

# New Hampshire Drinking Water and Groundwater Advisory Commission

## RSA 485-F:4 – SB380 – Chapter 11:2 – Laws of 2016

### Regular Subcommittee Meeting Minutes

**MEETING DATE:** 9:00 a.m., Friday, November 17, 2017, SH 103

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**Members of the Committee Present:** Richard Russman (State/Regional Land Trust), Rodney Bartlett (Public Member), Paul Sanderson (Fish & Game Designee), Bernard Rousseau (Public Member), Clark Freise (Governor's Designee), David Paris (NH Water Works Association), and Rachel Miller (State Treasurer Designee).

**Members of the Committee Not Present:** Tim Vadney (NH Water Pollution Control Association).

**Audience Members Present:** Matt Leahy (Society for the Protection of New Hampshire Forests), Bill Hounsell (Granite State Rural Water Association), Jim O'Brien (Nature Conservancy), and Jim Malley (UNH).

#### **Meeting Discussion:**

- 1) *Welcome – Senator Rick Russman, Chairman*
- 2) *Discussion of the strawman application*
- 3) *Discussion of SRF and Rural Development Process*

Commissioner Freise discussed the strawman application designed by DES. There is a concern with State Revolving Fund (SRF) and Rural Development Grants. These are funds with federal dollars. The goal is to get as much money as possible to address water problems in the state. Some applicants are putting off addressing their water problems until the next grant cycle to access the Drinking Water and Groundwater Trust Fund (DWGTF), believing they will get better terms. There needs to parity between SRF, Rural Development Grants, and the DWGTF to 1) access as many dollars as possible and 2) to ensure that the DWGTF is not depleted at such a rate that the state has to return to federal dollars to address water problems.

Commissioner Freise noted that there is an interest to have another grant round. Until the Commission creates its own rules, the Commission should emulate SRF rules. If an applicant receives a grant or a loan, it is the same terms from SRF. This includes principal forgiveness, following the Davis-Bacon Act, and meeting the American Iron and Steel (AIS) requirement. Everyone knows what the standard is and people are not waiting until new rules come along. SRF cannot fund certain projects like water extensions. With the DWGTF, those projects can be considered. Projects will be filtered to the SRF or the DWGTF in the application process.

Mr. Paris asked how the principal forgiveness program works in SRF. Commissioner Freise said principal forgiveness factors in the affordability for a community. It examines average household income and water rates. The forgiveness is between 8-12%. Richard Skarinka from DES said principal forgiveness for this round is 10%, but will raise to 15%.

Senator Russman asked if the SRF rules are meant to apply for the next year. Commissioner Freise said the Commission approved projects at their last full meeting. The Commission does not have any rules, so the Commission should use SRF rules as interim rules. If another round is done, people will apply using the SRF format. If a project is not eligible for federal money, the DWGTF that can address those projects, such as water extensions. Federal money should be used first, then use the DWGTF to address projects not eligible for federal funds.

Mr. Paris stated that \$38 million has already been allocated from the DWGTF. That allocated money would follow SRF rules. Mr. Paris asked for clarification about rules going forward. Commissioner Freise said the Commission should follow the SRF rules until the Commission adopts its own rules.

Mr. Paris asked if projects would be weighed using SRF criteria. Commissioner Freise said the Commission would develop a strawman application that will allow them to rank projects by certain criteria. The Commission would then have the ability to weigh certain projects like the LCHIP model.

Senator Russman said the Commission already decided on \$38 million in projects. The issue going forward is setting up for another grant round in March 2018 – will everything be in place? If not, the Commission would follow the SRF rules. Commissioner Freise said that is correct. Projects apply for SRF. Those that are top rated in SRF get federal dollars. When federal money is run out, other projects go to the Commission to get reviewed and approved. The Commission can then make a determination as to what projects are a priority.

Commissioner Freise said there is a source protection grant program at DES that has roughly \$48,000 left. The NH Department of Transportation (DOT) has largely been using that grant program for the I-93 expansion. There are rules and criteria that allow for a 25% grant for a 75% match. DES could change it for a 50%-50% match, allowing for more applications than there would be money. There are other forms of source protection – wetland reconstruction, conservation, etc.

