

Friday, January 10, 2020

1:30 – 3:30 PM

## **CWSP Stakeholder Engagement Meeting –MINUTES**

### In Attendance

- Vermont DEC – Neil Kamman, Chris Rottler, Ethan Swift
- VAPDA/ RPCs – Charlie Baker, Peter Gregory, Tom Kennedy, Dan Albrecht (by skype)
- VACD/ NRCD – Gianna Petito, Holden Sparacino
- WUV/ WRP – Lyn Munno, Mary Russ
- GMWEA – Amy Macrellis
- LCC/ Water Caucus – Jared Carpenter
- CLF – Zack Porter

### Meeting minutes from 12-17

#### Corrections:

- Amy Macrellis should be listed as representing GMWEA
- Holden Sparacino indicated that the point on CWSP liability issue was not incorporated
- Holden also mentioned that the funding scenario that he presented on – i.e., whether or not the support for BWQC participation and support is adequate (this also was not included)

### Discussion of the draft CWSP selection RFP

- Number of watersheds - 15 versus 6 (Champlain) or 7 (including Memphremagog)
  - This will provide opportunities for CWSPs to initiate the BWQC model outside of LC/LM - won't have formula funding but will have participation through the TBP grant agreements (DEC)
    - Stands up the organization structure outside of the Champlain Basin
      - CWSPs would be able to tap into other grant categories
      - CWSPs won't have access to the formula grants though - and won't syphon funding away from the LC/LM basins (per that grant funding category)
    - DEC will still need to set schedule for other impaired waters – by 2023
    - It may be possible to develop Connecticut River Basin either for the Bacteria TMDLs, or ultimately the LIS load allocations under the N TMDL (WWTF targets have been set)
      - There has been recent interest from EPA in updating the “Sparrow” modeling data
  - The Sec. is required to adopt a schedule for these other impairments by 2023.
  - Is there an expectation (from ANR) to have a provider in all basins (right out of the gate)? RPCs did not realize that was ANR intent (RPC)
    - No compelling reason not to
    - The downside is that this could discourage entities from raising their hand (WC)
      - Though there may be more benefits from engaging more forthrightly in the basin planning process in forming BWQCs and having them stood up
    - However, this presents "pressure" for organizations to apply. Even if an entity isn't ready to raise their hand at the moment (VACD)



- Perhaps the details of coordination will need to happen eventually – i.e., there are some efficiencies in having that process take place now at the beginning - E&O, having a voice and participation in the process, etc (DEC)
  - Having clarity in the RFP is critical (VACD)
- Perhaps we need to be clearer in the RFP as to what it means to be a CWSP that is outside of LC or LM (DEC)
  - This did come as a surprise for the RPCs, as “they” (e.g., Conn River RPCs) were going to watch what happens in LC/LM and "stay tuned" (RPC)
  - Would there be an option for an organization that would be able to serve as a statewide entity (RPC)?
    - The RFP contemplates the ability to establish "back-up" CWSPs – where you can apply as the primary in one basin and the backup for multiple basins (DEC)
  - There is nothing preventing an entity from becoming the statewide entity - though there is a "sweet spot" in the number of basins a CWSP may propose to serve. This is because there will be a BWQC for each basin, and there should be an economy of scale should a CWSP carry more than one basin.
  - NOTE from Neil: This was not discussed at our 1/10 meeting, but...on this point, a review of the allocations of the LC and Memph TMDLs will be instructive in this regard. Watersheds with smaller load allocations or smaller developed lands wasteload allocations will be those where less pounds are likely to be assigned for non-regulatory projects.
  - In a proposal, an entity should provide that rationale for whatever basins they are applying for, and in giving the reasons as to why (VACD)
  - This is an RFP for all 15 basins, not one, three, or five (DEC) – entities have the flexibility to apply as they may want to (DEC)

#### Comments on the RFP process going forward

- Form of comments
  - Track changes is too difficult - too hard to reconcile all of those between partners (DEC)
  - At the last meeting (12-17), there was the request from partners to submit the language/ semantics that changes we wanted to see - i.e., hence the desire for the track changes ability (VACD)
  - Would it be more helpful to submit as embedded in the document? - word smithing line-by-line? (WUV)
  - Conceptually or however each feels best suits their needs – the key point is that we will not be able to reconcile conflicting inline changes, so DEC needs to understand the gist of the concern, which we can then address in the final RFP (DEC)

