



## Connecticut River Joint Commissions

*10 Water St., Lebanon, NH*

*Monday, February 27, 2017*

*Meeting Minutes*

**Commissioners Present:** Jason Rasmussen, VT; Steven Lembke, VT; Tara Bamford, VT; David Deen, VT; Chris Company, VT; Barbara Robinson, NH; Mike Storage, VT; Chris Yurek, NH; Jennifer Griffin, NH; Rick Walling, NH; Mary Sloat, NH; Jim McClammer, Marion Allen, NH; Jim Kennedy, Upper Valley Local Advisory Committee. **Commissioners Absent:** Ken Niemczyk, Alison Low, Brendan Prusik, Elaine Levlocke,

### **Convene & Introductions at 2:00 p.m.**

Comm. Rasmussen moved and Comm. McClammer seconded the motion to accept minutes with correction noted. Comm. Deen added list absent.

### **Annual and Monthly Financial Statements**

Comm. Sloat made the motion to accept financial statement as of January 31, 2017, Comm. McClammer seconded. Vote: Unanimous

Comm. Rasmussen moved to accept financial statements for the year ending June 30, 2016.

Comm. Lembke noted that conflict of Interest forms should be signed each year.

Comm. Sloat seconded. Vote Unanimous

### **Dartmouth Study of Connecticut River**

David Deen spoke about the work of the students of the Rockefeller Center in his role as Chair of a legislative committee and their work on the Lake Champlain clean-up. He asked whether they might do a similar study on the Connecticut River in Vermont. The study request focused on Vermont and the CRJC could put in a request that the students do a similar analysis on behalf of the NH side of the river. He will provide the name of the Professor so that CRJC may make a request for the analysis. A request need not come from a legislative committee. David Deen will make the contact with the program professor and advise further.

Comm. McClammer moved and Comm. Sloat seconded a motion to contact the Rockefeller Center to have students conduct a similar economic impact study for the NH side of the Connecticut. Vote: Unanimous

**Correspondence Follow up** – Previous Communications commenting on the relicensing will be posted on the CRJC website. The link to studies will be added to the letter. The letter will be posted to FERC on 2/28/17. Comm. Bamford moved and Comm. Deen seconded a motion to send the letter with the addition of the dates of the letters and hyperlinks. Discussion followed on the propriety of having the subcommittees comment separately and it was agreed that they may submit separate comments on the PLP. The motion unanimously passed.

**Comm. Griffin** requested that comments on Number 7 regarding establishment of the mitigation and enhancement fund and comments about separate town warrant articles might be deleted from the letter because CRJC had not taken a universal position on either. Comm. Rasmussen moved and Comm. Company seconded the motion to delete sentences. Vote: Carried with one abstention by Comm. Griffin.

Comm. McClammer noted that Comm. Bamford and many others had assisted in composing the final PLP comments. Both were thanked by Commissioners.

**Member Recruitment** – Comm. Lembke identified everyone that has to be reappointed in Vermont. Staff and Comm. Lembke explained the process for re appointment and provided a list of Commissioners whose terms were expired or expiring and might like to seek reappointment. Comm. Lembke and staff will follow up on re appointments first. Commissioners were encouraged to recommend additional members to serve.

### **Conte Partnership Update**

CRJC subcommittees are going to be part of the Watershed on Wheels at three events. NH Charitable Foundation MEF awarded a grant of \$5,000 to CRJC of \$1,000 for informational panels and \$4,000 for printing. The projects considered for creating a resource guide, homeowners' guides, and riparian buffers to be at Herrick's Cove on May 7, 2017.

Comm. Company won't be attending the next Conte meeting. The appropriation in the US House, cuts are deep on agriculture and the FY 2017 farm bill conservation programs.

