

GROUNDWATER COMMISSION HB1353 SUBCOMMITTEE MEETING

**A PUBLIC DISCUSSION WITH THE NH LEGISLATURE'S GROUNDWATER
COMMISSION TO DISCUSS THE ROLE OF MUNICIPALITIES IN THE
REGULATION OF GROUNDWATER WITHDRAWALS**

Sponsored by

THE NASHUA REGIONAL PLANNING COMMISSION

MEETING MINUTES

Meeting Date: April 30, 2009

Meeting Location: Nashua Regional Planning Commission (NRPC) headquarters in Merrimack, NH

Meeting Advertisement: The New Hampshire Department of Environmental Services (DES) mailed a meeting notice prepared by the Groundwater Commission to Town Managers/Administrators, Town Planners, Planning Boards, Conservation Commissions and Selectmen for the towns represented by the Nashua Regional Planning Commission. Towns represented by the Nashua Regional Planning Commission include: Amherst, Brookline, Hollis, Hudson, Litchfield, Lyndeborough, Mason, Merrimack, Milford, Mont Vernon, Nashua, Pelham, and Wilton. DES also e-mailed notices to all State Senators, Representatives and Executive Councilors that represent the region. DES also provided notice to various river and watershed organizations via e-mail. The meeting was also advertised on NHgroundwater.com, which was promoted in April in a press release issued by Senator Cilley's office.

Minutes Prepared By: Christine Bowman, NH Department of Environmental Services

These minutes provide a summary of the meeting. All meetings were video taped. Copies of these tapes can be provided upon request.

The meeting began at approximately 7:00 PM. Below is a list of participants:

Attendance:

Name	Association
Groundwater Commission Members / HB1353 Subcommittee Members	
Brandon Kernen	NH Department of Environmental Services
Bill McCann	Public Member
Dave Maclean	NH Business and Industry Association
Bob Snelling	Society for the Protection of NH Forests
Other Attendees	
Minda Shaheen	Nashua Regional Planning Commission – Planner
Kevin Lynch	Town of Litchfield – Health Officer
Robert Kelley	Merrimack Village District – Board of Commissioners
Sean Trombly	Trombly Gardens, Milford, NH
Eben Currier	Currier Orchards, Merrimack, NH
John Boisvert	Pennichuck Water Works
Stephen Roy	NH Department of Environmental Services
Christine Bowman	NH Department of Environmental Services

The meeting was opened with introductions. Bill McCann then gave a general overview and history of the Groundwater Commission and HB1353 and his involvement with the subcommittee. He explained that the purpose of the meeting is to get input from members of the public and local governments on the issue of local participation and/or control in the large groundwater withdrawal permitting process so that the Groundwater Commission can make recommendations to the legislature. He stated that the Groundwater Commission wants to hear what people think is right and wrong with the current process and most importantly, the basis for their opinion. Bill McCann stated that the Groundwater Commission is tasked with using the information gathered to formulate legislation if there is a need or a desire to change the process. He then introduced Brandon Kernen.

Brandon Kernen then delivered a PowerPoint presentation on laws related to groundwater withdrawals in NH and the current regulatory process. He directed the attendees to NHgroundwater.com for more detailed information. Brandon Kernen concluded the presentation by stating that written comments could also be submitted after the meeting through the website. He also directed the attendees to the list of lead-off questions on the meeting flyer. Following the presentation, Bill McCann opened the public discussion portion of meeting.

An attendee asked how 57,600 gallons per day was derived as the threshold for requiring a large groundwater withdrawal permit. Brandon Kernen responded that there was an existing regulation in 1998 separating large community water systems from small community water systems and that the cut-off between the two was 40 gallons per minute which translates to 57,600 gallons per day.

An attendee asked about the economic development council's view for the development plan for southern NH, commenting that as more housing is built, water usage and consumption will increase. He also commented that commercial water use should also be looked at in terms of the amount of water that is used to create products. Bill McCann responded that the southeastern part of the state is also seeing a lot of growth and that in the time since the issuance of the USA Springs permit in 2004, that town has permitted a lot of growth. He commented that it is a difficult issue, which may require better coordination on a statewide or regional level. Bill McCann stated that as certain parts of the state are growing faster than others, large groundwater withdrawals could have a greater or lesser degree of impact depending on where they are proposed and that water resources need to be looked at in a collective manner. He stated that local communities currently have a role through land use planning and regulation. The attendee commented that developers should be encouraged to use water-conserving devices in the homes they are building. Bill McCann commented that there needs to be more recognition by local governmental bodies of their role in the process and what they can bring to the process. The attendee commented about the potential for increased commercial development. Dave Maclean commented that a large scale commercial development would have to go through the process if they are using groundwater in excess of the threshold and that there are water conservation requirements to ensure that the water is being used in a sustainable manner. He commented that in terms of looking at the carrying capacity of a region, the science is improving. He referenced the USGS study of the Seacoast region.

