

Bill as Introduced

HB 1348 - AS INTRODUCED

2010 SESSION

10-2309
06/04

HOUSE BILL **1348**

AN ACT relative to enforcement of surface water classification.

SPONSORS: Rep. Spang, Straf 7; Rep. Kappler, Rock 2; Rep. Abbott, Rock 12; Rep. Kaen, Straf 7; Rep. G. Richardson, Merr 4; Sen. Fuller Clark, Dist 24; Sen. Cilley, Dist 6; Sen. Merrill, Dist 21; Sen. Odell, Dist 8

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill clarifies the enforcement of classification for surface water.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to enforcement of surface water classification.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Water Pollution and Waste Disposal; Enforcement of Classification. Amend RSA 485-A:12, I
2 and II to read as follows:

3 I. After adoption of a given classification for a ~~[stream, lake, pond, tidal water, or section of~~
4 ~~such]~~ **surface** water, ~~[the department shall enforce such classification by appropriate action in the~~
5 ~~courts of the state, and]~~ it shall be unlawful for any person or persons to ~~[dispose of]:~~

6 (a) **Discharge** any sewage, industrial, or other wastes, either alone or in conjunction
7 with any other person or persons, in such a manner as will lower the quality of the ~~[waters of the~~
8 ~~stream, lake, pond, tidal water, or section of such]~~ **surface** water below the minimum requirements
9 of the adopted classification~~[-]; or~~

10 (b) **Cause, allow, or contribute to any other activity that lowers the quality of**
11 **the surface water below the minimum requirements of the adopted classification,**
12 **including but not limited to diversion of water, removing trees or other riparian vegetation**
13 **so as to alter water temperature, or increase the potential for stormwater run-off.**

14 **I-a.** If the department shall set a time limit **under paragraph II** for abatement of pollution
15 ~~[under]~~ **or for cessation or modification of an activity that is prohibited by** paragraph ~~[H]~~ **I,**
16 and it becomes apparent at any time during the compliance period that full compliance with the
17 adopted classification will not be attained by the end of such period due to the failure of any person
18 to take action reasonably calculated to ~~[secure abatement of]~~ **abate the pollution or to cease or**
19 **modify the activity** within the time specified, the department shall notify such person or persons in
20 writing. If such person or persons shall fail or neglect to take appropriate steps to comply with the
21 classification requirements within a period of 30 days after such notice, the department shall seek
22 appropriate action in the courts of the state.

23 II. If, after adoption of a classification of any ~~[stream, lake, pond, or tidal water, or section of~~
24 ~~such]~~ **surface** water, including those classified by RSA 485-A:11, ~~[it is found]~~ **the department finds**
25 that there is a source or sources of pollution, **or any other activity is occurring,** which ~~[lower]~~
26 **lowers** the quality of the waters in question below the minimum requirements of the classification so
27 established, the person or persons responsible for the ~~[discharging]~~ **discharge** of such pollution **or**
28 **for causing, allowing, or contributing to the activity** shall be required to abate such pollution
29 **or cease or modify the activity** within a time to be fixed by the department. If such pollution is of
30 municipal ~~[or industrial]~~ origin, the time limit set by the department for such abatement shall be not
31 less than 2 years nor more than 5 years **unless the discharge can reasonably be abated in less**

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1 *than 2 years.* For good cause shown, the department may from time to time extend any time limit
2 established under this paragraph. Any determination by the department under this paragraph shall
3 be subject to appeal as provided for in RSA 485-A:19.

4 2 Effective Date. This act shall take effect upon its passage.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 1348

BILL TITLE: relative to enforcement of surface water classification.
DATE: February 9, 2010
LOB ROOM: 305 **Time Public Hearing Called to Order:** 10:30 a.m.
Time Adjourned: 11:15 a.m.

(please circle if present)

Committee Members: Reps. Spang, Tupper, Parkhurst, Moody, Aguiar, Gottling, Hubbard, Kepner, Thomas, C. Williams, McClammer, D. Russell, Renzullo, C. Christensen, Ahlgren, Kappler, Spaulding, Bolster, T. Howard and St. Cyr.

Bill Sponsors: Rep. Spang, Straf 7; Rep. Kappler, Rock 2; Rep. Abbott, Rock 12; Rep. Kaen, Straf 7; Rep. G. Richardson, Merr 4; Sen. Fuller Clark, Dist 24; Sen. Cilley, Dist 6; Sen. Merrill, Dist 21; Sen. Odell, Dist 8

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Lawrence Kappler - Supports the bill.

Steve Del Deo, Executive Director, NH Waterworks Association - Opposed to bill. Six members who currently divert water and others who may do it in the future. Depend on diversion to meet certain demands. Often crucial for citizens. Could be costly for municipal systems to meet water quality standards as written in bill.

Rep. Aguiar: Why do you divert water? ANS: To meet demands, particularly in summer. For example, Arlington Pond is part of system that feeds Canobie Lake. Concord diverts water from the Merrimack to meet summertime demands.

Rep. Tupper: Line 10. Talking about quality of water. Don't you think that is important? ANS: Absolutely. Our concern is anybody who didn't want to see that diversion could hire an attorney to delay the diversion and then how do you demonstrate in a short period of time that you are not lowering the water quality?

Rep. McClammer: Are you basically talking about withdrawals or is it diverting from one watershed to another? ANS: Not clearly defined in here- If it was a hard pipe or digging a trench or through dams...

Rep. McClammer: What aspect of the bill is a problem for your organization? ANS: Can't see how the time would be possible to show degradation. Concerned if this conforms to federal standards. Don't know.

Rep. Renzullo: Does this apply to times of drought when sources might be very low? ANS: Believe DES commissioner has the ability to intervene in drought times. Would this circumvent that? ANS: Not sure I can answer that.

Rep. Parkhurst: I'm having an echo that we have been through this before. My fear is NH water leaving NH when we need it. Can Commissioner nullify contracts when we are having a problem here? ANS: DES person behind me can answer that. In cases I am talking about we are not diverting water out of state. Has nothing to do with bottled water.

Rep. Howard: Where in bill is there talk of quality of water and you can't divert from one watershed to another? ANS: Line 12 says including but not limited to diversion of water.

*** Paul Currier, NH Department of Environmental Services (DES) - Supports the bill.**
Purpose is to provide Department with enforcement for full range of surface waters of NH. Does not create any new authorities. Does provide for penalties for violation of standards already in place. Quality is a bit of a misnomer. Interplay between statute, state rules, and federal CWA. Must pay attention to aquatic life in rivers, streams. No one can dry up the river by diversion regardless of what the entity is. You can divert but only to a point. That is one example of water quality. 1305 has been interim-studied and the Water Quality Advisory Committee has agreed to work with RR&D subcommittee to clarify issues. We could accept an interim-study on this bill and combine it with 1305.

Rep. Moody: Paragraph in doubt from previous testimony; clarified. ANS: Public water supply is a designated use but you can't ignore aquatic life or recreation.

Rep. Howard: Stuck on diversion issue. If we have to drain the water and may devastate the aquatic life, do we not do it and folks go without water? ANS: Commissioner has the power under designated rivers (RSA 483) to prescribe a modification of the protected flows. There are safety valves.

Rep. McClammer: Resonates with HB 222. Not sure if this is very helpful. Is there any way to protect waters not presently covered? ANS: Two ways water quality standards works. Can approve, deny or place conditions on uses. Sometimes failure to meet standards is discovered after the fact. DES is responsible for setting up mitigation and following through that it is done.

Rep. McClammer: Is there nothing we can do except federal. ANS: Permit programs work with standards and try to make sure the water quality standards are adhered to.

Rep. McClammer: But sometimes it is the cumulative effect that causes the problem.
Ans. Agree. Good example is the Great Bay Estuary. Just about every property produces nitrogen that gets to the Great Bay. Needs everyone to work to prevent or fix it.

Rep. Kepner: When we get to the point where we need to do these withdrawals, would there not be a ban or limitation put on the use of water? Who has the right to put a ban on use? ANS: Exists in public water supply rules. Will be developing conservation plans. Presently doing pilot studies on Souhegan and Lamprey rivers.

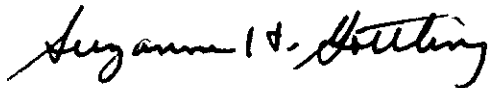
Ken Rhodes and Gary Abbott, Associated General Contractors - Abbott: Opposition to bill. Under 1305 testified together. There were some conflicting definitions. Lines 3 and 4 a concern. Broadens the scope of what we think is intended. Highways have settling ponds and these might be included. Agree that this bill with 1305 should be interim-studied. Rhodes: Currier's clarification good. Paragraph b starts at line 10 and phraseology is too broad, is it wetlands or uplands activity? I can remember when Canobie Lake almost ran out of water and Arlington Pond residents complained. Whatever the interpretation of lowering water quality is, needs to be clearer. Appreciates continued reminder that it is the small accumulation of problems that ultimately adds up and can change water quality. Generalized language could be looked at as retroactive. Brings up many more complex issues. Use interim study as a vehicle to come up with a clear bill.

Larry Morse: Representing NHANRS: Opposes the bill. Dana Bisbee previously presented our concerns with 1305. They are the same with this bill. Bill is important but want it fully understood and able to be implemented properly. Change to definition of surface water to include all wetlands in the state is a problem: DES says definition is already in rules and now needs to be put into statute. Concern to us. Includes small isolated pockets of wetlands. Science about what is appropriate water quality for those pockets is not robust. Our concern is not that this isn't needed but we need to have a better understanding of intent and what comes under these standards. Very unclear. Advisory Committee agreed to include NHANRS. We agree that interim study and input from WQAB and RR&D needed. Regulated public needs to understand.

Rep. Tupper: This bill as presently drafted muddies the waters.

Rep. McClammer: Agree with about 98% of what you said. Reiterate that cutting of trees in upland or wetland not prohibited. If we refined it to say wetlands with surface waters, would that solve your problem. Not all wetlands have surface waters. If we take a subset, would that help? ANS: Agree that there probably is a subset and such would go a long way toward solving our objection.

Respectfully submitted,



Rep. Suzanne H. Gottling
Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 1348

BILL TITLE: relative to enforcement of surface water classification.

DATE: 2/9/10

LOB ROOM: 305

Time Public Hearing Called to Order: 10:30 a.m.

Time Adjourned:

(please circle if present)

Committee Members: Reps. Spang, Tupper, Parkhurst, Moody, Aguilar, Gottling, Hubbard, Kepner, Thomas, C. Williams, McClammer, D. Russell, Renzullo, C. Christensen, Ahlgren, Kappler, Spaulding, Bolster, T. Howard and S. Cyr.

Bill Sponsors: Rep. Spang, Straf 7; Rep. Kappler, Rock 2; Rep. Abbott, Rock 12; Rep. Kaen, Straf 7; Rep. G. Richardson, Merr 4; Sen. Fuller Clark, Dist 24; Sen. Cilley, Dist 6; Sen. Merrill, Dist 21; Sen. Odell, Dist 8

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Public Hearing on HB 1348

Relative to enforcement of surface water classification

2/9/10 LOB 305 10:30 a.m.

Introduced by Rep. Kappler: Supports the bill.

Steve Del Deo: Ex. Dir. NH Waterworks Assoc. Opposed to bill. Six members who currently divert water and others who may do it in the future. Depend on diversion to meet certain demands. Often crucial for citizens. Could be costly for municipal systems to meet water quality standards as written in bill.

Rep. Aguiar: Why do you divert water?

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MCC. What aspect of the bill is a problem for your organization.

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Ans. Believe DES commissioner has the ability to intervene in drought times. Would this circumvent that?

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Ans. Line 12 says including but not limited to diversion of water.

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McClammer: Is there nothing we can do except federal.

Ans. Permit programs work with standards and try to make sure the water quality standards are adhered to.

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Ans. Agree that there probably is a subset and such would go a long way toward solving our objection.

Adjourned 11:15 a.m.

Sub-Committee Actions

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

SUBCOMMITTEE WORK SESSION ON HB 1348

BILL TITLE: relative to enforcement of surface water classification.

DATE: September 21, 2010

Subcommittee Members: Reps. McClammer, Spang, and Kappler

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. Spang

Seconded by Rep. McClammer

Vote: 3-0

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Judith Spang
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

SUBCOMMITTEE WORK SESSION ON HB 1348

BILL TITLE: relative to enforcement of surface water classification.

DATE: September 21, 2010

Subcommittee Members: Reps. McClammer, Spang, and Kappler

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. Spang

Seconded by Rep. McClammer

Vote: 3-0 /

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. *Julie H Spang*
Subcommittee Chairman/Clerk

Sub-Committee Minutes

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

SUBCOMMITTEE WORK SESSION ON HB 1348

BILL TITLE: relative to enforcement of surface water classification.

DATE: April 27, 2010

Subcommittee Members: Reps. McClammer, Spang, Kappler, Gottling, Renzullo, and Moody

Comments and Recommendations: Please see attached notes.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Jim McClammer
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

SUBCOMMITTEE WORK SESSION ON HB ~~7488~~

1348

BILL TITLE: relative to enforcement of surface water classification.

DATE: April 27, 2010

Subcommittee Members: Reps. McClammer, Spang, Kappler, Gottling, and Moody

Bozallo

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

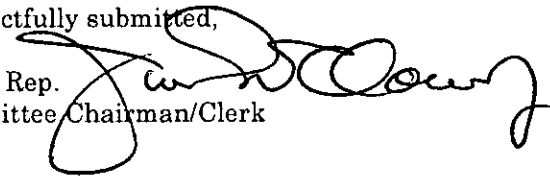
Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk



Present: Chair, Rep. McClammer

Reps: Bolster, Gottling, Moody, Spang, Renzullo, Tupper
Phil Trowbridge, DES, Jillan McCarthy, DES,
Gary Abbot & Andrea Johnson, Assoc. General Contractors, Kathy Corey Cox,
Marine Trades, Joel Anderson, Kathy Veracco, Pennichuck Water

P. Trowbridge explained why DES wanted the bills:

1. clarify the definition of "surface waters"
2. specify what "beneficial uses" are
3. incorporate federal Clean Water Act anti-degradation standards into State statutes
4. develop enforcement policies and procedures for not just discharges, but also other activities impacting water quality.

Trowbridge then described the Water Quality Standards Advisory Committee, which will be studying the bills' issues and making recommendations to the RR&D Committee for legislation:

It is an ad hoc advisory committee created by DES to review changes in water quality standards, comment on rulemaking proposals and on Guidance documents written by DES.

Rep. McClammer distributed the list of members of the WQSAC and the topic subcommittees they have been assigned to for this work. Trowbridge added that The Associated General Contractors and NH Assoc. of Natural Resource Scientists have requested that they be added to the Advisory Committee for the purposes of working on these two bills.

On May 10th each subcommittee will meet consecutively at DES. Tasks will be assigned to DES and members to explore for the next meeting. The RR&D reps. Pointed out that the schedule proposed for the WQSAC's final recommendations needs to be moved up from late in October to late in September in order to allow RR&D to prepare its final Interim Study report by Nov. 1st. Rep. Spang suggested that RR&D may want to have a public meeting on the results between mid-Sept. and mid-Oct. to take public input on the recommendations. She was particularly concerned that although the Advisory Committee was a widely-representative group, few if any conservationists on the Committee had volunteered to work in these subcommittees, with the potential that recommendations might not represent their points of view.

Rep. Kappler suggested that the four categories in the bills be divided into 4 separate bills so the statutes don't get too complex, like the Shoreland statute.

The discussion then turned to the elements of the work plan.

Anti- degradation: In 2008 the Alteration of Terrain rules were revised, including anti-deg for the first time. However, the issue became difficult and it was pulled out, and an Anti-Deg. Working Group was formed to address the issue. It was dissolved after 6 months, saying the issue should be covered in statute, not Rule.

The State has adopted federal anti-deg provisions verbatim and J. McCarthy said it was easy to put them into state statute. However, it is difficult to work out the implementation. Implementation of anti-deg through AOT is a good first step, but needs to be applied more broadly (eg., adding it to the EPA municipal stormwater permit, EPA general construction permits, and even NPDES?) Jillian McCarthy felt that implementation of anti deg is beyond the scope of HB 1305, which just covers anti-deg through existing DES Rules and policy.

Phil Trowbridge explained that implementation should be considered as the nuts and bolts of interpretation for a specific water body--- how much degradation is acceptable? (eg., number of water quality samples taken, calculations, etc.) RSA 485-12:I give sDES the authority to enforce anti deg. Generally, not just discharges, as in A:12 II. However, 12:I is vaguely worded and in need of being shored up by more specific language.

In response to Rep. Renzullo's concern that a characteristic in a water body could be deemed beneficial or not according to the "eye of the beholder" Trowbridge added that there could indeed be a different designated use for each different water body. For example, one water body might be highly valued for trout habitat, implying protection of cooler water, while another might not.

Definitions:

Gary Abbott stated that one of their primary concerns during the hearing had been the issue of definitions of terms (eg., "new and existing point sources") . It feeds into all the other issues. Jillian McCarthy explained that the CWA clearly lays out beneficial uses, but these are not in state statute anywhere but in assessment guidelines, used to determine whether a water body is impaired under the 303-d statutes. DES proposes adding to the federal list of uses "geomorphologic integrity" to take into consideration flooding, erosion, etc.

This would be implemented through RSA 45-a:12 for enforcement of water body classifications. In response to a concern of Rep. Spang, P. Trowbridge stated that the "classification" system is not very nuanced, but to fix it would be a major issue.

DES is asking the Attorney General's office and EPA to attend the May 10th meeting on definitions.....DES's Ted Walsh is assembling various state and federal definitions, which will be sent out before the meeting.

The meeting ended at 10:45 with all subcommittee members being urged to attend the whole day of WQSAP meetings on May 10th.

Respectfully submitted,
Rep. Judith Spang

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

SUBCOMMITTEE WORK SESSION ON HB 1348

BILL TITLE: relative to enforcement of surface water classification.

DATE: June 8, 2010

Subcommittee Members: Reps. McClammer, Spang, Kapler

Comments and Recommendations: Please see attached notes.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Judith Spang
Subcommittee Chairman/Clerk

MINUTES, INTERIM STUDY COMMITTEE ON Hbs 1305 AND 1348

June 8, 2010

Present: Reps. McClammer, Spang, Kapler,

DES Paul Currier, DES, Brandon Kernan, Jacquie Colburn, Paul Susca and others

Members of the Water Quality Standards Advisory Committee

EPA Ellen Weitzler

Recommendation of HB 1348-- Unanimous vote of by WQSAC and McClammer, Spang and Kapler --ITL because it is already covered by existing regulations.

HB 1305: Anti-Degradation-- 2 alternative approaches:

1)adopt federal 40CFR 131:12 regs into NH statutes; or

2)Ask DES to adopt rules relative to anti-degradation.

3)Federal regulations do not specify a "de minimus" level of degradation below which activities will be excluded from review. NH has this in Rule, which has been challenged as having not statutory basis. If we re-design our classification system of all water bodies, we need to take the first option to provide that flexibility.

4)By unanimous vote, it was recommended that we adopt p.2, line 8 (485-A:9-b) of HB 1305 to implement Alternative #1.

Definitions _fresh waters + tidal waters = surface waters.

Some wetlands are surface waters, but this has to be determined in each permitting program (eg. Wetlands permitting), except for subsurface and alteration of terrain permits, which use this definition already.

A proposed addition to 482-A is "fresh waters are wherever fresh water flows or stands "during any season of the year" so it is clear it can't be just one day, but a whole season. McClammer-- adding duration only confuses things. All agreed to omit "during any season of the year."

Agreed on a definition of surface waters of "surface waters means fresh water and tidal water", deleting all illustrative words such as "bogs, marshes"... etc.

HB 1305, Section XIV: Three options:

1. Surface waters defined only as "fresh and tidal waters", including wetlands with standing or flowing water.
2. Change the definition as proposed in the bill
3. include the illustrative words (swamps, bogs and other wetlands)
4. Go back to the existing definition (drop the words "waters of the state")

Unanimously agreed to "surface waters means fresh waters and tidal waters, including wetlands with standing or flowing water." (moved Spang, second McClammer)

Unanimously agreed to the definition of fresh water as "fresh waters means wherever fresh water flows or stands, excluding groundwater." (moved Kappler, second Ken Rhodes).

Definition of jurisdictional wetlands

For issuing a 401 certification, DES wants to add the words "and are waters of the US under the Federal Clean Water Act." This would mean that a wetland would now need to meet 4 criteria to qualify as jurisdictional, and it would be assumed that there is a nexus to navigable waters (as required by fed.. CWA) unless the applicant applies to the Army Corps to have it proved that there is no nexus. (an unlikely effort for all but definitive situations.)

Under NH statute (482-A, wetland permit) "nexus" is not necessary to make a wetland jurisdictional.

The ramifications: if a water body is excluded because it does not meet the 4 federal criteria, it would not have to support Designated Uses.

Unanimous: (Rhodes moved, McClammer second) to add to the definition of wetland "and are waters of the US under the federal Clean Water Act."

