



**RIVERS MANAGEMENT ADVISORY COMMITTEE**  
NH Rivers Management and Protection Program

New Hampshire Department of Environmental Services  
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**RMAC MEETING MINUTES**  
**November 18, 2014**  
**Fish and Game Dept., Concord, NH**  
**1:00 pm – 4:00 pm**

**Members Present**

Ken Kimball, Chair  
Michele L. Tremblay, Vice Chair  
Anne Krantz  
Roger Noonan  
Allan Palmer  
Jim Ryan  
Larry Spencer  
Donald Ware  
Patrick Hummel  
John Magee  
Susan Slack

**Representing**

Recreational Interests  
Conservation Community  
Historical & Archaeological Interests  
Agricultural Community  
NH Business and Industry Association  
NH Fish & Game Commission  
NH Association of Conservation Comm.  
Public Water Suppliers  
Commissioner, DRED  
Executive Director, F&G  
Director, Office of Energy and Planning

**Term**

Dec. 28, 2014 V  
Dec. 28, 2014 V  
June 15, 2016 V  
Mar. 22, 2015 V  
Sept. 28, 2016 V  
Sept. 28, 2015 V  
Oct. 12, 2016 V  
Sept. 28, 2016 V  
Indefinite NV  
Indefinite NV  
Indefinite NV

**Members Absent**

Alan Larter  
Frederick McNeill  
Vacant  
Mark Hemmerlein  
Gail McWilliam Jellie  
Elizabeth Peck

Granite State Hydropower Assoc.  
Municipal Government  
Local River Management Advisory Comm.  
Commissioner, DOT  
Commissioner, Dept of Ag., Markets & Food  
Commissioner, DOS

Jan. 5, 2015 V  
Nov. 16, 2014 V  
Sept. 5, 2016 V  
Indefinite NV  
Indefinite NV  
Indefinite NV

**DES Staff Present**

Jacquie Colburn Rivers and Lakes Programs  
Tracie Sales Rivers and Lakes Programs  
Carolyn Guerdet DES Water Division  
Wayne Ives Watershed Bureau

**Guests**

Richard Snow Lamprey Rivers Local Advisory Committee  
Gene Porter Lower Merrimack River LAC

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

Chair Ken Kimball called the meeting to order at 1:09 p.m. with introductions.

1) Review of September 29, 2014 RMAC Meeting Minutes

- ***Michele L. Tremblay made a motion to accept the September 29, 2014 RMAC minutes with the recommended changes to RSA 483, second by Jim Ryan. Motion passed unanimously with no discussion.***

2) RMAC Membership Update

Jacquie Colburn noted Michele L. Tremblay has her paperwork in for reappointment at the December 3<sup>rd</sup> G&C meeting. Ken Kimball has submitted his paperwork to the Governor's office. Fred McNeill's appointment expired 2 days ago but he has indicated he is seeking reappointment.

Alan Larter had emailed Michele that he wouldn't be here and he wanted to send an alternate from GSHA today and possibly in the future. Michele has informed him that this is not how it works, that he is the

Governor and Council appointee and that another GSHA representative cannot vote in his place.

Kath Nelson submitted her resignation effective October 29, 2014. On October 27<sup>th</sup>, Jacquie sent an email to all of the LAC Chairs seeking nominees to replace Kath as the LAC representative on the RMAC. To date, only one LAC member has expressed interest in the position. The RMAC requested that Jacquie send out another email request as the Commissioner must submit a list of 3 nominees to the Governor and Council.