#### Timing of the RFP being released

- Week extension requested for the release of the RFP period by one week – (WUV)
- RFP period to extend over 120 days (also presented by WUV)
  - Late May would be helpful.
  - Discussion to ensure there was adequate time to occur within basins, within organizations, potential for new organizations to form, more time for potential candidates to understand the guidance materials - might affirm or prevent a candidate from applying. Did not have an exact date, but wants 120 days (WUV)

- Recognition of the timeframe needed for ANR to prepare a responsiveness summary - how quickly can ANR turn around the RFP? (WC)
  - ANR expectations to get the RFP out by the end of the week and a full RS would make this tricky. (DEC)

**\*STAKEHOLDER COMMITTEE CONCURS THAT A RESPONSIVENESS SUMMARY IS NOT NECESSARY\***

- BY June 1<sup>st</sup> (at the very latest), we need to get the draft rulemaking before ICAR - we need to have a deadline by the end of April. We can make the selection of CWSP just before draft rule goes out, but that would not be the appropriate process regarding the upfront transparent process (DEC)
- Agreement with WUV that more time would be better (VACD)
- Issue of selection happening before the guidance materials are drafted and sent out - sequencing of this process (VACD)
  - Guidance should be known by then, but may not be "formally" issued (DEC)
  - This will all be built at the time we insert assignments into the draft rule (DEC)
  - Difference between guidance and governance? (WUV)
    - Governance is an important aspect of the guidance (DEC)
    - Group will be making these decisions over the coming weeks.
  - There will be some substance that is "uber" guidance (RPC)
  - Things that we want/ need to change (over time) will go in guidance - things that we don't will go in the rule (DEC)
  - Governance should be the first element of development (WUV)
  - Would prefer to work in monthly increments (RPC)
  - Would prefer more time regardless (WUV)
- Question regarding how CWSP can access the enhancement grants? Did not see this as an option (WUV)
  - CWSPs should be able to access these grants that are not beholden to needing to achieve targets (DEC)
    - Enhancement grants are intentionally open to broad range of organizations statewide, and will remain competitive throughout all basins (DEC)
      - So not required to have to access the formula grants first
      - Though would that give those orgs outside of LC and LM an "advantage" over other orgs that are required to access the formula grants first? (DEC)
      - Would you need to co-apply with a CWSP in order to be competitive? (WUV)
      - That will be an issue TBD in developing those grant programs (DEC)
- Can DEC extend the RFP comment period to 01-24? (WUV)
  - YES \_ EXTENDED to the 24<sup>th</sup> (DEC)
  - Has the Q&A been updated, or will it be based on the comments that are submitted under the RFP comment period? (VACD)
    - No, though we will provide a summary of the comments received (DEC)
- DEC will also decide on the total "runtime" of the RFP, carefully considering the 120 day request, and the necessary timelines for the Sec State process.

PROCESS to discuss the governance draft document (DEC)

DEC proposes to break these out by number over the course of the next 5 weeks or so (i.e., 2 sections per meeting)

- Does ANR see these elements as the more important in the sequence in which they are discussed?
  - 1 and 2 are important (5 is important to VACD) - everyone may have a different opinion
- DEC - rule and governance elements will be developed together, though all of these elements should be (and will be) reflected in guidance
  - Some of these elements may appear in both – and we will need to determine in which order

### Governance

1) Governance Executive Director who is responsible to board.

- Board and BWQC should not be considered inter-changeable (WUV)
  - The Division of the CWSP work vs their respective Board and oversight
- Issue of reflecting the (compatible) mission requirement as part of the RFP submission requirement and selection criteria – **REMOVED?** (DEC)
- Proposals still need to reflect their distinct scope of work
- Need to be clear that you cannot serve 2 masters, like an agreement (need clear definition of the role that each Board and their CWSP work would serve)?
  - Statement of the Board that serves as the CWSP – i.e., work is being executed according to this rule, etc.

Experience requirements/preferences for staff.

Bylaws, requirements TBD.

Board of Directors.

Data systems requirements

State has right to inspect.

Contingency Policy (payments) – Risk reserve?

Conflict of Interest policy.

Public documents/records.

Public meetings.

Input from non BWQC stakeholders?

Outreach and education requirements?

Non discrimination policy.

Lobbying. Left over funds.

Personnel policy/procedures.

Term for CWSP.

