

Friday, April 17, 2020

1:00-3:00 PM

CWSP Stakeholder Engagement Meeting Minutes

In Attendance

- Vermont DEC/ANR– Neil Kamman, Chris Rottler, Ethan Swift, Angie Allen, Danielle Owczarski, Ben Copans, Karen Bates, Billy Coster
- Vermont DEC CWIP – Marli Rupe, Katelyn Bockwoldt, Helen Carr, Rachel Wood
- VAPDA/ RPCs – Charlie Baker, Dan Albrecht, Peter Gregory
- VACD/ NRCD – Gianna Petito, Holden Sparacino, Jill Arace
- WUV/ WRP – Mary Russ, Lyn Munno
- GMWEA – Amy Macrellis
- LCC/ Water Caucus – Jared Carpenter
- VHCB - Karen Freeman
- Clean Water Board – Jim Giffin
- CLF - Zach Porter
- UVM – Christopher Koliba

This meeting was completed remotely over Teams due to COVID-19 and need for social distancing.

Agenda

1. Check- in on how folks are doing
2. CWSP RFP Updates
3. Payments
4. Risk Reserve
5. Left Over Payments
6. Risk of Loss

1. Check-in on folks

- Neil Welcomes the AG and asks that anyone should reach out to DEC if this process becomes a hardship to continue considering COVID-19 events.

2. CWSP RFP Updates

- Neil reviews the current status of RFP
 - Q/A Deadline passed yesterday
 - 35 Questions were submitted
 - DEC has drafted answers to the questions expects to provide those in a timely manner early next week, ideally Monday 4/20/20
 - Highlighted question: Request to delay RFP and currently discussing that action internally
 - Request out to AG if anyone has heard similar request to delay the timeline
 - Charlie: Delay hasn't been requesting from that end but haven't talked to everyone (VHCB)
 - Holden: How does the RFP play into the current states order to stop agreements?
 - Answer, this RFP is in a different category than the agreements currently being stopped by state due to COVID-19. Current RFP

established the CWSP and allows us to move forward with standing up the CWSP role.

- Set stage for funds for subsequent fiscal year
- Lyn: Make sure even for FY 21 we would be able to move forward with project development and implementation work depending on budget and concerned if standing up Act 76 by providing funding to CWSP takes away from work ready to go right now
 - Concern for the balance of different priorities
 - Neil: It is a dynamic time right now and priorities are being arranged by the Clean Water Board.
- Lyn: Heard some concerns from South Lake about RFP but left it in hands of folks applying to reach out if come across issues
 - Highlight that concerns are good to listen for but sounds like other RFP responses have been good and okay to move forward
- Chris R: Received diversity of thoughts on this topic and will have answer released with Q/A early next week if it comes to that

3. Payments

- Neil provides quick preface on this section
 - Thank you all for the session we had with Emily Bird the conversations around payments was helpful
 - Responses we are providing endeavor to separate cash flow vs. check in and stages
 - Generated some good dialogue and answered questions
 - Thank you for bearing with us
- Chris R. gives an overview of the document on Proposal for Structuring Payments to CWSP's
- Holden: is this document intended to be part of guidance? If so, want the BWQC to appear more prominently as an oversight mechanism
 - Chris R: the AG has talked about BWQC oversight, it is applicable, but this document is aimed at the payment model only. We can return to the BWQC oversight conversation in a future meeting.
- Holden: talked about a matrix of types of project costs and where costs could be applied from O&M Fund and Formula grant etc.. Is that still in development? Helpful for administrative expenses or overhead from partners/project development and whether that fits in formula grant or separate piece?
 - Chris R: today's talk is a bigger view of the architecture behind the payments
 - Significantly different from what Emily Bird presented on
 - Valid point but a reminder that it is not on immediate radar and trying to get feedback on bigger picture but moving onto next steps
 - Neil: Oversight section on document is what you are talking about Holden, could be a standardized matrix billed against project account, fit inside apparatus built in this section C.
 - Eligibility for pots of funding, admin, and project.

