Friday, March 6, 2020

1:30-3:30 PM

CWSP Stakeholder Engagement Meeting

In Attendance

- Vermont DEC – Neil Kamman, Chris Rottler, Ethan Swift, Peter Walke, Rachel Wood, Karen Bates
- Vermont DEC (skype) – Angie Allen, Danielle Owczarski, Ben Copans
- VAPDA/ RPCs – Charlie Baker, Peter Gregory, Dan Albrecht (skype)
- VACD/ NRCD – Gianna Petito, Holden Sparacino
- WUV/ WRP – Mary Russ (skype), Michael Kline
- GMWEA – Amy Macrellis
- LCC/ Water Caucus – Jared Carpenter
- UVM - Christopher Koliba
- Zach porter (skype)
- Ethan Parke - VHCB

Agenda
1. Housekeeping and Introductions
2. Review of Notes 2/21/2020
3. Act 76 Decisions Document 3/4/2020
4. Big Picture Topics for Future Meetings

Housekeeping

- Neil welcomed group and Advisory group introduced themselves around the table for the Commissioner, Peter Walke, who joined us for the beginning.
- Neil goes over graphics created as visual representation of CWSP and BWQC funding, priorities, and designation
    - Suggested edits to the graphic to create a clearer picture
    - Add non-regulatory to sections on the second page graphic
    - Confusing message on the right-hand side of first graphic, can be read as if the CWSP are implementing priority areas
- Statutory partners that contact DEC regarding Act 76 information will be directed to AG members in their area when requesting information on meetings notes and the activities of the AG.

Review of Notes 2/21/2020

- No changes request. AG is comfortable with notes being posted to webpage as is

Act 76 Decisions 3/4/2020 Document

Process and Role

- **CWSP may participate in the BWQC if they are a statutory member, subject to potential COI rules. At a minimum, the CWSP staffer should be a different person then the staffer voting on**

the BWQC. If possible, at the very least, they should represent a different organization (i.e., the Addison RPC is the CWSP for the Otter Creek Basin, and a Rutland RPC staffer sits on the BWQC)
- **Chair is selected by the BWQC. Shall have a one-year term, that can be renewed.**
    - ○ **Question: Role of the chair?**
    - ○ **Question: Who sets the meeting Agenda? CWSP, with a mandatory period for public comments?**
        - ▪ Concerns raised regarding having the agenda being up for public comment and who sets the agenda.
        - ▪ CWSP sets agenda and a portion of the agenda is open for the public to weigh in concerns at each meeting as part of the open meeting laws
        - ▪ Conversation around who sets the agenda occurred between the CWSP and the Chair
            - • Agenda set jointly with consultation between the CWSP and chair of the BWQC?
- **Chair/BWQC won't have financial role in CWSP (e.g. no check signing, etc.)**
- **BWQC terms shall be two years. Terms shall be staggered, so that 5 members have a one-year term to start, after which they shall be appointed for a two-year term. Also, at start-up, four members shall have a 2-year term to start.**
    - ○ **Question: Who picks replacement? CWSP always? Or should the umbrella organization have a role in choosing their replacement (I,e., so WUV chooses a replacement watershed organization representative)? I know that the CWSP initially selects BWQC members.**
        - ▪ Statute provides guidance on how the BWQC should be chosen, setting a replacement following statutory language
        - ▪ Last statement not worded correctly: CWSP establishes BWQC not selects
- **There shall be 9 members on a BWQC (per statute).**
    - ○ **Note, this is not a consensus view. One proposal: cap at 9 for first year and reevaluate.**
    - ○ **Question: What if there is a vacancy that is hard to fill? (Always need to approach the relevant available statutory partners to solicit their participation).**
- **One person, one vote. One person cannot represent another organization (see proxies, below). However, a designated "alternate" would have a vote if the regular appointee cannot participate**
- **Guidance shall state that members shall be knowledgeable. Best practices for membership is something that could be developed.**