Classification of Water Bodies

Paul Currier presented an alternative to the current "A/B" classification system. Each of the 60,000 Assessment Units that water bodies are broken up into, would get individual Designated Uses. (ie., each would have the 7 Designated Uses determined specifically.)

The process would involve:

1. Getting EPA approval of this approaches
2. developing a process for assigning DU's for every Assessment Unit
3. get public involvement in deciding those Dus for water bodies locally

4. Now, a designated use cannot be removed from a water body without EPA-approval, which requires a "use attainability" analysis.

There would be generic criteria proposed for DU's, which would then be refined and changed according to the public process. DES would set the water quality standards for each use, so public dialogue would be about the uses to be protected, not the water quality standards. The TMDL model would be used, where upstream AU's would be responsible for maintaining water quality for downstream ones.

Discussion ensued about whether the goals for a water body should be established based on its condition now, or what it could be?

It was pointed out that this system allows us to do long term planning for the state (where should recreation occur? Where industrial uses?) Spang said that some DUs should be a State decision, not a local or legislated one – e.g., maintaining endangered species. McClammer said that the DU system needs to be broadened beyond the 7 now used, and we will need experts able to determine certain DUs that must be maintained.

Through "tiered uses" goals for a DU would be on a scale, eg. For swimming, based on the frequency with which the water body is used for that purpose.

Discussion occurred relative to how to deal with designated uses that conflict, or conflicts between conditions under a natural state vs. those desired for a DU.

Jasen Stock asked who is obliged to abide by regulations, and how will they be enforced?

Paul Currier replied that it would be the same system as is now used. DES already has enforcement capability under the Clean Water Act. There is a collective obligation of all upstream discharges and uses to abide by the CWA.

Unanimous: in HB 1305, deleted Section 4. (p. 1, line 25.....deleted all of 485-A:9-a that lists "Designated Beneficial Uses" , since it is all now "between the lines" of state and federal regulations. Moved by McClammer, second by Kappler.

A unanimous straw vote: ask Paul Currier to proceed with development of this new system of classification of water bodies.

Respectfully submitted,

Rep. Judith Spang

**Water Quality Standards Advisory Committee
Meeting Minutes
NH Department of Environmental Services
March 24, 2010**

Members Present:

Robert Ball	NH Association of Conservation Commissions
Dan Blais	NH Home Builders Association
John Hodsdon	Farm Bureau
Mark Hutchins	Normandeau Associates
Tracy LaChance	BIA, Rath, Young & Pignatelli
Eileen Miller	Association of Conservation Districts
Larry Morse	NHNARS
Peter Rice	NH Municipal Association
Ken Rhodes	Associated General Contractors
William Schroeder	NH Lakes Association

Others Present:

Bill Arcieri	VHB
Dan Blais	Home Builders Association
Dave Cedarholm	Town of Durham
Neil Cheseldine	Wright-Pierce
Jim Fitch	Woodward & Curran
Steve Goddard	Hoyle, Tanner & Associates
Mike Metcalf	Underwood Engineers
Steve Goddard	Hoyle, Tanner & Associates

DES Staff Present:

Jeff Andrews	NHDES Wastewater Engineering Bureau
Jacquie Colburn	NHDES for Bud Barry of LMAC
Paul Currier	NHDES Watershed Management Bureau, Administrator
Bob Estabrook	NHDES Watershed Management Bureau
Lisa Fortier	NHDES Watershed Management Bureau
Wayne Ives	NHDES Watershed Management Bureau
Jillian McCarthy	NHDES Watershed Management Bureau
Dan Mattaini	NHDES Dam Bureau
Dave Neils	NHDES Watershed Management Bureau
Phil Trowbridge	NHDES Watershed Management Bureau

1:30 – 1:35 Introductions William Schroeder

Introductions were made around the room.

1:35 – 1:45 Approval of 1/27/2010 Meeting Minutes William Schroeder

Larry Morse – The correct acronym for the New Hampshire Association of Natural Resource Scientists is NHANRS not NANRS and on page two it should be RSA 482A instead of 485A.

- **Peter Rice** brought forward a motion to accept the January minutes as corrected and **Larry Morse** seconded, a vote was taken and **all approved**.

1:45 – 1:50 Revise Membership in WQSAC Terms of Reference Paul Currier

Paul Currier – The Terms of Reference were first written when WQSAC was created in July 2000 and they have been revised a few times. Today's revisions, on page 2, are to officially incorporate the NH Association of Natural Resource Scientists and the Associated General Contractors, represented by Ken Rhodes, who have asked to become official members. They were active in the discussions relative to HB 1305 and HB 1348 and would like to be on the Committee so that their constituency is represented. We would like to ask for a vote on that today. The other item is housekeeping. We inadvertently left off some charter members from 2000 and they have been put back on the list so it truly reflects the membership.

Bill Schroeder – Those are the five that printed out in red beginning with the NH Waterworks? There are no other changes in terms of what we are and how we do it?

Paul Currier – That is right and I would be glad to answer any questions about any parts of the Terms of Reference and how they work.

Bill Schroeder – Can we have a motion to accept these? The new item that we would be accepting would be the Associated General Contractors having a seat at the table.

- A motion to accept membership for the Association of Contractors was brought forward by **Peter Rice** and **Bob Ball** seconded it. A vote taken and all were in favor. The official representative for the Association is **Ken Rhodes**.

1:50 – 2:20 Update on Revisions to Env-Wq 1700

Paul Currier

Paul Currier – We haven't yet gone to rulemaking with changes that were made by this Committee before Christmas. There have been changes because of the Commissioner's review. As last reviewed by WQSAC, all of the "none unless naturally occurring" criteria for Class A waters were removed, and the parallel change was to make antidegradation in Class A waters significant so project proposals would have to go through an antidegradation review. The full antidegradation review process for Class A waters is now gone out of the proposed rulemaking. There are two reasons it was taken out and one of them is that antidegradation is now the subject of one of the workgroups of statutory changes as a result of the activity on HB 1305. The second reason is that the Commissioner asked what making antidegradation significant in a Class A watershed means, and we explained that it would add quite a longer decision making process to any proposals that would in fact result in degradation. He felt that shouldn't be done without sufficient notice to those that might be affected - people that might be planning projects in Class A watersheds. Everything else stays the same, except for housekeeping changes. We removed the phrase "disconnection of impervious surfaces" because it means the same thing as "infiltration of stormwater". If you are disconnecting impervious surfaces you are causing the stormwater to infiltrate rather than run off into surface water. There were words in the review and approval process that said the criteria was that the department has reviewed and accepted an alternatives analysis and information provided by the applicant pertinent to social and economic development and information pertinent to environmental impacts. It was pointed out that the meaning of "and accepted" is ambiguous. The requirement is that the department reviews what the applicant provides and then makes the decision and the findings in subpart 6: No feasible alternatives exist that would not involve degradation; the proposed degradation is the minimum necessary, and; the social and environmental benefits outweigh the environmental harm. Those are the three decisions we have to make. We don't have to accept anything provided by the applicant in making those decisions, we just have to review it and combine it with the other information we have and make the decision. The words "and accepted" have been stricken. It changes nothing and removes ambiguity. The final changes made as a result of legal review were words involving transfers and both the withdrawal and discharge to the receiving water shall be significant. That was changed just to clean up the wording. Previously, what we had proposed was that the transfer to the receiving water shall be considered significant for the purposes of antidegradation review. On legal review it was changed to the withdrawal from source water and the transfer to the receiving water shall both have been reviewed as significant impacts under the process specified under the Env-wq 1708.10 and determined to meet the criteria specified for approval. It basically means the same thing.

Mike Metcalf - Are these on the website?

Paul Currier – Not yet, when we file a request for financial impact statement we will e-mail everybody. The best time to do that is when we get the fiscal impact statements back and it appears in the rulemaking register and we will e-mail you the link to the rulemaking register and we will have the complete text, day, time and place of the agency hearing.

Bob Ball – I am missing the connection between HB 1305 and HB 1348 in this?

Paul Currier – There is none.

Bob Ball – You said some of what is in those two bills. What section do we affect in here?

Paul Currier - The antidegradation review where the proposal was “not unless naturally occurring” of the narrative standard for Class A waters was replaced with a provision that any proposed degradation would be considered significant for the purposes of antidegradation review. HB 1305 basically proposes to put antidegradation into statute.

Bob Ball – What if it dies in Committee? Do you have to come back to this again?

Paul Currier – Eventually we have to come back to it. The situation we find ourselves in is that we have discussed in previous meetings that DES has no way to interpret the “as naturally occurring” language in a way that we can apply to a specific situation. We will just have to deal with that. If these rules were to be adopted and (for example) Salem requested 401 Certification for their proposed transfer, we would have to figure out how to do that review. We thought that we had it fixed but the Commissioner had additional edits.

James Fitch – I am a little confused and I want to make sure we had this straight. The change to remove Class A was due to proposed legislation which would be enacted instead of inclusion.

Paul Currier – The reason it was removed was that it created a significant regulatory burden on applicants for permits in Class A watersheds, especially for Alteration of Terrain and Wetlands permits, without giving them the opportunity to understand what we are doing in changing the rule.

James Fitch - The significance of this rule is in all watersheds, except for Class A?

Paul Currier – The rule changes apply to all surface waters. The changes we deleted have not given them the opportunity to understand that is what we are doing in changing the rules.

James Fitch – The significance of rule is in all watersheds except for Class A then?

Paul Currier - The rule changes apply to all waters. What we deleted that applies only to Class A waters were the words that say “none unless naturally occurring” for some parameters for class A waters. DES will still be in a quandary as to how we interpret those words when we have numbers in front of us for those parameters.

Mike Metcalf – In your example of Salem, you thought you had it figured out as to how to apply it to them. Will this removal put you back in that quandary?

Paul Currier – Yes, take phosphorus for example, the proposed transfer contains phosphorus and it is a fairly straight forward argument to say that the transferred phosphorus is not naturally occurring to Canobie Lake because it was transferred from Arlington Pond. However, because the Canobie Lake watershed has development in it, every storm delivers phosphorus to Canobie Lake and that is not naturally occurring. We have a quandary in how to review the proposed transfer in a way that is consistent with what we know is going on with stormwater in the same watershed.

William Schroeder – I am trying to understand the Commissioner’s objection and I am still confused. I thought it was clear with procedures that we have in place now that a development or project in a Class A watershed had significant hurdles to be approved because it was a Class A watershed. With the deletion of all degradation to Class A waters being significant, now there is no difference between Class A and Class B.

Paul Currier – The Commissioner doesn’t want to create that difference. There are a number of parameters that are specified as “none unless naturally occurring” and it is easy to infer that it was intended to be more protective (for these parameters) in Class A waters than in Class B waters. Those of you who read the minutes will see that we spent a lot of time on this. We have no quantitative way to determine what is naturally occurring and what is not. We had agreement amongst the WQSAC and the staff and we couldn’t come up with a way that was satisfactory to do that. Our proposal was to pull “none unless naturally occurring” and substitute the more intensive antidegradation review that would require social and economic justification and would require those three things that I just read. No antidegradation or the degradation is the minimum necessary to achieve the applicant’s purposes and the social and economic benefit outweighs the environmental harm. For a significant project, those three things would have to be vetted through a public

process every time degradation is proposed. For insignificant projects, 20% of the remaining assimilative capacity can be used without those three things being demonstrated and without any public output. For Canobie Lake, which is a proposed transfer, because the rule language that involves transfers says that all transfers shall be considered significant, a proposed transfer will still have to go through that social and economic justification process, irrespective of whether its to a Class A or Class B water.

Bill Schroeder – I think that there was a request earlier for a clean copy of the proposed rules that would be going forward. Is it possible to get it now or in the near future? I think some of us that went through the proposal would like to see what it looks like now. Could we get that sooner?

Paul Currier – I hope that we will be filing the request for Fiscal Impact Statement fairly shortly.

Jim Fitch – I suggest that you send this copy on screen

Paul Currier – I just want to make sure that what you will see is what we take to rulemaking.

Peter Rice – Could we see the markup copy as well as the clean? It is a quicker check.

Paul Currier – Then you want my unreliable copy. That is the only place that it exists.

Peter Rice – Before you accept all your changes you get to a point where it is reliable and then you can accept changes and they all disappear and you show the final copy, right?

Paul Currier – Only if you are doing rulemaking.

Bob Ball – This is something that we had consensus on. In the Terms of Reference you are supposed to agree unless you give a significant reason why and it sounds like the reason is that the Commissioner didn't like it. Is that the reason?

Paul Currier – The reason that I understood is that it would blind-side people who live and own property and conduct business in Class A watersheds and who might want to get a permit that would involve degradation. They would now have to go through a process if degradation is proposed and all landscape change that gets an alteration of terrain permit, involves degradation. That is the norm. We have a few Alteration of Terrain Permits that don't have degradation.

Mark Hutchins – Will you attempt another way of addressing this or will you say that is it? As we discussed before, the problem is classification and not one of regulation. Are you going to rethink your approach?

Paul Currier – Yes, in the larger picture the agency would like to consider overhauling the WQ Standards and the classification system so you can actually use the Clean Water Act process to relate designated uses and various tiers of designated uses, as Maine does, to water quality criteria to support those uses. Right now we can't figure it out and we have no relationship (between classes of waters and designated uses). We have Class A waters that say "none unless naturally occurring". Why do they say that? What are we protecting? It is not defined. It is a personal hope that we will come up with some recommendations relative to statutory changes that address the issues, or were attempting to be addressed in HB 1305 and HB1348 and that leads to conversations about rethinking the classification system.

Unknown - Doesn't antidegradation to apply to all classifications, not just Class A waters?

Paul Currier – Antidegradation applies to all surface waters. NH has 20% de minimis exclusion. If it is under 20% of the remaining assimilative capacity for any parameter, the requirement for social and economic justification and public input isn't required.

Bill Schroeder? – You were only going to apply the initial proposal to Class A waters.

Paul Currier – We were going to make proposed degradation in Class A waters significant, which closes the 20% de minimis window and there would be no de minimis amount in Class A waters, which is what the rules going ahead have done for water transfers. There is no de minimis degradation for a water transfer. Any degradation proposed as a result of a transfer requires full antidegradation review, or will when we change the rules.

Bill Schroeder – But not existing transfers?

Paul Currier – Existing transfers don't need a 401 certification so they don't get an antidegradation review.

Bill Schroeder – What if your transfer already has a 401?

Paul Currier – The antidegradation rule applies to a change in the existing condition. I think we have been consistent in this. The existing condition for transfers of historical origin is they exist and happen and antidegradation review would apply to changes relative to the existing condition. That being said, existing transfers still can't result in violations of surface water quality standards.

Bill Schroeder – Are there any more questions discussion on this topic?

Eileen Miller – Any kind of thing, other than transfers, would allow for the 20% de minimis amount (before full antidegradation review)?

Paul Currier – Yes, in high quality waters, if it is a high quality water and it has remaining assimilative capacity, you can use 20% without any review.

Eileen Miller – So you are taking it down to the bottom of the ladder?

Paul Currier – That is just the way the rules work.

Eileen Miller – That sounds like an error somehow.

Paul Currier – As the Committee was aware, we worked with the Alteration of Terrain Program to put a section in the AoT rules that provided a way to answer the question of whether the project will cause degradation and if does, will it be less than 20%. There was an Antidegradation Workgroup but it wasn't making any progress and was put on hold and all the folks that were in that workgroup were invited to participate in the process that this committee will go through relative to HB1305 and HB 1348. The new rules define, substantially better than previously, the process for social and economic justification. The idea is that this Committee will review the federal requirements for antidegradation that require what ought to be in statute and make a recommendation for the legislature to put what the Committee recommends into statute. That will set the stage to deal more clearly with how to implement antidegradation with the various rules that the Department has that involve WQ Standards and permits whose intent is to uphold WQ Standards. It is going to take longer than we thought.

Larry Morse – For clarification, under the process, the only event that triggers that review under the federal permit requirement is aquatic water quality?

Paul Currier – Yes, or a transfer.

Brandon Kernen – You said federal or state?

Paul Currier – The state statute basically implements the federal requirement, which is, that anything that involves a discharge and requires a federal license or permit, needs to have a certification by DES that the construction or activity will not violate WQ Standards. That includes most (state) wetlands permits that are also federal permits under the SPGP, all federal 404 permits, all NPDES permits, all notices of intent under the federal NPDES Construction General Permit, which involves alteration of terrain of 1 acre or more, which doesn't have to be contiguous. All other federal general permits under NPDES as well, such as small MS4s, all need certification.

Larry Morse – Are there certifications by rule in place now for some of those?

Paul Currier – For a SPGP permit, we certify the general permit and we do the same thing for the Construction General Permit. If there is a particular project that has special circumstances that is not covered by the certification for the general permit, and additional monitoring or conditions are needed in order for us to be able to certify it, we write a modification to the General Permit with specific conditions for that project. Sometimes, instead of doing that, for example for Wetlands Permits, we ask the Wetlands Program to incorporate the certification conditions or requirements into the Wetlands Permit and then we can certify that permit.

Larry Morse - There is an internal review and you are making those determinations in-house?

Paul Currier – Currently, we do nothing with Construction General Permits. We have the ability to but we don't do it. We certify the General Permits but we don't review the Notices of Intent and we don't have a connection to EPA at the moment.

Bill Schroeder – Are there any other questions on this topic?

John Hodsdon – So, essentially, you are saying that if you have small, single lot developments that aren't connected to each other, they can go on over the whole watershed and can have significant degradation but anything that is big enough to trigger an Alteration of Terrain Permit needs to have some oversight on it?

Paul Currier – Yes, and that is an issue. An aggregation of things that a local building inspector can approve can result in a substantial increase in non-point source pollutant loadings. We have 319 Projects that are working on this issue and they are on Meredith Bay, Paugus Bay and Saunders Bay on Winnepesaukee.

Phil Trowbridge - I apologize that we weren't able to send this out to you earlier today. We were working on it up until noon and it wouldn't have been much of a read ahead. This is a discussion paper. We are switching over now from discussing rules to guidance and we have a lot more flexibility and we are not proposing any guidance language yet. The point is to frame the discussion today. The copy we've handed out is a draft and isn't written in stone. We want to get your input today. We have covered the topic a couple of times in previous meetings. We are trying to find the right approach to help us deal with water level fluctuations. The 401 WQ Certificates are required for hydro projects where there may be water level fluctuations for power generation or for withdrawals from an impoundment which may also cause the water level to fluctuate. The report shows that there is clear regulatory authority and that the WQ Standards apply to impoundments, both the WQ criteria as well as the antidegradation provisions. They apply in cases of hydro alterations, particularly if a dam operator wants to draw down for power generation or water management. That is something that is applicable under the WQ Standards and we have to certify these actions with our WQ Certificate to say that no WQ Standards would be violated. It is not just our WQ Criteria like DO, but also the biological aquatic community integrity criteria and refers to all organisms that living within the aquatic zone, furthermore we have to worry about the antidegradation provisions. The last time I made this presentation I had this flowchart. This was our first attempt at understanding the process. There are a lot of good comments, in particular comments about improving or adding de minimis thresholds for rate of change in water level. The first proposal only talked about the absolute magnitude of the water level change. We also need to think about frequency and duration. Fish & Game raised a lot of concerns about specific biological receptors like loons and fall spawning fish. There were some questions about whether we are going to be dealing with downstream uses and downstream flows. There was an interest in tying the whole thing to our regulations rather than floating it out there as its own guidance and make it an implementation of our existing rules but there are some general questions about the complexity. I started to modify the flow chart and I decided that it came out better as a memo. A lot of this is describing how we would go through the decision making through a regulatory process and putting it into yes and no questions to get through a series of steps. These are things that we would have to do anyway but would formalize it so that we know where we are in the process. I have condensed a lot of the numeric things that we discussed in the thresholds from the flowcharts to a "de minimis middle". There is one step in the middle, step 6, where we focus on de minimis thresholds to rule out small projects that don't require additional review and we added de minimis thresholds for the magnitude of the fluctuation, rate of change, frequency and flow of the release. Those are all things we need to discuss. I wanted to get you oriented to how this works. We are going through a series of steps that are largely questions guided by rule. The de minimis middle is where I think we should spend most of our effort in making sure these numbers are right or if they are the right questions to ask.

James Fitch - As this is written, it seems to apply only to impoundments, not water withdrawal for agricultural irrigation and impacts on stream flow depth and the aquatic community.

Phil Trowbridge - Right now this is just about impoundments.

Jim Fitch - Where does that other aspect fall?

Phil Trowbridge - We would have to certify that as well under a 401, but we don't have a process.

Paul Currier - There is a process and it falls under the Instream Flow Program.

Phil Trowbridge - I am going to skip to step 1, which is applicability, on the top of page three. For now we are saying that this guidance only applies to an impoundment which is requiring a new or modified WQ Certificate. It is a limited scope.

Steve Jesseman - Is this tied in with the language for all the changes, for example if you had a causeway or elevated road or were changing a culvert or a bridge, changing how you are going to release the flows, due to changes in ponding?

Phil Trowbridge - Not now, we are really trying to keep this narrowly focused on impoundments with dams that are having some changes in their operations or a withdrawal.

