



State of New Hampshire
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October 21, 2016

To: WRBP Member Communities and Document Signatories

Subject: Winnepesaukee River Basin Program (WRBP) Memorandum of Understanding (MOU) Update

The WRBP Advisory Board is pleased to provide the 2016 status update of the Memorandum of Understanding (MOU) between the Department of Environmental Services (DES) and Member Communities. The MOU update was reviewed by the WRBP Advisory Board which voted in concurrence on October 20, 2016.

In an effort to provide this information in an easily understood fashion, the status update is presented in two formats.

1. The MOU document text has been annotated to reflect the status of each individual item or goal included in the MOU. The update immediately follows each item.
2. The tabular MOU Milestones Calendar is also a working document to keep Advisory Board members and DES-WRBP staff informed of progress toward achieving the MOU goals. The latest version is included in this update.

If you have any questions concerning this information, please contact me or your WRBP Advisory Board representative.

Sincerely yours,

Sharon McMillin
Administrator, WRBP

cc: Eugene J. Forbes, P.E. (DES - Director, Water Division)

MEMORANDUM OF UNDERSTANDING - Annotated Update 2016

WHEREAS, RSA 485-A:45-54 authorizes the New Hampshire Department of Environmental Services (DES) to acquire, plan, construct, and operate sewage disposal facilities to service several communities collectively known as the Winnepesaukee River Basin Program (WRBP);

WHEREAS, the WRBP serves the sewer users located in portions of the municipalities of Belmont, Center Harbor, Franklin, Gilford, Laconia, Meredith, Moultonborough, Northfield, Sanbornton, Tilton and the State-owned Lakes Region Facility, which is currently managed by the New Hampshire Department of Administrative Services (DAS), and these users are variously represented by the signatories of the Memorandum of Understanding (MOU), including the DAS, Bay District Sewer Commission, Belmont Board of Selectmen, Franklin City Council, Gilford Board of Selectmen, Laconia City Council, Meredith Board of Selectmen, Northfield Sewer District, Sanbornton Board of Selectmen, and Tilton Sewer Commission, and which are collectively referred to as the Member Communities in this agreement;

WHEREAS, the cost of operating and administering the Winnepesaukee River Basin Program is borne entirely by the Member Communities;

WHEREAS, RSA 485-A:52 establishes an Advisory Board, referred to herein as the Advisory Board or the Board, for the purposes of reviewing (a) matters of mutual concern to the Member Communities and DES; and (b) the WRBP annual operating budget;

WHEREAS, while it is recognized that the DES has effectively operated these facilities for the benefit of these communities since the inception of the WRBP over 30 years ago, the Member Communities have become increasingly concerned about costs to maintain and operate the Winnepesaukee River Basin Program sewage facilities, particularly the projected costs to communities to fund capital improvements to replace and upgrade the aging WRBP wastewater facilities infrastructure; and

WHEREAS, the Member Communities and DES share the goal to continue to ensure and improve the efficiency and cost effectiveness of the operation of the Winnepesaukee River Basin Program;

NOW, THEREFORE, incorporating the whereas clauses above and in the interests of continuing to improve WRBP operations, under the applicable statutes and regulations related thereto, the undersigned parties hereby agree as follows:

1. For all requests for contracts to plan, design or construct capital improvements that require approval by the Governor and Executive Council, DES agrees to include a letter from the Advisory Board Chair documenting the consensus and recommendations of the Advisory Board. DES will include this letter as part of the approval request package submitted by DES to Governor and Executive Council for approval of contracts for these purposes.

Update: This on-going goal has been implemented. 2015 legislative changes to RSA 495-A:52 formalized inclusion of a recommendation letter with capital improvement requests to Governor and Executive Council.

2. Under RSA 485-A:52, DES is required to submit an annual budget to the Advisory Board by DES for review and comment at least 60 days prior to the beginning of every new state fiscal year. Henceforth, DES will also provide its proposed biennial budget for the WRBP to the Board for review and comment every two years during the fall when DES is in the process of finalizing recommendations for the Governor's biennial budget.

