

## RIVERS MANAGEMENT ADVISORY COMMITTEE

### Meeting Minutes

March 27, 2007

NH Fish & Game

9:30 am – 12:30 pm

#### Members Present

Ken Kimball, Chair  
Michele L. Tremblay, Vice Chair  
Alan Bartlett  
Jennifer Czysz  
William Heinz  
Deborah Hinman  
John Magee  
Walter Morse  
Allan Palmer

#### Representing

Recreational Interests  
Conservation Interests  
Agricultural Community  
NH Office of Energy and Planning  
Granite State Hydropower Assn.  
NH Assoc. of Conservation Comm.  
Fish & Game Department  
NH Fish & Game Commission  
Business and Industry Association

#### Term

Dec. 28, 2008 V  
Dec. 28, 2008 V  
Mar. 22, 2009 V  
Indefinite NV  
Jan. 5, 2009 V  
Oct. 12, 2007 V  
Indefinite NV  
Sept. 28, 2009 V  
Sept. 28, 2007 V

#### Members Absent

Bob Beaurivage  
Johanna Lyons  
Gail McWilliam Jellie  
VACANT  
Ted Sutton

Public Water Works  
Dept. Resources & Economic Development  
NH Department of Agriculture  
Historical & Archaeological Interests  
Municipal Association

Sept. 28, 2007 V  
Indefinite NV  
Indefinite NV  
June 15, 2007 V  
Nov. 16, 2008 V

#### Guests Present

Shari Colby

Dept. Resources & Economic Development

#### DES Staff Present

Steve Couture  
Laura Weit  
Paul Currier  
Rick Chormann  
Lori Sommer  
Carolyn Guerdet

NHDES Rivers Coordinator  
NHDES Lakes and Rivers Asst. Planner  
NHDES Administrator, Watershed Mgmt Bureau  
NHDES NH Geological Survey  
NHDES Wetlands  
NHDES Administrative Assistant

#### The Meeting Was Called to Order

Ken called the meeting to order at 9:30 AM.

#### I. 9:30 – 9:45 Introductions/Minutes/Committee Business

##### 1) February 9, 2007 Meeting Minutes - Vote Required

- *Michele L. Tremblay made a motion to accept the February 9, 2007 Meeting Minutes with the following corrections: page 2, insert the letter E in NPDES, page 3 paragraph 2 should read – Allan Palmer noted that the hydroelectric energy is in “some and not other”... , and page 6 noting discussion clarifying language of HB383 held between the 2 motions, second by Walter Morse. The vote was unanimous with one abstention.*

##### 2) RMAC Membership Status – Debby Hinman, Wes Stinson

Debby shared she will not be renewing her position on the RMAC when her term ends on October 7, 2007. Michele thanked her for her service.

Wes has resigned and the NH Historical Society will need to submit a new nominee as soon as possible. Steve will contact them to put forward a new nomination as it will have to go

through Governor and Council for approval. The RMAC will be sending Wes a letter of thanks for his service on the committee.

**3) Correspondence**

The material packet included correspondence related to legislation. This will be covered during that part of the meeting.

**II. 9:45 - 10:15 Strategic Planning and Reporting**

**LMAC and RMAC Watershed Sustainability Initiative**

The LMAC and the Governor's Office held a Lakes Forum in February of 2006. One of the action items that came out of the Forum was developing a strategic plan for lakes. The Lakes Management Advisory Committee (LMAC) has discussed this concept and the concept of sustainability at length at its monthly meetings. The DES Commissioner is very supportive of the idea and has requested the RMAC to become involved as well. Steve, Jacquie, Laura, and Paul have worked on developing a draft "white paper" to justify this initiative and provide an outline of how to proceed. Paul presented the draft "white paper" to the Committee.

The Watershed Sustainability Initiative would primarily focus on Land Use Change Issues by looking at the watershed activities that effect lakes and rivers in a combined effort. It would also tie in the Water Quality Standards, the anti-degradation language and come up with some recommendations on what anti-degradation means. One option is to refine the White Paper, by looking at everything the state does in regards to land use change, taking into consideration the anti-degradation language, and then make recommendations applicable to state agencies, the Governor's office, and also municipalities to come up with a sustainability initiative for watershed management for the entire state. This would be facilitated through some grant money, not developed by DES, to provide services and research. A subcommittee of the RMAC and LMAC would be formed to steer the process. Task 1 should be put together in a one year time frame when grant funds are found. Without grant funds, the process would take more than 2 years. Task 2 is in-stream flow and carrying capacity for lakes.