Steve Jesseman - Would it be applicable to something like a peak flow continuator such as a detention pond in a subdivision where the subdivision wants to expand and the detention pond becomes bigger and somehow releases the water?

Paul Currier - Detention ponds are not surface waters, they are treatment units.

Steve Jesseman – Correct, but you are going to need the water to flow to surface water.

Paul Currier – We have six classifications of surface water, one of which is an impoundment and in order to have an impoundment you must have a dam. These are cataloged. Every dam that is on our list has an impounded reach associated with it and that reach is what this applies to.

Ken Rhodes – My office has designed some detention facilities that met the definition and were registered as a Class A or C high hazard dam. Which is it?

Paul Currier – C's are high hazard?

Wayne Ives – They call them high hazard/low hazard.

Paul Currier – They still are not surface waters. You can have a dam and still not have a surface water body.

Ken Rhodes – Just for context, it has to meet both, not only that it is on the dam list, high or low hazard.

You can have a dam, but if it does not meet the definition of a surface water, is it covered?

Phil Trowbridge – We are dealing with potential distressed biological resources. The language for this comes straight from the wording that you would use to make a significant versus insignificant determination under antidegradation. Fish & Game brought up lots of good questions about nesting loons and fall spawning fish and rare, threatened and endangered species. There was no way to automate this process and make up a number that would protect all things. We wanted to give Fish & Game and the Fish & Wildlife Service a front-end pre-application consultation to raise their concerns and require that a mapping be done of the rare, threatened and endangered species from the Natural Heritage database and that their concerns be addressed. In a perfect world all concerns would be addressed but in the world we live in there may not be an agreement between the applicant and Fish & Game. In that case, rather than holding up the process completely, it would fall back on us to make a site specific determination. We would not use the de minimis thresholds and would look at it thoroughly to make our determination.

Peter Rice – For clarification, the standard used is within 1 mile of impounded shoreline?

Phil Trowbridge – The buffer is a nice round 1 mile but we could do ten miles or we could do a half a mile. I don't know that there is a standard you can use. It is open to discussion.

Ken Rhodes – Do I understand the wording of second sentence below?

Phil Trowbridge – Where, in step 2?

Ken Rhodes – Yes. Is there anything within a mile? Have you contacted Fish & Game and do they have any concern? That is the summary of the first three questions. If the questions are answered affirmatively, keep going. If they are answered negatively, you haven't seen anything, you didn't contact them, and they don't have any concerns, the applicant should work with Fish & Game to address them.

Phil Trowbridge – The first question is if the applicant has mapped the location. You can do a map and it shows nothing but you still have done the map and can check that box. The second thing is have you contacted Fish & Game. The third thing is if all the concerns of Fish & Game been addressed. If they had no concerns then they have been addressed. If it is ambiguously worded we should change it. There is a basic mapping process to be done, whether you have anything or not, then you contact Fish & Game with the additional information and address their concerns.

Larry Morse – When you say map, do you mean contacting the Natural Heritage Program to find if there is anything listed within one mile of the shoreline or do you mean an actual survey?

Phil Trowbridge – Contact the Natural Heritage Bureau and ask them. If they don't disclose the information, that is fine and you don't actually need to make the map. Step 3 mirrors the previous one in the Antidegradation Rules, stress to sensitive biological resources, and the one below, potential stress to sensitive recreational water uses and water supply. In the Massachusetts guidance there is a large section on the effect on private or community wells so I thought that we should have something in here that mirrors that as well. The applicant should contact DRED for sensitive recreational uses and DES Drinking Water Bureau for sensitive water supply uses. It gives them a preview and a chance to voice their concerns. I didn't know if there was a better place than DRED for sensitive recreational uses. Anyone have one that is better?

Jeff Andrews – I have a suggestion about major withdrawals and how they affect of wastewater assimilation. You had a bullet on how it would affect the 7Q10 and if there was a discharge downstream of this withdrawal.

Phil Trowbridge – Step 4 is straight from the regulations. We are trying to narrow our scope to only go further if we can demonstrate that all other water quality standards can be met. We didn't want to make a

decision based on water level fluctuations for the biology but still have dissolved oxygen impairment in the impoundment. That doesn't help us and we still couldn't certify the operation. Before we go any further we need to make sure that all the other water quality criteria, besides the biology, will be met by the operation of this facility and not only will they meet the criteria, but there will be no degradation provisions. That is what those two questions deal with.

Jim Fitch – I am going back to the point that we just made with about 7Q10. That is an impact outside of impounded area. Does that run against what you set upfront?

Paul Carrier – I don't think an impoundment fluctuation would help with any change to 7Q10.

Jim Fitch – If it were a withdrawal it could.

Paul Carrier – We are not talking about withdrawals, we are talking about fluctuations.

Phil Trowbridge – It could be a withdrawal that causes a fluctuation.

Jim Fitch – I believe it could be because 7Q10 is a result of a low-flow condition. If you are choosing to impound during a low flow condition to maintain head within an impoundment to be used at a later time during the year.

Phil Trowbridge – It's a downstream impact. You are holding back the water which affects the downstream flow and the 7Q10 within receiving waters. We'll discuss that because it will take some sorting out. For Step 5, one of the things that prompted the whole thing was the passage of rules protecting instream flows and the establishment of Water Management Plans to protect the downstream flows. The idea may be to manage the water in an upstream impoundment in order to supply water to downstream reach to provide for the protected instream flows on these designated rivers. There is a whole process outlined in Env-wq 1900 for establishing water management plans, going through a stakeholder process where you balance the interests of the upstream and downstream users, different types of biology and formally adopting those rules. If you have gone through that process already, which only affects the designated rivers which have water management plans (which would be the Souhegan and the Lamprey), we don't need to give this a second review because it has already gone through a large stakeholder review that has balanced interests.

Jim Fitch – Another point to raise for consideration, because this reflects something that the state of Maine does to control the water level in Sebago Lake and the Presumpscot River, is erosion. Erosion of shoreline became major issue in Sebago Lake and not sure erosion is captured here in any of your upfront stuff, so you may want to highlight that also.

Phil Trowbridge – Step 5 affects a relatively small section of the state because it has to be a designated river that has adopted a Water Management Plan. In Step 6 the idea is to set up de minimis thresholds to determine compliance. When we deal with requests for 401 we are currently operating in an area without a lot of boundaries and it is hard to know what an acceptable level is, whether it is a one foot or ten foot draw-down, fluctuating daily or once a year. It is hard to know and we spend a lot of time trying to justify to ourselves or understand the justification presented to us and whether whatever is going to be done with this dam will be meeting the WQ Standards. We thought it would be helpful to establish some de minimis thresholds. These would be things that would be the low bar and if an impact is below them we don't need to spend any more time on it. That doesn't mean that the applicant can't propose something greater than this. They would just have to be in the realm where we have to evaluate the application on a case by case basis. Think of this as kind of extreme examples that would help us weed out the small cases. We set up four of them. One of them is magnitude, which is what I presented before and this is adopted straight from what they use in Maine. The withdrawal or release will be one foot or less in the period between April 1st and July 1st, and the period between August 1st and March 31st will be two feet or less. As an important footnote, the way it is approached in Maine is that it is done in conjunction with all the releases and all the withdrawals and natural variability. If you have a wet year with a lot of water you can release down to a foot. If you have a dry year and you have already come down a foot from full pool, you cannot release any more. We have adopted their language as the magnitude de minimis. That doesn't mean that the applicant cannot release more than that. We would just go into a more detailed assessment. As far as the rate of change, there is a big difference from dropping the water level a foot in four hours versus dropping it a foot in two weeks. We made the assumption that fresh water mussels are one of slowest organisms and, if they can migrate faster than the water level change, then is the proposal would be acceptable. 0.1 foot a day is the rate that the Dam Bureau strives for

when they do a managed release. It is not a requirement but is something they use as good practice when they do a managed release.

Tracy LaChance – Do you know the average speed of a fresh water mussel?

Phil Trowbridge – No. That is why we said the “speed of a freshwater mussel” and not an exact number. The guidance can be better but we are trying to get a frame on it. As far as the frequency, you can have an operation that cycles daily, or once a year. We want to set up a de minimis for that and right now it is arbitrarily set at four times per year. It is certainly open to discussion and there are a lot of questions. One of the questions raised about the frequency is the primary impact of the frequency of cycling. Fish & Game’s take on it is that it is mostly about mercury methylation and its release from organic soils. Does it really matter if we have a de minimis magnitude of change? If we are only going up and down a foot, does it really matter how often we do that? It is an open question and what counts as a cycle? If you drop the water level by six inches and then refill, is that one release, or did you have to drop by the full amount to consider it one release. I think there is still a lot of work to be done with the frequency question.

Peter Rice – With frequency, what about duration?

Phil Trowbridge – They are inverses.

Peter Rice – If you are in a drought condition, which you can predict based on historic stuff, can you show that refill will be within two weeks of going low? Or, the longest duration when water levels would naturally be low? Natural wetland habitats go through drought conditions and come back after they get inundated again. If the duration is two years, that the impoundment comes back up to the full elevation in two years, obviously that is a problem.

Phil Trowbridge – The last of the de minimis thresholds is flow. I picked this up from guidance from Massachusetts regarding their draw-downs for their aquatic use and species management. They set some limits on the flow of water out of your impoundment that would consider acceptable. The idea is that when you are releasing the water, you should not release more than the equivalent of 4 cfsm for your drainage area. When you are refilling, you should not release any less than 0.5 cfsm. The idea is that you are not totaling flooding out the downstream area during the release and you are not drying up the downstream area completely when you refill it. These are the thresholds that Massachusetts uses and we decided to put them in as a starter.

Bob Ball – Does it make sense that magnitude rate of change are absolute numbers, rather than just percentages of the total size? A one foot variation in a 90’ deep impoundment is very different than a one foot variation in a 5’ impoundment. For the last threshold, you have a parameter that is sized for the impoundment. It seems that the rate of change and magnitude thresholds are absolute numbers.

Phil Trowbridge – A lot of people asked where the numbers from Maine come from? Maine DEP felt that they were science based and they would see changes to the order of a foot or two feet over the course of the year and that was independent of the size of the lake. That is why it is an absolute number. It is just from evaporation water level changes. They felt that one to two feet was pretty much what all the lakes should be doing, whether they were big or small.

Steve Jessemen – In relation to this whole guidance, particularly regarding building storage versus draw-down, is this going to apply across state, including municipalities? What comes to mind is Lake Massabesic, where Manchester Water Works uses it for storage and they deliberately planned to store water at certain times of the year and draw-down at certain times of the year. They adjust that due to lake levels because they are also controlling the downstream water levels in the watershed. Does this guidance apply to them?

Phil Trowbridge – Not a lot. This is not even regulation. It is just guidance. If they do something that requires 401 WQ Certification we would look to this guidance for our approach. It doesn’t mean that they would have to meet the de minimis thresholds. They are just what we use to screen out small projects.

Steve Jessemen – But suppose they are not building a new water intake but are just changing their ongoing operations, does that mean that they are going to be counted as an impoundment?

Paul Currier – No, WQ Standards are required to be met, at all surface waters at all times. If they are not, and we know about it, we make the determination that it is impaired and we put it on the list of surface waters that should be fixed by somebody at some point. Massabesic is a surface water and surface WQ Standards apply to Massabesic as well as all other impoundments no matter what they are used for. The process that we are trying to formalize is one for answering the question of whether a water body meets surface water quality

standards when that question comes up. In this specific case, we are talking about when it comes up in the context of a 401 WQ Certification. There are examples when it just comes up and nobody has proposed to change anything and no one wants any permits. The one that I can remember was a drought. Canobie Lake was down ten feet and we got a couple of calls from people around the lake saying that we think that aquatic life not being supported at a ten foot level and would you please investigate that. We did and we made the determination that what had been dewatered was hard bottom and there was no WQ violation at that level. We have to make those decisions on occasion and without any trigger from any permitting process what so ever. This kind of thing helps us with that as well.

Bill Schroeder – I am concerned about time and I don't think we will finish today. Is there something we can do to help you out?

Phil Trowbridge – If we don't meet the de minimis thresholds, any one of them, then we would go into this impoundment specific evaluation, which is essentially where we are now. The applicant needs to come to us and demonstrate that they are going to meet the WQ Standard and we have to figure it out. I think one of the most misunderstood things about this guidance is that we are not setting rules, limits, or laws on applicants. What we are trying to do is to give ourselves some guidelines to weed out the small things and give applicants some idea of the way we are going to look at it. In the last steps here, number seven and eight, are straight from the law and say that if we can't meet the standard or we have significant degradation under the antidegradation provisions, then we have to do the social and economic justification or a use-attainability analysis. This is just mechanics of working our way through to the ultimate end if we can't meet the standards. When we post our meeting materials for this meeting, I will post this document and we will e-mail it out to you. I would appreciate any comments you want to give me on it: Whether you think it is really lacking in terms of process, and also specifics about the de minimis steps that could be improved.

2:55 – 3:15 Presentation on Numeric Nutrient Criteria for Rivers

Dave Neils

Dave Neil's presentation was curtailed because of time constraints.

Dave Neils – This is the preliminary data analysis that we have done and an overview of the approach that we plan on taking. This is a quick review of the data that we have and how we are going to approach things in the future. We have a narrative standard in our Administrative Rules. The problem is because it is narrative criteria we don't have a way to evaluate nutrients concentrations in flowing waters and numeric criteria so we know when we are above a critical level that influences the integrity of the aquatic community. Everyone knows that nutrients in high numbers are not good so I won't spend a lot of time on this. The wadeable streams assessment, which came out in 2006 found that nitrogen and phosphorus were the two highest contributors to the poor conditions for aquatic communities. They were two times more likely to have poor condition areas than streams without high nitrogen and phosphorus. That is one reason we need this numeric criteria. It is important to protect the waters and EPA says we have to do it. They have been asking all the states in the country to work on numeric nutrient criteria since 1993 and said that all states should have it in place by 2003. As of 2008, six states have adopted numeric nutrient criteria for rivers and streams so we are not way behind. Initially, we want to look at what regional criteria have been proposed to date. We have a lot of data already on nutrients. We think that it is important to recommend interim nutrient criteria because it is going to take some time to develop the rest of the criteria. One of the important parts of development of nutrient criteria is that you can show a response by the biological community to help set where those impairments occur. EPA is really stressing that you use multiple lines of evidence and multiple response indicators as well as looking at the quantitative data that you have. We are going to talk about just phosphorus today and we will do the exact same thing for nitrogen in the future.

Here is an overview of what has been done in the region so far. For a long time EPA used 0.1 mg/L at 7Q10. Everybody realizes that is too high and it is an outdated numeric standard. EPA has done some future work and took all the state's data from the region and crunched the information. ENSR, through some money from NEIWPC, did a similar exercise and came out with 0.012 mg/L. ME & NY have done some good work and have used multiple lines of evidence, including stress response indicators and have come up with some numbers that are higher and much more realistic. What we are shooting for here is something in

those neighborhoods and using multiple lines of evidence. The analysis today is based solely on water quality data without regard for biological response and represents 1 line of evidence. EPA had a couple different recommendations to get to these numbers based on frequency distributions. First, they said that if you pick a set of reference sites, to assure the best quality streams and rivers, and take the 75% distribution of that data and use that as an indicator of a potential numeric threshold. Looking at all of our data we identified a reference set based on sampling locations with a conductivity of less than 50 μ mhos with 5 or more phosphorus records. We identified a secondary reference set as sites without a dissolved oxygen impairment. Alternatively, you can take all your data and use the 25% percentile of the data distribution. For this we used data from all sites with 5 or more phosphorus records. As a final point of interest we also included all sites for which a dissolved oxygen impairment has been documented and considered phosphorus concentrations at these locations.

Based on the EPA recommended "all data" approach the 10th and 25th percentiles and ended up with a range between 5 and 9 μ g/L. If we utilize the EPA recommended "reference approach" based on low specific conductance and use the 75th and 90th percentiles we get a range of 15-23 μ g/L. If we utilize the EPA recommended "reference approach" based on lack of dissolved oxygen impairment and use the 75th and 90th percentiles we get a range of 20-35 μ g/L. Lastly, for sites with dissolved oxygen impairment the 10th and 25th percentiles were 11-18 μ g/L which tells us even when phosphorus conditions are low we can still have DO impairments. Cumulative distribution plots help us compare our results to what Maine and Vermont have established as numeric nutrient criteria targets. For the "all data" option we came out with numbers that were much lower (5-9 μ g/L) than Vermont (35 μ g/L) and Maine (30 μ g/L) which correspond to somewhere between the 80th or 90th percentile of our data distribution. For the "low conductance" reference approach we end up with criteria between 15-23 μ g/L. For this distribution the Vermont and Maine would fall somewhere between the 95th and 100th percentile. For "no DO impairment" reference approach the criteria would be between 20-35 μ g/L with Vermont and Maine criterion between the 80th and 90th percentiles. This approach resulted in numbers most comparable to the Vermont and Maine criteria (See Summary categorical comparison slide for full account of results). As far as response, we talked about biological condition being inversely related to nutrient concentrations. We have some preliminary data showing a weak relationship between invertebrate community condition and nutrient concentrations. We plan to further explore this relationship over the next 2 years through a grant from EPA. By the end of 2011 we hope to have 100+ data points. We also hope to add algae as a second stress response indicator in the future but need money and staff support to pull this off. Based on our early results it looks as if a total phosphorus concentration around 30 μ g/L is good starting point. Further discussions will be necessary to determine how realistic this number is.

Paul Currier – EPA has applied the old Gold Book Standard, 0.1 mg/L at 7Q10, which translates roughly into .065 mg/L on a growing season median. There are two permits in NH. Keene's permit is being issued and Jaffrey's permit is under appeal. The numbers presented today are lower than what has been applied in NH and would result in phosphorus removal from virtually all the treatment plants in NH in future freshwater permits.

Jim Fitch – I was part of task force that worked on the Maine standards. We strove not to have a one-size fits all standard number for that exact reason, that you would be removing phosphorus at great expense from the environment, as far as I am concerned, with limited or no measurable impact. What Maine did was look at a four box square. My suggestion that if you are looking at something long-term and intermittent that you recognize that phosphorus is not a toxic, so it is not a direct impact compound, that it is a secondary or tertiary compound. Rather than regulate based on phosphorus concentrations alone, that you look at the effect of phosphorus on the system. This allows you to place each facility in one of four boxes, only one of which is in non-compliance and would require treatment.

Paul Currier – That is a good point. We have a similar box for nitrogen in estuaries and phosphorus in lakes and our intent is to do that. We wouldn't blindly apply one number for phosphorus, irrespective of what is going on in the rest of the system.

Bill Schroeder – I would like to suggest that if you have thoughts or information, please corresponding to Dave. Will you the presentation be included?

Phil Trowbridge – Yes, we will post the files to the website.

Dave Neils – We have some other documents from Maine, Vermont and possibly New York that I will try to make available on the website. They are fairly easy to read.

3:15 – 3:30 Plan for Legislative Study Commission Meetings

Paul Currier

Paul Currier – The memo that you received in your packages summarizes what we would like to accomplish. There are no RR&D Legislative Committee members here. The General Court is in session today but they intend to participate. There are four topics outlined and the thought was to create four workgroups. The desire is to move forward expeditiously so the Advisory Committee is able make recommendations for the next legislative session. That is somewhat a soft deadline. If we don't make it this session we can always do it in the next session. The idea was that we would try and produce something that could be introduced next session as part of the interim study process. We should probably form the workgroups fairly soon. DES will staff the workgroups and ask those workgroups to get organized and meet prior to the next WQSAC meeting and do a report at the meeting of the workgroups understanding of the issues and tasks before them and the plan for addressing them. The next meeting is June 23rd in the auditorium, if we have it in the auditorium. The auditorium is free on the 22nd and the 25th and Lisa has already booked it for those if we want to have it in the auditorium with more people. That is a basic logistical question about what the next meeting will be and who will be invited. If we have a hundred people then we need to have it in the auditorium.

Bill Schroeder – I am thinking there might be some discussion about the way to proceed here.

Paul Currier – I will pass around a sign up sheet for workgroups. Please give name, e-mail, affiliation and which workgroup you would like to participate in. If you just want to be on the e-mailing list, just check that box. You don't have to be a member of the Committee to be on the workgroup.

Bill Schroeder – We ought to find a way to make others aware of it such as an e-mail inviting response. In first paragraph in the handout, where you are describing your situation, it says "refer to interim study...". The responsibility for developing the recommend bill language would be upon the WQSAC. That seemed a little odd to me. It seems to me that it should be upon DES with the WQSAC providing guidance, like other stakeholders. Is that what you really meant, or did you mean it some other way?

Paul Currier – I guess we would use the process in the Terms of Reference.

Bill Schroeder – Yes, usually what we do is we deliberate and discuss. Sometimes we don't reach agreement and DES says thank you for your input and then comes up with a decision to move things forward and recognizes the input as best they can. That would have DES ultimately being responsible for producing language instead of the WQSAC.