Update: This on-going goal has been implemented. In FY16, DES' accounting group took over member invoicing and preparation of assessment forecasts provided to the Advisory Board. The FY18/19 recommended State budget will be provided to the Advisory Board in November 2016.

3. By March 31, 2012, DES and the Advisory Board shall establish formal procedures for the review, prioritization and concurrence by DES and the Board of capital improvement projects. It is recognized that this work is well underway through the efforts of the Capital Improvement Program (CIP) Subcommittee of the Advisory Board, which includes members from DES and the Board, and routinely reports to the full Board.

Update: Completed. The CIP Standing Subcommittee established on 8/11/10 adopted a formalized CIP process on 5/3/11. As part of the process, an annual review of the 10-year CIP was implemented.

4. By March 31, 2012, DES and the CIP Subcommittee shall have completed a review of the available information and studies concerning long term capital investment plans and will have outlined a scope of work for additional studies determined to be necessary. The results of this effort will be submitted to the Advisory Board and DES for future consideration.

Update: Completed. The CIP Subcommittee completed the initial 10-year CIP on 1/6/12 with subsequent approval by the Advisory Board on 1/17/12. The 2013, 2014, 2015, and 2016 updates of the CIP were approved by the Advisory Board in October of the respective year. The Advisory Board recognizes that the CIP will remain largely unchanged until additional prioritization and probable project cost information is available from on-going asset management and infrastructure assessment programs.

5. By June 30, 2012, the Advisory Board shall adopt procedures, and incorporate these procedures into bylaws or equivalent, to establish a more formal structure for the Board to fulfill its advisory role to DES. The purpose will be to ensure that the Board has mechanisms in place to more formally and clearly provide the recommendations of the communities on WRBP operations to DES concerning budgets, operations and capital investments.

Update: Completed. WRBP Advisory Board Governance Guidelines were approved on 4/10/12. The guidelines were amended on 10/16/12 to allow designated Alternates to serve on subcommittees with full voting authority.

6. If deemed necessary by the Advisory Board after completion of the work described in Items 3 and 4, DES and the Board will solicit proposals for an engineering firm to develop a revised capital improvements plan that complements the existing information. The engineering firm will be selected by a selection team comprised of DES staff and an Advisory Board subcommittee subject to concurrence by the Advisory Board. Funding for this endeavor, if necessary, will be paid by DES using the special fund established by RSA 485-A:50, VI. The target completion

date will be determined by the Advisory Board. DES and the Advisory Board would subsequently work cooperatively to implement agreed upon recommendations.

Update: Completed. The Advisory Board voted on 1/17/12 to affirm that no assistance by a contracted engineering firm was necessary to complete the WRBP CIP. Therefore, no solicitation was deemed necessary.

7. DES and the Advisory Board recognize that the existing methodology for cost allocation to the communities is outdated and requires revision based on more current information and data on wastewater flow and quality. DES and the Advisory Board shall work cooperatively toward the goal of developing revisions to the cost allocation formula for implementation for state fiscal year 2016, which begins on July 1, 2015. To accomplish this goal:

Update: This goal is on-going with the Advisory Board and CIP Subcommittee working on completing the subtasks described below. The Advisory Board and CIP Subcommittee deferred work on developing a cost allocation formula pending implementation of the flow metering project and completion of the MOM study described in MOU item 8. Several formula variations have been proposed but none have been endorsed by the communities. The Advisory Board proposes a largely flow based formula; hence, the emphasis on the flow metering project which was implemented in November 2014. DES has offered to help facilitate these discussions and presented an analysis of respective contributions of capacity, flow and strength to WRBP annual expenditures on 5/5/16.

7.1 DES has developed a plan for proposed flow metering locations where meters need to be installed or upgraded to ensure representative flow metering and will seek Board consensus regarding the plan in December 2011. This plan will be incorporated into the final design of the metering program

Update: Locations for permanent flow metering to be included in the scope of work for a proposed construction project were finalized at an Advisory Board meeting on 6/7/12. The flow metering construction project was delayed when only one construction bid was received which exceeded the available SRF Loan funding. After rejection of the sole bid received for the work, the Advisory Board voted on 9/7/12 to re-bid following value engineering to identify appropriate cost reduction measures. The subsequent value engineering effort modified the scope of the construction project including changing the locations for some permanent meters and eliminating some permanent locations in favor of temporary flow metering or use of other collected flow data. The re-bidding of the construction contract in 2013 again led to a sole bid which the Advisory Board also recommended rejecting as not in the long-term best interest of the communities. Subsequently, a multi-year service contract for flow metering was developed and five firms submitted proposals. After completing due diligence, the low responsive firm was recommended unanimously by the Advisory Board on 7/15/14. The new flow meters were installed and operational in November 2014. Flow data is being collected and a third party review of the data collection and analysis has been completed in 2016; with report recommendations being implemented, as deemed necessary.