### **Schedule for future meetings to convene with Secretaries and Commissioners**

Chris Company drafted a statement regarding convening between Commissioners from counterpart agencies from each state. Commissioners agreed that this was a good idea and was a good form of education and outreach and an opportunity to meet face-to-face. The

suggestion was to have these in 3 out of 6 meetings June, August, December may be a good time as legislatures are out of session and Agency Secretaries may have more flexible schedules. Comm. McClammer expressed the interests in water quality issues and issues relative to relicensing and other impacts on the river. Mary Sloat suggested summer meetings in another location for example in the northern or southern part of the state.

### **Status of the Waters of the US Rule**

The White House has a website that has this in the cross-hairs as it is seen as an obstacle to economic development. McClammer reported that decisions in the Swann & Rapanos cases, previously heard by SCOTUS regarding jurisdictional wetlands under the Clean Water Act (CWA), caused ambiguity in defining “waters of the US”. The 2015 Waters of the US Rule was implemented by the ACOE to address this ambiguity; but, it was immediately stayed by numerous federal courts over issues that range from ACOE overreach to noncompliance with the Administrative Procedures Act. The issue as to which federal Court has the authority to hear challenges to the 2015 rule is currently before the SCOTUS, and a decision on only this issue is expected a year from now. In the interim, the ACOE has reverted to using pre-existing guidance (i.e., procedures to determine if there is a significant nexus between certain wetlands and tributaries to traditional navigable waters) to determine which “waters” are jurisdictional under the CWA. Consequently, the 2015 waters of the US rule is not being used, and issues over its legality are unlikely to be resolved for at least a year (but more likely several years). Which “waters” are jurisdictional to the CWA is relevant to Section 401 of the CWA. The states have the responsibility for establishing standards and protecting water quality under Section 401. The use of a dissolved oxygen standard is being discussed in NH as one of those standards.

McClammer is more concerned that reductions in EPA state grants will have a greater adverse effect on the ability of NH and VT to protect water quality than a purported repeal of the 2015 waters of the US rule, which is not currently being used.

### **Warrant Article on MEF**

It is important that any CRJC endorsed activity should be voted upon by either the full commissions or executive committee. At CRJC subcommittee level they may comment. Comm. Griffin. Executive Committee should remind subcommittees of the structure. Draft letter to Editors explaining the difference for future reference. Comm. Griffin moved and Comm. Bamford seconded motion to send letter of correction. Discussion followed. Motion carried 11/2.

## **Other Business/Announcements**

VT H92 will require Dam registration and Safety (except hydro–electric). Comm. Company and Comm. Lembke will write a letter in support of the bill. H. 211

<http://legislature.vermont.gov/assets/Documents/2018/Docs/BILLS/H-0211/H-0211%20As%20Introduced.pdf> on water quality monitoring will encompass all three VT river watersheds has been read and is now in Natural Resources, Fish and Wildlife Committee for consideration.

Comm. Lembke reported that the Connecticut River Byway Council asked to be re–associated and they promised to have some information sent to CRJC in the near future.

The Local River Subcommittee report was distributed for reading.

Northern Connecticut River Tributaries are meeting with NH DES about unused dams and watershed wide culvert inventory and assessment on Ammonoosuc at NCC at Mt. Eustis Commons on March 9 from 4:30 to 6:00 pm.

## **Agenda – April Meeting**

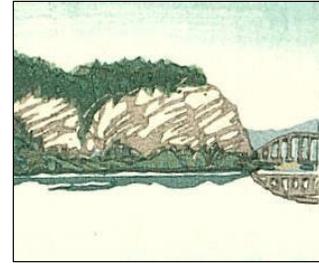
- Comm. Dick Sanders resignation letter was read into the record. Discussion of the points raised including using phone conferencing to accommodate those who are unable to be physically present at meetings, while noting that a physical quorum must be present in the room.
- Upper Valley Local River Sub Committee Chairman Jim Kennedy’s letter to DES on how to work better with LRS will be added to the next full commissions meeting
- Nominations for leadership positions to be voted in June.

