

## WATER COUNCIL MEETING

NH Dept. of Environmental Services  
29 Hazen Dr., Concord, N.H.

August 10, 2011  
9:00 a.m.

**Members present:** Chairman Gilbert, Vice Chairman Christie, Councilors Butler, Gosse, Henderson, Hinds, Hoyt, Lyons, Rastallis, Rawnsley, and Varotsis

**Members absent:** Councilors Barrett, Densberger, and Harrington

Chairman Gilbert called the meeting to order at 9:00 a.m.

### 1. Approval of Minutes of July 13, 2011 Meeting

- *Motion made by Councilor Varotsis to approve the minutes as corrected, second by Councilor Butler. Motion passed unanimously.*

### 2. Introduction of New Assistant Attorney General

Lisa English introduced herself as the new counsel from the Dept. of Justice for the Water Council, replacing Anthony Blenkinsop. She attended Boston College of Law School and was in private practice before beginning work at the Department of Justice.

### 3. Status of Appeals

Appeals Clerk, Paula Scott, presented an update on the following appeals:

#### I. New Appeals

#### II. Previously pending cases.

#### Docket No. 08-54 WC - Loretta Simonds

RE: 8/8/08 Decision on Request for Reconsideration

Presiding Officer: Christopher Rawnsley

Status: A Pre-Hearing Conference(PHC) was held July 19, 2011. A hearing is scheduled for November 9, 2011 at 10:00 a.m. per the Pre-Hearing Officer(PHO).

#### Docket Nos. 08-57 & 08-59 WC - Eric W. Waleryszak, Brian T. and Adela J. Griset Appeal

RE: Notice and Decision on the Determination of Lake Level issued by DES on 9/29/08

Presiding Officer: Christopher Rawnsley

Status: A PHC was held on July 19, 2011. Hearing is schedule for December 14, 2011 at 10 a.m. per the PHO. Decision on Pending Motions was issued August 1, 2011.

#### Docket No. 09-05 WC - North Country Alliance for Balanced Change (Dalton Valley Drag)

RE: 12/12/08 Alteration of Terrain Permit WPS 8289 for Dalton Valley Drag

Presiding Officer: Christopher Rawnsley

Recused: Nancy Christie

Status: Hearing scheduled for October 12, 2011 at 10:00 a.m. Status request with 30 days response due on 8/26/11. Received status report on 8/4/11.

It was decided to table it until next month to await a status from the intervener.

**Docket No. 09-14 WC - Andrew and Karen Goldstein**

RE: 3/17/09 Administrative Order No. 09-006 WD

Presiding Officer: Christopher Rawnsley

Status: The parties have reached a settlement agreement. The May status report indicated that "A withdrawal will be filed soon" but the record contains no correspondence after 10/29/10. Counsel for the Appellants advised that a withdrawal was likely before the 7/13 meeting, but no withdrawal has been filed. Notice of Closure and Release of Recordation was issued on June 17, 2011. Council may dismiss or close file as appropriate.

The appeals clerk is to send a letter to the appellant asking for written notification to withdraw the appeal.

**Docket No. 10-09 WC – Lake Waukegan**

RE: Notice of Decision, Interim Operating Level issued by DES on 4/12/10

Presiding Officer: Christopher Rawnsley

Status: Council denied consolidating with 11-08 WC. Council decided to dismiss as moot with 30 days to respond. Decision issued on August 2, 2011.

**Docket No. 10-25 WC – Robert Van Dyke and Van Dyke Construction, Inc.**

RE: October 25, 2010 Administrative Order No. 10-042 WD

Presiding Officer: Steve Densberger (assigned by AGO).

Recused: Deborah Hinds

Status: The Council accepted the appeal on March 9, 2011. A PHC is scheduled for October 26, 2011 at 9 a.m., notice sent on July 26<sup>th</sup>.

**Docket No. 11-05 WC – Town of Hooksett and Hooksett Sewer Commission**

RE: 3/21/11 Administrative Order, Administrative Order No. 11-010 WD

Presiding Officer: Not Assigned

Recused: Christopher Rawnsley

Status: Appeal received on 4/20/11. On May 11, 2011 the Council voted unanimously to accept appeal. No action required until requested by the parties.

**Docket No. 11-08 WC David Riley, et al.**

Re: Lake Waukegan Final Operating Level

Presiding Officer: Christopher Rawnsley(confirmed by AGO).

