



RI BAYS, RIVERS, & WATERSHEDS COORDINATION TEAM

Meeting of January 16, 2013

**10-12 PM
Executive Dining Room
RI Department of Administration
One Capital Hill
Providence, RI**

Meeting Minutes

RI BRWCT Members in Attendance: Sue Kiernan, Jeff Willis, Tom Uva, Nancy Hess, Jared Rhodes, Mike Walker, Kathy Crawley

RI BRWCT Staff: Ames Colt, Melissa Deciantis

RI BRWCT Administration

Meeting was called to order at 10:00 am.

Meeting minutes for the September meeting were approved, accepting edits requested by Uva.

RI BRWCT Chair Report

Updates on Funded Projects

*Middletown Stormwater Utility District Planning Project
(Town of Middletown, RI Depart. of Environmental Management)*

The consulting firm AMEC has been selected to work with DEM and the Town of Middletown. They have revised the first work plan, revising the public and town council meeting schedules slightly. The project is scheduled to begin this February.

*Legal Analysis of State Enabling Legislation for Stormwater Management Districts
(Conservation Law Foundation)*

Colt, DEM OWR and Legal Services staff have worked with Conservation Law Foundation RI Office (CLF) staff on revisions to their draft report. Colt has emphasized to CLF and DEM that the goal of this project is to produce an in-depth, thoughtful, and neutral white paper on the key legal issues surrounding development of stormwater utility districts by RI municipalities so that they have a clearer understanding of what

they can and cannot do under state law in establishing stormwater management districts. DEM Legal Services staff have provided comments to ensure the white paper fully reflects their interpretations of the authorities available to RI municipalities via the state enabling legislation.

One key issue raised in CLF's analysis is identifying the types of properties that would be assessed a stormwater utility fee, given the state's statutory guideline that fees may be assessed only for properties that discharge directly or indirectly into a municipal stormwater conveyance system. For some RI municipalities, such as Middletown, many properties may not be connected directly to the town's stormwater conveyance system. There are also often uncertainties regarding the location, extent of and connections (individual property to municipal, and connections between municipal and state stormwater infrastructure) to a municipal stormwater conveyance system. It will be essential for stormwater utility district development that the definition of municipal stormwater conveyance system be broadly but carefully defined.

CLF hopes to finalize the report and seek approval for its release from the RI BRWCT in the coming weeks.

*Statewide Impervious Surface Layer Update
(RI Depart. of Environmental Management, RI Statewide Planning)*

Paul Jordan has completed the contractual agreement needed to begin the project.

Willis said a lot of the data relevant to this analysis has been collected by CRMC through various projects, as well as the forthcoming Beach erosion SAMP. Does Colt anticipate any amount of this money going toward gathering data on impervious surface? Kiernan replied that the interested vendors may already be aware of the available data, and DEM Office of Water Resources also has compiled a CD of data that would be made available as well. There definitely will be an attempt not to duplicate the collection of impervious surface data already collected. Tetrattech has already done similar analyses for the RI Department of Health, but any other firm who is interested is welcome to apply and the same datasets would be available to them.

Large Marine Events Benefits Assessment (RI Economic Development Corp.)

The final draft of the report was provided to EDC, Colt, and the Governor's Office in December 2012. Earlier versions of the report received significant attention from the Governor's office, EDC, DEM, and DOA, because of the interest in providing credible data on the substantial economic benefits generated by the America's Cup World Series Regatta held in Newport July 2012. Governor Chafee was considering convening a press conference to release its findings to the public. At this point in time, however, it does not look as if the Governor will convene such an event, and EDC's Judy Chung is now overseeing the release and communications for this.

Beach Erosion SAMP (RI Coastal Resources Management Council)

Colt seeking a complete proposal for SAMP development plan from URI CRMC to share with the Team. Colt will meet with CRMC and URI Coastal Resources Center on January 25 to discuss.

*Assessment of Hazardous Climate Change Poses to Wastewater Treatment
(RI Depart. of Environmental Management)*

A draft RFP is part of today's meeting materials. DEM determined that DOA would not permit an addendum to an existing contract between Department of Health and TetraTech, in order to execute this project. DEM has drafted an RFP and proposals to conduct the assessment will be solicited. Overall budget for the project of \$59,000 (approved at May 2012 RI BRWCT meeting) remains the same.

Other Updates

RI Maritime Port Marketing and Development

A "RI Port Policy Summit" was convened on December 10th by Senator Whitehouse and the rest of the RI Congressional Delegation, and was attended by Colt. Follow-up meetings are in planning.

