

RIVERS MANAGEMENT ADVISORY COMMITTEE

Meeting Minutes
February 1, 2010
DES Rooms 113/114
1:00 pm – 4:00 pm

Members Present

Ken Kimball, Chair
Michele L. Tremblay, Vice Chair
Bob Beaurivage
Jennifer Czysz
Gary Kerr
Anne Krantz
Johanna Lyons
Frederick McNeill
John Magee
Gail McWilliam Jellie
Kathryn Nelson
Allan Palmer
Larry Spencer
Richard Verville
Christine Perron (for Kevin Nyhan)

Representing

Recreation Interests
Conservation Interests
Public Water Suppliers
NH Office of Energy and Planning
Granite State Hydropower
Historical & Archaeological Interests
Dept. of Resources & Economic Development
NH Municipal Government
NH Fish & Game Department
NH Department of Agriculture, Mkts. & Foods
Local River Management Advisory Comm.
Business and Industry Association
NH Association of Conservation Comm.
NH Dept. of Safety
NH Department of Transportation

Term

Dec. 28, 2011 V
Dec. 28, 2011 V
Sept. 28, 2010 V
Indefinite NV
Jan. 5, 2012 V
June 15, 2010 V
Indefinite NV
Nov. 16, 2011 V
Indefinite NV
Indefinite NV
Sept. 5, 2010 V
Sept. 28, 2010 V
Oct. 12, 2010 V
Indefinite NV
Indefinite NV

Members Absent

Vacant
Jim Ryan

Agricultural Community
NH Fish & Game Commission

Mar. 22, 2009 V
Sept. 28, 2012 V

DES Staff Present

Laura Weit
Jenn Rowden
Paul Currier
Wayne Ives
Shane Csiki
Carolyn Guerdet

NHDES Acting Rivers Coordinator
NHDES Assistant Planner, Rivers and Lakes Programs
NHDES Watershed Bureau Administrator
NHDES Instream Flow Program Specialist
NHDES Fluvial Geomorphologist, Geological Survey
NHDES Administrative Assistant

Guests Present

Amelia Mellon

National Park Service

The Meeting Was Called to Order

Ken Kimball, Chair, called the meeting to order 1:05 pm.

I. Introductions/Minutes/Committee Business

1) September 29, 2009 RMAC Meeting Minutes

- *Michele L. Tremblay made a motion to accept the September 29, 2009 RMAC meeting minutes with corrections noted by Chairman Kimball, second by Kathryn Nelson. Motion passed unanimously.*

2) RMAC Membership Update

- 1) Jim Ryan has been confirmed for the NH Fish and Game Commission position.
- 2) Representation by the Agriculture Community is still unfilled. Laura will write letters to the three organizations that nominate the representative. She will ask if they want representation or not.

II. Legislation/Rulemaking/Other

1) **House Bill 2 Committee Update** – Laura Weit

The Committees on Committees that was established by HB 2 to review all non-regulatory committees, boards, commissions, and task forces met on January 28th to review the list that was under consideration. Based on testimony that was given on HB 1451 and the survey submitted by DES, the Committee on Committees unanimously voted to reinstate the LACs. HB 1689 will be amended to include an exemption for the LACs and the Lakes Management Advisory Committee, as the RMAC is already included. Michele Tremblay encouraged the RMAC to stay vigilant until HB 1689 passes and is signed into law.

Larry Spencer, who was in Ireland last semester, mentioned that the university at which he taught was extremely impressed with NH's river management protection program and the LACs.

At this time Chairman Kimball asked those present to introduce themselves as there were guests present. He also thanked Laura, Jenn, Commissioner Burack, and Assistant Commissioner Walls for their support on reinstating the RMAC and the LACs.

2) **Wetland Stream Crossing Rules Update** – Laura Weit

This was postponed until later in the meeting.

3) **Legislation and Policy Subcommittee** – Michele Tremblay

Michele thanked subcommittee members Kath Nelson and Allan Palmer and also Laura and Jenn for their work on developing the recommendations. She then reviewed the handout listing the bills and explained the process – OSM = oppose, support, or monitor.

