

LAKES MANAGEMENT ADVISORY COMMITTEE
NH Lakes Management and Protection Program



New Hampshire Department of Environmental Services
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MEETING MINUTES
January 7, 2011
DES Conference Room
9:00 a.m. – 12:00 p.m.

Members present:

Diane Hanley, Chair
Wendell Berry, Vice Chair
Don Kent, Ph D.
Jeff King
Jim Morash
Fred Murphy
Phil O'Brien, Ph.D.
Eric Orff
Dennis Pavlicek
Dick Smith
Bill Carpenter
Larry Sunderland

Representing:

NH Assn. of Conservation Commissions
NH Business and Industry Assn
State Conservation Committee
Exec. Dir. Rep, F & G
Tourism Industry
Planning Boards
NH Lakes Association
Fish & Game Commission
Municipal Officials
Fishing Interests
Commissioner Rep. DRED
Conservation Interests

Term:

August 22, 2013
July 8, 2013
August 1, 2012
Indefinite
August 1, 2013
August 1, 2011
August 1, 2012
August 22, 2012
August 1, 2011
November 17, 2013
Indefinite
September 19, 2010

Members not present:

Jennifer Czysz	Director Rep, Office of Energy & Planning	Indefinite
Mark Gallagher	Commissioner Rep, DOS	Indefinite
Jim Haney, Ph.D.	Scientific Community, UNH	August 22, 2013
Mark Hemmerlein	Commissioner Rep., DOT	Indefinite
Bo Quackenbos	NH Association of Realtors	June 27, 2011
Ken P. Wilson	NH Marine Dealers Association	August 22, 2011
David Rousseau/Robert Wolfe	Commissioner, Dept. of Agr., Markets & Food	Indefinite

Staff Present

Jacquie Colburn	Lakes Coordinator, Watershed Management Bureau (WMB)
Jenn Rowden	P.T. Asst. Planner, WMB
Laura Weit-Marcum	Lakes Program, WMB
Jody Connor	Limnology Center, WMB

Guests:

Dave Packer	NH Lakes Association
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Opening

Chairman Hanley called the meeting to order at 9:03 a.m. and welcomed all those present.

Minutes

September minutes were reviewed.

- ***Bud Berry made a motion to accept the September 24, 2010 minutes, second by Dennis Pavlicek. Motion passed unanimously.***

November minutes were reviewed.

- ***Dennis Pavlicek made a motion to accept the November 12, 2010 minutes, second by Jim Morash. Motion passed unanimously.***

Status of Committee Membership

Jacquie thanked Phil O'Brien for being present and acknowledged receipt of his letter of resignation. Dave Packard has expressed interest in representing the NH Lakes Association and was in attendance; he works for PSNH and is a member of the board of NH Lakes. Jim Haney is still working on his reappointment. A letter has gone out to the four organizations that need to nominate a "Conservation Interests" representative to replace Larry Sunderland.

Member Updates

Jim Morash said that the Mount Washington Corporation had applied for a grant through DES to re-power one of their smaller vessels, the Doris E., with new energy efficient engines. A few years ago, Jim applied for and received funding to install more fuel efficient cleaner burning engines in the Mount Washington cruise ship. He re-applied when he heard that there was money available and hopes it comes to fruition. It will be good for Lake Winnepesaukee. The federal money for the Mount Washington cruise ship and this funding, if approved, will come through the DES Air Division.

Diane encouraged the members to provide program and stakeholder updates at future meetings.

Jody Connor shared that he and Amy Smagula along with Don Kent and Bob Wolfe have been working for several months regarding issues pertaining to exotic aquatic plants; Agriculture, DES, Fish & Game and DRED, all have interests in the presence and management of exotic plants in New Hampshire. In the past, questions have arisen between the departments regarding how exotic plants should be managed. It is important that all of the agencies come together and reach a decision or consensus on how we can get it done. Bob is working hard at looking at all the permits to try to establish a way to get through this without any differences between organizations or departments. Commissioner Burack of DES had taken the lead on this and called EPA. EPA is providing NH with a professional facilitator for the meetings and the agencies will discuss several issues related to exotics. First, the agencies will explain their role in monitoring or permitting exotic aquatic plants in the state. Second, the role of the federal government, including US Fish and Wildlife and EPA will be explained. Third, how to reach an agreement on the nature and extent of the exotic aquatic plants in the state and the impacts these species have on aquatic biology and ecology.

