



# Massachusetts Association of Conservation Commissions

*protecting wetlands, open space and biological diversity through education and advocacy*

April 19, 2018

*Via Electronic Mail*

The Honorable Anne Gobi  
24 Beacon Street  
Room 513  
Boston, MA 02133

The Honorable William Pignatelli  
24 Beacon Street.  
Room 473F  
Boston, MA 02133

Re: Opposition to **H.2151** *An Act relative to a cranberry water use transfer program*, and proposed **Budget Amendment 1192 to H4400, Water Permitting**.

Dear Chairwoman Gobi and Chairman Pignatelli:

Massachusetts Association of Conservation Commissions (MACC) is writing this letter in opposition to **H.2151** *An Act relative to a cranberry water use transfer program*, and proposed **Budget Amendment 1192 to H4400, Water Permitting**. MACC is the non-profit association representing more than 3,000 conservation commission and other environmental professional members in 351 towns and cities across Massachusetts. Our association provides educational resources and technical assistance to Massachusetts' conservation commissions, which are the municipal boards responsible for administering the state Wetlands Protection Act and municipal wetland bylaws and ordinances; conservation commissions are also responsible for managing municipally-owned conservation land. Our association protects Massachusetts' natural resources through our education and advocacy efforts.

**H. 2151** would allow cranberry water use registrations and permits to be used, transferred or sold, in whole or in part, for mitigation by other permitted or registered users within the same drainage basin. We are concerned that this practice would circumvent established, science-based, state water management tools for making permitting decisions customized to individual users.

Water use permits are authorized under the Water Management Act, M.G.L. c. 21G, which authorizes the Massachusetts Department of Environmental Protection (MassDEP) to regulate the quantity of water withdrawn from both surface and groundwater supplies under the Massachusetts Water Resources Management Program regulations, 310 CMR 36.00. The purpose of the Water Management Act is to ensure adequate water supplies for current and future water needs. The regulations include a registration and permit program.

Current regulations require MassDEP to issue permits for unregistered withdrawals above 100,000 gallons per day. The permits are based on a variety of factors including whether:

- the water withdrawals could impact other sources of water withdrawals,
- the withdrawal is within the safe yield of the aquifer,

- the time of year when the withdrawal will be made,
- reasonable conservation measures will be taken consistent with efficient water use, and
- reasonable protection measures will be taken related to public drinking water supplies, water quality, groundwater recharge areas, fish and wildlife, and wetland habitat.

Cranberry bogs are considered wetlands under both federal and state law, and cranberry bogs have an enormous, and often negative impact to naturally-occurring wetlands due to alteration of wetland areas, and nutrient and pesticide flow into shared water resources. Cranberry bogs that were in operation prior to passage of the Water Management Act, like other pre-existing water withdrawals, were allowed to register their withdrawals. Registered withdrawals are not subject to permit conditions such as water conservation, and none of the factors listed above were applied in granting registrations. Allowing the use of those registrations by other entities in a different location and with different hydrogeologic conditions than the cranberry bog operations would not be appropriate and could negatively impact the environment and other water users.

Allowing the transfer of water withdrawal registrations and permits to mitigate impacts of other new withdrawals would circumvent the established regulatory process of creating a unique, site-specific permit for each permitted water withdrawal. Permit and registration transfers that circumvent a science-based evaluation process might overlook the presence of sensitive vernal pools or wetlands, which require monitoring to assess withdrawal impacts. Current permitting regulations allow MassDEP to attach special conditions to individual sites including requirements that permittees track water withdrawals of the site by acreage. Individual permits are important for cranberry production because they allow for water conservation requirements.

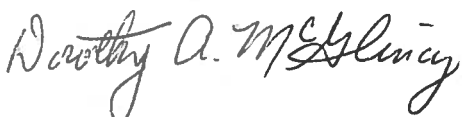
Finally, with respect to **Budget Amendment # 1192 to H4400, Water Permitting**, we understand that the following section is being proposed by Mr. Straus of Mattapoissett:

SECTION XXXX. Notwithstanding any general or special law to the contrary, the Executive Office of Energy and Environmental Affairs shall provide authorization that cranberry water use registrations and permits issued pursuant to chapter 21G of the General Laws can be used for mitigation by other permitted or registered users within the same watershed."

MACC opposes this amendment because it would allow cranberry operations that are shutting down (or reducing their water usage) to sell their registered water rights to other new withdrawals as "mitigation." Those water use registrations were originally created as grandfathered rights when the Water Management Act is passed, and the withdrawals, at other locations, may have significant environmental impacts that have never been evaluated or subjected to any permit conditions.

Thank you for the opportunity to comment on these issues. If you have any questions or need additional information, please contact our office at (617) 489-3930.

Sincerely,  
*Massachusetts Association of Conservation Commissions*



Dorothy A. McGlincy, PG, LSP  
Executive Director