

RIVERS MANAGEMENT ADVISORY COMMITTEE

Meeting Minutes

March 5, 2008

DES Rooms 112/113

9:30 am – 12:30 pm

Members Present

Alan Bartlett
William Heinz
Johanna Lyons
John Magee
Kevin Nyhan
Allan Palmer
Ted Sutton

Representing

Agricultural Community
Granite State Hydropower
Dept. Resources & Economic Development
NH Fish & Game Department
NH Dept. of Transportation
Business and Industry Association
Municipal Government

Term

Mar. 22, 2009 V
Jan. 5, 2009 V
Indefinite NV
Indefinite NV
Indefinite NV
Sept. 28, 2010 V
Nov. 16, 2008 V

Members Present via phone

Ken Kimball, Chair
Michele L. Tremblay, Vice Chair
Anne Krantz
Walter Morse
Kathryn Nelson
Bob Beaurivage

Recreational Interests
Conservation Interests
Historical & Archaeological Interests
NH Fish & Game Commission
Local River Management Advisory Comm.
Public Water Suppliers

Dec. 28, 2008 V
Dec. 28, 2008 V
June 15, 2010 V
Sept. 28, 2009 V
Sept. 5, 2010 V
Sept. 28, 2010 V

Members Absent

Jennifer Czysz
Gail McWilliam Jellie

NH Office of Energy and Planning
NH Department of Agriculture

Indefinite NV
Indefinite NV

Guests Present via phone

Larry Spencer

DES Staff Present

Steve Couture
Laura Weit
Jen Rowden
Carolyn Guerdet

NHDES Rivers Coordinator
NHDES Lakes and Rivers Asst. Planner
NHDES Lakes and Rivers Program, via phone
NHDES Administrative Assistant

The Meeting Was Called to Order

Ken Kimball, Chair, called the meeting to order at 9:05 AM.

I. Introductions/Minutes/Committee Business

1) January 23, 2008 RMAC Meeting Minutes- Vote Required

- ***Anne Krantz made a motion to accept the January 23, 2008 RMAC Meeting Minutes, Kath Nelson seconded the motion and the vote was unanimous.***

II. Sustainability Initiative

Jennifer Rowden noted that staff, Ken Kimball, and Phil O'Brien met with the Commissioner to review the eight initial issues. Per the Commissioner's suggestion, it was brought down to three issues that could be accomplished in a reasonable time frame and with current staffing. The three chosen were: 1) Lack of coordinated approach, 2) Lack of data and improved access to data and management by data uses, and 3) Control of aquatic invasive species. Progress has been made with all three of them. There was funding available to add an

additional five hours to Jenn's current 20 hours/week schedule that will be used for this. There could also be funding for an intern for this summer.

- 1) Lack of Coordinated Approach – will start with a reorganization of the Watershed Management Bureau to coordinate programs and staffing. A bureau-wide meeting was held to brainstorming possibilities. Paul Currier asked staff for their input as to how they're working with others inside the program and outside of the bureau. The goal is to have the reorganization be implemented into the DES strategic planning process that is currently underway. The timeline to incorporate this is May/June.

Steve said there is a technical assistance project that the State of NH has received called the Land and Water Project. This project includes a variety of partners including the Trust of Public Lands, EPA, and the Association of Drinking Water Suppliers. The hope is this effort could address some of the larger issues identified in the Sustainability Initiative, such as protect shorelands and riparian buffers, that are not currently being addressed. It is expected that a report with recommendations to improve water resource management will be issued in September.

- 2) Lack of Data and Improving Data Access – met with staff from other bureaus and programs in late January and asked about the lack of data and the ways of improving data, possible funding mechanisms, possible gaps that could be filled, and things that could influence the legislative budget cycle for the coming session. Short term goal from this meeting was finding stable funding for a stream gage network. Also methods were discussed to fill the gaps in the water quality data, such as collection of water quality sample information when wells are tested for residential transfers. Steve mentioned that there is a NH Water Monitoring Strategy that speaks to surface water quality monitoring. Groundwater is mentioned and could and should be included as part of that strategy. This can have an influence on the strategic planning process at DES and then any related legislative efforts beyond that.