Studies and publications have been done on how milfoil and other exotic plants lower property values and water quality. If we decide we're not going to manage milfoil anymore, what is going to happen to our lakes and ponds? We subscribe to the integrated pest management practices right now and have used everything that we can. We have certain areas of exotic plants where a large area we may use an herbicide and for smaller area we may use suction harvesting hand-pulling. These are all management techniques that will be discussed. And can each agree on the content and functionality of long-term management plans? In the last few years DES has been putting together long-term management plans for each lake which outline what we're going to do on a year-by-year basis to control the milfoil in that particular lake or pond. Can each agency agree on a process to raise and address concerns about particular control and management strategies as they arise in the future? Hopefully, the agencies will collectively come to a decision to make this process a lot easier and will avoid last minute issues.

Fred Murphy said that this issue is germane to our discussions regarding the sustainability of lakes and it is a key element of our sustainability initiative. He is concerned that we have a management plan for every lake. Laura Weit-Marcum asked how many long-range management plans have been developed. According to Jody, there are about 30 plans. Every time we find a lake with a new milfoil infestation we start a management plan for that lake; before any money can be expended for treatment. All of the plans are on the website. Fred asked why we don't write one plan for the whole state! Jody responded that each lake is unique. What we want to do is map out exactly where the exotic plants are located in each waterbody. We want the management to be specific for each lake.

Jody said these are individual lakes with individual components that need to be addressed in that fashion. A template for the plan is universal, the things we look at in each site are the same items; but they vary from place to place. If you try to make one plan for the State you won't have the necessary detail nor could it be as flexible as individual plans where you need to adjust based on observations. One statewide plan would be 500 pages long. Jim Morash added that there may be a lot of similarities from waterbody to the next, but each one has its own unique characteristics.

Fred asked how much time it takes to put a management plan together. Jody responded that there's a lot of field work that has to get done including the mapping the location of the milfoil using GPS. The one important thing we've found out about managing milfoil is knowing exactly where it is. Making a map and geo-locating the milfoil is an important part of each plan. That way the contractor knows exactly where to apply the herbicide. The mapping is the hard part and the most time consuming part.

Don Kent stated that there are 2 factors that make this a waterbody by waterbody issue. One is the state of the lake, its trophic status – what is the baseline; the second factor that makes it waterbody specific - what is the cause. If we don't identify the cause then we could be wasting our time and money dumping chemicals into the lake. If we don't understand the cause, if we don't understand the trophic state of that lake, we're never going to be

successful. This is tied to the permitting process, so it is a waterbody by waterbody issue for good reason. The management plans are not onerous, they're short and concise, but it shows that there is an understanding of the waterbody and that the action you're going to take is actually going to be effective. It is big money for the towns and lake associations. After a while, they determine that they can't afford it anymore and then the State has to pick this up. And we know the state doesn't have the money. So it is important to think of each situation individually so that we don't create bad feelings or mislead people about what the results of these treatments are going to accomplish.

Fred said that his issue is the amount of time spent to write a plan every time. The key is that you have a template for this: number 1 – you get the call; number 2 – you're going to start the study; number 3 – you're going to look at the applications; number 4 – is the final application. Fred asked, if I call up in March with some milfoil, would it get treated this year? Jody responded absolutely not, unless there is only a small infestation and then we can hand-pull it. Fred stated that we ought to have a better process by which we can be reactive and proactive rather than reactive. Don added that it can be worse to make a bad decision on management in a hurry than to be a little more deliberative and come up with the right solution. Fred responded that it could be worse not to act fast enough.

