

Friday, February 21, 2020

1:30-3:30 PM

CWSP Stakeholder Engagement Meeting Minutes

In Attendance

- Vermont DEC – Neil Kamman, Chris Rottler, Ethan Swift (Skype – Angie A., Danielle O., Ben C.).
- VAPDA/ RPCs – Charlie Baker, Peter Gregory, Dan Albrecht
- VACD/ NRCD – Gianna Petito, Holden Sparacino, Jill Arace
- WUV/ WRP – Mary Russ
- GMWEA – Amy Macrellis
- LCC/ Water Caucus – Jared Carpenter
- UVM - Christopher Koliba
- Mike Kline, WUV Board Member

Items in yellow represent areas of consensus or prospective decision

Comments regarding BWQC size before main discussion:

- Charlie B mentioned meeting with Chittenden county regional planning commission, and they had some thoughts on BWQC size and if it could be opened up to expand the member numbers.
 - Discussion around if it could be left up to each council to self-direct regarding member size
 - Legislature states at least 9 members on the BWQC, that is a minimum
 - Gianna: Conversation was brought up in Lamoille as well regarding mechanisms for diversity of voices that would address the issue of representation and having too many municipalities. Disagrees with opening to more members due to offset of efficiency and balance. Could potentially see it with guardrails and everyone on council would have to agree to bring an extra person onto BWQC.
 - Didn't hear why rotation of voices and open meetings wouldn't assuage concerns regarding representation on the BWQC.
 - Don't want municipalities to outweigh everyone else, that was the point of legislature to keep balance
 - Municipalities have four voices on the council with RPC and Municipalities representatives
 - With more people comes more training and greater costs with larger group
 - Can potentially see another expert that needs to be added to a BWQC that provides more knowledge, should contemplate ways to allow onboarding that could also address stacking of the deck and efficiency problems
 - Discussion if all BWQC start with 9 members for the first year to see how this operates and then each council can make their case for adding more members. Leave it up to councils to decide how to effectively distribute money with more members.
 - Matter of Guidance?
 - Make a compelling vote statement to expand and live within the means of the formula grant

- Could expand BWQC to bring in expertise that isn't around the table and cannot just add another watershed or municipality
 - Any reason why the added members must be voting members? Invite people if they agree to come and not necessarily get paid or vote as a member
 - CWSP can hire a professional if needed
- Decisions noted later in this document.

Project Selection Process discussion

1) SRF as a model – Chris described the process SRF uses to stage projects

Proposed: CWSP staff develop a list, based on ranking criteria. Projects must be ready to proceed. List can be reviewed every quarter/rolling basis. Criteria to bump/end projects that stall out, based on 30/60/90% progress review. Each project on list requires a vote, subject to conflict of interest rules. Projects without conflicts, can be voted as a block.

- Charlie B: Likes this model for projects truly ready for implementation and their permits are cleared. Enable CWSP to hit the ground running with pre-qualification process and frontloading of project development.
- Mike K: Concern with this proposed process of a list due to some non-regulatory sector projects that may be spur of the moment (landowner permission granted and need to act fast). Recommend having a way to respond to opportunities that arise quickly or else make some projects not feasible.
- Neil: we have created an onramp for this process with WPD: stage list, prioritization factors and readiness factors to push projects out the door. Need to make it easy for someone to get the valuable projects on the list and scored quickly in the event an unanticipated valuable project emerges.
- Jill A: Request to distinguish between the types of projects and have segregate cost levels and decision-making authority. With a riparian buffer projects, one can't wait a year with landowners, nor does one need to. Afraid process will tie own hands on small projects.
- Chris R: Possibly allow the Chair to approve small projects without the committee
- Mary R: How is prioritization going to occur? Discussion that creates a foundation for these decisions may decide priorities and where to carve money to get things done. Could have guidance on what this may look like, so basins are guided similarly with a rubric in place for a standardized process.
 - This scoring process is part and parcel of tactical basin planning's work towards Act 76.
 - Ethan S: internal efforts to increase coordination are occurring, looking at all variables of schema and process is being beta tested. Priority to enhance informatics for project database so it is more self-evident moving forward for different projects. Anticipate building into guidance and frontloading information as best as can with development process.
- Gianna: Discussion around what we prescribe and what is the local decisions of the BWQC/CWSP. Need descriptiveness of project list/schema and think creatively to invite proposals over time and balance leniency.
- 30/60/90 then to full design: are good times to check in on progress and if investment is sound

