

Approved
MEETING MINUTES
NEW HAMPSHIRE WATER SUSTAINABILITY COMMISSION
October 18, 2011

Commissioners in attendance:

Virginia Battles-Raffa
Robert Beurivage
Kris Blomback
Thomas Burack
John Gilbert, Chair
Denise Hart
Mike Licata
Martha Lyman, Vice Chair
Amy Manzelli
Glenn Normandeau
Cliff Sinnott
Alison Watts

Commissioners not in attendance:

Dave Allen
John Palermo
Chuck Souther

Public in attendance:

John Boisvert
David Cedarholm
James Gove
Jennifer Rowden
Judith Spang
Peter Walker

Chairman John Gilbert called the meeting to order at 2:15 pm

I. September 20th Meeting Minutes

A motion to accept the September 20th meeting minutes was made by Glenn Normandeau and seconded by Kris Blomback. The motion passed unanimously.

II. Other Water-Related Commission Representatives Panel and Presentations

John Gilbert explained that the representatives from other water-related legislative commissions were invited to speak to the Commission regarding a summary of their commission's work and to address the following questions:

- What are the key issues identified by your commission that are particularly relevant to achieving water sustainability?
- What are the key recommended measures and actions identified by your commission?
- Which of these measures and actions have been implemented?
- What have been the outcomes of the measures and actions that have been implemented?
- What changes, if any, would you make to improve the effectiveness of these measures and actions that have been implemented?
- What are key hurdles to implementation of measures that have not yet been acted upon?
- Which of the key issues identified by your commission do you see as interconnected with or related to the work of other commissions?
- What measures should be taken in coordination to address these interconnections?
- What gaps do you see in available information assessed by your commission that need to be addressed?

- Who is your constituency and where have you looked for support for your recommendations?
- How can the work of the Water Sustainability Commission help advance the work of your commission?

A. Stormwater Commission (HB 1295) – David Cedarholm, Commission Chair (Town of Durham Engineer representing New Hampshire Public Works Association)

The summary of the Stormwater Commission was handed out to the Water Sustainability Commission. The major recommendations put forth by the legislative commission to address stormwater issue were:

- Define the term “stormwater” in state law.
- Inclusion of the concept in state statute that property owners are responsible for stormwater that originates on and discharges from their property.
- Creation of a statewide stormwater utility program (involving multiple recommendations for implementation).
- Clearly enabling municipalities to regulate stormwater within their boundaries.
- Dealing with additional issues related to municipal authority to regulate stormwater.

To date, no municipality has implemented a stormwater utility. The updated MS4 permit that will affect 32 New Hampshire communities may be the catalyst that forces some communities to adopt these utilities. The MS4 permit requires municipalities with certain population densities or areas of density (mainly urban) to manage their stormwater, and the 2008 permit (which has not yet been issued) will have stricter requirements than the 2005 permit under which municipalities are currently operating.

B. Infrastructure Funding Commission (SB 60) – John Boisvert, Commission Member (Pennichuck Water Works representing NH Water Works Association)

This commission was reauthorized this year; however, it has not yet met. The final report is due in November 2012. Some recommendations or suggestions from the commission have been accomplished.

Commission duties:

- Conduct “an assessment of the state’s need to construct and maintain infrastructure to protect its water resources, taking into consideration public health issues, ecosystem and habitat protection, and economic factors including tourism.”
- To “consider the information, conclusions, and recommendations presented in the New Hampshire water resources primer published in December 2008, which evaluates how to improve the long-term sustainability of New Hampshire’s water infrastructure and its funding.”

The Infrastructure Commission looked at three main items: water and wastewater infrastructure, dams and stormwater infrastructure. The following were major findings or issues identified by the commission:

- The short-term and long-term funding needs of dam maintenance given the dwindling state funding for such work and the aging infrastructure.
- The question of whether the State should continue to acquire dams and the associated cost of maintenance, even if they are not wanted.
- Stormwater infrastructure needs, and possible solutions, aligned with the Stormwater Commission's recommendations of the creation of stormwater utilities.
- Water and wastewater systems will require billions over the next ten years just to maintain. For water systems, this cost is mainly for replacing the aging infrastructure, and, for wastewater systems, it is mainly upgrading treatment for nutrient removal. The Commission estimated 2.3 billion dollars will be needed just to maintain the water infrastructure over the next ten years (including dams, water utilities and stormwater).
- There is a lack of available funding, and the funding that exists is often too targeted.
- The rate structure for water systems and that the rates should be member-driven.
- Small systems often have disproportional maintenance costs. The possibility of allowing small systems to form cooperatives as a way to spread out costs (infrastructure and personnel).

C. Land Use Commission (HB 1579) – James Gove, Commission Member (representing Association of General Contractors of New Hampshire) and Peter Walker, Commission Member (representing New Hampshire Association of Natural Resource Scientists)

The Land Use Commission was tasked with multiple duties; however, to date no implementation related to legislation has been accomplished.

