



RIVERS MANAGEMENT ADVISORY COMMITTEE
NH Rivers Management and Protection Program

New Hampshire Department of Environmental Services
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DRAFT
RMAC MEETING MINUTES
August 25, 2015
1:00 pm – 4:00 pm
NHDES Conference Room 112

Members Present

Ken Kimball, Chair
Michele L. Tremblay, Vice Chair
Mark Hemmerlein
Patrick Hummel
Anne Krantz
Frederick McNeill
Jim Ryan
Susan Slack
John Magee
Donald Ware

Representing

Recreational Interests
Conservation Community
Commissioner, DOT
Commissioner, DRED
Historical & Archaeological Interests
Municipal Government
NH Fish & Game Commission
Director, Office of Energy and Planning
Executive Director, F&G
Public Water Suppliers

Term

Dec. 28, 2017 V
Dec. 28, 2017 V
Indefinite NV
Indefinite NV
June 15, 2016 V
Nov. 16, 2014 V
Sept. 28, 2015 V
Indefinite NV
Indefinite NV
Sept. 28, 2016 V

Members Absent

Alan Larter
Gail McWilliam Jellie
Roger Noonan
Allan Palmer
Elizabeth Peck
Larry Spencer
Ruth Ward

Granite State Hydropower Assoc.
Commissioner, Dept of Ag., Markets & Food
Agricultural Community
NH Business and Industry Association
Commissioner, DOS
NH Association of Conservation Comm.
Local River Management Advisory Comm.

Jan. 5, 2018 V
Indefinite NV
Mar. 22, 2015 V
Sept. 28, 2016 V
Indefinite NV
Oct. 12, 2016 V
Sept. 5, 2016 V

DES Staff Present

Collis Adams Wetlands Bureau Administrator
Jocelyn Degler Wetlands Bureau
Ted Diers Watershed Bureau Administrator
Carolyn Guerdet DES Water Division
Wayne Ives Watershed Bureau
Tracie Sales Rivers and Lakes Programs
Mary Ann Tilton Wetlands Bureau

I. Introductions/Minutes/Committee Business

Chair Ken Kimball called the meeting to order at 1:01 PM with a quorum present.

1) Acceptance of June Joint RMAC/LMAC Meeting Minutes

- ***Vice Chair Michele L. Tremblay made a motion to accept the June RMAC/LMAC minutes, second by Jim Ryan. Motion passed unanimously.***

2) RMAC Membership Update

Tracie Sales noted that both Roger Noonan and Fred McNeill reported submitting their membership renewal paperwork to the Governor's Office.

3) Status of the Rivers Coordinator Position

Tracie explained that with Jacquie Colburn's departure, the Rivers and Lakes Programs will be in "maintenance" mode through the end of the year. There will be no Rivers Coordinator until early 2016. Tracie and Ted Diers will be busy assisting Wayne Ives with the Instream Flow (ISF) Program through

December 1, 2015 when the ISF report is due to the legislature. David Rosengarten may be able to assist with some tasks. Tracie asked members to be responsive to emails and Doodle Polls, as she will not be able to follow up with additional emails and calls.

Michele and LMAC Chair David Packard have reviewed the newly combined Rivers & Lakes Coordinator job description. The position title has changed to Rivers and Lakes Programs Manager, and the job description has been updated to more accurately represent the level and tenor of the position, including overseeing the ISF Program and the work with LACs. It is a general funded, Env IV, LG 27 level position. The position will be posted internally to DES for 10 days and then, if needed, it will be posted outside of DES. Both the RMAC and the LMAC may review the position description. It will be sent out to the LMAC and RMAC to respond by the end of the week.

In response to Ken's question about advertising the job prior to January, Ted explained that until a new state budget is approved, we are in a hiring freeze. In addition, because of the Continuing Resolution, Jacquie's retirement payout has to be fully covered in the regular budget until the position can be unfrozen, which will require an approved state budget.

II. Instream Flow Program Update

Wayne Ives reported that the draft Instream Flow Pilot Program report, describing the Pilot Program's 2-year implementation, will be released September 1st, initiating the public comment period. Two public hearings have been scheduled, one in each watershed. The Final Report is due on December 1, 2015. The next step will be to move from the Pilot Program to state-wide implementation.

The report incorporates responses to many questions, including those submitted by the RMAC. The focus of the report is on the lessons learned, the impacts of the program, and the plan for applying ISF to other designated rivers. Wayne described some of the primary benefits of the program including ensuring a robust supply of water, delaying or relocating the impact of withdrawals during periods of low flow, and encouraging the use of infrastructure that reuses water. Lessons learned during the Pilot Program included the fact that releases from impoundments can successfully meet management goals, numerical standards can be defined that describe the qualitative water quality criteria for stream flow in state rules, the Natural Flow Paradigm is the key foundation for the program, more outreach is needed to stakeholders impacted by the program, and additional monitoring is required to determine the long-term success of the program. In order to expand the program, the Program will need more stream gage data, state-wide fish data, additional staff, and focused long-term monitoring.

