



RIVERS MANAGEMENT ADVISORY COMMITTEE
NH Rivers Management and Protection Program

New Hampshire Department of Environmental Services
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RMAC MEETING MINUTES
October 2, 2013
Fish and Game Conference Room
9:00 am – 12:00 pm

Members Present

Ken Kimball, Chair
Michele L. Tremblay, Vice Chair
Anne Krantz
Frederick McNeill
Kathryn Nelson
Allan Palmer
Jim Ryan
Larry Spencer
Donald Ware
John Magee
Elizabeth Peck
Susan Slack
Matt Urban (for Kevin Nyhan)

Representing

Recreational Interests
Conservation Community
Historical & Archaeological Interests
Municipal Government
Local River Management Advisory Comm.
Business and Industry Association
NH Fish & Game
NH Association of Conservation Comm.
Public Water Suppliers
Executive Director, F&G
Commissioner, DOS
Director, Office of Energy and Planning
Commissioner, DOT

Term

Dec. 28, 2014 V
Dec. 28, 2014 V
June 15, 2016 V
Nov. 16, 2014 V
Sept. 5, 2016 V
Sept. 28, 2013 V
Sept. 28, 2015 V
Oct. 12, 2013 V
Sept. 28, 2013 V
Indefinite NV
Indefinite NV
Indefinite NV
Indefinite NV

Members Absent

Roger Noonan
Vacant
Gail McWilliam Jellie
Johanna Lyons

Agricultural Community
Granite State Hydropower
Commissioner, Dept of Ag., Markets & Food
Commissioner, DRED

Mar. 22, 2015 V
Jan. 5, 2015 V
Indefinite NV
Indefinite NV

DES Staff Present

Jacque Colburn
Shane Csiki
Ted Diers
Carolyn Guerdet
Tracie Sales

Rivers and Lakes Program
NH Geological Survey
Watershed Bureau Administrator
Water Division
Rivers and Lakes Program

Meeting Was Called to Order

Chairman Ken Kimball called the meeting to order at 9:07a.m. with introductions.

I. Introductions/Minutes/Committee Business

1) Acceptance of April RMAC Meeting Minutes

- ***Jim Ryan made a motion to accept the April 23, 2013 meeting minutes, second by Fred McNeill. Motion passed unanimously.***

2) RMAC Membership Update

Anne Krantz and Kath Nelson have been reappointed by Governor & Council (G&C)
Allan Palmer's nomination for reappointment is before G&C today
Donald Ware's nomination has been submitted to G&C
Larry Spencer's term expires on October 12th; he is seeking reappointment
The Commissioner will send a letter to Granite State Hydro requesting 3 nominees given Gary Kerr's passing. Gary's term would have expired in January 2015.

II. Update Regarding RMPP Activities

1) RMPP Updates – Jacque Colburn

- a. RMPP 25th Anniversary Celebration Review

Jacquie thanked subcommittee members Larry, Roger and Michele, as well as Ken and Tracie. Their work made for a very successful event. Jacquie read the Commendation received from the Governor and Council. Kath Nelson requested a copy of the Commendation to share with the LACs. About 62 people attended (of the 75 expected) and 30 – 35 participated in the paddle.

b. Connecticut River Creosote - Tracie Sales

Railroad ties were replaced August 5th – 16th on the bridge over the Connecticut River in North Stratford. Absorbent booms were placed in the river and along the shore to collect stray creosote and cleaning solutions during the replacement. The bridge abutments and girders were vacuumed prior to tie removal, and cleaned after the new ties were installed. Soil samples under the bridge were collected for testing, and the contaminated surface soil will be removed. The old RR ties, which had been dripping creosote since installation about 7 years ago, were taken to the Rumford Paper Company in Maine, and the used absorbent mats were placed in covered containers prior to disposal.

2) RMAC/LMAC ISF Letter and Report to Commissioner – Jacquie Colburn

The Comprehensive Surface Water Resource Management document developed by the RMAC and LMAC had been sent to the DES Commissioner in February along with the committees' request to adopt the recommendations as policy. Rivers and Lakes Program staff met with DES senior leadership, who asked for the Attorney General's opinion on adopting it. Questions posed were:

- a. Does DES have the legal authority to adopt this document as proposed as policy?
- b. Are there any inconsistencies between the proposed policy and existing statutes?
- c. Would the proposed requirements be legally enforceable under existing statutes if DES were to formally adopt and implement the proposed policy?

