

**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 ROCKINGHAM PLANNING COMMISSION**

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**MEETING MINUTES**

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**Meeting Date:** May 13, 2009

**Meeting Location:** Seabrook Public Library in Seabrook, NH

**Meeting Advertisement:** The Rockingham Planning Commission (RPC) coordinated the HB1353 meeting with their regular commission meeting. RPC also mailed and e-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 RPC. Towns represented by RPC include: Atkinson, Brentwood, Danville, East Kingston, Epping, Exeter, Fremont, Greenland, Hampstead, Hampton, Hampton Falls, Kensington, Kingston, New Castle, Newfields, Newington, Newton, North Hampton, Plaistow, Portsmouth, Rye, Salem, Sandown, Seabrook, South Hampton, Stratham, and Windham. The Department of Environmental Services (DES) e-mailed notices to all community water systems in the region. 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.

**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 conducted was held as part of the regularly scheduled Commissioner meeting of the Rockingham Planning Commission (RPC).

The meeting began at approximately 6:30 PM. Below is a list of participants:

**Attendance:**

<b>Name</b>	<b>Association</b>
<b>Groundwater Commission Members / HB1353 Subcommittee Members</b>	
Brandon Kernen	NH Department of Environmental Services
Bill McCann	Public Member
Robert Snelling	Society for the Protection of NH Forests
Brian Goetz	New Hampshire Water Works Association
Susan Roman	HB1353 Subcommittee Member
Glenn Greenwood	RPC – Assistant Director / Association of Regional Planning Commissions
<b>Other Attendees</b>	
Cliff Sinnott	RPC – Executive Director
Ted Tocci	RPC - Hampton Falls
Glenn Coppelman	RPC - Kingston
Donna Green	RPC - Sandown
Mark Traeger	Sandown
Chris Mills	Nottingham
Therese Thompson	Nottingham
Bill Bennett	Town of Atkinson – Board of Selectmen
Christine Bowman	NH Department of Environmental Services
Representative Mary Allen	Rockingham County – District 11 / RPC - Newton
Tim Moore	RPC - Plaistow
Barbara Kravitz	Seabrook
Tom Morgan	Seabrook
Sue Foote	Town of Seabrook - Planning Board and Conservation Commission
Anthony Blenkinsop	RPC – Portsmouth
Francis Chase	RPC – Seabrook
Curtis Slayton	Town of Seabrook - Water Department
Robert Moore	Town of Seabrook – Board of Selectmen
John H. Kelley	Town of Seabrook - Planning Board
Aboul Khan	Town of Seabrook – Board of Selectmen / RPC – Seabrook
Bob Brown	RPC - Rye
Peter Griffin	RPC - Windham
Gwen English	RPC - Exeter
Katherine Woolhouse	Exeter
Bob Goodrich	RPC – Stratham
Paul Deschaine	Stratham
Representative Donna Schlachman	Rockingham County – District 13
Ernie Landry	Town of Kingston - Planning Board
Mark Olson	Town of Hampton - Planning Board
Fran McMahan	RPC - Hampton
John Payzant	RPC - New Castle
Carl McMorran	Aquarion Water Company
John Boisvert	Pennichuck Water Works
Stephen Roy	NH Department of Environmental Services
Patricia deBeer	Fremont
Richard Milner	Newton
A. Chiaramida	Daily News of Newburyport

The meeting was opened with introductions. Glenn Greenwood then opened the HB1353 portion of the meeting by providing introductory remarks about the purpose and duties of the Groundwater Commission and the HB1353 Subcommittee. He explained that the Commission is conducting regional meetings to hear the public's ideas and recommendation about how groundwater should be managed in New Hampshire and what the role of municipalities should be in regulating groundwater. He then directed people to the available reference materials and [NHgroundwater.com](http://NHgroundwater.com) for more information. 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. Following the presentation, Bill McCann opened the public discussion portion of meeting by restating the purpose of the meeting and explaining that the Commission really wants to understand why people have the opinion they do when they provide their recommendations.

