Bill as Introduced

HB 1449-A – AS INTRODUCED

2002 SESSION

02-2428
06/10

HOUSE BILL ***1449-A***

AN ACT relative to the New Hampshire rivers management and protection program and making an appropriation therefor.

SPONSORS: Rep. Calawa, Hills 17; Rep. R. Cooney, Rock 26; Rep. Whalley, Merr 5; Sen. Francoeur, Dist 14; Sen. Johnson, Dist 3; Sen. D'Allesandro, Dist 20

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill establishes a pilot program in the department of environmental services to develop protected instream flows and river management programs for the Lamprey River and the Piscataquog River – south branch and makes an appropriation for the pilot program. The bill also establishes an instream flow technical review committee and a water management planning area advisory committee for each river designated for an instream flow and river management plan under RSA 483.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1449-A - AS INTRODUCED

02-2428
06/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Two

AN ACT relative to the New Hampshire rivers management and protection program and making an appropriation therefor.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The general court finds that it is in the interests of the state to do a comprehensive study regarding the establishment of protected instream flows and river management plans for 2 designated rivers and their tributary drainage areas. The general court finds that it is in the interests of the state to initially restrict instream flow rules to 2 rivers to ensure that adequate funding is available to develop the necessary protected instream flows and river management plans and to ensure that the department of environmental services will devote adequate attention to the effective and fair administration of the first application of instream flow regulation under the provisions of RSA 483. The general court also finds that the study findings and the proposed protected instream flow and river management plan for each river should be adopted by the legislature to allow for a public hearing with input from affected water users and the public.

2 New Section; Pilot Program Relative to Instream Flow Rules for the Lamprey River and the Piscataquog River – South Branch. Amend RSA 483 by inserting after section 11 the following new section:

483:11-a Pilot Program; Instream Flows; Lamprey River and Piscataquog River – South Branch. The commissioner shall adopt instream flow rules pursuant to RSA 541-A relative to the Lamprey River as delineated in RSA 483:15, I and the Piscataquog River – south branch, as delineated in RSA 483:15, X(c). The protected instream flows and river management plans adopted pursuant to this pilot program may not restrict water use or require changes in river management practices relative to either one of the rivers or their tributary drainage areas. Notwithstanding any other provision of law, the commissioner shall not adopt protected instream flows or river management plans or rules relative to any other designated rivers without further authorization from the legislature after the completion of the pilot program. The authority for the pilot program shall terminate when the legislature has approved the protected instream flow and river management plans adopted by the department for the Lamprey River and the Piscataquog River – south branch.

3 New Sections; Committees Established. Amend RSA 483 by inserting after section 483:8-a the following new sections:

483:8-b Instream Flow Technical Review Committees; Establishment; Duty.

I. There are established instream flow technical review committees to implement the provisions of this chapter for each designated river. Prior to beginning a protected instream flow

study for each designated river, an instream flow technical review committee shall be appointed and convened. There shall be 11 members of the committee appointed as described by this section.

II. The duty of the committee shall be to advise the department on the preparation and conduct of the protected instream flow study. The committee may seek input from appropriate state and federal agencies as necessary.

III. The committee shall serve until the department establishes and formally adopts the protected instream flow rules pursuant to RSA 541-A for the designated river for which the committee was appointed.

IV. A committee member shall have either education or experience in instream flow protection. The members shall be as follows:

(a) Two members, appointed by the senate president.

(b) Two members, appointed by the speaker of the house.

(c) Seven members, appointed by the governor and council, nominated by and representing the following interests: conservation, business interests on the designated river, recreational interests on the designated river, agricultural interests on the designated river, and dam owners on the designated river. There shall be at least one representative of each listed interest group where applicable, provided that no interest group is represented by more than 2 members.

V. An instream flow technical review committee shall make an interim report regarding its progress and findings on or before November 11, 2002 to the senate president, the speaker of the house of representatives, the governor, the commissioner of the department of environmental services, and the state library.

483:8-c Water Management Planning Area Advisory Committees; Establishment; Duty.

I. There are established water management planning area advisory committees to implement the provisions of this chapter for each designated river. Prior to beginning the protected instream flow study for each designated river a water management planning area advisory committee shall be appointed and convened. There shall be 11 members of the committee appointed as described in this section.

II. The committee shall:

(a) Provide information towards the completion of a protected instream flow for the designated river for which the committee was appointed;

(b) Provide information towards the completion of a water management plan for the designated river for which the committee was appointed;

(c) Review and comment on the river management plan for the designated river for which the committee was appointed; and

(d) Assist the department in hearings, negotiations, and public meetings related to establishment of protected instream flows and adoption of water management plans for the designated river for which the committee was appointed.

III. The committee shall serve until the department establishes the water management plan for the designated river for which the committee was appointed.

IV. The members shall be as follows:

(a) Two members of the senate, appointed by the senate president.

(b) Two members of the house of representatives, appointed by the speaker of the house.

(c) Seven members, appointed by the governor and council, nominated by and representing the following interests: conservation, business interests on the designated river, recreational interests on the designated river, agricultural interests on the designated river, and dam owners on the designated river. There shall be at least one representative of each listed interest group, where applicable, provided that no interest group is represented by more than 2 members.

V. A water management planning area advisory committee shall make an interim report regarding its progress and findings on or before November 11, 2002 to the senate president, the speaker of the house of representatives, the governor, the commissioner of the department of environmental services, and the state library.

4 Appropriation. There is hereby appropriated the sum of $450,000 for fiscal year 2003 to the department of environmental services for the pilot program established in this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

5 Effective Date. This act shall take effect July 1, 2002.

LBAO
02-2428
2/5/02

HB 1449-A - FISCAL NOTE

AN ACT relative to the New Hampshire rivers management and protection program and making an appropriation therefor.

FISCAL IMPACT:

The Department of Environmental Services states this bill will increase state expenditures by $310,851 in FY 2003 and FY 2004, and by $89,526 in FY 2005. There will be no fiscal impact on state, county, and local revenue or county and local expenditures.

This bill appropriates $450,000 from the state general fund to the Department of Environmental Services for the fiscal year ending June 30, 2003.

METHODOLOGY:

The Department states this bill establishes a pilot program that requires DES to develop protected instream flows and water management plans for the Lamprey River and the Piscataquog River-South Branch, and makes an appropriation of $450,000 in FY 2003. This bill also establishes an Instream Flow Technical Advisory Committee and a Water Management Planning Area Advisory Committee for each river. The development of protected instream flows and river management programs will require a Protected Instream Flow (PISF) Study as described in rules, and a Water Management Plan (WMP) development, both of which will be conducted by a contractor. A DES Hydrogeologist will coordinate contractor efforts and oversight committees and provide technical support and assessments. Further, the two committees will require administrative support to manage meetings and write the interim reports required by this bill. The Department assumes the pilot program would be completed in three years, but the funding would need to be appropriated before hiring a contractor. Contractor costs for developing PISF studies and WMP's are based on the number of affected water users (AWU) and affected dams (AD), and the length of the designated reach to be protected, as well as some fixed base costs for document preparation, river surveys and meetings. Base costs to conduct a PISF/WMP are $110,000. Additional costs include $3,000 for each designated river mile, $6,750 each AWU, and $3,250 each AD. The Department estimates the costs as follows:

River	Designated Miles	Affected Water Users	Affected Dams

Lamprey	12	4	19

LBAO
01-2428
2/5/02

HB 1449-A - FISCAL NOTE

Piscataquog	10.8	2	16
Total	22.8	6	35

Base Cost @ $110,000 X 2 Rivers	$220,000
Designated Miles X $3,000/mile	68,400
AWU X $6,750/AWU	40,500
AD X $3,250/AD	113,750
Total Contractor Costs	$442,650

DES staff costs are based on a Hydrogeologist position at labor grade 27 with fringe benefits, equipment, travel and supplies. Salary and fringe benefits are estimated at $63,526 annually, and equipment, travel and supplies are estimated at $6,000 annually, for a total cost of $69,526. Committee administrative support staff is estimated at $20,000 annually for a part-time position. The Department states the fiscal impact as follows, assuming contractor costs are apportioned over the first two fiscal years only:

	FY 2003	FY 2004	FY 2005
PISF/WMP Contractor Costs ($442,650/2)	$221,325	$221,325	$ 0
DES Hydrogeologist Costs	69,526	69,526	69,526
Administrative Support Staff	20,000	20,000	20,000
Total	$310,851	$310,851	$89,526

The Department states long-range state and municipal costs associated with implementing the plan once it has been prepared are not included.