Mr. Bartlett asked what happens if the DWGTF is mixed with SRF funds. What happens to the requirements, good or bad? Commissioner Freise said there are federal requirements like Davis-Bacon and AIS. It is best to run both programs the same until the Commission develops its own rules. There are some cost savings going outside these requirements. However, an applicant could game the system and put together a lesser application to get outside of the SRF requirements and go through the DWGTF, where they believe they get the better deal.

Senator Russman asked if applicants are waiting for the DWGTF to come up with their own terms, believing the terms will be better than SRF.

Commissioner Freise said there are multiple concerns: 1) an applicant does not want to take the SRF loans because they believe they will get a better deal from the DWGTF after it sets up its own rules. 2) Federal dollars are not used, 3) a project is delayed, and 4) more DWGTF money is being used. Commissioner Freise said the SRF loans are not onerous – they provide many assets. But some applicants believe they will get a better deal by waiting. Commissioner Freise noted Mr. Rousseau's comment about charging a higher interest rate for the DWGTF. However, that conversation has not taken place yet and it is not set in rules. Interest rates are set by the SRF rules and they inform DES what to set it at.

Mr. Bartlett noted that he has applied for an SRF loan in the past and turned it down because he got a better interest rate from a private bank. He also got away from the reporting requirements under SRF. SRF rates in NH tend to be higher than elsewhere in the country. He noted an Alabama mayor got an interest rate at less than 1%. He asked how DES sets its interest rates for SRF.

Johnna McKenna from DES explained that the rate is set once a year in August at a public hearing. DES takes the bond market rate and discounts it. She is unsure when Mr. Bartlett applied, but there was a change in rules. When the market became competitive, DES then had the ability to reset the rate. Ms. McKenna said Mr. Bartlett applied around the time of that rule change and was not able to take advantage of a lower SRF rate.

Commissioner Freise said other states fund the SRF program with general fund money. NH does not do that. The interest rates largely pay for the program in the NH. He noted that he believes the projects approved should be put out under SRF rules. For another round, people should apply through the SRF program and those that do not meet federal requirements will still be considered by the DWGTF.

Senator Russman said he hoped the subcommittee would meet again in mid-December to give DES feedback on recommendations. Municipalities and land trusts have to work with the process. They may have thoughts to offer on the application.

Commissioner Freise said terms and conditions are confusing. The best thing is to clarify DWGTF rules going forward, but to use SRF rules now.

Senator Russman asked if source protection should be run by the DWGTF or by LCHIP. LCHIP handles land conservation.

Commissioner Freise said Dijit Taylor from LCHIP believes water should not be in LCHIP's jurisdiction. LCHIP is not fighting for the chance to distribute money for source protection, but if the Commission decides to pass the responsibility to LCHIP, LCHIP will do it.

Mr. Sanderson said going through the SRF process is a great step – it provides clarity, consistency, and does not slow down the process. He asked how the Commission will address public entities vs. private entities. The Commission should avoid showing bias in grant allocations. He also wanted to avoid getting solely focused on drinking water – there have been no discussion on local/regional planning, wastewater treatment, etc. The DWGTF is meant to fill in the gaps of the SRF program. Therefore, if all the projects come into DES for review, all should go through the SRF process. If applicants cannot be addressed there, the DWGTF can take care of them.

Mr. Rousseau said that there was an earlier discussion of molding the LCHIP and SRF applications together. He referenced a set of questions to consider provided by DES. The questions can be answered using the LCHIP and SRF applications. An application can be customized based on the questions provided and can serve as a base. SRF serves as a great start.

Mr. Paris believed the DWGTF is a great supplement to SRF. It can cover areas that the SRF cannot. However, private wells have not be addressed – could private individuals apply to address contaminated wells? There is value in determining what the DWGTF can tackle for projects.

Senator Russman asked Commissioner Freise if there is value to simply supplementing SRF or expanding the reach of the groundwater commission to encompass other projects. Commissioner Freise said statute for the DWGTF does not allow funds to be spent on private wells. Commissioner Freise said there is merit to tackling things the SRF cannot touch: 1) every year, there are more projects than there are dollars. DWGTF can help address more projects. 2) DWGTF can address projects that the federal SRF program does not address. The trust fund can address issues like water expansions and economic development.

