

WATER COUNCIL MEETING

NH Dept. of Environmental Services
11 Hazen Dr., Concord, N.H.

December 8, 2010
9:00 a.m.

Members present: Vice Chairman Christie, Councilors Butler, Cowan, Densberger, Gosse Harrington, Henderson, Hinds, Lyons, Rastallis, Rawnsley, and Varotsis

Members absent: Councilors Barrett, Czysz, and Dupee

Vice Chairman Christie called the meeting to order at 9:05 a.m. and thanked those in attendance.

1. Approval of Minutes of November 10, 2010 Meeting

- *A motion was made by Councilor Densberger to approve the minutes of November 10, 2010, second by Councilor Butler. The Council unanimously approved.*

3. Env-WQ 1000 Amendments to Subsurface Rules

Rene Pelletier, Assistant Director and Rob Tardif, Subsurface Acting Administrator Questions to changes to Env-Wq 1000 were discussed. There were a number of questions raised but the Council agreed to allow the rules to go public and for the Council to still discuss further at the January 12th meeting.

4. Env- 1900 Environmental Quality Re-adoption Rules for the Protection of Instream Flow on Designated Rivers

Laura Weit-Marcum, Watershed Management Bureau
There are no changes or amendments to these rules. Interim rules are specified standards and criteria procedures for the protection of the instream rules program under RSA 40 to establish and enforce instream flows for designated rivers. Pilot projects are in place right now for the Lamprey and Souhegan Rivers.

- *Councilor Varotsis made a motion to concur with the plan to re-adopt Environmental Quality 1900 rules, second by Councilor Butler. Discussion was held. Motion passed unanimously.*

4. Other Business

Director Stuart announced that the new public member and council chair nominee, John Gilbert should be voted on today by the Governor and Executive Council.

Also a proclamation from the governor for John Bridges is ready. A luncheon for John will be set up in the future.

Vice Chair Christie opened up discussion in regards to the appeals and hearings process. She reviewed the Decision and Orders that are awaiting completion. It was noted development of a template would help as would access to a transcript of the hearing. The decision incorporates the whole council and how they came to their decision. Attorney Blenkinsop explained the attorney general's position, which is to just assist. He clarified the

question of when will the AG's office will utilize SB480 hearings officers that are not members of this council. Possible relief will be in the new biennium when the funding issue is resolved. He encouraged attendance at the training at the end of the week. Copies of the training materials may be available also. He will get try and get examples for guides on decisions and orders. He encouraged the council to consider when they deliberate to think of it as helping the presiding officer to set forth what findings are being made as a council. Findings of Fact and Findings of Law are guidance from deliberations.

The discussion regarding a quorum at our meetings and the number of meetings cancelled then ensued. It was encouraged to re-commit to attendance. The council gave their ok to call the appointee who has not been attending consistently.

2. Status of Appeals

Amy Samson, Appeals Clerk, presented an update on a number of appeals and requested Council action on several, as noted below.

I. New Appeals.

Docket No. 10-25 WC – Robert Van Dyke and Van Dyke Construction, Inc.

RE: October 24, 2010 Administrative Order no. 10-042 WD

Presiding Officer: Not Assigned

Status: Appeal was received on November 23, 2010. The appeal is insufficient and notice has been sent to the parties.

II. Previously pending cases.

Docket No. 04-19 WC - Town of Newport

RE: Denial of a Request for Waiver of Env-Ws 386.56(h)(12), (14), (18)

Presiding Officer: Joel Harrington

Status: Originally expected the appeal to be withdrawn by this Council meeting but hasn't. A request for status will be sent today to the parties.

Docket No. 08-54 WC - Loretta Simonds

RE: 8/8/08 Decision on Request for Reconsideration

Presiding Officer: Christopher Rawnsley

Status: A hearing is scheduled for January 9, 2011 at 10:00 a.m.

Docket Nos. 08-57 & 08-59 WC - Eric W. Waleryszak, Brian T. and Adela J. Griset Appeal

RE: Notice and Decision on the Determination of Lake Level issued by DES on 9/29/08

Presiding Officer: Christopher Rawnsley

Status: A Pre-Hearing Conference(PHC) is scheduled for January 27, 2011 at 10 a.m.

Docket No. 09-05 WC - North Country Alliance for Balanced Change (Dalton Valley Drag)

RE: 12/12/08 Alteration of Terrain Permit WPS 8289 for Dalton Valley Drag

Presiding Officer: Christopher Rawnsley

Status: At the last Council meeting, the Council requested status from the parties. The parties have yet to respond so a follow up letter will be sent.

Docket No. 09-14 WC - Andrew and Karen Goldstein

RE: 3/17/09 Administrative Order No. 09-006 WD

Presiding Officer: Christopher Rawnsley

Status: An Assented-to-Motion to Continue for 60 days was filed and granted by Councilor Rawnsley. A hearing is scheduled for March 9, 2011 at 10:00 a.m.

Docket No. 09-24 WC – Lake Sunapee Protective Association

RE: 4/16/09 Alteration of Terrain Permit WPS-8382

Presiding Officer: Stephen Densberger

Recused Members: Carol Henderson; Johanna Lyons; and Nancy Christie

Status: A hearing was held on October 13, 2010. Day 2 and Day 3 (if needed) is scheduled for January 4 and 5, 2011 at 8 a.m.