4apr02...3236h

HB 1449-A – AS AMENDED BY THE HOUSE

2002 SESSION

02-2428
06/10

HOUSE BILL ***1449-A***

AN ACT establishing a pilot program to study and establish protected instream flows and water management plans on the Lamprey River and the Souhegan River.

SPONSORS: Rep. Calawa, Hills 17; Rep. R. Cooney, Rock 26; Rep. Whalley, Merr 5; Sen. Francoeur, Dist 14; Sen. Johnson, Dist 3; Sen. D'Allesandro, Dist 20

COMMITTEE: Resources, Recreation and Development

AMENDED ANALYSIS

This bill establishes a pilot program in the department of environmental services to study and establish protected instream flows and water management plans for the Lamprey River and the Souhegan River. The bill also establishes an instream flow technical review committee and a water management planning area advisory committee for each river designated for an instream flow and river management plan under RSA 483.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1449-A – AS AMENDED BY THE HOUSE

4apr02...3236h

02-2428
06/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Two

AN ACT establishing a pilot program to study and establish protected instream flows and water management plans on the Lamprey River and the Souhegan River.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The general court finds that it is in the interests of the state to do a comprehensive study regarding the establishment of protected instream flows and water management plans for 2 designated rivers and their tributary drainage areas. The general court finds that it is in the interests of the state to initially restrict instream flow rules to 2 rivers to ensure that adequate information is available to develop the necessary protected instream flows and water management plans and to ensure effective and fair administration of the first application of instream flow regulation under the provisions of RSA 483.

2 Pilot Program Established; Instream Flow Rules for the Lamprey River and the Souhegan River.

I. There is established a pilot program for the purpose of studying and establishing protected instream flows and water management plans for the Lamprey River and the Souhegan River, and their respective tributary drainage areas.

II. The commissioner of the department of environmental services shall adopt instream flow rules pursuant to RSA 541-A and RSA 483:9-c relative to the Lamprey River, as designated in RSA 483:15, I, and the Souhegan River, as designated in RSA 483:15, XIII. For each of the designated rivers, the instream flow rules shall require that a protected instream flow study be conducted prior to the commissioner of the department of environmental services adopting a protected instream flow level and a water management plan.

III. The commissioner of the department of environmental services shall initiate and adopt rules pursuant to RSA 541-A for other rivers designated under RSA 483:15 only after the adoption and implementation of the rules relative to protected instream flows pursuant to RSA 483:9-c for the Lamprey and Souhegan rivers and completion of the report required under section 3, III(b) of this act, but not before October 1, 2006.

3 Instream Flow Technical Review Committees; Establishment; Duties.

I.(a) There are established instream flow technical review committees to assist in implementing the provisions of the pilot program for the Lamprey River and the Souhegan River. Prior to beginning a protected instream flow study for each river, an instream flow technical review committee for each river shall be appointed and convened. There shall be 14 members of each committee appointed as described by this paragraph.

(b) The duty of each committee shall be to advise the department on the preparation and conduct of the protected instream flow study. The committees may seek input from appropriate state and federal agencies and other interested parties as necessary.

(c) A committee member shall have either education or experience in water resources management or protection. The members shall be appointed by the commissioner of the department of environmental services in consultation with the rivers management advisory committee, as follows:

(1) One representative from New Hampshire fish and game department;

(2) One representative of the United States Environmental Protection Agency;

(3) One representative of the United States Fish and Wildlife Service;

(4) One representative of the United States Geological Survey;

(5) Four technical representatives of business interests, one of whom shall be a municipal water supplier;

(6) Four technical representatives of conservation interests; and

(7) Two ex officio representatives of the New Hampshire general court; the chairperson of the senate environment committee, or designee, and the chairperson of the house resources, recreation and development committee, or designee.

(d) The members of each committee shall elect a chairperson and vice-chairperson from among the members. The first meeting of each committee shall be called by the commissioner of the department of environmental services. Legislative members of each committee shall receive mileage at the legislative rate when attending to the duties of the committee.

(e) The instream flow technical review committees shall make annual reports regarding their progress and findings on or before November 1 of each year of their existence to the senate president, the speaker of the house of representatives, the governor, the commissioner of the department of environmental services, and the state library.

II.(a) There are established water management planning area (WMPA) advisory committees to assist in implementing the provisions of the pilot program for the Lamprey River and the Souhegan River. Prior to beginning a protected instream flow study for each river, a water management planning area advisory committee for each river shall be appointed and convened. There shall be up to 20 members of each committee appointed as described in this paragraph.

(b) The committee shall, with respect to the river for which the committee was appointed:

(1) Provide information toward the development of the water management plan and the implementation of the protected instream flow;

(2) Review and comment on the water management plan; and

(3) Assist the department in hearings, negotiations, and public meetings related to the protected instream flow and the water management plan.

(c) The members shall be appointed by the commissioner of the department of environmental services in consultation with the rivers management advisory committee, as follows:

(1) Two local rivers management advisory committee representatives;

(2) Four affected business water users in the WMPA;

(3) One conservation commission member from a town or city in the WMPA;

(4) Up to 3 government official representatives from a town or city in the WMPA;

(5) One representative of recreational interests in the WMPA;

(6) One community citizen representative from a town or city in the WMPA;

(7) One representative of conservation interests in the WMPA;

(8) One representative of business in a town or city in the WMPA;

(9) One state senator in a town or city in the WMPA;

(10) One state representative in a town or city in the WMPA;

(11) One representative of a lake association in the WMPA, if any;

(12) One public water supplier in the WMPA, if any;

(13) One affected dam owner in the WMPA, if any; and

(14) One affected agricultural water user in the WMPA, if any.

(d) The members of each committee shall elect a chairperson and vice-chairperson from among the members. The first meeting of each committee shall be called by the commissioner of the department of environmental services. Legislative members of each committee shall receive mileage at the legislative rate when attending to the duties of the committees.

(e) Each water management planning area advisory committee shall make an interim report regarding their progress and findings on or before November 1 of each year of their existence to the senate president, the speaker of the house of representatives, the governor, the commissioner of the department of environmental services, and the state library.

III. The commissioner of the department of environmental services shall by November 1, 2005:

(a) By October 1, 2005, conduct protected instream flow studies and adopt protected instream flows and water management plans relative to the Lamprey River and the Souhegan River; and

(b) One year after the adoption and implementation of the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River, the department shall hold a public hearing and open a 30-day public comment period. The department shall consider the public comments received in any revisions to the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River.

(c) By December 1, 2006, submit a report that details the activities and results of the pilot program, including the impacts of the protected instream flows and water management plans on water users, wildlife, recreation, and other interests along the rivers and any recommendations

for proposed legislation. The report shall also include a summary of public comments received and the completed instream flow studies and the adopted protected instream flow levels and water management plans and shall be submitted to the senate president, the speaker of the house of representatives, the governor, and the state library.

