
MEMORANDUM

To: Julia S. Moore, Secretary, ANR

Thru: Jason Batchelder, Commissioner, DEC
Neil Kamman, Director, Water Investment Division, DEC
Ethan Swift, Program Manager, Watershed Planning Program, DEC

From: Chris Rottler, Clean Water Service Provider Technical Project Manager; Angie Allen, Watershed Planner for the Otter Creek Basin; Ben Copans, Watershed Planning Supervisor

Date: December 5, 2024

Re: Reassignment Review and Recommendation – Otter Creek CWSP/Addison County RPC

Cc: Emily Bird, Water Investment Division, DEC

Addison County Regional Planning Commission (ACRPC) currently serves as the Clean Water Service Provider (CWSP) for the Otter Creek Watershed (also known as Basin 3). ACRPC's term started July 1, 2022 and runs through June 30, 2025. This is their first term of service as a CWSP. On July 26, 2024, ACRPC submitted to DEC their intent and request to be reassigned to another term as CWSP for the Otter Creek Basin (see Attachment A.) The new term would run from July 1, 2025 for five years, through June 30, 2030.

Recommendation:

For the reasons noted below, we hereby recommend that Addison County Regional Planning Commission be reassigned to a second term of service as Clean Water Service Provider for the Otter Creek Basin, which term shall run from July 1, 2025, through June 30, 2030.

DEC's Process to Review of Reassignment of a CWSP

The process for reappointing a CWSP to another term of service is governed by 10 V.S.A. §924, Act 76 (2019), Chapter 39 of Vermont's Environmental Protection Rule, and by the Clean Water Service Provider Guidance document, including in particular, Chapter 9 on Adequate Progress and Chapter 10 on Reassignment. Section 39-709 of the Rule states that when evaluating a CWSP's performance and request for reassignment, that: "...[t]he CWSP shall be subject to the Secretary's review of adequate annual progress toward the CWSP's allocated pollution reductions and five-year target and adequate maintenance of clean water projects, pursuant to 10 V.S.A. §924(f)."

The reassignment process shall be initiated by the CWSP, who shall submit a request to DEC to be reassigned to another term by July 31 in their last year of service. DEC is required to publish this request to its website and provide an opportunity for the public to provide comment on the request.

DEC published ACRPC's letter requesting reassignment to its website shortly after its receipt and provided notice of the letter via the Watershed Planning Program's newsletter. DEC also created and distributed a survey to the public, to provide input on ACRPC's service as the CWSP for Basin 3. The survey was open in September and October 2024, and DEC received 9 responses.

DEC staff then reviewed whether the applicant had achieved 'adequate annual progress,' using information gathered from CWSP reports, CWSP submissions, staff observations, and input from the public, as well as any other relevant sources of information. Evaluation of 'adequate annual progress' is both a quantitative standard and qualitative question, that involves a review of five distinct areas of service: 1. The CWSP's progress towards their assigned phosphorus reduction target; 2. Implementation of adequate operation and maintenance; 3. CWSP coordination of the Basin Water Quality Council; 4. CWSP administration of required program requirements (i.e. 'governance'), and 5. Project oversight. As part of this review, the Basin 3 CWSP was asked to provide all relevant information and documents from two projects that were funded by the CWSP. DEC staff also reviewed the write-up from ACRPC's recent monitoring visit from DEC's Administration and Innovation Division (AID) grant monitoring team.