Mr. Bartlett asked how to get a better understanding of what is eligible for SRF and what is not. Richard Skarinka from DES said there are three criteria for eligibility: 1) public health, 2) risk, and 3) compliance with the Clean Water Act. What is not eligible for SRF are projects focused on growth/economic development, operation & maintenance, and cost. Johnna McKenna said the DES has released a handbook that details what is eligible and not eligible and she said she could provide to the subcommittee.

Commissioner Freise said the Commission needs to get to a point where they get a sense as to what their application is weighing – is the application needs-based? Public health-based? Population-based?

Mr. Paris asked what occurs with projects that are not eligible for SRF – does the scoring on each application determine its ranking, or does the Commission weigh the projects? Commissioner Freise said LCHIP has a scoring system that is pretty good at prioritizing projects, but the whole LCHIP body can review projects and decide if lower scored projects are more important. The Commission should do that. If

there is an application that scored poorly and needs assistance, the Commission can make it a priority. The determination of the true value of a project is made by the Commission, not DES. DES provides a list of project based on scoring and criteria and can help towns undertake projects approved by the Commission.

Commissioner Freise said there will be workshops to steer municipalities in the right direction to get the best review. If DES does not know what the Commission wants, projects will be steered to what DES thinks is best, and that is not the intention. For example, towns must know how to operate their water systems properly. The Commission may want to offer more of a grant rather than a loan if a town is struggling financially. DES can tell towns to come as close to a match as possible, but the Commission can lower the match to make sure the town has money on hand to operate its system.

Mr. Sanderson said there are parallels to how transportation projects are reviewed. That may be something to review as the subcommittee continues its work.

Bill Hounsell from the Granite State Rural Water Association encouraged the subcommittee to look at the rural utilities program from the EPA. This program goes directly to municipalities. Their grants are around 20%. There should be a search for every federal source of money. The Davis-Bacon Act does not apply. The programs considers towns with population of 10,000 and under.

Commissioner Freise said the Rural Development Grant program is preferred over SRF, but there are limitations as to who can apply. There are better interest rates, more principal forgiveness, and no Davis-Bacon or AIS requirement. Every dollar is needed to help address an estimated \$800 million water problem.

Paul Susca from DES discussed source water protection. DES has been trying to outline a program. A public input session would be good to hear from stakeholders. He would like to hear from the subcommittee about the strawman application created for the subcommittee.

Ms. Miller asked if the Rural Development Grant is oversubscribed like SRF. Commission Freise said there have been more applications for the Rural Development Grant. It is very attractive, but you must meet certain standards. Places like Manchester will never get one.

Paul Susca asked if it would be appropriate for DES to have a public session to hear from stakeholders on the outline of an application. Senator Russman had no problem with it. He left it to DES to lead the effort. Commissioner Freise said DES can consolidate the information for the subcommittee.

Mr. Paris asked what the DWGTF can do relating to source protection. Mr. Susca said the trust fund could do grants. The strawman application was outlined with conservation in mind, but would be open to watershed restoration and other source protection methods. There needs to be some criteria for the projects, as well as readily available funds.

Mr. Rousseau recognized the ability of DES to make the public aware of their efforts. There have been comments by applicants asking how to access those funds. Using the questions provided by DES to the subcommittee would be a great starting point for the subcommittee.

Commissioner Freise said DES has been careful to convey the things that are clearly known to the public: 1) the DWGTF has a legacy capability – it is meant to last more than a year. 2) A certain amount of money is made available every year in a mix of grants, loans, and source protection. 3) There needs to be a dollar for dollar match. Any applicant needs skin in the game. 4) There is work on the Commission's rules to provide clarity. Applicants need to understand that it is not free money. This is an opportunity to address projects to make them affordable.

Mr. Rousseau reiterated the need to have a workshop and address the questions provided by DES. That will allow the Commission to formulate its own application. As DES educates applicants in NH, there will be a rulebook that can provide guidance. There needs to be a timely rollout of the application. Commissioner Freise said LCHIP is successful because they have people who help applicants get to a successful

application. They do not simply provide a handbook. It requires a great amount of contact with the communities.