Mark Hemmerlein asked about prioritizing the next rivers for ISF, and whether or not there was a river size for which ISF was not feasible. Wayne responded that all rivers can theoretically be done, but rivers like the Connecticut will be complicated (FERC regulated, etc.). Prioritization recommendations are tributaries to other designated rivers, rivers with existing stream gages, and those in areas with population growth.

Michele asked if the funding requests have been included in the current budget, to which Ted replied that they have not yet been finalized in the draft report, and will be added to the budget in 2017.

Ken asked if there were any recommendations for backstop measures if ISF does not receive the required funding to make faster progress than the 2 pilot rivers. Wayne responded that we still have 401 Water Quality Certification and groundwater permits, but these are both standard setting approaches, which were rejected by the public and the legislature. Ted added that while the Pilot Program required a process evaluation, this step will not be required for future rivers, which will speed up the process. Michele proposed some sort of overlay be applied if full ISF funding was unavailable, to which Ken responded it might make a good argument to use to get more ISF funding. Ted commented that the public hearings will be good places to share these types of concerns.

Ken noted that the summary provided was too generic and needs to focus more on the next steps. Ted agreed, and proposed developing a Recommendations handout for the hearings. Wayne added that in addition to the hearings, staff would also be meeting with the SB330 committee, which oversees the Pilot Program. Comments on either the report or the summary provided to the RMAC can be sent to Tracie.

III. RMPP Rules Updates

1) Proposed Changes to the RMPP Rules (Env-Wq 1800)

Michele thanked members of Policy & Legislation Subcommittee who have worked on the Rules revisions. We now have a draft of the rules with refined wording. The biggest change is to eliminate the

point system, reducing the rules from 10 pages to 5 pages. We also added a definition of stream order, and discussed bringing definitions in statute into the rules. The rules are in good shape, and we are on or ahead of schedule. Michele asked if we needed to contact JLCAR about getting the rules into them, but Ted replied that there are several steps yet to take prior to submission with JLCAR. The NHDES legal department will need to review them first, which may take some time due to their work load.

Michele also noted that the rules should reference species of “special concern.” She will forward the Natural Heritage Bureau reference to Tracie.

2) Next Steps for the RMPP Rules

Ken asked about changes necessary to the statute as a result of the proposed rule changes. Michele recommended submitting any statute changes through the House, which requires submitting a LSR title by September 18th. She asked whether we should forward statute changes resulting from rules separately from the housekeeping statute updates approved last year, or together. Tracie commented that the changes in the rules proposed so far did not require a statute update, though a few revisions to the statute would help better align the statute and rules. Ken thought the two statute changes could be submitted together, to which Michele agreed. Ted further noted that some recent administrative rule revisions went very smoothly, so recommended putting forward the existing revisions, and then making additional rule updates later, if necessary, based on any statute changes.

- ***Michele L. Tremblay moved that the RMAC accept the revisions to the rules that the Policy and Legislation subcommittee made in this draft, understanding that there may be further minor revisions, second by Fred McNeill. Discussion was held. Motion passed unanimously.***

Tracie will send a draft version of the revised rules to the LACs, to representatives of nominating committees from the Suncook River and Ham Branch, and to the Warner and Androscoggin nominating committees for their consideration and comments.

IV. **RSA 483 Statute Updates for 2016 Legislative Session**

1) Previously Approved but Delayed Proposed Changes to RSA 483

Ken recommended submitting these housekeeping changes, with a few additional modifications, in the 2016 legislative session.

2) RSA Changes to Coordinate with Proposed Rule Changes

RSA 483:6 I – Ken proposed removing the requirement to send written notice to riparian landowners of a river nomination, noting that this requirement makes a watershed approach for designated rivers almost impossible. Michele added that the requirement holds these volunteer groups to a higher standard than the state is required to follow. The requirement was added in 2011, and no rivers have been designated since 2011.

- ***Michele L. Tremblay moved to remove “riparian landowners and” from RSA 483:6 I, second by Anne Krantz. Discussion was held. Motion passed unanimously.***

RSA 483:6 IV(a) – Ken proposed re-ordering and updating the list of factors considered in a river nomination to the match the list proposed in the revised rules, including the wording changes around rare, threatened and endangered species. Ted suggested not making a change in the statute unless it is necessary. Ken responded by suggesting the committee come back to this question later.