Paul Currier – I don't think that it matters. The default condition for an interim study bill is that it dies. The reason is that there will be an election next year and a new legislature and there is very little continuity between the Committees of this session and the Committees on next session. Without a consensus recommendation, any action is likely to die, no matter what DES recommends. The thought with RR&D is that these are important enough issues so there ought to be a process other than it goes to interim study and dies. The Advisory Committee provides that process and, if the Committee comes up with language that the Committee has consensus on, then the language would go forward as bill the next session.

Bill Schroeder – How do you visualize the collaboration with RR&D happening?

Paul Currier – They will sit on workgroups. Representatives Spang and McClammer indicated that they would have been here today if they weren't required to be elsewhere.

Bob Ball – Is there a version online that has the wording that DES is proposing?

Paul Currier – Yes, we have draft language to start with and you can get it from the General Court website by just by typing in the bill number.

Bob Ball – There has been a lot of work done on it and we are going to modify what is there. You have text that has been taken out already. What confuses me is that HB 1348 already went to Executive Session, according to this, since our last meeting. It sounds like somebody in the executive session has already worked on it, whereas the other one is not due until next year some time.

Paul Currier – I think that they did an Interim study on it at their executive session.

Bob Ball – The other one is not scheduled until next year.

Paul Currier – I think that is a result of Interim Study.

Bob Ball – I think that there are two different timeframes.

Paul Currier – They should be the same. They go to interim study and that means RR&D can work on it. For anything useful to come out of Interim Study it has to be worked on between now and the deadline for proposing legislation.

Bob Ball – Which study groups are best tied to House bills?

Paul Currier – The first one is HB 1305 and the last is HB 1348.

Phil Trowbridge – Paul, could you give us a brief thumbnail of the stumbling blocks that we need to get over?

Peter Rice – Yes, as well as the driver behind it? I know it makes your life easier but I know the surface water definition is problematic because of the federal issue, so maybe you can give us an idea of the context of the driver.

Paul Currier – DES initiated the requests to the RR&D Committee and found sponsors last session. The purpose is to, make the WQ process more understandable in the statutory language and take things that have been, for historical reasons, put into the regulations and put them where they belong in statute in light of their importance in the WQ Standards process. The first one is the definition of surface waters, in which we have a federal requirement that in order to be approved, state water standards have to cover the same population of waterbodies that are included in surface waters of the US under the federal law. We have a definition of surface waters in the WQ Statute and another one in rule. The reason for that is that it is not clear in the statutory definition that it includes all the waters of the US. The EPA lawyers would not approve our standards unless they were sure that it would include all the waters of the US. We have a different definition of surface waters that goes along with RSA 482-A. RSA 482-A doesn't have a definition but in the preamble it refers to surface waters of the state and there are some other definitions to go along with that. The idea is to make all the definitions the same so people are talking about the same thing and we say that our WQ Standards include all of the waters of the US to EPA they understand that we are telling the truth and they can approve our WQ Standards. That is no small task. The second one is to specify designated uses. EPA requires that our WQ Standards have designated uses, criteria to support the uses, and an Antidegradation Policy. You have to have all three things and they have to cover all the waters of the US for our WQ Standards to be approved by the EPA under the Clean Water Act. Has anyone tried to find our designated uses, either in our statute or our rules? I wager that you won't have much success because they are hidden in a bunch of language. The place to best understand them is in our Consolidated Assessment Listing Methodology (CALM), in which we have done our best to identify what the statute means and we have identified them in words that relate to the Clean Water Act and what other states have as designated uses. The idea was to specify it in the statute. These were important because designated uses say the benefits that humans derive from surface waters that are important enough to create criteria to preserve those uses. Our proposed language in HB 1305 takes what we think the statute says, in combination with our rules, and tries to put it into more concise language. It adds a new designated use called geomorphic integrity, which we will talk more about later. The third one is antidegradation, which does not appear in statute. It is a requirement of the federal Clean Water Act. It is all in the rule. Antidegradation to meet the federal rule is a performance specification. In our rule, the performance specifications get mixed up with the process and you can't figure out what is going on. The idea is to put the performance specifications in the law and our proposed language in HB 1305 mimics the federal rule. That will set the stage to disentangle the performance specifications out of the rules and write rules that are clearer. The fourth one is a proposal to catch up the enforcement authority for WQ Standards with the current scope from WQ Standards. WQ Standards has grown over time to become applicable to activities that don't involve discharges but may never the less result in violations of WQ Standards.

Bill Schroeder – Is that one of the drivers here? Is there concern that putting enforcement issues in legislative language will surprise people who think that DES has or will be doing these things and they will push back?

Paul Currier – That was the testimony that we got at hearings. It was a surprise to everyone (e.g., NHANRS, RR&D Committee, and the Associated General Contractors) that we claimed the authority was already there, just not very clear in the statute. We have the authority to enforce on these issues because have

the force of law. If you violate our instream flow rule, which is a narrative standard, we can make the determination and do something. It is not a violation of statute, but it is a violation of rule. If you are discharging something then that is a violation of law and we have the authority of the law behind us.

Phil Trowbridge – Paul, who do you need to come to this meeting? Do we need all this other space?

Paul Currier – My hope is to get workgroups going and the Committee would go back to your constituencies and with the information. The next meeting would be a substantial briefing by the workgroups that will have done some work between now and then of what the issues are and what the work groups think will transpire to work up language. There may be a fair amount of interest. Everyone on the AoT workgroup expressed interested in being involved in this.

Bill Schroeder – This may be the agenda for the next WQSAC meeting and it may be more than two hours.

Paul Currier – We wear out after two hours and I think we can do this in two hours.

Phil Trowbridge – Shall we invite the RR & D Committee?

Paul Currier – Yes.

Tracy LaChance – What are the next steps after June meeting in terms of finalizing language for the fall?

Paul Currier – That would probably be up to the workgroups. We probably wouldn't have an Advisory Committee meeting over the summer. The work groups could proceed as fast as they are able and DES will provide the staff to keep up with them to the extent that we can. DES would have to be out in front providing discussion papers, revising things and getting new materials out before each meeting for all of the work groups. The fall is a soft deadline. These are important issues and they are worth working over seriously and if we don't have a proposal by next fall there is always the session after that. The default is that we always have processes in place and things that work now and the idea is to make them work better.

Phil Trowbridge – Do all four things need to be resolved?

Paul Currier – No, they are independent of each other. If any one of these lags behind, that would be fine. If one workgroup says they know what to do and propose recommended language; then we are done and can propose that the next session.

Ken Rhodes – You will take any progress that you can get?

Bill Schroeder – It may be possible for one bill may go forward and another doesn't.

Paul Currier – It could be a piece of a bill. Basically, these four topic areas are completely separated. We will send out e-mails inviting people to sign up electronically to what is circulating around. Knowing that the workgroups are going to form, we will work to get the materials for the first workgroup meeting and will be working on that as soon as this meeting is over.

Bill Schroeder – It seems to me that we might need to set some kind of a deadline for people to be on a workgroup. Not that you can't be on it if you don't sign up by that date but to try to encourage people quickly. You said that you would assign staff to the workgroups. For the first workgroup meeting where you don't have a Committee chairman yet, I would think that the DES coordinator would have to take a place, set a date, and communicate with those who signed up about the location of the first meeting.

Paul Currier – I will call first meeting and I will probably do a doodle poll sort of thing, once we have people signed up.

Jim Fitch – If we are going to use the auditorium will we have to move that date?

Phil Trowbridge – We have two options for the Auditorium. One is Tuesday the 22nd and 25th in the afternoon.

Bill Schroeder – Would we like to try for Tuesday the 22nd at 1:30 pm time?

Jim Fitch – You may want to schedule it for the full amount of time. I respect what Paul said about running out of gas after 2 hours but there could be some good detailed discussions.

Phil Trowbridge – We could schedule from 1-4 and see how long we last.

Lisa Fortier – No one usually schedules the auditorium after 4:00.

Bill Schroeder – The suggestion is that it would be from the 22nd from 1:30 to 4:30, or so. Can we have a motion to that effect because we are changing an official meeting date?

- Motion to change meeting date to June 22nd in the Auditorium, was brought forward by **Ken Rhodes** and **John Hodsdon** seconded. A vote was taken and all approved.

Phil Trowbridge – We will be getting things out to WQSAC members were not here, the AoT work group and the RR & D Committee. We hope to get a lot of attendees at the meeting. There is nothing worse than having a meeting in a big room and having no one there.

3:30 – 3:45 Other Business and Confirm Next Meeting Date

William Schroeder

- A motion to adjourn was brought forward by **Dan Blais** and **Larry Morse** seconded. No vote was taken

Adjourned at 3:45

DRAFT

**Water Quality Standards Advisory Committee
Meeting Minutes
NH Department of Environmental Services
June 22, 2010**

Note: Uncertain text is highlighted in blue.

Members Present:

Dan Blais	NH Home Builders Association
John Hodsdon	Farm Bureau, also NH Conservation Districts (for Eileen Miller)
Diane Hanley	NH Association of Conservation Commissions
Mark Hutchins	Normandeau Associates
Mike Metcalf	Underwood Engineers (representing Phil Bilodeau)
Larry Morse	NHNARS
Allan Palmer	RMAC
Ken Rhodes	Associated General Contractors
William Schroeder	NH Lakes Association
Jasen Stock	NHTOA
Ellen Weitzler	USEPA Region 1

Others Present:

Joel Anderson	RR & D Staff
Dan Blais	Home Builders Association
John Boisvert	NH Waterworks Association, Pennichuck Water
Dawn or Erin Bourgeois	NH Realtors Association or NH Rivers Council
Neil Cheseldine	Wright-Pierce Engineers
Sue Gottling	NH House RR & D
Diane Hanley	LMAC
Mike Kappler	NH House RR & D, Southeast Watershed Alliance, Lamprey LAC
Jim McClemmer	NH House RR & D
Marcia Moody	NH House RR & D
Susan Oleson	NH Soil Conservation Association
Elizabeth Sargent	Sheehan & Phinney Capitol
Bill Solomon	CLPA
Judith Spang	NH House RR & D
Toby Stover	USEPA Region 1
Donald Ware	NH Waterworks Association

DES Staff Present:

Jacque Colburn	NHDES for Bud Berry of LMAC
Gregg Comstock	NHDES Watershed Management Bureau
Shane Czsiki	NHDES Geological Survey
Paul Currier	NHDES Watershed Management Bureau, Administrator
Ken Edwardson	NHDES Watershed Management Bureau
Lisa Fortier	NHDES Watershed Management Bureau
Wayne Ives	NHDES Watershed Management Bureau
Brandon Kernon	NHDES Drinking and Groundwater Bureau
Paul Susca	NHDES Drinking and Groundwater Bureau
Phil Trowbridge	NHDES Watershed Management Bureau

1:30 – 1:35 Introductions

William Schroeder

Introductions were made around the room.

1:35 – 1:40 Approval of 3/24/2010 Meeting Minutes

William Schroeder

Ken Rhodes – On page 2, the explanation that Paul gave in the middle of the page, should that be HB1305?

Phil Trowbridge – Is that in the middle of page?

Ken Rhodes – Yes. On page 7, the second sentence says “you can have a dam but if it does not meet the definition of surface water, it isn’t covered”. A question mark would be better because I think it is more of an inquiry than a statement. Just for context, it has to be both. You can have a dam but if it doesn’t meet the definition of surface water, it isn’t covered. That ties it to your explanation.

Bill Schroeder – In the previous minutes someone has taken the trouble to go through and edit what was said for clarity and I don’t think that happened this time.

Lisa Fortier – That was Bob Estabrook because he was more likely to understand what you were talking about.

Bill Schroeder – I have a few comments and the first are the update and revisions to Env-Wq 1700. I read the sentence and it didn’t make sense. A little more careful review of what was said would be helpful.

1. On page 2 Paul Currier is speaking and towards the end of it says, “previously, what we have proposed was that the transfer to receiving waters shall be considered important for the purposes on antidegradation.” I think that ‘important’ should be ‘significant’ because significant is a very meaningful word.
2. The remainder of the sentence is what I had trouble understanding. It says “review and on legal review they established change to withdraw from source water and transfer to receiving water and so forth”. I think what it means “on legal review it was changed to withdrawal from source water and transfer to the receiving water shall both have been reviewed as significant impacts under the process.” I think that would make it a little clearer and acceptable. That would be “they established change” to “it was changed to withdrawal from source water.”
3. At the top of the next page Paul was speaking again, it says “not yet, when we filed a request for a financial impact statement, we will e-mail everybody.” Was that supposed to be “when we file we will” and now has that been filed?
Paul Currier – No.
4. Further down the page there was some discussion about transferring water from Arlington Pond to Canobie Lake. I thought that was unclear. The first sentence, “Take phosphorus, for example, if the proposed transfer contains phosphorus then it is a straight forward argument to say that phosphorus is not naturally occurring to Canobie Lake because it was transferred to Arlington Pond.” You should change the word “to” to “from”. Part of the next sentence can be deleted and begin with the phrase “however, because the Canobie Lake watershed has development in it, every storm delivers phosphorus to Canobie Lake and that is not naturally occurring. We have a quandary.”
5. I was speaking on page three, “I was trying to understand the Commissioner’s objection and I am still confused. I thought that it was clear with the procedures that we have in place now that the development of a project in a Class A watershed had a significant hurdle to be approved because it was a Class A watershed. There is no difference.” I think that what I said is that now there is no difference between A and B. I would like it to be changed back.
6. On the top of page four near the top, Paul Currier is speaking. “I just want to make sure that what you see is what we take to rulemaking.” I think it means that you will see what we take to rulemaking.
7. In the middle of the page there is something attributed to Bob Ball and Paul Currier responds, I think that the last couple of sentences might have been you (Paul Currier). “This is something that we had a consensus on. The terms of reference are supposed to agree unless

you give a significant reason why and it sounds like the reason is that the Commissioner didn't like it. Is that the reason? The reason I state it is that it will blindside people."

Paul Currier – Yes.

Allan Palmer – I think right below that a similar thing happened below that.

Bill Schroeder – Where is that?

Allan Palmer – Beyond Mark Hutchins, you have Paul Currier answering Paul Currier. I know he is really good but I think the question at the very end of it is from someone else.

Bill Schroeder – So you are saying that "it wasn't the attempt on antidegradation to apply the whole Classification" was a question?

Allan Palmer – I am guessing that was someone else. I would like to take credit for it but I wasn't here.

Lisa Fortier – It may be that somebody said something in between that I just deleted because it was a one word comment. I try to shorten minutes so they aren't twenty pages long.

Paul Currier – "I think there wasn't the attempt to antidegradation to apply to all classifications, not just Class A waters." That is probably is someone else because that is the question I answered.

Bill Schroeder – So let's just say an unknown person asked that question.

Lisa Fortier – What page is that?

Bill Schroeder – Page four.

Allan Palmer – On the presentation on phosphorus, starting on page 10, that Dave Neils gave, I don't understand if it is numbers or units but something doesn't run right when you read the two highs/low and match the numbers together. For instance, he talks about 0.1 and 0.12, seemingly being too high but then later in the discussion we start talking about numbers such as 35 and 5 and 9, which are higher than 0.1.

Unknown - 0.1 should be milligrams per liter.

Allan Palmer – Is that the 0.1 and the 0.12?

Unknown – Yes.

Allan Palmer – On page 10, if you go seven lines up it says that EPA used 0.1.

Paul Currier – Dave is switching units in his presentation.

Allan Palmer – Those smaller units of 0.1 and 0.12 are all milligrams per liter?

Unknown – Yes.

Robert Schroeder – We could approve the minutes as they are but I have a feeling there may be more. How do you feel about reviewing them offline and resubmitting them next time? These go into the record and if there is confusion and so one tries to go back and make sense of it, isn't good. I would suggest that we not approve the minutes as they are done. We have a number of corrections and would ask DES to review them and resubmit them at the next meeting, if that is ok with everyone.

Ken Rhodes – It resolves my discomfort with the difference between a transcription and minutes. If this is a transcription, which is what is attempted. Whether or not you said it or didn't say it or meant it or didn't mean it. The next thing you have to do is do a logical interpretation. You are either going to interpret or you are going to transcribe.

Bill Schroeder – I think what we are going to try to do is interpret and make them reflective of what we meant to say and accomplish.

Ken Rhodes – I spent six years as the chairman of the Auburn School Board and we had one situation that got very testy about the subject of transcript versus interpretation. Your interpretation is your interpretation. Don't tell me what I said. I agree that for a more contiguous process such as this, where transcription is not what has been done before, you should go back and make it a set of minutes.

Lisa Fortier – These were always done as transcription because that is what they wanted and Bob would go through and interpret some of the things that didn't make sense.

Paul Currier – Bob Estabrook, who retired between the last meeting and now, made sure that the words made sense and reflected minutes. We dropped the ball because Bob wasn't around to make that happen but we will pick the ball back up.

1:40 – 1:55 Summary of HB 1305 & 1348 Working Group Meetings

Paul Currier

Paul Currier – I don't want to talk a lot, I want to let the working group chairs report out. We had four working groups that were working on the original HB 1305. We had a working group on HB 1348 and three working groups on parts of HB 1305. We had a group on definitions, designated uses and antidegradation. Those working groups have been very busy since the Advisory Committee agreed to work with the RR&D on the interim study process and they will report today. This is basically a report out process of the working groups to the full Advisory Committee. What we would like to have is for the Advisory Committee to ask questions of the working group chairs and members that are here; and then act to ratify the work and recommendations of the working groups so that we may continue with the interim study process and transmit things to RR&D. I think the working groups are ahead of schedule and that we are mostly done.

Bill Schroeder – We will move to item 4 because Larry is not here yet.

2:00 – 2:30 Report Out from Working Group on "Antidegradation"

Ken Rhodes

Motion: To approve recommendations of subcommittee

With staff help and a lot of good discussion we covered the general issue of antidegradation in statute, relatively thoroughly. In the handout, a comparison was made between the original bill text and the new proposed bill text. In the original presentation on HB1305, there was some concern from the Association of General Contractors and others that some of the wording may, particularly in areas of existing and tie-ins to definitions. The presentation this spring was pretty much a copy of the Clean Water Acts regulation 40 CFR 131.12. Let's talk about how some of these phraseologies may work out. After the meetings that were held, and this was remanded for interim study, we were working on some of the items and eliminating Item 5 altogether and trimming up some of the words in (items) 1-4. Staff came back at the last session and they have collapsed the proposed language to one sentence shown as RSA 485-A:9-a, "The Departments shall adopt rules that implement the antidegradation provisions of the federal Clean Water Act as required by 40 CFR section 131.12." The inquiries were along the lines of does the staff feel that the words were a strong enough tie-in. The answer at that point was yes and that it essentially accomplishes the task. The opening here on antidegradation specifically are that there are a number of rules already in place and that there have been concerns raised whether or not the statute has allowed the Department to promulgate rules, in essence, a cart ahead of the horse scenario. If this moves forward, this proposed language attempts to resolve that cart/horse problem. The details of exactly how to implement antidegradation in the context of the rules in place, as I am reminded continuously, and how all the nuts and bolts work can be worked through even more in rulemaking. But, to accomplish the antidegradation portion of HB 1305, the subcommittee, at its last meeting, vetted this language rather well and this is where we would like to land. As chairman, that was my summary/introduction and I would like ask Paul if there are any other comments he would like to make.

Paul Currier – I think that covers it pretty well. We feel we need specific authorization to write rules if it is to be put in rule. We discovered that there are some pitfalls to putting the federal rule 40 CFR 131.12 directly into statute verbatim. As Ken said we already have rules that implement the federal antidegradation policy that have been reviewed by EPA in the last review of our WQ Standards. We don't have to create new rules. The proposed bill text gives us the clear statutory authority to adopt the rules that are in effect.

Ken Rhodes – I am asking for additional comment and review.

John Hodsdon – Is it proposed that the original bill text be eliminated and the text labeled with 485-A:9-a will replace the text labeled 485-A:9-b, or will they both be eliminated?

Phil Trowbridge – It will be just stuff on right hand, where it says proposed bill text. That is what we are proposing.

John Hodsdon – You are proposing to eliminate the text shown on the left-hand side labeled with 485-A:9-b?

Phil Trowbridge – That is not in statute now. That was the original bill to put that into statute. It doesn't exist now. It will just disappear.

Ken Rhodes – John, on the left-hand side the text is referred to as 485-A:9-b and on the right-hand side is the text is referred to as 485-A:9-a. We should use the same label. Is that where you were going?

Phil Trowbridge – There are issues with numbering (i.e. 485-A:9-a or 485-A:9-b) that will be sorted out with Legislative Services.

Rep Kappler – The last sentence, where it says, “as required under 40 CFR Section 131.12”. Wouldn't it be better if we just said “The Federal Clean Water Act, as required under 40 CFR.” If EPA comes out and changes that section and comes out with a different number for the antidegradation regulation it will require legislation to change it.

Ken Rhodes – We did ask that question and I can't remember if we had any strong feelings.

Paul Currier – I think we ought to note that comment and defer action on that to working with legislative services to draft the bill language.

Rep Kappler – Make a note there. If they make a change to their rules then you would have to go back with another bill to change the legislation.