The commission was tasked with studying and identifying the following:

- The effects of land development on surface and ground water quality and quantity, and terrestrial and aquatic habitat.
- The adequacy and consistency of local, state and federal programs as they relate to the regulation and management of land development, including regulations of wetland buffers and setbacks, stormwater management, and cumulative effects of development.
- The opportunities for integration of land use controls, open space protection techniques, and environmental and public health protection laws to promote land development patterns that maintain ecosystem health and integrity while providing desirable communities in which to live and work. This shall include study of any programs of this kind underway in other states or nations.
- The potential legal, fiscal, regulatory and technical obstacles for creating an integrated approach to land development.
- Legislation that may be necessary to implement the recommendations of the commission.

Commission recommendations:

- Utilization of the *Method for the Evaluation of Freshwater Wetlands in New Hampshire* (revised New Hampshire Method) for determining wetland buffer distance (between 50 and 100 feet). Buffer distances should be reviewed as more scientific data and study results become available.
- Define “wetland buffers” and “indirect impacts” to wetlands.

- Compilation of data on wetlands functional value as it becomes available in order to evaluate the effectiveness of recommendation 1 (above).
- Encourage municipalities to implement wetland buffer ordinances utilizing the method proposed in recommendation to promote consistency across municipal boundaries.
- Enhance existing education and outreach programs to promote smarter growth and protect natural resources, specifically municipal boards.
- Consider new legislation to provide alternative, integrated land development permits (e.g. wetlands, stormwater, etc.) to address multiple issues in coordination. (Note that DES is already starting the process of doing this type of integration.)
- Establish incentive-based programs to promote smart growth patters of development in the state.
- Develop and implement a statewide ecological connectivity plan to maintain and restore wildlife mobility among habitats and across the landscape.

D. Groundwater Commission (SB 155) – Rep. Judith Spang, Commission Chair
(representing New Hampshire House).

This commission was originally formed in 2003, largely in reaction to the concern over the USA Springs project. The major focuses of the commission were to assess the ability to protect groundwater quantity by protecting water quality, to understand who has the right to control water and to evaluate the need for more groundwater data. The commission held nine public hearings in each of the regional planning commission regions seeking input surrounding groundwater from the local level.

The major accomplishments of the commission are:

- Establishing legislation that created the Water User Registration and Reporting Program.
- Establishing enabling legislation to allow municipalities to restrict outdoor residential lawn watering during federal or state drought declarations.
- Establishing legislation requiring accurate construction and location data for newly constructed wells.
- Establishing legislation to allow DES to develop administrative rules to regulate certain types of geothermal processes to protect water quality.
- Establishing legislation that clarified municipal authority to regulate land use that is not pre-empted by the state's large groundwater withdrawal permit.
- Establishing legislative requirements for back-up, emergency and short-term usage of large groundwater withdrawals.
- Inclusion of funding for the groundwater level monitoring network to be included in the state budget.

Additional recommendations included:

- Require private well testing for new wells and when existing homes are sold.
- Expanding the state's groundwater monitoring network.

The biggest obstacle the commission faced in implementing recommendations, besides the lack of political will, was the lack of data. The commission also looked at water conservation and the hierarchy of water users; if there is not enough water then what needs should be given priority

access to the water. Tying a fee or tax to water was also explored, though it did not get very far. It was thought that the fee should not be overly burdensome on the public or impede economic growth, but that everyone should pay something for the water they use.

E. Panel Question and Answer Session

Question: In hearing from the other commissions today, did any of you see overlap or similarity amongst the commissions?

Answer: It keeps getting back to land use and how the state is growing. Poor land use planning leads to poor infrastructure planning. As the state grows, we need to consider if we can afford to “grow” in certain places. The development of the state should be encouraged to be concentrated in areas that are already developed, that already have the infrastructure. However, there is the recognition that this cannot be overly burdensome or it will stifle the state’s economy.

Question: Regional land use planning in New Hampshire is generally considered pretty weak. Would the Regional Planning Commissions be a better place to try to implement more of these items?

Answer: New Hampshire plans town by town, so there is not much connection on land use planning between towns. There is a need to plan on a more regional/watershed level. Due to the disparity between towns, it should be done at the state level.

Question: If it needs to be at the state level, then how do we do it?

Answers: No one wants to see state-wide planning, except perhaps for developers who want consistency in the regulations.

What is being talked about is smart growth, which has been done elsewhere; New Hampshire does not need to reinvent the wheel.

We forget that in New Hampshire there is another layer of government that we do not utilize: county-level. If we are looking at a middle ground between state-level versus town-level control then perhaps we need to focus more on the regional-scale solutions. There would be a need to explore the potential costs and potential savings. Based on what the other commissions experience it seems the biggest problem is implementation. Loss of local control, property rights and impeded economic development are the biggest obstacles this Commission will need to overcome.

