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November 4, 2013

The Honorable Marc Pacheco, Senate Chair
The Honorable Anne Gobi, House Chair
Joint Committee on Environment, Natural Resources and Agriculture
State House, Room 473F
Boston, MA 02133

RE: Senate Bill 1880—An Act Improving Drinking Water and Wastewater Infrastructure

Dear Chairs Pacheco and Gobi:

The Massachusetts Coalition for Water Resources Stewardship (MCWRS) is a non-profit organization of over 40 municipalities and wastewater districts along with engineering and legal firms. We unite to advocate for sound science, cost consideration and best use of fiscal resources in water resource management regulation. MCWRS has been involved with the Water Infrastructure Alliance to educate elected officials and the public about the need for investment in water infrastructure in Massachusetts. We welcome the opportunity to comment on Senate Bill 1880, An Act Improving Water and Wastewater Infrastructure.

MCWRS applauds the Senate President and Senator Eldridge for their efforts to raise awareness about the need for greater state assistance to municipalities and districts burdened by enormous costs to maintain and improve water infrastructure. SB 1880 includes provisions for increased funding as well as regulatory reform to aid communities. However, the assistance proposed through this legislation barely scratches the surface of what is needed to close a \$40 billion gap in funding drinking water, wastewater and stormwater needs across the Commonwealth. We see this bill as a beginning to what must be a long term commitment by the state to find new and creative ways to help communities grapple with infrastructure maintenance. We hope that with your leadership the Joint Committee on Environment, Natural Resources and Agriculture will continue to champion the cause of state-assisted water infrastructure investment for years to come.

MCWRS asks for consideration of the following comments to make this legislation more effective and fair for all communities:

1. It is unclear just how much new money is being made available by initiating some changes to the State Revolving Fund (SRF) program. The borrowing

cap of the Water Pollution Abatement Trust is being raised but there are limits on how much of this new money will be directed to various programs. Some analysis of these changes should be offered so that there is clear understanding as to how much money is available for cities and towns.

2. The bill includes language (Section 23-Chapter 29C Section 6(9)) that penalizes communities that have enterprise systems for water or wastewater and that transfer some of their revenue to the municipal general fund for other purposes. As written, this language would disqualify most communities with enterprise systems from participating in SRF or other financing because some enterprise revenue is always transferred to the community general fund. It must be made clear that most every enterprise does have legitimate transfers to general funds in order to pay for services provided by the municipality. For example, enterprises may obtain services from the municipal Law Department, Treasurer's Office and Human Resources Department. The enterprises pay for these services via transfers from enterprise to the municipality's general operating budget. There are also times when the enterprise encounters a budget shortfall and is supported by the municipal operating budget. The enterprise must then reimburse the general operating budget during the following fiscal years. The proposed language would punish communities for these very legitimate transfers. The language needs to be reconsidered. We would ask the committee to strike the following language in part (9) of Section 6 (lines 307-311) "(2) any local government unit that transfers or otherwise uses money from its enterprise fund to support its operating budget will not be eligible to seek new commitments of contract assistance to provide for the additional subsidy or other form of financial assistance referred to in paragraphs (3), (4) or (5) of this section for a period of 10 years following the date of such transfer or other use."

It also should be recognized that many public water and wastewater systems, especially water and wastewater districts and commissions, may not have formal enterprise funds established under Chapter 44, Section 53F1/2 because there is no need to formally do so since all their revenue is retained within the utility. There are also utilities that have special receipts accounts or special revenue accounts which act just like an enterprise fund, but are not formally established under the enterprise fund statute. MCWRS recommends that any reference to enterprise funds in Senate Bill 1880 be changed to say "enterprise fund or equivalent" so that water and wastewater districts and commissions are not disqualified from being eligible to obtain the lesser interest rates or principal forgiveness.

3. MCWRS supports the water banking provision in this bill (Section 26). This authorization in statute would secure a community's option to seek an additional source of revenue to offset environmental impacts from new water infrastructure users. We are concerned that language in line 341 stipulating that the funds should be deposited into accounts "established under section 53F1/2 of Chapter 44" might make it more burdensome for water and sewer districts or commissions who would then have to establish formal enterprise accounts when they otherwise would not have to. We support that the money be set aside in a dedicated account

used solely for its intended purpose, but ask that the committee strike the language requiring that these dedicated accounts be established as an enterprise fund under section 53F1/2 of Chapter 44.

4. The bill (Section 23: Chapter 29C Section 6(7)) would have the Commonwealth reimburse MWRA for its expenses related to grants it issues to its communities for sewer collection system rehab and inflow/infiltration (I/I) removal. Many other non-MWRA communities (large and small) spend millions of dollars on sewer system rehabilitation and I/I removal. Why is MWRA the only entity to be subsidized by the State for these costs? There should be a level playing field with state grants or reimbursements to all communities that invest in such work similar to MWRA. I/I removal in particular reduces sanitary sewer flows thus reducing pumping and treatment costs, reduces the occurrence of sanitary sewer overflows which present health and environmental hazards, and keeps groundwater in the ground where it might provide baseflow to streams. I/I removal programs are singularly one of the most environmentally and economically beneficial programs available to communities. State investment in such work would be money well spent. State funds for such work by non-MWRA communities collectively should match the amount appropriated for MWRA.