- Significantly different and puts CWSP in more the driver's seat for administering the funds as opposed to DEC dolling it out after projects have been moved along.
- Charlie: In Section B talking about money flow, how does it work now with DEC getting funds from the EPA? Initial concern is that a bulk of construction work may happen in first quarter (July – September) and may exceed the 25% budget while the planning and design happens in winter. How does this work with flow of work and smoothing out the reality of construction season in Vermont?
 - Chris R: We receive grant (SRF loan fund) and doll out money for design or implementation, similar to what we are talking about here.
 - We receive grant and bill against it on a quarterly basis
 - More expenses than what allowed to bill? Have to float that and provide own liquidity
 - Loan fund = repayment money in it
 - Want AG feedback on the liquidity challenges, original thought was you would have design work right out of the gate not construction work
 - Idea: if Clean Water SRF be available for interim financing to deal with liquidity situation you are contemplating
 - Contemplate what that would be for CWSP if not the case for this conversation
 - Not sure how to deal with billing stuff right off the bat
 - Neil: as an internal team, this architecture is what it would look like in first year with more invested in project development vs construction
 - Reporting/oversight track: hear from CWSP what the likely needs are going to be for the next draw
 - 5-year target and 1-year obligation letter of a million dollars, basically tell us you need half of that for construction, may be able to deal with but new paradigm with clean water grants
- Jill: recommendation to invite CWSP to give a quarterly cash flow estimate, sense of needs of CWSP and be able to put that into how you build budgets over time and interact with SRF
- Jill: my experience with EPA grants: you can advance more than 25% in first quarter (4-6 months' worth) end of quarter only invoice what you spent, have a float and getting reimbursed after and then at the end of agreement you get nothing since you have spent down your balance. Allow frontloading of money with oversight quarterly.
 - Neil: idea that SRF could be used as line of credit to access immediate funds to do work, paid back by formula grant = creative idea have not fleshed out
 - Answer need to do liquidity
 - Charlie: support what Jill had said, appreciate liquidity option, more context: are we all more conscious of cash concerns that are happening now? Model proposed funded by cash flows coming into budget during the fiscal year, so you do not have money available each quarter. Or money collected at beginning and just trying to meter it out?

- Chris R: not related to DEC liquidity, more an internal control environment that does not put too much money out into the world unless needed
 - Express need for dollars? Need feedback about cashflow or float
 - Comes down to managing money and keep a reign on it
 - Internal controls and conservative environment are primary goal of this
- Charlie: love the idea of liquidity, worried about the lumpiness of flow, bigger dollar amounts waiting quarterly... way to get to hybrid version of quarter float and depending on how fast being invested, start going to monthly reimbursement as it is being spent, question to going to reimbursement model provides controls – peers liked hybrid solution better to flow with any unknowns. Concerns about restrictiveness of the quarterly draw model.
 - Chris R: need to be thinking more than first year, further into system entitled more money and better position to deal with lumps of money
- Neil: original question of structure has nothing to do with ebb and flow of Clean Water fund and current state, we are building the ship for when we are on the other side of this pandemic COVID-19
- Chris R: maybe worth considering a different regime in year 3, 4 and 5. More flexible in year 1 & 2 when there is not much money and be more cautious in later years when CWSP has access to more money.
 - Charlie: Concerns about every year moving forward going to have lumpiness of funds and dealing with construction season vs development season, concerns over long time to wait on a quarterly invoicing process and want to smooth it out
 - 25% to get seated is great and works, and then later move to reimbursement model
- Peter: Mixing advances with reimbursement might be a challenge for all parties, wonder if 25% advance is a good thing in the beginning but in future quarters may estimate needs based on construction and request another advance of 40%, not worry about payment times from DEC but draw down what we anticipate using in next three months
- Jill: system using with EPA and advance being more quarterly meant covering the gap of submitting for reimbursement and getting paid and not needing to take a loan for interim period
- Chris R: simplicity is key, manage without a loan would be easier
- Jill: authority of CWSP to use funds as match, great deal of interest as CWSP get developed and write proposal for other things and provide/address authority to use these funds
 - Neil: interesting question and good idea, needs more nuanced discussion. Standard agreements are you can't use funds as match unless authorized.
 - Point worth figuring out, provide some flexibility in system for CWSP/BWQC to document/track match against these funds
- Lyn: thinking about all different layers of people expending funds and when will they get reimbursed.
 - Implementing organizations doing the work, sub-contract out