Allan Palmer – Conversely, if you just open it all up to 40 CFR you are taking a whole lot of regulations under the realm of this one and I don't think you want to do that.

Ken Rhodes – The previous presentation was 40 CFR 131.12. I think Rep. Kappler's comment is don't create a situation where, if something changes, you have to page back six drawings and change every detail and do it all the way through. The discussion is that once you have tied the statutory authority down that you shall adopt rules to implement antidegradation provisions. DES feels comfortable that the approval of the rules by EPA Region I becomes the tie-in to how you are going to implement the statute. EPA has approved the existing antidegradation rules before, so therefore, that is where it landed. If you don't have to change the language of authority, you can wrestle with the nuts in the bolts in the rules.

Allan Palmer – I would think that there would something put in there, and I am surprised that it hasn't been done already. You reference that CFR section so if it gets changed you can follow it.

Bill Schroeder – I have seen that kind of language before, “or as amended in the future.”

Ken Rhodes – I would suggest Paul's recommendation to ask Legislative Services the best way to do that. I think the mood of the commentary is along the lines of not making everybody go back later on if there is a good way to do that.

Bill Schroeder – What will these rules apply to? I think one of the original questions was do you have the authority to apply antidegradation rules to AoT procedures. They might not have been challenged if you could only apply antidegradation to some other Clean Water regulation. But can you apply it to AoT? Is it clear where it goes in RSA 485-A and what it applies to?

Ken Rhodes – I think so because RSA 485-A is AoT.

Paul Currier – Yes, AoT is further down in RSA 485-A. That is the question that will be answered by the Definitions Working Group. RSA 485-A covers surface waters. We are proposing to change the definitions around somewhat. The EPA Clean Water Act requirement for WQ Standards is that they apply to at least all the waters of the United States., Antidegradation needs to apply to all waters of the United States. The waters of the United States include those things that the statute defines as surface waters plus other wetlands which you could interpret as not included in the definition of surface waters. Antidegradation needs to apply as one of the three parts of WQ Standards.

Antidegradation needs to apply to all the waters of the United States as a minimum. That is the Definitions Workgroup. Antidegradation is one of the three parts of Water Quality Standards. Virtually all Alteration of Terrain Permits, which is a state permit, for example, require a EPA NPDES Construction General Permit and a Notice of Intent be filed, that is a federal permit. All

federal permits that may involve a discharge to surface waters of the US require a 401 WQ Certification that the construction and operation of the activity, which is the subject of the permit, will not violate WQ Standards. Antidegradation applies to Alteration of Terrain, Wetlands Permits, FERC licenses and anything that gets a NPDES Permit, either a specific permit or a general permit.

Ken Rhodes – That has been part of sorting the jigsaw puzzle together. One piece is to what are we going to apply all this to? There are two definitions. There are surface waters and then there are waters of the state. That tells you where antidegradation through RSA 485 and the AoT plus you still have the federal level. That is where they all tie together.

Rep. McClammer – You are saying that these antidegradation provisions are applicable where we have a federal action.

Paul Currier – No, they apply to all of the waters defined in RSA 485-A and they apply all the time to all of the waters. What we do when there is a federal action that involves a discharge is ask the question looking forward, “In the event that this permit is granted, will water quality standards still be met?” That is the certification process.

Rep. McClammer – The certification is only when it is the federal action but you can apply these antidegradation standards to other requirements under your surface water regulations that are adopted by DES. You don’t have a certification process at the state level. The question is, “Do you have authorization or an enabling legislation to allow you to establish antidegradation standards for your regulations at the state level?”

Paul Currier – This would be the authorization.

Ken Rhodes – That is the authorization. The applicability of it is the definitions portion of it, which then got into tracking, references to surface waters and waters of the state. Put the NPDES aside for a second, those two definitions track including, in RSA 485, which says that if you are affecting waters of the state in these particular matters you are within jurisdiction of antidegradation laws. It definitively applies to waters of the US when you get into that federal level permit. That is the minimum requirement. HB1305 goes back to the definition of what waters of the state are. As we have clarified some of that. It is more expansive. It covers the area that you are referring to. There is that linkage.

Rep. McClammer – I would like to rephrase this to clarify it. What we have here is some impact on waters, whether it will be a discharge, diversion or withdrawal. These are all activities that would all be looked at by the state agency but only when there is a federal action involved such as a NPDES or wetlands permit. Will a certification be required under federal authorities? I have been playing around with it for years and never quite understood it. It is becoming a little bit clearer now. You have regulations at the state level that are more restrictive than those at the federal level in terms of what you comply water quality standards to.

Paul Currier – I don’t believe so. The intent is to have the population of waters to which WQ Standards apply to be identical to the federal waters of the US. The way it is now in rule Env-wq 1700, we say the rules, which include antidegradation provisions, apply to surface waters as defined in RSA 485-A and waters of the US.

Ken Rhodes – Is that in the state or the US?

Paul Currier – In the US, that is in rule. It was brought to our attention that we may not have had the authority to apply those rules to anything other than surface waters, as defined by state statute.

Ken Rhodes – So the antidegradation statute provides that tie in. The definition clarifies the jurisdiction.

Paul Currier – If you read the federal antidegradation rules, which are mirrored in our rules, it is clear that the federal rule envisions that there will be a review related to permits before something happens. But, it is possible to apply the antidegradation principal in the absence of permit. For example, if we have a period of record on a lake that indicates water quality that water clarity has a declining trend, you might apply the antidegradation provision to say that WQ is down. That is a violation of the provisions of the Clean Water Act that says water quality of high quality waters shall be maintained and protected unless there has been a Department decision to allow degradation.

Rep. McClammer – In my mind, federal rules become effective when there is a federal action. Where someone is cutting trees along shoreline, which is causing some thermal alteration, there is no federal action involved. What gives the state the authority to monitor that activity or be involved in regulating it?

Paul Currier – The state statute.

McClammer – Has that been authorized by the federal statute or does it need authorization by state statute to say that DES can establish WQ standards and antidegradation, irrespective of the federal law?

Paul Currier – It needs authorization in the state statute, irrespective of the federal law.

Rep. McClammer – That is what I am getting at. We are saying that antidegradation is authorized for situations governed by the Clean Water Act. Do we also need antidegradation standards that would be applicable to state statutes?

Paul Currier – I don't think so.

Ken Rhodes – I think it will all work out ok. I think that this works relatively well. What struck me when staff came back with just one sentence was that we put rules and regulations together years ago. The Attorney General reviewed the rules and said the tie-in to RSA 485-A that said that you will enforce the Clean Water Act was good enough at the time. What seems to have evolved is that there are a whole bunch of rules and regulations. The question has come out about it being weak. It is probably better that you put in RSA 485-A that you do have the authority to make rules about antidegradation specifically. That is one more modernizing step from what was decided 15 or 17 years ago. In that context, the next part of this is where exactly does all this apply? I am pretty comfortable that Env-wq 1700 is pretty comprehensive. If we then get to the next step of HB 1305 and modify some definitions, so we don't have to go through parsing words through Env-Wq 1700 and know exactly what those definitions are, I think we are pretty well covered if this finds its way into the antidegradation tie-in. It takes the Env-Wq 1700 rules and gives them that first bit of tie-back and then in practice and application. I think that you are going to see that most everything is covered. It is pretty clear overall that, if someone is saying that they are not within jurisdiction, then that person has to prove that they are not.

Rep. McClammer – You are saying that the jurisdiction is the surface waters because you are in surface waters, irrespective of the type of activity. What you are doing to the surface waters is not going to trigger the federal process, except when there are federal actions involved.

Ken Rhodes – I am thinking of your example of tree line. If you change the character of a surface water right now, I will bet you that DES has a very strong case that you can't do that in the waters. I think that authority already exists. There is a paper by the former legal counsel of EPA that he wrote about two years ago saying that he could make a case that if a hog farm even thinks that it wants to pollute the pond next door that he could take them out right now.

Rep. McClammer – We don't have state statutes that may necessarily allow that but you are saying that we go back to the Clean Water Act.

Paul Currier – It all has to be in state statute. The Clean Water Act says that it has to be in statute or rule. Rules that are adopted by the agency, upon authorization of the General Court, have an effect of law.

Rep. McClammer – As an example, when you talk about the shading of trees, that is an action that is probably not going to come under the umbrella of the Clean Water Act because there isn't that federal action involved.

Ellen Weitzler – I would like to explain a little bit. If you look at the antidegradation requirement on page 4, the text mirrored the federal text precisely. It requires that high quality waters be maintained. In state regulations you can define what activities fall under that. Some states have a very long list and some states have a narrower list but ultimately it is required that you maintain high quality. It does, and in Section 4, requires you implement limitations and conditions for point source discharges and use management techniques for non-point discharges. It doesn't say that you should control septic system discharges, tree cover and channelization. All those things that you may need to do would fall under the antidegradation provision but those activities may not require a federal permit of

some kind. Those would be state managed activities. If you have to do something to protect water quality, whether or not it requires a federal authorization, it can be done under the requirements of the antidegradation language that is in the federal statute. By referring to 40 CFR 131.12, you are talking about any activity that you choose as a state to maintain high quality waters. Does that make sense?

Rep. McClammer – I think it makes a lot of sense. I just think the feds enable the state to have a classification system. We then establish the standards for the classification system and the antidegradation standards for those and any activity that has an impact on those standards is, in essence, authorized by federal statute.

Ellen Weitzler – Not every one of those activities would have federal involvement.

Rep. McClammer – Right, but the statutory authority goes back to the feds as opposed to state statutes.

Ellen Weitzler – Not the authority, but the requirement to maintain water quality is a federal regulation.

Bill Schroeder – Isn't it as simple as the Clean Water Act essentially sets the bar that all the states need to meet. If the states want to establish higher or more stringent standards and apply it to more waterbodies, that is fine with the feds but there is a minimum standard that the Clean Water Act wants to see the states employ.

Ellen Weitzler – Yes, but it is not explicit about what those are.

Bill Schroeder – But is clear that the state has to do it as opposed to the feds.

Ellen Weitzler – That is the way it has been interpreted.

Ken Rhodes – I think that overall, what was pointed out over several inquiries, unless you have linkage like this, the state never adopted that authority. If you put this in place you have the linkage back. I think that if you make rules and something comes up that is violating WQ Standards or degrading high quality waters, you may not have to have a section in Env-wq 1700. You can't degrade by the Clean Water Act and if you can make a case to say that it is not working then the state has the authority to act if they tied it down in a specific antidegradation piece of statute. Without more specificity, what I learned is that actual rules and regulations will govern a lot of the application of this and how it goes forward and is reviewed by EPA. How do you meet that statute and how do we meet that statute linkage? That doesn't mean that if something is getting out of control, you don't have the authority to go back in there and do it anyway without a permit.

Ellen Weitzler – I think that in Env-Wq 1708 antidegradation requirements that you already have apply to new discharges or activities for high quality waters.

Paul Currier – There are two parts of Env-Wq 1700. Let me read the applicability section for the entire set of rules including antidegradation: "These rules shall apply to any person who causes point or non-point discharges or pollutes the surface waters or undertakes hydrologic modifications such as dam construction or water withdrawals or who undertakes any other activity that affects the beneficial uses or the level of water quality of surface waters." That is, I think, all inclusive.

Ken Rhodes – It doesn't leave much out. The basis of the antidegradation portion is that the staff felt comfortable that this adaptation of 485-A:9-a or 485-A:9-b, whatever is chosen, would provide linkage back to that. It re-enables it and closes that piece. We can have another discussion down the line about Env-Wq 1708 but I think this would work. Ellen, if you are comfortable, I think this works out pretty well.

Don Ware – I think that the question has been answered. The purpose of this legislation is to ensure that the state has the authority to implement the Clean Water Act so that retains primacy. Without this, my understanding is that there is some question as to the state's authority to implement in rulemaking, the necessary statute to the necessary rules to retain primacy over the Clean Water Act.

Ken Rhodes – In essence, it fills that gap and keeps the state of NH implementing the rules that comply with the Clean Water Act. Mr. Chairman, can you recommend that this move forward.

Bill Schroeder – For this item and several others, it is suggested that there be a motion to accept the recommendations of the Subcommittee. In this case, the recommendation is that the proposed bill text would be the short version that we were just talking about.

Ken Rhodes – That would be a motion that I would entertain as that chair.

Bill Schroeder – What is the implication if we approve the recommendation of the Subcommittee? What does that mean?

Paul Currier – That means it will be transmitted to the RR & D Committee for action or possible legislation. RR & D has an interim subcommittee and all of the members are here. Our recommendation will be passed to that Subcommittee which will then work on legislation.

Bill Schroeder – Then our working group that has been focusing on this particular issue will be done?

Paul Currier – Yes.

Ken Rhodes – Where we were in the spring, the interim study where this group got together and said maybe this line doesn't work try this the next time?

Bill Schroeder – The WQSAC would be ratifying the work of the Subcommittee and say that the issue has been dealt with.

Judith Spang – You will all show up at public hearing and speak in support of it otherwise, speak now or forever hold your peace.

Mike Metcalf – Does this mean that there won't be any more rulemaking, or does this just mean that you now have statutory authority for the rules you had.

Paul Currier – The latter.

Allan Palmer – Paul, do you expect that 40 CFR 131.12 is going to show up in Env-wq 1700?

Paul Currier – It is already there.

Allan Palmer – All the words that are on the left-hand side.

Paul Currier – Virtually all the words on the left-hand side are presently in our regulations.

Allen Palmer – The rules, for the most part, won't be changing as a result of this.

Paul Currier – They won't be changing at all.

Judith Spang – We have the original bill text on the left and the proposed bill text on the right. Does that assume that everything on the left is being thrown out?

Paul Currier – Yes.

Judith Spang – If the stuff in the left is in Env-Wq 1700 and will stay in Env-Wq 1700, if something is on the left, how do we know, on the other pages, what is going to be thrown out and what is going to be remaining?

Paul Currier – In all cases, the left is completely replaced by the words on the right.

Judith Spang – Yes, in the statute, but in the rules it will still remain.

Ken Rhodes – The rules are not being touched by these actions.

Judith Spang – You told Allen that all of the stuff on the left is in rules now.

Paul Currier – Yes.

Ken Rhodes – The other part of this 40 CFR 131.12, the left-hand side is almost a verbatim. You still have that tie-in as well. I think these guys didn't want to write it down twice if it was already there.

- **Motion to made by Ken Rhodes and seconded by Bill Schroeder to make a recommendation to the RR & D Committee to accept the proposed bill text language as presented on the right. A vote was taken. All were in favor. Ellen Weitzler abstained from vote because of a conflict of interest.**

Judith Spang – In each of these subcommittees there were other things that were discussed that needed to continue to be discussed. What happens to those that are still up in the air that need to be resolved?

Bill Schroeder – One possibility is that in the Subcommittee can recommend future topics for review to hear and discuss in the future.

Judith Spang – Would we be getting that report in time for prospective legislation to come forward that would open the door for further discussion?

Bill Schroeder – Would you be doing what report?

Judith Spang – If something was worth doing but we haven't come to a resolution, a bill could be brought forward that would present the opportunity to work on that issue further. The other dynamic would be for the WQSAC to take it on as part of their work in the coming year.

Bill Schroeder – I guess this gets into one of the recommendations of your committee that certain subjects should be discussed more. You actually want to pass some session legislation relative to that. Is that correct?

Judith Spang – We would be acting within the context of these two bills. We would just be saying what we would propose for future legislation, specifically relative to these two bills. Some of these other issues that were important but don't appear in these two bills specifically I would hate to see get lost.

Allan Palmer – I would think that the working groups would bring them forward as part of their recommendation to our group to continue to work on. For example, I think in here they talk about manmade ponds for wetlands mitigation. Is that one of the ones was brought forth and not finish?

Paul Currier – Yes.

Ken Rhodes – The way that I approached my piece of this is that this time around under HB 1305 and HB 1348 there were questions raised that went to interim study. It was divided into four pieces. Let's see how they all fit together. Don't lose that list but let's finish the task in front of us now and see how that fits. I suspect that water quality in the state of NH is going to be a living discussion.

Bill Schroeder – Later in the meeting we will be setting meeting dates for next year and I don't think that an agenda of topics has been put out but typically DES does that in the September WQSAC meeting. Maybe we can not things that we would like to be on WQSAC's agenda for next year. DES can work those things around whatever other things are on your list for us to do.

2:30 – 3:25 Report Out from the Working Group on "Definitions"

Larry Morse

Motion: To approve recommendations of Subcommittee

Everything revolves around the definition of surface waters that was proposed in HB 1305, which on page one of the hand-out was one short paragraph in the statement on the bottom of the left-hand side, which took the existing definition of surface water in RSA 485-A: 2, XIV and added swamps and all wetlands that were under state jurisdiction under RSA 482-A, which is the Wetlands Program statute, and designated them as surface waters. There was a considerable amount of concern with respect to that concept and some potential unintended consequences. I think that has been the focus of the discussion topics in this work group and has extended beyond the meetings of the workgroup in-house with DES working with the Timberland Owners Association, NH Associated of Natural Resource Scientists with respect to the concept of that. We came out with new proposed text, which is larger than one paragraph and is shown on right hand of the hand-out. I think there was an important concept here which I don't see in here. As part of the proposed bill text, we need to change the reference to "surface waters" in RSA 485-A to "waters of the state".

Paul Currier – Yes, Joel from Legislative Services reminded that we had not made that clear.

Bill Schroeder – Can you repeat that again? We need to change what?

Larry Morse – All references to surface water in RSA 485-A, with the exception of the definition of surface water, need to be changed to "waters of the state", which be defined under subparagraph XIV-d down below. I think that is the concept we went to.

Phil Trowbridge – I think we did talk about a few cases where we could not do that, particularly around withdrawals.

Larry Morse – I think that the focus of the discussions that we had and the concerns that were raised were the common understanding, outside the regulatory aspect, of what surface waters were. There is something different from what lay people understand versus what is embodied in the regulations under Env-Wq 1700, where it included wetlands. The focus here was to bring that concept of wetlands back in under the definition. When we got talking about it and some of the areas within the regulatory framework within the Department that surface water has a different connotation in several different areas, i.e. particularly subsurface system rules with regards to setbacks, which is different

from wetlands. I believe we made the determination that instead of talking about the surface waters and to get rid of that confusion, as far water quality standards, what would be considered would be waters of the state. They would be defined in here to match with waters of the US so that we have the same subset of waterbodies in the landscape that we are applying the standards to at the federal and state level. Hence, we start with the definition of surface water. We are going to keep the definition of it in there because it is used elsewhere in RSA 485-A I think in a different context, as Phil talked about, to include simply fresh waters, tidal waters, including wetlands with standing or flowing waters. Those are the wetter components of the wetlands systems, which act more like surface waters and are appropriate for those areas of the landscape that are regulated by under sections of RSA 485-A.

Allan Palmer – Does that mean that there are wetlands that are not surface wetlands?

Larry Morse – Correct, this would be primarily wetlands that may not be connected to surface or may not have standing water. They all get saturated from the surface. Farm fields have poorly drained soils and there is a differentiation between those two areas of the landscape and the subsurface system in their rules and setbacks. This definition coincides with theirs and lets the general public understand that there are wetlands that act like surface waters from other standpoints other than water quality.

Ellen Weitzler – I wanted to make sure I understood that the purpose of the definition for wetlands is to be not greater than the federal definition.

Larry Morse – That is right.

Ellen Weitzler – Under the federal definition of waters of the US, wetlands without the nexus would not be protected and the intention of NH is to also not protect those waters.

Paul Currier – Yes.

Ellen Weitzler – We had the opposite discussion.

Larry Morse – The discussion started here and there was a real desire by the subcommittees to get away from that nexus concept because it was hard to understand in the first place.

Ellen Weitzler – You are going to have to get to that because you are falling back on the federal definition here, unless I am misunderstanding that.

Larry Morse – We left the federal definition in here, but from a practical standpoint there is no such thing unless you want to spend six months and a whole bunch of money to make that determination. A jurisdictional determination by the Corps required four levels of process and is very time consuming to get that determination made that there is no nexus. I think that there is a feeling that, at least from what we've seen, most wetlands are likely to get covered and identified as assessment units as far as wetlands for water quality. I am not going to go beyond that anyway. Also, we understand that there is federal legislation in the works that may or may not deal with that issue and that issue may change. We wanted to make sure that we at least had the federal requirements covered. Waters of the state is now a concept that we are using to apply in water quality standards. It is stated a little further down in the definition and that is probably where we ought to start. It will be defined to meet waters of the state and waters means tidal waters, fresh waters and wetlands. They define freshwaters under subparagraph A. Fresh water means wherever fresh water flows or stands, excluding groundwater. Tidal waters are where the tide ebbs and flows. A fairly general definition would be supported by a little more. In the regulatory aspect of RSA 485-A there is probably a condition for that but I think for surface waters this is fine. I think we recently talked about Wetlands. The classic definition of wetland qualifies it so it would have to be considered waters of the United States for the Clean Water Act. As far as water quality standards, Paul can you jump in here?