HB 222, relative to fill and dredge permits in wetlands. Recommendation - Monitor, as no consensus was reached amongst the subcommittee.

HB 1234, relative to disclosure of property rights and responsibilities in the sale of shorefront property. Recommendation – Monitor, as no consensus was reached amongst the subcommittee.

HB 1239, relative to DES field citations and cease and desist orders. Recommendation - Support.

HB 1266, relative to notification requirements for lowering the water level of a lake or pond. Recommendation - Support.

HB 1299, establishing a committee to study enacting a moratorium on the sale and use of fertilizers containing phosphorus. Recommendation - Monitor.

HB 1305, relative to designating uses of surface waters. Recommendation - Support.

HB 1348, relative to enforcement of surface water classification. Recommendation - Monitor, as no consensus was reached amongst the subcommittee.

HB 1450, relative to the designation of a portion of the Cocheco River as a protected river. Recommendation - Support.

HB 1451, relative to the expiration dates of certain committees. Recommendation - Support.

HB 1462, establishing a shoreland advisory committee. Recommendation - Support.

HB 1689, exempting certain non-regulatory boards, commissions, councils, advisory committees, and task forces from repeal on June 30, 2011. Recommendation - Support.

SB 44, establishing a commission to review all fees charged by DES. Recommendation - Support.

SB 335, relative to wetland impact assessments in construction permit applications.

Recommendation - Monitor, as no consensus was reached amongst the subcommittee.

SB 370, relative to sewage disposal systems. Recommendation - Oppose.

SB 411, relative to permitting of large groundwater withdrawals. Recommendation - Support.

SB 441, relative to the lakes management and protection program. Recommendation - Support.

SB 442, relative to the grant program to administer exotic aquatic plant prevention. Recommendation - Support.

Discussion then turned to HB 681-FN and comments received from Collis Adams. Michele proposed that the bills in which the subcommittee did not reach consensus be 'M'onitored. She also proposed that for all other bills, the RMAC 'S'upport or 'O'ppose as recommended.

Bob Beaurivarge raised the question as to what is done if a member of the RMAC has a different position than what the subcommittee recommends, as all the stakeholders names are on the RMAC letterhead, which gives the impression of support/opposition by the entire committee. Michele noted that these are recommendations and nothing takes place until the entire body votes on it. It is always possible to note split votes, abstentions, or nay votes in the letter. In the past, the RMAC has decided that if the majority votes in favor, that is the committee's decision and final opinion.

Chairman Kimball suggested there could be a vote for the chair to work with staff to get the letter drafted and out, or to vote to see the letter before it goes out. Then there is the question of who sees the 'final' draft if suggestions are made. If it is a close vote Chairman Kimball stated it would be noted in the letter that there was opposition and it wasn't unanimous. Laura noted that in the past a close decision has been noted in the letter with reservations or concerns listed. Kathryn noted that a letter can be sent directly from an organization that does not hold the same view. Jennifer Czysz noted that the non-voting members may also have concerns, as they do not vote, but are included on the letterhead. In addition, the agency they represent may have an opposing position. Michele suggested amending the letterhead so it differentiates between voting and non-voting members.

Chairman Kimball will make the final decision if there is conflicting advice about the letter from different interest groups based upon the committee's vote. If there is one area of contention he will just leave that out of the letter, and list a vote if it was close.

- ***Michele L. Tremblay made a motion that the RMAC support the recommendations that the subcommittee has made and issue letters according to those recommendations, second by Gary Kerr. Motion passed unanimously.***

Those coming up within a few days are: HB 681 and HB 1299 to be monitored so no letter. HB 1239, HB 1462, SB 411 will need letters of support as soon as possible. Jennifer Czysz suggested waiting until the executive session on HB 1462 to await the final decision on a proposed amendment. It was decided to send a letter of support with the bill as written.

Chairman Kimball shared his concern that the subcommittee should have a balanced set of interests. Gary Kerr volunteered to be a part of the subcommittee.