4 Position Established. There is established in the department one hydrogeologist III position, to be known as the instream flow protection coordinator, who shall be a classified employee at labor grade 27, qualified by reason of education and experience, and who shall administer the pilot program. The instream flow protection coordinator shall serve as secretary and staff to the instream flow technical review committees and the water management planning area advisory committees.

5 Applicability of New Position; Funding. The position of instream flow protection coordinator established in section 4 of this act shall not be filled unless sufficient moneys are received from grants, gifts, or donations, from any non-general fund public or private sources, to cover the full cost of filling the position. Any sums designated to cover the full cost of filling the position are hereby appropriated.

6 Committee to Study the Impact of Water Withdrawals on Instream Flows; Report Date Extended. Amend 2000, 242:5 as amended by 2001, 138:6 to read as follows:

242:5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 1, [~~2002~~] ***2006***.

7 Effective Date. This act shall take effect upon its passage.

LBAO
02-2428
2/5/02

HB 1449-A - FISCAL NOTE

AN ACT relative to the New Hampshire rivers management and protection program and making an appropriation therefor.

FISCAL IMPACT:

The Department of Environmental Services states this bill will increase state expenditures by $310,851 in FY 2003 and FY 2004, and by $89,526 in FY 2005. There will be no fiscal impact on state, county, and local revenue or county and local expenditures.

This bill appropriates $450,000 from the state general fund to the Department of Environmental Services for the fiscal year ending June 30, 2003.

METHODOLOGY:

The Department states this bill establishes a pilot program that requires DES to develop protected instream flows and water management plans for the Lamprey River and the Piscataquog River-South Branch, and makes an appropriation of $450,000 in FY 2003. This bill also establishes an Instream Flow Technical Advisory Committee and a Water Management Planning Area Advisory Committee for each river. The development of protected instream flows and river management programs will require a Protected Instream Flow (PISF) Study as described in rules, and a Water Management Plan (WMP) development, both of which will be conducted by a contractor. A DES Hydrogeologist will coordinate contractor efforts and oversight committees and provide technical support and assessments. Further, the two committees will require administrative support to manage meetings and write the interim reports required by this bill. The Department assumes the pilot program would be completed in three years, but the funding would need to be appropriated before hiring a contractor. Contractor costs for developing PISF studies and WMP's are based on the number of affected water users (AWU) and affected dams (AD), and the length of the designated reach to be protected, as well as some fixed base costs for document preparation, river surveys and meetings. Base costs to conduct a PISF/WMP are $110,000. Additional costs include $3,000 for each designated river mile, $6,750 each AWU, and $3,250 each AD. The Department estimates the costs as follows:

River	Designated Miles	Affected Water Users	Affected Dams

Lamprey	12	4	19

LBAO
01-2428
2/5/02

HB 1449-A - FISCAL NOTE

Piscataquog	10.8	2	16
Total	22.8	6	35

Base Cost @ $110,000 X 2 Rivers	$220,000
Designated Miles X $3,000/mile	68,400
AWU X $6,750/AWU	40,500
AD X $3,250/AD	113,750
Total Contractor Costs	$442,650

DES staff costs are based on a Hydrogeologist position at labor grade 27 with fringe benefits, equipment, travel and supplies. Salary and fringe benefits are estimated at $63,526 annually, and equipment, travel and supplies are estimated at $6,000 annually, for a total cost of $69,526. Committee administrative support staff is estimated at $20,000 annually for a part-time position. The Department states the fiscal impact as follows, assuming contractor costs are apportioned over the first two fiscal years only:

	FY 2003	FY 2004	FY 2005
PISF/WMP Contractor Costs ($442,650/2)	$221,325	$221,325	$ 0
DES Hydrogeologist Costs	69,526	69,526	69,526
Administrative Support Staff	20,000	20,000	20,000
Total	$310,851	$310,851	$89,526

The Department states long-range state and municipal costs associated with implementing the plan once it has been prepared are not included.

Amendments

Rep. R. Cooney, Rock. 26
April 2, 2002
2002-3206h
06/09

Floor Amendment to HB 1449-A

Amend the title of the bill by replacing it with the following:

AN ACT establishing a pilot program to study instream flow on the Lamprey River and the Souhegan River and establishing instream flow technical review committees and water management planning area advisory committees.

Amend the bill by replacing all after the enacting clause with the following:

1 Findings. The general court finds that it is in the interests of the state to do a comprehensive study regarding the establishment of protected instream flows and water management plans for 2 designated rivers and their tributary drainage areas. The general court finds that it is in the interests of the state to initially restrict instream flow rules to 2 rivers to ensure that adequate funding is available to develop the necessary protected instream flows and water management plans and to ensure that the department of environmental services will devote adequate attention to the effective and fair administration of the first application of instream flow regulation under the provisions of RSA 483.

2 Pilot Program Established; Instream Flow Rules for the Lamprey River and the Souhegan River.

I. There is established a pilot program for the purpose of studying instream flow on the Lamprey River and the Souhegan River, and their respective tributary drainage areas, and to adopt instream flow rules, instream flows, and water management plans for such rivers.

II. The commissioner of the department of environmental services shall adopt instream flow rules pursuant to RSA 483:9-C relative to the Lamprey River, as designated in RSA 483:15, I, and the Souhegan River, as designated in RSA 483:15, XIII. For each of the designated rivers, the instream flow rules shall require that a protected instream flow study be conducted before the commissioner adopts a protected instream flow and a water management plan.

III. The commissioner shall not adopt rules relative to protected instream flows pursuant to RSA ~~483:9-c, or water~~ management plans or rules for any other rivers designated in RSA 483:15 until the expiration of the pilot program.

3 Instream Flow Technical Review and Water Management Planning Area Advisory Committees; Establishment; Duties.

I.(a) There are established instream flow technical review committees to assist in implementing the provisions of the pilot program for the Lamprey River and the Souhegan River.

Prior to beginning a protected instream flow study for each river, an instream flow technical review committee shall be appointed and convened. There shall be at least 7 members of each committee, appointed as described by this paragraph.

(b) The duty of each committee shall be to advise the department on the preparation and conduct of the protected instream flow study for one river and its tributary drainage area. The committee may seek input from appropriate state and federal agencies as necessary.

(c) A committee member shall have either education or experience in instream flow protection.

(d) The members of each committee shall be as follows:

(1) Two members of the senate, appointed by the senate president.

(2) Two members of the house of representatives, appointed by the speaker of the house.

(3) Two representatives of the department of environmental services, appointed by the commissioner.

(4) One representative from the fish and game department, appointed by the executive director.

(e) In addition to the 7 members described in subparagraph (d), the department of environmental services, in consultation with the rivers management advisory committee established under RSA 483:8, shall invite the following to be members of each committee:

(1) One representative of the United States Environmental Protection Agency.

(2) One representative of the United States Fish and Wildlife Service.

(3) One representative of the United States Geologic Survey.

(4) Up to 4 technical representatives selected by business interests.

(5) Up to 4 technical representatives selected by conservation interests.

(f) The members of each committee shall elect a chairperson and vice-chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. Legislative members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

(g) Each instream flow technical review committee shall make annual reports regarding its progress and findings on or before November 1 of each year of its existence to the senate president, the speaker of the house of representatives, the governor, the commissioner of the department of environmental services, and the state library.

II.(a) There are established water management planning area advisory committees to assist in implementing the provisions of the pilot program for the Lamprey River and the Souhegan River. Prior to beginning a protected instream flow study for each river, a water management planning area advisory committee shall be appointed and convened.