RSA 483:4 – Tracie asked if “community resource” should be defined in statute, noting that it is already defined in rule. Discussion was held. It was agreed to leave the definition in the rules.

3) SWQPA and Stream Order References in RSA 483

Ken proposed making a change to RSA 483-B, the Shoreland Water Quality Protection Act (SWQPA), such that 1st through 3rd order streams only be subject to the Waterfront Buffer provisions of the SWQPA. These are the provisions that outline the standards required within 50’ of the reference line. Rather than pre-empting the Shoreland Advisory Committee’s (SAC) recommendations, it was proposed to submit this concept as a recommendation to SAC, which Michele offered to do at the October 5th SAC meeting.

A proposal was also made to add text “including but not limited to RSA 483-B,” to the 2nd sentence and “notwithstanding the provisions of RSA 483-B,” to the 3rd sentence of RSA 483:2 so as to cross-reference the SWQPA in the RMPP statute. Michele commented that she felt it would be inappropriate to reference

a piece of one statute, but not all of the other ones that apply to designated rivers, and thus did not recommend changing RSA 483:2. After discussion, the committee agreed that the application of the SWQPA to 1st through 3rd order designated rivers should be dealt with through the nomination guidance document and presentations, and that RSA 483:2 should remain as currently written.

- ***Don Ware moved that the RMAC recommend to the Shoreland Advisory Committee that for first, second and third order designated rivers, only the provisions of the SWQPA which describe the Waterfront Buffer standards, those within 50 feet of the reference line, be applied. Second by Jim Ryan. Motion passed unanimously.***

4) RMAC/LMAC Proposal to Take on SAC Role

Michele has made an informal proposal to SAC about the RMAC and LMAC taking on some of SAC's responsibilities when SAC sunsets at the end of December 2015. SAC is amenable to this idea.

- ***Michele L. Tremblay moved that the RMAC recommend to the SAC that the RMAC and LMAC jointly take on the role of advising the NHDES Commissioner and the legislature on RSA 483-B when SAC sunsets December 31, 2015. Second by Anne Krantz. Motion passed unanimously.***

5) Other Proposed Statute Changes

Ted reported that DES Senior Leadership was concerned that the language proposed by the RMAC for RSA 483:10 II(k) regarding "fluvial geomorphology assessments and hazard mitigation" in river corridor management plans would require DES to conduct fluvial erosion hazard (FEH) assessments on all designated rivers without the resources to do so. DES would like to work with the RMAC to recraft this language. Michele did not feel that the proposed language required DES to do FEH studies.

Tracie asked the RMAC if they would like to add the terms lengths for the RMAC chair and vice chair to RSA 483:8 V similar to what is in the LMPP statute. Michele felt that having the term lengths in the by-laws was sufficient, and other committee members agreed. Tracie also proposed changing "chairman" to "chairperson" in the statute. Committee members agreed to this change.

V. Follow-up from Joint Meeting Conversations on Hybrid RMAC/LMAC Approach

Ken reminded members that the RMAC needs to select members for the RMAC/LMAC subcommittee that will flesh out ways to advance the Hybrid Approach, which proposed separate rivers and lakes committees that would use parallel processes and work toward watershed concepts as appropriate. Ken and Michele both volunteered to serve on that subcommittee, and Susan Slack also agreed as a non-voting member from both the RMAC and LMAC.

The subcommittee is expected to get underway in January. Tracie or Ken will contact David Packard to get the LMAC's volunteers.

VI. NHDES Rules & Routine Roadway BMP Manual Update

1) Wetland Rules Status Update

Mary Ann Tilton distributed handouts of the Wetlands rulemaking schedule, comments received, project classifications, and an avoidance/minimization concept document. Both the schedule and the comments received during the listen sessions are also available on the Wetlands Process Improvement Webpage. Mary Ann noted that workgroups are tackling various aspects of the rules, including mitigation, docks, tidal areas and inland areas.

Overall, the public wants more guidance from DES on wetlands, especially data, enhanced clarity and information on avoidance/minimization. Other topics that were brought up were climate change, stormwater, enforcement, pre-application meetings and expanded DES notice authority. Michele highlighted a comment about DES defaulting too easily to riprap. The Avoidance/Minimization concepts proposed have been well received, and a guidebook is being developed. Michele also asked if the wetlands avoidance/minimization techniques would consider impacts on other permitting programs such as Shoreland, to which Mary Ann replied they only covered wetlands, but it was a good comment.