## II. Proposed Changes to RSA 483

### 1) Review of the Proposed Statutory Changes

Chair Kimball noted 2 remaining tasks: 1) finalizing the changes to RSA 483 and 2) finding legislators to sponsor a bill. Following the procedure used at the prior three meetings for this topic, Chair Kimball recommended going through the remaining outstanding items and coming to a consensus on each before voting on all of the proposed changes to RSA 483. Changes highlighted in yellow on the *11/18/2014 version of the RSA 483 Mark-up* were agreed upon by the RMAC at the May, June and September meetings. Rivers Program staff noted that not only did the RMAC need to consider the outstanding items highlighted in green, but also the questions and comments submitted by LACs, LAC members and other concerned parties. (*Note: Complete responses to LAC member comments are included as an addendum to these minutes, Response to LAC Feedback, with only a reference included below.*)

Referring to the *11/18/2014 version of the RSA 483 Mark-up*:

#### RSA 483:4

- II-a Definition of “Aquatic connectivity” approved as proposed. See *Response to LAC Feedback*.
- IX-b Definition of “Fluvial Geomorphology Assessment” approved as proposed with the addition of “deposition, aggradation” after flooding. See *Response to LAC Feedback*.
- X Definition of “Free-flowing” approved as proposed. See *Response to LAC Feedback*.
- XII-a Definition of “Meander belt” approved as proposed. See *Response to LAC Feedback*.
- XVI Definition of “Protected instream flow” approved as proposed. See *Response to LAC Feedback*.
- XIX Definition of “River drainage basin” approved as proposed. See *Response to LAC Feedback*.

#### RSA 483:7-a

- I(a)(3) Relative to roads near Natural rivers, approved as proposed. See *Response to LAC Feedback*.

#### RSA 483:8

- I(g), (h) & (j) relative to RMAC nominations, approved as proposed. See *Response to LAC Feedback*.
- VII-a Relative to disposal of state-owned lands. The RMAC determined that this proposed language was superfluous to section VII, and any review process changes, such as seeking the input of LACs, could be handled in the RMAC’s internal SOPs. Section was struck.

#### RSA 483:8-a

- I Deletion of requirement for one LAC member per town approved as proposed. See *Response to LAC Feedback*.
- III(b) Regarding LAC permit review, approved as proposed. See *Response to LAC Feedback*.

#### RSA 483:9

- VI(c), et al. regarding BMPs, approved as proposed. See *Response to LAC Feedback*.

#### RSA 483:9-a, 9-aa, and 9-b

- Jim Ryan recommended keeping the proposed language with respect to fish passage.
- Existing language regarding channel alterations approved with the addition of a comma after the word ‘facilities’ and after the word ‘project’ if missing. See *Response to LAC Feedback*.
- VIII Regarding watercraft speed, approved as proposed. See *Response to LAC Feedback*.

#### RSA 483:9-c

- III Deletion of language referencing PUC approved as proposed. A statement from Granite State Hydro Assoc. (GSHA) which expressed concern with this deletion was read out loud during the meeting. GSHA will be notified that the existing language is outdated and that the impact assessment is maintained through the first sentence of the section. See also *Response to LAC Feedback*.

#### RSA 483:10

- I Division of historical resources added to the list of coordinating state agencies as requested.

- III Question regarding corridor plans and LAC authority addressed in *Response to LAC Feedback*.

RSA 483:10-a

- Question regarding long-range plans addressed in *Response to LAC Feedback*.

RSA 483:15

- I Wording change describing Lamprey tributaries approved.
- I(b) The Lamprey River LAC sent a letter to RMAC asking to maintain Shoreland Water Quality Protection Act exemptions for its the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> order streams. Exemption to be maintained.
- II & III Name of Merrimack River segments approved as written. See *Response to LAC Feedback*.

- ***Michele L. Tremblay moved that the RMAC accept the changes as discussed today, move forward with legislation to revise RSA 483, and begin securing sponsors from both sides of the aisle, preferably from both chambers to get through during this legislative session. Second by Larry Spencer. Motion passed unanimously.***

2) Process and timeframe moving forward

Chair Kimball asked RMPP staff to meet with DES Senior Leadership to review the proposed changes and request DES' support; staff indicated that they would do so. Chair Kimball then asked if the Policy & Legislation subcommittee could work with legislators to move the bill forward and Subcommittee Chair Tremblay responded affirmatively. Chair Kimball confirmed that this process will proceed without additional full committee approval. In response to Larry's question, Michele said that she, Allan, Don and Fred are the P&L subcommittee members. John Magee will join as needed.

