



RIVERS MANAGEMENT ADVISORY COMMITTEE
NH Rivers Management and Protection Program

New Hampshire Department of Environmental Services
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RMAC MEETING MINUTES
January 28, 2016
Dept. of Environmental Services, Concord, NH
1:30 pm – 3:30 pm

Members Present

Ken Kimball, Chair
Michele L. Tremblay, Vice Chair
Mark Hemmerlein
Anne Krantz
John Magee
Roger Noonan
Susan Slack
Larry Spencer
Ruth Ward
Donald Ware

Representing

Recreational Interests
Conservation Community
Commissioner, DOT
Historical & Archaeological Interests
Executive Director, F&G
Agricultural Community
Director, Office of Energy and Planning
NH Association of Conservation Comm.
Local River Management Advisory Comm.
Public Water Suppliers

Term

Dec. 28, 2017 V
Dec. 28, 2017 V
Indefinite NV
June 15, 2016 V
Indefinite NV
Mar. 22, 2018 V
Indefinite NV
Oct. 12, 2016 V
Sept. 5, 2016 V
Sept. 28, 2016 V

Members Absent

Patrick Hummel
Alan Larter
Frederick McNeill
Gail McWilliam Jellie
Allan Palmer
Elizabeth Peck
Jim Ryan

Commissioner, DRED
Granite State Hydropower Assoc.
Municipal Government
Commissioner, Dept of Ag., Markets & Food
NH Business and Industry Association
Commissioner, DOS
NH Fish & Game Commission

Indefinite NV
Jan. 5, 2018 V
Nov. 16, 2017 V
Indefinite NV
Sept. 28, 2016 V
Indefinite NV
Sept. 28, 2018 V

DES Staff Present

Tracie Sales
Jocelyn Degler
Ted Diers
Carolyn Guerdet
David Rosengarten
Mary Ann Tilton

Rivers and Lakes Programs
Land Resource Management
Watershed Management Bureau Administrator
Water Division
Watershed Management Bureau
Land Resource Management

Guests

Brian Maloy
Gene Porter
Richard Snow

Monadnock Paper Mills, Contoocook & North Branch Rivers LAC
Chair, Lower Merrimack River LAC
Chair, Lamprey Rivers LAC

I. Introductions/Minutes/Committee Business

1) Welcome & Introductions

Chair Ken Kimball called the meeting to order at 1:35 PM with a quorum present. Members introduced themselves.

VI. 1) Water Quality Standards Advisory Committee

Because Ted Diers needed to leave the meeting early, he reported ahead of schedule that WQSAC is reviewing the draft update for the water quality standard rules, Env-Wq 1700. A public notice on the draft rules will go out this spring, with a public hearing likely in April. The primary changes are to the Toxics table, 1701.3, which has not been updated in 17 years. EPA has developed new guidance for

aquatic life use, and there are 94 chemicals that have new human health criteria. The new ammonia standard will affect about 15 wastewater treatment plants now, and more in the future. The lower limit for hardness in toxicity calculations is going down to 20 from 25. NH's bacteria standards are being codified in rule (they are currently in statute), and NH's standard is different than EPA's because it is calculated differently, but it is as strict and protective.

2) Acceptance of October 13, 2015 RMAC Meeting Minutes

- ***Michele L. Tremblay made a motion to accept the October 13, 2015 RMAC minutes, second by Larry Spencer. Discussion was held. Motion passed unanimously.***

II. RMPP Program Updates

1) RMAC Membership Update

All members are up-to-date and RMAC member seats are full. Anne Krantz' membership expires in June, while Don Ware, Allen Palmer, Larry Spencer, and Ruth Ward will be due for renewals in September. Members need to submit their Financial Interest Statements to the Governor's office.

Michele asked how the RMAC should approach the regular absence of voting members. Suggestions included a letter to new members and a letter to the nominating group. This topic will be discussed at a future meeting, and Michele will speak with the Governor's office as to other processes that are used and prepare some recommendations.

2) Status of the Rivers Coordinator Position

Discussed during the Joint meeting. RMAC and LMAC representatives are on the interview team.

3) River Nominations (Androscoggin, Warner, Nashua, & Snake Rivers)

- Androscoggin – Ken reported that the Northern Forest Canoe Trail, AMC and the Androscoggin River Watershed Council will have a nomination coming forth, with a draft to DES in the beginning of May.
- Warner – Tracie said the nomination underway, and CNHRPC plans to submit a draft in early May. One riparian landowner is concerned about restrictions the designation may impose on the development of a potential hydropower facility at an existing dam where the proposed classification is rural-community. While no hydropower designs have been developed, the group may reclassify segment as community to accommodate potential dam improvements. The Warner River is entirely 4th order or higher.
- Snake – The Windy Waters Conservancy taking the lead on this proposal. The river is 1 mile long, between Lake Waukewan and Lake Winona in Center Harbor and New Hampton, and is 3rd order, but the group wants SWQPA. Many properties on the New Hampton side already have conservation easements. There may be changes in local regulations coming that would provide additional protections in Center Harbor.
- Nashua – LMRLAC has expressed an interest in adding the Nashua River to LMRLAC. In NH, the Nashua runs through Nashua and Hollis. Gene Porter has received positive feedback from the Nashua mayor, but has not yet approached Hollis. This nomination will not be submitted this year.