DES Commissioner Burack is considering his response and will get back to the committees soon. Chair Kimball commented that he would not be surprised if it is not adopted as policy, and will then look for other ways to implement the Recommendations. If the decision is that it will not be adopted as policy, then the LMAC has requested that the Commissioner attend the joint meeting.

3) Instream Flow Program Update – Ted Diers

HB 588 – extended the deadlines of the instream flow program. It was approved but it was made clear by the legislature they are done extending the program. The program has been in the works 10+ years. On August 30th the Protected Instream Flows and the Water Management Plans were completed and adopted for the Lamprey and Souhegan Rivers, including the Conservation Plans for affected water users and Dam Management Plans for affected dam owners. The Protected Instream Flows for the Lamprey were adopted at the same time as the Management Plan, while the Souhegan Protected Instream Flows were re-adopted due to a change in the fall flows that had been previously established.

The Water Management Plan for the Lamprey is ready to be implemented. DES staff is working on revising the procedures for the Souhegan, however, which will allow for flow augmentation from 4 dams rather than 2 and require a drawdown of no more than 2 feet in any one reservoir. DES is working with the dam owners and the affected communities.

Land owners on Pawtuckaway Lake have been concerned about the drawdowns required by the Lamprey Plan, particularly about the need to maintain more water in the lake during the winter to allow for a relief pulse. However, changing the drawdown has become less about flow and more about the health of the lake. The deep drawdowns were increasing phosphorous accumulation in the deep part of the lake. Lake residents have now agreed to the plan. The reduction of the winter drawdown will start this year and for the next four years will be decreased by 6 inches per year to determine the affect on docks. The phosphorous is being monitored. A Partnership Agreement has been initiated between DES and the Pawtuckaway Lake Improvement Association.

DES will be hosting meetings in each watershed to begin program evaluation. The department is required to give the legislature an evaluation of the ISF program in 2 years, and DES will be asking for the RMAC's input. The legislature will be deciding on the future of the program. What questions should DES try to answer during the next 2 years? Examples: lessons learned; water quality; long term monitoring; public process; are flows protected? DES will prepare a draft set of questions for the next RMAC meeting.

Vice Chair Tremblay asked if the instream flows applied to the entire Lamprey watershed or to the originally designated portion of the river. Ted Diers replied that it only applied to the originally designated section of the mainstem, however, all dams and water users in the watershed are included in the plan.

Kath Nelson asked who would be doing the reporting and what funding was available. Diers noted that Wayne Ives would be the lead on the evaluation, but that Jacquie, Tracie, Ted and the water quality monitoring staff will also be pulled in to help as necessary. He said that DES may ask USGS and UNH to do some studies, but that there is no money for consultants.

Fred McNeill asked about state authority over private dam/land owner actions. Diers responded that he is not yet sure, especially in cases where the land under water and behind a dam is privately owned. However, there are precedents in the FERC 401 process.

Matt Urban asked if the downstream impacts will be studied. Diers replied that they would be as resources are available. He asked who had data that could help, i.e. fish population data from F&G.

Chairman Kimball noted that there would be limited future fiscal resources. Diers agreed, but noted that the instream flows for the pilot rivers are a numeric translation of the existing narrative water quality standard.

Allan Palmer asked if the pilot is successful. Ted commented that time will tell. What DES is doing is cutting edge science in the US; operationalizing a theoretical construct. It will need to be evaluated. Palmer followed up asking how this program would be rolled into other rivers. Diers responded that the science end of the process could probably be automated, but that they have learned the importance of the people part/outreach, and that part must still be done for each river with limited staff resources. Palmer then suggested putting together summary reports of the process evaluations, i.e. How do people that were involved feel about the ISF process? Diers thought this was a good idea and could probably be done through Survey Monkey.

Don Ware noted that the success of the program will be determined by the Water Users and Dam Owners implementing the plan. Diers responded that DES will meet with each affected water user and go through the plan again and talk about how to implement it. However, enforcement is one of the topics still to be determined. Also, the notification process needs to be improved.

Larry Spencer asked if there is enough water in New Hampshire. Diers responded that this program is designed to make sure that available water is fairly apportioned, using the example of a future water bottling plant in the Lamprey watershed.

