

**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 STRAFFORD REGIONAL PLANNING COMMISSION**

---

**MEETING MINUTES**

---

**Meeting Date:** June 11, 2009

**Meeting Location:** City Hall, Dover, NH

**Meeting Advertisement:** The Strafford Regional Planning Commission 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 Strafford Regional Planning Commission. Towns represented by the Strafford Regional Planning Commission include: Barrington, Brookfield, Dover, Durham, Farmington, Lee, Madbury, Middleton, Milton, New Durham, New Market, Northwood, Nottingham, Rochester, Rollinsford, Somersworth, Strafford, Strafford County, and Wakefield. The Strafford Regional Planning Commission and Bill McCann issued press releases that were carried in several regional newspapers to advertise the meeting. 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:**

<b>Name</b>	<b>Association</b>
<b>Groundwater Commission Members / HB1353 Subcommittee Members</b>	
Brandon Kernan	NH Department of Environmental Services
Bill McCann	Public Member
David Maclean	NH Business and Industry Association
Susan Roman	HB1353 Subcommittee Member
Brian Goetz	NH Water Works Association
<b>Other Attendees</b>	
Rep. Mann	Rockingham County – District 1
Rep. Susi Nord	Rockingham County – District 1
Rep. Susan Price	Strafford County – District 3
Dean Peschel	City of Dover
Marika Wilde	Save Our Groundwater
Patricia Newhall	Save Our Groundwater
Denise Hart	Save Our Groundwater; Food and Water Watch
Cynthia Copeland	Strafford RPC
Amos Townsend	Save Our Groundwater
Peter Rice	City of Portsmouth
David Allen	City of Portsmouth
Christine Bowman	NH Department of Environmental Services
Stephen Roy	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](http://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.

Representative Nord asked why a withdrawal would be allowed to operate if an impact to a private well is shown during the pumping test. Brandon Kernen responded that if an adverse impact occurs during the pumping test, the test would be changed. He then stated that if the pumping test results indicated that an adverse impact would or could occur, the applicant would be required to mitigate those impacts by either reducing their proposed withdrawal amount so that no adverse impacts would occur or by providing an alternative water supply to the affected user. Bill McCann commented that the NH Supreme Court found that DES has to issue a permit as long as it can be demonstrated that the withdrawal will result in no unmitigated adverse impacts. Representative Nord then asked what would be considered acceptable mitigation for impacts to private water supply wells. Brandon Kernen referred Representative Nord to the meeting handout regarding the permitting process and then stated that when there is an adverse impact to a private well, the permit holder either has to reduce their withdrawal amount or provide the affected user with a viable alternative water supply. He explained that in the case of a shallow dug well, a mitigation option would be to replace the well with a drilled bedrock well. Representative Nord asked if viable is defined. Brandon Kernen responded that for private wells, the rules and statute state that up to 10 gallons per minute is protected if that is your demonstrated use. He explained that the rules also have requirements for water quality treatment to make sure the replacement supply meets drinking water standards. He stated that although some people may not want a drilled well, or a water quality treatment system, that is what the law allows for.

Representative Mann commented that 10 gallons per minute is not an enormous amount of water. She then asked, with reference to the bankruptcy of USA Springs, what would happen if a permit holder cannot mitigate a problem due to their financial situation. She asked if the state steps in to mitigate the problem and whether there have been discussions about raising the flow threshold that the state considers reasonable for mitigation. Brandon Kernen responded that the 10 gallon per minute threshold applies to private domestic wells and that 10 gallons per minute is

a lot of water for residential use. Bill McCann then commented on the status of SB56 related to bonding and insurance requirements. Bill McCann also stated that in the case of a bankruptcy, there is the issue of how a new owner would acquire the permit and whether DES should have a say in who takes over the permit. He stated that there is no provision in a permit specific to bankruptcy and that the rules are very vague in regard to the transfer of a permit.