Non – Member Input

- **BWQC meetings shall be public and subject to Vermont's Open Meeting Law.**
- **Subcommittees are allowed, with membership approved by the BWQC.**
    - ○ **Question: are subcommittees also subject to open meeting law?**
- **Any BWQC member can solicit information from their constituency.**

BWQC Alternates/Substitutions

- **Designated alternates are allowed (must be identified ahead of time)(best practice – one time/year, unless mid-year change in personnel, etc.)**
    - o **Question: only one alternate allowed? Or two?**
- **Proxies are not allowed.**

Quorum Requirements

- **Quorum – is 5 to conduct business (based on 9 members). Must be appointed as Rule.**
- **Meetings minimally happen four times a year, with preference for a meeting/quarter**
- **Decision-making methodology: majority vote of members (ie. 5 to pass, regardless of those present.)**
    - o Conversation around wanting to ensure that the language reflects the intent for the BWQC to reach consensus as a methodology.
    - o Idea is to seek consensus but to document for public investment a vote needs to be made

Executive Session

- **Only when permitted by statute, with outcome voted in public.**
- **Three triggers for ES – legal, personnel, financial (i.e., contractual, such as in reviewing proposals for an RFP) deliberations – all decisions then made in open meeting**

Conflict of Interest
- • Concerns raised that this section of the decision document doesn't reflect what was spoken about last meeting regarding:
    - o Project sponsor does not score own project
    - o Recuse oneself on individuals project decisions when being decided at the project scale, per the LCBP model
    - o If council is reviewing bundle of projects, then everyone votes on the bundle
- • These concerns and points are reflected in the minutes from 2/21 and didn't make it entirely to this decisions document
- • Question: Has this (the conflict of interest question) been run by lawyers yet? Answer: No
- **Yes, there shall be a policy, details TBD. Rule states there shall be a policy.**
- **Guidance has the details. Approach will be standard across the State.**
- **Starting point is LBCP COI policy, but there is disagreement on this.**
    - o **Question: Can an alternate vote if principal BWQC member has a COI, unless Alternate is from a different organization than the one subject to the conflict. (this example could be at play for RPC, CD, watershed assoc., or muni). Alternates are not there to vote what the member wants (that's a proxy). Alternates are there to vote their best professional understanding**

Project Ranking/Selection.

- **CWSP develops a list of projects, based on ranking criteria/FFI informatics tool/etc.**
- **CWSP may consider maintaining a "development" list, and an active "implementation" list**

- o Question raised regarding having two lists and if the development list is still subject to council review and ranking. Concerns over having two separate lists entirely and the application for either one being confusing/difficult.
    - ▪ This was a method to deal with development costs before you have a pound to pay for development, a phased list with a que of projects ready
    - ▪ Idea to make the process of moving projects as packages easier with project development vs implementation
    - ▪ Will there be a different scoring system for how projects in the development phase are ranked versus how implementation projects are scored? Answer: Everything is brought to the BWQC table still
    - ▪ This method could work well with basin planning method of project development. Project development is a process that has to be conducted between implementation partners, landowners, and basin planners, and which may requires site visits to verify eligibility.
    - ▪ Basin planners are moving away from the "Shot-gun" approach to dealing with concerns and complaints as they arise. Taking a more methodical approach to sector-based assessments and applying metrics to the overall basin planning process
        - • Interplay between vetted projects, placed into WPD, projects that merit further screening
    - ▪ The development list will be more opportunistic and less scripted, there are a lot of unknowns and will be hard to rank
    - ▪ BWQC will still need make priority decisions on how to spend the funds with criteria.
- **Implementation projects must be ready to proceed and listed in the Watershed Projects DB thus by association in the TBP. Definition of 'ready to proceed' needs to account for need for NR technical program review (DEC).**
- **Standard Rules for Ranking Projects (Ethan).**
- **80/20 state scoring, local input**
- **Criteria to bump/terminate projects based on 30/60/90 review. Guidance/best practice?**
    - o **Question: O&M for old projects eligible for funding?**
        - ▪ Thought that 30/60/90 review was replaced with 30/90 last meeting due to certain projects not being compatible with three check-ins
        - ▪ Conversation arose around projects requiring different levels of check points, some require permits before it can go to final design and that could be a checkpoint beyond the 30 mark. Some projects you must go through final design before certain that a project can move forward
        - ▪ Risk versus Reward: some projects may have an opportunity for tremendous impact but be risky investments
        - ▪ Question: How often do projects get past halfway and have to pull the plug? Answer: No very often but it does happen.
        - ▪ Need flexibility, each project type will have different milestones
        - ▪ Place something in the guidance document regarding this risk and not being penalized for trying and failing