An attendee asked about the term of a large groundwater withdrawal permit and whether it was DES' experience that permits were issued for too long or too little of a time period. Bill McCann responded that a permit is valid for 10 years at which point it would have to be renewed. Brandon Kernen commented that a shorter term or a refreshing step requirement is a good recommendation, particularly if a permit hasn't been used within a certain time period of issuance. He stated that this could be considered in the rule re-adoption process. The attendee then stated that when a developer gets a permit from the planning board, the permit lapses if there isn't a substantial amount of activity within a certain period of time.

Representative Mary Allen asked if there is a time frame for each of the steps of the large groundwater withdrawal permitting process and if there isn't, why? Brandon Kernen responded that the time frames DES has to respond to different submittals are established in the rules, but that there isn't a fixed time for each step beyond the public comment period. He stated there are multiple reasons for this including the time it could take an applicant to respond to a comment letter from DES or secure contractors for aquifer testing. He also stated that some applicants try to time aquifer testing seasonally and that it generally takes a couple of years to complete the entire permitting process. Representative Mary Allen asked whether the state was considering expanding the time frame for municipalities to provide comments to DES on an application because towns typically have to hire a private consultant and the current time frame is very narrow. Brandon Kernen and Bill McCann responded jointly that the time frames are established by statute. Bill McCann then stated that it would make sense to expand the time frames if the local role in the process were expanded.

Representative Donna Schlachman asked whether there have been any discussions at the state level regarding the amount of profit a water supplier should be allowed to make in providing a community with water. Bill McCann responded that this was outside of the realm of the subcommittee and that some private companies are regulated by the PUC. Representative Donna Schlachman asked whether the Groundwater Commission had thought about influencing that process because the companies exist to serve the public. Bill McCann responded that the subcommittee would have to discuss whether it is in their purview.

Chris Mills stated that he understands that when DES issues a large groundwater withdrawal permit, they assume there will be no adverse impact to the community. He asked whether DES looks at potential development in the community and takes into consideration future increases in water demand for residential or business use. He then asked what recourse people have against DES for issuing a permit if the assumption of no adverse impacts is wrong or something unforeseen happens. Bill McCann stated that the key is no unmitigated adverse impacts and that generally speaking, it is DES' responsibility to look at all of the data that is presented at the time of the application. Chris Mills reiterated his first question stating that since the issuance of the USA Springs permit, several developments have been built in town resulting in increased residential water use. He asked whether DES looks at the future growth of a community at least over the 10-year term that a permit is issued for. Brandon Kernen responded that in the case of Nottingham, the town provided information during the public comment period related to proposed developments and that as such, future water use was addressed through the permitting process. He stated that as additional water users are added, USA Springs would have to reduce their withdrawal volume to maintain a reservoir of water based on water level thresholds. He also cited another permit in Stratham which required a similar approach to ensure a certain amount of water was maintained for future water users. He also commented on two changes to state law that occurred in 2006. The first change required that DES to develop a pilot groundwater management plan for a geographical region of the state to see if groundwater management plans that identify future water needs could be incorporated into the large groundwater withdrawal permitting process. The second law that was passed amended the Groundwater Protection Act to require that DES amend a large groundwater withdrawal permit to protect public water supply as needed. Chris Mills asked whether this would also apply to private wells. Brandon Kernen responded that public water supply is not defined in RSA 485-C so DES would interpret it to mean the public's supply of water not only EPA-regulated water systems.