4) Proposed Mascoma River Hydroelectric Project

A preliminary permit application has been submitted to FERC for a proposed hydroelectric project in Lebanon on the Mascoma River. It would involve constructing a new dam and 1,200 foot long penstock between where Rte. 120 crosses the Mascoma River and the confluence of Great Brook. They also are evaluating developing the Mascoma Lake Dam (owned by DES) for hydropower. The new dam is in a section classified as Community, so new dams are allowed. The Mascoma Lake dam is on a section classified as Rural-Community, where hydro can be developed at existing dams, but restrictions include run-of-river, no significant diversions of the river, and maintenance of the historic impoundment level.

MRLAC, CRWC and others have joined together as interveners, and several paddling groups are also jointly seeking intervener status. That stretch of the river is popular for whitewater kayaking.

III. RMPP Rules Update Status

1) RMPP Rules Update Status

Michele thanked everyone for their help on updating the RMPP nomination rules, Env-Wq 1800. The subcommittee examined the rules to ensure that they conform to the statute, determine where duplication between statute and rules exists, and ensure that the rules would not conflict with proposed changes to the statute. The revised rules eliminate the point system for river nominations, which leaves little left in the rules that is not already in statute. We therefore considered eliminating the rules altogether, but this could take away our rule-making ability. The DES Legal department recommends maintaining the point system, but Michele believes they are overstepping in this case by advising on programmatic administration. She feels we should proceed with the rules as proposed without the point system.

Tracie reported that the proposed rules have been submitted to DES Legal for review before going to JLCAR. She has explained to Legal that no criteria have been established for using the point system to determine the value of a nominated river. Legal says the statute should maintain rulemaking authority. The short rule set proposed without the points is doable, and would not require a change in the statute. Legal is negative on the idea of no rules at all. If we did change the statute to remove the need for nomination rules, we would want to have language that nominations will follow procedures outlined in the statute and also maintain the ability to have rules in the future. We have not heard more back from Legal. Ken noted that we would have a legislative hassle if we wanted to change RSA 483 now relative to the nomination rules.

- ***Michele L. Tremblay made a motion that the RMAC recommend to the commissioner that we go forward with the rules that we developed through the consultative process and submit them to JLCAR as our proposed revision, and that the legal department of DES receive a copy with a cover letter explaining the intensive review and that we feel this is the best way to satisfy the statute. Second by Larry Spencer. Motion passed unanimously.***

Ken asked to clarify under what laws and rules the nominating committees should proceed. Tracie said that they should follow the existing nomination form and guidance document, and that they would only follow the new rules only after they are submitted to JLCAR. However, she recommends leaving the point system until last, and filling it in at the end of May if the rules have not yet been sent to JLCAR. However, prepare the map of stream order that is being added to statute and rule as it is useful information. The other key question for nominating committees is whether all riparian landowners need to be notified of the nomination. This will depend on when and if the statute change is passed.

2) Stream Crossing Rules (Env-Wt 900) & Designated Rivers

Tracie reminded Committee members that Wetlands is updating their rules and have proposed changes to the rules for stream crossings in Designated River corridors. Jocelyn Degler reported that the Stream Order group has vetted the proposal on the handout dated 9/4/15. While these are draft proposals, this is what DES will be moving forward with. The other handout is specific to Designated Rivers. Projects in Designated River corridors are currently considered major projects, requiring additional information. Jocelyn explained that they would like to base the automatic elevation of projects in Designated River corridors to Major on the river classification, where projects within ¼ mile of Natural rivers would be Major, but only projects within the banks of a Community river would automatically be Major. All tier 3 streams will still be major impact projects. They are also proposing that work in corridors can be done under the Routine Roadway BMP manual, which will include a notification to the LACs, though not under the certified culvert maintainers program.

Tracie explained there are not a huge number of culvert projects in corridors, roughly 39 in 2014 and 19 in 2015. Michele asked about the justification for this change with regard to Designated Rivers, especially when other resource types are not being similarly downgraded. Mark Hemmerlein and Jocelyn replied that culvert projects are not getting done because of the required paperwork, resulting in more emergency permits. The bump up to major impact for projects in Designated River corridors began recently with the implementation of the stream rules. Ken asked about the requirements for Stream Notices. Discussion was held on the pros and cons of the proposal. Roger Noonan spoke in partial favor of the proposed changes due to the frequency of extreme weather events, and the need to upgrade culverts. The new Routine Roadway BMP manual addresses aquatic organism passage. Jocelyn also noted that most projects are coming in under the Alternative Design Standards because they cannot afford to meet the full Stream Crossing Rule requirements. Ken stated that basing the project category on the river classification is not logical because of the varied basis on which classifications are determined. This proposal for stream crossings covers not only culvert replacements, but also new culverts.