- It's about pounds, not going to count one every dollar going into every project
  - Suggestion: record and look at funding investments of CWSP down the road to compare and create a robust analysis of what has worked project wise
  - Suggestion: CWSP spends money on suite of projects that cluster around cheap but low return, keep those projects in the mix for future technology advancements that may change the outcome and make the project more feasible
  - Need to place guidance on project types
  - Question: how is the allocation of funds being laid out for non-regulatory projects and drive decision making process? Some types of projects will yield more pounds but be cheaper and drive decision making
  - What is being laid out before the provider and how the P pounds are being generated
  - Suggestion: previously stated in past meeting, having an annual check in with all CWSPs and BWQCs to share lessons learned and approaches that worked
  - Question/concern arose around if the CWSP is presenting a project that they are not able to use the 15% towards that project budget since it would lower the budget cost compared to projects from others
    - the 15% is for reporting back on full suite of projects, not one project
    - CWIP funding policy will be start to this
    - Will get complicated with CWSP projects against non-CWSP projects
- **Vote for each project on the list or vote as a package is an open question.**
- **Allow chair to approval small projects?**
- **Project selection criteria should be standard across all basins, such as pollutant targets, co benefits, O&M costs, and other wq benefits beyond pollution reduction (e.g. habitat, flood resiliency, etc.) This gets at the 80/20% split**
- **Standard process for determining eligibility, how to get on the list.**

Relationship of BWQC to Basin Planners

- **Basin Planners represent DEC/ANR at BWQC meetings. They will be able to provide guidance to the CWSP/BWQC on items such as whether a project is eligible. Basin Planners are neither facilitators nor formal mediators. Where there are significant conflicts between the BWQC and CWSP (e.g. on whether to fund a particular project as it relates to phosphorus reduction goals), these conflicts will be managed by a process TBD at DEC/ANR.**
  - **Note: eligibility decisions need to be tracked, and shared across the State/with other BWQCs, etc. DEC keeps a catalog of decisions.**
- **Facilitates/coordinates TBP process**
- **Eyes/ears of DEC at BWQC meetings**
- **BWQC/CWSP direct line to DEC**
- **Basin Planner breaks a tie in voting (TBD)**
  - Basin planners can break a tie in some cases

- o Bigger disagreements require a way to appeal to the Commissioner, include this language in the "direct line" that is provided through the basin planner
  - o Concern arose about basin planner being made arbiter of the council. Planners should be informing on project co-benefits but shouldn't be pulled as mediator/arbiter over larger scale issues
  - o Need to point to larger over-arching authority for assistance with bigger issues

BWQC and Tactical Basin Planning
- **BWQC will be the venue at which statutory partners engage the tactical planning process. Funding – some BWQC meetings will be supported with "basin planning" funding (≥$500K TBP, while some may be CWSP funded. Depends on context.**
  - o Basin planners already coordinate regional meetings, don't want a redundant process. Instead of CWSP operating separately they interact with Basin planners on certain meetings
  - o Achieving TMDL is done through the basin planning process and the traditional basin planning process needs to continue to not lose sight of those permitted to meet the loads
    - ▪ BWQC/CWSP won't touch things in the regulatory
    - ▪ Don't want to limit our outward public engagement at the table on regulatory committee and non-TMDL stuff
  - o Concerns arose around what is meant by the funding in the above language and the mechanisms for that
    - ▪ Language needs to be altered to reflect a different meaning
    - ▪ The operation of the council may be funded by CWSP money, basin planner money, admin, or project money depending on what is being presented on at the table
    - ▪ If the provider convenes council regarding projects, then the project fund will be use to pay. If talking about basin planning, then basin planning will fund that