(b) The committee shall, with respect to the river for which the committee was

appointed:

(1) Provide information towards the development and completion of the protected instream flow and the water management plan;

(2) Review and comment on the water management plan; and

(3) Assist the department in hearings, negotiations, and public meetings related to the adoption of the protected instream flow and the water management plan.

(c) The appointed members shall be as follows:

(1) Two members of the senate, appointed by the senate president.

(2) Two members of the house of representatives, appointed by the speaker of the house.

(d) In addition to the appointed members in subparagraph (c), the department of environmental services, in consultation with the rivers management advisory committee established under RSA 483:8 shall invite the following to be members of each committee:

(1) Two local river management advisory committee members invited from those appointed under RSA 483:8-a.

(2) Four representatives of affected water users in the water management planning area.

(3) One conservation commission member from a town or city in the water management planning area.

(4) One government official representative from a town or city in the water management planning area.

(5) One representative of recreational interests in the water management planning area.

(6) One community citizen representative from a town or city in the water management planning area.

(7) One representative of conservation interests in the water management planning area.

(8) One representative of business in a town or city in the water management planning area.

(9) One representative of a lake association in the water management planning area.

(10) One public water supplier in the water management planning area, if any.

(11) One affected dam owner in the water management planning area.

(12) One agricultural affected water user in the water management planning area, if any.

(e) The members of the committee shall elect a chairperson and vice-chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. Legislative members of the committee shall receive mileage at the legislative rate when

attending to the duties of the committee.

(f) A water management planning area advisory committee shall make an interim report regarding its progress and findings on or before November 1 of each year of its existence to the senate president, the speaker of the house of representatives, the governor, the commissioner of the department of environmental services, and the state library.

4 Duties of the Commissioner; Protected Instream Flows; Lamprey River and Souhegan River. The commissioner of the department of environmental services shall by November 1, 2005:

I. Conduct protected instream flow studies and adopt protected instream flows and water management plans relative to the Lamprey River and the Souhegan River; and

II. Submit a report that details the activities and results of the pilot program to date, including any recommendations for proposed legislation, to the senate president, the speaker of the house of representatives, the governor, and the state library. The report shall include the completed instream flow studies and the adopted protected instream flows and water management plans for review by the legislature. No protected instream flows or water management plans shall take effect until the expiration of the pilot program. DATE or earlier as set by legislature

5 Position Established. There is established in the department an instream flow protection coordinator, who shall be a classified employee qualified by reason of education and experience, and who shall administer the pilot program. The instream flow protection coordinator shall serve as secretary and staff to the instream flow technical review committees and the water management planning area advisory committees.

6 Committee to Study the Impact of Water Withdrawals on Instream Flows; Report Date Extended. Amend 2000, 242:5 as amended by 2001, 138:6 to read as follows:

242:5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 1, [~~2002~~] ***2004***.

7 Repeal. Sections 1-4 of this act, relative to a pilot program for instream flow studies on the Lamprey River and the Souhegan River, is repealed.

8 Effective Date.

I. Section 7 of this act shall take effect July 1, 2006.

II. The remainder of this act shall take effect upon its passage.

2002-3206h

AMENDED ANALYSIS

This bill establishes a pilot program in the department of environmental services to study instream flows for the Lamprey River and the Souhegan River. The bill also establishes an instream flow technical review committee and a water management planning area advisory committee for each river designated for an instream flow and river management plan under RSA 483.

Environment
April 17, 2002
2002-3575s
06/09

Amendment to HB 1449-A

Amend the bill by replacing sections 2 and 3 with the following:

2 Pilot Program Established; Instream Flow Rules for the Lamprey River and the Souhegan River.

I. There is established a pilot program for the purpose of studying and establishing protected instream flows and water management plans for the Lamprey River and the Souhegan River, and their respective tributary drainage areas.

II. The commissioner of the department of environmental services shall adopt instream flow rules pursuant to RSA 541-A and RSA 483:9-c relative to the Lamprey River, as designated in RSA 483:15, I, and the Souhegan River, as designated in RSA 483:15, XIII. For each of the designated rivers, the instream flow rules shall require that a protected instream flow study be conducted prior to the commissioner of the department of environmental services adopting a protected instream flow level and a water management plan.

III. The commissioner of the department of environmental services shall initiate and adopt rules pursuant to RSA 541-A for other rivers designated under RSA 483:15 only after the adoption and implementation of the rules relative to protected instream flows pursuant to RSA 483:9-c for the Lamprey and Souhegan rivers and completion of the report required under section 3, III(d) of this act, but not before December 1, 2006.

3 Instream Flow Technical Review Committees; Establishment; Duties.

I.(a) There are established instream flow technical review committees to assist in implementing the provisions of the pilot program for the Lamprey River and the Souhegan River. Prior to beginning a protected instream flow study for each river, an instream flow technical review committee for each river shall be appointed and convened. There shall be 14 members of each committee appointed as described by this paragraph.

(b) The duty of each committee shall be to advise the department on the preparation and conduct of the protected instream flow study. The committees may seek input from appropriate state and federal agencies and other interested parties as necessary.

(c) A committee member shall have either education or experience in water resources management or protection. The members shall be appointed by the commissioner of the department of environmental services in consultation with the rivers management advisory committee, as follows:

(1) One representative from New Hampshire fish and game department;

(2) One representative of the United States Environmental Protection Agency;

(3) One representative of the United States Fish and Wildlife Service;

(4) One representative of the United States Geological Survey;

(5) Four technical representatives of business interests, one of whom shall be a municipal water supplier;

(6) Four technical representatives of conservation interests; and

(7) Two ex officio representatives of the New Hampshire general court; the chairperson of the senate environment committee, or designee, and the chairperson of the house resources, recreation and development committee, or designee.

(d) The members of each committee shall elect a chairperson and vice-chairperson from among the members. The first meeting of each committee shall be called by the commissioner of the department of environmental services. Legislative members of each committee shall receive mileage at the legislative rate when attending to the duties of the committee.

(e) The instream flow technical review committees shall make annual reports regarding their progress and findings on or before November 1 of each year of their existence to the senate president, the speaker of the house of representatives, the governor, the commissioner of the department of environmental services, and the state library.

II.(a) There are established water management planning area (WMPA) advisory committees to assist in implementing the provisions of the pilot program for the Lamprey River and the Souhegan River. Prior to beginning a protected instream flow study for each river, a water management planning area advisory committee for each river shall be appointed and convened. There shall be up to 20 members of each committee appointed as described in this paragraph.

(b) The committee shall, with respect to the river for which the committee was appointed:

(1) Provide information toward the development of the water management plan and the implementation of the protected instream flow;

(2) Review and comment on the water management plan; and

(3) Assist the department in hearings, negotiations, and public meetings related to the protected instream flow and the water management plan.

(c) The members shall be nominated by the commissioner of the department of environmental services in consultation with the rivers management advisory committee and shall be appointed by the governor and approved by the executive council, as follows:

(1) Two local rivers management advisory committee representatives;

(2) Four affected business water users in the WMPA;

(3) One conservation commission member from a town or city in the WMPA;

(4) Up to 3 government official representatives from a town or city in the WMPA;

(5) One representative of recreational interests in the WMPA;

(6) One community citizen representative from a town or city in the WMPA;

(7) One representative of conservation interests in the WMPA;

(8) One representative of business in a town or city in the WMPA;

(9) One state senator in a town or city in the WMPA;

(10) One state representative in a town or city in the WMPA;

(11) One representative of a lake association in the WMPA, if any;

(12) One public water supplier in the WMPA, if any;

(13) One affected dam owner in the WMPA, if any; and

(14) One affected agricultural water user in the WMPA, if any.