Michele questioned if grant funds were not found, what effect would that have on other aspects of the RMPP? Steve noted more of his time would go to RMAC support with policy time being shifted.

Paul feels that the time is right for the advisory committees to be part of this active consideration of sustainability. The Governor is behind this and there is an active process underway in the Water Quality Standard Advisory Committee to explore making better use of the anti-degradation policy. This policy says that whatever the water quality is you can't make it any worse, unless there has been a full public discussion and it has been decided there are good social and economic reasons to do so. This is a real opportunity for the RMAC and the LMAC to make a difference in advising the Governor and the DES Commissioner relative to the direction that should be taken.

Allan P. asked if the regulations already in place are sufficient to provide the protection for the water bodies?

Paul said this is an opportunity to make the existing regulatory structure more robust, relative to the characteristics of watersheds that impact water quality and the associated ecosystem. Internally there are draft rules proposed that are based on the anti-degradation policy, by

requiring water quality not be made worse. But, the pieces need to fit together into some kind of strategic plan, as this initiative would do.

Ken stated that it would make more sense if the definition of sustainability started with the ecological aspects and followed with the human. He also inquired what the purpose of the document was. He recommends that all of the programs in place be listed along with some of the past initiatives and indicate which ones have been successful and which ones have not.

Steve noted that for a watershed initiative to be successful support is needed from the executive branch, which we currently have.

Debby requested that on Page 3 – II, paragraph one the words “and quantity” should be added after “The major factor affecting physical/chemical water quality” to make sure that both are included. She also suggested adding language to the definition of sustainability regarding the conflict that typically results from various human uses.

Michele requested that the biology 101 statements be removed, (ex. the description of eutrophication). She also noted that more concrete steps or products are needed in order to justify why this proposal would make the world a better place.

Allan P. expressed his concerns about the document. He noted that it has a lot of words, but not a lot of meaning. Also, how would this be implemented? We already have a bunch of tools, but they are useless, since they are not enforced. He questioned if there were other things that are already out there that we should be using.

Paul explained that he sees this as an over-arching concept that holds all of those tools together to foster an understanding of what the overall objective is and what the tools should be used for.

Steve noted that an inventory of the existing tools combined with a gap analysis should be performed.

Paul noted that there are two aspects - the watershed aspect and the on-water body carrying capacity. The carrying capacity should be broken out as a separate task and completed by the LMAC.

Ken noted that now is the time to focus on something like this, due to increasing development pressure on rivers.

➤ **Debby Hinman made a motion to have the RMAC move forward as one of the participants in this, second by Michele L. Tremblay. Vote was unanimous.**

Ken requested that the draft “white paper” be revised before taking a final vote on the next steps. These revisions should include: the revisions discussed, a list of available tools, more details of what actions would be taken, funding source options, and specific end products. This needs to happen fairly quickly if we want to move forward with a completion date of October 2008. He also offered to review the draft once revised.

The Committee briefly discussed what effect the proposed budget cuts would have to the RMPP. The Part-Time Assistant Planner would be laid-off and no interns could be hired for the summer.

- **Michele L. Tremblay made a motion that the RMAC write a letter to Commissioner Burack and if needed to House Finance Committee and the Governor's Office pointing out the importance of the class 050 funding relative to the staffing for this program, second by Debby Hinman. Vote was unanimous.**

Michele offered to help with the letter.

Steve would like to begin biennial reporting for the program. The RMAC is not required to but, has in the past. He would like to tie the budget to what is achieved and put this in a report that DES can use with the Governor's Office, the general court, etc. Michele suggested highlighting not only the unpaid efforts from this committee, but also their efforts on various other committees such as dams, AOT, stream flow, etc.

Steve also asked if a sub-committee should be formed to address policy issues that arise between RMAC meetings to determine if the full Committee needs to review them. He was thinking that the subcommittee would work on the long-range management plans, permit notification process, and maybe functioning as a screening or pre-review group. Ken suggested maybe having monthly meeting for the full RMAC during the legislative season to review and respond to legislation. Michele suggested drafting a concept letter that would indicate what this subcommittee would do. Steve will put down the RSA specific projects he will be working on this year and ask if the RMAC wants to participate in them. Ken suggested having different committees for the different programs that line up with the areas of expertise and areas of interest of members.

### **III. Instream Flow Update**

Ken reported that the Souhegan held a public hearing on March 21<sup>st</sup> to present the Protected Instream Flow Study. The public now has the opportunity to comment on the recommendations. The Lamprey has been following the Souhegan schedule, but has fallen a little behind.