Representative Price commented on the bonding and insurance issue stating that insurance companies expect losses and bonding companies do not. She explained that as part of the surety process to get a bond, the surety underwriter is going to require a hydrogeological firm to perform a technical review of the application. She stated that because surety companies do not expect losses, the underwriting criteria for bonding are very stringent unlike those for insurance. She stated that in the case of a bankruptcy, a bonding agent can also go back to the bankruptcy court and become a default creditor. For these reasons, she supports bonding over insurance. She also said that bond premiums are typically less than insurance premiums making it more favorable from a business perspective.

Denise Hart asked about the role a community could play in the case of the transfer of a permit. She stated that it seems like the permitting process should begin again. Susan Roman explained that the issue is not so much that a permit runs with the land but that the bankruptcy court has a mechanism that prevents the person on the other side of a contract from terminating that contract because of the bankruptcy. She explained that through the reorganization process, the court wants to force contractual arrangements to go forward. She stated that if there is language in a permit that states it terminates upon bankruptcy, it may be enforceable particularly in the case of government licenses. She stated that the issue of a permit transfer has to be looked at more closely. Brandon Kernen explained that the current process for a permit transfer is streamlined in the rules and requires only a written notice. Denise Hart commented that a community has no say when a permit is transferred and the state doesn't have the opportunity to review the stability of the incoming company or their track record; this provides the community with no role and no protection through the state. Brandon Kernen explained that whoever would assume the permit would have to comply with the permit or lose it and that the state does not review the adequacy of an applicant at the front end of the permitting process. Denise Hart commented that this would be another area to look into. Bill McCann responded that RSA 485-C has evolved in response to issues that have arisen over time that were originally unforeseen and that this issue requires further examination.

Peter Rice commented that the permitting process was developed to make sure the resource is protected and that the water is used in a responsible manner. He stated that in the case of a permit transfer, if the permit is appropriate to begin with, it shouldn't matter if it is transferred, particularly if it is for the same use and the permit conditions can be complied with and the water is used in a sustainable manner. He commented that he would hate to see changes in the regulations that are too broad sweeping because of one specific concern.

Denise Hart responded that local communities should have a say especially since there is an increasing trend for private companies to negotiate agreements with municipal water suppliers to use municipal supplies for the expansion of their business. She cited cases in Kennebunkport,

Maine and Claremont, New Hampshire where municipal water suppliers were pursued by bottling companies.

Representative Price commented that the modeling that is conducted as part of the application process only looks at current aquifer conditions. With reference to the USGS study of the Seacoast region, she stated that the stress on the water balance based on projected growth over the next 20 years is striking. She stated that she is concerned that an applicant is not made to stress a model based on anticipated development and that she would like to see future development being taken into account in the modeling. She commented that what may be an acceptable permit today, may be too much stress in the future. Dave Maclean asked how an applicant would be able to account for future conditions. Representative Price stated that there is available reasonable data from regional planning commissions and that she would like to see the rules examined for potential changes. Bill McCann asked about the data availability for other areas of the state outside of the Seacoast. Brandon Kernen explained that there are two levels of data; the USGS Seacoast study used traffic demand models which provided locational information on where future water use could occur. Brandon Kernen explained that this approach allowed for reasonable estimates of where increased future water use would likely occur but that it has not been applied statewide. He stated another approach is one taken by the New Hampshire Geological Survey in which water use has been estimated for every census block in the state. Representative Price commented that models should not just be a snap shot, but that they should take into consideration reasonable estimates of future development and growth based on the best available data.

Peter Rice commented that it seemed like there is more concern about commercial ventures as opposed to municipal ventures. He stated that in the City of Portsmouth water system's master plan, the water system takes into account future growth or increased water use. He asked Representative Price if she was saying that they should also take into consideration the same for surrounding communities. Representative Price responded that an aquifer doesn't pay attention to municipal boundaries and that if you are going to develop a large groundwater withdrawal, you need to look at long-term stressors on the aquifer. Peter Rice then asked if there is a hierarchy of need and that if a residential well would be considered more valuable than a municipal well that serves multiple dwellings. Representative Mann responded that some communities that have municipal water supplies are in a position to expand their systems but that some communities don't have municipal systems and rely solely on individual water supply wells. She stated that the management of water resources has to be looked at on a regional level like regional planning and has to take into consideration growth projections. She then stated that she is familiar with the permitting process and that citizens feel like they have no input or say, citing the establishment of multiple citizen groups in opposition to the USA Springs project. Bill McCann commented on the work of the hierarchy of use subcommittee stating that there are uses that should take greater priority than others.