BWQC role in hiring staff

- **Not formally but can be solicited by CWSP if so desired.**

Liability Insurance
- **Yes, per Attachment C, plus D+O coverage for BWQC members.**
- **Probably not available for projects themselves, per VLCT research**

Payments
- **Subcontractors can bill an hourly rate that is all project costs. Do not need to itemize indirect/admin/overhead costs.**
- **Invoicing of DEC shall be no more frequent than monthly**

Communication Requirements

- **CWSP shall maintain a website, used for noticing meetings at the very least, and historical record of meeting minutes**
    - o Thought DEC will be hosting the website with a directory of all CWSP/BWQC in one place

3/6 Meeting: Big Picture Topics for Future Meetings
1) **Recap where we have been – agreement to date**
    - This will be reflected in a decisions document
    - Use different language? Summary?
2) **Remaining Governance topics**
    Open meeting law for subcommittees?
    - Question: Will BWQC subcommittee be subject to open meeting law? Answer: Yes, needs to take minutes
    - Conversation arose around at what number is it considered a subcommittee.
        - o Not quorum, 2-4 is okay but not 5
        - o School board rules state no more than 2 people
        - o Need to be specific about what is allowed, what has to follow open meeting law
        - o Keep in mind that you don't want to limit the ability of people to go out into the field to view projects
    Communication requirements?
    - Meetings should have a phone/ skype and/or other electronic connectivity to allow remote access to meetings
    - Communication around project progress: the provider will provide reports to the council
        - o Council will decide how often they want reports
        - o Guidance states that you should have reports
    Dispute resolution?
    - Direct line to the DEC Commissioner
    - Basin planner will be frontline on whether a project is eligible, the initial screening
    - Basin planner as the ability to take information back to DEC to determine if eligible
    - Matter of guidance to speak with basin planner regarding project vetting
    - CWSP will have the ability to reach out to basin planner regarding a particular project, need to make clear that it is not up to the basin planner to review all the proposed projects
    - Concerns arose around dispute resolution that may be chronic: BWQC not happy with CWSP and vice versa
        - o Not necessarily the States obligation to sort out these issues, just need to know about it
        - o Use formal grievance process as boiler plate
        - o The BWQC can write a bad review on the CWSP as a way to report on the issue
        - o If the issue is dysfunctional and hindering adequate fiscal process, then State can step in
        - o Code of Conduct would address this issue. A set policy on common operations
            - ▪ Matter of guidance would say that BWQC should have policy and contemplate that is could happen to create a space for it

- What if decisions are being made that don't meet the requirements?
  - Sate will step in, part of annual progress
- Basin planner is a direct line path to the State if necessary, but don't want to place basin planner as arbiter
  - Basin planner will provide tech input to sway discussion/arguments, provide the facts in order to recalibrate smaller arguments
    - Larger communication grievances between BWQC and CWSP will be taken to the DEC Commissioner
- Are the council's independent authority? Answer: it's both, they serve each other and have oversight
  - The members serve at the pleasure of their own constituency
  - Several organizations are appointing members to the council
  - Have the ability to insert State authority to disqualify a council member in matters of egregious conduct
  - Matter of annual progress as well

Role of BWQC in other matters? Determining most significant water quality impairments? Open host organization meetings?

- Conversation arose around if the CWSP host organization has a board that meets, are those meetings subject to open meeting law per the rule
  - CWSP business has to be open meeting law and can't fold the CWSP business into the regular board meetings; but board meetings separate of that aren't subject to open meeting law
  - Ways to audit the organization without using the CWSP as a kind of trojan horse into the host site meetings
  - Annual audits can be required
  - Requiring host sites meetings to be subject to open meeting law would limit who would want to be a CWSP, don't want to do that
  - CWSP meeting needs to be open and if issues arise in board meeting that pertain to the functionality of the CWSP to complete annual targets this will need to be made public
    - Self-policing
  - Matter for the grant agreement: public document that is the power of the state to require financial statements

Records retention/requests policy? Confidentiality?