2) BWQC relationship and Project Selection CWSP must have their own guidance document for their BWQC, that is approved by DEC and complies with the grant, rule and guidance, and all applicable laws. DEC shall develop guidance on project selection.

- i.e., project prioritization and selection

DEC shall develop a policy/procedure for dispute resolution.

Fault for a failed project? Who bears the risk of loss?

Conflict of interest – see above.

Third party input into decision making.

Disputes.

Procedure to allow for appeals by third parties of BWQC decisions?

Left over funds, see governance, above.

Co-benefits as a selection metric.

- Is DEC looking for feedback on the specifics needed?
- At what point will ANR have quantifiable tools? The analytic tools - is that what is meant by project selection - when will CWSPs see the tools that they will need to use for project ID and prioritization
  - The information technology exists but we need to determine how best to share (DEC)
- What about the roles of the CWSP versus the BWQCs? (WUV)
- Will there be a baseline document of how BWQCs function that is not in Act 76, as to what their meeting frequency and other logistics will be met (i.e., the subject of the guidance materials
  - i.e., Timing and frequency of meeting, etc - R&Rs
- Guidance around model bylaws? i.e., other orgs may have existing bylaws that may be conflicting
- If the CWSP becomes its/ their own entity, in which case they may adopt their own bylaws
- For fairness, each CWSP / BWQC must operate in a similar and consistent process
  - ANR stands up guidance and hands off to CWSP, the details of which may be nuanced. Having structure around a project decision making process would make sense (DEC)
- Details matter a lot - i.e., decisions will be made through consensus-based DM – i.e., need to establish “rules of the game”
- The more consistency across basins the better - however, some detail will need to be made on the basin level (WUV)
  - There will be a certain degree of politics that happen on the local level
- The Act does not reflect that the BWQC actually has more of a role to play in guidance, The CWSP does not issue the guidance - the BWQC was intended to have a stronger role to play (RPC)
- The intention (at the end of the legislative session) was to have the BWQC establish policy for the CWSP (WUV)
- ANR will establish the guidance document YES - things either live in the guidance or live in the rule
- Compensation for the BWQC - guidance or rule? (WUV)
  - Won't be specified in the rule, but likely will live in the grant documents (DEC)
- Relationship between the basin planning \$\$\$ - how do the BWQC members get funded?
- There needs to be an affirmation that compensation will be required (WUV)
  - We cannot determine this point at this time, needs to be a function of our budget making (DEC)
  - Perhaps this lives in the basin planning grant agreements? (RPC)
- You should not be required to participate if you are not being paid (NRCD)
- What if the BWQC membership balloons? What is the expectation?
  - Hence the reference to the minimum - level of funding
  - Need to meet the statutory intent
- Perhaps the BWQC can seek out additional funding to support themselves (RPCs)
- What is the compensation based on - an hourly rate? Need big picture perspective
  - Ultimately, Act 76 is intended to maximize the amount of funding that is being put on the ground, not necessarily intended to compensate each and every person that wants to participate on a BWQC

**DEC - will add to # 2**

R&Rs

Meeting schedules

Meeting roles and responsibilities (and including proxies)

Additional members

Decision making

Compensation

- (WUV notes that If BWQC partners can't afford to attend these meetings, they won't, meaning key decisions about prioritization schema, project selection, basin planning and problem identification will all be happening without critical partners at the table, compromising the effectiveness and reach of these BWQC.)

Relationship to basin planning

3) Ability to Implement Projects (CR - selection criteria item) -  
QC Per Act 76 Project tracking (database).

Record keeping (QC)

Quality control.

Ability to issue subgrants and subcontracts.

Ability to operate and maintain projects.

Jurisdiction for a project - Regulatory or non-regulatory?

Projects in multiple basins?

Projects that address more than one land  
use? Co-funded projects?

- Would it be more accurate to entitle this the ability to “administer projects”
  - O&M should be included in this section (?) - is there also going to be O&M for X project type
  - Need to identify the cost of doing projects that include O&M - could factor into project prioritization
  - O&M should be captured in the project selection

4) Site Control and Access Easements required for projects that cost \$100,000 or more, with an expected project design life of greater than 7 years.

For projects between \$1 and \$99,999, must have a contract allowing for site access. Other requirements TBD.