RI Climate Change Commission

Nothing to report at this point. The work groups are meeting

New England Regional Ocean Planning

CRMC Director Grover Fugate has been appointed State Co-Chair of the regional planning body and DEM Director Janet Coit will serve as the other Rhode Island state delegate to the RPB. Colt attended the inaugural meeting of the RPB last November on behalf of Director Coit, and may do so for future RPB meetings.

RI BRWCT FY 2013 Work Plan

Two significant changes were made to the Work Plan that the RI BRWCT reviewed and tentatively approved at its September 26, 2012 meeting. One change is based on the decision by the RI BRWCT last September to refrain from trying to completing an inter-agency proposal competition in FY 2013. Instead, this spring the competition will be conducted for projects starting in FY 2014.

The other change is shifting from an update of the RI BRW Systems-Level Plan to partnering with DEM and RI Statewide Planning to produce a new Watershed element for the State Guide Plan. There is an updated outline for the new element that Ernie Panciera and Kiernan have drafted available upon request to them.

Kiernan reviewed the purpose and approach to developing the new element with Statewide Planning. Kiernan said that the existing State Guide Plan has a number of elements that are outdated, including the Narragansett Bay Comprehensive Conservation and Management Plan (1992), the Non-Point Source Management Plan from DEM (1995), the Rivers Policy and Classification Plan (2004). DEM is mandated to update its Non-Point Source Management Plan in order to continue to receive and expend Section 319 funds from EPA. DEM Office of Water Resources believes that legal and bureaucratic distinctions between point and non-point sources are not helpful in fostering ecosystem-based management of RI's water resources. And rather than have a plan dedicated to non-point source pollution that is silent on point sources, DEM would prefer to develop a watershed element which synthesizes policies and the strategies for

water quality management utilizing a watershed management approach. The idea would be to articulate a document that describes our water resources in the state and describes the conditions and issues with managing them from a water quality perspective. Water quality management entails the chemical, biological, and physical integrity of natural waters, but not necessarily determining the most effective and equitable water quality protection and pollution control strategy set. Kiernan envisions a water quality or watershed element that will RI's waters, their water quality impairments, how those impairments should be addressed, and how the state will go about doing so.

The new element would be linked to DEM clean water mandates under federal and state law, including the development of specific watershed plans that would contain specific recommendations for eliminating water quality impairments. Kiernan's hope would be that over time these new watershed plans would summarize what DEM and other state agencies have concluded needs to be done to protect and restore water quality in individual watersheds and waterbodies. The new element's focus would be water quality, but they envision drawing upon new floodplain management initiatives, which also need to be assessed and pursued on a watershed basis.

DEM would consider and apply the new element to fulfill EPA's new planning requirements for nonpoint source programs supported by Section 319 funds. DEM will also need write an implementation strategy to fulfill new Section 419 requirements; it would contain milestones and targets to detailed for inclusion in a State Guide Plan Element.

Rhodes said he liked the way Kiernan describe the purpose of the new element and that Statewide Planning is fully on board with producing it. Hess added that the State Guide Plan is a long range document and she envisions a water quality element being brought in. She thinks this is a process that should be handled with an MOU between Planning and DEM and that they should form a small advisory committee. Changes to the State Guide Plan are reviewed and approved by the RI Planning Council. Rhodes asked if they should have Gonsalves start to draft the MOU for review by DEM. Hess said she would like to see Kiernan's outline first and discuss it.

Hess stated that a RI BRW SLP update need not be put on hold simply because of the effort to develop the new Watershed element. Colt said that he had not been contemplating trying to move both forward simultaneously with both planning efforts. His assumption had been that after the Watershed Element is completed (roughly in 6-9 months), the RI BRWCT would focus on an update of the RI BRW Systems-Level Plan. Rhodes said that Hess, Gonsalves, and Kiernan should be able to handle development of a new watershed element, so he does not envision Colt having to invest significant time into that planning effort.

Colt noted that the first task in an update of the RI BRW Systems-Level Plan is to specify in greater detail the purpose and form of RI BRW SLP, especially in relation to the RI State Guide Plan. There seems to be agreement that the RI BRW Systems-Level Plan will not become a State Guide Plan Element. How should the RI BRW Systems-Level Plan synthesize and build upon the State Guide Plan?