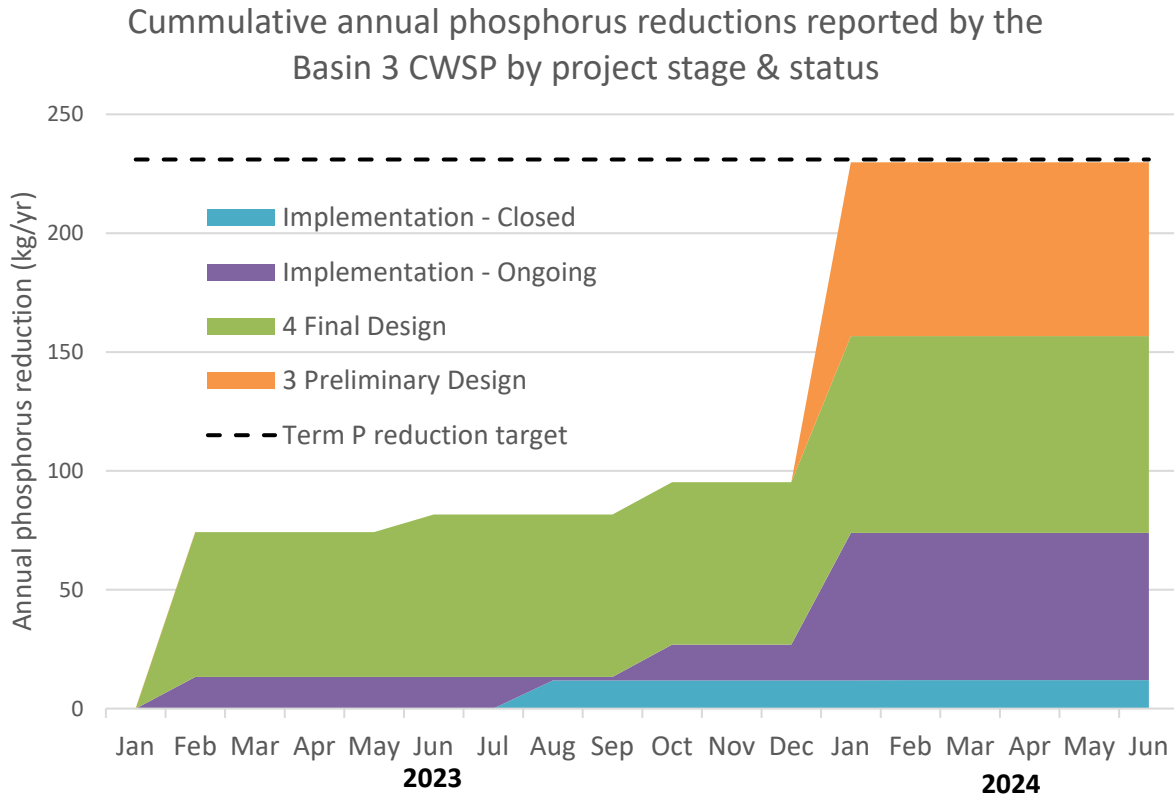
If the Secretary finds that the applicant's efforts as a CWSP have met the standard for achievement of 'adequate annual progress', then the applicant shall be reappointed to another term. If a CWSP is reappointed to a new term, DEC has one more step to complete. Specifically, in the twelve to eighteen months of the new term, DEC will 'look back' at the previous term to evaluate whether funded projects were in fact implemented to ensure that a CWSPs' grants were properly spent and closed out, and any other administrative wrap-up that may be required.

The Basin 3 target for phosphorus reductions in their first term is 231 kg/year of phosphorus.

DEC FINDINGS:

1. Progress Towards Target

The Basin 3 CWSP has made significant progress in funding projects to achieve their assigned phosphorus reduction target. As of June 30th, 2024, the CWSP has nearly 12 kg/yr of annual phosphorus reductions that have been constructed and closed out, another nearly 62 kg/yr in the construction phase projects, 83 kg/yr in projected final design phase projects, and 73 kg/yr in estimated preliminary design phase projects. In total, across all phases of projects, this totals 230 kg/yr so just one kg/yr short of the first term target of 231 kg/yr. However not all projects at the preliminary and final design phase will necessarily be implemented with the full expected phosphorus reduction that was estimated at the early phase by the end of the first CWSP term. On the other hand, there may also be additional implementation phase projects that may come to the CWSP directly that may add to the reduction potential as well as opportunities for the CWSP to achieve up to 15% of the target phosphorus reductions through adoption of operation and maintenance activities for prior-constructed projects that may assist the CWSP in meeting the target by the end of the term. The rate of progress in achieving phosphorus reduction targets over time can be shown in the graph below that shows the phosphorus reduction potential by stage and status, which shows that the CWSP is generally on track to make significant progress in meeting targets by the end of their term if projects in the design phase move along.



The CWSP has had to overcome many challenges in making this progress towards their phosphorus reduction targets including working under draft (or in certain cases, non-existent) guidance, steep learning curves with partners learning phosphorus accounting methodologies, and only the recent ability to complete the verification necessary to adopt projects and only for riparian buffer plantings and stormwater practices. Further, the assigned target is based on DEC’s Cost Rate Methodology formula which is based on project data from projects implemented before the COVID-19 pandemic. The Methodology has not yet been adjusted to account for any of the recent inflation (which, when likely updated in 2025, will reduce the CWSP’s target by a corresponding amount). The Basin 3 CWSP has been working hard and effectively to make progress in meeting targets under these conditions. ACRPC has been entrepreneurial, proactive, and a leader in looking for projects and solutions for reducing phosphorus loading in their basin.

Project stage and status	Phosphorus reduction (kg/yr)
Preliminary Design	73.1
Final Design	82.83
Implementation - Ongoing	61.91
Implementation - Closed	11.97
Total potential P reductions	229.81
Term P reduction target	231

2. Implementation of Adequate Maintenance

The guidance and requirements for CWSPs to fund and implement operations and maintenance ('O&M') were recently finalized, with a 'start date' for this component of the program of July 1, 2024. As a result, the Otter Creek CWSP has not yet initiated, nor have they had any meaningful opportunity to initiate, any O&M verification or other work on CWSP funded implementation projects. Accordingly, DEC will assess CWSP implementation of this requirement of service later, both during the 'look-back' period for this term, as well as on an ongoing basis during the CWSPs second term of service.

