



**2) RMAC Membership Update**

- 1) Walter Morse's term has expired. Jim Ryan is seeking appointment for the NH Fish and Game Commission position.
- 2) Laura introduced, Richard Verville, with the Department of Safety, as the newest RMAC member. This addition was due to a change in statute during the last legislative session.
- 3) Michele L. Tremblay reported the NH Farm Bureau Federation, the Northeast Organic Farming Association, and the NH Association of Conservation Districts, may be submitting their own nomination letters for the vacant Agricultural Community position.

**3) DES LAC Permit coordination SOP**

The LAC permit Standard Operating Procedure has been approved by the DES Commissioner and is posted on the DES intranet. A request was made to post it on the RMAC blog to make it publicly available. There has been one revision to clarify the reporting dates of when the LAC receives a copy of the permit and when comments are due to DES. Laura will investigate the possibility of adding a LAC corner on the RMAC blog for posting documents of relevance.

Kath Nelson noted under Section B, number four, the sentence that reads "The LAC shall submit its comments directly to the applicant, with a copy to DES" is opposite of what has been done in the past. Laura will check into this.

It was also pointed out that the rules now state that the applicant must provide copies of the paperwork to the LACs using certified mail. This change has gone through Alteration of Terrain, Wetlands, and Shoreland rules. It was noted it needs to be added to Waste's rules.

**4) Status of Rivers Program Budget**

There are no changes to the budget but there is uncertainty with the state employee contract. The union vote deadline is October 8<sup>th</sup>, in which it will be decided if there will be furloughs or layoffs.

**II. Lamprey River LAC – Sharon Meeker, Chair**

Sharon was unable to attend today's meeting. Laura will try to reschedule for the next meeting.

**III. Instream Flow Update – Wayne Ives, NHDES**

**Lamprey Protected Instream Flow (PISF)**

On July 13<sup>th</sup>, the Lamprey River PISF report was completed. Protected flows have been defined and comments have been answered. The final report is on the web.

On September 14<sup>th</sup>, Harry Stewart, Paul Currier, Wayne Ives, and Laura Weit met with Public Water Suppliers (PWS) in the watershed. The meeting was productive and cleared up some misunderstandings; PWS would like to delay the establishment of instream flows until the completion of the Water Management Plan (WMP). This would allow them an opportunity to assess the impact protected flows would have on their ability to supply water while still having the option to appeal.

*"VI. Any party who is aggrieved by a determination establishing such protected instream flows may petition the commissioner for a hearing to review such determination within 30 days of the date the determination is issued. The filing of such petition shall stay the implementation of the determination until a final decision has been rendered on the petition or an appeal taken pursuant to RSA 541"*

**Natural Flow Paradigm (NFP) guidance [INTERNAL REVIEW COMPLETED, PUBLIC DRAFT AVAILABLE]** – Protected instream flows were defined for fish and riparian vegetation and wildlife with measurable flow needs. Protection for protected entities such as aesthetics, swimming and public water supply will be accomplished by maintaining flows within the natural ranges of variability described by the PISFs.

Components used to describe the variability, include: 1) Timing – seasonally when these flows are likely to occur. In New Hampshire, there tends to be high flows in spring and lower flows in summer. 2) Magnitude

– size or extent. 3) Frequency and duration – how often high and low flows are reported and how long should the events happen. 4) Rate of change – how rapidly water will drain through and how quickly it will rise. All of which should be taken into consideration when determining which strategies should be used for mitigation.

Lamprey Water Management Plan (WMP)

Components of Water Management Plan consist of: 1) Conservation - applies to all water users, 2) Water Use – applies to water users, and 3) Dam Management – applies to all effected dam owners.

Dam Management Plans – Pawtuckaway fall drawdown testing is being planned. The fall drawdown is being scheduled for October 13<sup>th</sup>, with weekly measurements for two months. There will be a seven foot water level drop. The plan is to measure water quality changes, flow and impoundment level changes, in order to conduct an assessment of the flow releases and its effectiveness in changes to the Designated River.