**Adjourn** – Comm. Rasmussen moved and Comm. Sloat seconded a motion to adjourn at 4:15 p.m.

**Adopted:** June 19, 2017

# Upper Valley River Subcommittee

New Hampshire – Piermont, Orford, Lyme, Hanover, Lebanon  
Vermont – Bradford, Fairlee, Thetford, Norwich, Hartford



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Subject: **NHDES – LAC Permit Interaction**

As described in the River Management statute, RSA 483:8-a III, a Local River Management Advisory Committee (LAC) has a duty to “**consider and comment** on any federal, state, or local government plans to approve, license, fund or construct facilities that would **alter the resource values or characteristics** for which the river or segment is designated”. As required in the Wetlands statute, RSA 482-A:3, I (d) (2), “the local river management advisory committee shall, under RSA 483:8-a III (a)-(b), advise the commissioner and **consider and comment on the permit application**”.

The Upper Valley River Subcommittee (LAC) of the CRJC has considered and commented on many applications in the last few years, mostly riverbank stabilization projects on the main stem of the Connecticut. We have generally had a good relationship with NHDES, but several recent permit decisions have brought the permitting process into question. The following are our concerns:

**Pre-application:** applicants meet with NHDES and negotiate the construction details of a project. The applicant then proceeds to the application phase as if NHDES has approved the project, and represents this to the LAC. Sometimes, the materials and methods proposed may not be appropriate for the site, or may affect abutters. Less impacting alternatives are not always considered or subjected to detailed analysis. The LAC is the local “eyes and ears” for NHDES, and the department cannot visit every site.

Possible solution: Perhaps the LAC could be more involved in the pre-application process.

**Application submittal:** The method of delivery to the LAC and the local Conservation Commissions sometimes results in delays in reviewing the project. This, combined with the monthly or bi-monthly meeting schedules of the LAC, can result in delayed responses to NHDES.

Possible solution: Streamline the process to shorten response times.

**Review of applications:** Usually, a few members of the LAC (as a “review team”) visit the site with the applicant and prepare comments for the full quorum meeting of the LAC. If the LAC will not meet before the comment deadline, the review team sends the comments to NHDES with a description of the persons involved and the procedure used. This process may be contrary to the state meeting and right-to-know laws.

Possible solution: Develop a standardized review and comment procedure, allowing for action without a full LAC quorum. Develop a simplified procedure for “ de minimus” activities.

**Coordination with other agencies:** Reviews by NH Natural Heritage Bureau, NH Fish & Game, and U.S. Fish & Wildlife Service are not always seen by the LAC. The LAC members are stewards of the river, and may be able to contribute valuable information to these agencies.

Possible solution: make sure that reviewing agencies receive the LAC comments.

**Requests for More Information (RFMI):** The LAC usually receives the RFMI, which often cites the LAC concerns. However, the LAC does not usually see the applicant’s responses or plan modifications, and does not have a chance to review or comment on them. Since the statute requires that the LAC consider and comment on application, there may be an assumption that the LAC could comment on all parts of the application.

Possible solution: Require the applicant to submit responses and revised plans to the LAC.

**Permit issuance:** Permits usually contain detailed findings, conditions, and answers to the LAC comments, but sometimes they are brief and do not answer all of the LAC concerns.

Possible solution: Make sure that permit findings and conditions respond to all LAC concerns.

**Construction and monitoring:** In some instances, the contractor modifies the scope of work or the specifications. Also, the permit can be amended after issuance. Although the applicant is usually required by NHDES to inspect the work and monitor the construction, the project doesn’t always end up as permitted.

Possible solution: Provide for LAC comment on the results of the work, and for long-term monitoring.

If you need additional information, please contact us at the above address.

Respectfully submitted,  
James S. Kennedy, chair  
Upper Valley Subcommittee (LAC)  
Connecticut River Joint Commissions