3. Coordination of the Basin Water Quality Council

DEC's watershed planner for Basin 3 regularly attends the Otter Creek Basin Water Quality Council (BWQC) meetings and supports their reappointment based on excellent coordination of the Basin 3 BWQC during their first service term.

The CWSP effectively established, maintained, and coordinated a BWQC during their first service term. Their dedicated focus on collaboration enabled them to set workable policies and procedures to support effective communication and decision-making of the CWSP and BWQC. The CWSP communicated via website updates, emails, and press releases. They regularly hosted virtual Zoom meetings of the CWSP and BWQC, which included coordinating project reviews of four Formula Grant rounds in Basin 3. The CWSP has been responsive to any questions or issues that arose during project reviews.

DEC also solicited input from the public, including BWQC members, through a survey that was made available for this purpose in the fall of 2024. Nine people responded to the survey, four of whom were BWQC members. Organizations that responded included watershed groups, conservation districts, a land conservation entity; a non-WID DEC employee, and a regional planning commission from another region of the State.

Responses to the survey provided favorable feedback on the CWSP's work. On the CWSP's coordination with partners, respondents said the following:

'Very helpful',

'ACRPC did an excellent job coordinating the evaluation of project proposals, supporting applicants, and ensuring members' review comments were addressed',

'Basin 3 CWSP collaborates fully with a number of partners',

'Coordination has been fine; no problems', and 'the Otter Creek CWSP does an excellent job.'

On ACRPC's facilitation of the BWQC, respondents said:

'ACRPC provided excellent guidance and leadership particularly considering they were navigating a new process. I highly support their continuation as a CWSP provider and look forward to seeing the projects that result from their coordination',

'Excellent',

‘I am happy with the way that the CWSP facilitates and prepares us for BWQC meetings’,
‘All has been very smooth and they provide answers in a timely manner when I have questions’,
‘The CWSP has done a good job facilitating the BWQC and bringing in DEC support staff as necessary.’

It is clear from this feedback that ACRPC is working effectively with their BWQC and has the general support of their stakeholders

4. Implementation of Requirements of CWSP Governance

General observations

DEC’s Watershed Planning Program routinely interact with the Otter Creek CWSP. DEC staff attend the Otter Creek BWQC meetings; DEC hosts a monthly check-in meeting attended by all the CWSPs where information is disseminated and process improvements are shared; quarterly, the CWSP TPM and watershed planner meet with the CWSP, and CWSP staff routinely send emails or request meetings to ask questions about projects, governance, or other topics as questions or challenges arise. DEC staff also receive quarterly reports that show the CWSP’s pace of project implementation, as well as other data related to CWSP performance. DEC staff also receive updates on the CWSP informally through ad hoc emails, conversations, or meetings with BWQC members or other stakeholders that report on CWSP activity.

Through these interactions and touch points, DEC staff have monitored ACRPC’s implementation of the CWSP program. Our observations match the feedback received from stakeholders through the survey, that despite structural challenges associated with implementing a new funding regime that represents a major change-management exercise, that ACRPC has done well with both quantitative and qualitative metrics for implementing the program. ACRPC has shown an entrepreneurial ‘hustle’ to think creatively, build relationships, and look for projects, as is their charge, all while minding the numerous requirements that must be adhered to. ACRPC has responded well to feedback early in the process that they were moving too fast and adjusted their approach accordingly. ACRPC demonstrate familiarity with program requirements and routinely provide feedback on opportunities to improve the program and increase efficiency.

File review

As part of the term-end review process, ACRPC was asked to submit documents from two separate projects that the CWSP funded, so that staff could conduct a program review of ACRPC’s work. DEC staff reviewed the submissions and made the following observations:

1. The files show that ACRPC complied with required procurement rules for CWSPs
2. The files show that ACRPC secured the required certificates of insurance from the subawardees
3. The files show properly executed agreements with the subawardees
4. The files were from two of the earliest projects implemented by the CWSP, and the applicant’s project eligibility screening forms showed some deficiencies that should have been corrected.

5. All required project documents were received

DEC made the following observations on ACRPC's general CWSP operations:

1. ACRPC's required WPD reporting is timely and accurate;
2. ACRPC's quarterly reporting has been submitted and/or is available on their website;
3. ACRPC appears to be in compliance with the requirements for CWSPs related to conflict of interest and open meeting law compliance;
4. ACRPC is now properly holding their Formula Grant advance funds in an FDIC-insured institution;
5. ACRPC is solvent and has a designated CWSP Director;
6. Along with their BWQC, ACRPC has duly adopted a public participation policy that covers the CWSP, bylaws, and a co-benefits scoring policy. They have also adopted an innovative budget adjustment policy.

