

## WATER COUNCIL MEETING

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

September 14, 2011  
9:00 a.m.

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

**Members absent:** Councilors Barrett and Rastallis

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

### **1. Approval of Minutes of August 10, 2011 Meeting**

- ***Motion made by Councilor Hinds to approve the minutes, second by Councilor Gosse. Motion passed unanimously.***

### **2. 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 hearing is scheduled for November 9, 2011 at 10:00 a.m. per the Pre-Hearing Order(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: 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. and status request with 30 days response due on 8/26/11. Notice sent July 27, 2011. Received status report from appellant on 8/4/11. Received status report from DES on 8/10/11. Waiting until Sept. meeting to see if applicant submits status report before ruling on request to stay.

- ***Councilor Rawnsley made a motion to grant the motion to stay proceedings in Docket No. 09-05 WC – North Country Alliance for Balanced Change the stay to***

***be indefinite and cancel the hearing for October, second by Councilor Butler.  
Motion passed unanimously.***

**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 10/29/2010. 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 June 17, 2011 Council may dismiss or close file as appropriate. Letter requesting withdrawal sent August 16, 2011. Withdrawal of appeal was filed with the Council on 9/2/11.

**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: A PHC is scheduled for October 26, 2011 at 9 a.m., notice sent on July 26, 2011.

**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: 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. D & O issued/mailed August 2, 2011. Council accepted 75 Petitions to Intervene for 131 people. Received 23 Petitions to Intervene for 33 people Aug 10, 2011. Council will need to rule on additional Petitions to Intervene. Decision on 75 Petitions to Intervene was sent Aug. 11, 2011. PHC is scheduled for Sept 14, 2011, at 11 a.m. noticed issued Aug. 11, 2011. 8/19/11 received Partial Objection to 23 Petitions to Intervene.

- ***Councilor Rawnsley moved to accept the 23 Petitions to Intervene conditioned upon requiring all interveners to combine into one, along with the other 75 interveners - all their presentation of evidence, arguments and cross examination and any other participation in the proceedings, second by Councilor Hinds. Motion passed unanimously.***

In addition the Objection received from appellant asks for the interveners to also be represented by one counsel. This will not be required.

III. Decision and Orders that need to be written, finalized and issued.
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**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 accepted by the Council; issued/mailed on August 10, 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.

- ***Councilor Butler made a motion to accept the Decision and Order that was written for Docket No. 09-34 WC – Ashuelot Pond Association, subject to grammatical corrections, second by Councilor Lyons. Motion passed unanimously.***

**4. Appeals**

Ms. Scott noted in the Docket No. 07-19 WC Presby Environmental Appeal file, a draft order is on file but there is a question whether actually sent. The order will be issued, this then opens it up to the 30 reconsideration filing. Chairman Gilbert will send a cover letter regarding the delay.

The draft order that was in the records was distributed for review.

- ***Councilor Densberger made a motion to accept the draft order, second by Councilor Butler. Discussion was held. An amendment was offered by Councilor Rawnsley to include the following in the Decision and Order paragraph, first sentence - “,dismissal being based upon a failure to demonstrate that petitioner would sustain injury in fact, and consequently a failure to demonstrate standing”. Councilor Densberger made a motion to amend the decision to incorporate the language offered by Councilor Rawnsley regarding the reason for the dismissal, amendment seconded by Councilor Butler. Motion passed unanimously with Councilor Hinds abstaining.***

This is in regards to the March 18, 2008 Draft Order. The signature line and date will be changed as well grammatical and typographical errors corrected.

## **5. Other Business**

Chairman Gilbert

Chairman Gilbert has spoken with the attorney general's office regarding the letter received from DHHS that they would not be sending a representative. The statute is being reviewed furthered as to whether they can opt out or not.

The Water Sustainability Commission met in August identifying 3 working groups that will be established. 1) Public engagement – now and later 2) legal ramifications and what legislative changes may need to be made – crossing political boundaries with cooperation between towns and counties, more oriented to watershed management 3) focus on how to structure the deliverable. A framework on how to engage people with what has to be done and a series of principles to deal with the unexpected and changes. They will meet again later in September. It is good to report a North Country representative has been found. They are still looking for an industry/manufacturing representative.

Next meeting will be October 12, 2011 at 9 a.m. There could be a hearing, the council will be notified.

Director Stewart will send the House LSRs that are being worked on already. 96 already involve DES and he will send the Council the relevant ones.

Councilors Gosse and Hinds shared the positive feedback on the new 1000 rules.

## **6. Adjournment**

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

Meeting was adjourned at 9:42 a.m.