Dean Peschel commented that there are situations where large wells are being operated without any impacts to surrounding users. He stated that he thinks DES has done a great job in requiring the necessary information and that the regulations are adequate. Representative Nord commented that her constituents do not feel the system worked adequately or that the process is working. She

asked if there has been any clarification on the appropriate use of water. Bill McCann responded that it is pretty clear that public water supply will have top priority in a hierarchy. He commented that fitting commercial use into a hierarchy is more challenging because commercial use is not only bottling. He stated that a lot of people, including himself, were involved with the USA Springs project and it wasn't necessary to totally revisit it, but that the subcommittee would like to know what people felt needed to be changed in the process and what role local communities could have.

Representative Price stated that the coastal watershed alliance bill is a good example of a comprehensive approach to manage wastewater, in this case, on a regional basis. She stated that groundwater needs to be managed on a watershed basis not on a town-by-town basis and that a comprehensive groundwater management strategy will look into the future. She commented that it is important to note that a management strategy is also tied to economic development.

Brian Goetz stated that the Seacoast study indicated that towns that have large municipal water and sewer systems are not the towns that are going to see the greatest growth. He explained that when a developer proposes a project in a town with a public water system, the system has to have the excess capacity to support the development and it has to be resolved up front. He commented that the same is not true for a developer proposing a project with individual wells and that a lot of small withdrawals could have the same effect as one large withdrawal. Representative Price said she agreed and commented that there may be a role for the legislature to create watershed districts that provide planning based on watershed boundaries not town boundaries. She said that the discussion points to the need for a comprehensive plan for the state's watersheds and that it is an important environmental and economic issue.

Denise Hart commented on the role of the USA Springs project and legislators in changing different components of RSA 485-C. She then stated that she would like to see the creation of a water advocate position at the state level to aid towns in navigating the permitting process. She stated she would also like to see better integration of DES Bureaus so that different programs work together and not in conflict with each other. She also commented that she would like to see the creation of an ombudsman position at the state level to resolve conflicts between local communities and the state to find an equitable solution. She then commented on the vulnerability of water systems to privatization and that it is necessary to establish funds to assist small public water systems to enable them to stay publicly owned.

Representative Price commented on the high cost to small communities to "stand up to" permit applicants.

In response to Denise Hart's comments, Dave Maclean commented on the scope of the HB1353 subcommittee and asked for clarification of what she meant by a water advocate. Denise Hart responded that a water advocate could help a municipality faced with a large groundwater withdrawal navigate the permitting process. She stated the individual could also play an educational role in providing a municipality with information about groundwater and hydrogeology. Dave Maclean asked if what she was proposing is different from the recently proposed legislation (HB314-L) which would allow a town to hire a consultant at the applicant's

expense to review an application. Bill McCann asked if she meant a position like the consumer advocate in the Public Utilities Commission. Denise Hart responded that yes, she meant something similar to the consumer advocate position. Stephen Roy asked if she was talking about an advocate strictly in the arena of groundwater withdrawal permitting. Denise Hart responded yes, in the context of the meeting, but that it would ultimately be up to the state to decide how to implement it.