Hess stated that she felt that the form and function of the RI BRW SLP in relation to the RI State Guide Plan should be worked out by Colt. The State Guide Plan sets out overarching, long-term goals and policies and the RI BRW SLP should reflect them accurately. The goals, policies and strategies of the RI State Guide Plan should not be changing in relation to RI BRWCT agreements on priorities for coordination between state agencies regarding water resources management and sustainable development. If there is an issue regarding coordination that arises during watershed element development, then they would bring it to the attention of Colt. But fundamentally there is no reason why the RI BRWCT should hold off on a SLP update while the new element is being developed.

Kiernan said she does not necessarily disagree with Hess's view that the RI BRWCT could proceed simultaneously with a RI BRW SLP update, but she noted that there are some important organizational developments being led by EPA Region I that will likely lead to significant changes to federal and state watershed management and coastal restoration initiatives in RI and southeastern New England. Specifically changes to the Narragansett Bay Estuary Program and creation of a federal-state coastal restoration partnership for southeastern New England. What these changes will entail specifically will not be clear until about mid-year 2013. Kiernan suggested that RI and EPA Region I, and other governmental and external stakeholders need to work through these (and other) changes before RI BRWCT initiates an update to the SLP

Hess said she understands Kiernan's point and asks that the RI BRWCT make a consensus decision on how to proceed.

Walker added that they should not overlook the relevance to the RI BRWCT of some of the activities underway via Statewide Planning's Sustainable Communities initiative, including an update of the Economic Development Element of the RI State Guide Plan. Hess said this is a great point as to why Statewide Planning needs to help orchestrate multiple planning processes, along with continuing to work toward a simpler, more user-friendly State Guide Plan.

Kiernan stated her view that between now and June 2013 is not the best time to be launching an update on the SLP, but July could be a good starting point. Her personal goal for some of the work they are doing with the Narragansett Bay Estuary Program is to work toward some clarification of roles because there are multiple people doing multiple things in ways that are not particularly efficient.

Colt said that with regard to updating the RI BRW Systems-Level Plan, there are new strategic priorities and actions for water resources that have been are being developed, such as the new water supply element Water 2030, CRMC's Ocean SAMP, and DEM's new launched shellfish planning process, and the Sustainable Communities Initiative. Thus, there is a lot of new work that will need to be incorporated into the RI BRW SLP as well as more evaluative findings on the pursuit of recommendations in the 2008 RI BRW SLP.

Uva said the RI BRWCT should be keeping track of changes being proposed to how EPA and state environmental agencies manage water quality and point source dischargers, particularly with regard to nutrients and stormwater management. He noted how the

Massachusetts Wastewater Coalition is pushing for some reforms to point source permitting and water quality planning.

Hess asked if Uva could give a synopsis of where they want to go with nutrient control and the management structure. Uva replied that when the Clean Water Act was written forty years ago, EPA was a partner with the wastewater utilities and the municipalities and the cities and towns. They located staff at the wastewater plants to provide technical assistance and they funded 80-90% of the treatment upgrade costs, and they invested in sound science to make sure they were getting a good value for the federal investments in wastewater treatment. As federal funds for CWA implementation dried up in the early 1980's, a major financial terrible burden was placed on states and municipalities to pay for the costs associated with continued treatment upgrades, particularly these days for nitrogen reduction. In addition, as treatment requirements have tightened, cost of treatment per increases exponentially. The Narragansett Bay Commission, and other wastewater treatment authorities are continuing to look for a new ways to reinstitute a more functional partnership between federal, state, and local environmental authorities.

Kiernan added that municipalities have experienced for years steadily growing responsibilities treating wastewater, and upgrading drinking water and stormwater infrastructure for treatment and conveyance. EPA has acknowledged nationally the need for greater flexibility in allowing a community to plan and commit over a longer period of time to reach their objectives in all three areas of water resources supply and pollution control, without shirking fulfillment of strict mandates for water supply and clean water.

Colt reiterated that Planning and DEM will work up an MOU/MOA to specify development of a new element that addresses water quality issues. Colt committed to providing an initial set of steps for updating the RI BRW SLP, particularly with regard to information that can be collected now in preparation for a formal update of the RI BRW Systems-Level Plan starting later this year.

