

RIVERS MANAGEMENT ADVISORY COMMITTEE

Meeting Minutes

June 5, 2008

DES Rooms 110/111

11:30 am – 4:00 pm

Members Present

Ken Kimball, Chair
Michele L. Tremblay, Vice Chair
Alan Bartlett
Bob Beaurivage
Jennifer Czysz
Anne Krantz
John Magee
Walter Morse
Kathryn Nelson
Kevin Nyhan

Representing

Recreational Interests
Conservation Interests
Agricultural Community
Public Water Suppliers
NH Office of Energy and Planning
Historical & Archaeological Interests
NH Fish & Game Department
NH Fish & Game Commission
Local River Management Advisory Comm.
NH Dept. of Transportation

Term

Dec. 28, 2008 V
Dec. 28, 2008 V
Mar. 22, 2009 V
Sept. 28, 2010 V
Indefinite NV
June 15, 2010 V
Indefinite NV
Sept. 28, 2009 V
Sept. 5, 2010 V
Indefinite NV

Members Absent

William Heinz
Johanna Lyons
Gail McWilliam Jellie
Allan Palmer
Vacant

Granite State Hydropower
Dept. Resources & Economic Development
NH Department of Agriculture
Business and Industry Association
Municipal Government

Jan. 5, 2009 V
Indefinite NV
Indefinite NV
Sept. 28, 2010 V
Nov. 16, 2008 V

DES Staff Present

Steve Couture
Laura Weit
Jen Rowden
Paul Currier
Kathy Fife
Brenda Johnson
Carolyn Guerdet

NHDES Rivers Coordinator
NHDES Lakes and Rivers Asst. Planner
NHDES Lakes and Rivers Asst. Planner
NHDES Watershed Bureau Administrator
NHDES Instream Flow Program
NHDES Lakes and Rivers Program Intern
NHDES Administrative Assistant

Guests Present

Lorie Chase
Bill McCann
Julie LaBranche
Charlie Ryan
Leslie Bergum
Joan Karpf
Rep. Judith Spang
Larry Spencer

Cocheco River Watershed Coalition
Dover Conservation Commission
Strafford Regional Planning Commission
Ammonoosuc River Local Advisory Committee
Ammonoosuc River Local Advisory Committee
Ammonoosuc River Local Advisory Committee
House of Representatives
Pemigewasset River Council

Michele L. Tremblay announced that the NH Rivers Council will be celebrating the 20th anniversary of the Rivers Management and Protection Act at the Red River Theatre tonight. It will be held in conjunction with the DES Rivers Management and Protection Program.

The Meeting Was Called to Order

Ken Kimball, Chair, called the meeting to order 11:42 AM.

I. **Introductions/Minutes/Committee Business**

1) **March 5, 2008 RMAC Meeting Minutes- Vote Required**

- ***Michele L. Tremblay made a motion to accept the March 5, 2008 RMAC Meeting Minutes, Bob Beaurivage seconded the motion and the vote was unanimous.***

Introductions were made.

2) RMAC Membership Update

Ted Sutton, Municipal Government representative and one of the original RMAC members, has retired. A nomination for a representative for the association of conservation commissions is also pending. There are a total of 11 voting committee members, with a current roster of nine; this means five voting members must be present for a quorum.

3) RMAC Officer Elections

- ***Walter Morse made a motion to nominate Michele L. Tremblay as Vice Chair. Second to the motion by Kathryn Nelson. Motion passed unanimously.***

Meeting was turned over to Vice Chair, Michele L. Tremblay.

- ***Kathryn Nelson made a motion to nominate Ken Kimball as Chair. Second to the motion by Walter Morse. Motion passed unanimously.***

Meeting was turned back to Chair, Ken Kimball.

II. Cocheco River Nomination

Chairman Kimball reviewed the process that must be followed when a river nomination is submitted: 1) the nomination group gives a presentation to the RMAC, 2) a site visit is conducted, 3) a public hearing is held in a municipality along the river corridor and 4) public comments are reviewed by the RMAC and a vote is taken.

