

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 SOUTHERN NEW HAMPSHIRE PLANNING COMMISSION

MEETING MINUTES

Meeting Date: March 26, 2009

Meeting Location: Southern New Hampshire Planning Commission headquarters in Manchester, NH

Meeting Advertisement: The Southern New Hampshire Planning Commission (SNHPC) 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 SNHPC. Towns represented by the SNHPC include: Auburn, Bedford, Candia, Chester, Deerfield, Derry, Goffstown, Hooksett, Londonderry, Manchester, New Boston, Raymond and Weare. The SNHPC also issued a press release that was carried by regional newspapers. 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'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 6:30 PM. Below is a list of participants:

Attendance:

Name	Association
Groundwater Commission / HB1353 Subcommittee Members	
Senator Cilley	
Senator Barnes	
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
Susan Roman	HB1353 Subcommittee Member
Other Attendees	
Stephen Roy	NH Department of Environmental Services
Christine Bowman	NH Department of Environmental Services
Debra Sonderegger	NH Department of Environmental Services
David Preece	Southern NH Planning Commission
Carol, Eddie, and Kenneth Grant	Town of Atkinson – Citizens
John Terninko	Town of Nottingham – Citizen
Greg Hasevlat	International Bottled Water Association
Ray Clement	Southern New Hampshire Planning Commission
Gail Mills	Town of Nottingham – Citizen
Judy Doughty	Town of Nottingham – Citizen
David Brown	Town of Bedford – Conservation Commission
Cole Melendy	Underwood Engineers Town of Londonderry – Planning Board
Dave Paris	Manchester Water Works
Dan Hicks	Farm Bureau of NH
Phil Ferdinando	J & F Farms, Derry, NH
Jeffrey Porter	Town of Auburn – Conservation Commission
Bill Bennett	Town of Atkinson – Board of Selectman
Gerald Curran	Woodard & Curran
John Boisvert	Pennichuck Water Works
Donald Ware	Pennichuck Water Works

The meeting was opened with introductions. Senator Cilley then asked the attendees to sign in on the attendance sheet and asked that they be respectful of time constraints so that everyone could have an opportunity to share their opinions. She also stated that people could provide their comments through NHgroundwater.com and assured them that information submitted via the website would also be taken into consideration.

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 and asked attendees to hold their questions till after the presentation.

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 stating however, that people should not be constrained by the list. Following the presentation, Bill McCann opened the public discussion portion of meeting.

Judy Doughty stated that she has concerns about the role of the pumping test in the permitting process. She stated that if a pumping test is done properly and all of the information gained from the test is used the way it should be, the process should work well. She raised an issue specific to the USA Springs case in which the pumping test revealed points which she felt could have been grounds for DES' denial of the permit. She stated that although the original application was denied, it seemed that politics took over and the permit was later granted and that all of the points raised as a result of the pumping test seemed to no longer be an issue. She asked how this could happen and how it could be prevented from happening in the future. Bill McCann provided an explanation on the USA Springs case and then asked Judy Doughty for clarification on whether she would like to see changes made in the pumping test process. She responded that the information gleaned from the pumping test should be strongly considered, if a permitting decision will be based on the results of the pumping test; she stated that she is concerned that information gained during the USA Springs pumping test was ignored. Senator Cilley offered to provide Judy Doughty a copy of DES' decision statement and offered to discuss any outstanding issues with her.

Kenneth Grant referred to the division of statutory law and common law, as presented by Brandon Kernen, and stated that he maintains that the common law is not really relevant because for common law to enter a case, an individual must have a demonstrated grievance to gain standing and to his knowledge, this has not happened in NH. He then stated that to have results

through the statutory law, the legislature has to change the law. He contended that the current statute was written as “one size fits all” and, as a result, does not take into consideration the unique conditions that exist in different communities. He stated that the current process is not adaptable and that issues related to planning in local communities, political considerations and geography need to be accommodated in the statute. He stated that political subdivisions should have a controlling input in the process. Bob Snelling asked Kenneth Grant for clarification on what he meant by controlling input and what kind of process he had in mind. Kenneth Grant responded that if a community has serious concerns and can demonstrate them, they should have a serious role in the decision making process.

John Terninko commented that when water is returned to the environment from a facility, it should be of better quality than when it was taken. He also commented that the state should consider consequences on future generations and that most decisions are short-sighted. He also remarked on the impact of private water providers on the public.