Kevin Lynch commented that one of the concerns in the Town of Litchfield is that there are large wells in the town owned by another entity (either the town of Hudson or Pennichuck). He stated that zoning and regional planning are very important and commented that Litchfield is a town that tries to control growth but is a small rural town in a more urban area. He stated that towns need more guidance on zoning, commenting on the inconsistencies in zoning regulations between Litchfield and neighboring communities, because all of the towns may be dependent on the same groundwater resource. He stated that it doesn't make sense to look at the resource from a town perspective, and that it should be looked at from a regional perspective and that towns in the same region should adopt consistent regulations. Bill McCann commented that because water doesn't respect municipal boundaries, it makes it more difficult to develop regulations and policy and get everyone's buy in, but that some people would suggest that there needs to be a mechanism to get the communities to come together. Kevin Lynch commented on regulations that mandate certain water supply requirements, citing fire flow as an example, and commented that lawn irrigation is a luxury. In follow-up, Bob Snelling asked Kevin Lynch if he had any thoughts on who should be looking at these decisions on a regional scale: the State through DES, an aquifer district, a regional water commission? He asked Kevin Lynch where he thought this responsibility should lie in the government structure. Kevin Lynch responded that the general assembly of legislators, as a whole, should be looking at water issues. Bob Snelling responded that the general assembly has directed the establishment of the Groundwater Commission and then asked Kevin Lynch what he felt would be the best way to implement a regional approach to ensure that individual town's interests are represented, while ensuring that it's a collective regional decision making process. He asked whether the state should serve this function or whether a new intermediate organization should have the responsibility.

An attendee stated that he supported the idea of water commissions, commenting on his experience while living in Georgia where each town has a representative on a commission who reports back to the town government but the commission has decision making authority.

Eben Currier commented that groundwater withdrawals for agricultural use may not be occurring 365 days of the year, and asked whether there are any considerations or exemptions given to agricultural users in the permitting process. Brandon Kernen commented on work by the hierarchy of use subcommittee, in terms of looking at which users should have priority in a water supply emergency or drought. He commented that Eben Currier's question seemed more related to water users that use water differently. Dave Maclean stated that under the current statute, agricultural users are not exempt. He commented that the months of the year when agricultural users are extracting water are also typically the months of the year when water resources are most stressed. An attendee commented that agricultural users are putting the water back into the ground, unlike water bottling plants. John Boisvert responded that most of the water used for irrigation is lost through evapotranspiration. Dave Maclean commented that the pumping of groundwater by any user can cause adverse impacts. The attendee commented that a mitigation strategy, similar to wetlands mitigation should be considered for agricultural users. John Boisvert commented that during a drought, the big question will be who gets the water, stating that he is not in support of customers of public water systems being allowed to water their lawns because it would be a wasteful use of the water. He stated that agricultural users have an economic interest in running their farms which produce food and that during a drought, that use should have

greater priority than a golf course which irrigates, for example. He stated that this is a policy decision for the legislature. Eben Currier asked whether agricultural users have the right to capture and store stormwater that enters their property. Dave Maclean reiterated that the priority of use is something that the commission is working on. John Boisvert commented that many factors have to be considered in looking at the priority of use including health and safety and economic issues.

John Boisvert commented that there are private wells whose withdrawals are not regulated in the zone of influence of the Litchfield wells. He then commented on the cumulative impacts of withdrawals from private wells stating that when developers are looking to develop land, they may not have access to an existing public water system and instead may opt to develop large lots with large lawns with on-lot water and sewer, rather than a large groundwater withdrawal, and that the water demand may be the same if not more since the individual withdrawals are not regulated. He commented that during a drought, the state would have more authority if the development was a community water system. He also commented that fire protection is a relatively small amount of water and that it really requires larger storage tanks and bigger pipes. He stated that conservation is working and that winter demand in Pennichuck systems shows that per capita usage is decreasing. He said conservation will work better when we start to look at land use and development, citing impervious surfaces and landscaping. Kevin Lynch commented that in Litchfield, there are homes that are on public water but their lots can also accommodate private wells so people install private wells for irrigation. John Boisvert commented that water systems may be encouraged to keep water rates up to encourage conservation but that people will find ways around that, one way being installing private wells for irrigation. He commented that this may actually result in more water use since the use is unregulated. Bob Snelling asked John Boisvert is he was suggesting that the commission should recommend to the legislature that the law be expanded to include developments with on-lot wells whose aggregate use is greater than 57,600 gallons per day, or whether even for developments that use less than 57,600 gallons per day, that communities as part of their subdivision regulations impose a requirement for a permit or even require the development have a community water system. John Boisvert stated that the approach for looking at the cumulative effect of private well withdrawals should be examined, commenting that one avenue may be through site development laws. He also commented that local communities may want to have incentives for smaller lots because their development results in less land disturbance, less road surface, and overall less impervious surface.

Kevin Lynch commented that towns may not have the resources to regulate something like this and would therefore depend on outside agencies for the review. Dave Maclean responded that certain regulations, such as zoning, lot sizing, and site development specifics, are under the town's purview. Minda Shaheen commented on the connection between land use and water use stating that there should be a mechanism to look at the cumulative impact of a development through the permitting process so a developer isn't able to circumvent the process simply by developing on-lot wells. She asked if there was a way through the regulations to offer an incentive for conservation subdivisions with community water systems to avoid cumulative impacts of private wells. She commented that encouraging conservation subdivisions seems to be a logical connection between land use and water resource management. John Boisvert commented that in regard to zoning, towns can zone based on available resources (utilities for

example) and for what they want their town to look like in the future. He stated that when utilities become available, towns often feel pressure to change their zoning to maintain the character of their town. Minda Shaheen commented that towns should be closely examining the type of zoning that they want. In response, Kevin Lynch commented on the “costs” of commercial land use.