- Holden preferred 30/Final, rather than 30/60/90, which would be more suited to complicated Stormwater GSI retrofits but not the smaller natural resource projects.
- Lamoille meeting feedback: check ins are fine; however, it all depends on who to check in with and how many people at DEC will need to be contacted regarding whether a project is suitable from a resource protection standpoint.
- If DEC is going to delegate authority, then they can't go halfway
- Check ins are to determine if the design of the projects has achieved its intended purpose, the 30/60/90 may not be a strict process but more of a keeping an eye on a projects progression and if it is achieving desired water quality benefits.
 - DEC must check in at some point to ensure public investment is being used appropriately
 - Money flow Point of View: money won't come in one large sum, rather doled out as project progresses, up to BWQC how to spend money and invest wisely in development. This means knowing when to cut off or defer higher-cost/lower value investments and move on.
- 2) **Standard rules and/or factors for consideration for ranking projects for selection across all BWQCs? Such as: pollutant reduction targets, co-benefits, O&M costs, conformance with tactical basin plan, and other water quality benefits beyond pollution reduction.**
- Who is making the decisions to move forward with a project, BWQC or CWSP?
- Discussion around creating a manual for standardized values of pollutant reductions and design elements, guide investments and check in's
 - Inventory/list of projects and non-regulatory projects
 - Categories, suggested guidance's and steps of the process
 - Recommended pathways and practices (30/100 for buffers, but 30/60/90 check in for complicated projects that are engineered)
 - Allow comparing of apples to apples
 - An uber council that provides clarity under DEC advisement
 - Need to guard against Impact of projects to natural resources, want to ensure greatest water quality benefit
 - Ethan notes that a contract is out on the manual proposed presently. Will provide practice efficiencies, and O+M approaches, for a variety of project types.
 - Project development is under the prerogative of CSWP, don't need council's permission to explore a project
 - Identification then prioritization – twostep process and rolling
- How much is needed to come to greater council and what can be determined by CWSP solely?
- Discussion around creating a rubric for standardized elements the know how projects are being judged.
 - Eligibility criteria
 - How to get on the list
 - What the BWQC is using (standardized)
 - BWQC will determine co-benefits
 - Pollutant reductions will be primary driver
- Jill A: Advocating for a uniform selection process across the state
- Co-benefits are more subjective, brainstorm a list of co-benefits

- What IT support does DEC intend to provide to assist scoring?
 - Watershed Project DB with project identities, stage, sector, prioritization factors
 - Clean Water Project Explorer: add projects and their attributes into GIS layers, highlight aspects and envision this as part of next phase
- Decision – Check in process will be a matter of Guidance: in BWQC/CWSP best interest to complete check ins, figure out how project is being approved and progressing

3) Relationship of BWQC to basin planners.