Mr. Rousseau asked how much money is available every year. Ms. Miller said there is a commitment to 20% of the DWGTF. That does not factor into the timing of disbursements. 20% is not given out immediately. There are still unknowns in the subcommittee. Commissioner Freise said if there was \$250 million available, \$50 million would go out the first year. This does not factor in the time for the issue to go before town meetings to be approved and discussed. There needs to be an RFP and an approval by Governor and Council. There is a running process to manage the cash flow, keep the Commission engaged, and to ensure completion of projects.

Dijit Taylor referenced the questions provided by DES and asked if the subcommittee would like LCHIP to provide answers to the questions. Having answers to the questions from existing programs (LCHIP, SRF, Asset Resource Management, etc.) will provide the subcommittee with an idea of what exists currently and what the DWGTF could address. Senator Russman asked if Ms. Taylor to do so.

Johnna McKenna said there can be a public comment session on the side for source protection, but for infrastructure, there could be a Survey Monkey sent out to stakeholders to get their feedback. Senator Russman said it would be good to get feedback for a finalized second draft of an application. Commissioner Freise said there are a number of questions where the subcommittee needs to provide an answer. He referenced the list of questions provided by DES.

Mr. Bartlett said the subcommittee cannot lose sight of the development and connection fees that the Commission can collect. It gets money back into the trust fund. Once infrastructure is in the ground, who owns it? Mr. Sanderson said Manchester and Merrimack have programs in place, but little towns do not. Impact fees would need to be addressed by legislation. DOT does not have it figured out. There are many models available, but municipalities do not have them.

Senator Russman went through the questions provided by DES:

- Who can apply?
  - Subcommittee agreed on towns, municipalities, private water companies, and land trusts.
- Eligible projects?
  - Sanderson: Take existing programs and supplement them with the DWGTF. Trust fund applications should not cause a negative impact. Water extensions should be included, but use all federal dollars available first.
  - Commissioner Freise: Do the exact same thing as SRF. There is not enough funding in SRF to do the ten best projects that were received. There are other projects beneficial to water quality, such as asset management, source protection, etc. It may be good to have Paul Susca come in at the next meeting to discuss that in more detail.
- Whose application is it?
  - Commissioner Freise: Is it a DES or a DWGTF application? If projects are going through SRF, it should be a DES/SRF form. The DWGTF would access the list of those who apply. It is important to educate people to have them apply, even if they are not eligible for SRF. If there is a project that needs to be addressed, applicants should apply to get into the system to be reviewed.
  - Miller: There is a value to distinguish the application in a way. It is confusing. There are a lot of programs available. It is good to use SRF rules currently, but those rules will be slightly different to distinguish it.
  - Commissioner Freise: There can be a DWGTF supplement to the SRF form.
- Can an applicant submit more than one application for multiple projects?
  - Senator Russman: no problem with a municipality applying for multiple projects. It should be part of one application. An applicant should prioritize their projects on the application if there are multiple phases or a project is ongoing.
- Can they apply for a grey and a green at the same time?
  - The subcommittee believed that an applicant can do so.

- Can it be a combo loan and grant?
  - Sanderson: There is a worry about public vs. private applicants.
  - The subcommittee believed that an applicant can apply for a combo loan and grant.
- How can this complement other funding programs such as the SRF and RD?
  - The subcommittee encouraged that throughout the meeting.
- Pay for work already completed?
  - The subcommittee said that starts a slippery slope and was against it.
  - Commissioner Freise: On source protection, the Commission should consider it.
- Match requirements?
  - Commissioner Freise: at least a 50-50 match, unless in the case of emergencies. This sentiment was expressed by Senator Morse.
- Environmental review?
  - Commissioner Freise: DES does that with SRF loans, but does not want DES to tilt the scoring of the applications to see if there is an environmental impact.
  - The subcommittee agreed on the need for an environmental review.

Mr. Rousseau wanted to clarify that LCHIP would provide short answers to the questions provided by DES. The DES would also do the same for the SRF program.

4) *Adjourn.*

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**Next Meeting(s):** Tuesday, December 19<sup>th</sup>, 2017 at 9:00 a.m. in SH 103

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