- Retain what is in the grant file for 3 years after
- Matter of public documents
- What should be withheld if anything? Private property ownership or agriculture practice ownership that is protected in statute
  - Contracting law when negotiation you can't reveal the information until negotiations are done
  - Proprietary technology is protected
  - Cite the state law on this
- See tension of confidentiality and privacy if a landowner is interested in doing a project on their land but may not want their name out in public
  - Respect the landowner and be reasonable about privacy

Reporting. Projects, Ongoing Other, Annual Reports.

- There needs to be reporting
- Emily Bird will speak to this in some degree in next meeting
- Does the Sate have the right to inspect projects and records? Yes
- There will be a verification procedure on O&M
- Reporting on the performance of the CWSP through financial statements
- Let statute language dictate what is require and minimize what is coming from the state
  - Matter of guidance or best practice for reporting, don't necessarily need the state to be specific on this
- Reporting from BWQC to CWSP is done at the local level

Non-discrimination policy. ADA accessibility? EJ?

- Yes, adhere to state law
- EJ = Environmental Justice
  - Proactive to reach out to communities that aren't usually engaged in the conversation
  - State is creating a policy around EJ
  - Could EJ be a co-benefit?
    - Series of questions asked
    - Can see like mitigation of flood hazards in mobile parks being a co-benefit
  - Don't create a challenge with engagement, clear guidance on how to approach the topic is never enough
  - Can't just be online, some people do not have internet access

Outreach and education requirements?

- Public education part of the budget
- Some grants require a modicum of outreach and education
- This is not part of the standard costs
- EJ may touch upon this subject and creating a basic level of transparency by engaging the public
- Don't require it but guidance can touch upon that they may complete outreach
- Question: Will the requirement of a press release and Flow blog carry over?
- Propose: Matter of Guidance, provider may complete education and outreach if they want to use money to do so and are getting important projects identified through this
  - Council must agree to this

Training requirements?

- Yes, to opportunities of training
- No, do not require it

3) **Adequate annual progress**

Who is responsible for what? Tension between BWQC and CWSP, and AAP.

- State picks the CWSP, has the authority/responsibility to oversee the CWSP is meeting annual progress and decertify CWSP if necessary
- Annual progress responsibility has the weight
- State look at issues from the lens of adequate annual progress and will step in if BWQC is disrupting that

- - - o Potential for program represented by a council member that is disrupting adequate annual progress to be impacted for future grants?
  - Concerns that this "adequate annual progress" doesn't work with the 20% local input since the intention is to give weight to something other than just P reduction
    - o Need to have clear decision criteria and not a black box
    - o Accountability for project selection rests with BWQC
  - Issues of a technical matter could be taken care of by establishing a technical advisory committee so content experts can help mitigate that type of tension
  - Tension due to Politics is another matter, if the Chair or CWSP are feeling that the relationship is going off the rails then they have the ability to bring the DEC Commissioner in to resolve the situation
  - Need some rule mechanisms for this planner liaison and what is the threshold for going to the DEC Commissioner
    - o Can request assistance from DEC on matters of disagreement technical and political
    - o Rule needs to confer to fix a council that is broken
    - o State should have authority to ask host organization to pick someone else
    - o Matter of rulemaking?
    - o Use statute as a backstop for this issue

Content to be covered in next meeting:

> **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.**
>
> 4) **Definitions.**
>   **Administrative Fees**
>   **Project Delivery Costs.**

3/20 Meeting

1) **Liability**
2) **Payments**
3) **Left over funds policy**
4) **5% Risk Reserve**

4/3 Meeting

1) **Internal Controls**
2) **Procurement**
3) **Ability to Implement Projects**
4) **Site Control**

4/17 Meeting

1) **Audits/Oversite/Compliance**
2) **Violation of Terms**

3) **Miscellany (any lingering topics, etc.)**
4) **Act 76 Advisory Group going forward (e.g. rulemaking).**