7.2 By September 30, 2012, DES and the CIP Subcommittee will provide the Board, in draft form, alternatives for an updated assessment formula that takes into account information on “the volume and strength of the industrial, domestic, commercial, and all other waste discharges

treated or the estimated volume and strength of the industrial, domestic, commercial and all other waste discharges” (see RSA 485-A:50).

Update: The DES and the CIP Subcommittee continue to work together on developing an updated assessment formula. Several formula variations have been proposed but none have been endorsed by the communities. **DES presented an analysis of respective contributions of capacity, flow and strength to WRBP annual expenditures on 5/5/16.**

7.3 DES and the Advisory Board shall work cooperatively toward the goal of completing the installation of new meters and/or upgrade of existing meters at selected flow metering locations and initiating flow metering data collection by October 31, 2012.

Update: Completed. The flow meters were installed and flow data collection started in November, 2014 under the service contract executed in September 2014.

7.4 By December 31, 2012, (or alternate date as determined by the Advisory Board), the Advisory Board will reach consensus on an updated assessment formula, including an implementation schedule for adoption of revised assessments, duration of the flow measurement period to be utilized to develop community rates, and the timeframe for future reviews and reassessments.

Update: The DES and the CIP Subcommittee continue to work on developing updated assessment formulas. The Advisory Board agreed that consensus on an assessment formula be reached prior to actual flow data being made available to the member communities. **June 2017 is the new goal date for the Advisory Board to reach consensus on a new formula.**

7.5 For a period of time determined by the Advisory Board following installation of the flow meters, DES will submit quarterly reports to the Board, at least two weeks in advance of the meeting, on the progress of the flow metering study, to include flow metering results.

Update: The Advisory Board agreed that actual flow data being made available to the member communities could affect their rate allocation deliberations, so a formula is to be adopted before actual flow data is shared. DES will implement this quarterly reporting process after the new flow meters are installed and following approval of the updated assessment formula described in MOU Item #7.4. **New goal date is contingent on the date consensus is reached on an assessment formula.**

7.6 By December 31, 2014, (or alternate date as determined by the DES and Advisory Board following installation of the flow meters), DES shall complete the initial flow metering data collection for the communities. (Note: Based on recent Advisory Board discussions, DES assumes that at least 1½ to 2 years of data will be required to establish "representative" flows for each community that will satisfy Member Community needs.)

Update: DES will complete the initial flow data collection period based upon the process developed and approved per MOU Item #7.5. Commitment is unchanged but dates have changed to reflect flow meter installation and start of data collection in November 2014. **On-going issues with fouling and debris at one community flow meter location which necessitated that the flow meter be removed limited analysis of flow data for several months in 2016. In addition, the unusually severe drought**

conditions and implementation of recommendations from the third party analysis in 2016 led to recommendations for additional flow data collection period in order to be more representative. Therefore, the initial representative data collection period of 2 years that was forecast to be completed in November 2016 to establish representative flow has been extended; with flow data collection and analysis on-going.

7.7 By June 30, 2015, DES will present the final analysis of the flow metering data to the Board for review, comment, and concurrence within 6 months of initial data collection period determined in Item 7.6.

Update: DES will present the final analysis to the Advisory Board within 6 months after completion of MOU Item # 7.6 (or by an alternate date determined by the DES and Advisory Board). Commitment is unchanged but date has been extended indefinitely to reflect the anticipated delays in completing the initial representative data collection. New goal date is contingent on the date consensus is reached on an assessment formula as described in MOU Item # 7.4.