Impoundment fluctuation guidance [INTERNAL REVIEW IN PROGRESS, PUBLIC DRAFT SOON, probably at next Water Quality Standards Advisory Committee meeting] – Impoundments were created to allow the storage and release of water. Habitats created by these impoundments are not in natural conditions and should not be assessed in the same way as natural conditions.

Chairman Kimball is concerned about moving away from using natural condition criteria for impoundments. It is a question of whether the guidance for impoundments are headed into “what you see if what you get”, in which impoundments would be exempted from water quality standards. Ken believes the criteria should still require the maintenance of littoral zones.

Paul Currier said they will bring the draft guidance to the RMAC for their review.

Wayne noted they are working with the Dam Bureau to create least minimal outflows to provide survival flows in the springtime. Future draw downs will also be reviewed. In addition, there is work being conducted on the effects of created wetlands from dam removal.

Instream Flow Council Report [Rec'd 9/25/09 and in review]. DES asked for an impartial, third-party review of the Souhegan and draft Lamprey Protected Instream Flow Studies. The Instream Flow Council is made up of fish and wildlife management agencies across the United States and Canada. The Council was tasked with reviewing the protected flows related to biological entities for the Lamprey and Souhegan Rivers. Their findings will be made public.

Souhegan Task 8 (Water use versus the Protected Flows – Where are the problem areas relative to water use with the protected flows?) [ANALYSIS IN PROGRESS] – Water use is low in most places, but there are some sections with high use. Milford Fish Hatchery has a complex hydrologic situation, which makes quantifying impact difficult. There is a short reach of impact before water is returned; cost versus value is needed.

Souhegan WMP [PUBLIC DRAFT EXPECTED BY 12/30/2009]

Conservation Plans – Drafts in review by Affected Water Users.

Water Use Plans – The focus is mainly on the spot problems, since cumulative water use is not a large problem.

Dam Management Plans (Site 19 and Site 35) – The strategy is to find flexibility to store water in and release water from dams while still meeting their functions. Fish sampling; temperature logging; hydraulic impacts study; inundation study; property/flowage rights may be a constraint.

Chairman Kimball asked that at the next meeting the Impoundment Fluctuation Guidance be made available and a summary of the Protected Instream Flow Studies be provided.

**IV. 604(b) Water Quality Planning Grants – Laura Weit, NHDES**

A summary of the 604(b) Water Quality Planning Grant Program that the RMPP and the Lakes Management Protection Program administers was distributed. This is EPA money that is passed through to the Regional Planning Commissions for water quality planning purposes.

**Clean Water Act Section 604(b)**

- Grants provided by EPA for water quality planning purposes
- Requires 40% of state allocation to be passed through to Regional Planning Organizations or Interstate Organizations
- A waiver of the 40% pass through requirement is allowed – Governor must request and EPA must approve

**NHDES Use of 604(b)**

- 60% for water quality planning staff and associated costs (401 Water Quality Certifications & FERC Licensing)
- 40% pass through to RPCs and CRJC

**RMPP & 604(b)**

- Starting in 1994 –per NHDES Commissioner Varney – 604(b) pass through funds to CRJC and RPCs to support LACs
- Annual contract with RPCs for basic LAC support (i.e. specific deliverables lacking)
- Until 2002, 604(b) contracts administered by WQ Section of DES, not RMPP
- 2002, LMPP and RMPP take over 604(b)

**RMPP 604(b) –Changes Made**

- In 2004, lumped two FFYs together to make two year contracts (RMAC approved)
- Made the process competitive (RMAC approved)
- Maximum award of \$20,000 (\$80k available)
- Projects focus on:
  - Development of a nomination for designation
  - Development of river corridor management plans
  - Implementation of River Corridor Management Plans
  - LMPP Management Plan activities