(d) The members of each committee shall elect a chairperson and vice-chairperson from among the members. The first meeting of each committee shall be called by the commissioner of the department of environmental services. Legislative members of each committee shall receive mileage at the legislative rate when attending to the duties of the committees.

(e) Each water management planning area advisory committee shall make an interim report regarding their progress and findings on or before November 1 of each year of their existence to the senate president, the speaker of the house of representatives, the governor, the commissioner of the department of environmental services, and the state library.

III. The commissioner of the department of environmental services shall:

(a) By April 1, 2005, conduct protected instream flow studies and submit a report that details the results of science for the pilot program, including the projected impacts of the protected instream flows and water management plans to be implemented on water users, wildlife, recreation, and other interests along the rivers and any recommendations for proposed legislation. The department shall hold a public hearing jointly with the senate environment committee and the house resources, recreation and development committee within 60 days and be open for a public comment period of an addition 30 days. The department shall consider the public comments received in any revisions to the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River.

(b) By October 1, 2005, adopt and implement the protected instream flows and water management plans relative to the Lamprey River and the Souhegan River.

(c) One year after the adoption and implementation of the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River, the department shall hold a public hearing and open a 30-day public comment period. The department shall consider the public comments received in any revisions to the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River.

(d) By December 1, 2006, submit a report that details the activities and results of the pilot program, including the impacts of the protected instream flows and water management plans on water users, wildlife, recreation, and other interests along the rivers and any recommendations

for proposed legislation. The report shall also include a summary of public comments received and the completed instream flow studies and the adopted protected instream flow levels and water management plans and shall be submitted to the senate president, the speaker of the house of representatives, the governor, and the state library.

Committee Minutes

Date: April 17, 2002
Time: 8:41 a.m.
Room: Room 104, LOB

The Senate Committee on Environment held a hearing on the following:

HB 1449-A (New Title) establishing a pilot program to study and establish protected instream flows and water management plans on the Lamprey River and the Souhegan River.

Members of Committee present: Senator Johnson
Senator Below

The Chair, Senator Johnson, opened the hearing on HB 1449-A.

Senator Carl R. Johnson, D. 3: Before I call for testimony, I just want to mention that I did receive a couple of letters yesterday. They are both dated April 15th. One is supporting the bill as it came over from the House from the Appalachian Mountain Club, Audubon Society of New Hampshire, Business & Industry Association of New Hampshire, Connecticut River Joint Commission, Connecticut River Watershed Council, New Hampshire Farm Bureau Federation, New Hampshire Municipal Association, New Hampshire Rivers Council, New Hampshire Timberland Owners Association, New Hampshire Water Works Association, New Hampshire Wildlife Federation, Ski New Hampshire, and the Society for the Protection of New Hampshire Forests. I also received a separate letter from the BIA also saying that they again support as this came over from the House. With that, I will open the hearing and I will call on the prime sponsor, Representative Leon Calawa. Good morning, Representative Calawa.

Representative Leon Calawa: Good morning. Thank you, Mr. Chairman. For the record, my name is Leon Calawa. I represent Litchfield, Hillsborough District #17.

Why I filed this bill was, when this first come out a year and half ago, probably eighteen months, twenty-four months ago, that there was concern as to what was going to happen to some of my constituents, which are the farmers down in Litchfield who do crop farming, probably the biggest area in the State. It does crop farming and there was no reason that they shouldn't be pumping water out of the river as they have been ever since the irrigation pumps were there and they were able to irrigate their crops and have a living and produce crops that a lot of the State of New Hampshire enjoys.

The original bill that I had, if you would read it, practically does nothing but ask for review by the legislature as everything is done on these two rivers. The study is done on these two

rivers and it comes back to the legislature for a review and I will tell you why the review, I believe, is necessary, and the people who co-sponsored at the time, thought it was necessary. I don't know their feelings today.

New Hampshire has six state facilities and 107 impoundments that are greater than ten acres and are operated by the State. There are forty-five municipal or county public water supplies that are affected on the river segments. These are on the seven rivers. How many are on the two that are in trial period, I am not sure, but I know there are some. If we are doing this, how about 28-A, which is that we can't put any burden, financial burden, on the counties and towns? Is the State going to pick up the burden?

There is a lot more that needs to be done with this bill, no matter how it goes. With the amendments that are floating around, I think that it needs a review of the legislature before it goes anywhere. How about the riparian rights of the owners that are adjacent to this water? I think they come into play. Who pays for it if they are harmed? Who pays for their harm? Who pays for the digging of the wells to find out if your well is actually flowing into the river or drawing out of the river? Right now, the State is saying that you have to go back 500 feet from those rivers and they have the control of the water. If there is any thought that you might be drawing directly from the river or your water is flowing towards the river, you are going to have to do some testing. Who pays for the testing?

It seems to me that it is unnecessary to take 500 feet from anybody's land from the high water mark on your river or stream, brooks, swamps. This is a land taking in no uncertain terms. Do we want to do that without having a legislative review? I'm not saying we don't do any of these things, but we need a legislative review so as to be sure that we are on the right track and everybody is going in the same direction and not hurting the people in New Hampshire, the businesses, the water companies, and everyone else.

Right in the rules that were passed out, there are three sets of rules that have come down in the last eighteen months. The rules aren't established yet; they are going to be floating around. How do we know what is coming down the road if we pass some of the amendments that are coming along? Who is it going to hurt then?

Right in the rules, 1902.03, 500 feet of a designated river or within 500 feet of the river or stream and its tributaries drainage area. Think of the amount of land that is being taken by just the plain rule. Probably a quarter of the land in the State of New Hampshire, maybe a third, because every wetland that drains in has a drainage area and they flow into the rivers or streams or somewhere get to the rivers. I don't think we want to do that without having legislative review.

I would be glad to answer any questions.

Senator Carl R. Johnson, D. 3: Representative Calawa, so you are saying there should be legislative oversight before the rules are established for the two rivers in the pilot program?

Representative Calawa: No, I say after they have gone with the pilot program and come back with the science as to what they are going to do and how it affects the State of New Hampshire and affects the people on those rivers. What is the financial impact and what has to be done? I think there should be legislative review before these rules are permanent rules that go into effect. If they have to pass some rules, and I don't like to see rules because we don't have any say in them, but if they have to do something to find out how the pilot program works on those two rivers, that is fine. But, it should come back to the legislature to

find out what the fiscal impact, what is the impact on the State and the people that are on those rivers that are using that water.

Senator Carl R. Johnson, D. 3: Thank you. Senator Below, questions?

Senator Clifton Below, D. 5: No, thank you.

Senator Carl R. Johnson, D. 3: Thank you, Representative Calawa. I will call on Representative Cooney. Good morning, Representative Cooney.

Representative Richard Cooney: Good morning, Senator Johnson and members of the Committee. For the record, my name is Richard Cooney and I represent Rockingham District #26, the Town of Salem.

This bill was originated in the study committee which I had the privilege to chair, formed by SB 330 in the year 2000, as you well know, Senator Johnson, since you are a member of that study committee.

These instream flow rules are an extremely important initiative because they will say who can take water out our rivers, how much water they can take, and when they can take it. Obviously important to a whole bunch of people, including our environment. The Department has worked very hard on the draft rules, which I have twenty-seven pages to the draft rules in front of me. The latest revision is January 8, 2002. It has gone through several revisions. But, it is important to remember, these rules, these twenty-seven pages, all they do is give a means to determine when a river is stressed enough to need flow protection. When that happens, these rules also will set up a process by which the management plan can be developed for that river. And, it is that management plan that is going to say who can take water from the rivers, how much and when. Public water supply, agriculture, business and industry. So, it is really that water management plan that is going to make the important policy decisions in this regard and how we are going to distribute the water among the various interests. Therefore, my view of the water management plan is a policy for the State of New Hampshire for instream flows. We can't develop it. It is going to be complicated. We will need an outline for each river and that is why we have the program that everybody agreed to.