- DEC vision for this: Basin Planner...
 - Administers Tactical Basin Planning (TBP) process
 - Eyes/Ears for DEC at the BWQC meetings
 - BWQC/CWSP direct line to DEC
 - Arbiter if necessary, for smaller issues like is it eligible, larger issues to be brought back to DEC
- Conversation around if BWQC will be taking part in more TBP meetings and if BWQC is just part of the non-regulatory portion of the plan, what does the dialogue look like
 - BWQC is the table at which TBP will be developed among statutory partners. The other BWQC members – land conservation and munis, along for the ride and able to provide valuable feedback.
- Is the Basin Planner a voting member or non-voting member on the BWQC?
 - DEC perspective: basin planner would be staff/support role as liaison between DEC and council
 - Basin Planner are critical as liaison for questions at the table
 - Ensure technical guidance from DEC is involved in discussion, integral part
 - It was suggested that basin planner has tiebreaking vote in the unlikely event of a hung vote of BWQC.
- Desire to make the role of Basin Planner in the BWQC explicit in rule/guidance to show importance of Basin Planners to process and large role in conversations of water quality outside of just pollutant reduction
 - Mindful of workload for Basin Planners, still working on other areas not just BWQC/CWSP
 - Basin Planners can serve as facilitator/mediator, however, this may be a delicate role, so need to be realistic.
 - Will Basin Planners Represent the agency at the table and have a position of authority from the state? Or just there as a technical guide capacity?
 - A – Basin planner is State’s representative
 - Insert into guidance to what degree Basin Planners should mediate disputes to ensure a proper working relationship/process with BWQC for future
- Would Basin Planners have authority to give determination if a project is eligible to move forward?
 - Yes, with a caveat that there needs to be internal coordination and communication
- If a Basin Planner determines something regarding eligibility of a project, need to share this information across all councils in the state to ensure communication and standardized decision making

- **Decisions**
 - Rule: Basin planner represents State at BWQC/CWSP, fulfills DEC vision listed above, makes determinations, or obtains DEC determinations, depending on scale of decision.
 - Matter of Guidance: DEC keeps catalog of decisions made to create precedence for outlier project decisions and document how dealt with. This information is then shared.

BWQC Process and Role

- 4) **Dispute resolution. When the CWSP and BWQC don't agree (policy, selection). State role in overseeing BWQC?**
 - Depends in part on nature of dispute.
 - If it is a dispute requiring State intervention, then Tactical basin planner for small disputes, return to DEC for greater issues
- 5) **Conflict of interest policy for BWQC participation and the CWSP as a whole.**
 - Role of having a COI policy is to create credibility for decision making process
 - Charlie B: Two types of COI foreseen in this, 1. Personal conflict of interest (personal property, spouse, relatives) then need to step away from decision making. 2. Project in the bundle
 - Only so many people in this work in state of Vermont, bound to have some COI
 - When projects voted on as a bundle: everyone has something in the package, so under strict COI, nobody could vote.
 - Provider will do the work of scoring and presenting a list to the council of proposed projects listed for voting
 - Allow appropriate discussion around project benefits, need to have everyone around the table and concerned that a COI won't allow people to be at the discussion who need to be there and are most knowledgeable.
 - Need a transparent process so everyone sees the benefits, the voting and the process
 - **CWSP scores projects under fully transparent process**
 - Council will vote on local component of scoring process.
 - CWSP does leg work and council votes at the end of the scoring.
 - Discussion around a system of checks and balances: if council doesn't trust the way a CWSP scored a project what is the second set of eyes for the QA/QC of scoring procedure
 - Transparent: make results of scoring of projects available for all to see and how projects ranked against each other
 - Proposed Process: CWSP has set scoring rubric that has been decided upon by DEC/BWQC, CWSP scores projects based on nutrient reduction, feasibility, co-benefits, return to council with basket of proposed projects to meet a target, council decides yes/no, council may decide on certain projects needing a re-ranking, then vote again
 - Basin planner be checks and balances for project ranking
 - Show your work to ensure transparency in scoring process
 - Outside eyes will be able to see ranking of projects and what they scored against another project
 - Different lists by readiness (list to 30, list to final)
 - COI: doesn't always require a recusal, should require that member informs the council of potential COI, signed an agreement at induction to be a BWQC member