Steve said Wayne Ives did a quick analysis of what we should be requesting for additional data beyond the 15 stream gages that are to be installed in the next two years. It was decided to request seven additional gages over the next capital budget cycle along with a long-term plan to fund the operation of these gages.

- 3) Key challenge with the invasive species program for rivers is that river access is less controllable compared to lakes. There is a possibility of additional money for more staff time to be spent on rivers and conducting more river research in terms of eradication techniques. The current motor boat fee is specifically under the clean lakes program with no mention in the statute for flowing waters. There was also discussion of the lack of research on invasive species and riparian systems. One suggestion was to increase the boater registration fee. If a fee was tied to riparian invasive species research, a canoe/kayak registration fee might be possible. John Magee asked what the biological and water quality implications of these invasive species are in waterbodies? Steve noted didymo probably has had the most research. Ken noted that water chestnuts and milfoil has had some research. He then asked the question of how do you get a funding source that is going to work and be accepted politically? There is a two-tier approach for invasive projects: 1) eradication and 2) control. Larry Spencer brought up the possibility of an endowment for each gage so that there will always be a source of funding. Kath Nelson asked if there could be a fee added to the large groundwater permits for gages.

Ken Kimball noted item #7 in the Sustainability Initiative and asked why it wasn't put on the list. Jenn said that they were looking for items that could actually be accomplished within the September time frame and current staffing. The three chosen were at the Commissioner's recommendation. Steve noted a funding possibility for instream flow and other river programs through legislation that was drafted this past fall. The idea is to have a surcharge of \$50.00 on any permit applications within the watershed areas of designated rivers. It is anticipated that this would create a revenue stream of \$300,000 to \$600,000 per year. This could possibly fund the instream flow effort. Ken asked that instream flow be added as a priority.

- ***Kathryn Nelson made a motion to put the RMAC proposed RSA 483 legislation for 2009 back on the Sustainability Initiative agenda. Second by Anne Krantz. Vote was unanimous.***

Chairman Kimball encouraged moving instream flow ahead of the invasive species work. Steve noted that it will be included in the discussion between now and May.

III. Legislation/Rulemaking/Other – Steve Couture

HB 1295 – A bill relative to the establishment of a commission to study issues relating to stormwater. Amended to change the membership of the Commission, removing the RMAC as a member. The amendment was passed in the House and the bill is now going to the Senate. Chairman Kimball and Steve Couture do believe the interests of RMAC will be covered appropriately with the current named commission members. It was decided to stay with a letter that requests a RMAC member and monitor it.

HB 1349 – A bill relative to membership on the council on resources and development. The RMAC is tracking this bill. It has been amended so that CORD's approval is required in order for a surplus land to move forward.

- ***Kathryn Nelson made a motion to write a letter of support giving authority back to CORD for the review and disposal of state-owned land. Second by Allen Palmer. Vote was unanimous.***

Steve agreed to find out what CORD's position is on the amendment.

HB 1353 – A bill relative to local control of water resources. RMAC had voted to oppose it and a letter was sent to the House. It has been amended to form a commission to study issues relative to groundwater withdrawal.

- ***Bob Beurivarge made a motion to track it. Second by Allen Palmer. Vote was unanimous.***

HB 1579 – A bill relative to setback requirements from wetlands including direct and indirect impacts. This bill has been completely changed to form a commission to study issues relating to land development and land development regulation in New Hampshire. A final report date is set for November 1, 2009. This is an effort to better understand how the state manages growth. RMAC is not a member on this commission.

- ***Kathryn Nelson made a motion to support the writing a letter with the addition of representatives from the Dept. of Transportation and the Dept. of Agriculture,***

Markets, & Food on the commission. Second by Ted Sutton. Vote was unanimous.