- Now through block grants been challenge with billing organizations
 - Make sure not too much lag time so that folks doing work are getting paid
 - Think about time lag if reimbursable model
 - Neil: heard comment about creating liquidity
 - Chris R: other comments down the road DEC is open to hear them, write us in an email
4. Risk Reserve
- Chris R: introduces the Risk Reserve concept as part of the payment architecture for CWSPs
 - Relates to liability discussion that we will have later on in this conversation
 - Savings account retained, funded by contributing 5% of project funds from each formula grant until capital has been achieved on a basin
 - Available to guard against lost projects depending on why project was lost
 - Charlie Baker: How did you get to the \$150,000.00. Wonder if you might want to flex the target amount based on basin size and need.
 - Chris R: I made it up
 - Neil: capital reserve used for emergency situations
 - Jared: want to clarify that this is 1 per basin and not every basin with one pool of money? Preferable for the little pool not the big pool
 - Chris R: good point to discuss, state or CWSP hold onto the pool?
 - Haven't thought about who holds the funds
 - Neil: advantages to both models (external vs internal) segregated by basin or a pot
 - Dan: Wondering if legal for CWSP to require the implementor/construction organization to require a landscaping bond? Common in Burlington, x% of total cost of trees put in as a bond, may be a nice thing to have, lasts a couple of years, legal document developer must do
 - Karen Freeman: any restrictions to the reserves accruing interest. Reason to aggregate them to be able to leverage the ability
 - Chris R: Arbitrage has yet to be spoken with legal about, subject to arbitrage prevents us from investing. Open question yet to answer but on radar screen.
 - Lyn: question on what Dan is asking about landscaping bond, is that something for voluntary NR projects, is that thing people do?
 - Mary Russ: Do not have a bond associated with smaller infrastructure bond, sometimes require a bond during construction projects if don't have a relationship with contractor that has been hired, projects over \$100,000.00 standard practice.
5. Left Over Payments
- Chris R: overview of the section on left over funds on the payment architecture for CWSP document
 - Would be no leftover funds if doing a reimbursement scheme
 - Act does contemplate leftover funds and what allowed to do with it
 - Looking at 5-year pollution reduction goal, don't have leftover funds until closer to end of 5 year period

- Language is from the Act and nothing is new, relevant, and contemplated by Act
- Jared: trying to remember what the committee was leaning towards...regulatory purpose or other projects with co-benefits?
- Lyn: can't remember either, possibly both
- Chris R: language is paraphrased from Act
- Lyn: interested in the line" use those funds now for other eligible projects (which must have a phosphorous reduction benefit, which can be 'banked' for application to the CWSP's next 5-year pollution reduction goal"
 - Remember this is going to be used for TMDLs that are not Phosphorous
 - Use language when there will be funding to reach other TMDL's
 - Change from phosphorous to pollution reduction benefit
- Jill: wasn't only projects that meet Phosphorous goals, other projects that fall under enhancement goals
- Jared: extra money you can use it on other things
- Neil: exactly what Chris is saying, clause 5: use those funds that improve water quality in that basin, additional NR projects that might not have a lot of Phosphorous benefit
- Jared: if you can hit targets and stay under budget, have flexibility with extra money, see if anyone gets there
- Neil: topic of leftover funds, something we want to seek out advice of Matt Chapman, gives discretion for CWSP to select what use money for, act is not putting state in driver's seat of that
 - Jill: Strong incentives for O&M

6. Risk of Loss

- Chris R: Gives brief overview of the CWSP Risk of Loss document draft
 - Liability scenarios document that was introduced 2 months ago as a ladder of risk concept and various possible scenarios of things going wrong
- Project fails because the contractor/implementor didn't get it installed
 - Chris R: Not reimbursement based, affects risk of loss and what is being put on CWSP
 - Risk reserve not available for this scenario, something that should be sitting with contractor and CWSP to be worked out
 - Role for natural resource bond to mitigate risk here maybe
 - If CWSP is paying for design there may not be Phosphorous reduction associated with design, no benefit until project is constructed, CWSP might not want to engage in, might want to own project all the way through
 - Mary: conceptually hear question: in this case the CWSP working with sub-grantee working with contractor, language shifted
 - Chris R: maybe need more subtlety there
 - Risk goes up with project size, bond would be helpful here for larger projects, waive that bond when know contractor