Cynthia Copeland stated that much of her perspective is derived from previously working in a state where permitting authority was delegated to the counties. She then commented, in reference to the USA Springs case, that the initial education of the public about groundwater and hydrogeology was beneficial and that there needs to be some way for people encountering large groundwater withdrawals in their communities to access information to understand the basics of the science and the language so that they can be intelligent observers and participants in the process. She then stated that the water conservation plan process needs to be more rigorous. She then commented that it always shocked her that a developer wasn't required to install wells in a proposed subdivision prior to applying for the subdivision and that the current process leaves private property owners to deal with the issue of water supply on their own. In reference to the bonding issue, she stated that easy access to financial resources is necessary for emergency situations and that letters of credit may also be a viable option. She then commented that in previous permitting she was involved with in another state, a permit was ceased if the permit holder went bankrupt. She also stated that there needs to be greater transparency in regard to a permit holder's compliance with the conditions of their permit, in terms of how monitoring occurs and how that information can be accessed. She also stated that the coastal watershed alliance is a good example of collaboration between communities on a regional level.

Patricia Newhall commented on the standing of municipalities and citizen groups in the appeals process stating that rules need to be changed. Bill McCann responded that Save Our Groundwater was denied standing by the Water Council but that they were able to get their case before the NH Supreme Court. He stated the he agreed that something should be changed to allow groups or individuals who feel like they're impacted to have the right to appeal at the administrative level and not have the Attorney Generals office deny them. He commented that the legislature will have to deal with the standing issue so that non-profits and advocacy groups have standing in the appeals process.

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:**

- Bonding or insurance should be required for commercial withdrawals.
- Provisions need to be added to the permitting process to evaluate the financial capacity and stability of an entity before: 1) Issuing a large groundwater withdrawal permit; and 2) Transferring ownership of a permit. Additionally, the statute or rules should address what happens to a permit if the permittee becomes bankrupt.
- There should be a process in place for transferring ownership of a large groundwater withdrawal permit.
- The large groundwater withdrawal permitting process should take into account future development and growth including long-term stresses on an aquifer.
- A hierarchy of need for water uses needs to be established.
- Comprehensive regional/watershed planning needs to occur to adequately manage water resources.
- Should the permitting process include an assessment of the appropriateness of water use?
- The State should establish a position for a water advocate to aid towns in the various permitting processes at DES.
- The state should establish a position for an ombudsman to coordinate local and state regulatory processes more holistically.
- The various permitting programs (bureaus) at DES need to be better coordinated so that the different permits issued are not in conflict with one another.
- Corporate acquisitions of community water systems should not be allowed.
- The public needs to have a better understanding of basic hydrogeology.
- The state should increase its water conservation requirements.
- Subdivision regulations for lots that will rely on private wells need to be expanded to ensure a private well is viable on a lot. Wells should be drilled and tested before subdivision approval is issued.
- The permitting process needs to be fully transparent. Data, permits, and ongoing monitoring need to be readily available.
- Bonding or insurance should be required for commercial withdrawals.
- Provisions need to be added to the permitting process to evaluate the financial capacity and stability of an entity before: 1) Issuing a large groundwater withdrawal permit; and 2) Transferring ownership of a permit. Additionally, the statute or rules should address what happens to a permit if the permittee becomes bankrupt.
- There should be a process in place for transferring ownership of a large groundwater withdrawal permit.
- The large groundwater withdrawal permitting process should take into account future development and growth including long-term stresses on an aquifer.
- A hierarchy of need for water uses needs to be established.
- Comprehensive regional/watershed planning needs to occur to adequately manage water resources.
- Should the permitting process include an assessment of the appropriateness of water use?
- The State should establish a position for a water advocate to aid towns in the various permitting processes at DES.
- The state should establish a position for an ombudsman to coordinate local and state regulatory processes more holistically.
- The various permitting programs (bureaus) at DES need to be better coordinated so that the different permits issued are not in conflict with one another.
- Corporate acquisitions of community water systems should not be allowed.
- The public needs to have a better understanding of basic hydrogeology.
- The state should increase its water conservation requirements.
- Subdivision regulations for lots that will rely on private wells need to be expanded to ensure a private well is viable on a lot. Wells should be drilled and tested before subdivision approval is issued.
- The permitting process needs to be fully transparent. Data, permits, and ongoing monitoring need to be readily available.