**RMPP 604(b) Projects for 2009-10**

- Update Piscataquog River Management Plan (SNHPC)
- Upper Merrimack River Buffer Protection (CNHRPC)
- Water Quality Planning Activities in Support of the Exeter River (RPC)
- Maximum Impervious Surface Model Ordinance and Low Impact Development Guidebook for the Lower Merrimack River Corridor Communities (NRPC)
- Oyster River Nomination to the RMPP (SRPC)
- Education and Outreach for the New Connecticut River Water Resources Plan (CRJC)

**RMPP 604(b) Stimulus Projects**

- \$235,820 total (passed through 60% to RPCs, instead of required 40%)
- Approximately \$15,824 per RPC/CRJC for RMPP & LMPP projects
- Remaining Funds \$8,620 per RPC (Replace REPP in SFY 2010) :
  - Municipal Outreach and Technical Support for DES Innovative Permitting and Technical Assistance Initiative
  - Development of Innovative Land Use Ordinances/ Regulations for Municipalities
- A Land Conservation Plan for the Piscataquog River Watershed (SNHPC)
- Contoocook River Management Plan Update (CNHRPC & SWRPC)
- Connecticut River Water Resources - Local Subcommittee Editions (CRJC)
- Co-occurrence Map Creation and Outreach in the Pemigewasset River Watershed (LRPC)
- Pemigewasset River Corridor Management Plan Survey (LRPC & NCC)
- Fluvial Geomorphic Outreach and Education for the Ammonoosuc River (NCC)
- Education and Outreach to the Towns of Lincoln and Woodstock re: RMPP (NCC)
- Promote Adoption of Souhegan River Watershed Management Plan (NRPC)

- Innovative Land Use Ordinances for Riparian Buffers, Floodplains and/or Stormwater in the Souhegan River Watershed (NRPC)
- Promote Water Quality Protection in the Isinglass River Watershed (SRPC)
- Fluvial Erosion Hazard Ordinance Outreach and Adoption in the Isinglass River Watershed (SRPC)
- Development of Squamscott River Nomination into the Rivers Management and Protection Program (RPC)
- Fluvial Erosion Hazard Innovative Land Use Planning Chapter and Adoption in the Exeter River Watershed (RPC)

Michele asked if this is intended to support Regional Planning Commissions or if it is meant to support LACs and lake groups that are involved in planning. Laura explained that the federal Clean Water requires 40 percent of the funds be distributed to the Regional Planning Commissions. Michele indicated that the decision making to determine how funds are spent and how projects are implemented is flawed. The power is in the hands of an individual versus the particular groups that may need the money or be worthy of it. If the intent is to support the local efforts then it needs to be reviewed.

Kath Nelson noted that there is no requirement of the funding mechanisms to either notify or engage the LAC. They have asked many times with future funding that the RPC keep the LAC informed and nothing has happened. Jenn Czysz noted that it all comes back to the engagement between the RPCs and the LACs.

Chairman Kimball asked a small subcommittee of the RMAC to work with Laura. He asked Michele, Kathryn, and Jennifer to come up with a cohesive recommendation to present to the RMAC. What is needed is to determine if the RMAC still supports a competitive process, with a maximum award of \$20,000 as it has in the past. The subcommittee will outline what has worked and what has not. The subcommittee will then come up with one or two new ideas to be reviewed before the next funding cycle. Request for Funding Proposals will go out next August. Michele will take the lead.

#### **V. Legislation/Rulemaking/Other**

##### **1) Wetlands Stream Crossing Rules**

Paul Currier reported that the hearings have been delayed due to substantial revisions of the stream crossing rules. One change will completely exempt forestry and another was to reduce the review for watersheds less than 200 acres in size, if the natural stream characteristics are retained on site and the stream is not impaired. Another change that may be incorporated is not allowing mitigation for crossings on outstanding resource waters.

Michele expressed her concerns regarding the way in which these changes were made. The work group had met regularly over one year to develop rules; these rules were based on consensus by the entire work group. Public hearings were scheduled and held. After the interim rules were developed, a special meeting was set up with Commissioner Burack to discuss forestry concerns. These concerns were incorporated into the preliminary draft rules. The work group was reconvened, so they could be made aware of these changes. Chairman Kimball sat in for Michele at this meeting and expressed concern at the exemption written for the forestry group. Discussion reviewed the interpretation of the old and new rules, and whether permanent stream crossings for timber operations are exempt from the rules. A letter of testimony had been written from the RMAC on the rules as they were originally proposed. Michele suggested another letter be written that addresses the concerns raised.