### III. **Nomination of the Ham Branch River Watershed to the RMPP**

1) Process and timeframe moving forward

Jacque provided the committee with a chronology of department actions since the 9/29/14 RMAC meeting in Easton.

- October - Letter of completeness sent to the nominating committee indicating that additional water quality and fish data had been received.
- October 17 - Darlene Forst, Craig Day, Tracie and Jacque spoke with Roy Stever and Kris Pastoriza explaining the Shoreland Water Quality Protection Act (SWQPA) and existing exemptions.
- October 22 - Craig Day, Tracie and Jacque presented the SWQPA at a public meeting in Easton with 29 residents in attendance.
- November 7 - Wetlands Administrator Collis Adams, Darlene Forst, Jacque and Tracie met with Commissioner Burack and Water Division Director Gene Forbes to discuss the nomination and anticipated SWQPA exemption request.
- November 10 - Public hearing held in Easton with Ken K., Larry S., Allan P. and Jacque in attendance. Twenty people spoke at the hearing with only one dissenting speaker.
- November 14 - closing date for public comments, 2 comments received.

2) RMAC's recommendation regarding the Ham Branch River Watershed to the RMPP

Chair Kimball noted that Easton is moving forward on changes to their ordinances to better align with the SWQPA, with the plan of presenting them at the March Town Meeting. Vice Chair Tremblay added that North Country Council is asking for model shoreland ordinances, so evidently this is a foregone conclusion that the SWQPA exemption is going through. Chair Kimball reminded the committee that the RMAC has made it clear that RMAC does not have the authority to grant the exemption from the SWQPA. The nomination as submitted does not include an exemption. Additional discussion ensued about the RMAC's knowledge that the SWQPA exemption would be requested despite it not being included in the nomination document, and ensuring that the RMAC did not bless the exemption.

- ***Larry Spencer moved to go forward with nomination of the Ham Branch as presented, second by Roger Noonan.***

Discussion held.

Vice Chair Tremblay said she is disturbed that DES has already agreed to be supportive of the exemption, asking why Easton was seeking the designation in the first place. She added that the Lamprey and Oyster did not want the exemption, that it was thrust upon them. She also asked about what

happens going forward if the Franconia and Sugar Hill portions of the watershed are added, the crack is open for additional river segments to be excluded from SWQPA. She continued that she does not feel that Easton should be able to pick and choose which parts of the legislation they want applied, what if a community asks to be excluded from core RMPP protections such as solid waste siting or instream flow? Also, none of the support letters mention the exemption. She felt that this is a situation where we are going to be gutting the law. She said she would not be supportive of this nomination.

Anne Krantz said she felt that the whole river should be nominated, including the Franconia segment. She was also concerned that if the Gale River was added later that they, too, would want an SWQPA exemption.

Larry Spencer and Allan Palmer noted that at the public hearing, the about half of the people speaking were in favor whether they were granted an exemption or not.

Don Ware said that the SWQPA exemption guts the only real teeth of the designation and asking DES for an exemption just weakens the process. He felt that if you want to be a designated river, then you have to accept all of the controls that come with designation.

Vice Chair Tremblay noted the potential conundrum of having had organizations, including the RMAC, write letters of support assuming it was for a designation within the full law, but then those same organizations feeling that they should contradict their earlier support when the bill comes before the legislature because of the exemption.

Chair Kimball outlined three positions for the RMAC to take: 1) support the nomination, 2) oppose it, or 3) support it without the exemption. He added that the RMAC could also oppose the exemption when the bill gets to the legislature even if the committee supports it now. When asked about extenuating circumstances for the exemption, Chair Kimball described the discussions of the Shoreland Adhoc Subcommittee and how the SWQPA was designed for lakes, not 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> order streams. Those small streams can be so close together that the 50' building setbacks can cover most of the area.