Fred suggested that the LMAC write a letter to the DES Commissioner stating that this is one of our real concerns; it is one of our sustainability issues and that we would hope that within 5 years it could be addressed. Jacquie suggested that at the March meeting that the LMAC be updated regarding the agency meeting because the next steps in the process will probably have been outlined and further needs identified by the participating agencies. At that point we can decide if there is anything else the LMAC would like to do relative to this issue. Jody said that he won't be here on March 18th but maybe Don or Bob can provide the update to the LMAC.

Key Discussion Issues

Updates, Review and Discuss Amendments LMPP/LMAC Projects and Reports

1) Proposed Lakes Program Administrative Rules

Jacquie said that Jenn has worked hard again on our proposed administrative rules. Next, we would like to meet with the RPC (Regional Planning Commission) Directors to share the draft rules with them and get their feedback. From there we'll move ahead with the rule making process, which involves many steps, such as getting approval from JLCAR (Joint Legislative Committee on Administrative Rules) and will probably take several months.

2) Letter to DES and DOT re: Cobbetts/Canobie and Stormwater Runoff

At the November meeting Jacquie told the committee that she had met with the Assistant Commissioner and discussed the draft letter with him at that time. He asked that she speak to other staff and get their input, which she has done. Jocelyn Degler, who is the DES liaison to DOT on the I-93 construction and Paul Currier have revised the draft letter. Now Gregg Comstock and Ridge Mauck both have a copy for review and comments. Jacquie said that she is trying to write this letter to represent everyone's concerns as well as offer recommendations. The draft letter includes the concerns that DOT raised, concern brought up by DES and concerns that the LMAC members expressed during the discussions.

Jacquie reviewed the content of the draft letter, in detail, with the committee. She apologized that this wasn't yet completed but that she was still getting staff input. Fred said it really has to be done by June, because that's when construction activities are going to be cranking up and that he appreciated the effort.

Fred said that when we were visiting Canobie Lake and Cobbetts Pond we ran into an issue where there was a 100 year storm; it overloaded some of the settling basins and a lot of silt got into Cobbetts Pond. The project management of DOT wanted to apply flocculants but DES expressed concerns and wanted to put a hold on that until they looked at some further studies. Our position is/was to work this out so an onsite project manager be allowed the authority to apply flocculants if a 100 year storm results in the collapse of the control system for sediments. Can you add more to that? Maybe DES's concern was a little bit greater. DOT's concern was that we couldn't react quickly enough.

Jody said that we have used flocculants before; this wasn't the first time. About 3 or 4 years ago we used them on 2 separate occasions in New Hampshire - it was necessary to do it, if not, turbidity and phosphorus would get into the lake. It happened during a big rain event on a very steep slope in Laconia right before it got into Lake Winnepesaukee. We were able to remove the turbidity before it got into Winnepesaukee. Fred said that the issue wasn't whether it was used or not. The issue was that it couldn't be used immediately, that was the concern. If the project manager had the authority to apply this thing Cobbett's Pond wouldn't have had this boom out there.

Jacquie pointed out that we need to know what these flocculants are comprised of. It is really important to match the flocculant to the soil chemistry and we need to make sure that the flocculant(s) is/are right for our climate. A great deal of research has been done on flocculants in southern climates and a report has been produced by the Univ. of Central Florida relative to the application of flocculants in the southeastern part of the country. It doesn't appear that similar research has been conducted for northern climates.

Don stated that he may have missed the other aspects of this, but, the outcome of this sounds like we've concluded that the planning and operations part of this was fine and the only problem in this whole situation was there wasn't pre-approval or instant approval to apply flocculants. Is that the conclusion? Jacquie said that that we would like to have the information from the manufacturers ahead of time so that we know what these flocculants are comprised of but getting that information has been difficult. We do have a process in place, and a form, where the manufacturers provide that information. DES is developing a list of those flocculants which have been reviewed by the department and are deemed acceptable to be used onsite. Then DOT would have those particular flocculants available to them to use in a situation where they can be applied during or after a storm event. Don said it seems like we're really counting on flocculants to save the day. He'd like us to be cautious and make sure we're planning thoroughly and communicating well throughout. We know we're going to have big storm events occasionally.