Therese Thompson referred to the water resources primer stating that only one well out of twenty-five wells in the state's groundwater monitoring network is a bedrock well. She asked that if 60% of NH's population relies on groundwater and 80% of drinking water comes from bedrock, why there is only one bedrock monitoring well in the network. Brian Goetz provided an update on the work of the data needs subcommittee to formulate a plan to devise a better monitoring network. Therese Thompson asked for clarification on whether that would mean more bedrock monitoring wells in the future. Brian Goetz replied that the subcommittee is looking at the potential for additional wells but it is unknown what the outcome will be due to time and budget constraints. Therese Thompson then asked how many of the large groundwater withdrawals depicted in Figure 1 of the toolkit are from bedrock wells. Brandon Kernen estimated roughly 25%. Therese Thompson then stated that a copy of the municipal water ordinance similar to what some towns have adopted was available if anyone was interested.

Tim Moore asked whether there a process in place for expanding the potential impact area during the permitting process if a local condition was brought forth that necessitated increasing the size of the area. He stated that this may require an applicant to notify additional municipalities and water suppliers. He also commented that review time frames for municipalities could be increased to a larger fixed interval or could be amended to a process similar to how town

conservation commissions comment through the wetlands permitting process. Bill McCann responded that his comments might be something that would have to be addressed through a statutory change and then incorporated in the rules. He also reiterated that it would make sense to expand the time frames if the local role in the permitting process were expanded.

Bill Bennett commented on issues specific to the Hampstead Area Water Company's permit application. He stated that he is not convinced that Atkinson is in good hands with the state in terms of protecting the town's interests. He specifically referred to the mitigation options for adverse impacts to private wells. He also said that the state should ensure that towns are not subject to a particular business model in that Hampstead Area Water Company is drilling wells deeper than any private wells in Atkinson and that if private wells are dewatered, the water company could offer to sell the private well owners water as a mitigation option. Bill McCann responded that there are usually conditions in a permit related to drought conditions. Brandon Kernen referred Bill Bennett to other permits where impacts to private wells were successfully mitigated after a permit was issued. Bill Bennett responded that during the public hearing on the application, the town was told that the water company would be liable for the impact but that connecting residents to the water system would be an acceptable solution. Brandon Kernen provided an overview of the options for mitigation of adverse impacts to private wells. Bill Bennett then asked if a lawsuit against the water company is a persons only recourse if after several years have passed and there is no proof whether the large groundwater withdrawal is causing an impact on a private well, or if the impact would be occurring naturally. Brandon Kernen described the reasoning for establishing a representative well monitoring network as a condition of a permit and also stated that in the statute, an adverse impact is any reduction in the yield of a low yielding well and that if a well becomes low yielding due to drought and it is impacted by a withdrawal, the impact must be mitigated. He stated that the burden of proof is on the applicant/permit holder citing other cases where permit holders were required to investigate claims of adverse impacts. Bill Bennett responded that in the case of a public water system, temporarily stopping the withdrawal may not be an option. Brandon Kernen responded that the public water system in question has diversity in sources so they would either be required to alter or terminate their withdrawal or mitigate the problem.

Peter Griffin asked whether there are laws that mandate a community to evaluate the merits of a development of a certain size in terms of an applicant providing some type of certification that water is available to serve the development. Brandon Kernen referred to the toolkit stating that it cites authorities where communities can look at the adequacy of a water supply for new subdivisions. Bill McCann referred to the site plan review process. Glenn Greenwood stated that there are examples from other states which require a developer to show the impact of wells and that there is an adequate water supply. He stated that no such requirement exists at the state level in NH and that he and Brian Goetz have looked at model language to propose to the Groundwater Commission and that it seems shortsighted that subdivisions have to provide detailed information for septic systems but all that is required for wells is the location and protective radius. He stated that this is a weakness in the process.

An attendee commented that it would be helpful to write enabling legislation to allow towns to adopt the types of regulations that Glenn Greenwood was referring to.

Therese Thompson asked Brandon Kernen what is considered an adverse impact on a private well. Brandon Kernen directed her to the narrative for the permitting process that was provided and the statute. Brandon Kernen also referred the attendees to the toolkit for references of other government entities that have adopted testing requirements for subdivisions.