7.8 DES will implement the new allocation formula for quarterly billing purposes based upon the approved plan developed in Item 7.4 above in accordance with RSA 485-A:50.

Update: DES will implement the new allocation formula. Commitment is unchanged but State FY19 is anticipated for implementation of the new allocation formula for billing, including incorporating any agreed-upon phase in period.

8. By April 30, 2012, and as necessary thereafter, DES, DAS and the Advisory Board agree to meet to provide the Member Communities with an understanding of State administrative costs as applied to state agencies such as the WRBP and discuss the feasibility of alternative approaches.

Update: Evaluation of State administrative costs applied to the WRBP was included in the scope of the MOM Study (see MOU Item 11). Information regarding existing state administrative costs and feasibility of alternative approaches were presented as part of the final MOM Study completed June 2014. Subsequent discussions may be scheduled with DES, DAS and others.

9. By March 31, 2012, and as necessary thereafter, DES and representatives from the Member Communities shall meet to work cooperatively to evaluate possible alternatives to amend the authorizing statutes for the WRBP, RSA 485- A:45-54.

Update: Commitment to review and amend WRBP governing statutes is unchanged and is an on-going evaluation. The Advisory Board met with Rep. Frank Tilton (Laconia) on 2/6/12 to discuss amending the statutes to implement weighted voting by member communities on matters brought before the Advisory Board. Advisory Board Governance Guidelines subsequently approved on 4/10/12 included provisions for voting by member communities (e.g. one member one vote). RSA 485-A:53 governing WRBP insurance was amended in the 2014 legislative session. Amendment to RSA 495-A:52 in 2016 formalized inclusion of a recommendation letter with capital improvement requests submitted to Governor and Executive Council for approval. RSA 485-A:49 was amended in 2016 to allow the WRBP to fund proposed evaluations regarding alternative governance structures.

10. By December 31, 2012, DES shall complete an ownership inventory study for the purposes of determining which existing properties, facilities or components of the Winnepesaukee River Basin Program are clearly owned by the State of New Hampshire and which properties, facilities or components have indeterminate ownership. DES and the Board will then develop a systematic approach to clarify the ownership of properties, facilities or components that are indeterminate.

Update: The inventory was completed for infrastructure located within each member community in 2012, with some infrastructure identified as having indeterminate ownership, or unresolved operational and financial responsibility. Guidance for creation of memoranda of agreements (MOAs) from the NH Attorney General's (AG's) office was used to develop documents for respective responsibilities. The DES, with member community assistance, has a goal of completing this documentation by June 30, 2017.

11. If deemed necessary by the Advisory Board, by June 30, 2013, DES and the Advisory Board will have a study completed by an independent engineering firm on WRBP management, operations, regulatory compliance and maintenance procedures. This study will be designed to provide recommendations on potential cost savings measures. In addition to the evaluation of existing operations, this study will include evaluation of the advantages, disadvantages, costs and potential cost savings of (a) creating an independent sewer authority to own, operate or manage the WRBP under the sole authority of the communities and separate from the State of New Hampshire; and (b) privatizing operations of the WRBP facilities that are owned by the State of New Hampshire. Funding for this endeavor, if necessary, will be paid by the DES WRBP using the special fund established by RSA 485-A:50, VI. Selection of the engineering firm will be by a team comprised of DES staff and an Advisory Board subcommittee (if desired by the Board), subject to approval by the full Board. After study completion, DES and the Advisory Board will then work cooperatively to implement agreed-upon recommendations in a systematic fashion.

Update: The Maintenance, Operations and Management (MOM) Study started in March 2013 was completed in June 2014 with both Task 1 and Task 2 reports provided to the DES, WRBP and communities. The DES Implementation Plan and Schedule incorporated the consolidated five priority recommendations. The DES Implementation Plan has been implemented and its five overarching initiatives are on-going. A feasibility study is proposed to answer addition community questions regarding alternative governance structures for the WRBP.

12. DES will continue to promptly comply with all reasonable requests from the Advisory Board members for financial reports and other data. The Board members agree that, in general, these requests are most efficiently and appropriately made by the full Board and not by individual members. DES will continue to provide the Advisory Board with a summary of the status of all on-going capital projects at the Board's regularly scheduled quarterly meetings.