Jacquie added that in the concluding remarks of the letter, it states, "to render an environmentally sound decision as quickly as possible the information needs to be in place and the process determined especially now when the agencies have fewer staff to do the work. The LMAC has concerns about the potential water quality impacts to the state's surface waters especially if flocculants become a BMP of choice in NH for all construction activity not just transportation. Therefore it is important that DES and DOT get this right and we appreciate that both agencies are engaged in an exercise of due diligence to determine the best approach to design and temporarily and permanently treat stormwater run-off from the I-93 construction." This wording may change as it gets reviewed by other staff. It may be very useful to have the UNH Stormwater Center conduct research and determine the BMPs and flocculants that would be most appropriate for the Northeast.

Phil asked if anywhere in the construction documentation, that DOT is required to pre-establish the soil chemistry? The other thing is whether or not attention is being given to how much land is open. Which seems to have been key, when a 100 year event occurs you have a huge problem not just a trivial one. Jacquie said that we are of the understanding that DOT is going out and collecting the soil a head of time, because there does need to be a time for that analysis to be done. But you're asking is there any kind of requirement for this in the DOT contracts? Phil said that you have to have the soil chemistry established well before. You can't say, well it's raining really hard so we got to send some soil to a flocculant contractor and hope the event is over before anything can be done. Fred responded that he can't tell you specifically if they do certain kinds of chemical tests in the soils but there's only a certain amount of area that can be opened up for construction, but he's not sure what that is.

Bud said he wanted to follow up on Don's point – getting to the bottom line of dollars. He thought he heard them (DOT) say that the amount of space they opened was based on a cost benefit calculation; in that situation recognizing risk. I guess the question we might be addressing at this point is – they were saving money in their construction plan but ultimately it has cost money as a result of the problem (storm event). If one were to look at the case from a bottom-line point of view that you could be more cautious in the beginning and come out in the same place without the event later on from a dollars point of view. I don't know if we've addressed that. Diane added that she would agree with those comments. There's more to it than just flocculants, but she has personally seen the need for flocculants.

3) Public Trust White Paper

Jenn said that she had added the member comments from the November meeting to the Public Trust paper and that the revised document was posted on the LMAC Blog and the LMPP webpage. She apologized that she did not have an opportunity to develop an example of the appendix to the white paper which will include specific issues and relevant statutes, administrative rules, and court cases that may have dealt with lake activities and uses, such as swim rafts or moorings. Hopefully, a draft will be prepared for the next meeting. Don asked if there were any substantial changes that we should be aware of. Jenn responded that the only changes made were to the purpose statement and the last sentence, otherwise there were none.

4) LMPP/LMAC Biennial Report

Jacquie told the committee that after our last meeting she made some additional edits and revisions; the most noteworthy was the addition of some language regarding the economic value study. Other than that, the changes made to the report were primarily grammatical and typos, there was nothing that she thought warranted bringing

the report to the committee for another review and approval again. The same document is essentially the same as the one that the committee reviewed and approved at its last meeting. We will review it in-house, make revisions to it if necessary and will send it to the General Court next year so that it's in sync with the budget cycle.

5) Sustainability Initiative

Jenn provided a presentation update regarding the Sustainability Initiative. She specifically highlighted the Initiative's history and timeline to date, including the meetings, updates and documents that have produced. She discussed the relationship between the Initiative and the department's current Strategic Plan as well as the most recent efforts of the Data Subcommittee and the Lakes Program's efforts to address Carrying Capacity.

When Jenn finished, Jacquie quickly summarized the progress status of the 8 significant issues identified in the Sustainability Initiative document.

#1 Lack of Data and Improve Data Access and Management by Data Users

Related Issues: Increase the Network of Stream Gages and Expand and Improve Water Quality Monitoring

- We're making some progress on this, especially if the grant that Jenn described in her presentation would come through.

#2 Lack of a Coordinated Approach

- The coordinated watershed approach, that's something that the Watershed Management Bureau has talked about this but hasn't made much progress recently (as a Bureau) to address this issue.

#3 Protect Shorelands and Riparian Buffers

- This is addressed through the implementation of the Shoreland Protection Act and other efforts to make sure that BMPs are put in place to protect riparian buffers.