Recused: Carol Henderson

Status: Appeal received on May 27, 2011. Council accepted appeal and approved applicant's Motion to Intervene and denied Motion to consolidate Docket No. 10-09 WC. Notice sent July 25, 2011. Decision and Order issued/mailed August 2, 2011. Received 75 Petitions to Intervene for 131 people on July 12, 2011. On July 18, 2011 received Appellant's Objection to 75 Petitions to Intervene. Council needs to rule on Petitions to Intervene and Objection.

- ***Councilor Varotsis made a motion to deny Petitions to Intervene, second by Councilor Hinds. Discussion was held. Motion rescinded by both.***
- ***Councilor Rawnsley moved to accept the 75 Petitions to Intervene conditioned upon requiring all interveners to combine into one - all their presentation of evidence, argument and cross examination and any other participation in the***

***proceedings, second by Councilor Gosse. Discussion held. Motion passed unanimously.***

Limitations can be placed by the PHO at any time and the limitation of witnesses is an appropriate discussion at the PHC. Knowing the Council's concerns, the number of people that can speak will be restricted.

The Objection to 75 Petitions to Intervene was declared moot.

III. Decision and Orders that need to be written, finalized and issued.

**Docket No. 04-18 WC - Thaddeus Dymon**

RE: Denial of a Request for Waiver of Env-Ws 386.56(h)(12), (14), (18)

Presiding Officer: Joel Harrington

Status: A Decision and Order was distributed.

- ***Councilor Christie moved to approve the Decision and Order for Docket No. 04-18 WC, second by Councilor Hinds. Motion passed unanimously.***

**Docket No. 08-29 WC – Silver Lake Association**

Re: 4/29/11 Decision and Order Dismissing Appeal

Presiding Officer: Stephen Densberger

Status: Motion for Rehearing filed on May 24, 2011. Council adopted Decision and Order denying Rehearing. Order was issued July 27, 2011.

**Docket No. 09-24 WC – Lake Sunapee Protective Association**

RE: 4/16/09 Alteration of Terrain Permit WPS-8382

Presiding Officer: Stephen Densberger

Recused Members: Carol Henderson; Johanna Lyons; and Nancy Christie

Status: A decision and order is being finalized.

**Docket No. 09-34 WC – Ashuelot Pond Association**

RE: 8/28/09 Notice of Decision on Determination of Lake Level for Ashuelot Pond Dam Village District

Presiding Officer: Christopher Rawnsley

Status: Hearing held on 7/13/11. Decision drafted but needs review.

**Docket No. 11-01 WC – Jean Gagnon Sr.**

RE: Site Specific Application #06070 -01 for Terra Firma Real Estate, Brown Hill Rd Phase III

Presiding Officer: Not Assigned

Status: Appeal dismissed as untimely. Order issued and mailed July 27, 2011.

Review of files continues and action may be needed on some files.

Chairman Gilbert will circulate the current draft Lake Sunapee Order along with an Order that has been approved.

9:35 a.m.

- ***Councilor Varotsis made a motion to go into Executive Session, second by Councilor Butler. Motion passed unanimously.***

9:40 a.m.

- ***Councilor Gosse made a motion to return to return to the regular meeting, second by Councilor Rawnsley. Motion passed unanimously.***

#### **4. Appeals**

No new appeals.

#### **5. Other Business**

Chairman Gilbert

Jim Gallagher reported the Wetlands and Subsurface amendments that are being put up on the web page do reflect the changes.

The Water Sustainability Commission met in July. A facilitator was brought in and they worked through the 4 key issues along with who needs to be engaged and what constituencies are affected. Clarified thinking regarding key issues and found this may be a good way to key in with the public. At the public meetings they will outline of the vision of how water will be managed in the state and then break into smaller groups. They are working towards starting public sessions in the fall. Implementation will be critical.

A letter has been received from DHHS indicating they are no longer going to send a representative due to budget constraints. Questions: Do we have the ability to release a state agency? Is it in statute? Also, if not attending on regular basis – what about the issue of a quorum? Councilor Lyons noted that it doesn't have to be an employee, it can be a volunteer that they appoint. Which raised the question – 'What does designee mean'? Chairman Gilbert will speak with legal counsel as to how to respond and clarity. He will be asking if it can be a volunteer and if they don't fill the position how does it affect the quorum?

With this being her last meeting, Councilor Butler thanked Nancy Christie for her contributions to the Council these last 5 years. She shared she is speaking with a possible replacement. Chairman Gilbert expressed the Council's deep appreciation for her service and best wishes in her new home.

Next meeting will be September 14, 2011 at 9 a.m. No hearing.

#### **6. Adjournment**

- ***Councilor Varotsis made a motion to adjourn, second by Councilor Gosse. Motion passed unanimously.***

Meeting was adjourned at 9:54 a.m.