Steve reported this nomination was received on May 29, 2008. He deemed it administratively complete today. RMPP staff reviewed the nomination using the scoring system developed by administrative rule. Based on the criteria, the nomination received 537 out of 595 possible points. A 120-day timeline starts today. During this timeframe, the RMAC and DES need to hold a public hearing and make a recommendation to the Commissioner relative to the nomination.

Representative Judith Spang joins the meeting.

Lorie Chase, with the Cocheco River Watershed Coalition gave a presentation about the river. A CD containing the nomination and associated maps was distributed to each committee member. The Cocheco River Watershed Coalition is seeking to designate 34 miles of the Cocheco River in the communities of: New Durham, Middleton, Farmington, Rochester and Dover. Three classifications have been proposed - community, natural and rural community.

The Cocheco River watershed is in a region undergoing rapid growth both in population and the developed landscape. Changes in the hydrology, vegetative cover and ecology of the watershed have the potential to alter the existing environmental status of the river. Recent regional and state studies show that water quality can be impaired by urbanization and water quality may also affect the economic well being of the regional and state economy.

The communities of the Cocheco River Watershed have expressed strong support of the ecological services and functions of the river by requiring setbacks and buffers, limited uses

and development disturbance near the river and water quality standards. In fact, several communities require stricter setbacks and buffer standards for the river than required by the NH Comprehensive Shoreland Protection Act.

In 2008, the Town of New Durham strongly supported protection of the Cocheco River and its watershed by adopting a Conservation Focus Area ordinance and a Steep Slope Protection District ordinance. The purpose of the Conservation Focus Area ordinance is to conserve lands of exceptional significance containing the critical ecological, biological and water resources of New Hampshire's coastal watershed including diverse wildlife habitat, abundance wetlands, high water quality, productive forests and outstanding recreational opportunities. The Steep Slope Protection District ordinance implements standards for development of steeply sloping lands in order to limit soil loss, erosion, excessive stormwater runoff, degradation of surface waters, and to maintain the natural topography and drainage patterns of the land.

The Land Conservation Plan for New Hampshire's Coastal Watersheds (2007) by The Nature Conservancy and its state, local and non-profit partners recognizes four Core Focus Areas and their Supporting Landscapes located wholly or partially within the Cocheco River corridor. These areas contain lands of exception significance for the protection of living resources and water quality. The Core Focus Areas and Supporting Landscapes include: Cocheco Headwaters (New Durham, Middleton), Blue Hills (Farmington), Rochester Heath Bog (Rochester) and Rochester Neck (Rochester).

Julie LaBranche, of the Strafford Regional Planning Commission, answered questions regarding the Conservation Focus Area and Steep Slope Protection District ordinances. Bill McCann, of the Dover Conservation Commission, spoke for the commission in support of this nomination.

Steve explained the point system that is required by administrative rule in more detail. The point system is used to evaluate all nominations and make relative comparisons between rivers. It is also used to determine the specific characteristics of each river. There is no minimum score for a river to become designated. The scoring system is more favorable towards multi-use rivers.

The Committee suggested the Cocheco River Watershed Coalition acquire letters of support from each of the towns along the river. The letters would need to be submitted before the RMAC vote.

The site visit will be on July 23rd beginning at 1 PM, followed by dinner, then a 7 PM public hearing. A 20-day public comment period will begin after the public hearing. The 120 day deadline will end October 3rd and the LSR submission will need to be made in November.

A five minute recess was taken.

III. Ammonoosuc River, Upper Reach Nomination

Steve reported the nomination was received on May 30th and was deemed administratively complete today. The point system was applied; it scored 505 out of 595. Eight letters of support have already been received. This segment is contiguous with the existing designation of the Ammonoosuc River. The Ammonoosuc River Local Advisory Committee has indicated their willing to accept the additional responsibility for the upper reach of the Ammonoosuc River. This is the first time additional mileage has been added onto an existing designated river.

Charlie Ryan, Joan Karpf, and Leslie Bergum, members of the Ammonoosuc River Local Advisory Committee gave a presentation on their nomination. One of the first tasks of the Ammonoosuc River Local Advisory Committee was to designate the remaining mileage of the Upper Ammonoosuc River. This nomination includes the remaining 12 miles starting from the White Mountain National Forest property line at Lower Falls in the Town of Carroll upstream to and including the Lakes of the Clouds on the western slope of Mount Washington in the unincorporated place of Sargents Purchase.