I think we have reached a consensus on almost every issue and the only bone of contention is this legislative oversight which Representative Calawa mentioned that, in my view, I don't think we should delegate the making of these important policies to advisory committees to the Department of Environmental Services. We owe it to the people that elected us to have a good say, an appropriate say, in the setting of those policies. So, the bone of contention before you is the legislative oversight.

I tacked on a floor amendment that I prepared and the intent of that floor amendment is to give this legislative oversight and what it does is, once the water management plan is completed, but before it is implemented, they give the legislature time to review that and take any action it deems appropriate, with any action it wants to take. And then, at the end of the legislative session, the process continues through the end of the pilot program.

The water management plan, if implemented, may impact the water users on the rivers, may cause them to expend money, reduce their business, add an economic penalty, and we should be aware of the magnitude of that before the rules are implemented. If we wait until the end of the pilot program after these people on these two rivers expend that money or suffer that economic penalty, and then at the end we decide to change it in such a way that their

expenditures or economic penalties shouldn't have been made, that will be kind of a messy situation. The realistic thing to do is when that water management plan is completed, and it is going to be a complicated hard thing to do, we should take a look at it and see if it is doing the right thing as far as the policy of the State.

Now, you read off a very impressive list of a whole bunch of what I call special interest people and their lobbyists who really have a common thing where they don't want legislative oversight for some reason. I think the people of the State of New Hampshire deserve this legislative oversight on this issue, so I would ask that you amend this bill and give it appropriate legislative oversight.

Thank you very much, Mr. Chairman.

Senator Carl R. Johnson, D. 3: Representative Cooney, I guess we all could say we have a special interest. I think that that support with the letters they wrote, there are a lot of people who certainly would be impacted by what happens. And, if I may just read one paragraph here from the Business & Industry Association letter.

They say there are many proponents of this bill. However, there are still opponents that believe that there is a need for greater legislative oversight in the process. That argument is not persuasive because the legislature, at any time, can change the law if they deemed the law that was effectuated by HB 1449 to be inadequate or working improperly.

Would you agree with that?

Representative Cooney: Well, I essentially agree, but it is a question of timing. If this water management plan is completed, say in May, and then it starts to get implemented the next legislative session, it is the following year. By that time, it is already implemented and whatever happens to those water users, it has happened. In retrospect, the legislature can do something, but as you know, it is awful hard to change things once they get implemented.

Senator Carl R. Johnson, D. 3: Thank you. Further questions? Senator Below?

Senator Clifton Below, D. 5: Thank you, Mr. Chairman. When is the expiration of the pilot program on your floor amendment?

Representative Cooney: I think it is, it says Section 7 shall take effect July 1, 2006. That is the pilot program and just proceeds on a normal basis after that.

Senator Clifton Below, D. 5: That is actually an earlier date than the version passed by the House in terms of the date for adoption of rules.

Representative Cooney: When it was passed by the House, wanted to wait until the end of the pilot program before the legislature reviews the results of the pilot program. The intent of my floor amendment was to, as of November 1, 2005, the report would come to the legislature with the results of the water management plan for action in the session year 2006, if they so decide to do anything. And then, by July of 2006, the legislature has acted and it should proceed on a normal basis.

Senator Clifton Below, D. 5: Further question?

Senator Carl R. Johnson, D. 3: Follow up.

Senator Clifton Below, D. 5: Representative, your floor amendment that is dated April 2nd, was that presented in the House?

Representative Cooney: Pardon?

Senator Clifton Below, D. 5: Was your floor amendment presented in the House?

Representative Cooney: No, it wasn't.

Senator Clifton Below, D. 5: You had it prepared, but you didn't present it?

Representative Cooney: That's right.

Senator Carl R. Johnson, D. 3: Any further questions? Thank you, Representative.

Representative Cooney: It was discussed, though, in a previous amendment. The House didn't like this legislative oversight, for whatever reason, but the issue was discussed.

Senator Clifton Below, D. 5: Thank you.

Senator Carl R. Johnson, D. 3: Thank you, Representative Cooney. Representative Spang? Good morning, Representative.

Representative Judith Spang: Good morning, Mr. Chairman and members of the Committee. I am Representative Judith Spang, representing District #8, Durham. I was one of the people responsible for the amendment that passed in the House.

I think that a lot of the concerns that are being expressed are kind of putting the cart before the horse here. We have been going through sixteen years, by the time the pilot is finished and the next rivers are in line here, it will be sixteen years of work on this project. For the past twelve years, this has been studied and I don't really think that we can say that this is untested and it needs to be subjected to more scrutiny. We need to get out of this study mode and get into this pilot project and then move forward from the pilot project into getting this going. We have had over fifty communities waiting for these rules to get implemented for these twelve years and I think it is time we got off the dime on it.

I think that it is not a matter, and I think the House saw this, it is not just a matter of legislative oversight. I think what the House was referring to when they turned down the amendment that would have given that oversight was the fact that it isn't the legislators that need to have oversight; it is all of the people who are affected. It is the communities; it is the users; it's the affected dam owners who really should have the opportunities for input. In the existing process, under the bill that is before you, there are many opportunities for that to happen. First of all, the rules that are going to be governing the pilot have to go to JLCAR, and that gives us an opportunity to take a look at it. There will be members of the legislature on both of the two advisory committees that are set up. There will be the SB 330 committee, as you know, that will be continuing to have ongoing input into the process as the pilot goes along. There will be hearings at the local level. The users can ask for, can petition, for changes. They can bring forward petitions for waivers, all of which will enable them, DES and the advisory committees, to fine tune things. After the end of the pilot, there is a hearing and there is a comment period where the public can comment, and then there is a one-year waiting period for everybody to have an opportunity to see how this is working and for the legislature to bring in any changes that it sees. And, then it needs to go through JLCAR for the new rules for the rest of the rivers.

So, there is plenty of opportunity for both the public, the users, and the legislature to get involved in shaping this program. Also, the DES will be preparing an economic analysis. So, I would argue that there is plenty of opportunity for legislative oversight.

The negative aspects of this having to go through the legislature before it can be implemented on the two pilot rivers is that we are very concerned that, in the water management planning negotiations, it will be impossible to negotiate in good faith with the users on possible limitations to their water use, if they know that in the end they are going to be able to come to the legislature and get those overthrown.

So, for it to be a genuine test of the pilot, we need to be playing for real here.

I think that is probably the meat of what I wanted to say today. Are there any questions?

Senator Carl R. Johnson, D. 3: Thank you, Representative Spang. Senator Below?

Senator Clifton Below, D. 5: Sure. To understand, you are saying that the alternative amendment that is offered is requiring the rules come back to the legislature before they get adopted somehow? Or some proposals?

Representative Spang: The bill that is, was passed by the House, only applied to the pilot, set up a pilot program. So, we would then have to develop new rules to apply to the rest of the rivers. So, that whole process would have to involve coming forward with the new rules and it would have to go through JLCAR. I would think it would have to go through substantial review with hearings that DES would be having as part of the JLCAR process and, of course, they would be going through the SB 330 committee as well.

Senator Carl R. Johnson, D. 3: Thank you, Representative. I will call on Paul Currier from the Department of Environmental Services. Good morning, Paul.