Paul mentioned that the Souhegan Instream Flow Report has been fairly successful and included some good concepts. He asked if the committee would be interested in hearing a briefing on this report. It was decided to include this as an agenda item at the next meeting.

Senator Martha Clark will now be the ex-officio member from the general court on the Technical Review committee for the Lamprey. Ray Konisky has been nominated to replace the former TNC representative.

- **Michele L. Tremblay moved to approve the nomination of Ray Konisky for the Lamprey River water management planning area advisory committee , second by Alan Palmer. Vote was unanimous.**

### **IV. Legislation/Rulemaking/Other**

Change in the agenda as Lori from DES was present for her presentation.

#### **2) Administrative Rules – Lori Sommer, NHDES**

- a) Env-Wt 800, Wetland Mitigation Rules

Lori reported that the law regarding Wetland Mitigation was finalized and signed by Governor Lynch in June 2006 and became effective August 18<sup>th</sup>. DES now has the authority to have a

4<sup>th</sup> mitigation option, which includes wetlands restoration, preservation of uplands and wetlands, as well as the creation of wetlands in lieu of paying into the aquatic resource mitigation fund. DES can now accept payments. Draft rules have also been written with interim rules adopted in November 2006, which are available on-line. The rules establish the program, but are only good for 6 months. DES is in the process of formal rule-making for the inland fee program as well as mitigation rules. The draft rules will be circulated and available on-line and also distributed to stakeholders. A public hearing will be held at the end of April to accept comments and testimonies. The rules are being tightened for clarity. There is also a new section that establishes an eight member committee that reviews applications and decides where the funds should go. Their recommendations are then reviewed by the Wetlands Council, which has the authority to distribute the funds.

The first payment has been received from a project in Londonderry for around \$50,000.00. The funds are pooled within the watershed where the impacts occurred and must be used within two years. DES has two years to develop the application forms and tools for applicants to use when applying. The site selection committee is working on the form and packet, operating guidelines, and a separate mitigation webpage. The webpage will also have the rules, a map, a calculator to determine payments, and suggested easement language, etc.

Lori noted that there is a 5% administrative overhead that is taken out of the total payment which funds the program. She also mentioned that the rules involving streams and rivers needs a lot of work. There is a stream group working to develop a stream crossings guidance manual and DES will look at improving all the rules and mitigation.

Michele said that the changes had included language that required impacts on designated rivers to be calculated at a higher ratio, but this had not made the cut. She indicated that this should be pursued further.

Ken noted that wetlands abutting rivers are typically some of the best nurseries for fish, water fowl, etc. and this is not recognized in the ratios.

Lori noted the initial comment period is still open and they should be watching for the next draft. It involves changes to chapter 500 also, but mostly 800.

- **Michele L. Tremblay moved that the RMAC use the wetlands letter regarding comments made the last time the rules were proposed and revised it as necessary but keep the intent of the ratio being higher for wetlands associated with river systems, second by Debby Hinman. Vote was unanimous.**

The letter will be circulated to the full committee.

Bill asked Lori what types of projects are eligible. Lori noted that any conservation easement within an affected watershed was eligible. But, she also pointed out that the project must match what was lost – both the function and type of wetland. She explained that the payment program is only available for projects of 10,000 square feet to an acre. Anything greater usually comes in with a package, usually wetlands restoration or preservation. Steve pointed out there are two references to the RMPP program in the initial proposal on page 3 and on page 8.

### 3) Stream Gage Task Force Recommendations

Steve reported that funds were requested in the DES capital budget proposal to the Governor's office to provide \$120,000 for 10 gages. This did not make the Governor's cut. It has not gone into executive session, so the RMAC could still submit testimony.

- **Debby Hinman moved to send a letter supporting the recommendations that the stream gage task force made, second by Michele L. Tremblay. Vote was unanimous.**

A letter was sent to the US congressional delegation with a list of items that we would like to see funded which included stream gages. The letter requested \$325,000 for the installation of 18 continuous stream gages in the state with USGS funding in the 2008 budget. Ted Diers went to Washington, DC to provide testimony. The idea is to find long term funding sources and avoid earmarks.

In regards to HB 664, Bill noted that the February 9<sup>th</sup> minutes said to track this bill, rather than submit a letter of support, which is how the RMAC voted. Steve mentioned that a letter had been sent. The purpose of this bill is to provide money to DES to staff DES gages and to potentially partner with USGS on gage implementation. Paul noted that they are exploring potential locations that the Dam Bureau would have easy access to.

