

## Northern Lake Champlain Basin Water Quality Council Regular Meeting, September 21, 2022 10 a.m. (Online) Minutes

See meeting recording & meeting materials at:

<https://www.ccrpcvt.org/northern-lake-champlain-basin-water-quality-council/>

**1) Introductions, Changes to the Agenda and Public comment on items not on the agenda**

*The meeting was called to order at 10:02 a.m. by Chair Ken Mirvis. A quorum of 9 seats out of 9 were represented as noted in Bold.*

(# seats)	Members Present	Alternates Present
<b>Watershed Protection Organizations (2)</b>	<b>Kent Henderson, Friends of Northern Lake Champlain</b>	
	<b>Andrea Morgante, Lewis Creek Association</b>	<i>Roger Crouse, Lake Iroquois Association</i>
<b>NRCDs (2)</b>	<b>Remy Crettol, Winooski NRCD</b>	
	<b>Molly Varner, Grand Isle NRCD, VICE-CHAIR</b>	
<b>Municipalities (2)</b>	<b>Ken Mirvis, Grand Isle, CHAIR</b>	<i>Tom Briselden, North Hero</i>
	<b>Dave Wheeler, South Burlington</b>	
<b>RPCs (2)</b>	<b>Dean Pierce, Northwest RPC</b>	
	<b>Karen Adams, Chittenden County RPC</b>	
<b>Land Conservation Organizations (1)</b>	<b>Emily Alger, South Hero Land Trust</b>	
<b>Primary Clean Water Service Provider Staff</b>		<b>Secondary CWSP Staff</b>
	<i>Dan Albrecht, Manager</i>	<i>Chris Dubin</i>
<b>Guests</b>		
	<i>Tyler Knapp, Knapp Environmental Solutions</i>	<i>Kate Kelly, Lewis Creek Association</i>
	<i>Christine Dougherty, Town of Williston</i>	<i>Jared Carpenter, Lake Champlain Committee</i>
	<i>Kerri Garvey, Watershed Consulting Associates</i>	

*On a motion by Henderson, with a second by Varner, the draft agenda was approved unanimously. No public comment was made on items not on the agenda.*

**2) Review and approval of Minutes for Meeting of July 20, 2022**

*On a motion by Pierce, with a second by Alger, the draft minutes of July 20, 2022, were approved unanimously, with the following edit on page 1: correct to read Varner as Vice-Chair.*

**3) Update on CCRPC RFQ for Project Manager/Implementor Subgrantees**

Albrecht reported that the CCRPC pre-qualified the following organizations and municipalities from their first solicitation which ended August 31<sup>st</sup>: Franklin County NRCD, Grand Isle County NRCD and Winooski NRCD, Friends of Northern Lake Champlain, Lewis Creek Association, Vermont River Conservancy, Town of North Hero, City of South Burlington, and Northwest RPC.

**4) Draft Chapter 6 of DEC Guidance: Project Eligibility, Screening, Prioritization & Selection**

Albrecht walked the Committee through this first draft of this Chapter. A few minutes in he realized he was supposed to be talking about the draft formula grant per the agenda but members were okay with talking about the guidance now. Key provisions he noted were verbatim as follows:

- *This chapter provides guidance to CWSPs, BWQCs, project implementers, landowners, stakeholders, and the public on the substance of moving a project from an idea to construction, together with other relevant topics.*
- *This chapter should not be read in isolation. Other relevant documents and policies should also be considered, including other chapters of Guidance, the Clean Water Initiative Programs' funding policy, the State's Northern Lake Champlain Basin Water Quality Council September 21, 2022 Meeting minutes*

*Non-Point Source Management Plan, Tactical Basin Plans, the State's Surface Water Quality Standards, and the State's Surface Water Management Strategy, among other documents.*