Update: DES continues to respond to Advisory Board requests and provides written monthly summary report updates to the Advisory Board, including status of capital projects.

The parties acknowledge that the dates set forth in this MOU may change by mutual agreement of DES and the Advisory Board.

MOU MILESTONES CALENDAR - 2016 UPDATE

Initial MOU Goal Date	Item	Description	Comments/Status/Revised Goal Date	Date Completed
On-going	1	DES shall include a letter from the Advisory Board Chair documenting the consensus and recommendations of the Advisory Board in G&C requests for Capital Projects.		N/A - on-going goal
On-going, annually by 5/1	2	DES to submit annual budget to the Advisory Board for review and comment at least 60 days prior to the beginning of every new state fiscal year.	Met Initial Goal/On-going goal each year.	N/A - on-going goal
Fall; even numbered years	2	DES to provide its proposed WRBP biennial budget to the Board for review and comment every two years during the Fall when DES is in the process of finalizing recommendations for the Governor's biennial budget.	Met Initial Goal/On-going each biennium.	N/A - on-going goal
3/31/2012	3	DES and the Advisory Board shall establish formal procedures for the review, prioritization and concurrence by DES and the Board of capital improvement projects.		
		- CIP Subcommittee Founded.	Met Goal.	CIP Standing Subcommittee Established on 8/11/10.
		- CIP process formalized in Executive Summary of CIP Subcommittee.	Met Goal.	Final CIP Process Adopted on 5/3/11.
3/31/2012	4	DES and the CIP Subcommittee shall have completed a review of the available information and studies concerning long term capital investment plans and will have outlined a scope of work for additional studies	Met Goal.	Affirmed in CIP transmittal memo that Item 4 was completed as of vote on 1/17/12.
		- 10-year CIP completed and scope of capital plans and additional studies are included.	Annual reviews established per established CIP Subcommittee guidelines/approval of annual update each year in October.	N/A - on-going goal
6/30/2012	5	The Advisory Board shall adopt procedures, and incorporate these procedures into bylaws or equivalent, to establish a more formal structure for the Board to fulfill its advisory role to DES.	Met Goal.	WRBP Advisory Board Governance Guidelines approved 4/10/12; amended on 10/16/12 to allow Alternates to serve on subcommittees.
	6	If deemed necessary by the Advisory Board after completion of the work described in Items 3 and 4, DES and the Board will solicit proposals for an engineering firm to develop a revised capital improvements plan that complements the existing information.		
		- Determine if outside CIP is necessary via CIP recommendations/vote and present to Advisory Board for vote.	Met Goal - not deemed necessary.	Advisory Board voted Item 6 completed on 1/17/12.
12/2011	7.1	Locations for Flow Meters incorporated into Final Plan		
		- Additional changes to final locations deemed necessary to meet the needs of the member communities		Revised locations to be included in a proposed construction project were revised at a Board meeting on 6/7/12.
		- Value engineering and service contract incorporated changes to final locations deemed necessary to meet the needs of the member communities		Scope and locations for a flow metering service contract finalized at Board meeting on 6/15/14. Service contract was awarded and flow meters installed in October 2014 and operational in November 2014.
9/30/2012	7.2	DES and the CIP Subcommittee will provide the Board, in draft form, alternatives for an updated assessment formula.	On-going work.	DES presented an analysis of respective contributions of capacity, flow and strength to WRBP annual expenditures on 5/5/16.
10/31/2012	7.3	DES and the Advisory Board shall work cooperatively toward the goal of completing the installation of new meters and/or upgrade of existing meters at selected flow metering locations and initiating flow metering data collection.	One construction bid received; Advisory Board voted on 9/7/12 to re-bid following value engineering; Re-bid did not yield satisfactory response with only one bid received; A multi-year service contract was created. A Flow metering service contract approved September 2014 with installation completed and initial data collection. New goal date of 12/31/14 was met.	Completed. Flow meters were installed in October 2014 and operational in November 2014.
12/31/2012	7.4	The Advisory Board will reach consensus on an updated assessment formula, including an implementation schedule for adoption of revised assessments, duration of the flow measurement period to be utilized to develop community rates, and the timeframe for future reviews and reassessments.	On-going work. June 2017 is new goal date.	
	7.5	DES shall submit quarterly flow metering reports to the Advisory Board 2 weeks in advance of meetings.	Quarterly after Flow Meter installation and concurrence of assessment formula. New goal date is contingent on the date consensus is reached on an assessment formula as described in MOU Item # 7.4.	Contingent on concurrence on an assessment formula.