5. The opportunities for 0% SRF loans (Section 23: Chapter 29C Section 6(4)) appear too restrictive especially when 0% loans will not be given for projects that include regulatory consent orders or enforcement action. Consent orders are part of the normal process of NPDES permitting and to exclude 0% loans from projects with any consent orders will eliminate most communities from this opportunity. Zero percent loans should also be available for stormwater projects that address nutrient issues but appear to be limited to wastewater projects.

6. The language on water leak classification (Section 14) should be stricken entirely. This section leads to more red tape and paper shuffling by water systems and MassDEP and accomplishes nothing as water leaks are already addressed as part of daily operations in most every community. This language is not helpful and simply adds more burdens with no benefits.

7. The definition provided for green infrastructure (Section 5) seems much too specific, (e.g., porous pavement at drinking water treatment facilities). MCWRS would request changing the definition to:

“Green infrastructure” is an approach to water infrastructure design that includes preserving and protecting natural or “green” systems, incorporating natural processes into the design and operation of water infrastructure, or other innovative approaches and technologies that help meet societal needs using natural systems. Techniques include but are not limited to: wastewater treatment systems using wetlands, biological processes or infiltration; water reuse; low impact development techniques such as rain gardens, artificial wetlands, porous pavement, green roofs, water efficient landscaping, infiltration planters, trees and tree boxes and rainwater harvesting systems; preservation and restoration of natural landscape buffers such as forests, floodplains,

and wetlands and land use policies that maintain or restore the natural hydrologic cycle and minimize or reduce imperviousness in a watershed.

While some seek to require green infrastructure components along with applications for traditional infrastructure projects, we believe that approach is unwise. MassDEP already includes criteria within its scoring process for green projects. MCWRS believes that green infrastructure principles should be considered but may not be applicable in all settings and for all projects. Green infrastructure projects should be incentivized but not at the expense of negatively affecting the ability of water, wastewater and stormwater systems to obtain funding for traditional infrastructure projects.

8. The proposal to waive Interbasin Transfer rules (Section 4) for projects intended to address streamflow depletion has merit. Perhaps there is compromise language that could be used to advance this concept but maintain some level of public involvement that will satisfy watershed groups that have voiced their opposition. A study and evaluation of the Interbasin Transfer Act and the level of burden it places on communities seeking to take steps to benefit the environment would be in order before substantial changes to this process are adopted.

9. Other opportunities for regulatory relief should be considered including:

a. Permit waivers or relaxed permit conditions for communities and systems that develop and implement integrated water resources management plans that include drinking water, wastewater and stormwater components.

b. Establishment of affordability thresholds for the combined costs of drinking water, wastewater and stormwater infrastructure operation and maintenance. Once an affordability threshold has been reached a community would not be required to pay for additional regulatory compliance without full state and/or federal funding for the additional costs. Regional planning agencies, regulatory agencies, municipal officials and infrastructure managers, and economic and financial experts should be convened in a funded working group to craft appropriate affordability indices.

c. Passage of House Bill 716/SB 378, An Act to Assist Municipal and District Ratepayers. This legislation calls for regulatory impact analysis and cost benefit assessment of all new and proposed environmental regulations, rules, policies and guidance. Recommendations #17 and #18 of the Water Infrastructure Finance Commission's report encourage cost benefit analyses in order to determine how to achieve the maximum environmental benefit with the available resources. This legislation establishes a mechanism through which the costs, benefits and financial impacts of proposed environmental rules must be identified and described before the rules can take effect. The act fills a missing gap in the rule-making process by requiring environmental agencies to consider the costs and benefits of their proposals. By doing so, public funds

at the local and state level can be used more efficiently and effectively to derive maximum benefits for each dollar expended.

10. Senate Bill 1880 lays out a number of criteria (Section 23: Chapter 29C Section 6(3)) for the Board of the Trust to consider when establishing criteria for loans that will be issued at a lower interest rate. MCWRS supports the suggestion of Massachusetts Water Works Association (MWWA) that the legislation call for a stakeholder group to advise the Trust on the development of the criteria. Part (3) of Section 6, lines 220-222, could be rewritten to say, “With input from a group of representative stakeholders, the Board shall promulgate regulations under Section 7 of this chapter establishing criteria that the department shall use to evaluate applications for additional financial assistance equivalent to a loan made and an interest rate of less than 2 percent.” The same language should be added to Part (5) of Section 6, lines 259-261, “With input from a group of representative stakeholders, the Board shall promulgate regulations under Section 7 of this chapter establishing criteria that the department shall use to evaluate applications for additional financial assistance, including principal forgiveness.”

11. Under Section 31 of Chapter 21, the maximum amount of a grant issued to a community for a comprehensive plan for wastewater is \$15,000. This represents a small fraction of what a worthwhile plan would cost. Grants of this amount will tend to fund development of plans that have very little usefulness. MCWRS believes it is far wiser to provide more grant money for comprehensive or integrated water resources management plans to encourage preparation of meaningful and valuable plans to guide community efforts. We concur with MWWA that the grant amount should be capped at no less than \$50,000.

12. The House version of an Infrastructure Bond Bill submitted by Representative Dykema (House Bill 690) had many strong points that get more to the matter of infrastructure financing. We would hope that bill can be considered along with this Senate bill in order to reach a compromise on how best to advance this important matter.

Thank you for your attention to this important legislation and for your commitment to helping cities, towns and districts with the daunting task of improving our water infrastructure. Please contact MCWRS if you have any questions.

Sincerely,



Philip D. Guerin
President and Chairman

CC: MCWRS members