Paul Currier – We haven't talked about it. We are not sure if the words water standards are used anywhere else in RSA 485-A. The idea was to do away with the word "quality" because people often think that water quality means things that you measure in the water column and the standards are substantially broader than that. There does seem need to do some further work on that. We may not need that definition if we don't use it in RSA 485-A. I think it is the same thing with the definition for "waterbody". I know that it is used in the statute but I am not sure that the definition needs to be there.

Bill Schroeder – To be clear then, under the proposed bill text the definitions for Item E and Item F, water standards and waterbody, may need more work?

Paul Currier – Right.

Larry Morse – I think that completes the work that we did. I will open it up for discussion.

Allan Palmer – The wetlands definition is what we are living under today and Collis Adams was part of the group.

Paul Currier – The wetlands, freshwater and the tidal definitions are virtually identical to the definitions statute RSA 482-A. The definition of wetlands in RSA 482-A is not limited to waters of the United States under the federal Clean Water Act. So the state wetlands statute (RSA 482-A) has, in fact, broader jurisdiction than the Clean Water Act.

Larry Morse – One of the things that the Committee was concerned about was that, under the state Wetlands Program, things like constructed roadside drainage ditches and detention ponds that have developed wetlands characteristics, are defined as wetlands. These man-made waterbodies were excluded by qualifying the definition as being waters of the United States.

Mark Hutchins – It seems structurally awkward that wetlands get their own category but wetlands are actually subsets of fresh and tidal waters. The freshwater definition doesn't even look like a definition to me. Freshwater means freshwater? It seems like we have waters of the state, surface waters, ground water and non-jurisdictional water and under the surface waters we have tidal waters and non-tidal waters and there are subsets of those categories and wetlands fall in both. Maybe I am just looking at it from a classification standpoint and it seems awkward to me. In waters of the state we have three categories, tidal, freshwater and wetlands. It is waters of the state because that is what is jurisdictional. There are other waters of the state that are non-jurisdictional such as groundwater.

Bill Schroeder – What is the difference between waters of state and surface waters?

Larry Morse – There are a whole subset of wetlands that are not completely under the surface water definition that are under waters of the state definition.

Bill Schroeder – In other words, wetlands that do not have standing or flowing water.

Larry Morse – Correct, through the discussion of surface water came the story of 9 acres that can be crossed without sneakers never getting wet. How did that get in the definition? There is no surface water and no standing or flowing water in that wetland. If you are going to pick that one up somewhere in your definition you should make a distinction. It doesn't have any surface water but it is still a water of the state.

Bill Schroeder – Are water standards supposed to apply to waters of the state?

Paul Currier – Yes.

Bill Schroeder – Then how do you apply a water standard to a wetland that doesn't have flowing or standing water?

Larry Morse – That was another big question and I think we have another section in here in the presentation where we will talk about that outside of the definition aspect of it.

Paul Currier – That is one of the reasons to get rid of the word quality in there. For an example, we had one of these wetlands that doesn't have flowing or standing water and the tide does not ebb and flow on it but it has biota and a requirement for biological integrity so that aquatic wildlife can be supported. There are ways of measuring that integrity and that is a water standard. That is how that would work and if it seems odd to apply the word water where there isn't any.

Ellen Weitzler – What if it is not water all the time but it is enough to keep biological environment?

Ken Rhodes – One of the challenges, which is yet in rulemaking and is why some of the distinction is there, is in doing something out there. One of the provisions is that if you are going to do a project you may have to not degrade the waters of the state. How do you measure that you have been successful in that pursuit when you can't establish the baseline to begin with? At least by pulling a cup of water up, you can test a parameter for degradation. There has to be another conversation about what does all that mean? That is part of the part of definition. You at least have to get your sneakers wet to call it surface water. Then there are waters of the state. How do you measure and get to those things? What Jim, Larry and I run across in many ways has nothing to do with a lake, stream, channel

or most anything. It is a pocket in the forest. Now I need an AoT permit and I need to tie all that together and not degrade. That has become an interesting challenge.

John Hodsdon – What this is saying now is that my vernal pool, which has no outlet and has water in spring, is now a water of the state but not a water of the US? What does that imply for what needs to be maintained for water quality?

Larry Morse – It is a wetland, as defined by the State of NH, under RSA 482-A so any activities would be regulated under that statute, but RSA 482-A does not regulate water quality. It will depend on where the vernal pool is in the landscape and whether the period of time is sufficient to develop the conditions of a wetland. It will depend on whether or not it is a water of the US, and by this definition, waters of the state. Wetlands that we see and are identifying out in the field, most of them are associated with other wetlands systems that have nexuses and would fall under this definition. If you have a vernal pool that has the shading and water temperature to promote the activities that occur. If it doesn't have the other characteristics it wouldn't be a wetland and regulated under RSA 482-A. It is a vernal pool however, but it might not be for water quality standards, and there is a chance that the water quality standards, if someone wanted to go through the Nexus process, might not apply to it but otherwise, it would. What those standards are is yet to be determined and that is part of the other discussion. One of the concerns, as it is currently stated in the Env-Wq 1700 rules, is that wetlands don't qualify for the water quality standards that are currently in statute, which means the parameters of DO, total suspended solids and chemical composition. You can't measure those in wetlands so what they are is what they are. When you start applying antidegradation to the standard then current conditions is the standard that they are held to and you can't change it. You can't lower it which leaves one with the thought that you can no longer get a wetlands permit to do a driveway or do anything because you can't touch the wetland and you can't cut any trees in the wetland or walk through the wetland anymore and that is not the intent. Looking at the classification system and how we use that there has been a couple of uses associated with each of them. We will start to address that situation so that some measures that Paul is talking about as far as biotic and vegetative composition can be applied there so there is a standard which isn't what the condition is now but is a normal standard that can be applied from a water quality standpoint and whether permitting requirements are made. I am not really sure how that relates back to definitions but I think it got us back into where we went with the definitions in some aspect and I understand that we are going to be talking about that issue further in trying to identify what we are trying to cover here. I understand that when you look at this it kind of makes sense to me, but from a different set of eyes it doesn't. To you, it may seem strange and I am not necessarily sure that changing the concept from surface waters of the state to waters of the state required us to throw some of those definitions in there just so we wouldn't have a definition where the term are undefined. I think that is primarily why we did that.

Paul Currier – There are still some loose ends. Larry mentioned the details of where we are going to change the words surface waters to waters. There are some additional checks that we need to make sure where these definitions may interface with other statutes so we don't have a conflict. We did research the subsurface definition that Larry mentioned as a result of the working group meeting the last time. I think we are ok there but we have some loose ends and what we like is a concurrence from the Advisory Committee pending further work and a report out by the next meeting on the loose ends.

Bill Schroeder – That is suggesting a concurrence with the direction and a listing of loose ends and looking for a further report?

Paul Currier - Yes.

Dan Blais – When moving forward in this does the Department feel that it is necessary to include language that exempts artificial impoundments. For instance, as we start designing for antidegradation we are going to start seeing wet ponds and things like that that are water quality practices that are being designed. When we are all gone from the Committee and moved on to other things twenty years down the road I think it needs to be known that when these things were designed, they were designed to be exempt from someone saying, ten years down the road, that you can't put

dirty water into them. Are you comfortable that the text that is in there now that does exempt these sites or should the Committee include it?

Paul Currier – We are comfortable with that. I don't believe it is in rule but in guidance, and you can go to the EPA website, where EPA has said that waters of the US don't include treatment ponds and they don't include construction ditches and you can argue when something stops being a constructive ditch and starts being a natural ditch but those have never been included and with the words "and or waters of the US" we would continue to not include those. We are comfortable with them.

Dan Blais – When I looked at the bill as it arrived, the last words, natural or artificial, kind of jump out of the page at some of the designs.

Paul Currier – We are taking those words away.

Ken Rhodes – This is one of things that Representative Spang referred to that we really need to keep on the list. I will amend Paul's statement a bit. I agree that the EPA guidance refers to man-made ditches. We don't actually want to but your obligation, Jim's obligation and all of your colleagues obligations are, in certain situations, to still flag as wetlands because they do meet the four-part criteria now. Whether or not, you are doing maintenance. There is still work to do and we need to get specific about tying into the definitions. We never really meant that if you created a detention pond that you would need a permit ten years later to clean the thing out or modify it. DES says you can clean it without a general permit but it doesn't say you can modify it bit even if you resized it because you didn't think that it needed to be quite that big. The man-made definition can be varied and Dan, with very much respect, you guys are making man-made ditches all day long at Exit 3. How do they live in the next context?

Allan Palmer – If you undersize it in your original design and you want to make it larger so it is more functional then you have to get wetlands permit.

Ken Rhodes – You then have to apply antidegradation requirements to that and to create a pond that is naturally created to degrade to begin with.

Allan Palmer – It makes sense that the things that are specifically exempted be called out in these definitions.

Ken Rhodes – The challenge becomes that unraveling that knot as part of this got to be something that probably would not allow this to take on any context. Yes, there is still a portion of this environment between man-made and naturally occurring wetlands. Everybody seems to know what they want to do but it is going to take a little more time to think about how you want to unravel it.

Allan Palmer – If it is being created for stormwater treatment for wastewater treatment it makes sense to me that it is not part of these definitions.

Bill Schroeder – What I am thinking is that there are still a number of open items and areas of concern in these definitions. I am thinking that maybe we should ask the Subcommittee that is working on this to keep on working.

Paul Currier – My thought is that this is a definitely an issue and it is not the issue that we set out to fix. I don't believe that we have ever tried to apply water quality standards to treatment ponds or roadside ditches. We don't do that and we don't try to go out and try to assess them as to whether they support swimming or aquatic life and we haven't asked anyone to fix one and we didn't ask anyone to fix one because we didn't think they supported some designated use and we don't intend to do that. We don't have to fix that situation. It is good enough for us to read the federal guidance and say we are not going to apply water quality standards to man-made structures like treatment ponds and ditches and that is entirely consistent with past practices.

Judith Spang – I went out with Jim Gove and the _____ Commission saw this wetland that looked entirely natural but had been created by a road that went through and the banks went right down. You could see that it had never been there before but it was a fully functioning wetland that had been there for a long time.

Larry Morse – Was it constructed as a storm water facility?

Judith Spang – No, but you are talking about a man-made wetland. I think we have to make sure that we don't throw in that kind of a situation. There are other man-made wetlands that have become fully functioning wetlands.

Larry Morse – I think we go back to the guidance. The guidance doesn't specify that, and I think that the guidance is fairly specific to what they would not consider a wetland. It is constructed roadside ditches and storm water treatment systems that were constructed for those purposes.

Judith Spang – Would it also tell you LID created systems that could become fully functioning?

Ken Rhodes – Following up on the triangular discussion, I don't disagree that if you put a road through somewhere thirty-some odd years ago and all of a sudden it is backed up and it is doing some stuff.

Larry Morse – I do believe that situation you discussed is exempt.

Judith Spang – Relative to the problem of how you decide the function or value of that wetland. You are saying that it doesn't make sense to be measuring DO, for example?

Larry Morse – There are some wetlands that are more of surface waters that you could do that. The question is will you ever meet the DO quality.

Judith Spang – I was thinking, this might be more appropriate to the designated uses discussion and particularly the tiered uses, I was wondering if the measurement should be, instead of DO or pH for example, what use does it support? No matter what the chemical, physical, etc., if it is able to support full diverse plant or animal species.

Larry Morse – My understanding is that the Committee is in agreement with that but that is another road and whole different situation that is separated from what we are doing here, which is the development of quantitative classifications systems for these areas of the landscape, which we don't have. There are some that we talked about but we are not there yet. They need to be developed by the rulemaking process and the legislative process when it comes time for them to accept the classification. That is a whole another issue and process that is probably going to continue for years down the road. No one wants to see it get lost and I don't think that the intent is to forget that. Paul is not going to forget that.

John Hodsdon – In previous discussions here, talking about my irrigation pond, you have all been very supportive of continued use of it but I am wondering where does it say that I can continue to pump water and use it for irrigation if that might detrimentally affect the bass in it that my father put in twenty years ago? The primary reason it was built was for irrigation, not fishing and it is not part of the public waters as far as I am concerned. Spring peepers use it and there was a turtle there that I didn't put in and maybe there will be another one someday. The Subcommittee's have been very supportive and they want me to be able to use it and continue farming and use it for irrigation but where does it say that I can do that? Will there be somebody that comes in and says that you can't do that because the wildlife needs it.

Paul Currier – I think that will be part of our discussion on tiered uses later on in the meeting.

Larry Morse – Bill, I would like to respond to your suggestion. I feel comfortable that the definitions that we put out here covers what we intended to do. That is not to say that other work may not need to be done to clarify certain sets of circumstances but I think some of that work involves looking at the regulatory framework that is outside of the scope of the WQSAC. I am not sure that the subcommittee should continue on it. I think that there is consensus of the group that at least the definitions work, although they seem awkward to some. We should move forward with that and let Paul and his group finish the vetting. We may have one more meeting and then we are done.

Paul Currier – I think we can do that and report to the next WQSAC meeting in September. I think that will be in time for the RR & D Committee to do its work.

Bill Schroeder – The suggestion is that the Committee would not meet more and DES would look into some of the issues. At this meeting we would not be seeking to approve this proposed text. Does that sound good to the rest of the Committee? If it does then I don't think we don't need a vote.

Allan Palmer – Paul, in the original you had three definitions (High Quality Water, Outstanding Resource Water, Surface Waters). One of them you tacked to the new proposal and the other two just disappeared. Is that because they are covered sufficiently?

Paul Currier – Those were associated to antidegradation and when that language was changed we didn't need them anymore.

3:25 – 3:30 Break

3:30 -3:35 Review of Draft Policy for Water Level Fluctuations Phil Trowbridge
Motion: To approve recommendations of Subcommittee

Phil Trowbridge – All of the enforcement language was in HB 1348 and on page 4 of your handout about the proposed bill text. The group decided that HB 1348 should be determined inexpedient to legislate. The reason for that is that we determined that DES already had the enforcement authority that this bill text was going to give us. The bill was just clarifying existing authority and there was no need for it. Given all the complicated discussions around definitions and antidegradation, we decided it wasn't worth the effort to try to add clarifying language. Since it didn't do anything we decided to ITL this one.

- **Motion to IT'L made by Phil Trowbridge and seconded by Jasen Stock. A vote was taken and all were in favor. Ellen Weitzler abstained.**

3:35 – 3:50 Presentation on Revising the Classification of Surface Waters in RSA 485-A:8 Paul Currier

Paul Currier – We are talking about a proposal to replace or start a process that would replace the existing classification system, which has Class A and Class B waters with a system of tiered designated uses. We talked about this at the last working group meeting. As you recall, water quality standards have three essential components, and this is straight out of the Clean Water Act: Designated uses, which are goal uses and answer the question, "What do we want to use the waters of the state for?" Another way of putting that is what is valuable to us. There then needs to be criteria to support the uses that are measurable attributes that we can go out and measure to determine if designated uses being supported. The third is an antidegradation policy. Designated uses usually have some sort of narrative description. These are words out of our rules and statute like acceptable for fishing. Criteria can be either narrative or numeric. We have a mixture of both and they occur both in the statute and our rules. This is the narrative for biological integrity that is in our rules. An example of a numeric standard is, and this is in the rules, the pH shall be 6.5 to 8.0. WQ Standards are in two places, the first part of RSA 485-A in the statute and in the Code of Administrative Rules. We also have guidance associated with water quality standards. These are not officially part of the standards and are just guidance documents issued by the Department in order to implement the law and the rules. The important one is probably the Consolidated Assessment and Listing Methodology (CALM) which describes in detail the numeric and quantitative measures that we apply to assessment units in NH in order to determine whether water quality standards are met. In NH the statute says that there are two kinds of waters, Class A and B. It has a description of it. The legislature is responsible for assigning classifications to waters. There is a process whereby the Department makes recommendations to the legislature and the legislature passes laws that establishes classifications. The two page memo has a PDF copy of the map. If you want to read it you can blow it up on your computer screen. The legislature, since 1949, has made a number of waterbodies Class A. There is a hundred and some odd of them, everything else the legislature has classified B and that includes all kinds of waters, rivers and lakes, impoundments, wetlands, estuaries and oceans. We have a water body catalog. We started it in 2000 and it is now in its second iteration. The waterbody catalog assigns assessment units to all the mapped waters of the state. This is a picture from the 2008 catalog that is based on the 1:100,000 national hydrography dataset and it has no wetlands in it at all. In 2010, we moved the whole catalog to the 1:24,000 NH hydrography dataset and we added wetlands. The map got better. Each different color blob on the map is a different wetland assessment unit and we didn't have that in 2008 in our catalog. All together we have 60,000 assessment units, counting the wetlands, and about 50,000 of those assessment units are wetlands. You may wonder what the difference is between Class A and Class B waters. There are relatively small differences. The top ones are in statute and the rest are in

rule. There is a difference in bacteria numeric criteria. There is a provision in Class A that says no discharge of any sewage or waste. There is a bunch of "not unless naturally occurring things" that are in the statute. Those are the differences, practically speaking, they are relatively minor. In fact, based on the CALM, which is based on guidance which interprets the rule and regulation, whether the water is Class A or Class B, the designated uses, the desirable things to society that those waters should support, are exactly the same. We spend a lot of time trying to evaluate aquatic life, primary contact recreation (swimming). We don't spend any time on water supply. Fish and shellfish consumption we do some with and wildlife we do nothing with because we have no criteria. That is what we have in place right now. Think about designated uses instead of Classes. Instead of thinking what classification should the surface water be, think surface waters by surface water, assessment unit by assessment unit, what designated uses do we want our surface waters to support. Each waterbody will be assigned its own designated use and each designated use could possibly have tiers and each tier could have different criteria. This topic has been explored by EPA in the context of tiered aquatic life where you go from the natural condition, with no human beings around, and no human impact on the aquatic ecosystem through the scale, through benign change, through significant change due to human activity due to impaired or unacceptable change due to human activity. This is called tiered aquatic life use support. Maine has adopted this. They still keep classes and they put the scale in the classes and they have a narrative description of each class and they have some quantitative criteria in there. Ohio has also done this. They have a tiered system and words that describe the tiers. The tiers for aquatic life are called warm water, exceptional warm water, modified warm water, two tiers of cold water, inland trout streams, native fauna and limited resource water which have sub-categories of acid drainage and small drainage way maintenance. These are examples of how other states have done it, leading to a conceptual matrix, which the working group folks have all seen before. We have added geomorphic integrity to the existing designated uses, which was proposed in the original HB 1305. For aquatic life, you might have tiers along that scale relative to aquatic life use support. These words mimic the kinds of designated reaches for a designated river in RSA 483. You might have a tier that is natural and essentially undisturbed, rural, moderately disturbed, community, more disturbed and urban, if you have a stream that runs through a city and is pretty well hammered for aquatic life but it still supports the kind of biota that you would expect in an urban stream. You can create tiers for all of the designated uses and some of them don't look like aquatic life. Another example is swimming. You might create tiers for swimming and in fact this is essentially what the statute has done already. If you expect frequent swimming, you might have a higher quality, a lower expectation for bacteria that can cause illness. There can be a tier for occasional swimming. You don't expect people to be swimming a lot except off of a boat. You might think that you can allow a little more risk of illness if they did fall in. Then you might have a rare category where no one would swim on an intentional basis but they still might fall in. Swimming is full body contact. You can do the same thing for all the designated uses. This is just something conceptual to start the thinking process and is not a recommendation. Some examples are the twelve digit hydrologic unit code around Concord and the matrix I just showed you. How might we assign things based on how we do things now? Let's look at the ones we are familiar with, aquatic life, swimming and drinking water supply. Let's look at the drinking water assessments in the vicinity of Concord. We are talking about that HUC12 and we are going to zoom in on Horseshoe Pond. You can see from the aerial photo that there is development around it and there is some agriculture use. We might assign that to the community category for aquatic life because the landscape is used by humans for various things so we would expect the aquatic life in Horseshoe Pond to reflect that and set our criteria accordingly. Swimming might be occasional and there are no drinking water intakes in the immediate vicinity but Horseshoe Pond goes out and drains in the Merrimack River, which goes on downstream and provides drinking water for the City of Nashua. The City of Manchester has been planning to tap the Merrimack River for some time so it could be potential source water. It is the same thing for the Merrimack River. You take each assessment unit and ask where would we assign it on one of these tiers and then develop criteria that go along with the tier. Another example is an unnamed wetland that is adjacent to the Merrimack River. Based on the landscape setting and human activity we might assign that to a community status

for aquatic life. We don't expect there to be any swimming and we might say that there is no water supply potential for the wetland. That is how the system that assigns designated uses directly to assessment units might work. Practically speaking, how would we do this? If we were to transition from the Class A and B system we have now, which is basically a historical construct that started when the legislature first adopted their Classification system in 1947 and has been built on over time, including the passage of the Clean Water Act and some changes, how would we do it? The legislature may ask DES to explore this system and report in the fall of 2011 in time for introduction of legislation for the 2012 session. We started working out the details and continue to work with the WQSAC as a sounding board for ideas and we stay in touch with RR&D. There are also some issues we need to start talking to EPA about if we are going to start thinking in terms of how to transition. That is the first step and what we would like consideration of now. There might be two phases. In the next phase, the Legislature would receive the DES report. If they were favorable to the proposal, they would then adopt the new classification system and direct DES to proceed with reclassification. DES would develop that, with lots of stakeholder interaction, and bring it back to the Legislature with recommendation for reclassification that would map all the waterbodies in the state, all 60,000 assessment units, from the classification they have now, either A or B, with designated use support with the criteria we have now into a matrix, where each assessment unit would be assigned a set of designated uses and a tier for each designated use and that would have associated criteria.