Bill Bennett asked for clarification on a figure presented in the PowerPoint presentation regarding the interaction of groundwater and surface water near a well and the reason for grouting well casings. Brandon Kernen provided clarification and described why well casings are grouted. Bill Bennett responded that one of the concerns of the residents of Atkinson is that there is insufficient information on how far away from a well the area of influence could extend if surface layers are isolated from the layers being pumped. He also questioned the validity of a 1000-foot radius cone of depression. He then stated that he is concerned that decisions are being made without an adequate scientific basis due to a lack of understanding of local hydrogeology. Bill McCann asked Bill Bennett for clarification on whether his concerns are specific to a current permit application in Atkinson. Bill Bennett responded that he has more of a general concern that DES seems to rely on the concept of a cone of depression to assess the potential for adverse impacts and that there is a concern that deep bedrock fractures could be depleted at a rate faster than the groundwater is replenished. Brandon Kernen disagreed with Bill Bennett on his understanding of hydrogeological processes and explained in general terms why well casings are grouted. Bill McCann asked Bill Bennett whether he thought something needed to be changed in the law to address his concern. Bill Bennett responded that DES needs to do more research to learn more about NH hydrogeology. Bill Bennett expressed that the current process operates on the premise that unless it can be shown that the withdrawal causes a problem, it must be ok; on the other hand, residents are saying that unless DES can prove the withdrawal won't harm their private wells, the withdrawal should not be approved. Bill McCann referred to the NH Supreme Court's decision which stated that DES has to approve a permit unless an adverse impact cannot be mitigated. Senator Cilley interjected addressing Bill Bennett stating that she detected skepticism or at least a question about the technical competency of DES. Bill Bennett responded that time and budget constraints leave DES with little time to further the understanding of NH's hydrogeology and it appears that the concepts that are applied were taken out of studies conducted decades ago in the Midwestern United States. Senator Cilley asked Bill Bennett on whether he would like DES to better communicate the scientific backing for their decisions so that his community feels confident in the permitting and decision making process. Bill Bennett responded that yes that is necessary, in addition to conducting more research on NH's hydrogeology. Bob Snelling then commented that recognizing that there are uncertainties

associated with the science, the process doesn't end when a permit is issued and that monitoring requirements are typically a condition of a permit. He stated that ongoing monitoring allows confirmation of the assumptions that led to the issuance of the permit, to ensure that the decision can hold up over a long period of time. He stated that this is a check in the process that allows DES to adjust their decision. He asked Bill Bennett whether that process satisfies his concern and if not, what would give him confidences in the decision making process. Bill Bennett restated that he doesn't believe that there is sufficient information about NH's hydrogeology and that the lack of knowledge influences the design of the monitoring program, which may result in a monitoring program that does not monitor what really matters. He stated that redirecting DES' efforts might be wise and that more research including radioisotope age dating of groundwater is necessary.

John Boisvert stated that Pennichuck submitted written comments to the subcommittee. He then commented that if DES is not technically qualified to manage groundwater and large groundwater withdrawals, then the legislature is not either and that their responsibility is to direct policy. He stated that if policy is well-directed then DES can make sound judgments on the technical requirements to implement the policy. John Boisvert stated that the consulting community that brings these projects forward also has significant resources and knowledge. He cautioned that the legislature should be careful of unintended consequences, as the focus has been on a small number of cases that have driven legislation in the last few years. He stated that the current process is very technical in nature and that the current statutory language may be too restrictive potentially minimizing the flexibility DES has in addressing local conditions in the process. Regarding unintended consequences, he stated that the current process is long, expensive and involved which has started to drive people away from the permitting process. He gave an example of a developer of a large residential subdivision who looks at the cost and time frame for permitting, and decides instead to develop a traditional housing subdivision with individual wells, as opposed to a cluster-style subdivision with a community water supply well. He stated that with individual wells, there is no way to control how much water people use and for lots with in-ground irrigation systems, summer water use is significantly greater than winter use. Bob Snelling asked John Boisvert to put himself in the shoes of the owner of a water-dependant small business located near such a development, and what process he would like to see put in place to encourage the kind of development he wants while protecting his business. John Boisvert responded stating the homes in the development are using the same amount of water, if not more, than if they were on a community well but that you cannot regulate how much water they are using; when a project goes through the large groundwater withdrawal permitting process, there is some control. Senator Cilley asked for further clarification on what would need to be changed in the process to ensure that there is oversight in these types of situations. John Boisvert responded that the state is going to have to start looking at the regulation of private wells in that if you are a developer proposing a large subdivision with private wells, you will have to look at the impact of the development on neighboring water users. He stated that large scale development needs to be brought into the permitting process.

