

Memorandum

TO: Statewide Water Resources Committee

FROM: David G. Mandelbaum

DATE: April 7, 2010

RE: Implications of Identification of a Watershed as a Critical Water Planning Area During the Period Between Identification and Adoption of the Critical Area Resource Plan for that CWPA

At the meeting of the Technical Subcommittee on March 26, 2010, the Subcommittee observed that it was recommending to the Statewide Committee identification of several watersheds as critical water planning areas (“CWPA’s”). The Department of Environmental Protection (“DEP” or “Department”) does not presently anticipate that funding will be available in the near- or medium-term to prepare critical area resource plans (“CARPs”) for more than one or two of these CWPA’s, if they are identified. The Subcommittee wished the Statewide Committee to consider a clear statement of the Statewide Committee’s intention as to the implications of those identifications, should the Statewide Committee make them, during the period between identification of a CWPA and adoption of the CARP.

I suggest a few paragraphs along the lines of those that follow.

Section 3112(a)(6) of Act 220 calls upon the State Water Plan to include “an identification of critical water planning areas comprising any significant hydrologic unit where existing or future demands exceed or threaten to exceed the safe yield of water resources.” The Statewide Committee and the Department adopted Guidelines for Identification of Critical Water Planning Areas (“Guidelines”) as a guidance document in September 2006. Those Guidelines are not a regulation and do not have the force of law. Section 3112(d) of Act 220 sets forth the procedure for adopting a CARP. In particular, section 3112(d)(5) describes the substantive contents of a CARP.

Section 3116 of Act 220 provides:

(a) General Use of Plan.-- The state water plan is intended to serve as a policy and guidance document, providing information, objectives, priorities and recommendations to be considered and weighed in a broad range of state, local and private decisions. The state water plan is not intended to constitute or contain legally binding regulations, prohibitions or prescriptions.

(b) Specific Uses of Plan.-- Among other uses, it is intended that the state water plan will be used to:

(1) Identify and prioritize water resource and water supply development projects to be carried out by private organizations or government agencies.

(2) Provide information to public and private decision makers regarding water availability to help guide efficient investment and economic development.

(3) Identify opportunities for improving operation of this commonwealth's existing water resources infrastructure.

(4) Guide the development and implementation of policies and programs by state agencies that will reduce the risk of flooding, water shortages from drought and conflicts between water users or uses.

(5) Guide policies on activities that directly and significantly affect the quantity and quality of water available with the objective of balancing and encouraging multiple uses of water resources.

(6) Educate public officials and the public at large regarding the sources and uses of water in this commonwealth.

The Statewide Committee understands these uses to flow entirely from the information contained in the state water plan. The Statewide Committee does not intend its identification of a CWPA to constitute information different from, or additional to, the material already contained in the plan and the background technical information assembled for consideration of the watershed for identification as a CWPA. That technical information may be useful to inform decisionmakers as described in section 3116. The Statewide Committee's identification of a CWPA does not add to that background information, and should not be used to differentiate a CWPA from any other similarly situated watershed with similar technical characteristics.

On the other hand, a CARP, once prepared and adopted, would contain detailed review of the characteristics of a watershed and would also include planning provisions to address any problems identified in preparation of the CARP. Accordingly, the CARP, and not the identification of a CWPA, would provide independently significant information potentially useful for the purposes set forth in section 3116.