IV. InStream Flow Issues – (This item was moved up, as the presenters were present.)

1) Impoundment Fluctuation Guidance Update – Phil Trowbridge, Water Quality Manager, DES

Phil gave a brief update on the water level fluctuation guidance that is being developed. This is needed because of water quality certificates for impoundments i.e. hydroelectric facilities that want to fluctuate water levels to generate power or others that want to draw water for irrigation or water supply. This document will be used as guidance to make the process easier for everyone. This is being developed in conjunction with the Water Quality Advisory Committee. The goal is

to have it written by June. It will be good to have the applicability and the screening process well defined.

- 1) Applicability is limited now to new or modified water quality certificates that need to be issued. When the method is proved workable, then it will be applied as the next phase to DES operated impoundments, and then expanded further. All other water quality standards for the impoundment must be met first.
- 2) Screening approaches will be used to narrow down the pool of impoundments that must have an in-depth study. This will be a two or three stage screening process to help identify impoundments that will need more analysis. We are following Maine's lead in interpreting hydropower projects, by only accepting projects that will dewater no more than 20% of the total area. There may be times where site specific cases will draw down more for the protection of instream flows downstream of the impoundment. Water bodies with a small impact will have a simple evaluation procedure.

There will need to be a step added for consultation with other agencies to see if there are special factors that would prevent this from working – for example if there is critical habitat that will be affected.

- 3) The linkage between this study, the guidance and Water Quality Standards is anti-degradation. The biological condition radiant tier approach will be used first. There are about 10 different narrative metrics that are defined in terms of a classification and used to determine what tiers are. Lots of different information can be compiled about the biology in order to make it a more objective and organized decision.

This is being modeled after what has been done in Pennsylvania. In the new regulations there are about eight or 10 criteria that need to be addressed. It is ultimately the Commissioner's decision. This is not made to take the place of an Environmental Impact Statement; it will be in addition to it. It will be guidance for the Department to handle this question.

Phil asked for people to share thoughts with Laura or Jenn and they will forward them to him.

2) Instream Flow Program Update – Wayne Ives, Instream Flow Specialist, DES

The Protected Instream Flows on the Lamprey River Report was completed in July 2009 in which protected flows were identified. A waiver was requested to hold off on establishing the protected flows until the Water Management Plans were developed. The Commissioner is making a decision on that. The goal is to have the Lamprey Water Management Plan completed by September 2010.

Wayne then provided an update and summary of the Instream Flow Council's (IFC) review of the NH Instream Flow Studies on the Lamprey and Souhegan Rivers. The main purpose of the review was to identify any flaws in the methodology; it appears that the methodology is appropriate.

The Council is made up of Fish and Wildlife specialists from across the US and Canada who have an interest in developing instream flow methods. Five IFC members reviewed the studies, each with different technical strengths. The comments were received in September 2009 and were mostly positive.

The review was 72 pages long, dense with technical discussions. Wayne has worked it down to 26 pages. It is now more of a summary of the main points. It also contains DES's response to any questions or concerns raised. Wayne will now send it back to the contractors, and then back to the IFC so that there are no miscommunications. Agreement among the reviews was not always

reached, as each reviewer had different expectations. There was discussion as to how 'peer review' and 'general comments' should be presented in the summary document.

If there is a difference of opinion, it was mentioned that either side should justify their perspective with studies and/or data. It was also mentioned that the summary provided by DES describes how the methodology is being applied in NH. The intention is to distribute the IFC's response and the summary from DES, to allow people to be informed about the process and the review. Public input has always been very important. There is a deadline to finish due to NOAA funding.

Some of the differences of opinion include:

- our goal (biological integrity) for protection should be close to existing conditions,
- keep numbers instead of categorizing suitability,
- species versus community protected flows, and
- weighting values are of concern

Next steps:

This is the first IFC review that the IFC has done for anyone. Once Wayne receives confirmation from IFC that their points have been addressed, the summary will be sent to the Technical Review Committees for their review and consideration. Then, the IFC review and the DES summary will be posted on the DES website and notifications will be sent out.

Lamprey and Souhegan Water Management Plans (WMP)

Net water use is low, but some segments have large use.