With respect to wetlands project classifications, the existing minimum, minor and major classes will be retained. However, there have been requests to modify or eliminate the automatic elevation in status of any project in a designated river corridor, where even simple culvert maintenance within the ¼ mile corridor jumps into a major classification. Jocelyn Degler reminded the committee that Tier 3 projects, which are all of them in the corridors, even a 24" culvert replacement, require sign-off by a PE, which

dramatically increases the cost and results in maintenance not being performed. Mark Hemmerlein added that this results in 50-100 additional permits a year for DOT which would otherwise have been simple notifications. Michele commented that being a designated river has to mean something, and that the effort required by communities to nominate a river has to translate into other benefits. In addition, restoration of a designated river needs to include the tributary drainages. Mary Ann replied that in talks with DOT, they want to be sure there are specific on-site field measures that could be independently verified to ensure that projects that should not be streamlined in a notification process are caught.

Mary Ann invited the group to submit any comments.

2) Routine Roadway BMP Manual Update

Jocelyn reported that they now have a solid draft of the activities for the Routine Roadway BMP Manual. It includes 9 allowed routine roadway activities and 5 activities allowed under the culvert maintainers program (which doesn't require notification to DES, just quarterly reports). DOT has requested some additional changes to the activities, and would prefer a checklist to confirm that the activity is allowed rather than the existing sketches. DOT and DES are working together to determine the best concept.

The BMP manual is a DOT document, so DOT will be the approving body. This allows DES to reference the manual in its rules. In response to Michele's comment about the RMAC's request to review the draft manual, Collis Adams commented that DES will not incorporate the BMP manual into the Wetlands Rules unless they are comfortable with them. The goal is to have the manual complete in September 2016.

3) Residuals (Sludge) Rules Comment & Status

Tracie reported that Mike Rainey in Wastewater Residuals is still in the process of reviewing and responding to comments received. He expected to have a plan for his response to comments by this past week (8/21), and must submit the final draft rules to JLCAR in October. Mike expects that he will likely make many of the changes suggested by the Rivers Program staff.

- ***Michele L. Tremblay made a motion that the RMAC support the comments from the July 9th letter submitted by RMPP staff, second by Jim Ryan. Motion passed unanimously.***

Michele also noted that the grandfathering clause which exempts certain designated rivers from the sludge application restrictions is coming up for renewal soon. The clause is set to expire every 6 years. Michele asked committee to begin considering whether or not they wished to make an effort to curtail the continued extension of the grandfathering clause.

VII. Member Comments and Updates

1) Sub-committee Reports:

- a. WQSAC – Ted reported that the Water Quality Standards Advisory Committee is focusing on the rewrite of the Env-Wq 1700 rules. The updates will make the rules current with EPA standards and address other housekeeping items. They are close to having a complete draft. A number of communities and wastewater treatment plants will be affected by the changes.
- b. SAC – Michele reminded the group that the next SAC meeting is October 5th.

2) Other Member Updates

Ken reported on a letter received from George May, chair of the Souhegan River LAC, regarding a proposal to build log jams/woody structures in the river to slow the flow and reduce erosion. Michele thought the permit should not be a minimum expedited permit, which is its current classification. Ted said Wetlands is formulating a response, and Tracie noted that one of the LAC's issues was that they had not received the permit application. John Magee noted it is a well-planned design by John Fields, funded by NRCS, and avoids the use of riprap, but agreed that it should be a standard dredge and fill permit. Michele will acknowledge receipt of the letter, let George know that his concerns were brought up to DES, and note that it was discussed at this meeting today.

3) RMPP Updates

Tracie noted that two river nominations, the Androscoggin and Warner rivers, are expected for the coming year. On 8/11/15, Jacquie and Tracie met with the Errol Town Forest Commission, who owns land along the Androscoggin River, and Phoebe Backler from the Androscoggin River Committee (ARC). ARC has secured initial funds through the Northern Forest Canoe Trail to develop a nomination and recently submitted a grant proposal to help fund assistance from the AMC research department. ARC hopes to

finish the inventory this fall/early winter, hold public meetings this winter/spring, and submit a nomination on June 1, 2016.

On 8/18/15, Jacquie spoke with Mike Tardiff, CNHRPC Director, who is assisting the Warner River nominating committee. The committee received a very small grant from the Grassroots Fund. CNHRPC is committed to staffing the nomination effort and has a project meeting scheduled for 9/16/15. CNHRPC hopes to submit a nomination on June 1, 2016. Michele asked if they can get 604(b) funds. Tracie was not sure.

VIII. Other Business and Action Item Review

1) Action Item Review

- a. Legislative strategy
- b. Joint meeting with LMAC
- c. The Policy & Legislation subcommittee will get a sponsor for an LSR for the updates to RSA 483.

2) Next Meeting

The next meeting will be scheduled in October to address proposed changes to RSA 483, any required cleanup on the rules, and comments on the ISF report. Tracie will send out a Doodle Poll.

- ***Jim Ryan made a motion to adjourn, second by John Magee.***

Meeting adjourned at 4:03 PM