- *Note that there will be a separate Guidance chapters on CW project operation and maintenance and for project data management.*
- *Whether a project is consistent with relevant policies is more or less a binary analysis that is established and confirmed during the project screening process. Nevertheless, the BWQC should not advance projects that it considers to be inconsistent with State law, rule, policy or practice. How a project meets or conforms with water quality best practices contained in State guidance documents is a factor that can also be considered but is best analyzed and in consideration of empirical data as well as viability.*
- *This section of Guidance does not apply to proposals to support project identification through assessments/planning, or to support project development. CWSPs must follow a separate section of Guidance on project identification and development activities.*
- *Each CWSP and BWQC may decide how and when they will solicit proposals from implementers to complete project designs and implementation and how much of their fund allocation to dedicate to these project life cycle stages.*
- *Once project design and implementation proposals have been received, the CWSP and BWQC must, based on the guidance provided below, 1) screen proposals to confirm they are eligible to receive Water Quality Restoration Formula Grant funds, 2) rank and prioritize the eligible proposals and 3) select proposals for funding.*
- *There may be cases where an individual project is designed to fulfill both regulatory requirements and exceed regulatory requirements to also achieve phosphorus reductions from non-regulatory/sub-jurisdictional sources.*
- *Please note that Municipal Separate Storm Sewer System (MS4) permit regulatory projects are not eligible for Formula Grant funds. An MS4 permit regulatory project is defined as a project that contributes to MS4 community(ies) meeting MS4 permit flow and/or phosphorus reduction targets, including projects identified by the MS4 community in a flow restoration plan (FRP) and/or phosphorus control plan (PCP). The only scenario where an MS4 project could go above-and-beyond regulatory requirements is where the MS4 has, as a community, met its phosphorus reduction targets.*
- *Agricultural and natural resource projects on non-jurisdictional farms or farmland (i.e. lands not subject to the Required Agricultural Practices Rule) are eligible. Natural resource projects on jurisdictional farms are subject to AAFM review. CWSPs will be required to consult with AAFM quarterly on natural resource project eligibility, selection, and progress, as AAFM will determine whether such a proposed project qualifies as a clean water project. Please note that agricultural projects on jurisdictional farms are not eligible.*
- *Once the CWSP and BWQC have established a ranking schedule and scoring process, the CWSP shall be responsible for applying this scoring process to all eligible proposed projects and presenting the ranked project proposals for final selection by the BWQC. CWSPs and BWQCs may elect to confer on scoring and jointly consider and agree to adjustments to scoring during BWQC deliberations on project selection.*
- *CWSPs are required to follow the pollution reduction cost effectiveness equation/calculation, described below, to ensure consistency across basins and project types. ....The DEC will provide CWSPs, BWQCs, and implementers training on and access to pollution reduction calculator tools consistent with the methods included on the Standard Operating Procedures (SOPs) for Tracking and Accounting of Phosphorous. CWSPs shall use this calculator to determine the pollution reduction value of a proposed project (or to confirm the pollution reduction value provided by the project proponent/implementer). CWSPs shall use this pollution reduction value and the project proposal's budget to determine cost-effectiveness.*
- *Project proposal budgets must include the projected project costs proposed to be covered by the Formula Grant, as well as any match/leveraging from whatever design phase a project begins with Formula Grant funds through to implementation.*
- *The pollution reduction cost effectiveness of the project is a key metric for ranking projects as it allows an apples-to-apples comparison of a projects' efficiency against all other projects. This analysis allows the*

CWSP/BWQC to look at the impact any given dollar has on reducing phosphorus pollution. In other words, the better the cost effectiveness, the larger the impact of each dollar spent, when compared against other projects.

- In a given solicitation round, projects will be ranked against each other based on cost-effectiveness.
- The degree of uncertainty for scoring criteria inputs may be factored into project scoring, such as for co-benefits).
- The Water Quality Restoration Formula Grant Targets and Fund Allocation Methodology provides benchmarks to consider reasonable values for cost effectiveness at the sector and project category-level (i.e., cost per unit phosphorus reduced, referred to as “cost rates”).
- Other Criteria to Consider in Project Scoring. This includes the cost of operation and maintenance of the project, design life beyond 15 years, conformance with the basin plan, and co-benefits which shall account for the remaining percentage of the total project score beyond the pollution reduction cost effectiveness equation. For instance, if the cost-effectiveness rank accounts for 60% of the total project score, then cost of operation and maintenance of the project, design life, conformance with the basin plan, and co-benefits shall account for 40% of the total project score. The CWSP and BWQC may determine their own methodologies for accounting for these components.
- When choosing between multiple, eligible projects, BWQCs will need to weigh the various co-benefits and project aspects against each other.
- Per the reference in Chapter 4 of Act 76 Guidance, BWQCs may establish policy around how co-benefits are considered in the project identification and prioritization process. DEC recommends that if a potential project negatively impacts a co-benefit (e.g., wetlands impact) then it should receive negative points for co-benefits scoring.
- Once a CWSP has screened project proposals for eligibility and applied preliminary prioritization scores based on the guidance provided in Section 2 of this chapter, the CWSP shall present the prioritized list to the BWQC for final scoring and selection
- Projects should be preliminarily ranked based on scoring, which includes overall cost effectiveness based on estimated project cost and total phosphorus load.
- Cost efficiency, project cost, and overall pollution reduction are the primary considerations in ranking, but intangible factors such as a project’s expected durability/design life, the timing needed for implementation (e.g., seasonal concerns, labor availability, readiness to proceed, time needed to complete), whether the project is new or innovative, and other risk factors are also relevant considerations for a BWQC to determine.

