



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 26, 2016

The Honorable Chris Christensen, Chair
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, NH 03301

RE: **HB 1461** *An act relative to the definition of and criteria for protection instream flow.*

Dear Chairman Christensen and Members of the Committee:

Thank you for the opportunity to comment on HB 1461. This bill would modify the instream flow sections of RSA 483. The Impact of Water Withdrawals on Instream Flows Study Committee recommended the creation of this legislation for consideration by the General Court. This bill will modernize the definition of instream flow protection and apply the program to each of the designated rivers in the state. The Department of Environmental Services (NHDES) supports this bill with a minor proposed change.

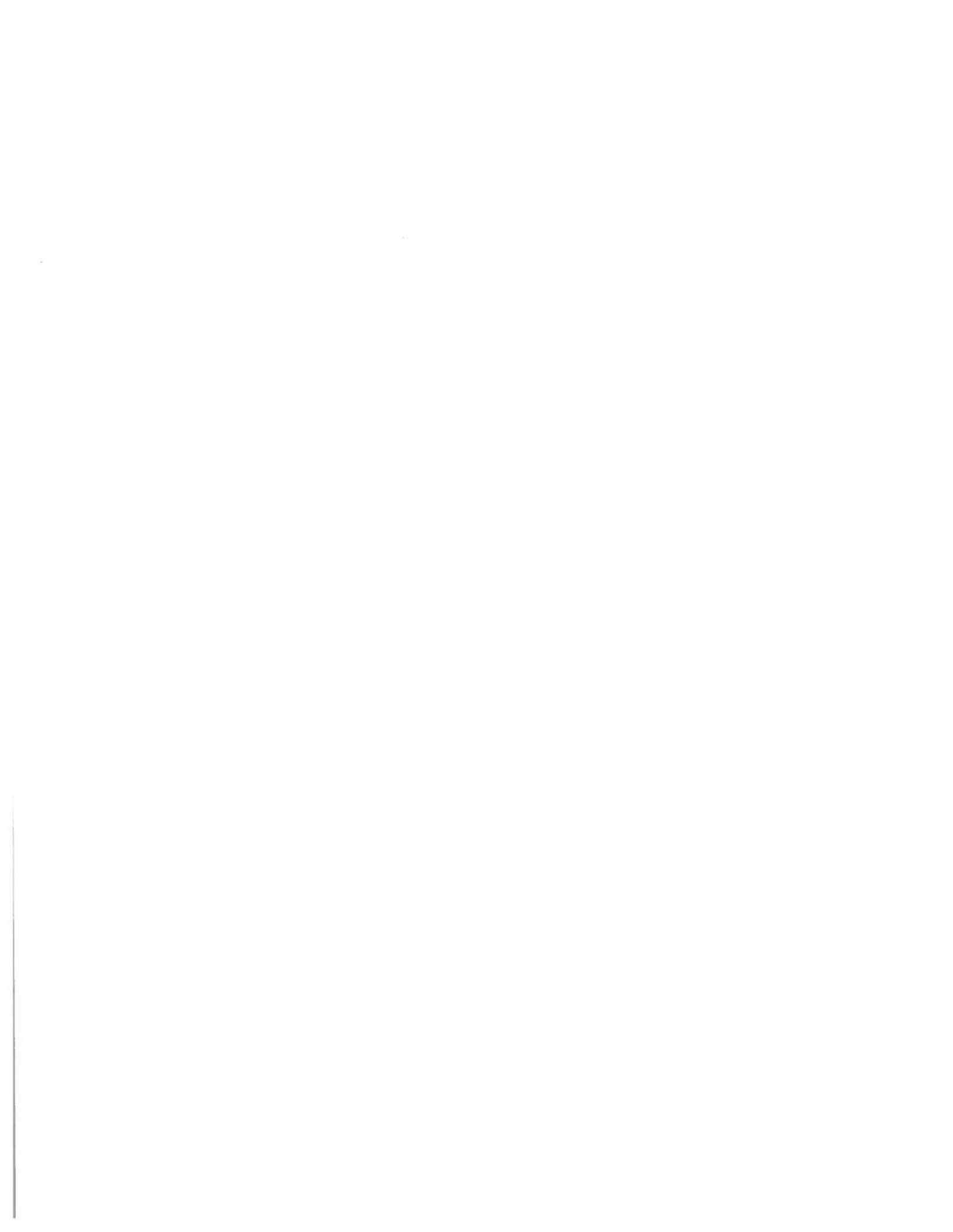
In December 2015, NHDES submitted a Report of the Instream Flow Pilot Program to the General Court as part of the Instream Flow Pilot Program statutory requirements. The two purposes of the Instream Flow Pilot Program (Pilot), as defined by statute, were to develop a methodology to define and implement protected instream flows on Designated Rivers and to meet water quality standards. Two rivers, the Souhegan and Lamprey, were chosen as the pilot rivers. Protected instream flows were established that translate narrative water quality standards into numerical criteria. The Pilot provided a way of protecting water quantity by establishing specific stream flows that represent the natural variability of flows. In short, the Pilot identified when the pattern of flows are abnormal and then created water management plans to restore natural flow patterns.

Since the original enactment of RSA 483 in 1990, the science of instream flow protection has advanced significantly. In addition, the completion of the Pilot has demonstrated the practical application of instream flow protection. This proposed legislation incorporates the knowledge that has been developed both in the science and through the Pilot. The proposed bill would expand the program beyond the pilot phase into a statewide program. The legislation incorporates three of the most important lessons from the Pilot phase in the program. First, the proposed definition of instream flow

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reflects the dynamic nature of river flows and the river-specific, science based approach utilized in the Pilot. Second, the program is oriented toward protecting those instream uses which are most susceptible to low-flow conditions, which will simplify and streamline the approach. And, finally, the legislation acknowledges the need for a robust public outreach approach before, during and after an instream flow study.

The Department is grateful to the sponsor for integrating our input into the proposed legislation. Upon further review and analysis, we believe that a minor change to the language is warranted. As introduced, the bill would amend RSA 483:9-c, II to read in pertinent part as follows: “II. ***No less than 60 days prior to commencing a protected instream flow study on any designated river other than the Lamprey or Souhegan designated rivers,***” The reference to the Lamprey and Souhegan Rivers was made to distinguish the pilot phase from the future program. We now think that this language is unnecessary and may complicate future work on those rivers. We request striking the words “***other than the Lamprey or Souhegan designated rivers.***”

As the final Pilot report demonstrates, instream flow protection is a scientific and river-specific approach that is important to:

- *Protect fish and other aquatic life;*
- *Provide water for people;*
- *Level the playing-field for all users;*
- *Provide incentives for sustainable water infrastructure development; and,*
- *Integrate the management of lakes and rivers.*

If you have questions or need additional information, please contact Ted Diers, Watershed Management Bureau Administrator (ted.diers@des.nh.gov or 271-3289) or Wayne Ives (wayne.ives@des.nh.gov or 271-3548).

Sincerely,



Thomas S. Burack
Commissioner

cc: Sponsors of HB1461: Reps. Mullen, Spang; Sens. Fuller Clark, Reagan.