MOU MILESTONES CALENDAR - 2016 UPDATE

Initial MOU Goal Date	Item	Description	Comments/Status/Revised Goal Date	Date Completed
12/31/2014	7.6	DES shall complete the initial flow metering data collection for the communities.	The initial representative data collection period has been extended; with flow data collection and analysis on-going.	Contingent on concurrence on an assessment formula.
6/30/2015	7.7	DES will present the final analysis of the flow metering data to the Board for review, comment, and concurrence within 6 months of initial data collection period determined in Item 7.6.	New goal date is contingent on the date consensus is reached on an assessment formula as described in MOU Item # 7.4.	Contingent on concurrence on an assessment formula.
State FY16	7.8	DES will implement the new allocation formula for quarterly billing purposes based upon the approved plan developed by the Advisory Board in Item 7.4	New goal date is State FY19 or later as determined by the plan developed by the Advisory Board.	Contingent on concurrence on an assessment formula.
4/30/2012	8	DES, DAS and the Advisory Board agree to meet to provide the Member Communities with an understanding of state administrative costs and discuss the feasibility of alternative approaches.	Future discussions may be scheduled with DES, DAS and others.	The Management, Operations, and Maintenance (MOM) Study administrative evaluation was completed in June 2014.
3/31/2012	9	DES and representatives from the Member Communities shall meet to work cooperatively to evaluate possible alternatives to amend the authorizing statutes for the WRBP, RSA 485-A:45-54	Goal Met; on-going evaluation.	Advisory Board met with Rep. Frank Tilton 2/6/12; Governance Guidelines approved 4/10/12 in lieu of legislative changes. RSA 485 A: 53 was amended in 2014 to reflect unavailability of liability insurance and changes to insurance procurement processes. RSA 485-A:52 was amended in 2016 to add recommendation letter to G&C requests for capital projects. RSA 485-A:49 was amended in 2016 to allow the WRBP to fund proposed evaluations regarding alternative governance structures.
12/31/2012	10	DES shall complete an ownership inventory study	Goal Met.	Completed in December 2012.
after inventory is completed	10	DES and the Board will develop a systematic approach to clarify the ownership of properties, facilities or components that are indeterminate.	Guidance for creation of memoranda of agreements (MOAs) from the NH Attorney General's (AG's) office was used to develop documents for respective responsibilities. New goal of collaboratively completing this documentation to delineate operational and financial responsibilities is June 30, 2017.	On-going work.
6/30/2013	11	DES and the Advisory Board will have a study completed by an independent engineering firm on WRBP management, operations, regulatory compliance and maintenance procedures and cost saving measures.		
		- Evaluation of existing operations, this study will include evaluation of the advantages, disadvantages, costs and potential cost savings of (a) creating an independent sewer authority to own, operate or manage the WRBP under the sole authority of the communities and separate from the State of New Hampshire; and (b) privatizing operations of the WRBP facilities that are owned by the State of New Hampshire.	MOM Study was completed in June 2014. Member communities are evaluating the feasibility of alternative ownership options.	MOM Study completed in June 2014. A feasibility study is proposed to answer additional community questions regarding alternative governance structures for the WRBP.
		- DES and the Advisory Board will implement agreed-upon recommendations in a systematic fashion.	On-going. DES implemented priorities included in the Implementation Plan and Schedule for the enhanced status quo approach endorsed by the Advisory Board in April 2015.	N/A - on-going goal
	12	DES will continue to promptly comply with all reasonable requests from the Advisory Board members for financial reports and other data.	On-going.	N/A - on-going goal
	12	DES will continue to provide the Advisory Board with a summary of the status of all on-going capital projects at the Board's regularly scheduled quarterly meetings.	On-going.	N/A - on-going goal