- **Allan Palmer moved to reopen the February minutes and revise the language to reflect that the RMAC supports HB 664 as opposed to just tracking it, seconded by Michele L. Tremblay. Vote was unanimous.**

Ken noted the stream gage task force was concerned with the priority needs in the state and this opportunistic strategy doesn't get to those. Paul said there could also be partnering with USGS whereby they maintain the rating curve and DES maintains the equipment. These funds would at least provide some additional money into the dam maintenance fund which could be used for staff. The concern the RMAC had with this was the per foot fee on shoreland properties, which was deleted from the bill. Now HB 664 is just an increase of existing fees.

HB283 - The dam maintenance fund can be used by the agency for stream gages. Paul feels this basically prevents further erosion.

- a) **HB 61** – Passed the House. Steve thanked Debby for testifying on this bill. Steve asked the committee as a whole to thank Michele for testifying on 4 bills and a work session.
- b) **HB 319** - allows the Natural Resource Conservation Service, through their emergency watershed protection program, to qualify under the DES emergency permit process for wetlands. This is a new bill that replaces the original language. DES did support this bill. John and Michele shared their concerns with this bill.

- **Michele L. Tremblay moved to send a letter indicating that this is not an appropriate permit by notification power to give to a federal agency in the state of New Hampshire, second by Walter Morse. Vote was unanimous.**

- c) **HB 321** – an act relative to river protection and restoration. Recommendation from DES was ITL, as was the RMAC. No action – watch for reconsideration.

- d) **HB 383** – on consent calendar today, RMAC is in support if it stays intact. Jennifer noted that the bill passed with many errors. There were several omissions made by Legislative Services when drafting this bill and in order to meet the deadline the House committee voted 'ought to pass', acknowledging the errors and indicated that they would work with the Senate to correct them.
- e) **HB 384** - RMAC voted to track this bill, it should be ITL'd today. The Study commission is going forward under HB 699.
- f) **HB 439** – has passed the House, RMAC will track.
- g) **HB 648** – relative to the comprehensive flood management plan. Michele noted that this bill is not about controlling floods, but mitigating impacts. There will be amendments to this bill – adding a representative from DES and the NH Municipal Association. Representatives from the Office of Energy and Planning and Fish and Game were not included. The Committee did not take the RMAC's recommendation, so the title of the bill is still flood management. Steve noted that the duties are pretty much in line with what is asked for. It was decided to send the same letter to the Senate and stress that OEP and Fish and Game be included.
- h) **HB 663** – Amendment HB 380H for this bill passed the House and is being heard in Finance. This bill will require permits for activities within the CSPA jurisdiction. It is hoped that it will bring in enough revenue to exceed what is appropriated in the current General Fund to make it self-sustaining. The RMAC will keep its position to support. Ken suggested that the fees should be inflation indexed. Ken recommended sending a letter to the Senate stating that the fees should be inflation indexed per year to keep intact with actual costs.

➤ **Debby Hinman moved to send the above suggested letter, second by Michele L. Tremblay. Vote was unanimous.**

- i) **HB 665** – relevant to the stream ordering, including 3<sup>rd</sup> order streams under the provisions of the Comprehensive Shoreland Protection Act (CSPA). This is on today's consent calendar. It includes a change in methodology, but the inclusion of 3<sup>rd</sup> order streams would not go into effect until January 1, 2009, since DES needs time to develop an application, administrative rules, and hire additional staff. All, except 15 miles, of the designated rivers will fall under the CSPA if this bill passes.
- j) **HB 710** – relative to surplus land review. The RMAC submitted a letter of testimony in support for this bill. It was amended to place a moratorium on new leases through January 1, 2009.
- k) **HB 722** – This is the RMAC requested bill. There have been a few minor changes with some corrections. There has not been any change in intent at all. Michele suggests watching this as it moves over to the Senate.
- l) **HB 812** – relevant to the grandfathering of the existing sludge/septage land application sites. It is on today's regular calendar as submitted.
- m) **HB 857** – relative to the permitting responsibilities of the CSPA. Clarifies the language and identifies who is responsible for issuing permits – DES. Municipalities cannot waive the process. Jennifer noted that there had been a provision for municipalities to approve more stringent provisions and become certified, but only one town has done so. This would be removed from the bill, since towns that are certified are required to provide their own enforcement, which has been extremely difficult. This bill also had some errors, such as a missing exemption for public roadways, bridges, and boat ramps, etc. from the requirements. They are working to get this back in.
- n) **SB 71** – landfill setback bill. RMAC supported the bill with the amendment for the Isinglass. It is expected that the bill will go through.