The Upper Reach of the Ammonoosuc River offers many historic and cultural resources of local and statewide importance representing all of the important historical periods from the early settlers to the rise of tourism in the 20th century. This segment of the river corridor boasts the world's first mountain climbing railway, the Mount Washington Cog Railway, the Mount Washington Hotel, which is listed on the National Historical Register, as well as several locally important archeological and historical sites.

The Upper Reach of the Ammonoosuc River includes one of the most beautiful and significant river valleys in New Hampshire. It is valued by locals and tourists from around the country for its spectacular vistas of Mount Washington and the Presidential Range of the White Mountains. The river's steep, mountainous features provide rushing rapids and beautiful waterfalls including the Upper and Lower Falls. The Ammonoosuc Ravine Trail follows the headwaters of the Ammonoosuc River in a direct route to the Lakes of the Clouds. This popular trail boasts many fine waterfalls, cascades and Gem Pools, which are beautiful emerald pools at the foot of a cascade. The upper section of the river trail affords excellent views of the area. In addition, this portion of the corridor along Route 302 has been designated as a state Cultural and Scenic Byway.

The Ammonoosuc directly and indirectly provides drinking water to the communities through which it passes. Individual wells and aquifers lie along the length of the river. The water quality of the river has improved dramatically since the 1970's with nearly the entire river meeting or exceeding Class B standards. However, concerns regarding the lack of water quality data have resulted in volunteers joining the NHDES Volunteer River Assessment Program.

This portion of the Ammonoosuc River offers recreational opportunities of importance to both residents and tourists. This area of the White Mountain National Forest is associated with hiking, camping, skiing, snowmobiling, horseback riding, golf, mountain biking and other activities. The river itself is one of the state's best white water rivers rated from Class II to IV and is enjoyed by an increasing number of kayakers and canoeists. The easily accessible river is heavily fished for native and stocked trout. It is not unusual on a hot summer day to see people, residents and tourists alike, swimming at many locations along the river.

The Upper Reach watershed area and river corridor remain one of the most pristine ecosystems in the northeast. The extreme ecological diversity within this relatively small area is significant. The NH Natural Heritage Inventory has identified several exemplary natural communities and many plants that are threatened or endangered species. Mammals and invertebrates also make this critical list. Over 140 bird species have been identified with bald eagles, osprey and a variety of hawks are seen in the spring and fall as they migrate along the river. Native brook trout still inhabit the Upper Reach waters. The U.S. Silvio O. Conte National Wildlife Refuge identifies the Ammonoosuc River as "an important cold water fishery" and places a 'high' priority on protecting the river, not only as an important fishery, but also for

“contiguous habitat communities” which includes portions of the White Mountain National Forest.

This portion of the Ammonoosuc River is currently in the middle of a development boom with increases in commercial and residential users. There is growing concern about the impact these changes and the resulting fragmentation will have on water quality, wildlife, stream bank erosion rates, access and the quality of the recreational experience on the river. The expansion of the golf course along the Ammonoosuc River at the Mt. Washington Resort may pose a threat to the water quality that currently exists in the river. The introduction of invasive species, particularly *Didymosphenia geminata* also known as Didymo or Rock Snot, is a continuing threat to this resource.

The RMAC would like to see letters of support from the Town of Carroll as well as the Coos County Planning Board.

It was decided to conduct the site visit on August 12th beginning at 1 PM, followed by dinner, a RMAC meeting, and a Public Hearing at 6 PM, concluding with reconvening the RMAC meeting. If necessary there will be a conditional vote dependent upon the receipt of letters of support from the Town of Carroll and the Coos County Planning Board. Logistics will be determined closer to the date.

IV. LAC Permit Notification

Kath Nelson proposed that a subcommittee be formed to review and make recommended changes to the permit notification process the RMPP uses for the local advisory committees (LACs). There has been concern that LACs were not being notified of actions taken within their jurisdiction. Legislative changes would have to be made to specifically address these concerns. Kath sent a notice to the LACs Chairs asking their opinions on the current process. The responses received were in support of forming a subcommittee. Pursuant to RSA 483:12-a, I-a “the Rivers Coordinator shall develop in conjunction with the affected state agencies and local river management advisory committees, the procedure by which the state shall notify the appropriate local river management advisory committee when the action is being considered which affects a designated river.” The two concerns are: 1) the LACs would like to be notified of permit decisions or enforcement actions within their jurisdiction and 2) there is a strong need for better communication between DES and the LACs. The LACs would like confirmation that their comments are being heard and their recommendations are incorporated as conditions into permits as appropriate.