RI BRWCT FY 2014 Work Plan Development: collaborative development of a suite of priority proposals

Colt reminded the Team that at the September 2012 RI BRWCT meeting they agreed to conduct a proposal competition for projects that would start on or around July 2013. He sent around a draft summary of how they could go about the process for comment. The basic opportunity is that \$200,000 is available to fund 1-3 projects. He hopes they can get all the agencies plus partners teamed up to produce 2-3 proposals that they would all look at together and agree to fund. Discussions would center on how each proposal can be strengthened and how much money the RI BRWCT should allocate to it. This process would compel the agencies to work together on a particular project and provide the opportunity to draw in other partners via the agencies. This would not be an open competition, but the agencies could solicit external partners who could receive funding

as part of a project. He suggested that proposals should be submitted by March 20, 2013. Could make final decisions on funding at the May 2013 meeting and then projects would start roughly around July 1.

Colt informed the Team that Uva submitted a proposal on behalf of NBC last month. He stated his view that what NBC was proposing had merit, but that NBC and DEM had to partner on the proposal before the RI BRWCT could consider it; nevertheless Colt envisioned this proposal as one to consider in the proposal review.

Kiernan noted the potential difficulties inherent to a process of the RI BRWCT agencies reviewing and prioritizing their own proposals. She agreed that Colt should work to arrange collaboration and coordination between the agencies so that they end with a consensus on which two or three projects are the most appropriate investments.

Uva expressed concern that if Colt were going to make final funding decisions, is there a conflict of interest inherent to the fact that he is based at DEM? Colt noted that the RI BRWCT by-laws prevent him from participating directly in RI BRWCT funding decisions.

Crawley said part of what was intended when they started this conversation was to develop projects that advanced the goals and recommendations of the RI BRW SLP. Do we have information on how the RI BRWCT (and individual state agencies) is funding the priorities committed to in the RI BRW SLP? She also noted her concern about whether six weeks was enough time to pull the proposals together.

Uva said once they get into annual routine of proposal development for possible RI BRWCT funding, it will go quickly, especially as the agencies already have plenty of needs to be filled.

Hess asked if there is a fiscal consideration about being able to carry the money forward to the next FY, Colt said no, but budget analysts have asked about how the CT revenue account will be spent down. The rollover between FY's decreased in size for the first time last July. Hess said that maintaining permission to rollover all unspent funds between FY's underscores the importance of efficiently moving forward with proposal development and review, and committing to a timetable for funding decision, so that when the Chair is questioned about it, he will have concrete answers that all have agreed to.

Uva asked if they will have to abstain from voting for their own projects. Colt said the best way to go about it is to get everybody on board with a set of the proposals. Kiernan suggested that, in order to be efficient, there should be conceptual proposals that have some detail to them but people have not spent all this time and work to nail it all down in writing to determine whether the BRWCT thinks they are worthy or trying to pursue.

Colt agreed and said that he wanted to work with each individually as the mediator/facilitator to see what comes of it. It is conceivable, for example, that EDC may wish to submit its own proposal without other agencies involved, and they should be permitted to do that. In terms of proposal reviews, the RI BRWCT could utilize its

standing committees as a means to generate feedback from impartial observers. Colt could handle that process.

Uva said the problem with that is that they are on every committee or we have delegates from each of our agencies from these committees.

Colt said they could work with the chairs.

Rhodes said he personally is comfortable with Colt reviewing the applications and presenting recommendations to the board as a staff and then determine guidelines as to how the RI BRWCT members would participate in the proposal review decisions.

Crawley asked why this is any different from putting together a work plan. Colt agreed that this would produce the foundation of the FY 2014 Work Plan. Kiernan added that there are so many needs, but the priorities that the RI BRWCT is intended to enhance must entail multi-agency coordination.

Uva asked if the legislation requires them to vote on everything, or can they just put these things down as line items on the budget and develop a budget every year. Colt said the legislation is silent on these details other than that they have to have an annual work plan.

Rhodes said he personally is comfortable with all the individuals around the table making decisions regardless of whether or not they have an application on the table. The only thing to be cautious about is whether or not there are any legal concerns. Could they get an opinion from the DEM legal staff? Colt said he will check with Mary Kay.

Colt will propose proposal review scoring criteria and proposal development process in which he works with each agency or team of agencies on conceptual proposals. Colt then asked Uva if he wanted to give a synopsis of the NBC proposal.

Uva noted how NBC is monitoring the upper bay weekly, including now plankton thanks to the recently received RI BRWCT equipment grant. NBC feels it now has the premiere monitoring program upper Narragansett Bay, in its effort to ensure there is an adequate monitoring database to assess future potential nitrogen treatment enhancements. The proposal calls for a partnership with DEM, CRMC, EDC, Statewide Planning, and the Rivers Council to take an ecosystem-based management approach to upper Narragansett Bay. It is hoped that this effort would produce some creative treatment proposals, such as selective dredging to enhance upper Bay flushing. NBC would like to partner with DEM and use RI BRWCT funds to hire a consultant who will facilitate these work groups.

