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N.H. Rivers and Lakes Management and Protection Programs  
**N.H. Rivers and Lakes Management Advisory Committees**

October 4, 2018

Wayne Ives

Instream Flow Program

New Hampshire Department of Environmental Services

29 Hazen Drive

Concord, NH 03301

**RE: Proposed Instream Flow Rules – Env-Wq 1900**

Dear Mr. Ives:

The New Hampshire Rivers Management Advisory Committee (RMAC) and the New Hampshire Lakes Management Advisory Committee (LMAC) appreciate the opportunity to comment jointly on proposed revisions to the Instream Flow Rules, Env-Wq 1900. This letter reflects the initial findings and recommendations to the proposed rules based on a draft version of the rules published on July 26, 2018 for the RMAC and the LMAC, and subsequently discussed by members of the department and representatives of both Committees on August 9, 2018. The Committees understand that some of the typographical, reference, and nomenclature changes recommended during that meeting ~~have been~~ may already be incorporated into the document that will become the Initial Proposal ~~published on September ??, 2018~~. The Committees support the revised rules with two substantive clarifications and several additional minor revisions.

First, the rules are unclear regarding how and where the *de minimis* amount will be calculated and how this amount of water will be shared among water users. The term is defined in Env-Wq 1902.06, and used in Env-Wq 1905.03 (g). While the rules say that the *de minimis* amount will be calculated, apportioned, incorporated into the water management plan report, and revised as necessary, no further detail is provided. Because this small amount of water may be critical to water users during periods of low flow, the Committees suggest that the location of the *de minimis* amount calculation is clearly defined for each water user whether it is at the point of withdrawal, at the stream gage, at the beginning of the designated river segment, or at some other location on the designated river. Similarly, the rules state that the *de minimis* amount will be apportioned, but they do not state how the water will be shared among users. These explanations may be added to the rules, or may be explained in greater detail in a white paper, but the Committees suggest that the procedure be clearly outlined for all water users.

Second, the RMAC and LMAC suggest that the rules clarify the Instream Flow Program's authority over dam owners who are not affected dam owners as defined in Env-Wq 1902.02. The Committees acknowledge that dams exist on or upstream of designated rivers which impound an area less than 10 acres, and thus will not be utilized to generate a flow relief pulse during periods of low flow. However, these dams must still pass any relief pulse generated upstream without attenuating it, and thus may

be impacted by Program activities for the designated river. The Committees therefore recommend adding owners of dams which impound less than ten acres, but are downstream of impoundments used for generating relief pulses, to the definition of affected dam owners. Env-Wq 1906.03 (g) could then be moved to a new Env-Wq 1905.04 (b)(2)d and would state that dam management plans for dams impounding less than 10 acres will require that the dam operate as run-of-river during relief pulses.

In addition, the RMAC and LMAC recommend the following changes to the proposed Instream Flow Program rules:

- Use “water management planning area” or WMPA consistently throughout the document rather than “watershed management planning area.”
- Use “protected instream flow” as appropriate throughout the document instead of “instream flow protection” such as in 1903.01 (a).
- Include in the lists of entities notified of public hearings in Env-Wq 1903.02 (g) and in Env-Wq 1904.04 (e):
  - All Local River Management Advisory Committees (LRMAC) in the WMPA, not just the LRMAC of the designated river in question;
  - The New Hampshire Lakes Association; and
  - The New Hampshire Rivers Council.
- Add “for routine maintenance” after “schedule” in 1905.04 (b)(1)f to differentiate routine maintenance drawdowns from drawdowns resulting from instream flow management.

The RMAC and LMAC are legislatively created bodies charged to work with the New Hampshire Department of Environmental Services (NHDES) to administer RSA 483, the Rivers Management and Protection Program and RSA 483-A, the Lakes Management and Protection Program. These Committees are comprised of Governor and Council appointed representatives from business, conservation commissions, agriculture, hydroelectric, municipal government, the scientific community, water supply, statewide river and lake organizations, realtors, tourism, conservation, recreation, marine dealers, fish and game, LRMACs, and historical interests. The RMAC and LMAC are charged with reviewing and advising on legislation and rules relevant to their Programs and with advising the NHDES Commissioner.

Should you have any questions regarding these comments, please feel free to contact Michele L. Tremblay at 603.796.2615 or [MLT@naturesource.net](mailto:MLT@naturesource.net) or David Packard at 603.634.2299 or [appliedforce52@gmail.com](mailto:appliedforce52@gmail.com).

Sincerely,

Michele L. Tremblay  
Chair, RMAC

David Packard  
Chair, LMAC

ec: RMAC Representatives  
LMAC Representatives  
Ted Diers, Administrator, Watershed Mgmt. Bureau, NHDES  
Tracie Sales, Rivers and Lakes Programs Manager, NHDES  
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