Albrecht encouraged the members to read this Chapter 6 guidance carefully as it has a lot of the long-asked-for detail we have wanted in how projects get funded. In response to a question from Briselden, Albrecht responded that both CWSP and BWQC will call for proposals to get a broad swath of applications but proposals that have good Cost-Benefit Ratio (in terms of cost per pound of phosphorus removed) will rise to the top. He also noted that more identification and development of old fluvial erosion /river corridor plans need revisiting. Henderson. In response to a question from Henderson, Albrecht noted that yes, you can use the P-reduction calculator provided by DEC and the CWSP will ask applicants to work with their consultants to run the calculations. We as CWSP staff will review the calculations that are submitted, and also check in with Karen Bates of DEC that they look kosher, etc. Then the BWQC will vote on the proposals. Henderson noted that prices for implementation are already increasing and these costs are affecting the scope of work and also therefore the P-reduction calculation. In response to a question from Morgante, Albrecht noted that the first source of funding for Project Development and which he recommends now is the Project Development Subgrants being managed by Addison County RPC, Watersheds United Vermont and the Association of Conservation Districts. With regards to identification and development, Albrecht noted that about 3% and 4% of a CWSP’s Formula Restoration Grant can be used for those tasks, respectively. The process for awarding such funds remains to be determined. Project managers/applicants will need to put most recent data into the Watershed Projects Database (WPD). We as Basin 5 CWSP will be keeping our own separate database. Pierce noted that CWSPs will be checking the data entry as well in the WPD at least every quarter.

**5) Overview of updated GIS online dashboard of potential projects**

Albrecht first off noted that the initial query that he had Dubin display had a lot of projects that it turns out are likely ineligible. The new list which he emailed yesterday and is now displaying on the screen took that initial query and the separated projects into separate tabs for Likely Eligible (for CWSPs), Likely Ineligible (potentially because they are MRGP-road-related or ag-related or culvert-related) and then several tabs for each of the Flow Restoration Plans from the MS4s which are probably ineligible. He encouraged everyone to look these over and let him (Editor's note: send to Karen as well) know what they know about them including any duplicates or errors or already completed projects and especially look at the Likely Ineligible tab and proofread them. Finally, any project that is not in the Watershed Projects Database people need to contact Karen Bates asap so she can enter them in. Also, projects on private drives are likely eligible. Dubin asked that people also provide Lat Long data if they know it as that is it critical to a map-centric data management solution. Albrecht noted that Pierce pointed out that a CWSP can take ownership of an already completed project, do the annual operations & maintenance and then claim the phosphorus credit. Lastly, the CCRPC as CWSP, could pursue a project such as hiring a consultant to do development work on projects identified in old fluvial erosion hazard studies. Also, be sure to look at the full data download from the WPD to see if there are already existing partners working on something.

**6) Continued discussion: co-benefits when scoring a water quality project application**

Albrecht walked through the new elements (highlighted in yellow) based upon the feedback that members sent him. He reminded members that he as CWSP staff would do an initial score for a project but then the BWQC would vote on the final co-benefit score. Pierce reiterated that he believes the matrix could be made much simpler. Albrecht encouraged him and all Council members to continue to suggest edits.

**7) Overview of recently started DEC Formula Grant to CCRPC as Basin 5 CWSP**

Albrecht highlighted some key stipulations in the grant.

- Total is \$645,340 with a performance end date of December 31, 2024.
- The primary responsibilities include overseeing identification, prioritization, development, design, and construction of non-regulatory clean water projects within Basin 5 for the purpose of achieving pollutant reduction values established by the Secretary for the basin.
- Albrecht is pleased with the simple performance metrics such as tracking Assessments and Plans completed, projects developed, projects designed, projects implemented, and estimated kilograms of phosphorus pollution achieved.
- He noted that CCRPC has already worked to "(e) stablish, convene, and provide technical staff support to Basin Water Quality Council (BWQC) ....and coordinate with BWQC per Rule and statute.

The grant also requires that in coordination with the BWQC, CCRPC will work to

- oversee identification, prioritization, development, design, and construction of non-regulatory clean water projects within Basin 5.
- adopt and implement policies and procedures as needed/required to fulfill CWSP duties and responsibilities

CCRPC will also

- complete CWSP quarterly, annual, and final reports.
- strive to achieve adequate progress toward their annual pollutant reduction targets. Adequate progress means the estimated phosphorous reduction from implemented, designed, and planned projects that are anticipated to meet annual phosphorous reduction targets

Albrecht noted additional key provisions:

- The State acknowledges that in this first year of Formula awards, the precise accounting and absolute attainment of quantitative targets will be subject to many factors. The Grantee shall use the following quantitative measures to demonstrate adequate progress: Estimated kilograms of phosphorous planned

to be achieved based on design projects completed; and Estimated kilograms of phosphorus pollution achieved based on implementation projects completed. He said that conceptually, this means we are planning and presenting a list of projects, which if completed will meet the p-reduction targets and we keep “moving down towards the goal.”