Consequently, conservation & water use plans have limited effect for most of the river.

Dam management is a strong component of the WMP – storage is still finite and ultimately, can not offset all new water use. Dams will have a larger role than anticipated. The flexibility to change the storage is even smaller. The water plan gets updated when any new water use comes into existence.

Conclusion – water use management has increased in importance.

Water Management Plan (WMP)

- WMPs for each Affected Water User (AWU) and Affected Dam Owner (ADO)
 - Manage for the rare and some critical catastrophic Protected Instream Flow (PISFs)
 - Track the trends in/out PISFs
 - Offset impacts of off-stream use
 - Protect public water supplies' interests
- Implementation schedule extends over years
- (Still missing a long-term monitoring program)

Status of Lamprey and Souhegan WMPs

- Focus shifted from the Souhegan to the Lamprey WMP to close out NOAA funding
- January 15th meeting regarding conservation tool box:
 - Souhegan Task 8 showed localized Water Use (WU) impacts
 - Lamprey Task 8 showed localized WU impacts
 - Env-Wq 2101 Conservation Rules apply
 - Additional conservation during low flows- limitations on outdoor water uses

Souhegan WMPs

- See status handout
- Boilerplate done – historical water use and impoundment/dam infrastructure details
- Site 19, Site 35 (passing through Water Loom)
- Impact studies done on 19 and 35

- Information on other dams for future offsets

Lamprey WMP subwatershed-plans status

- Boilerplate done – historical water use and impoundment/dam infrastructure details
- Developing individual plans
- Water use subwatershed-plans are last to be developed
- Preliminary drafts for DES to review then go to the AWUs and ADOs
- Need to complete flow analysis for what is needed/possible from relief pulses (Dam B.)

A study was conducted on Pawtuckaway Lake to measure water flows and water quality on the Lamprey River. The impact on the Lamprey River by Pawtuckaway Lake is measurable. There were no dramatic water quality impacts, and the flow releases were under ideal conditions. In these conditions, we were able to see a significant response from dumping water out of Pawtuckaway Lake. This would allow for the operation of a pulse flow, which is a release mechanism for instream flows. Operators could ramp up for one day, or two days of flow, and then ramp down for the final day. There appears to be no negative impacts.

Chairman Kimball noted the challenge is now the politics between the Lamprey's Protected Instream Flow and the Water Management Plan. This information is posted on the internet.

Mary Ann Tilton joined the meeting.

II. Legislative/Rulemaking/Other

2) Wetlands Stream Crossing Rules Update – Mary Ann Tilton

DES filed final proposed Stream Crossing Rules and will be before JLCAR on February 19, 2010. Several documents were developed, one summarized all written comments received, another summarized oral testimony given at the public hearings, and a third described the changes made to the rules. The changes made to the rules were balanced and ensured the main goal of the workgroup was achieved. Mary Ann welcomed any testimony before the JLCAR committee and noted that additional changes can still be made. A public hearing will be held.

Areas in which the rules have been strengthened:

The waiver process has been narrowed in terms of definition and moved into a single location. Temporary crossings have been tightened up; they must be removed in one year.

For permanent crossings the logging industry must now obtain the standard Dredge and Fill permit for projects over 200 acres. This allows more flexibility for temporary crossings but tightened up the review for permanent crossings. Clarification is also being worked on for the table for the different tiers. The intent was to have a notification process, a PBN or Forestry Notification for certain tiers. The Notification process is definitely being reviewed.

DES does have an interest in looking at adopting the UNH manual, but the objection is that it does not reference the stone fords. A lot of the UNH guidebook is already being applied because federal permits are wanted.

Michele Tremblay noted there is discussion about field determination of different conditions and that would change the threshold of an application vs. just being able to do something vs. Permit by Notification.

Mary Ann invited the committee to look at the waiver section. It is much more specific now. It is related to the project purpose.

Chairman Kimball noted that the question is not only the details but how the RMAC wants to respond. There are significant improvements. There is a six year period for the rules to be reviewed and then more refinements can be made.