#4 Limit Impacts to Water Quality and Quantity from Urbanization and Watershed Development

- This one, as well as #2 and #3, have not been addressed by the LMAC/RMAC.

#5 Determine Carrying Capacity

Related Issue: Provide Adequate Public Access

As Jenn just described in her presentation, the Lakes Program is working with Plymouth State University and Squam Lakes Association in an effort to address the recreational uses of our lakes.

#6 Control Invasive Aquatic Species

- Is being addressed through this upcoming meeting with the DES Commissioner and other agencies.

#7 Consumptive Uses of Surface and Groundwater

Related Issues: Determine and Implement Instream Flow Protection and Groundwater Withdrawal

- Is being addressed by Wayne Ives and the Instream Flow Program.

#8 Address Climate Change Impacts

- Is being addressed throughout DES, in terms of all the work that the department does.

Fred said that it's good to coordinate it together with the Strategic Plan. The goal of this was to find out how things were going over time. In 2008 we kicked off the Sustainability Initiative and we have been following 3 priorities for the LMAC and the RMAC - control of invasive species, data access and management, and the third one was a coordinated watershed approach. Fred asked for a summary or a percentage of how much of each one of those items has been completed for these 3 priorities. Jenn said she can tell us which recommendations have been specifically addressed. Whether or not you can say we've actually addressed the issue is a much bigger challenge. Fred asked from 2008 to now – the lack of data and improved data access management – can we come up with, let's say, we've achieved 20% of that goal? What percent of Items #1, 2 and 6 have we completed?

Fred added that once we've achieved these 3 priorities, then we would move onto another couple of priorities and begin working on them. That's the whole goal of a sustainability management initiative is to show progress, show management review, and then to come up with goals or to help the people that are working on these priorities. For example - "increase the number of stream gages", from 2008 to now have we increased any? Diane concurred, if there is a way to show the progress since 2008 that would be great. Jacquie suggested that staff put something together and share it with Fred. Fred said he would be happy to help.

State Level Lakes Management Criteria/Recommendations

Jacquie said that following the November meeting an email was sent to the state agency representatives. They were asked to review the PowerPoint slides that had been developed for the 2006 Lakes Forum; to make additions and revisions to them and to comment on the management criteria recommendations. At this point, Jacquie and the committee reviewed all of the information that the agencies had provided. Jacquie then moved on to the hard copy "Lakes Management Criteria Draft for Discussion Purposes, 1/7/11" which was provided to each member at this meeting. Jacquie explained that Laura looked at our 1996 Management Criteria recommendations and pulled

out those that we believe still have not yet been implemented. At the same time, she did an awesome job reviewing several other recently produced reports. She then redeveloped a series of findings and recommendations that are a result of her review of the 1996 management criteria, those various reports, the DES in-house staff discussion which took place on November 3rd, and the comments that the LMAC made at our November 12th meeting regarding the management criteria. Laura suggested that since the members had just received the handout at the meeting, that they take it home, review it and then send back any edits, amendments, additions via email before the next meeting. Jacquie said that the third and final thing we'd like to do today is a quick review a document that exists on the webpage, "Agencies with Lake-Related Responsibilities". The agency representatives were asked to let us know what, if any, updates or changes need to be made.

Diane asked what we want out of this whole process. She said that she had additional comments and questions. She asked if the LMAC members should provide feedback on recommendations that are still outstanding, even though they have not been worked on. Jacquie said yes. Further, we need to ask ourselves - are we addressing the existing processes and programs, as well as the products, sufficiently? Jacquie then asked those members who aren't state agency representatives to provide feedback based on their stakeholder's perspective. Are there things the state agencies could or should be doing that they are not? Jenn added that we can put together a form outlining your comments, once they have been submitted.