- Chris R: risk reward dynamic, too expensive to get a bond on a small project but may want to require it on larger projects
- Mary: definitely need a dollar amount associated with that, performance bond are expensive
- Neil: SRF world have construction performance bond, what do you think is the line magnitude of project/dollars for requiring this bond?
 - Mary: what the partnership does is standard across board
 - Consider it for projects over \$100,000.00
 - Require as part of bid process, but may waive if know the contractor to reduce cost when knowing the locals
 - Dan: design implementation block grants done by town, performance bonds, bid bonds, but that is all because it goes through municipalities. Having the performance bond is pretty standard and borrow VTRANS language.
- Charlie: love idea of performance bond, want to note a concern about phrasing and CWSP paying out of pocket, own enterprise fund and stands on its own, this communicates in addition to risk reserve each CWSP/BWQC is going to think about having funds set aside for these circumstances, outcome of this language, real world need a contingency fund for when things go wrong, worth adding this to guidance/rule that BWQC/CWSP need to set aside funding for risk
 - Chris R: meet adequate annual progress, 5 year P reduction goal, 95% way there in year four and you are doing your last project and it fails and you don't have any more money, you still have a goal to meet, what does that mean for your meeting adequate annual progress. No more money left and have not met goal there has to be deadline (farfetched scenario) that if not crossed you aren't meeting adequate annual progress. Maybe have leftover funds and be efficient? What does that mean? This is what I'm thinking about when writing these words.
 - Charlie: just asking for guidance to be prepared for contingency of things going wrong, constructive ways of
 - Peter: language is scary and if were to remain it would be a deal breaker and all risk is on CWSP, following up with what Charlie said about getting oversight money that is where the liability rests not with CWSP
 - Neil: good feedback, the thing that sounds scary is the thing that is fixed with performance bonds
 - i. Concept not yet included in this outline
 - ii. Eligible expense as part of project implementation and provide protection
 - Holden: peter can you repeat what you said about admin cost and liability?
 - Peter: my understanding that there is money that is part of project cost, project sponsors time in selecting contractor
 - Holden: groups implementing projects?

- Peter: yes, that that entity must work out issues and not the CWSP
 - Holden: 15% administrative cost for CWSP that does not go to implementing groups, implementing groups can charge project cost is there time to report results, done as a contractor, not coming from 15%
 - Peter: Correct
- Lyn: following up with what Holden is saying my understanding is the project implementor can charge project management and deliverables time, but a little confused how they have the funding to deal with this liability
 - Neil: peter scenarios, you are sub-recipient and contracted with you to do a rain garden installation, as the one contracting that as part of project cost you would require construction company to have performance bond on that project, ultimately the implementor holds some of the liability that they are contracted to do
 - Lyn: some of these wont have sub-contractors,
 - Neil: idea of bond is a tool that hasn't been placed into this architecture yet
- Gianna: under SRF world the cost to a municipality to require construction bond that is eligible under project account, right?
 - Chris R: yes, I see that as being eligible under project expense
- Gianna: Is it being included as part of formula in estimating the cost of these types of projects?
 - Chris R: Conceptually it is important to account for that yes
- Chris R: lay out reasonable expectations for what CWSP are going to be required to do, want to incentivize good behavior. Direct language of law. Happy to change tone of this, but welcome more conversation. There does need to be consideration for the scenario.
 - Charlie: appreciate this, need some wording that gets us to what we can do to mitigate like bonds, shared accountability structure needs to be more explicit, that there are organizations in the middle of these deals often, here to back each other up and make sure things get done together and make system work
 - Lyn: language change reflects better how the relationships will work, alleviate worries of sole responsibilities, implementing group is part of equation
 - Chris R: State only has relationship with CWSP
 - Charlie B: Needs to be speak to how things will work in practice, CWSP will have relationship with sponsor, from state perspective the thumb is on provider and things roll downhill, guidance recognizes this
 - Lyn: satisfy this by saying "working things out with the sub-grantee" rather than the contractor