Vice Chair Tremblay reiterated that the nomination should be for the complete set of protections and restrictions, or the Ham Branch should not be designated at all. She also reiterated that none of the support letters mention the exemption. She feels that the RMAC is supposed to be the keepers and protectors of this statute and the legislature has already opened this crack way too far. Larry Spencer disagreed because the nomination came to the RMAC without an exemption, and should be evaluated on that basis.

Additional discussion ensued about what recommendation to make to the commissioner of DES given that the nomination as presented did not include a request for the exemption, but knowing both that the SWQPA exemption request would be made and that Easton was also attempting to make their own ordinances consistent with or stronger than the SWQPA. Vice Chair Tremblay noted that there is no guarantee that the town's proposed ordinances would pass.

- ***Michele L. Tremblay moved to amend Larry Spencer's motion such that the RMAC is aware of the ongoing process for an exemption from the Shoreland Protection Act, of which we are not supportive; we are supportive of the nomination as submitted. Second by Jim Ryan.***

Discussion was held on the amendment, focusing on the history of the two designated rivers with Shoreland exemptions, where the exemptions were initiated by a legislator.

Chair Kimball asked for a vote on the amendment alone.

- ***The amendment proposed by Michele L. Tremblay passed with one vote opposed.***

Chair Kimball then asked for a vote on the amended motion.

- ***The amended motion, as proposed by Larry Spencer and modified by Michele L. Tremblay, passed with two votes opposed.***

Chair Kimball noted that we will write a letter to the Commissioner to that effect. Allen Palmer noted that the RMAC needs to work on rules appropriate to 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> order streams in the Shoreland Act.

#### IV. DES Wetlands & DOT Request to Modify RMPP and LAC Roles for Routine Roadway Maintenance Activities

##### 1) Status update of the 2014 Routine Roadway BMP Manual

Jacque reminded the committee that she had presented an outline of the Table of Contents for the updated BMP manual to the RMAC a few months ago. She and Tracie had spoken recently with Jocelyn Degler regarding the status of the BMP manual update. No further progress has been made on the BMP manual.

##### 2) Proposed RMAC response #2 to DES & DOT request

Vice Chair Tremblay thanked everyone who participated in developing the response to DOT including Don Ware, Fred McNeill, Allan Palmer and John Magee. She asked if the RMAC members had any additional comments or concerns before going forward with the draft letter included with meeting materials. Allan Palmer had some suggested edits, including dividing the large paragraph and removing overlapping points. He agreed to write the final draft.

- ***Larry Spencer made a motion that the intent of the letter is correct but it needs to be edited before it is sent, second by Jim Ryan. Passed unanimously.***

3:19 pm Jim Ryan leaves the meeting.

#### V. LAC Permit Review Process Update

Jacque explained that several meetings had been held as part of a continuous process improvement exercise regarding the permit application review process. Staff, a few LAC members and several LAC chairs met on 5 mornings where they mapped, discussed and reviewed the existing permit application review process. In mid-November, the New Hampshire Rivers Council and Rivers Program staff hosted a ½ day LAC workshop. With 32 LAC members in attendance, RMPP staff presented the existing permit application review process and the efforts that are currently underway to improve it. The team developed 14 recommendations, including a few easy/short term fixes. For example, the GIS check to confirm whether the proposed activity is within the river corridor should be conducted by DES staff earlier in the review process. In addition, the Rivers Program weekly permit notification report has been improved and feedback has been positive, though staff continues to work on it to be more helpful to the LACs. In the long-term, the group agreed to recommend a 45 day review time frame for all permits.

Vice Chair Tremblay thanked DES for bringing the LACs in to address these concerns. Some of the recommendations may require changes to statute or rules. Tracie noted this was a good learning exercise; we now understand each step of the process and are focused on process improvements, including development of a guidance document for the review process and development of a spreadsheet outlining the staff and LAC permit review timeframes.

All documents from the workshop will be available on the website. The guidance document will include some model SOPs for permit application reviews and comments.