3:50 – 4:10 Report Out from Working Group on “Designated Uses” Judith Spang
Motion: To Approve recommendations of subcommittee

Judith Spang - That goes a long way in reviewing what it was we were talking about terms of implementing our designated uses. Paul mentioned that we are thinking of adding geomorphic integrity as a designated use. I think that the rest of our designated uses are pretty much what EPA has suggested and has been adopted by many other states across the country. The actual designated uses wouldn't change much. It is just how we would apply them in a more specific way to every water body. So instead of having a classification where the same designated uses gets assigned to a whole padre of rivers and waterbodies, the designated uses would be customized to each one. If you look on page 2, we have taken out the whole section from the original HB 1305 on the left-hand side and instead have put it into session law, which is not an RSA but is still a bill never the less. We are saying the General Court requests a comprehensive review of water quality standards, including the assignment for designated uses for waters of the state, numeric criteria, and the antidegradation policy. We are taking the step that is necessary to implement something like this and tying the state in with the EPA. The Commissioner is going to be asked to review WQ Standards and come up with a report by September 2011.

Jasen Stock – Going back to John's farm pond, the one with the turtle, I noticed in some of the other states classifications there was an agricultural classification or use. You will see it under AA, the second from the bottom. I am curious, to get to the other irrigation ponds, even on the Merrimack River I know. Gold Star Sod is an example where they used the river for irrigation and some of the floodplain. I am curious if there is enough activity or call for such the addition for such a column on this table. I think that is one of the places we would start. I think in the June 8th memo there is an example of other states. Other states get more detail about designated uses than we do. That is something to think about. If you look back at the history of our reports, NH, at least one time or another, had an agricultural designated use we reported out on that. Bill Schroeder mentioned that aesthetics might be one that would be worth considering. Let's use John's farm pond for an example. If you have agricultural use out there, you would rate that fairly high because it is going to get a lot of agricultural use. You might put it down in the fairly highly disturbed category for aquatic life because we don't expect it to be natural. John's grandfather made it for a farm pond and it isn't natural. Depending on how frequently John goes to cool off in it we can assign a class here. With this kind of

a system you can tailor it so that farm ponds and things like that fit into the system and we don't create unreasonable expectations for him by having a one size fits all.

Judith Spang – That is when the existing natural conditions conflict with the desired uses. At our last meeting, Representative McClammer said that he thought we needed to broaden beyond the seven that we have identified. This really moves us down the road in terms of doing a more comprehensive look at how we deal with land use in the state. You would have to be thinking about what waterbodies we want available for recreation. Where do we want our industrial uses? It sounds like what we are going to allow on different waterbodies but it is also is going to guide growth and where those uses will occur statewide. It can be a very powerful tool for developing a comprehensive look at our landscape and I think the Commissioner is very big on, watershed-wide and beyond.

Paul Currier – I think what DES would do is, if the Advisory Committee thinks it is a good idea and wants to recommend to RR & D, that they report this out as legislation as a result of interim study. DES will continue to work on this over the summer and begin putting more detail on what are sketchy ideas right now.

Bill Schroeder – I think we have struggled in WQSAC over the years with shortcomings of our existing system, Class A and Class B, and how some things don't seem to make a whole lot of sense. We have talked about how there must be a better classification system we could have that would serve us better. I for one, as a member of the Committee, would like to take this on and if passing some session law gives the Department the necessary resources, requirements or deadlines to try to make that happen, then I would like to see that be a major focus in the next year or so. I think this is going to take a lot of work. An aggressive schedule is good. Some of the things are asked for here in the review, a history of standards and shortcomings and what we hope to get out of the new system. All of that I think would be good for motivation.

Judith Spang – Would it be appropriate to ask for a vote on the recommendation of the Subcommittee to move forward?

Bill Schroeder – Are there any other questions or comments?

John Hodsdon – On the irrigation side the rivers people get involved in this and I was involved in the instream flow twenty years ago and there was a lot of talk. I am not sure what got done but there is always a conflict there because those who are irrigating out of the river need the irrigation when the flow is low just because of the climatic nexus and that should be taken into consideration.

Bill Schroeder – Are you suggesting that should be an item thought about in this classification system?

John Hodsdon – Yes, add to it an agricultural classification too.

Judith Spang – That is one of the designated uses that need to be protected, which I think that it is. Agriculture is generally one of those beneficial uses that are considered one of the seven things to be protected.

Ken Rhodes – Under the proposed bill text, I am going back to a previous conversation we had two hours ago. You used the phraseology of "The General Court finds that administration of WQ Standards", which is used several times in here. Your previous commentary under definitions was maybe water standards instead. I just want to note the paradox between the two. If you are going to go forward, and I think it is essential to do this exercise if you want to get out of the Class A/Class B system, what do you want to define things as and how do you put those rules in place? I think there is a lot of conversation, even amongst some of the things we thought about so far. The seven, the six plus one, is nice. There are a couple of others here that we talked about and I think each has its own conversation that will be real important in this. The only other thing that I don't know but I think is part of it, whatever phase it is, there will be conflicts. For John's farm pond what I try to get my mental arms around is the antidegradation part of that. In the using of a farm pond for irrigation he is kicking the living hell out of aquatic life. You are not allowed to degrade anything. Even though you define them as different tiers there is the resolution of those inter-use conflicts that I think is going to be very important to the whole discussion, to the point, as the story goes, of his neighbors objection over aesthetic uses. The devil is in the details.

Judith Spang – Yes, I am glad that I am not on Subcommittee anymore.

Mike Metcalf - In terms of designated uses, tiers and resolving conflicts: who is doing that? Are we doing that, or is DES doing that? I am listening to the irrigation thing and I am representing water supply and I am thinking the same thing, that the time you want to use water for irrigation, we want to use water for drinking water. That has an impact on aquatic resources. There are many competing interests at the same time? How does that work?

Paul Currier - The same way it works now. The difference here is that there is some flexibility in the assignment of tiers so for example, you don't have the highest expectation of the same waterbody for all of the uses all of the time. Relative to withdrawals, it always remains that a certain amount of water has to be left in the stream or waterbody for aquatic life and some water can be taken out for off stream uses. What the designated use process states is that water has to be suitable quality for the designated uses. When a water supplier takes water out of the stream and takes it off to become drinking water, the water in the stream needs to be of suitable quality so they can make drinking water out of it. When John takes water out of his pond to irrigate, it has to be suitable quality so he can use it to grow crops and he has to leave enough water in the pond so everything doesn't die. Durham has to leave enough water in the Lamprey River so everything doesn't die. There is some flexibility in that tiered system where you can adjust the expectations.

Bill Schroeder - I think that we have segued into discussion on the motion on the floor.

- **The Motion to move was made by Chair Judith Spang to move the Subcommittee's report and John Hodsdon seconded. A vote was taken and all were in favor. Ellen Weitzler of EPA abstained.**

Bill Schroeder - We are now ready for discussion on that new motion John.

John Hodsdon - I probably should have had another use for the farm pond in conjunction with the Meredith Fire Department and water department. There is a dry hydrant there, which they use for training every year and a couple times in the past they have extensively withdrawn from the pond to help control fires up the hill. There were a whole bunch of them down around Neil's shore. They found it easy to talk a walk around my pond and take it out of there to put out the fires than to take it out of the lake. Water levels went down some but the spring is feeding it.

Bill Schroeder - The new sections that were proposed in the original bill text. If I understand this motion, we wouldn't be doing that? The left-hand column is not going to be done and the right-hand is the proposal instead. Is that right? If it takes us several years to get a new classification system in place, do we have any sort of problem in the near term by not putting these designated beneficial uses into law? I guess that is the question for DES?

Paul Currier - I don't think so. They are there but you have to read between the line, which is what we have done and published in the CALM. The EPA has always been satisfied that we had a sufficient number and level of designated uses to meet the requirement of the Clean Water Act. I think the legislature has always been satisfied because we report to them at the same time we are reporting to EPA that we are assessing our waters for the right thing. We can just keep doing what we are doing in the interim.

4:10 - 4:20 Decide schedule for future HB 1305 & 1348 Meetings

Phil Trowbridge

Judith Spang - We need to have the Interim Study for the final report in for November 1st and I noticed is that October 31st is when DES will submit a report that will summarize everything that happened here. Paul, were you intending that would be everything that happened at the Subcommittees or RR&D Committee?

Paul Currier - Yes, the idea is that we would provide a report that would serve as your report.

Judith Spang - Moving backwards from November 1st, if we could have the entire vote of the RR&D Committee on October 26th, we would have a final meeting of the Subcommittee that would vote on its recommendation to the full Committee on October 4th. September 21st would be the Subcommittee's first formal meeting. We had discussed having a public hearing at that point for the

public and affected parties to come and express their opinions about this and that would give the opportunity for anyone from RR&D who wanted to get up to speak on it and for us to hear from people who are not around this table about how they feel about it. That would be September 21st. Phil, way back in May you set October 13th as the next of WQSAC but this is the schedule that would probably work smoothly for us.

Phil Trowbridge – September 21st would be hearing?

Judith Spang – Yes, and our first Subcommittee meeting. Are we thinking that there is still some more work to be done on the definitions and can we have those done by September 21st?

Paul Currier – Yes.

Phil Trowbridge – Would there be a need for another WQSAC meeting before then for would we just go straight to that?

Judith Spang – We are going to need to know what it is we are bringing to the hearing. It would be good to have those definitions. I don't know if you need to have agreement on the definitions before then.

Paul Currier – What if we schedule a full Advisory Committee meeting for early on in September?

Judith Spang – That would be the week of September 13th? The week before that is Labor Day.

Phil Trowbridge – Are there any known conflicts on the week of September 13th?

Judith Spang – You generally like to meet on Wednesdays?

Phil Trowbridge – We are proposing the second Wednesday of the month.

Judith Spang – That would be the 15th then?

Bill Schroeder – Wednesday has been our traditional meeting day. I believe that the WQSAC has met on Wednesday afternoons.

Phil Trowbridge – We have met Wednesday afternoons or mornings, one or the other.

Bill Schroeder – Dan and I have weekly meetings on Wednesdays in the middle of the day but everybody else has issues too. Does Wednesdays seem like a good time for people or is there another day of the week they would like to propose? A part of that may be if you already did some research to see if meeting rooms are available.

Phil Trowbridge – We didn't check meeting rooms, just holidays and things like that. Wednesdays are good.

Lisa Fortier – We ended up with Wednesday because you can almost never get a meeting room on Tuesday because they are already booked by people who have reoccurring meetings who book the rooms a year ahead of time. That is a limiting factor.

Ken Rhodes – Would this time be a little more limited because we are just talking about a report back on definitions?

Phil Trowbridge – We would like it to be two hours at the most.

Ken Rhodes – You can talk about that for two hours?

Bill Schroeder – I am just trying to find out about Wednesdays in general. How would you like to keep it on Wednesdays? It sounds like there is a meeting room to keep it on Wednesdays?

John Hodsdon – We could also inquire tomorrow.

Bill Schroeder – If we know if this is morning or afternoon we can shift occasionally so I think we are ok.

Lisa Fortier – The meeting rooms tend to be open more on Monday and Friday because no one wants to have meetings then.

Judith Spang – The sixth is Labor Day.

John Hodsdon – The mornings of the third Wednesday is the Waukegan Watershed Advisory Committee, which will be on the 15th but if you schedule it at the same time I will be here instead of there.

Bill Schroeder – So the third Wednesday is not good for you.

Larry Morse – The third Wednesday is not good for me either because I have pre-hearing conferences for the Wetlands Council that today.

Phil Trowbridge – So the rest of the dates are second Wednesdays. What is the second Wednesday in September?

Phil Trowbridge – Is afternoon or morning better.

- **A vote was taken for afternoon or morning meetings. Afternoons won.**

Phil Trowbridge – That would be a 1:30 to 3:30 time slot.

Bill Schroeder – Back to September, do you want to make it the 8th? Does that work for people? The main business should be the Report on Definitions. Should that be the only business and then we move into other business in October?

Phil Trowbridge – Yes. I think this meeting should just finalize the new legislative stuff and we will finalize the new agenda items.

Bill Schroeder – That will be on Wednesday the 8th at 1:30.

Paul Currier – If we need a workgroup meeting on definitions, I will give you a call.

Judith Spang – I mentioned October 4th and it should be October 5th. We have a lot of Commission meetings between legislators on Mondays. That would be just the Subcommittee that would be voting.

Phil Trowbridge – Our schedule from here on out is September 8th at 1:30 for the WQSAC, just dealing with legislative stuff and September 21st would be the RR&D hearing. October 5th is the RR&D Subcommittee vote to recommend to the full Committee. October 26th would be the vote by the RR&D on the proposed legislation. The final report is due on November 1st.

Judith Spang – The hearing will be in the morning at 10:00 am.

Phil Trowbridge – For the next year we choose the second Wednesdays every other month. In the e-mail I sent I put down the dates of October 13th, December 8th, February 9th, April 13th and June 8th. It will probably be dominated by this designated tiered aquatic life use classification discussions. We will propose what the topics are in our first couple of meetings.

Bill Schroeder – Those will probably all be at 1:30 in the afternoon and if we have a room problem we will all shift to the morning.

4:25 – 4:30 **Other Business**

William Schroeder

Bill Schroeder – In the March meeting we talked about revisions to the Env-Wq 1700. Are they basically on hold at this point? What are the plans for that?

Paul Currier – They have been on hold because we haven't known what to do with the "not unless naturally occurring". We are thinking we will let HB 1305 play out a bit. It has played out a bit now so I think that we are ready to move forward with that proposal. The proposed legislative changes have no affect on the proposed changes for Env-Wq 1700 so we can move forward with the proposal. We owe the Advisory Committee some additional explanation.

Bill Schroeder – My sense of the discussion that we had back in March was that there were changes to the revisions to Env-Wq 1700 and we would like to take a look at that again and talk about it.

Paul Currier – Maybe we can do that in a September meeting?

Bill Schroeder – We wanted to just focus on just focus on the legislative.

Mike Kappler – Maybe we can do it in the October meeting?

Paul Currier – Yes.

Ken Rhodes – September is going to be dominated by the completion of definition?

Paul Currier – Yes.

- **Motion to adjourn from mike Metcalf and Dan Blais seconded. A vote was taken and all approved.**

Adjourned at 3:45

HB 1305 – Side by side comparison of original bill text and proposed bill text (edited after DES staff meetings on 7/19/10 and 8/11/10)

Bill text pertaining to definitions

Original Bill Text	Proposed Bill Text
<p>New Paragraph; Definitions; High Quality Water. Amend RSA 485-A:2 by inserting after paragraph V the following new paragraph: V-a. "High quality water" means a surface water of the state whose water quality exceeds any criterion or criteria for support of existing uses and the uses assigned to the class, or whose qualities and characteristics support a high quality or exemplary natural community of aquatic organisms.</p> <p>New Paragraph; Definitions; Outstanding Resource Water. Amend RSA 485-A:2 by inserting after paragraph VIII the following new paragraph: VIII-a. "Outstanding resource water" means a surface water of the state that has exceptional recreational or ecological significance, including, but not limited to, surface waters that are wholly or partially in a national forest, state park, or wildlife refuge.</p> <p>Definitions; Surface Waters of the State. Amend RSA 485-A:2, XIV to read as follows: XIV. "Surface waters of the state" means perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, <i>swamps, bogs, other wetlands</i>, water courses, and other bodies of water, natural or artificial.</p>	<p>Definitions; Surface Waters. Amend RSA 485-A:2, XIV to read as follows: XIV. "<u>Surface waters of the state</u>" means <u>perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or artificial, and waters of the United States under the federal Clean Water Act.</u> [note: strikethrough and bold-italics indicate changes from existing RSA.]</p> <p>New Paragraphs. Amend RSA 485-A:2 by inserting after paragraph XIV the following new paragraphs: XIV-a. "<u>Water Quality Standards</u>" means the combination of designated beneficial uses, criteria to support the uses, and antidegradation provisions <u>whether specified in this chapter or rules adopted pursuant to this chapter,</u></p>

Deleted: XIV. "Surface waters" means fresh waters and tidal waters, including wetlands with standing or flowing water.

Deleted: XIV-a. "Fresh waters" means wherever fresh water flows or stands, excluding groundwater.¶

XIV-b. "Tidal waters" means wherever the tide ebbs and flows.¶

XIV-c. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, and are waters of the United States under the federal Clean Water Act.¶

XIV-d. "Waters of the state" or "waters" means tidal waters, fresh waters, and wetlands.¶

Deleted: contained in

Deleted: and

Deleted: that are applicable to waters of the state

Deleted: XIV-f. "Waterbody" means a surface water or wetland or any portion of a surface water or wetland identified separately for assessment of designated beneficial use support.

Formatted: Normal (Web), Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

HB 1305 – Side by side comparison of original bill text and proposed bill text

Bill text pertaining to designated uses

Original Bill Text	Proposed Bill Text (<i>Session Law, not changes to RSAs</i>)
<p>Standards for Classification of Surface Waters of the State. Amend the introductory paragraph of RSA 485-A:8 to read as follows: 485-A:8 Standards for Classification of Surface Waters of the State. It shall be the overall goal that all surface waters attain and maintain specified standards of water quality to achieve support the purposes of the legislative classification <i>beneficial uses designated in RSA 485-A:9-a, I</i>. For purposes of classification there shall be 2 classes or grades of surface waters as follows:</p> <p>New Sections; Designated Beneficial Uses; Antidegradation Requirements. Amend RSA 485-A by inserting after section 9 the following new sections: 485-A:9-a Designated Beneficial Uses. The following beneficial uses shall apply to all classes of surface waters: I. Support of aquatic life, including a balanced, integrated, and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of the region; II. Recreation in and on the water, including, where applicable, swimming, wading, boating of all types, fishing, surfing, and similar activities; III. Fish and shellfish for consumption; IV. Drinking water supply after adequate treatment; V. Water-oriented wildlife, including, but not limited to, waterfowl, shore birds, beaver, mink, moose, and otter; VI. Geomorphic integrity, including suitable physical conditions in surface waters, adjacent shorelands, and riparian zones to provide floodwater attenuation and storage and maintain natural processes of erosion and sedimentation.</p>	<p>Findings. The general court finds that administration of water quality standards and the classification of waters, including assignment of designated uses for waters of the state, establishment of narrative and numeric criteria that support those uses, and an antidegradation policy, are important to the management and protection of New Hampshire's waters. It is in the interests of the state to do a comprehensive review of water quality standards, including the statutory process for classification of waters under RSA 485-A:8-12, and the related Surface Water Quality Regulations (Env-Wq 1700) adopted by the Department of Environmental Services.</p> <p>Report required; Review of water quality standards. I. (a) The commissioner of the department of environmental services shall conduct a comprehensive review of water quality standards and shall present a report, together with any proposed legislation, to the governor, the president of the senate, and the speaker of the house not later than September 30, 2011. (b) The report shall: (1) Include a brief history of water quality standards in New Hampshire, including the classification history and current classifications for state waters. (2) Describe the current water quality standards, including statutes, rules, and administrative practices of the department. (3) Describe the state responsibilities and requirements for water quality standards under the federal Clean Water Act, including a report of consultations with EPA Region I. (4) Summarize representative water quality standards of other states. (5) Include recommendations for proposed legislation to make water quality standards work better as a tool for managing and protecting New Hampshire's, and to better fulfill the state responsibilities under the Clean Water Act. (c) The commissioner may solicit the input and advice of diverse stakeholders in preparing the report, including consultations with the department's ad hoc Water Quality Standards Advisory Committee.</p>

HB 1305 – Side by side comparison of original bill text and proposed bill text

Bill text pertaining to antidegradation

Original Bill Text	Proposed Bill Text
<p>New Sections; Designated Beneficial Uses; Antidegradation Requirements. Amend RSA 485-A by inserting after section 9 the following new sections:</p> <p>485-A:9-b Antidegradation Requirements. In order to implement the antidegradation provisions of the federal Clean Water Act as required under 40 CFR section 131.12, the following shall apply:</p> <p>I. Existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected.</p> <p>II. The water quality of high quality waters shall be maintained and protected unless the department finds, after full public participation, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the department shall impose such limitations or conditions on the activity as are necessary to ensure water quality adequate to protect existing uses fully.</p> <p>III. The water quality of outstanding resource waters shall be maintained and protected.</p> <p>IV. In those cases where a potential water quality impairment is associated with a thermal discharge, the requirements of section 316 of the federal Clean Water Act shall be met.</p> <p>V. The department shall impose such limitations or conditions on all new and existing point sources as are necessary to ensure that the highest statutory and regulatory requirements are achieved, and shall require the implementation of all cost effective and reasonable best management practices for nonpoint source control.</p> <p>6 Effective Date. This act shall take effect upon its passage.</p>	<p>New Section; Antidegradation Requirements. Amend RSA 485-A by inserting after section 9 the following new sections:</p> <p>485-A:9-a Antidegradation Requirements. The department shall adopt rules that implement the antidegradation provisions of the federal Clean Water Act as specified in 40 CFR section 131.12 or any successor regulation promulgated by the United States Environmental Protection Agency.</p>