HB 1581 – A bill enabling municipalities to form stormwater utilities. The RMAC submitted a letter of support to the House, but the bill has since been amended for a technical clarification. There was a minority report filed that was not necessarily accurate. The RMAC letter will be resubmitted in support to the Senate. The RMAC may need to have a representative ready to testify.

HB 648 Flood Management Commission – John Magee gave an update with the points of discussion. The Commission is talking about limiting activities near flowing waters that have the potential to cause an erosion hazard. Points of discussion are:
 #4 – should there be a state-wide program that indicates what should be done in floodplains to minimize flood damage and preclude public safety issues?
 #1 and #2 – should floodplains fall under wetlands jurisdiction? If they do fall into some jurisdictional area, what kind of criteria should be used?
 #3 – how are new and replacement stream crossings related to this whole issue? Culverts, crossings with bottoms, etc. are a point of public safety and long-term capital costs.

There are three sub-committees. Each subcommittee is now researching the presentations, documents, facts and findings relevant to their particular sub-committee and is currently developing recommendations that will be considered by the full committee.

John Magee also noted that the committee is working to:

- 1) Preclude/minimize long term costs – death, taxes, money, public safety
- 2) Permits – state standard dredge and fill, the army corps requires that the applicants demonstrate if they are in a 100 yr. flood plain, if they are then a federal executive order is in place.
- 3) Vermont has a strong program to preclude flood damages from erosion of flowing waters. FEMA regulations are related to inundation. They also have a Fluvial Erosion Hazard Mitigation program.
- 4) Climate change predictions for New England may change the 100 year predictions to 25-50 years.

Chairman Kimball urged John to be quite strong on RMAC's position that the state set a minimum bar and encourage the state to find ways to regulate development in the floodplain. John felt the message to this committee would be that DES should adequately regulate activities to preclude the damages, long term and short term that are obvious.

Michele T. has left the meeting.

- 3) DES Stream Rules work group – Steve, Kevin Nyhan and John Magee are all participating in this work group. Steve said the group is in agreement on replacement structures. They are now working on determining the criteria for the requirements – what size stream should the requirements be applied to. For replacement – when and why replace with more than in-kind. They are also looking at natural resource concerns. John noted that there are two tiers – replacement and new structures. For both, they must be geomorphically transparent – not slowing down or increasing the water velocities and not changing the sediment transport conditions at the site. This applies to state and federal requirements and precludes any water quality degradation. Flood requirements are still being discussed, with the 100 year storm the consensus right now. A stream power model has been developed that determines where to set the breaking point for when the rules

will be applied for these structures, taking into consideration slope and drainage area. It is being recognized that the smaller streams can have significant impact during flood events. Michele Tremblay has been representing the RMAC at these meetings.

- 4) **HB 710 Lease of state Owned Land Commission – Bill Heinz**
A joint proposal by the LMAC and the RMAC has been put together and is included in the RMAC packet which was intended to help the HB 710 Commission move the process forward. Laura Weit and Jacquie Colburn authored it with comments from others. Mitch Kalter presented it to the Commission. The chair of the commission then reported work would be put off until March 29 due to the legislative workload.
- 5) **Water Quality Standards Advisory Committee – Paul Currier and Allan Palmer**
Steve had sent a powerpoint presentation to the RMAC members. Paul reviewed the basic water quality standard items and then reported on what the Water Quality Standards Advisory Committee is doing. The Committee is working to resolve the issues of policy and guidance around permitting a transfer, specifically for the town of Salem. The Town wants to transfer water from Arlington Pond on the Spickett River to Canobie Lake, their current water supply. Issues revolve around the implementation of the anti-degradation policy. Water Quality Standards have three essential elements required by federal law. 1) Designate uses – NH has five designated uses, most important of which is aquatic life and recreation, then drinking water supply, fish consumption and support of wildlife, 2) criteria to support the uses – they are quantifiable attributes of the waterbody or its surroundings. A work group for rivers nutrient criteria (flowing waters) was discussed. Kath Nelson was interested in forming a work group and will work with Allan Palmer and Paul Currier, and possibly the wastewater treatment plant staff. 3) Anti-degradation has basically three tiers – a) maintain existing uses and continue to support designating uses, b) high quality waters – waters which are better than just maintaining existing uses and support for designated uses and, c) outstanding resource waters – an administrative class of waters with high values. In NH, outstanding waters are those rivers located in the national forest and natural segments of designated rivers.