Chairman Kimball also noted we will be looking at RSA 483 and may or may not make recommendations regarding instream flow. Diers noted the WMPAAC meetings are valuable for public input.

- 4) Proposed SLR 13-008 Concord (84 Iron Works Rd) Update – Jacquie Colburn
DHHS proposed to dispose of land on Iron Works Rd in Concord that included frontage along the Turkey River. In response to the RMAC's request that the riparian corridor remain state property and the committee's suggestion that the corridor be added to the abutting state forest, DHHS and DRED have agreed to a land swap where DRED will give 0.9 acres of existing Russell Shea State Forest land to DHHS for sale with the remaining portion of the #84 property in exchange for 0.9 acres bordering the river.

Vice Chair Tremblay noted that this results in a net loss in state-owned land in Concord, which is disappointing and potentially not a positive solution, but that the corridor did need to be preserved. Nelson commented that this solution leads to more potential development near the river (part of the property to be disposed is within the 250' shoreland buffer zone). Susan Slack noted that CORD has limited authority in these situations. Vice Chair Tremblay wondered if the RMAC could reply to CORD that the swap was not an even value, as the riparian corridor is not of value to a potential developer for building.

Chairman Kimball summarized the draft letter that the RMAC will be sending to CORD agreeing to the Surplus Land Disposal, but stating the committee's dissatisfaction with the solution. Kimball noted that RSA 483 requires that a strategy for state-owned land be developed, and that the RMAC does not currently have one. This situation emphasized the need for such a strategy, and this topic should be added to the discussion of proposed RMPP statute changes.

- 5) Other Updates – Jacquie Colburn
The Warner Conservation Commission has expressed an interest in getting the Warner River (a tributary to the Contoocook) designated. Jacquie spoke to them in early September, and is waiting to hear back

from them after they talk to Central NH RPC. Fish & Game is involved and supportive. Colburn told them that funding is a challenge.

There will be an LAC Workshop on Saturday, October 19th at DES 8:00am to 2:00pm. Please visit the New Hampshire River's Council website for more information and to register.

III. Review of Proposed Rivers Related Legislation for 2014 – Michele L. Tremblay

One LSR has been submitted by Rep. Spang relative to lakes and rivers watershed management as a place holder. The LSR submission period for the Senate is still open, but the House period is closed. We only have one or two LSRs that might be relevant, though Tracie noted a LSR related to notification of water release from dams.

The RMAC Policy & Legislation Subcommittee consists of Kath, Allen, Fred, and Michele. With Gary's passing, the subcommittee needs another volunteer. The subcommittee usually meets once in person and then via email and phone.

IV. Statute Review: RSA 483 – Ken Kimball

The purpose to this discussion is to review RSA 483 after 25 years. Where can we make it better? What parts are not working? The Statute Review Subcommittee (Ken, Michele, Fred and Gary until his passing) was to review RSA 483 and propose changes. Chairman Kimball asked RMAC members to email their post-meeting thoughts to the subcommittee members before the December RMAC meeting. The Lakes Management Advisory Committee and Shoreland Advisory Committee also want to meet with the RMAC and will be attending the December meeting. Vice Chair Tremblay noted that the RMAC may have to do chapter law review as well as statute.

Chairman Kimball reviewed the concepts spreadsheet which was the result of the subcommittee's discussions. Page 1 is River & Instream Resources, about protection of the resource itself. Page 2 is the Statute Process, the tools.

A. River Resources

1. Riparian

- a. River Management Plans – Management plans are often not implemented by towns. The focus tends to be on Shoreland Act requirements, rather than the LAC's management plans. What is the most effective way to have more success of management plans? Should LACs work on these or move to protection at the State level? Vice Chair Tremblay suggested that the LMAC and RMAC take over when the Shoreland Advisory Committee sunsets. Nelson thought that state regulations could be a tool for the LACs to work with at the local level. Tremblay noted that the original intent of the statute is not working, so other actions have been implemented. The result has been patchwork. Nelson added that the management plans may be a barrier for new LACs. Chairman Kimball suggested discussing the Management Plans with the LACs at the LAC Workshop.
- b. State Lands – The State has the obligation to protect the public trust. The long range plans for state lands on rivers have not been written, except on the Exeter. For surplus lands, the state organizations should be responsible for demonstrating that disposal is not detrimental to public access, etc. before the proposal is sent to CORD or the RMAC. Colburn contacted the Office of Energy and Planning and has obtained the GIS shapefiles of existing state lands on public waters as of 2007.