DEC Financial Monitoring Visit

In February, 2024, DEC's Administration and Innovation Division (AID) financial team conducted a monitoring visit with ACRPC and their implementation of the CWSP Formula Grant. The main purpose of the monitoring visit is: to review Addison County Regional Planning Commission's human resources and fiscal infrastructure to ensure that Addison County Regional Planning Commission administers DEC's funds in compliance with applicable federal and state laws, regulations, policies, and the provision of the Grant Agreement for Services.

AID conducts a review to identify risks and help improve grantee operations. As a result of AID's monitoring visit, they recommended that ACRPC improve their process for handling assets to increase the separation of duties between reconciliation, authorization, and bookkeeping. ACRPC responded by noting that going forward, only their Board Chair or Treasurer may authorize a transaction, and noting the record keeping process preserves audit trails and thus accountability, thus supporting adequate internal controls. They also addressed other items related to training and succession planning. These process improvements were accepted by AID.

Survey

ACRPC received positive comments on their management of procurement. Respondents said the following in response to the question:

- 'Excellent',
- 'The CWSP provided guidance as needed on each stage of the procurement process and it went smoothly considering the newness of the program',
- 'Fine',
- 'All very helpful assistance; they've made the process easy',
- 'Consistent RFP timing is helpful in project planning; rolling application acceptance would also be welcome. The agreement draft and execution was very timely',
- 'I have been concerned about the prequalification process that does not seem to have been

open. My biggest concern surrounds making sure that contracts with grantees reflect the deliverables required by DEC. That said, the CWSP has been open to some changes suggested and has made edits to some materials based on feedback. I hope that all applicants in the future will be required by the CWSP to have completed all portions of the eligibility screen before receiving funding; the earlier rounds of applications were concerning, but have been improving with time and experience’, and ‘the CWSP does an excellent job.’

5. Oversight of Clean Water Projects

During their 3 years of service, the Basin 3 CWSP has made sufficient progress establishing and overseeing a diverse portfolio of clean water projects. They have been intentional in their efforts to establish a project pipeline, including various project types and phases, which will serve them well if reappointed. From FY 2023-2025, the CWSP annual project funding has steadily increased, totaling \$2,735,231.

The CWSP has effectively conducted four Formula Grant rounds for projects that improve water quality in Basin 3. The CWSP has developed an application that includes required materials that are to be completed before being submitted to the BWQC for review. The CWSP coordinated project reviews with their Basin Water Quality Council and has been responsive to any questions or issues. One issue that was noted during our project audit was a missing section of the natural resource eligibility screening document. The missing screening section did not include any screenings that were required to happen before the project proceeded. The CWSP has been notified of this issue and agreed to review the forms more closely in the future. The CWSP also ensured all milestones were met and deliverables were submitted and approved according to the grant agreement and the Clean Water Funding Policy (Appendix B).

ACRPC also received positive comments through the survey on their management of project administration, operation and maintenance, and for general feedback.

Conclusion and Recommendations

In reviewing the work of ACRPC over the past 2.5 years, the results show that the applicant has met the standard for the reasonable implementation of the Clean Water Service Provider program in the Otter Creek. Reviewing their efforts against both the qualitative and quantitative requirements of service, ACRPC has implemented the CWSP program for their first term, achieving ‘adequate annual progress’ in a professional and collaborative manner.

In support of this conclusion, two watershed groups working with ACRPC in the Otter Creek Basin made the following general comments at the end of the public survey, that are worth noting here:

1. “Basin 3 CWSP staff are responsive, punctual, thorough and helpful.”
2. “I appreciate the CWSP's work in this role. I believe they are the right fit for the job!”



Vermont Department of Environmental Conservation

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Water Investment Division

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DEC staff agrees and recommends that the Secretary (re)appoint Addison County Regional Planning Commission to another/second term of service as the Clean Water Service Provider for the Otter Creek Basin, for the term running from July 1, 2025 through June 30, 2030.

Secretary's Reappointment

For the reasons stated herein, Addison County Regional Planning Commission has made 'adequate annual progress' in their first term as Clean Water Service Provider for the Otter Creek Basin (aka Basin 3). Pursuant to Vermont Statute, 10 V.S.A. §924, and Environmental Protection Rule 39, I hereby appoint Addison County Regional Planning Commission to another term of service as the Clean Water Service Provider for the Otter Creek Basin (aka Basin 3), for the period running from July 1, 2025 through June 30, 2030.

Signed:

A handwritten signature in black ink, appearing to read "Julia S. Moore", written over a horizontal line.

Julia S. Moore, Secretary

12/19/24

Date