Docket No. 09-34 WC – Ashuelot Pond Association

RE: 8/28/09 Notice of Decision on Determination of Lake Level for Ashuelot Pond Dam Village District

Presiding Officer: Christopher Rawnsley

Status: A PHC is scheduled for January 27, 2011 at 11 a.m.

Docket No. 10-09 WC – Lake Waukewan

RE: Notice of Decision, Interim Operating Level issued by DES on 4/12/10

Presiding Officer: Christopher Rawnsley

Status: A PHC is scheduled for January 27, 2011 at 9 a.m.

II. Decisions that need to be written, finalized and issued.

Docket No. 04-18 WC – Thaddeus Dymon

RE: Denial of a Request for Waiver of Env-Ws 386.56(h)(12), (14), (18)

Presiding Officer: Joel Harrington

Status: Council dismissed at the September 8, 2010 Council meeting. A Decision and Order needs to be finalized.

Docket No. 08-27 WC - Moody Point Company

RE: 5/19/08 Administrative Order No. 08-027 WD

Presiding Officer: Christopher Rawnsley

Status: A decision and order is currently being drafted. It was expected that it would be ready for the Council to review by this meeting, but it will not be ready until the January 12, 2011 meeting.

Docket No. 08-29 WC - Silver Lake

RE: Notice of Determination of Natural Mean High Water Mark Evaluation dated 5/29/08

Presiding Officer: Stephen Densberger

Status: A decision and order has been drafted and is currently being reviewed by the Council's attorney. A final copy will be ready for review by the Council at the January 12, 2011 meeting.

Docket No. 08-61 WC - Norman and Patricia Bureau

RE: 11/4/08 Administrative Order No. 08-044 WD - Alteration of Terrain at 5 Christopher Road & 6 Steep St., in Merrimack

Presiding Officer: Joel Harrington

Status: A decision and order is currently being drafted. It was expected that it would be ready for the Council to review by this meeting, but it will not be ready until the January 12, 2011 meeting.

Docket No. 09-27 WC – Homes for a Life Time, LLC

RE: 5/28/09 Denial of Alteration of Terrain Permit Application No. 081231025

Presiding Officer: Christopher Rawnsley

Status: A decision and order is currently being drafted. It was expected that it would be ready for the Council to review by this meeting, but it will not be ready until the January 12, 2011 meeting.

The issue of whether a councilor can hear a case based on 'association' was discussed. Attorney Blenkinsop said the primary concern would be if the councilor came to the case impartially or inclined to find in favor because of a professional relationship. If not, then there doesn't seem to be an appearance of impropriety.

It was also discussed what the council's options were when appellants don't appear for their hearings. Attorney Blenkinsop reminded the council they are like a judge, use their best discretion and judgment, be flexible and reasonable, but if a multiple request - be vary wary. Endeavor to give as much notice as possible, at least 20 or 30 days when scheduling.

In regards to the 'in camera' review question in the Lake Sunapee Protective Association, it has been advised that the hearings officer is the one that does the review.

5. Env-Wq 1708 Amendments to the Water Quality Regulations

Paul Currier, Watershed Bureau Administrator

The Water Quality Standards Advisory Committee has been working together for almost 10 years. The amendments distributed have been approved by consensus by the advisory committee. Current rules prohibit transfers of water. The modifications begin at 1708.12 regarding transfers. There are also further modifications to the anti-degradation provisions of rules. All proposed transfers would need to go through the full anti-degradation process under the new proposals. These rules are not on a strict timeline. Paul was asked to come back for questions in February.

A short recess was taken.

Meeting reconvened at 11:10

6. Background Information on Lake Level Analysis

Jim Gallagher, Dam Bureau Administrator

Authority for the lake level investigations is in RSA 482:79-83. They were first enacted in 1937, concerning the use and enjoyment of the state waters. This applies to every water body with a dam on it, privately or state owned dams. In 1986, when DES was formed, it became our responsibility. There is a two phase process to begin an investigation. It can begin when a petition is received from 10 property owners or from the attorney general's office or if the dam bureau sees a need. The second phase is a public hearing. There are then 3 possible outcomes: 1) no serious impacts from present management/no change 2) changes would be of benefit without undo injury to the dam owner 3) changes would be of benefit but there are damages to the dam owner. There is then the appeal process if it is felt necessary.

7. Legislative Update

Director Stewart

A handout of LSRs the department is watching was reviewed. It is still mainly titles of LSRs and it will be necessary to watch the House and Senate websites for actual bill language. Of concern are the bills reducing fees. Work is still being done on the 2012-2013 budget.

8. Other Business, Continued

This was Council Cowan's last meeting and the Council thanked him for his 20 plus years of service.

Council went into Executive Session.

9. Next Meeting

Next meeting will be January 12, 2011 at 9 a.m.

10. Adjournment

- ***Councilor Varotsis made a motion to adjourn, second by Councilor Harrington. Motion passed unanimously.***

Meeting was adjourned at 12:00 p.m.