Paul Currier: Good morning. For the record, I am Paul Currier, representing the Department of Environmental Services. Thank you for the opportunity to testify, Mr. Chairman.

The Department supports HB 1449 as passed by the House and we recognize and appreciate the efforts of many in reaching the compromised language. And, as Representative Spang said, we have been working on this long and hard for a long time. We believe that the language in HB 1449, in combination with the draft rules, the January 8th version of the draft rules that we proposed after substantial public input, will accomplish an effective pilot program and give opportunity for legislative oversight, which we welcome and acknowledge to be essential.

I think the issues have been laid out before you by previous testimony. I would like to add that there is a provision in the rules for the implementation schedule for any water management plan provisions that might apply to individual water users or dam owners and require action. The intent of that implementation schedule is precisely to mitigate financial impacts once they are known and provide a reasonable process for implementation. That schedule will provide adequate time and adequate opportunity for the reports that are provided for in the legislation and legislative opportunity to review those effects.

I would be glad to answer any questions.

Senator Carl R. Johnson, D. 3: Are there any other situations where DES has to come back to the legislative branch before adopting further rules?

Mr. Currier: Not that I am aware of.

Senator Carl R. Johnson, D. 3: Thank you. Senator Below? Thank you very much. I will call on Gary Abbott.

Senator Gary R. Francoeur, D. 14: Senator Johnson, can I go before Gary Abbott?

Senator Carl R. Johnson, D. 3: Yes, you certainly can, Senator.

Senator Gary R. Francoeur, D. 14: Good morning, Mr. Chairman. For the record, my name is Senator Gary Francoeur and I represent District #14.

I think we have all been involved in this for quite some time. I know, since this summer with the study committee and stuff that we had worked on, there has been a lot of input and concern about the inflow streams before us today. It has had a long road. I know I worked quite a bit this summer with the study committee and Representative Calawa on some of the wording. I felt that the study committee had done a great job and the bill that I co-sponsored and everybody else on, 1449, the original form with Representative Calawa is the best for the State of New Hampshire.

I recognize that sometimes there has to be some give and take and I firmly believe that it is the legislature that should set the policy and not the departments in the State of New Hampshire. I feel that there has probably been given more away and caused more harm in the compromise that has come out of the House than good. But, I recognize also that we have to address everybody's concerns enough to get what we need to have passed and what would be the best for the State.

As I reviewed the bill, 1449, as amended, I see that the Department picks all the people that are on the committee and that greatly concerns me. I think it is important that the legislature, or at least the executive branch, should be the one that is appointing the individuals, with the approval by the Council, which should be at least the minimal of any changes that are in this piece of legislation.

Also, when you are going to path all the rivers in the State of New Hampshire eventually, maybe not initially, but without any input from the legislature, I think that is a dangerous precedent to set.

After I speak, Gary Abbott can explain some of the other details, I think, of how we can at least have some legislative input into this, I guess, by timing it. I think the amendment that I proposed here today, I think, will be best for everybody. He will work on the sections, he will speak to the sections about the dates and stuff. In the amendment that I handed you, I said amend Section 3, which was how the appointments are done, which I have already spoken about. They should be done by the Governor and Executive Council. The rest I will let him speak to which he can tell you how we could have certain dates and by doing it with these dates, that will the chance, if there is any problems with any of the proposed rules, that the dates would allow the legislature to have time to act. So, it doesn't give us total hands on, but it does at least make us fully aware of what is going forth and how it is going to be implemented. That way there, hopefully we won't have, that may help with the calls that we get...(tape turned, some testimony lost) ...and that would address that area.

I would be glad to take any questions. I will leave the date questions and changes to Gary Abbott.

Please see "Amendment to HB 1449" attached hereto and referred to as Attachment #1.

Senator Carl R. Johnson, D. 3: Senator Below?

Senator Gary R. Francoeur, D. 14: I would be glad to help out if there is any way I can.

Senator Carl R. Johnson, D. 3: Thank you. Gary Abbott?

Gary Abbott: Thank you very much. For the record, my name is Gary Abbott and I am the Executive Vice President of the Associated General Contractors of New Hampshire. We will be affected by the instream flow studies and future impacts on the rivers, as representing sand and gravel operators and asphalt and concrete plants that we draw our water up to 500 feet from the rivers.

Let me just run through the sequencing. First of all, if you go to the original bill, page 3, line 25, I read this section over and over. Keep in mind that this was an amendment on the floor of the House and I was not involved in this amendment. But, as you can see by the Roman III, it says that the commissioner shall, by November 1, 2005; then it starts out with (a) by October 1st it does things; then there is the one year and I don't know when the one year started from. I started to get confused as to the sequencing of the report. Section (c) says by December 1, 2006. So, I was confused by this section. I recognize that the creators of this were looking for the public hearing for the comment period. What I did, if you look at the amendment that Senator Francoeur proposed, I looked at the sequencing and what I basically did was it said by October 1, 2005 under (a) submit a report, that details the results of science for the pilot program, including the projected impact. So, up until this point, you are doing the science, as I have heard throughout this process; you are asking to do the management plans, get the businesses that are affected to figure out appropriate management plans.

What this would do by October 1st is that it would say that the Department does a report and hold the public hearing, and I think this was part of the concept that was in the other, except what it did was ask for that Department to hold a public hearing jointly with the Senate Environment Committee and the House Resources and Recreation Committee and hold that within ninety days from the October 1st. That would give opportunity, both for the Department, the environmental groups, and the business community, if there were concerns, to hear the public input up to that stage. That would be the first stage of the study and the Department to consider that input before implementing the plan.

Section (b) then takes into the concept that was in the House floor amendment that, I had trouble, I didn't know to put by or on, but on May 1st, adopt and implement into those businesses the management plan. What happens is, you have done the study, you have done the science, and you have developed the management plan. Then you implement it for one year to see how that test goes.

Section (c) and I recognize that I only gave thirty days after that one year, for DES to do the final report. And, what that does, it doesn't give legislative oversight, it follows the same, but it allows the legislature to be actively involved in the public hearing and hearing the public comments in case, in either under (a) or (c), to do legislative or whatever is appropriate.

At this moment, we do not know what the science will produce, what the requirements will be and even, I believe very strongly, that we will need probably some legislation for the Department, something that will be found out through the process of the study, but it doesn't say it has to be. If everything is running fine, these steps would just take place, the public hearing would take place, and the implementation would take place.

Now, a little bit confusing, if you go up to Section 2 at the top, Amend section 2, Roman III. All that is changed there is the last line. It is saying that the final ending date coincides with the final ending date in this section 3, that it applies to Roman III (c) that it would end June 1, 2007.

Now, the sequencing I recognize, that it added six months onto what the House amendment, but I think it coincides with the legislature, as a possibility for the legislature to be actively involved in this.

Also, amendment six should be on the backside. Again, this is just changing the date to the same ending date that is in the House bill.

I believe that this clarifies because, if you read that section in the House amended on the floor bill, it is confusing over how the sequencing of one, when the science gets done, where the public input happens. Right now, under that bill, it is after it has already been implemented on you before business and representing businesses. This would allow that input prior to its implementation on whether you are agriculture, or whether you are environmental. It gives equal opportunity to all the groups involved in this process.

So, I think this amendment doesn't go as far as I think Representative Cooney and Representative Calawa were talking about legislative oversight, but it does allow, I think, exactly what the BIA had in its letter that Senator Johnson read off. It allows a clear guideline as to the sequencing of how this study, when this study gets done. It doesn't affect the rulemaking. All of that stays in place as agreed in the compromise in the House amendment on the floor. But, I would take any questions. I believe this clarifies it a lot better and it includes the role of the legislature a little clearer.