- o) **SB 158** – it was decided to track this bill at the last meeting. There is now no reference to 401 certifications for State projects. It now amends state law to give the authority to grant 401 water quality certifications on Federal projects. Paul noted that DES did not request this bill. The intent was all state projects would be certified. No project can cause violations to water quality. The interim draft amendment and list will be sent out.

It was noted that copies of all letters of testimony have been sent out via email.

**V. 11:45 – 12:15 Surplus Land Reviews (SLR) – Disposition of state-owned properties**  
**2) CORD SLR 07- 02 Warren(Patch Brook) – Vote Required**

Laura reported that the Fish and Game Dept. received a request from the NH Electric Cooperative, Inc. for an electrical utility easement for the purpose of installing one power pole at the Warren Fish Hatchery.

- **William Heinz made a motion to approve, second by Michele L. Tremblay. Vote was unanimous.**

**1) DOT 06-06 Franklin (Upper Merrimack)**

No additional information has been received, no action required.

**3) HB 710 – SLR Commission**

This was discussed earlier.

**4) LMAC & RMAC staff letter to CORD**

Upon review of CORD minutes there was some concern regarding how the RMAC has conducted surplus land reviews. To provide clarification, Jacquie and Steve submitted a letter, on behalf of the LMAC and RMAC, explaining the statutory requirements of each of the Committees and their advisory role to the DES Commissioner.

Jennifer clarified that this dialog was not negative, nor reflective of how the RMAC currently reviews surplus land reviews. She also indicated that CORD felt things are working very well and OEP is pleased and they want to continue in this way.

Laura noted that CORD has approved a new cover letter and application for surplus land reviews, but are seeking input. Ken asked Laura to review the RMAC checklist and compare it with the CORD application and submit any recommendations.

Michele requested that both the CORD cover letter and application be sent out to the RMAC for comment. Jennifer noted that they are also on OEP's website.

Debby noted that the word Council should be Committee on the RMAC SLR checklist.

**VI. 12:15-12:30 Other Business/Action Item Reviews**

None.

**V. Next Meeting Date(s)/Adjourn:**

***Next meeting date: –***

***Tuesday, April 17, 2007 from 9:30 am - 12:30 pm at DES.***



**Tuesday, June 19<sup>th</sup>, to discuss sustainability. Michele L. Tremblay will look into having the meeting at the Boscawen Town Hall, then a possible canoe trip on the Upper Merrimack in the afternoon.**

**It was decided not have live streaming audio of the RMAC meetings.**

***Action Items –***

1. Feb. meeting minute changes.
2. Contact NH Historical Society re: RMAC rep for historic/archaeological interests.
3. Draft letter thanking Wes for his service. DES staff to draft for Ken's signature.
4. Move forward with biennial reporting (DES staff to develop format).
5. Subcommittee idea – further develop concepts (DES staff).
6. Sustainability Initiative – further develop draft (DES staff), Ken and LMAC subcommittee to participate.
7. Letter to DES adding mitigation ratios for riverine floodplain wetlands. Upon receipt of revised initial proposal, DES staff to draft for Ken's signature.
8. Letter to Capital Budget Committee for inclusion of stream gage funding, DES staff to draft for Ken's signature.
9. HB 319 – LOT to Senate for ITL. DES staff to draft for Ken's signature.
10. HB 383 – LOT for Senate needs to reference or include corrections that need to be made. DES staff to draft for Ken's signature.
11. HB 663 – LOT to Senate needs to include recommendation that permit fees be tied to rate of inflation. DES staff to draft for Ken's signature.
12. SB 158- List of existing state programs relevant 401 WQ Certs to RMAC (DES staff).
13. Letter to CORD in support of Warren SLR.
14. Email copies of CORD check list to RMAC. DES staff will provide comments.
15. June 19<sup>th</sup> RMAC meeting location. Michele to seek reservation of Boscawen Town Hall.
16. Upper Merrimack LAC to host canoe trip afternoon of June 19<sup>th</sup>. (DES staff and Michele)
17. Issue letter to Finance Committee re: 1518 class 50 budget.

➤ **Motion to adjourn by Michele L. Tremblay, second by Alan Bartlett. Vote was unanimous.**

**Meeting adjourned at 12:34 pm.**