Comment was made that there may be a “sweet spot” for action between the state and local levels – county or inter-municipality (e.g., Southeast Watershed Alliance).

Question: Towns often struggle with a lack of technical expertise. Would the state taking control of some of the burdens mentioned actually be a relief to the towns?

Answer: The burden on towns is there, but not the main issue. Consistency and repeatability in regulations is a greater issue than making some areas easier to develop.

Question: Does the scientific rationale that goes into a state standard help to dissolve the political trepidation of these towns feeling that a state standard is not strict enough or is overly strict and thus encourages more uniformity?

Answers: The science on these standards is not always cut and dried; at some point a policy decision will need to be made about balancing the competing needs and interests.

This group needs to look at what issues can be addressed at the regional level in the state, as it seems to be the point where implementation may best be achieved.

One item Governor Lynch specifically mentioned is that this Commission should try not to get caught up on cost at this point. Several Commission members expressed their understanding of the Governor's point; however, there is a need for the Commission to frame the context/relationship between costs/valuation and sustainability and perhaps to assign real dollars to some items since addressing issues down the road will only become more costly.

A summary of the big picture, cross-cutting issues for all the water-related commissions include:

- Valuation/costs – fee structures and how we value scarcity.
- Appropriate scale for action.
- Access and rights to water resources.
- Constituency – need for people to listen to each other, change behavior.
- Science-based decision-making though recognizing that we will likely never know everything there is to be known.

III. Working Group Updates

On October 17th, John and Marcy met with Governor Lynch who reaffirmed his interest in the Commission's work and his commitment to be involved in the public outreach sessions if possible. He also indicated his willingness to reference the Commission's work in talks he gives. John and Marcy will work with the Governor's Office to develop some regionally specific talking points for him (to be discussed at the November Commission meeting) and to see if his schedule will allow for him to attend one or more of the public sessions.

A. Public Engagement Subcommittee

Denise met with Bruce Mallory of the UNH Carsey Institute to discuss possibly working with the group to help facilitate and organize the public outreach sessions using a technique called "deliberative democracy". This is the group and technique used by the Department of Resources and Economic Development to develop the updated State Comprehensive Outdoor Recreational Plan. The sessions would be held simultaneously in each Executive Council district to improve the sessions' reach; these would be held in the January/ February/March timeframe. Utilizing New Hampshire Listens and Leadership New Hampshire for some of the facilitation, organization, etc., of the public sessions may be possible. The Carsey Institute could cost approximately \$20,000, and they could have a report to us on the public sessions' outcome by May.

Denise submitted a letter of intent to a private foundation for \$10,000 that could be used to help fund the Carsey Institute work. Due to the foundation's deadline, the application was submitted prior to this Commission meeting. She requested the Commission's support to move forward with the foundation. The Commission encouraged her to continue to move forward with the potential funding and with the Carsey Institute.

The subcommittee met just prior to today's Commission meeting to discuss the content of the public listening sessions and the outreach list that was sent out to the Commission.

B. Implementation Subcommittee

Virginia and Kris met briefly before this Commission meeting to try the draft template the subcommittee developed using a specific case, i.e., phosphorous in fertilizer entering waterways. In working through the template, they found that they did not have all the information they needed, and that without knowing what the Commission recommendations are going to be they could not get very far without the entire Commission. It was requested that at an upcoming Commission meeting the agenda focus on the recommendations the Commission is going to make. It was suggested the subcommittee start with those recommendations of the water-related legislative commissions and those findings from the *New Hampshire Water Resources Primer*.

Several Commission members pointed out the need to create higher-level, long-term recommendations that will not just be reiterations of the other commissions' work. The plan and recommendations that come out of this Commission should not just sit on a shelf, but need to be utilized. The plan needs to include long term goals accompanied ways to measure progress towards sustainability, indicators/benchmarks/measures to ensure that the implementation and impacts of recommendations can be tracked with regard to ensuring the long-term sustainability of the state's water resources.

The implementation template draft was requested to be sent to the entire Commission.

C. Information Needs Subcommittee

The subcommittee has not met since the last Commission meeting; however, the panel discussion for today's meeting was arranged. Cameron Wake from UNH is not able to attend the November meeting to discuss climate change impacts, but will be able to attend the December meeting. Alison will see if Ken Johnson may be able to speak to the Commission at the November meeting.

Request was made for informational sessions in two areas:

1. Water policy and law: briefing on existing principles, policies and laws that govern ownership, access and rights as well as strategies that might require different approaches to achieve sustainability
2. Water valuation: how is water currently valued (rate structures), costs covered etc. – what are some strategies/other approaches that promote sustainability?

IV. Public Comment

No public comments were offered.

Meeting adjourned at 5:00 pm.

The next Commission meeting is scheduled for Tuesday, November 15, 2011 from 2:00 to 5:00pm at the New Hampshire Fish and Game Department, 11 Hazen Drive, Concord, NH.