Walker asked what the cost will be. Uva said the proposal seeks \$50,000 annually for three years. They are also looking at other grant sources.

Kiernan stated her support for the idea of getting the involved stakeholders together and thinking about how we best want to manage the upper Bay. The technical and

engineering work that would be required to answer definitively questions about how a mix of innovative nitrogen treatment solutions could qualify to create the required improvements in dissolved oxygen concentrations in the upper Bay, would require considerably more funding than is being requested by NBC. She noted that there are

several US cities that have committed to advancing green infrastructure approach to stormwater management (such as Philadelphia). Some of the possible nitrogen control innovations are costly, but it is important to evaluate options for capturing nitrogen throughout the watershed as opposed to capturing it at a single discharge point. At the end of the day, innovative approaches to nitrogen control may be as costly as conventional approaches. Kiernan did not think DEM would rule out innovative approaches, but ultimately they have to come up with nutrient control strategies that are credible and affordable. She noted that innovative approaches may be more feasible south of the Fields Point Wastewater Treatment Plan, compared to what the Bucklin Point Treatment Plant can do, given that it discharges into a waterbody with very constrained flows.

Colt suggested that the RI BRWCT consider such a process in relation to the scheduled TMDL work by DEM for the upper Bay. Uva noted the wastewater treatment authorities view themselves as watershed and water quality stewards. They want to determine the optimal mix of treatment strategies for Narragansett Bay, including recommendations for wetlands treatment strategies, dredging, and other approaches, and more detailed cost information for each nitrogen management strategy.

Colt suggested that NBC share Dr. Chris Kincaid's final report on their hydrodynamic modeling effort. to look at. This is the most problematic area of the Bay, but it is a great place to start.

Colt said what NBC is proposing seems to be an effort to consider holistically needs for stormwater control, CSO abatement, and nutrients management. He noted that it would also be similar conceptually to the CSO abatement stakeholders' process conducted in the 1990's to determine the best approach to CSO abatement. In this case though, the problem for stakeholders to address is more broadly defined. The CSO stakeholder process was able to focus on a specific cause of water quality degradation, CSO's, and the development and assessment of seventeen specific approaches to CSO abatement in the City of Providence. A stakeholder process looking at a diverse suite of water quality impairment causes, and multiple solutions to each of those causes, would perform not be easily grounded structured by focusing on coming up with the optimal solution to a particular cause of water quality impairment.

Uva said he does not know where the stakeholder process would go and he does not know how they will limit it to considering just sources of nutrients. Uva stated that the RI BRWCT has to ask what the alternatives to such a stakeholder process. NBC is very concerned that one alternative would be that DEM will tighten the treatment standards for Fields Point and Bucklin Point while NBC is still in the process of finishing the latest round of upgrades to their treatment systems. He envisions that the stakeholder process would come up with a set of solutions and present them to the Governor and the General Assembly for possible state funding.

Colt noted that even if NBC successfully argues that its rates will soon hit their maximum allowable level under CWA and EPA regulations, thereby halting for the interim at least new nitrogen control mandates for NBC, the state would still be responsible for ensuring that the causes of water quality impairments in the upper Bay

are being addressed and eventually eliminated. Willis said that is true, but if they take Uva's proposal and keep it open ended, such a stakeholder process could continue on behalf of the state. Kiernan said people have developed conceptually alternative nitrogen control strategies, but the technical basis for judging their cost-effectiveness has to be developed and eventually brought forth publicly.

Uva noted the valuable lessons about alternative approaches being acquired by Cape Cod communities who are faced with enhancing nutrient controls as well.

Colt said he thinks the nature of the challenge is so difficult that it is going to require an enormous, intergovernmental effort to develop a comprehensive strategy for upper Narragansett Bay water quality management. He thinks the path that NBC is proposing fits well with the coordination mandate of the RI BRWCT, but that NBC and DEM have to come to an agreement on how work together and the goals of the stakeholder process. He suggested that a very fruitful first step that could be undertaken now is to assess collaboratively the utility and capacities of emerging hydrodynamic and systems analysis models being developed by NBC, researchers, and EPA Region I. He promised to follow up with Uva and Kiernan after the meeting to see if an agreement could be forged

Meeting was adjourned at 12:00 PM