Mary Ann Tilton joins the meeting.

Mary Ann answered questions concerning the forest management exemption. She pointed out the Wetlands rules reference the 2006 Best Management Practices Manual. There is a conflict/confusion between the logging rules and the BMP manual. It would be good to have this clarified. The Timberland representative is willing to work with DES and DRED to resolve this, by including current construction practices. They oppose the inclusion of the 2006 BMP manual as it does not allow the use of stone fords, which are used regularly in the field. When considering rules changes, it is important to compare what the practices are now and what they should be. Wetlands statute does exempt forestry from minimum impact; the loggers now file a one-page minimum notice. Chairman Kimball noted stream

crossings must accommodate for a 25-year storm, however the frequency and magnitude are increasing for these storm events.

Discussion was then held as to the eight foot wide stream width threshold for dredge and fill application versus a minimum impact notice. There was also discussion revolving around the conflicting rule language in Env-Wt 300 and Env-Wt 903 & 904 regarding stream crossings.

The rule making hearings will be held on the earlier version of the rules, the initial June 24<sup>th</sup> version. Handouts will be made available at the rescheduled hearings with the new September 24<sup>th</sup> version. The RMAC was provided with copies of the June 24<sup>th</sup> and September 24<sup>th</sup> versions. The RMAC was encouraged to submit recommendations on both versions. DES legal counsel has advised to go ahead with this and take comments on the new version at the hearings. All comments will be considered on both versions.

It was recommended by the RMAC that only one version be presented at the hearing. It was explained that if this is done the rule making process would halt and it would have to start all over. Mary Ann will bring this up to the Legal Department.

- ***Michele L. Tremblay made a motion that the RMAC submit a letter to the DES Commissioner indicating the concerns that have been raised relative to having multiple versions and the process. Second by Anne Krantz. Discussion ensued. Passed unanimously.***

The last day hearings can be held is November 10<sup>th</sup>, which is the last hearing date. If postponed, the rule making process would have to stop and start all over again. Another option is stopping the rule making process now and posting the current version of the rules and use it as a pre-rule making hearing for the next rule making session.

Michele indicated that not all of the stakeholders were present at the last stakeholder meeting. She expressed concern regarding the preliminary draft rules and indicated that she did not feel comfortable with the changes, since it is a dramatic departure from the consensus of the group. She also reiterated her motion to submit a letter recommending that this rule making process be suspended until the full stakeholder group can reconsider what is being proposed in the 9-24-09 document, and postpone the hearing schedule.

Ken asked which version is coming out. If the June version is being released, then we are not asking for a suspension. If it is the September version, then we are asking for a suspension. Ken suggested an amendment to make two recommendations – one for the content and one for the process. Kath asked justification be included in the letter. How will these recommendations strengthen the stream crossing rules?

Mary Ann noted that these rules will provide the foundation for the new in-lieu fee stream mitigation program that will be developed.

## **V. Legislation/Rulemaking/Other**

### **1) Designated Uses – Paul Currier**

LSR for three changes to RSA 485-A to clarify the Water Quality Standards:

- 1) Specifically identify the designated uses under the Clean Water Act: recreation, aquatic life, wildlife, drinking water supply, and fish and shell fish consumption. Also add geomorphic integrity designation for integration with other programs.
- 2) Explicitly incorporate the anti-degradation policy which is required by federal rule into state statute. This would remove it from rule and incorporate it into state statute.
- 3) State statutes give DES enforcement authority when violations of water quality standards involve discharges of pollutants. This would give the same enforcement authority over alterations of stream flow violations that do not involve discharges of pollutants.