What still needs to be done is develop a process for social and economic justification. Work will begin on this in April. Anti-degradation says that additional pollutants should not be allowed unless there is an economic or socially justifiable reason to do so, since, it is incredibly expensive to mitigate degraded rivers. Ken Kimball asked the question - is this description of social and economic justification the loop hole as to how you can legally continue to degrade our waters, or is our anti-degradation standard truly what it says it is – which is, we're not going to allow waterbody(s) to decline? Paul Currier says there needs to be a social/political conversation that reaches a conclusion about the merits of degradation relative to the anti-degradation requirement. It begs the question as to who is going to be a part of the discussion. Ted Sutton pointed out that permit requirements are more restrictive on higher quality waters. Anti-degradation takes the existing condition, and says it shouldn't get any worse. It was decided that this should be followed rather closely as to how social and economic justification will be played out. Paul reported they were going to form three work groups with a case study for a NPDS discharger, a case study for a large commercial, or residential development, and an industrial complex.

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

- 1) DOT 08-01: Town of Colebrook, (Mohawk River). Information about this disposition was distributed at the last meeting. Response has been received from the Connecticut River Joint Commission and the letter states there is no reason to continue to own the property. They do have some restrictions that they believe would help protect the water quality

adjacent to the Mohawk River. It was also noted that the property is located along a third order stream so that it does not fall within the CSPA right now but will fall within the provisions of the CSPA after April 1st. This property will be sold as a residential property.

- ***Kath Nelson made a motion to recommend approval with the conditions set forth in a letter from the Connecticut River Joint Commission dated February 12, 2008 as well as disclose to the land purchaser that the provisions of the CSPA will apply to the property on April 1, 2008. Second by Ted Sutton. Vote was unanimous.***

- 2) CORD 08-001: Jaffrey (unnamed brook). This is a land swap in the town of Jaffrey, 119 acres of Gay State Forest for a parcel belonging to the Society for the Protection of New Hampshire Forests (SPNF). The RMAC only reviews and makes recommendations on state-owned land within 250 ft. of any perennial stream that falls on 1/24,000 USGS map. Gay State Forest does fall under this provision. The forest is surrounded by other forested land, has no road access and will continue to be managed as a forested land.

- ***Ted Sutton made a motion to recommend the disposal of this state-owned property. Second by Allan Palmer. Vote was unanimous.***

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

- 1) It is anticipated that there will be a designated river nomination that will be submitted for RMAC consideration. There will probably be a public hearing in July in the watershed of that river and a tour.
- 2) The 20th Anniversary of the RMPP is this year! Steve will try and have a new poster of the 15 designated rivers. He is working on a proclamation from the Governor, article in the newsletter, and working with the NH Rivers Council on some other concepts to get publicity.

VI. Next meeting date(s)/adjourn:

It was then proposed to have the next meeting on June 5, 2008. RMAC will be held from 1-4 pm with the opportunity to attend the NH Rivers Council Annual meeting that evening at the Red River Theatre in Concord beginning at 6 PM.

There will then possibly be an all day meeting in July with the possible new designated river nomination presentation.

- ***Bill Heinz made a motion to adjourn with a second by Ted Sutton. Vote was unanimous.***

Meeting adjourned at 12:53 pm.