- What happens if a member doesn't disclose a COI? Do they get kicked out of council?
- COI Hypotheticals
 - What if two projects are tied as a score and they are the last two projects with similar co-benefits and cost and two members on council have stakes in them?
 - Depends on single decision on one project or a voting on bundle of projects
 - Can't participate in what benefits you, if it is one project then recuse oneself
 - If it is a bundle of projects, council weighs factors and everyone can still vote
 - From Policy point of view this conflict of interest is hard to define in guidance, may invite council to draft how they will approach COI as part of application?
 - Does the COI need to be regionalized? Should it be consistent statewide?
Answer = Yes there should be one consistent approach
 - If it is a vote on individual projects then recuse themselves and still have 8 voters, if the decision is made as a tie then the basin planner can act as tie breaker
 - Can Alternate vote instead of a member with a COI?
 - Alternate is identified before, second staff member or board member of same organization
 - COI due to significant others/relatives:
 - Part of a typical COI policy
 - Municipality owned COI?
- Outcomes:
 - Council needs to approve the specific scoring method, subject to State guidelines. One idea is that 80% of the score is from state metrics and 20% local score.
 - All vote on package of projects as scored. This is under consideration by the State vis a vis the conflict of interest policy.
 - Members disclose COIs
 - Two brands of COI
 - Landowner who materially benefits – recuse
 - Implementor at least discloses all prospective conflict, including organizational
 - It will be difficult to develop a perfect approach, but DEC perspective is that there is a need to guard against appearances or real conflicts, in order to retain integrity of the State's investment in CW projects. Policy and process here will need to accomplish this, or there will need to be more work.
 - Need for COI approach will be in rule
 - Approach to COI in guidance
 - Approach will be standardized across CWSP

6) Liability insurance coverage for BWQC members and CWSPs.

- Guidance to recommend:
 - D+O coverage should be acquired for decisions made by provider and for BWQC members.
 - Liability Insurance – carried by implementor, but also by CWSP?.

7) BWQC role in overseeing and/or hiring of ED/CWSP Program Manager?

- Previously, the group had determined that BWQC should not have a role, but as a matter of guidance, the group has reconsidered, and provider may ask council for feedback on staffing decisions.

8) Discussion about funding categories within the formula grants – how are various activities supported within the formula funding and related admin?

- Staff member salaries can be funded by admin funds if completing administrative work, project funds if completing project work, and O+M funds if completing O&M work.
- Those implementing projects should load rates so that indirect costs necessary to implement a project are covered, based on audited costs. These would be covered by the project account. Likewise, subrecipients of O+M funding would also load their rates. Some additional examples:
 - Basin Council member costs:
 - making a project happen = project account
 - working on basin planning? = basin planning funds
 - working on general business of CWSP = admin funds
 - Costs for extra members that may be invited to participate subject to CWSP operating rules (see above)? A: Additional council Seats would result in additional or more effective pollution reductions achieved. Paying additional members necessarily reduced cost efficiency, so the ultimate endpoint of pollution reduction needs to be considered.
 - Final project report by an implementor = project account

9) Communication requirements for CWSP?

- Should there be requirements on CWSP about reporting to Council, State or others?
 - Project ranking should be transparent and the methods of ranking
 - Statute = annual reporting requirements to ANR and reviewed by BWQC
 - Should there be a formal reporting mechanism?
 - Open meeting law
 - Recording on funds as part of check-ins?
 - Monthly invoicing if enough money
 - Set the frequency of invoicing to show progress is being made
- Communication between CWSP and BWQC
 - Ability of BWQC to request information/reports of activities quarterly from CWSP
 - CWSP should prepare paperwork/reports before meetings to show progress
- Maintain a website?
 - A portal used by all CWSP/BWQC for tracking/scoring of projects
 - Allow for cross posting, agenda, and minutes of meetings for all
 - Will there be a DEC webpage as a universal place for everyone/public to find the BWQC minutes and links to every CWSP for information?
 - Who will be notifying public of open meetings?

Not covered in meeting:

CWSP Governance

- Left over funds policy.
- CWSP host organization open Board of Directors meetings?

- **Records retention/records requests? Confidentiality?**
- **Reporting – Projects, Ongoing Other, and Annual reports.**
- **Non-discrimination policy? ADA accessibility?**
- **Outreach and education requirements?**
- **Training requirements?**

Adequate annual progress:

- **Annual feedback from BWQC informing Secretary's oversight.**
- **Accuracy and completeness of reporting.**
- **Total pollutant reduction relative to target. Progress in standing up projects.**
- **Other items, TBD.**

Definitions:

- **Administrative Fees, Project Delivery Costs**