Eben Currier commented that the state should be encouraging the use of porous pavement to encourage the infiltration of stormwater. Bill McCann responded that some communities’ site development regulations take this into consideration.

An attendee asked whether it is within the Groundwater Commission’s mandate to make recommendations regarding new technologies that should be considered by towns when a development is proposed, citing graywater recovery systems as an example. Bill McCann restated the main charge of the commission, adding that the RPC-sponsored meetings are creating opportunities for other discussions. He commented that municipalities currently have a lot of input into the development process and referred the attendees to the water resources primer, adding that there needs to be more education of local officials to let them know what they can and cannot do. Kevin Lynch commented that in discussing land use and water use, the focus should be on regions and not individual towns because neighboring communities may not agree on a particular approach. Bill McCann commented that the state can encourage development standards but they cannot mandate them. Minda Shaheen asked whether and how the development of the regional impact process has affected the groundwater permitting process. Brandon Kernen responded that for the large groundwater withdrawal permitting process, the notification process extends to the subwatershed which captures towns adjacent to where the withdrawal is proposed. He commented that in some cases, the town in which the withdrawal is located and the neighboring towns will come forward to discuss impacts relative to water resources at that scale. He stated that to his knowledge, the regional impact clause was only invoked in the USA Springs case and it was related to issues such as traffic and not the large groundwater withdrawal because of the preemption in the statute. Minda Shaheen responded that there is a disconnect between having regional involvement, since communities are preempted in certain instances and can’t invoke the regional impact clause. Dave Maclean commented that the large groundwater withdrawal permitting process is very good at looking at the effects of the individual withdrawals; however, it doesn’t take into account the cumulative effect of many things coming together. He stated that awareness is being generated at the regional level, citing Rockingham Planning Commission’s involvement with the USGS. Kevin Lynch asked how people in other parts of the state are responding to the subcommittee’s questions. Bill McCann responded that the Nashua meeting was only the second meeting held to date. John Boisvert commented that applicants such as golf courses and water bottling facilities seem to generate the most controversy, when compared to public water systems, in which controversy often only arises when water crosses municipal boundaries. Brandon Kernen responded that he anticipates that meeting attendance will probably be better in other parts of the state because there were recent or are ongoing large groundwater withdrawal projects and the public is more aware of the process. An attendee asked whether an overlay of the state showing the state’s water availability exists. Brandon Kernen responded that the stratified drift aquifers in the state are mapped and their capacities have been pretty well estimated. In regard to bedrock aquifers, he commented

that estimates of water availability are made on a case by case basis and making estimates on a statewide level would require a lot of data. He commented that another confounding factor is that while you can grossly estimate how much water is being taken from overburden and bedrock aquifers, it's all connected to surface water so the limiting factor is how much water has to stay in the streams and wetlands, not necessarily dewatering of aquifers or saltwater intrusion, citing the USGS seacoast study. He commented that the management of wastewater and stormwater also contributes to the management of surface water flows.

Sean Trombly stated that he lives on the Souhegan River and that because he will be limited on how much surface water he can withdraw due to instream flow requirements, he may have to withdraw groundwater. He also commented that some agricultural operations, citing dairy farms as an example, would be operational 365 days of the year. In response, John Boisvert commented that a water management plan for the Souhegan River has yet to be brought forth.

The meeting was adjourned at approximately 8:15 PM.

The following is the list of discussion points noted on the flip chart during the meeting:

- NH Economic Development Council – development trends in southern NH and increased water use
- Water conservation measures
- Water re-use
- Regional planning/regional zoning
- What about smaller rural towns in more urban regions?
- Rules/regulations in neighboring communities or in the same region should be consistent
- Rules that mandate certain requirements for certain water uses (domestic, fire protection, etc.)
- Who should be responsible for regional initiatives? Who should oversee - the state, regional water commissions, etc.?
- Special consideration should be given to agricultural users because of the seasonal nature of their water use – some water users use water 365 days a year while agricultural users may only use water for several months out of the year for irrigation
- Devising mitigation strategies for groundwater use by agricultural users
- Hierarchy of water users/priority of use
- Capture of stormwater for other uses, for example, agricultural use
- Cumulative effect of small groundwater withdrawals from private wells
- Effectiveness of conservation
- Landscaping ordinances - specifically in regard to the amount of lawn allowed that would have to be irrigated
- Irrigation wells on lots served by public water
- Incentives for conservation subdivisions with community water systems – encouraging through regulations
- Zoning for what you want your community to look like
- Encourage land developers to use materials/techniques to preserve groundwater recharge characteristics
- Regional impact process
- Aquifer mapping
- Surface water needs is a limiting factor in how much groundwater can be withdrawn