An attendee from Stratham commented that in his two experiences with the large withdrawal permitting process, one with a golf course and one with Aquarion Water Company, he recalled that the effects of a groundwater withdrawal on wetlands did not come under the jurisdiction of the DES Wetlands Bureau. He stated that in theory a well could be installed next to a wetland and the wetland could be pumped dry and that the Wetlands Bureau would not have jurisdiction over that type of impact. He asked if this was still the case and whether the wetlands statute should be revisited. Brandon Kernen responded that the wetlands council is looking at issues related to prime wetlands and that impacts to wetlands as a result of a large groundwater withdrawal are regulated through the large groundwater withdrawal regulatory process and not the dredge and fill regulatory process. The attendee then stated that he draws a distinction between withdrawals by public entities and withdrawals by private entities, partly because the two groups answer to different constituencies. He asked whether the state is considering making a similar distinction. Bill McCann commented on work being conducted by the hierarchy of water users subcommittee and stated that he was unsure if the issue raised by the attendee comes under the purview of the HB1353 subcommittee or if should be referred to another subcommittee. The attendee then commented on interbasin transfers of water. Bill McCann responded that this concern had been expressed at other public meetings.

Chris Mills stated that as he understands the current permitting process, there are two opportunities for public notice. He asked how much notice DES takes of public input and what weight is given to public input. He cited examples from the USA Springs case and stated that the public comments weren't taken into consideration in any of the permitting processes that USA Springs had to go through. Bill McCann responded that the large groundwater withdrawal statute requires DES to respond and that in the case of USA Springs, the groundwater bureau did respond but he agreed that other agencies may not have responded satisfactorily.

Bill Bennett stated that he feels that not enough attention is paid to public comments and that if the state allows towns to have a say in the permitting process, it may be that towns will not allow companies to have large groundwater withdrawals and may prefer it that way. He then stated that he supports giving veto power to towns and that there seems to be a fear on the part of state agencies that towns could exercise it overzealously. Bob Snelling stated that this position of a town having the ultimate say on whether a permit is granted had been presented before, usually in the context of denying an application. He asked Bill Bennett whether he would be comfortable with a town having that power, even in cases where his town shares an aquifer with a neighboring town that had a large groundwater withdrawal application that they saw a public benefit in approving. Bill Bennett stated that he is not arguing for complete town authority. He stated that DES has a role in the process but that DES needs to show they understand bedrock hydrogeology and how to evaluate the risks of large groundwater withdrawals in bedrock settings and that DES should value people's well being over a company's well being. Brandon

Kernen explained the purpose of public hearings and stated that upon making a permitting decision, DES would be happy to present the reasoning for their decisions to the public.

An attendee commented that he wasn't aware of the variable nature of the reasonable use doctrine or the concept that a permit could be variable based on future conditions. He stated that if the variable nature of a permit was made more explicit in regulations, it might address some of the concerns of communities. Bill McCann responded that this was a comment that could be considered as DES goes through the rule re-adoption process. The attendee then asked what the limits to scaling back a permitted withdrawal would be and what would happen if a withdrawal couldn't be scaled back to meet everyone's needs particularly in the case of a public water supply or a PUC-regulated company. Brandon Kernen responded that since withdrawals that predate the large groundwater withdrawal statute aren't regulated, the statutory law is not exactly consistent with common law. He also commented that the variable nature of permits could be more explicit in the rules.

An attendee stated that while the public can't overlook that public meetings with the state are a way to improve the process, they also need to elect people to the legislature that are sensitive to a their community's needs.

An attendee commented that there was no discussion of desalinization, which could become an important issue in the Seacoast. She stated that she hopes the state has the forethought to develop regulations instead of relying solely on the minimal regulations the EPA might have. She stated the regulations should address wells that are developed to withdraw brackish groundwater and wells that are developed to withdraw the freshwater lens from under a salt marsh, as examples, and their potential impacts.

