA permits made it clear

that WMA staff (and its counsel) are not well-informed about the state's antidegradation policy, and the applicability of WQSs to WMA permitting decisions.

For the first time, streamflow and the need to *restore* flows is an explicit part of the PPA. While recognizing the importance of water budgets to decisions affecting streamflows, the work plans do not identify actions for integrating key inflow-outflow factors, namely -- wastewater, stormwater and water supply -- in decision-making. This will hamper streamflow protection and restoration efforts.

We support the development of guidance on offset measures in the "Restore Impaired Flow" work plan pursuant to DEP's new WMA policy, however, by its terms the offset provision in the WMA policy is limited to new permits or proposed increases in allowed withdrawal volumes in existing permits and does nothing to address withdrawals *already permitted*, but not being fully used. The offset provision in the WMA permitting policy will not help to restore currently impaired flows since this provision does not apply to existing withdrawals. The Restore Impaired Flow section also states that when new sources or increases in withdrawal volumes are proposed, DEP "will evaluate whether additional conditions and offsets are necessary to achieve the appropriate balance between competing water uses." CRWA believes that the work plan should include the development of criteria by which DEP will decide whether additional conditions and offsets are warranted and also the development of offset ratios for individual measures.

In basins already overallocated for water withdrawals where actual withdrawals are below the volumes authorized, offsets are critical to streamflow restoration efforts and the sustainability of the public water supply. Somewhere in Goal 2 of the PPA should be the goal of sustainable water resources for both instream and out-of-stream uses, as well as the enhancement of water supplies through stormwater recharge and treated wastewater infiltration.

The work plan calls for setting "Protective Flow Targets" in conjunction with the statewide streamflow task force and strengthening databases and tracking systems. In addition, CRWA believes that it is critical to monitor and evaluate the effectiveness of the flow targets and streamflow standards, both short and long term. The development of evaluation protocols should either be part of this work plan, or included under the statewide monitoring and assessment strategy.

The section on "Knowing streamflow conditions" recognizes the importance of real time flow data and the need to increase the number of flow gages. Without this information it will be difficult to refine the Water Resources Commission's *Stressed Basins* framework, or to use it reliably in permitting decisions. For instance, a gage in the upper Charles River would show that the upper river is highly stressed, as opposed to its medium stress classification under the Stressed Basins report. The work plan for this section, however, is quite vague and merely states that DEP is "exploring options to address this data gap and acquire water quantity information . . ."

Under the "Controlling water withdrawals" section DEP acknowledges that if the majority of the permit holders are in compliance and yet basin stress is increasing, this

may indicate that permit provisions are not effective and also the need to control other activities, like infiltration and inflow and sewage disposal that affect water flows. Similar to the need to evaluate the effectiveness of flow targets, we think it is critical to develop a method for assessing the effectiveness of existing and modified WMA permit conditions in carrying out the purposes of the WMA. Additionally, standardized reporting should help DEP determine compliance, as should improved databases. Annual statistical reports should be available on line to the public and CRWA believes that this should be included in the work plan. We think that information on “confirmed violators” withdrawing in excess of authorized withdrawals should be included in the EPR, or through a link.

DEP recognizes that ascertaining compliance will become more challenging as more conservation standards are included in permits necessitating greater staffing as well as to ensure timely five-year reviews of WMA permits. The estimated hours for five-year reviews seems low and we note that the WMA program has been understaffed since its inception. While recognizing in the Control Water Withdrawals-Permitting section that it needs to consider other aspects of water management that affect stream flows, such as wastewater treatment and stormwater management, the detailed work plan is silent on how it will do this.

Lastly, the MA Division of Fisheries and Wildlife is playing an important role in streamflow and habitat protection and restoration. The PPA/EPR should include DEP’s continued work with DFW and use of its target fish assessment work in permit decisions.

CRWA appreciates this opportunity to comment on the final draft PPA. Please do not hesitate to call me if you have any questions.

Very truly yours,

Margaret Van Deusen
Deputy Director and General Counsel

cc: Cynthia Giles