- ***Michele L. Tremblay moved that the RMAC maintain its position of support, but noted that clarification is needed on the notification process, second by Kathryn Nelson. Motion passed unanimously.***

III. 2008 – 2009 Rivers Program Biennial Report– Jenn Rowden, NHDES

The biennial report covers fiscal years July 1, 2007 to June 30, 2009. It serves as the report to the General Court on the Dedicated Rivers Program Fund that was added through the legislature in 2007. During this time frame, two rivers have been to the program – the Cocheco River and the Upper Reach of the Ammonoosuc River, and RSA 483 was updated and revised slightly. Tidal rivers can now be nominated into the program. In addition, RSA 483 was modified to ensure that when conflicts arise in the attempt to protect valued characteristics within a river, priority shall be given to those characteristics necessary to meet state water quality standards.

Protected Instream Flows were established for the Souhegan River and work is still being conducted on the Lamprey River. A draft of the Long Range Management Plan for State-Owned Land within the Designated Exeter River Watershed was developed. Two Watershed Conferences were held, which reached just over 400 people. The RMAC & the Lakes Management Advisory Committee (LMAC) have developed their Sustainability Initiative to direct future goals to help protect surface water in the state. There was also the addition of one non-voting member to the RMAC representing the Department of Safety. The RMAC provided almost 500 hours of volunteer time, which is a very conservative estimate. The Committee reviewed 17 surplus land requests, testified on 15 river related bills, served on five legislative subcommittees, and provided advice to the Instream Flow Program and DES on a variety of topics.

The LACs developed or updated eight local river corridor management plans, three of which were new and five were updates. Lots of Management Plan efforts were conducted. In addition, LACs reviewed over 150 state permits and provided over 21,000 hours of volunteer time.

RMPP staff worked 12,000 hours on river program activities for the two year period. Most of the time is spend on the Instream Flow program. The LAC time is 10 – 15% of overall staff time. The budget is about \$470,000 for the two years.

The future program goals are divided into four categories. They were developed to encompass a five year time-frame and were directed by the Sustainability Initiative. The goals under the outreach and education category include more focus on using watershed approaches for outreach, increasing protection of riparian buffers, and more effective communication of the work that is being done – data collection, monitoring, etc. The RMAC/LMAC data subcommittee is currently working on the latter portion. The goals for the legislation and policy category include increasing protection of headwater streams, incorporating designated uses of state water quality standards, and implementing flood commission recommendations. The goals under the technical assistance category include increasing geomorphic work, continuing the use 604(b) funds to implement LAC river corridor

management plans, and develop more long-range management plans for state-owned lands within designated river watersheds. The goals under the research category include increase the amount of monitoring of physical, chemical and biological data on the state's rivers, incorporate instream flow and geomorphic stability into the DES Consolidating Assessment Listing Methodology, and promote research efforts that identify control and removal methods of both terrestrial and aquatic invasive species.

It is anticipated that the future needs of the RMPP are one full-time technical assistant position, established long-term funding for the Instream Flow Program, and small grants to the LACs for management plan implementation. The program is growing but funding is staying the same.

Chairman Kimball noted he was very impressed with the Biennial Report and encouraged the Committee to read it, if they had not already. Michele Tremblay also noted that the program needs and priorities are on tract. Discussion ensued as to what the technical assistant would be responsible for and future position funding.

- ***Kathryn Nelson made a motion to write a letter to Commissioner Burack requesting the creation of a Technical Assistant position to assist with the implementation of the Instream Flow Program and provide technical support to the LACs, second by Anne Krantz. Discussion was held. Motion passed unanimously.***

V. Other Business/Action Item Review

Next meeting:

1. Legislative Crossover – March 25th
2. Nominations – due June 1st

VI. Next Meeting(s)/adjourn:

Next meeting will be March 3, 2010, from 1 – 4 pm.

Following meeting will be held on June 30, 2010 from 9 – 12. River nominations will be presented.

- ***Larry Spencer made a motion to adjourn, second by Bob Beurivage. Motion passed unanimously.***

Meeting adjourned at 4:12 pm.