- ***Michele L. Tremblay made a motion to form a subcommittee of RMAC members and LAC members to review and submit recommendations regarding the permit notification process the RMPP uses for the LACs. Second by Bob Beaurivage. Motion passed unanimously.***

Michele L. Tremblay suggested that someone from DES and DOT also participate. In addition to the changes to the legislation, there needs to be consistency in statutes and administrative rules to make LACs an integral part of the process. Chairman Kimball suggested the policy for the disposal of state-owned lands be reviewed and used as guidance for this process. This subcommittee will be a task-oriented committee. It will not be on-going. It is expected that the subcommittee will communicate via conference calls and email as much as possible. Michele offered to host a webinar, if it would be of help.

Kath Nelson will serve as the Chair. Michele L. Tremblay and Kevin Nyhan (DOT) also volunteered to serve on the subcommittee. Steve will serve as staff and will also work with the

DES Waste and Water Divisions to find suitable representatives. Interested LAC members will also be invited to participate. Chairman Kimball stated that the objective is to develop a clear communication structure to resolve the uncertainty that exists right now. It is expected that this can be accomplished by the end of the year.

V. Sustainability Initiative – Jenn Rowden

Jenn referred to the final initial report of the Sustainability Initiative that was distributed. She provided a brief overview of the executive summary. In January 2008, the LMAC and the Rivers Management Advisory Committee (RMAC) presented *The Sustainability of New Hampshire's Surface Waters* to Commissioner Burack. The paper provides a roadmap to address the LMAC and RMAC's concerns that despite decades of efforts the quality and integrity of the state's water resources will decline under current efforts. Commissioner Burack supported the LMAC and RMAC's efforts and with the help of LMPP/RMPP staff requested they move forward with the Sustainability Initiative focusing on near-term achievable goals and integration with other strategic initiatives occurring within the state.

The LMAC and RMAC believe that if adequate resources and information are not made available now, then achieving sustainability of New Hampshire's surface waters will become more difficult, more costly or impossible. The LMAC and RMAC define sustainability as "the preservation and protection of water quality and quantity, maintaining intact ecological linkages between surface waters and their surrounding watersheds, achieving the appropriate balance between different human uses while protecting the biological integrity of the resource, and restoring and improving existing degraded systems." Both committees recognize the State's anti-degradation provision in the water quality standards rules in Env-Ws 1700s, but feel that water quality should be improved where necessary.¹ Development of a timeline for achieving sustainability is difficult, but if aggressive actions are not made now sustainability may not be possible.

The interim report makes recommendations for short-term achievable goals and actions to address four of the eight issues identified by the LMAC and RMAC as being critical to sustaining the state's water resources:

- Lack of Data and Improve Data Access and Management
- Lack of a Coordinated Approach to Manage Watersheds
- Control of Invasive Aquatic Plants
- The Consumptive Use of Surface and Groundwater

A list of several recommendations with specific goals that address each of the four issues has been completed. The recommendations were based on the ability to complete the task by the end of 2008. All are meant to be included in the current budget cycle, the upcoming legislative cycle, and/or the current strategic planning efforts at DES. All capital budget items have been submitted with the DES capital budget request. Program operational budgets will be discussed with the commissioner for his input. Legislative aspects will be internally vetted as appropriate. There are also programmatic recommendations that will take place within DES. The purpose of the meeting with the commissioner, to be held later this afternoon, will be to garner his support of the recommendations and to further discuss their implementation in the five-year DES strategic plan. The following will be discussed: 1) explanation of the process used to develop the recommendations, 2) the political feasibility of implementing the recommendations,

¹ Anti-degradation means that, whatever the current state of the surface water is, human activity should not make it worse unless there is an overriding social or economic reason to do so.

particularly in regards to legislation, would DES support the proposed legislative changes or will the LMAC or the RMAC need to find legislative sponsors and 3) funding aspects.