David Brown commented that the town of Bedford is currently facing a situation with a 100-lot subdivision with individual wells, as opposed to a large community well(s). He expressed that the burden of proof in using individual wells is far less rigorous than in the large groundwater

withdrawal permitting process. He stated that large developments are withdrawing just as much water in the aggregate as a large groundwater withdrawal and that there needs to be a more rigorous process in place to address this situation.

Carol Grant stated that Atkinson is a community that is subject to intense development and that DES is not aware of things happening at local level. She expressed that the statutory language does not allow DES to consider local issues in the permitting process and that it doesn't allow local communities to do anything. Bill McCann asked Carol Grant what she would like to see changed to address her concerns. Carol Grant responded that the law has to be amended to let local towns have more say in the protection of their quality of life and their own water resources.

Donald Ware stated that discussions seem to be focused on permitting for two types of groundwater use: consumptive and non-consumptive. He also stated that there seems to be a general consensus that the permitting process is very technical and that there isn't enough information about bedrock aquifers. He stated that the best thing that can be done to understand groundwater flow in bedrock aquifers is to conduct extended pumping tests. He then stated that the process should involve local governments by providing them opportunities to get copies of the application and filings and have local hearings so that DES can hear about local issues that might be impacted or might affect the permitting decision so that DES can craft the permitting process to take those things into account. He expressed that municipalities do not have the technical wherewithal to decide whether a permit should be issued. He also stated that the development of community water supplies should be encouraged because they are regulated from a quantity and quality perspective and go through rigorous testing, unlike individual private wells, and that the permitting process should be kept technical and politics should be kept out. He reiterated John Boisvert's comment about the unintended consequences of driving developers away from the permitting process which could result in sprawl and other adverse effects on the environment.

Dan Hicks expressed that the legislature should be careful of how much control is given to towns and they should realize that agricultural users need water and may have operations in multiple towns. He expressed that the legislature should consider how changes in the process could affect agricultural users. Senator Cilley asked Dan Hicks whether he thinks there are any problems with the current process or whether his comments are intended to prevent a future problem, from an agricultural user's standpoint. Senator Cilley also commented that the role of politics had been brought up several times in the discussion and asked the attendees where they saw the political process entering the permitting process aside from the legislative process. Phil Ferdinando responded that the process in place works and it should remain unchanged. He stated that water regulations should stay with DES and not go to local governments. He reiterated that some agricultural users have operations or farms in multiple towns and that municipalities don't know enough to control water usage in the towns. Senator Cilley responded that some communities want a greater local voice in the decision process. Phil Ferdinando responded that having a voice in the decision process is one thing but that the towns should not be given control over how water is used.

Gail Mills stated that she learned that the town's concerns were not taken into consideration in the permitting process for USA Springs and the town was told they did not have standing. Bill McCann asked for clarification and whether Gail Mills was referring to proceeds held by the water council and wetlands council. Gail Mills stated that she believes it was DES. Senator Cilley asked for clarification and whether Gail Mills was saying that the community, as represented by elected officials, or local groups did not have standing. Gail Mills responded stating that local groups and individual residents did not have standing. Bill McCann stated that the law has changed since the USA Springs case and that the hearing and appeals processes are different that what was in effect at the time of the USA Springs application. Senator Cilley asked Brandon Kernen is she was correct that a formal entity of the community has to intercede in the permitting process, or whether organizations have the right to intercede or provide comments to DES as part of the large groundwater withdrawal permitting process. Brandon Kernen responded that there are no examples where someone was denied standing in the large groundwater withdrawal permitting process. Gail Mills responded that she would look into the issue further. Gail Mills then stated that the state should be looking at how water is used but that there is a difference between someone using their house well versus someone selling water out of town. Bill McCann provided additional clarification on the standing of different entities in the permitting process and in proceedings with the water council and wetlands council. Gail Mills responded that municipalities have to be heard more than they are now and that local residents are familiar with the problem areas in a town and that the regulations have to be looked at so the process can accommodate information as it becomes available.