Glenn Greenwood stated that from his perspective and his involvement with the process, it has gone from an abysmal response to one in which he has more confidence. He stated that although the process isn't perfect, it is evolving and that there is a responsibility for a town to take notices of applications very seriously. He stated that he fully supports incorporating opportunities for additional local input in the process and that he is happy the public is providing their input on how to improve the process.

Representative Donna Schlachman commented on the tension between private profit and public good stating that somewhere in the process, the overriding public good should be taken into consideration. She said she doesn't feel like this issue has been adequately addressed and more time needs to be spent on it. Bill McCann responded that as part of the process, an applicant has to show a need for the withdrawal and that he doesn't think the issue of private profit is necessarily an issue for the HB1353 subcommittee. He stated that whether the state should be deciding what is considered a reasonable use of the water and what is a reasonable profit may be issues that the legislature has to address in the future. Bob Snelling commented that this issue was also brought up at the meeting sponsored by the Lakes Region Planning Commission. He then stated that the current process is geared toward evaluating adverse impacts through a science-based quantitative process and asked what type of measure could be used to factor the public benefit into the decision making process and how could public benefit be quantified.

John Boisvert commented on the role of private water companies in providing the public with water. He also commented on how private water companies generate capital and make capital investments. He then commented on PUC regulations and stated that the rate making process needs to be looked at. He said that he hopes there is a distinction between private water companies and entities such as bottling plants. He then commented on subdivisions with private wells stating that large developments could have the same amount of impact, if not more than a large withdrawal user, when individual withdrawals are considered in the aggregate. He also stated that many communities allow clustered subdivisions that are usually on a community water system, which are subject to more regulation, and that there is less or no regulation of traditional subdivisions with individual wells.

Therese Thompson asked whether the state is considering the potential for saltwater intrusion due to the pumping of wells in Hillsborough and Rockingham Counties, given population growth projections. Brandon Kernen commented on the USGS groundwater study and flow model stating that the publication should be available shortly. He stated that the study looks at the effects of multiple issues in the Seacoast region including saltwater intrusion.

Brian Goetz stated that in regard to a subdivision with individual wells, the groundwater withdrawal itself is only one issue; when a subdivision is constructed, there are changes in the land cover and land use and it is also important to consider the effect on water that is leaving the site and changes in groundwater recharge characteristics.

An attendee commented on the annual drawdown of impounded lakes by the state stating that it is a tremendous waste of a natural resource. He commented that one option would be to create reservoirs to impound some of the water for later use rather than just discharging it. Brandon Kernen commented on the potential for using impounded water as a source for drinking water and stated that low flows in rivers can also be attributed to impoundments and their management.

The meeting was adjourned at approximately 8:30 PM.

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

- Is a ten year permit term too long or too short?
- Expiration of permit if it is not put into use?
- Is there a time frame for each step of the permitting process? If not, why?
- Expand comment period for municipalities to respond to an application to DES
- Set limits on profit made from sale of water by private water companies
- Does DES consider future water demand in permitting process? For example, based on growth projections or known development?
- Why is there only one bedrock monitoring well in the state groundwater monitoring network when a large portion of the population relies on bedrock wells?
- Is there a procedure in place to change the potential impact area based on a change in local conditions part way through the process?
- Are developers required to provide certification of an adequate water supply for proposed lots in a subdivision?
- Enabling legislation for towns to regulate water supplies (private wells) for subdivisions
- Effects of pumping (not a dredge or fill) on wetlands
- How much weight is given to public input on an application?
- Make variable nature of permitted withdrawals clearer in rules
- Regulations for brackish/salt water source development
- Public good vs. private profit
- How is public benefit factored into the permitting process?
- Impact of small withdrawals when considered collectively
- Potential for saltwater intrusion in coastal areas from pumping
- Annual drawdown of impounded water bodies by DES – wise use of water?