Proposed 2011 Lake-Related Legislation

Jacquie referenced the LMAC Legislative Tracking Spreadsheet and stated that a lot of the legislation has not been written; all that exists are proposed bill titles or Legislative Service Requests (LSRs). There are 4 rivers being nominated to the Rivers Program this year as well as several bills related to boating, dams, exotics, the Shoreland Protection Act, DES rules/regulations, and septic systems. She added that whether or not the LMAC will track versus take a position on a bill is difficult to determine because language for most bills has not been posted. We should establish a legislative subcommittee as it is early in the session. The subcommittee will meet via the phone and should be allowed to decide positions for the full LMAC. The blog will allow more correspondence this year relative to legislation. Jenn pointed out that whether the committee should support or oppose a bill could be addressed after cross-over. The LMAC will meet before crossover which will take place on March 31st.

Mark Gallagher asked if there was process to make the department representatives aware of particular bills that could affect their agency. The further along in the process, the harder it seems for bills to be modified. Some of those things can be worked out in a way that's going to make the bill more effective if it becomes law. If a subcommittee member learns of something ahead of the rest of the committee, please let the agency know. Jenn said that we will send out the LMAC legislative tracking spreadsheet on a weekly basis.

Diane asked for volunteers for the Legislative Subcommittee, in addition to Diane and Bud, Dennis Pavlicek and Dick Smith volunteered. The LMAC members discussed at length how the Legislative subcommittee would function and if the subcommittee recommendations or proposed letters of testimony would be posted to the LMAC blog. The underlying concern was to be sure that all the committee members had an opportunity to comment on a proposed LMAC position and at the same time be sure that any discussion or votes did not violate the public-right-to-know law. After much discussion, it was decided that the subcommittee will review proposed legislation, develop a recommendation and then bring it the full LMAC for a decision at a meeting, which had been properly noticed.

Since some committee members, including Jim Morash and Bob Wolfe asked questions and expressed concerns about the process; Diane suggested that the LMAC not take any positions today on those bills for which no language exists, but that we meet again before March 18th. Bud Berry concurred with the stipulation that the only agenda item is to review legislation and develop positions. Eric Orff pointed out that the Fish and Game Commission will have had a chance to discuss bills pertaining to the F&G Department if we, the LMAC, meet again before March 18th.

Dick Smith said that since we don't meet that frequently, that it would be cumbersome to officially form a position and testify. It's such a moving target, very often an amendment is introduced and it completely changes the bill. He said that he doesn't think it's possible to stay close to it. What we can do as a subcommittee though, is we can farm out some of the hearings and one of us make sure that we're there and then pass on the information to everybody. He really doesn't see from a practical standpoint how we could, as an advisory group, be in a position to officially testify. Jacquie responded that testimony or positions letter can be submitted later, it doesn't have to be at the time of the hearing. Missing the hearing doesn't mean missing an opportunity to submit our comments. Laura added that while that is true, it's usually most effective to provide oral testimony at the hearing.

Phil said he respectfully disagrees with Dick. He said that the LMAC has an obligation to be before the legislature and present its position. It's not something you can defer up to other agencies of government. It's incumbent upon this group to say what it thinks about pertinent legislation. Jacquie added that the LMAC has testified on several pieces of legislation over the years.

- *Fred Murphy made a motion to create a legislative subcommittee, second by Jim Morash. Motion passed unanimously.*
- *Eric Orff made a motion to oppose to LSR 0436 relative to repealing the Comprehensive Shoreland Protection Act, second by Fred Murphy.*
After discussing this, the committee decided to wait until language was available. Motion was withdrawn.

Laura told the committee that, if passed, HB 84 would bring the Oyster River into the Rivers Program and that in years past, that the LMAC supported river nominations. Laura explained the nomination process, the strong local support for the Oyster River nomination and provided some information about the river.

- *Don Kent made a motion to support this bill, second by Jim Morash. Motion passed with one nay vote.*

Committee members questioned whether LMAC support of a river nomination, or something that is dealing with rivers and it has no access to a lake, if are we confusing the legislators. Jacquie responded that she didn't think so, and that we need to keep in mind that rivers are part of the surface water network within the watershed. She read aloud the LMAC letter of support that she had drafted and told the group that she wasn't going to testify nor ask the LMAC to testify, she was just going to submit the letter of support for HB 84.

Diane concluded the meeting by reminding the members that we will meet again within a month; she thanked Phil once more for his service as Chair; and wished Laura well.

The meeting adjourned 12:20pm.