Further discussion ensued regarding how to best address the problem of inadequate culverts and how to improve the process to get them expeditiously replaced with better stream crossing structures.

- ***Michele L. Tremblay made a motion put together a letter to the Commissioner as to why this proposal should not proceed, and provide all reasons discussed today. Second by Larry Spencer. Include we have serious concerns. Discussion was held. Motion carried with one nay.***

Mary Ann Tilton provided background on this effort. There will be opportunities to provide input, such as February 10th, March 9th and March 18th, and a special session for RMAC designees can be arranged. Wetlands must submit its draft rules to Legal by the end of March. Public hearings on draft rules will be held over the summer. Six separate BMP guides are part of this project and will also be available for review. BMPs and rules are going forward hand-in-hand, but BMPs are being published by other agencies. Mary Ann will send the draft BMPs to Tracie, who will forward them to the RMAC. The RMAC requested that invitations and materials on this work be sent directly to RMAC staff or leadership, rather than depending on others to forward the information.

IV. River-related Legislation

1) RSA 483 and House Bill 1595

The RMAC testified on Tuesday, January 26th in support of HB 1595 based on the policies discussed and approved previously when the bill was submitted. Michele described the proposed amendment by the Audubon Society that would have the NH Council of Trout Unlimited as one of the three nominating parties for the RMAC's conservation community representative rather than the NH Wildlife Federation, as the NH Wildlife Federation has changed its charter and is no longer the affiliate for the National Wildlife Federation.

2) Instream Flow Program Legislation - House Bill 1461

The RMAC testified on Tuesday, January 26th in support of HB 1461 with an amendment based on the Committee's previously approved position.

3) Other 2016 Bills

Michele thanked the Policy and Legislation Subcommittee for their work. She reported that the subcommittee recommends that the RMAC support 7 of the bills and oppose 2, those highlighted in yellow on the legislation spreadsheet, while tracking the others as noted on the spreadsheet. The RMAC may want to submit a joint letter of testimony with the LMAC on the 2 bills that the RMAC and LMAC both support.

- ***Michele L. Tremblay made a motion to accept the policy and legislation subcommittee's recommendations as our marching orders for the RMAC's position on 2016 legislation, second by Larry Spencer. Discussion was held. Motion passed unanimously.***
- ***Anne Krantz made a motion to support Audubon's suggested amendment on HB 1595, second by Larry Spencer. Motion passed unanimously.***

V. Moving Forward with the Hybrid Approach – Discussed during the Joint RMAC/LMAC meeting.

VI. Member Comments, Updates and Other Related Groups

- 1) WQSAC – Covered previously by Ted Diers.
- 2) SAC
Michele reported that the final report has been produced and is available on the RMAC blog. She urged everyone to read it, as it will guide the Shoreland Subcommittee's work.
- 3) Other Member Updates
 - a. Tracie announced that the Natural Resources Advisory Committee of Southwest Region Planning Commission (SWRPC) will be discussing the LACs within its region on Wednesday, February 24 at 3:30 at the SWRPC office in Keene. Representatives of each of the 5 LACs (Ashuelot, Cold, Contoocook & North Branch, CT – Wantastiquet, Souhegan) as well as Rivers Program staff have been invited. LAC's and RMPP staff will give a brief update of their activities, but the focus will be a roundtable discussion to share ideas and ways that the groups can work together.
 - b. Roger – The Long Island Sound Regional Conservation Partnership is a public-private partnership that is working with NH conservation districts and has \$176,000 to deploy in the next 3 years. Must have 50% of match in-kind. They are looking at some target areas and important sites, and Roger has talked with Ted and David. Roger will forward additional information to Tracie.
 - c. Michele announced that an update to *What's Our Water Worth* is underway, with an addition called *What's Our Water Cost* to cover the cost of water delivery and treatment.
 - d. Michele announced the New Hampshire Rivers Council Wild and Scenic Film Festival on March 25th and invited all to attend. She will provide more information.
 - e. Larry announced that there are funds for a parking lot at Livermore Falls on the Pemigewasset, and the work will be going out to bid soon. Also working on parking for the Plymouth/Compton side.
 - f. The Water and Watershed Conference in Plymouth is March 18th.

VII. Other Business and Action Item Review

- 1) Action Item Review
 - a. Continue discussion of stream crossing rule revisions.
 - b. Follow-up on 2016 legislation in progress
 - c. Member attendance.
 - d. Michele asked for functional WiFi for meetings at DES, and to bring this issue up to the Commissioner if not readily resolved.
- 2) Next Meeting – date and proposed agenda items
 - Next meeting April 5th at 1:00 p.m.
 - Additional meeting in August to accommodate nominations

3:38 pm Meeting Adjourns