



October 14, 2009

The Honorable Deval Patrick
Office of the Governor
State House
Room 280
Boston, MA 02133

Dear Governor Patrick:

On behalf of Conservation Law Foundation, Ipswich River Watershed Association, Charles River Watershed Association, and Clean Water Action, we hereby resign as the environmental members of the Department of Environmental Protection's Water Resources Management Advisory Committee (Advisory Committee) to which you appointed us pursuant to section 3 of the Water Management Act, G.L. c. 21G (WMA). We are resigning because we can no longer conscientiously carry out our responsibilities under section 3 of the Act: 1) to provide advice and consultation to DEP on the Act, and standards, rules and regulations for water resources management; and 2) to make recommendations for improving water management practices and laws.

Precipitating our decision was an announcement last Thursday at a meeting of the Advisory Committee that DEP was jettisoning its long-standing interpretation of the term "safe yield," a cornerstone of the Water Management Act for protecting rivers and lakes. Discussion or debate on this dramatic revision of state policy was not invited or welcome.

This is a significant step in the wrong direction. DEP has always recognized that environmental factors are fundamental to safe yield. Its new interpretation, however, premised on the amount of water that can be withdrawn until there is no water left in a river, removes any environmental consideration and directly conflicts with DEP's own statements that

the concept of safe yield is fundamental to the proper management of a water source, taking into account the natural variability of streamflow, and serves as the principal regulatory basis for determining the scope of permitted water withdrawals in a water source.¹

Just as importantly, the Superior Court adopted this interpretation in a 2007 ruling involving withdrawals from the Ipswich River basin, which regularly dries up in the summer largely due to water withdrawals. The Court ordered DEP "to develop a scientifically sound methodology for determining safe yield and implement it to calculate the safe yield of the Ipswich River basin." Now, DEP is saying that the safe yield of the Ipswich basin is 22 million gallons *more* than its previous determination – a determination

¹ Introduction to 2005 amendments to WMA regulations at 310 CMR 36.00.

that the court said was “too high.” DEP has apparently spent the last two years trying to figure out how to get around the ruling.

To prevent any discussion of safe yield and to avoid seeking input from the Advisory Committee while its new position was being formulated, DEP has not convened the committee, which provides a public forum, since April. Instead it announced its new-found interpretation of safe yield as a *fait accompli*. We believe that its interpretation is ill- advised, seriously undercuts state water policy, and is not in accord with the WMA statutory scheme. Given the agency’s conscious decision to ignore the Advisory Committee on such an important issue, we have concluded that our continued service is not considered to be of any value.

While the Executive Office of Energy and Environmental Affairs at the same time announced the formation of a task force to better integrate water management – a move that we applaud – this unfortunately comes on the eve of DEP’s issuance of new 20-year water withdrawal permits across the state. We have tried to encourage DEP to consider issuing short-term 5-year permits that could be modified when the task force has concluded its work, but have not been encouraged by the response.

We thank you for your original appointment. However, since the collective missions of our organizations are to protect, preserve, and restore the environment of Massachusetts, we have no option but to resign our positions in protest.

Water could be a calling card for Massachusetts for economic development even in the face of climate change impacts, but only if managed correctly. It isn’t being managed correctly. We hope that the task force will undertake its work expeditiously – the law is 23 years old, after all – and provide real and innovative changes to Massachusetts’ management of its water resources.

Sincerely,

John Pike
Conservation Law Foundation

Kerry Mackin
Ipswich River Watershed Association

Margaret Van Deusen
Charles River Watershed Association

Becky Smith
Clean Water Action

cc: Ian Bowles
Laurie Burt