### **2) House Bill 2 -committee sunset clause – Laura Weit**

Representative Kappler has submitted a LSR on behalf of the RMAC, to exempt RSA 483, including the RMAC, and all LACs, as well as RSA 483-A, including the LMAC from the sunset clause.

3) Cochecho River – designation error – Laura Weit

Representative Kappler has submitted a LSR to correct a typographical error in the designation for the Cochecho River. As the legislation currently reads, it includes an additional tributary that was not including in the nomination. This will be clarified by striking out “at the outlet” and inserting the word “south,” so that the tributary will not to be included.

4) RMPP Nomination Rules – Laura Weit

Env-Wq 1800 Tidal River rules. The interim rules are available online. Changes between the interim rules and the draft rules are the addition of two definitions, one for mouth of the river and one for tidal river.

**VI. Sustainability Initiative/Biennial Report– Jenn Rowden, NHDES**

The consensus of a meeting in January 2009 between the LMAC, RMAC and Commissioner Burack was that DES needs to do a better job of providing the general public with easy to understand information about the state of the water bodies and watersheds and watershed health across the state. Work will begin with the strategic planning committee at DES to find a way to work with the RMAC & LMAC with possible watershed indicators. Senior Leadership has passed a charter that will allow staff to work with the RMAC & LMAC to help develop these indicators. Jenn asked for volunteers that would be willing to brainstorm questions that the public needs to know about the state of water and what they want to know about the state of water in NH that will lead to the indicators. From this an easy, web-based tool could be developed for people to find out the water quality of their watershed. Michele and Gary volunteered and they are hoping to have the first meeting in four to six weeks. This will serve as a template for DES to be able to put out other environmental indicators in the same fashion.

Jenn shared a draft of the rivers biennial report, which showed the total number of volunteer hours were 17,000 over the last two years. Using the federal volunteer hourly match rate for 2008 at \$18.77/hr this equals over \$317,000. She then showed where the river staff time is spent. There are about 12,000 hours of staff time in the two year period. Instream flow is using the most time.

Michele asked that the RMAC time be included in the volunteer estimate.

**III. Other Business/Action Item Review**

Dave Neils will be reporting on the Probability of Flowing Water Assessment. In 2009, the biomonitoring program completed its second monitoring season to characterize the condition of the nation’s rivers and streams. It included 1800 stations nationally, with 16 in New Hampshire. This summer’s efforts were based on wadeable streams. Results will be ready in 2011. DES has intensified the number of stations in NH to 50 to make a similar assessment of all of NH rivers and streams. They were sampled for fish, macro invertebrates, water chemistry, and instream habitat. When completed, this will provide the first comprehensive assessment of NH’s flowing waters for aquatic life and recreational designated uses. The goal is to have the report completed in time for the 2012 Water Quality Assessment 305(b) 303(d) list. It does not include the Volunteer Bio-Assessment Program (VBAP).

Laura asked for feedback on the RMAC Blog. The institutional memory aspect is appreciated and the information is readily available. It is not being used as a ‘Blog’ but by providing materials for upcoming meetings. It is much easier to print off the Blog rather than the FTP site.

River nominations to come in 2010:

- 1) Squamscott River – meetings scheduled with Newfields & Stratford Board of Selectmen next month; Rockingham Planning Commission is heading up the effort
- 2) Oyster River – almost complete; Strafford Regional Planning Commission is heading up the effort.
- 3) Lamprey River – going well and considering adding an additional 80 miles.
- 4) Mascoma River – meetings are on-going
- 5) Exeter and Upper Merrimack Rivers – are both pursuing ‘wild and scenic’ designation.

LSRs for the House are online. Senate LSRs are due the beginning of November. The RMAC legislative and policy subcommittee will need to review and then bring recommendations to the next RMAC meeting.

**VII. Next Meeting(s)/adjourn:**

Next meeting will be December 2, 2009, from 9:30 to 12:30.

- ***Michele L. Tremblay made a motion to adjourn, second by Bob Beaurivage. Motion passed unanimously.***

Adjourned at 3:57 P.M. with no quorum present.