There was a meeting in May to discuss ways to help fund many of the DES water-related programs that rely on federal funds. Proposals of ideas are being investigated to determine their feasibility. Chairman Kimball stated that the role of the RMAC is to conduct due diligence. The Sustainability Initiative was voted on and the challenge has become how to find the necessary resources to make it happen. Many of the programs at DES exist legislatively, but are not adequately funded. The objective is to find out what kind of funding mechanisms are needed to meet the goals laid out and how to get them in place.

Steve noted they met with the commissioner relative to the funding mechanism proposed in RSA 483. It was determined that the funding mechanism was deemed politically infeasible. The Commissioner did recognize there is a need for a long-term funding mechanism for the Rivers Program. The RMAC needs to consider how to tie the Sustainability Initiative to RSA 483 legislation. Paul Currier pointed out that DES intends to think strategically about the programs that are general funded. DES also plans to evaluate what is being done with existing funding and what is required under law, but is not being done. Changing conditions must also be taken under consideration. Chairman Kimball and Michele L. Tremblay encouraged taking a holistic approach, which offers stronger justification.

Jenn and staff were thanked for their work on this effort.

VI. Legislation/Rulemaking/Other – Steve Couture

Steve will revise the legislation that the RMAC proposed for RSA 483. The proposed funding mechanism will be removed. It will be reviewed again at the July 23rd meeting.

Steve reviewed the Weare Bridge project. In January, the RMAC received a presentation concerning a permit to replace the Abijah Road Bridge in the Town of Weare. The project would dredge and fill a total of 8,400 square feet to replace and upgrade the existing public bridge adjacent to and within the bed and banks of the Lake Horace Marsh Prime Wetland and temporarily impact 3,000 square feet to improve roadway alignment. The project is located at the downstream endpoint of the Natural section of the North Branch of the Piscataquog River.

At that meeting, the RMAC determined the following: 1) “channel” is not defined in RSA 483, 2) the proposed project appears to be a *permanent* (emphasis added) impact, so it may not be allowed at all under the provisions of RSA 483, 3) the RMAC is concerned that this project does not meet the protection measures outlined in RSA 483:9, III, and 4) the RMAC advises DES to document its interpretation of “channel” within the context of RSA 483.

On May 20, 2008, the DES Wetlands Bureau approved the request and initiated a 20-day permit reconsideration period for prime wetlands pursuant to Env-Wt 704.01. Relevant findings of note from the letter are as follows:

- The NH Management Advisory Committee met on January 23, 2008, the committee advised DES to document its interpretation of “Channel” within the context of RSA 483.
- The project meets the intent of Natural Rivers Protection, RSA 483:9, III, as the alterations to the channel result in an overall net gain in the size of the channel opening and improve the ability of the Piscataquog River to transport water and sediment through the structure in low and high flows.

- The project meets the intent of Natural Rivers Protection, RSA 483:9, III, as the alignment of the proposed structure is being improved to be more in line with the thalweg of the river improving the channel planform.

RMAC specifically asked DES to carefully consider the situation and define channel. The term "channel" has yet to be defined within the context of RSA 483. It is important to point out, that according to RSA 483:4 IV "'channel alteration' means any human activity which changes the character of a river or stream channel including, but not limited to, filling, dredging, relocating, excavating, cleaning, deepening, widening, straightening or riprapping."

After much discussion, the RMAC expressed concern that the RSA is subject to varying interpretations of this protection measure. RMAC members also expressed concern regarding setting precedent for future projects.

Chairman Kimball recommended sending a letter to the commissioner expressing their concerns. The RMAC does not object to this project and is supportive of the end product, but has concerns regarding the overall process. According to RSA 483:9 III, for river reaches designated 'natural,' "No channel alteration activities shall be permitted, except that the commissioner may approve *temporary* (emphasis added) channel alterations in conjunction with the repair or maintenance of a bridge, road, or riprap which is in place at the time a river or segment is designated."

DES's approval never appropriately addressed the fact that its decision was in direct conflict with RSA 483. The project could have been allowed through the appeals process and preserved precedent while permitting the project to proceed.