B. Instream Resources

1. Instream Flow – Wq-1900 describes interim flow under *de minimis* (not 7Q10) conditions, but it is generic, even though it does recognize seasonal flow variability. Public water suppliers oppose generic standards as management can be triggered too soon. This is also a politically sensitive topic. Chairman Kimball will follow-up with Don Ware on this subject.
2. Lake Level vs. Flow – Waiting on the response from Commissioner Burack on the RMAC/LMAC "Comprehensive Surface Water Resource Management" document.
3. Water Quality – Palmer is the RMAC representative to the DES Water Quality Standards Advisory Committee (WQSAC), which is an ad hoc advisory committee. Should the RMAC be doing more regarding water quality? WQSAC is looking at water quality narrative standard needs and anti-degradation with a focus on Wq-1700. McNeill thought that the RMAC should be doing more with water quality and WQSAC, as water quality protection is one of the RMAC's most important roles. Chair Kimball asked if the RMAC should make its WQ advisory role specific. Palmer will report back

to the RMAC regarding WQSAC meetings either in person at RMAC meetings or via a 1 page summary.

4. Ecological Connectivity – DES has a good dam removal program but the RMAC has no formal role in this. John Magee suggested that the RMAC should have a representative attend the River Restoration Task Force meetings, which he already attends as a non-voting member. The group agreed to ask Magee to report back to the RMAC on these meetings. It was asked if the statute should specifically identify which committees the RMAC should be a member of. Vice Chair Tremblay suggested that there should be no statutory change unless the RMAC becomes a member of a statutory group. Colburn suggested that a Silver Jackets Update should be added to the RMAC agenda, and that she or Beth Peck will report back to the committee as both are members of Silver Jackets.

C. RSA 483 Process

1. River Nomination/Designations – Nelson asked if different categories for designation should be used, particularly if management plans are rarely acted on. A lot of time is spent on determining the designation break off points, perhaps classifications could be based on HUC units instead? Jacquie will work with the LACs and river coordinators for some recommendations.
2. RMAC – Changes are needed to the member nomination procedure to require just one nominee. Also, need to review nominating groups to make sure they are representative, and that their names have not changed. Example of Granite State Hydro was given, which only represents small hydropower owners, but not large ones.
3. LACs – 5 year terms have been suggested for LAC members to reduce paperwork for program staff. Also, should the LACs be acting more like a ZBA, becoming more regulatory than advisory?
4. Biennial Reporting – A suggestion was made to move reporting to a report card type of format regarding river protection status and fulfillment of duties. Reports can also be difficult because LAC annual reports do not align with the State reporting period. Tremblay commented that reporting is important to keep the Program from becoming invisible. Sales feels traditional reports do need to be streamlined. Tremblay suggested that Nelson work with program staff and propose report changes. Staff will also look at RSA 483 before the December meeting to determine if the reporting changes will require changes in the statute, or if they can be done below that level.

D. Monitoring

Some LACs conduct water quality monitoring and some do not. Do we want to strengthen the LAC's role in monitoring in RSA 483? What about developing a white paper looking at all monitoring programs and how they could be coordinated and enhanced? Tremblay encouraged using the DES Onestop (available on the DES website) as the repository for all data.

The statute review subcommittee needs to work on specific language changes in preparation for the December meeting. They will meet after the LAC workshop after getting LAC feedback. This subcommittee will then get together mid-November. Ken Kimball and Don Ware will also be working on feedback regarding the Instream Flow Program.

V. **Other Business and Action Item Review**

- 1) Action Item Review
Follow-up tasks associated with statute review.
- 2) Next Meeting – Joint Meeting with LMAC
Sales will send out a Doodle Poll to the RMAC regarding a date in November or early December.
- 3) Proposed Agenda Items for Next Meeting
The Chair of the Shoreland Advisory Committee will give a short 15 min. presentation at the joint meeting. Discussion of additional proposed agenda items was postponed.

VI. **Member Comments and Updates**

Postponed due to lack of time.

- ***Motion to adjourn by Larry Spencer, second by Kathryn Nelson. Motion passed unanimously.***

Meeting adjourned at 12:04 pm.