- The first target is to be reduced over the next 3.75 years through June 30, 2026. During that term we need to be meeting an annual phosphorus reduction target of 41.9 kg. Pierce noted that the text that Dan was displaying incorrectly stating 10.48 kg.
- Albrecht noted that the required reporting/tracking deliverables are reasonable. CCRPC will look to its Subgrantees to populate the online databases with the required information.
- Albrecht noted that they are also pleased with the ability to draw down funds right away.

In response to a question from Crettol, Albrecht anticipates that required data to be sent to DEC will mimic what is in the draft Data Management Standards he circulated. In other words, similar to what DEC grantees have been required to report.

In response to a question from Kelly, Albrecht stated that DEC will recognize that it may be a year or two before projects actually get physically completed but as long as we can show that we have a plan, we are identifying, developing and designing projects in the meantime, i.e. meeting progress.

In response to a question from Crettol, right now there are nine prequalified entities interested in doing projects. In theory many more municipalities can be qualified but we need many boots on the ground. I hope that a year from now we can indeed be handing out \$500,000 per year for projects.

The challenge will be is that initially for example say WNRCD comes in with a project that initially is estimated to cost \$30k for Design and \$100k for Implementation. We hope DEC gives us flexibility as the BWQC may be nervous (and WNRCD would be as well) about releasing the \$100k for Implementation until we are confident in that number. We will need language in the Subgrants to enable amendments to adjust funds if needed and even hypothetically to stop a project if for example, the 30% design shows that a project is not cost-effective and therefore not worth pursuing.

In response to a question from Morgante, money can be carried over from year to year and if you don't spend it all you don't lose it.

#### **8) Recommendation to CWSP regarding elements of a Call for Letters of Intent / Pre-proposals**

Albrecht recommended deferring action on this item given the need to digest the draft Chapter 6 Guidance. He encouraged members to work with their advocates to bring any concerns to DEC about the Guidance and he also encouraged them to dive deep into the project list he distributed. He also urged people, if they have new projects identified, to contact Karen Bates so she can load them into the Watershed Projects Database.

#### **9) Additional updates as needed from CWSP staff, DEC, BWQC Members and Guests**

Pierce shared some data crunching he had done to focus in on phosphorus reduction and whether or not the targets can be met given the dollars allocated and he is also concerned about any unnecessary complications/hindrances to the CWPS getting their required job of phosphorus reduction completed. He shared the DEC Excel file titled “2022-03-09\_CWSP\_Targets\_Costs. Total for Basin 5 is \$645,340 (editor's note: of that, \$96,801 is allocated for administrative costs). The annual target for Basin 5 is 41.9 kilograms. So, he ran the Interim Phosphorus Calculator for each category of project (e.g. lakeshore, riparian buffer, passive restoration & easement & buffer, gully repair, etc.) and for example calculated that if you only did lakeshore work that would equal 2330 ft., for riparian buffer that would equal 26.2 acres, etc.....Then using average costs for each type of project (e.g. lakeshore equals \$8,333, that would total about \$349k, riparian buffers cost \$5,116 per kilo equals \$214,360. He noted that the average costs have likely increased due to inflation. Albrecht and Mirvis thanked Pierce.

Albrecht noted that Chapters 2, 3 and 4 of the Guidance are now finalized. He noted the RFQ for Subcontractors (which members saw a draft of beforehand) has been completed with 8 firms selected and the  
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first round of RFQ for Subgrantees has been completed with 9 entities qualified. BWQC members did not see that beforehand as many of you would (and indeed) did submit qualification materials on that one. However, Chapter 6 will have more detail about how CWSPs will include more detail on how CWSP subgrants will work. Once that Chapter is complete, he will ask the BWQC to review and approve any required revisions to CCRPC's procurement policies that incorporate Rule-required subgrant guidance before it is voted on by the CCRPC Executive Committee.

Crettol noted that there are several other grant funding sources available now but now CWSP-funded grants could become live and thus WNRCD are straddling money sources. Albrecht noted that eventually the CWSP can give out funds for project maintenance and operations. He also encouraged organizations to get any grants now for Design work so that it is queued up for asking for CWSP funds.

**10) Items for draft agenda for meeting of October 19<sup>th</sup>**

- a) final action on Council policies & procedures, conflict of interest policy, public participation policy
- b) discussion with Rivers Management staff about revisiting previously identified projects
- c) discussion with Karen Bates about draft rough CWSP-eligible project list and to gain overall familiarity.

**11) Adjournment**

*On a motion by Henderson, seconded by Crettol a motion to adjourn at 11:37 a.m. was passed unanimously.*