- What if a project is installed on private property and then property transfer would result in the loss of the project
  - Need to have an alternative mechanism for smaller projects
  - Do not want to create disincentives for implementing projects
  - Perhaps we need to record these projects (larger) in the deed/ easement to ensure that becomes sustainable over time (DEC)
  - Assuming that all of the projects should have easements?
  - Just need landowner agreement/ stewardship agreement, though the project may not transfer (WUV)
- For D&I projects - there should be a record of O&M - what does the landowner agreement provide in terms of these stewardship services
  - Difference between O&M records or not - landowner agreement would lead to greater efficiency of the project
  - Need to ensure that we have captured practical applications
  - Need to have rules around project access and project reviewability - roles

5) Subgrantees/subcontractors and Procurement CWSP develop their own guidance.

Procurement: require a competitive selection process/policy (2 bids)?

Exclusion list for subgrantees/subcontractors. (debarment?)

## Minimum requirements for subcontractors/subgrantees?

- Also need “good standing” determination (DEC)
  - Strict standards still need to be maintained
  - Procurement and what will be allowed - i.e., RFP process
  - This process is meant to avoid a good deal of the standard bureaucracy

## Contracting

- This would significantly change the way that projects are happening
  - Would we take the projects that an organization developed then puts that out to bid?
- The BWQC and CWSP would need to concur that this is the project, and then xyz will be the lead on that (DEC)
  - Still need to sub out the actual construction
- Some projects would still require a bidding process
- How can you justify a sole source - need to follow a procurement process?
- BWQC will establish the process by which you would implement any specific project
  - This is more of a granting process issue that needs to be included
- Does the CWSP need to adhere to the same process as the state? (i.e., bulletin 3.5)
  - DA - CWSPs should be able to have a prequalified sub-grantee as project rolls along (through an open public process) - and then assigns the project accordingly
- Once a project has been ID'ed, what's to keep the Council from continuing to go with their preferred contractor
  - Need to have state guidance to standardize project selection to remove impartiality (in the last legislative session)
- Need to be able to maintain the auditability and integrity up and down the chain - not the intent to make the BWQC process cumbersome (DEC)
- The intention was to strengthen relationships in project implementation
  - R&Rs in grantees and sub-grantees
- Though CWSP may sometimes be the implementer
  - For the orgs that currently issue the BGs - this process is currently working
  - Act 76 not about open and fair procurement - but the best way to meet the targets - the right projects
- ANR should adopt a process around granting and sub-granting

## 6) Reporting

- All of the reporting?
  - YES- inancials, projects reporting, etc (DEC)
  - To what degree of expectations will be required by ANR?

## 7) Payments Seed money for new CWSP

- Related to liability
- Program delivery, not project delivery
- Need to put in some \$\$ up front

O&M is third pot of money.

How paid?

Invoicing no more frequently than 1x/month.

Documentation required for all subcontractor/grantee invoices, plus info on projects.

Left over funds policy (see Act 76).

- WRT pass through of the implementation \$\$.
  - When pass through admin in projects (the indirect), the project costs will include that admin
  - The 15% needs to be part of the project costs
  - Admin costs should be loaded into project costs - how the \$\$ should be passed through
  - Sub and their sub costs are included as the total project cost - this is project delivery for implementing
    - What can be included in the billable rate - need directly applicable billable hours directed towards this project?
- Current budget policy already describes this well - project implementation versus program delivery are separated (WUV)
  - CWSP needs set amount, and then the sub-grantees should get a % of the project for their admin
  - There is already language in the BG contract that addresses

8) Fiscal Management Internal Controls/Fraud Procedures/Policy. Solvency.

Insurance.

Electronic accounting system.

Ability to track multiple projects, multiple revenue sources/funds, and multiple staff.

Monitoring/oversight and accounting practices.

Annual audit, see below.

Disclosure of other revenue.

9) Audits/Oversite/Compliance Annually audited financial statements and annual report, that comply with GAAP rules. Unaudited financial reports quarterly.

Invoices must document sub invoices.

Four year cycle of compliance review?

Minimum standards checks, Bi-Annual Compliance Reviews, and Designation Review.

10) Violation of Terms/Corrective Action Plans

11) Provisional Certification/Decertification (or withdrawal??)/Backup CWSP

12) Assignment/Delegation prohibited.

13) Marketing (signage??)

14) Workforce development (service as EcoAmericorps Host Site?)

15) Training for Key Staff/BWQC CWSP must designate a key contact/responsible party in charge of CWSP activities.

Next meetings -

- 01-24 next meeting (1 to 3:30)
- 02-07 as proposed next meeting (1 to 3:30)