- Chris R: this is just conceptual language and not actual guidance language, all happy to revise based on what we are hearing
 - Neil: all that we are presenting to you now is meant to telegraph intent on how we are writing guidance/rule
 - Will be working together on this and word smith as time comes
 - Chris R: Moving forward in document, shift towards risk reserve
- Project is installed, but it does not work due to poor design/construction (discovered prior to final payment)
 - Not CWSP responsibility but on the other end of shovel that caused it to be a problem
 - State can't enforce that with direct relationship, CWSP will be responsible for chasing down failures
- Project is installed, but is a lemon – failing within 12-24 months of installation due to poor design/construction (payment already issued for the pounds)
 - Bond would cover this if there was negligence, improperly designed
 - Jared: is a lot of this stuff standard? Someone building a stormwater that builds, is that on the installer by contract?
 - Holden: I do not know about standard, possibility that there might be a situation that might not fit into these boxes.
 - Town postponed project to future year and project stopped but cost incurred already, across state will have scenarios that do not fit into these boxes
 - i. Need discussion between state and CWSP in the case that it is not clear
 1. Chris R: later in document this is addressed
 2. Neil: the implementation had started then that part of the cost is sunk and the increment falls into liability
 3. Chris R: is there an agreement, funder or landowner and they pull out and you have an agreement, may have some legal action to hold them accountable if they back out.
 - a. No fault: risk reserve available
 - b. May need to be other contingency funds that CWSP has
 - Charlie: risk of loss may not be the right term but Neil brought up a good point for the state to be explicit, money that has been expended doesn't always turn into a project and need to include language to reassure partners that it is okay to spend money and not have every dollar turn into a project
 - Neil: part of Emily Birds discussion on with a matrix of projects, need for project development and don't know if it is appropriate for state to say how much of the formula grant there will be for that, or function of quarterly draw and the cash

flow projection, development is important not every dollar will yield a kilo of pollutant reduction

- i. Charlie: need that in guidance
 - Lyn: talked about that with Emily Bird, shift the language to make sure there is separate pool of money for project development and different guidelines
 - Neil: payment structure, get dollars up front to spend for project development cost by the implementor
 - i. Like idea of having cash flow projections that Jill proposed
 - Mary: issue we see most often, landowner ownership change
 - Importance of O&M and prevention of miscommunication with landowner
 - Chris R: talk about concept of having landowner agreement, maintenance easement, really good to know about landowner change is bigger risk factor
 - i. Absent is O&M will be structured, currently being figured out
- Project is installed, damaged by negligence or intentionally by third party
 - Compensation from responsible party?
 - Risk reserve as back-up
 - Unavoidable event and not fault of CWSP
- Project is properly designed and constructed but poorly maintained and fails
- BMP is damaged, no one at fault (i.e. no negligence – just an accident)
- Project fails due to ‘Acts of God’ – rain, hurricane, vandalism that cannot be fixed with restitution
 - Holden: who is the decider of who is at fault? Differing opinions of how project failed and who steps in?
 - Neil: Interesting question, state will be arbiter when CWSP and BWQC can’t agree
 - If there is need for state to make determination
 - If there isn’t need for state to make determination that is preferred and that things resolve amicably
 - FAQ contemplates this
 - Holden: Hypothetical: situation where CWSP want to meet target and blame implementor and implementor wants to get paid so they claim it is an act of god... would the BWQC have a role in seeing which one it is? What if the BWQC is staffed by the implementor and/or the CWSP...tricky situation
 - Neil: Contemplate scenarios as draft guidance, reason for guidance is to learn way through it and if instances come that we didn’t contemplate then we adjust the guidance.
- Chris R: this is a big picture view and the details will be hammered out when we have more to come. This is the starting point for the conversation.

- Looking ahead to future meetings:
 - Placeholder meeting for revisiting some topics that had not been finished
 - Two particulate topics are conflict of interest and project selection
 - Are there other topics? Please send them to Chris R to be added to agenda
 - One topic might be the follow up from the Q/A?
- Holden: some general comments
 - Appreciate that DEC is also slammed but if we could get documents sooner that would be helpful
 - With these documents in the future it would be helpful to have the matrix and available cost provided before the meeting
 - Could put together what I understand of the scenario and have you tell me what is correct/incorrect?
 - Been making assumptions and would be helpful to have a matrix for reference.
 - Chris R: love to see your thoughts
 - Emily Bird does not have bandwidth right now
- Neil: Echoes what Chris R. says about Emily Bird and all the work she is doing, thanks the AG for the dialogue of today's meeting and know that it is important to get the architecture down
- Neil: LCBP is providing and emergency support grant opportunity for access to funds during this time