3:32 pm – Patrick Hummel leaves the meeting.

#### VI. Member Comments and Updates

##### 1) Subcommittee Reports

WQSAC – Allan Palmer reported that the last meeting of WQSAC was a public hearing on permit compliance schedules in DES permits. Sonya Carlson also gave a presentation on beach monitoring and closings. There are changes at the federal level as EPA has new standards for 94 toxic pollutants that DES will adopt into their administrative rules.

SAC/RMAC/LMAC/PREP Ad-Hoc Committee – Chair Kimball spoke about the ad hoc group which has concluded its business. The RMAC was well represented with Ken, Roger, Michele, Larry and Susan all serving on the committee. The recommendations the Ad-Hoc committee developed included: 1) shoreland standards streams should be resource-based because lakes, rivers and estuaries are different; 2) expand the jurisdiction of the Shoreland Act to include 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> order streams; 3) develop a best management practices manual for shoreline development; and 4) require public review and comment on

BMP documents. Chair Kimball pointed out that the members of the Ad-Hoc committee now understand that rivers are functionally different from lakes and estuaries and that that 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> order streams can be primary sources of pollution for lakes. He also recommended that the RMAC meet with the LMAC in January to jointly develop and submit recommendations to the Shoreland Advisory Committee. He will send a straw-man version of some recommendations out before the joint meeting, though he suggested asking topic experts to provide language to start with. Vice Chair Tremblay will reach out to the experts. When SAC sunsets in 2015, should the RMAC and LMAC take on an advisory role regarding shoreland issues?

2) Other Member Updates

Larry Spencer had written a long article for *Conservation Matters* regarding the Shoreland Protection Act. He will send the longer, non-edited, letter to the committee.

## VII. RMPP Updates

Jacque reported that staff has been busy with the Ham Branch nomination and improvements to the permit application review process. As a result of the recent nomination process, they have determined that within rivers program literature, there is no publication that speaks to the relationship between the Shoreland Act and the Rivers Act. They have since redeveloped a fact sheet that outlines the protection measures contained within the two acts. The introductory rivers program fact sheet has also been revised to inform the public that the Shoreland Protection Act applies upon river designation. The nomination guidance document does not include any reference to the Shoreland Protection Act and this will be corrected.

Tracie reported that the St. Lawrence and Atlantic Railroad has replaced the creosote soaked railroad ties over the Connecticut River in North Stratford and that the remediation work on the immediate shoreline has been completed. The Connecticut River Headwaters Subcommittee had requested that DES impose a fine on the railroad. A proposed fine has been submitted to the railroad company with the recommendation that the money be used for work in the North Stratford area watershed. Tracie said that while the fine and remediation projects had not been finalized, it was looking like it might be a 2 part process – the railroad company agreeing to do work on their own lines with an environmental benefit and the other part is money going to an outside group to manage and do a project in the immediate area, possibly on Bissell Brook, which is a tributary to the Connecticut River.

## VIII. Other Business and Action Item Review

1) Next Meeting

A joint meeting with the LMAC was requested for the 2<sup>nd</sup> or 3<sup>rd</sup> week of January. Staff will send out a Doodle Poll to schedule the next meeting.

2) Action Item Review:

- Send thanks to Kath Nelson for her work on the RMAC.
- Draft the RMAC letter to Commissioner regarding the Ham Branch River nomination
- Edit the letter to DOT– Allan and Michele
- Find sponsors for RSA 483
- Develop and distribute strawman paper regarding revisions to Shoreland Water Quality Protection Act - Michele to speak to Dick Nelson and Jeff Schloss for language.

Chairman Kimball thanked all those who went up to Easton and those that worked on RSA 483.

3) Agenda Items for Next Meeting:

Presentation on the ISF 2015 report by Wayne Ives.

- **Larry Spencer made motion to adjourn, second by Don Ware. Motion passed unanimously.**

Meeting adjourned at 3:52 p.m.