Deleted: required under

HB 1348 – Side by side comparison of original bill text and proposed bill text

Bill text pertaining to enforcement

Original Bill Text	Proposed Bill Text
<p>I Water Pollution and Waste Disposal, Enforcement of Classification. Amend RSA 485-A:12, I and II to read as follows:</p> <p>I. After adoption of a given classification for a [stream, lake, pond, tidal water, or section of such] surface water, [the department shall enforce such classification by appropriate action in the courts of the state, and] it shall be unlawful for any person or persons to [dispose of]:</p> <p><i>(a) Discharge</i> any sewage, industrial, or other wastes, either alone or in conjunction with any other person or persons, in such a manner as will lower the quality of the [waters of the stream, lake, pond, tidal water, or section of such] surface water below the minimum requirements of the adopted classification[-]; <i>or</i></p> <p><i>(b) Cause, allow, or contribute to any other activity that lowers the quality of the surface water below the minimum requirements of the adopted classification, including but not limited to diversion of water, removing trees or other riparian vegetation so as to alter water temperature, or increase the potential for stormwater run-off.</i></p> <p><i>I-a.</i> If the department shall set a time limit <i>under paragraph II</i> for abatement of pollution [under] <i>or for cessation or modification of an activity that is prohibited by</i> paragraph [H] I, and it becomes apparent at any time during the compliance period that full compliance with the adopted classification will not be attained by the end of such period due to the failure of any person to take action reasonably calculated to [secure abatement of] <i>abate</i> the pollution <i>or to cease or modify the activity</i> within the time specified, the department shall notify such person or persons in writing. If such person or persons shall fail or neglect to take appropriate steps to comply with the classification requirements within a period of 30 days after such notice, the department shall seek appropriate action in the courts of the state.</p> <p>II. If, after adoption of a classification of any [stream, lake, pond, or tidal water, or section of such] surface water, including those classified by RSA 485-A:11, [it is found] <i>the department finds</i> that there is a source or sources of pollution, <i>or any other activity is occurring</i>, which [lower] <i>lowers</i> the quality of the waters in question below the minimum requirements of the classification so established, the person or persons responsible for the [discharging] <i>discharge</i> of such pollution <i>or for causing, allowing, or contributing to the activity</i> shall be required to abate such pollution <i>or cease or modify the activity</i> within a time to be fixed by the department. If such pollution is of municipal [or industrial] origin, the time limit set by the department for such abatement shall be not less than 2 years nor more than 5 years <i>unless the discharge can reasonably be abated in less than 2 years</i>. For good cause shown, the department may from time to time extend any time limit established under this paragraph. Any determination by the department under this paragraph shall be subject to appeal as provided for in RSA 485-A:19.</p>	<p>None: Inexpedient to legislate</p>

**STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION**

FROM Paul Currier, Watershed Management
Bureau Administrator

Date August 18, 2010

Offices
Dept of Environmental Services
Water Division

SUBJECT Proposed changes to HB 1305 language
related to changes in RSA 485-A

TO Water Quality Standards Advisory
Committee

On June 22, 2010, the Water Quality Standards Advisory Committee (WQSAC) approved proposed language to revise RSA 485-A. This language was developed by working groups of the WQSAC at the request of the House RR&D Committee. The WQSAC directed DES staff to review the language and to work with Legislative Services to identify any remaining problems.

DES staff met with Joel Anderson, staff to the House RR&D Committee, on July 12, 2010. DES staff and Senior Management also met to discuss the proposed changes on August 11, 2010. As a result of these meetings and additional review of the proposed language, DES is recommending the following changes. Each of the changes is outlined and explained below.

Delete definitions for “wetlands”

Explanation:

There was concern that establishing an explicit definition of wetlands in RSA 485-A narrower in scope than the definition in RSA 482-A would erode the jurisdiction for wetlands regulation by RSA 482-A. The objective of the definition change is to clarify that the surface water quality standards apply to all waters of the United States under the federal Clean Water Act. This objective could be achieved using an alternative proposal for the definition of “surface waters of the state”.

The alternative proposal for the definition of “surface waters of the state” is:

XIV. “Surface waters of the state” means perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, ~~and~~ other bodies of water, natural or artificial, *and waters of the United States under the federal Clean Water Act.*

[note: strikethrough and bold-italics indicate changes from existing RSA.]

This proposal clarifies that the jurisdiction of the surface water quality standards includes all waters of the United States, without having to specifically define wetlands. This definition is effectively the same as the definition that was proposed by the WQSAC.

Delete definitions for “fresh waters”, “tidal waters”, and “waters of the state”.

Explanation:

These definitions are no longer needed because the new proposal does not reference these terms.

Edit the definition of “Water Quality Standards”.

Explanation:

The original proposal for this definition was:

“Water Standards” means the combination of designated beneficial uses, criteria to support the uses, and antidegradation provisions contained in this chapter and rules adopted pursuant to this chapter that are applicable to waters of the state.

This definition was changed to:

“Water Quality Standards” means the combination of designated beneficial uses, criteria to support the uses, and antidegradation provisions whether specified in this chapter or rules adopted pursuant to this chapter.

There are already groundwater quality standards so changing the name of the surface water quality standards to “water standards” would be confusing.

Delete definition for “waterbody”.

Explanation:

DES searched the RSAs for definitions and uses of the term “waterbody”. The term was spelled in two ways: “water body” and “waterbody”. The use of the term varied. Given that it is not critical to define the term in RSA 485-A, the proposed definition should be deleted to avoid further complicating the RSAs.

Provide a more robust reference to federal antidegradation regulations.

Explanation:

In case the federal antidegradation regulation were changed, the reference to this regulation should be appended with “or any successor regulation promulgated by the United States Environmental Protection Agency.”

The proposed language related to HB 1305 showing the edits made by DES staff is attached.

Schedule
Interim Study Sessions for HB 1305 and HB1348

(Revised June 28, 2010)

Water Quality Standards Advisory Committee and Working Group Meetings

Date	Meeting	Agenda
May 10, 2010	Working Group kick off meetings	<ol style="list-style-type: none"> 1. Elect Chair for Working Group 2. Define the problem and possible solutions (DES staff) 3. Discussion 4. Develop report-out for 6/22/10 meeting 5. Identify new stakeholders to add to Working Group 6. Assign research to staff and Working Group members 7. Schedule next meeting (if needed)
May 26, 2010	Working Group meetings	Work session – agenda items TBD
June 14, 2010	Working Group meetings	Work session – agenda items TBD
June 22, 2010	Water Quality Standards Advisory Committee	<ol style="list-style-type: none"> 1. Introductions by DES and legislators 2. Report-outs from Working Groups 3. Discussion
July 2010	Working Group meetings DES staff work	Work sessions (if necessary)
September 9, 2010 1:30 – 3:30 pm	Water Quality Standards Advisory Committee	1. Approval of final proposed language from Working Groups
September 21, 2010 (10:00 am)	RR&D Hearing	1. Opportunity for other stakeholders to provide input on final proposed language
October 5, 2010	RR&D Subcommittee Meeting	1. Vote to recommend bill language to full RR&D Committee
October 26, 2010	RR&D Committee Meeting	1. Vote to recommend bill language to full House
October 31, 2010	Interim Study Report	DES will prepare a report that summarizes the interim study process, stakeholder input received, RR&D votes, and outcomes.

Water Quality Standards Advisory Committee

2010-2011 MEETINGS

September 9, 2010, 1:30 – 3:30 pm

- Approve final proposed language for HB 1305 and transmit to the House RR&D Committee
- Review schedule for HB 1305 RR&D Hearings and Interim Study Report
- Approve list of topics for 2010-2011 meetings

October 14, 2010, 1:30 – 3:30 pm

- Review final language for initial rulemaking proposal for Antidegradation rule changes regarding demonstration of economic or social development (Env-Wq 1708.10) and water transfers (Env-Wq 1708.12)
- Review initial proposal to add Estuarine Nutrient Criteria to Env-Wq 1703.14
- Establish subcommittees and schedules for a comprehensive review of water quality standards, including the statutory process for classification of waters (“Classification System Study”)

December 9, 2010, 1:30 – 3:30 pm

- Report out by Classification System Study subcommittees
- Review guidance for Water Quality Certifications for water level fluctuations in impoundments
- Review revised proposal to add Estuarine Nutrient Criteria to Env-Wq 1703.14 (if needed)

February 10, 2011, 1:30 – 3:30 pm

- Report out by Classification System Study subcommittees
- Discuss methods and topics for the Triennial Review of water quality standards per 40 CFR 131.20

April 14, 2011, 1:30 – 3:30 pm

- Report out by Classification System Study subcommittees
- Report from UNH on research to establish water temperature criteria for streams

June 9, 2011, 1:30 – 3:30 pm

- Approve recommendations from Classification System Study subcommittees
- Establish schedule for completing report to the General Court on the Classification System Study by September 30, 2011

All meetings will be held at the NH Department of Environmental Services, 29 Hazen Drive, Concord, NH

Directions to NH Department of Environmental Services: From I-93 take Exit 14 (Loudon Road). Travel east on Loudon Road to Hazen Drive (on left at top of hill). NHDES is about 1/3 mile from the Loudon Road intersection on the left. Take first entrance and take immediate right

Water Quality Standards Advisory Committee

MEETING AGENDA

Thursday, September 9, 2010 1:30 pm – 3:30 pm

Department of Environmental Services

Rooms 112/113/114

29 Hazen Drive, Concord, NH

- | | |
|---|-------------------|
| 1) 1:30 - 1:35 Introductions | William Schroeder |
| 2) 1:35 - 1:40 Approval of the 3/24/2010 Meeting Minutes ¹ | William Schroeder |
| 3) 1:40 – 1:45 Approval of the 6/22/2010 Meeting Minutes ² | William Schroeder |
| 4) 1:45 – 2:30 Presentation of final proposed language for HB 1305 ^{3,4} | Paul Carrier |

→ Motion: To approve the final proposed language for
HB 1305 and transmit to the House RR&D
Committee

- | | |
|---|----------------------|
| 5) 2:30 – 2:45 Schedule for HB 1305 hearings and reports ⁵ | Rep. Spang/McClammer |
| 6) 2:45 – 3:15 Review topics for WQSAC meetings in 2010-2011 ⁶ | Phil Trowbridge |
| 7) 3:15 – 3:30 Other Business | William Schroeder |
| 8) 3:30 Adjourn | |

Comments on any discussion topic can be made either at the meeting, in writing or email after the meeting and before the next scheduled meeting. Email comments to Philip.Trowbridge@des.nh.gov

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List of Meeting Documents:

¹ “20100324_WQSAC Draft meeting minutes.pdf”

² “20100622_WQSAC Draft meeting minutes.pdf”

³ “20100818_HB1305 and HB1348 Proposed Bill Text.pdf”

⁴ “20100818 Explanation of Bill Changes.pdf”

⁵ “20100628_wg_schedule.pdf”

⁶ “2010-2011 Schedule of WQSAC Meetings.pdf”

Testimony

NH State Representative
Resources, Recreation & Development Committee
L. Mike Kappler

February 9th, 2010

Good Day Chairman & members of the Committee

I agreed to co-sponsor HB-1348 to simplify the verbiage in RSA 485, to help alleviate the confusion of so many pronouns in current language, and streamline classification to just say "surface water".

In addition to the classification change to "surface", the bill also clarifies the language in other paragraphs, to clear up more confusion.

In my opinion, this is strictly a grammar simplification bill, not changing the meaning or law intent of the RSA.

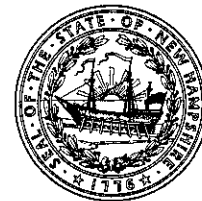
Please vote to send HB-1348 to the full House as OTP.

Thank you.


State Rep. L. Mike Kappler



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 9, 2010

The Honorable Judith T. Spang
House Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

Re: HB 1348, an act relative to enforcement of surface water classification

Dear Chairman Spang:

Thank you for the opportunity to comment on HB 1348, which was requested by the Department of Environmental Services (DES). This bill clarifies the agency's general authority to enforce surface water quality standards and the criteria that establish the occurrence of violations of surface water quality standards. The bill also makes technical corrections to include all surface waters in the requirements for compliance.

RSA 485-A:12 currently prohibits only discharges and sources of pollution that would result in violations of surface water quality standards. HB 1348 would expand this prohibition to include a wider range of activities in addition to discharges that are known to cause surface water quality violations if constructed or operated improperly. For example, under certain circumstances, these activities might include water withdrawals when stream flows are significantly reduced, thus affecting sensitive aquatic habitats, stream crossings that substantially restrict the passage of fish and other aquatic life in important fisheries, the construction or operation of dams in a way that causes significant water quality degradation, or other activities that cause demonstrable degradation of surface water quality. HB 1348 would clarify DES's authority to regulate these types of activities when the result is a lowering of surface water quality below the minimum requirements.

Thank you for the opportunity to comment on this bill. Please feel free to call Paul Currier, DES Watershed Management Bureau Administrator at 271-3289 or me at 271-2958, if you have any questions or need additional information.

Very truly yours,

Thomas S. Burack
Commissioner

cc: Representatives Spang, Kappler, Abbott, Kaen and Richardson
Senators Fuller Clark, Cilley, Merrill and Odell

Voting Sheets

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 1348

BILL TITLE: relative to enforcement of surface water classification.

DATE: February 11, 2010

LOB ROOM: 305

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. McClammer

Seconded by Rep. Moody

Vote: 18-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 18-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Suzanne H. Gottling, Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 1348

BILL TITLE: relative to enforcement of surface water classification.

DATE: 2/11/10

LOB ROOM: 305

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *McClammer*

Seconded by Rep. *Moody*

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Suzanne H. Gottling, Clerk

RESOURCES, RECREATION AND DEVELOPMENT

Bill #: 1348 Title: _____

PH Date: ____/____/____

Exec Session Date: 2 / 11 / 10

Motion: Interim Study

Amendment #: _____

MEMBER	YEAS	NAYS
Spang, Judith T, Chairman	✓	
Tupper, Frank A, V Chairman	✓	
Parkhurst, Henry A. L.	✓	
Moody, Marcia G	✓	
Aguiar, James D	✓	
Gottling, Suzanne H, Clerk	✓	
Hubbard, Pamela J	✓	
Kepner, Susan R	✓	
Thomas, Yvonne D	✓	
Williams, Carol A	-	
McClammer, Jim U	✓	
Russell, David H	✓	
Renzullo, Andrew	✓	
Christensen, Chris	✓	
Ahlgren, Christopher J	✓	
Kappler, L. Mike	✓	
Spaulding, Jayne E	✓	
Bolster, Peter S	✓	
Howard, Thomas J	-	
St. Cyr, Jeffrey L	✓	
TOTAL VOTE:	18	0

Committee Report

CONSENT CALENDAR

February 11, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on RESOURCES, RECREATION AND DEVELOPMENT to which was referred HB1348,

AN ACT relative to enforcement of surface water classification. Having considered the same, report the same with the recommendation that the bill be REFERRED FOR INTERIM STUDY.

Rep. James D Aguiar

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	RESOURCES, RECREATION AND DEVELOPMENT
Bill Number:	HB1348
Title:	relative to enforcement of surface water classification.
Date:	February 11, 2010
Consent Calendar:	YES
Recommendation:	REFER TO COMMITTEE FOR INTERIM STUDY

STATEMENT OF INTENT

This bill would attempt to clarify the enforcement of regulations to support state surface water classifications. Based on the recommendation of the department of environmental services, the committee recommends Interim Study so that its complexities can be studied in tandem with HB 1305 now in Interim Study.

Vote 18-0.

Rep. James D Aguiar
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

RESOURCES, RECREATION AND DEVELOPMENT

HB1348, relative to enforcement of surface water classification. **REFER TO COMMITTEE FOR INTERIM STUDY.**

Rep. James D Aguiar for RESOURCES, RECREATION AND DEVELOPMENT. This bill would attempt to clarify the enforcement of regulations to support state surface water classifications.

Based on the recommendation of the department of environmental services, the committee recommends Interim Study so that its complexities can be studied in tandem with HB 1305 now in Interim Study. **Vote 18-0.**

Original: House Clerk

Cc: Committee Bill File

HB 1348

This bill would attempt to clarify the enforcement of regulations to support state surface water classifications. Based on the recommendation of the department of environmental services, the committee recommends Interim Study so that its complexities can be studied in tandem with HB 1305 now in Interim Study.

James Aguiar

A handwritten signature or set of initials, possibly 'JA', located to the right of the name James Aguiar.

HB 1348

18-0
Interim Study
consent

This bill would attempt to clarify the enforcement of regulations to support state surface water classifications. Based on the recommendation of the department of environmental services, the committee recommends Interim Study so that its complexities can be studied in tandem with HB ~~1348~~ now in Interim Study.

1305

James Aguiar



HB 1348

This bill would attempt to clarify the enforcement of regulations to support state surface water classifications. Based on the recommendation of the department of environmental services, ^{the} the committee recommends Interim Study so that its complexities can be studied in tandem with HB 305 now in Interim Study.

James Aguiar

Rep. J.D. Aquino

HB 1348 Interim Study

This bill would ~~an~~ attempt to clarify the enforcement of ^{regulation} surface water ^{to support state} classifications.

Based on the recommendation of D.E.S., the committee recommends Interim Study ~~with~~

so that its complexities can be studied in tandem with ~~has been suggested that this bill should be assessed~~ ~~along with~~ ^{now} HB 305, ¹⁴ interim study.

**INTERIM STUDY
COMMITTEE REPORT.**

COMMITTEE: Resources, Recreation + Development

BILL NUMBER: HB 1348

TITLE: Relative to Enforcement of Surface Water
Classifications

DATE: October 26, 2010

RECOMMENDED FOR FUTURE LEGISLATION

LSR No. _____

(If legislation is already
filed, please list LSR no.)

NOT RECOMMENDED FOR FUTURE LEGISLATION

STATEMENT OF INTENT: (May be handwritten)

COMMITTEE VOTE: 15-0 (Attach Committee Voting Sheet)

Rep. David Russell
For the Committee

INTERIM STUDY REPORT FOR HB 1348 15-0

NOT RECOMMENDED FOR FUTURE LEGISLATION

BLURB: After discussion among members of the subcommittee and the Water Quality Standards Advisory Committee, it was determined that the provisions of HB 1348 are already in effect in existing statutes and Rules.

David Russey

9/3

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

INTERIM STUDY

EXECUTIVE SESSION on HB 1348

BILL TITLE: relative to enforcement of surface water classification.

DATE: October 26, 2010

LOB ROOM: 305

RECOMMENDED FOR FUTURE LEGISLATION

LSR No. _____
(If legislation is already filed, list LSR No.)

NOT RECOMMENDED FOR FUTURE LEGISLATION

Moved by Rep. Russell

Seconded by Rep. McClammer

Vote: 15-0 (Please attach record of roll call vote.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Suzanne Gottling, Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

INTERIM STUDY

EXECUTIVE SESSION on HB 1348

BILL TITLE: relative to enforcement of surface water classification.

DATE: October 26, 2010

LOB ROOM: 305

RECOMMENDED FOR FUTURE LEGISLATION

LSR No. _____
(If legislation is already filed, list LSR No.)

NOT RECOMMENDED FOR FUTURE LEGISLATION

Moved by Rep. *Russell*

Seconded by Rep. *McClammer*

Vote: *15-0* (Please attach record of roll call vote.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Suzanne Gottling, Clerk

RESOURCES, RECREATION AND DEVELOPMENT

Bill #: 1348 Title: relative to enforcement of surface water classification

PH Date: 1/1

Exec Session Date: 10/26/10

Motion: not recommended for future

Amendment #: _____

MEMBER	YEAS	NAYS
Spang, Judith T, Chairman	✓	
Tupper, Frank A, V Chairman	✓	
Parkhurst, Henry A. L.	✓	
Moody, Marcia G	—	—
Aguiar, James D	✓	—
Gottling, Suzanne H, Clerk	✓	
Hubbard, Pamela J	✓	
Kepner, Susan R	✓	
Thomas, Yvonne D	✓	
Williams, Carol A	—	—
McClammer, Jim U	✓	
Russell, David H	✓	
Renzullo, Andrew	✓	
Christensen, Chris	✓	
Ahlgren, Christopher J	✓	
Kappler, L. Mike	✓	
Spaulding, Jayne E	✓	
Bolster, Peter S	✓	
Howard, Thomas J	—	—
St. Cyr, Jeffrey L	—	—
TOTAL VOTE:	15	0