Kenneth Grant commented that the legislature has the responsibility to look at the dedicated use of water by corporations as a commercial enterprise. He stated that an exception for groundwater withdrawals for agricultural users could almost be made, but that the commercial use of water is in the purview of the legislature.

Dave Paris commented that based on his observations, commercial interests in the state have invigorated the conversation about large groundwater withdrawals. He stated that it is important from a community water supplier's perspective to ensure that a distinction is made between entities that provide water to a community as opposed to those having a profit motive outside of the community. He also stated that it would behoove the state to create initiatives or provide incentives for new developments to develop community water systems from a water quality perspective. He commented on natural contaminants that occur in NH's groundwater, specifically arsenic and radionuclides, stating that he is not convinced that private well owners have the ability or motivation to deal with them. He commented on the water quality standards that public water systems have to comply with and stated that from a public health point of view, for the health and safety of the citizens of NH, it would behoove the legislature to create an initiative for community water supplies.

John Terninko commented on the bankruptcy of USA Springs and that efforts to get USA Springs to get bonding or insurance were unsuccessful. He also stated that in the permitting process, he doesn't see explicit statements on how different criteria are weighted in the decision process or a way to measure alternative decisions. He then discussed groundwater recharge and the use of groundwater age dating to determine recharge rates citing examples from the

Midwestern United States. He also stated that he doesn't want to see profit motivated water withdrawals. He then talked about water reuse and recycling citing examples from communities in the western United States.

Bill Bennett expressed that politicians need to be concerned with what their constituents want; they don't necessarily want restrictions but they may want to limit population density to what the local resources can support. He then addressed Donald Ware regarding his statement related to the understanding of NH hydrogeology and bedrock aquifers. Donald Ware responded that knowing exactly where groundwater is coming from and how it is moving through the bedrock may not be possible; however, getting an estimate of how much groundwater is available is possible using a water budget approach and published recharge rates. Bill Bennett agreed with Donald Ware's statement about being able to estimate groundwater recharge. Bill Bennett then stated that steps should be taken through the legislative process to limit water use by limiting population density to stay within the limits of the available groundwater resource.

Cole Melendy asked whether it is philosophically consistent to have commercial entities withdrawing groundwater if it is in fact considered a public resource.

John Boisvert commented on how towns can protect farms and open space and limit development by buying land to protect it. He stated that Stratham passed a bond to buy development rights on land and that it has been a successful program.

Senator Cilley provided a wrap-up of the meeting, reinforcing the point that decisions about land use planning affect water use planning. She referred the attendees to the water resources primer for more information on how land use planning intersects with water use planning. She then provided an overview of the mandates of the Groundwater Commission since its inception and an update on the status of each mandate. She commented that the Groundwater Commission has a number of areas it is still working on. In response to Cole Melendy's question, she provided an update on the work of the hierarchy of water users subcommittee. She also provided an update on the status of SB56 and the technical details of bonding that have yet to be worked out.

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:

- Concerns about the pumping test process to evaluate potential impacts and how observations made during the pumping test affect the permitting and decision process
- Relevancy of common law
- Changes to statutory language
- The statute is “one size fits all” when unique conditions exist in different geographic areas; local conditions need to be accommodated
- Quality of water returned to the natural system
- Area of influence of deep bedrock wells
- DES needs to do more research on NH hydrogeology
- DES needs to have a scientific backing for their decisions
- Policy versus technical regulations/requirements
- Potential unintended consequences of very specific language in statute and more stringent regulations
- Regulation of private wells/land development/large scale residential development
- Effect of small groundwater withdrawals when considered collectively
- DES – lack of awareness of local issues; for example, other large water users
- Amend statute to let towns have a say in the permitting process
- Permitting process needs to take into consideration local conditions
- Effects of amending the statute on other entities, for example, agricultural users whose farms may cross municipal boundaries, or farmers that have operations in multiple towns
- Qualifications of towns to regulate water use
- “Standing” of different entities in the permitting and appeals process
- Consumptive vs. non-consumptive uses of water
- Water as a commercial enterprise
- Encourage community water systems due to water quality problems in private wells
- Bonding/insurance of permit holders
- Monitoring of aquifers – age of groundwater
- Water recycling/re-use and conservation
- Population density control based on available natural resources
- If NH’s groundwater is a public resource, does it make sense to allow commercial withdrawals