The RMAC recognizes that when interpreted literally, RSA 483:9 III does not allow restoration projects on natural segments if the river was designated after human disturbance. This is counterproductive. Restoration projects that restore the natural characteristics of the river for which it was designated should be encouraged and fully supported. Therefore, the RMAC suggests making appropriate changes to RSA 483, during the next legislative session, to rectify this problem.

- ***Michele L. Tremblay made a motion to write a letter to the commissioner expressing the concerns described by Ken. Ann Krantz seconded the motion. Motion passed with one nay.***

The letter must be sent before the public comment period ends on June 9th. A copy should also be sent to the Wetlands Bureau. It is important to note that the statute was written 20 years ago, before river restoration projects were common.

- ***Michele L. Tremblay made a motion that the RMAC review the legislative changes put forth by the legislative subcommittee relevant to RSA 483. This would involve removing the funding portions and amending the language to allow and encourage restoration projects that restore the natural characteristics of the river for which it was designated. Allen Bartlett seconded the motion. Motion passed unanimously.***

Steve noted that ten stream gages were requested for the Capital Budget in the next biennium. He then provided a brief legislative update:

HB1601 instream flow pilot reporting dates were extended.

HB384 inspection of septic systems at the time of sale of property now includes rivers.
 HB1581 stormwater utilities passed.

Flood Management Commission:

John Magee noted the final report is due in August. The subcommittee reports are to be finalized by the end of the June. He will bring draft recommendations to the RMAC in July for consideration.

Stream Crossing Rules:

Michele Tremblay reported there are two upcoming meetings: one in July and one in August.

- ***Michele L. Tremblay made a motion to support the following recommendations for the Stream Crossing Rules committee:***
 - 1) ***Request DOT update the map of designated rivers, both electronically and in printed materials.***
 - 2) ***Request the Wetlands Bureau to conduct random spot checks of the Permit by Notification sites.***
 - 3) ***Request the proposed in-lieu stream crossing program look at the appropriate fee calculation rather than a set cost.***

Second by Kathryn Nelson, motion passed unanimously.

Lease of State Owned Land Commission – Bill Heinz sent an email indicating the HB710 Commission meetings are frequently cancelled, since the legislative calendar takes precedence.

VII. Surplus Land Reviews (SLR)- Disposition of state-owned properties – Laura Weit

Neither of the following requires votes. Laura gave a brief overview of each.

- 1) DOT 08-02: Town of Bow, (Upper Merrimack River). DOT has been very proactive to preserve this area for conservation interests. It is 53 acres and is contiguous with 40 acres of unfragmented forest in the town of Bow. DOT approached Steve to request feedback to support their decision not to the sell this land. Laura sent a memo on May 12, 2008 indicating that the land would be best suited as conservation land. Michele L. Tremblay shared that the Upper Merrimack River LAC also believes it should be preserved.

- ***Michele L. Tremblay made a motion that regardless whether this property is disposed or retained a conservation easement should be placed on it. If it is disposed, it should first be offered to the municipality or another conservation group with the intention of placing a conservation easement on it. Second by Anne Krantz, vote was unanimous.***

Jennifer Czyz noted that if DOT does retain ownership, they may want to contact the Conservation Land Stewardship Program (CLS) through the Office of Energy and Planning. The CLS Program manages the majority of the state's conservation easement lands.

DOT 08-03: City of Keene, (Beaver Brook, tributary to Ashuelot River) is outside of RMAC jurisdiction but is within the Ashuelot River LAC jurisdiction. A preservation covenant will be a condition of the disposal to retain the historical significance of the site.

- ***Bob Beaurivage made a motion that this be approved. Second by Anne Krantz, vote was unanimous.***

Steve noted that the SLR checklist does not include an analysis of the Wildlife Action Plan. This should be incorporated.

- ***Michele L. Tremblay moved that the Wildlife Action Plan be added to the SLR checklist in the same style as the NHI. Second by Kath Nelson, vote was unanimous.***

VIII. Other Business/Action Item Review – Steve Couture, NHDES

IX. Next meeting date(s)/adjourn:

- ***Kathryn Nelson made a motion to adjourn with a second by Bob Beaurivage. Vote was unanimous.***

Meeting adjourned at 3:43 pm.