Senator Carl R. Johnson, D. 3: Thank you, Gary. Senator Below?

Senator Clifton Below, D. 5: Yes. I am trying to understand your intent. Is it your intent that the rules couldn't be adopted until 2006? I mean, for instance, I mean, in terms of, it would appear that there are deadlines for certain things, but they could happen sooner. I mean, if they complete the inflow studies in 2004, it doesn't appear that there is any limit on being able to go to the next step and such.

Mr. Abbott: I recognize that. That is a problem. But, let me first answer the question about rules. The rules set up the guidelines for the committees and the studies and the procedure in developing the science. So, as the bill, the original bill, which is not affected by the proposed amendment by Senator Francoeur, is that it does not stop that. They don't proceed with the rules through the rulemaking process in order to have the management plan, everything developed sequencing and it really doesn't stop that rulemaking and I think that is really under that amended section 2. It did not change anything regarding shall initiate and adopt rules under 541A, so the Department can continue, but I think what this does is it gives a clear. If you had dates uncertain, then you could be all over the place. At least this sets a very good guideline as to where the Department is trying to meet and where the involvement. So, I think businesses that are along those designated rivers that end up in the

study, they get, clearly, they know when their opportunity is if they have grievances or concerns or questions, the public hearing allows that. I recognize, but I don't think in any way we are stopping rulemaking by the Department under this amendment. It just sets in place that really the stages I think that are outlined in the compromised legislation. It just sets a clearer understanding of just when the input is going to be taken.

Senator Clifton Below, D. 5: Just a further question. You are shifting the date so that the ability to initiate rules on the rivers from October 1, 2006 to June 1, 2007. Presume, even if they were initiated, we couldn't initiate before October 1, it would mean that the rules would not be in motion for adoption until in 2007 in terms of the rulemaking process, so the legislature would meet in 2007 session, even with the start date set October 1, 2006 before they were done. I presume, I mean, you are trying to line up some dates here, but you are also would be back. I presume, out of the concern that the legislature be able to respond...

Mr. Abbott: The date, I think in the original bill under that section, was the completion date. That is the reason they changed it. I think it was December. Let me just find it here in the bill. I would be happy to work on this if there is a date that affects...

Senator Clifton Below, D. 5: Let me offer an observation. That is the rule on when they can initiate, from the time they initiate to the time they adopt is some number of months, more than two or three months. So, by the time they could adopt under the bill as passed by the House, is some date well into 2007.

Mr. Abbott: I would be glad to look at that further.

Senator Clifton Below, D. 5: As opposed to an end date.

Mr. Abbott: Right. I would be glad to work with the Committee. I don't think is. The intent, I think there are two parts. There are rules for the pilot and then there are triggers when you finish this, it can be on all other designated rivers. The Commissioner could then proceed and that could be separate rules. So, I am trying to make it clear.

Senator Carl R. Johnson, D. 3: Thank you, Gary. I will call on Representative O'Connell.

Representative O'Connell: Thank you, Mr. Chairman and members of the Committee. My name is Representative Tim O'Connell, Hillsborough #13, representing the Town of Milford.

I am sure a lot of people are going to highlight a lot of the specific details of this and some have already done so, so I will try to be brief and just perhaps belabor, I would be coming from, in my enthusiastic support for HB 1449, as amended, before you this morning which, again, represents a broad coalition of stakeholders in this significant issue.

I guess where I am coming from I can tell you, number one, I was the prime sponsor of entering the Souhegan River, or nominating the Souhegan River into the river management program three years ago now at this point. So, therefore, I feel, obviously, that I have some interest since the Souhegan River is one of the rivers that is in the pilot program. I also now try to make a living, anyhow, as a vegetable grower. I sit on the board of the Directors of the New England Vegetable Growers Association and I can assure you instream flow regulations and so forth are a common item under discussion in our group. In addition, my wife, however, is a member of the Board of Selectmen in the Town of Milford and our primary wells are two wells that we primarily rely on for water, are well within 500 feet of the Souhegan River, so perhaps there is another interest.

And, I think I have this interest and certainly in seeing the Souhegan River as part of this pilot program in the sense to end a lot of speculation of perhaps the impact on our local stakeholders. I know, all winter long, I keep going by the Souhegan River and saying to myself, "Gee, I wonder what would be the impact right now on Monadnock Spring Water, on the Town of Milford, on any agricultural uses across that river, the golf courses that are on that river". We have a major fish hatchery in Milford that is a prime water user. And, I keep saying to myself, "Gee, I wonder what would be the impact? With these instream flow regulations be in effect and what impact would that have on our community?"

And so, I don't take any great comfort, I guess, or security in speculating and so I look at this bill as amended as a way to put that speculation aside, to get a scientifically technically based study made up of membership that represents that scientific technical community, and for me, most importantly, and I think here is a real key, is that water management advisory community which you see on page 3 of the bill has been amended as such that it includes broad local representation of the stakeholders and if we run that list down, it involves community people, it involves business people, it involves ag, not that ag is not business, it involves a state Senator that is on the river that is affected, and it involves a state Representative that is on the river that is affected in the pilot study. I think throughout the bill, as Representative Spang has indicated to you, that there is plenty of opportunities for input from the legislature throughout the process. The original technical review committee as well, has representatives from both the Senate and the House.

The morning is getting late. There are many people I'm sure here that want to testify, but I think it is important for me to state again my emphasis on the fact that it has local oversight, which I think is a key component of this legislation that is before you this morning. I will be happy to answer any questions, if I can, but in the brevity of time, I will conclude.

Senator Carl R. Johnson, D. 3: Senator Below?

Senator Clifton Below, D. 5: The, what is the intent with regard to page 3, lines 25 and 26, maybe 27? Clearly there is some group-up there.

Representative O'Connell: OK, as far as some of the timeframes?

Senator Clifton Below, D. 5: Yes. The Commissioner shall by...

Representative O'Connell: I believe lines 25 and 26 is a group-up, as you indicated, because of the haste of trying to get this amendment before the floor of the House two weeks ago.

Senator Clifton Below, D. 5: Should we read it as if we struck that November 1, 2005?

Representative O'Connell: Yes. I defer to Brian Hart, who has really worked on this. But, yes.

Senator Clifton Below, D. 5: You could read it with a colon after shall and then just add probably October, one year, November 1, 2006.

Representative O'Connell: That is my understanding.

Senator Clifton Below, D. 5: So, you are, did you see this other proposed amendment?

Representative O'Connell: From Senator Francoeur?

Senator Clifton Below, D. 5: Senator Francoeur, right.

Representative O'Connell: I have. I really, frankly, haven't digested it that much. I could comment but I wouldn't feel exactly comfortable at this point.

I think it pushes out, it seems to me, as Representative Spang has indicated, on the 2006 date, that would be sixteen years of dealing with this issue. It would seem to me, again, that we have constant ongoing, at least legislative monitoring, if not complete oversight, through the SB 330 committee and the opportunities built within the bill for legislative input. My initial reaction would be, when I start to see extending these implementation dates out, that that is probably not the wisest thing to do at this point. I think it is time to hop on the bandwagon. Indeed, it is a pilot program and there is a year opportunity in the bill as you see amended before you. After the initial plans are drawn up, there is a twelve-month span there where input is solicited and there is certainly opportunity for local, regional, and state input.

Senator Clifton Below, D. 5: Further question?

Senator Carl R. Johnson, D. 3: Follow up.

Senator Clifton Below, D. 5: So, specifically, are you opposed to the idea that the Governor and Council make the appointments compared to the DES?

Representative O'Connell: Personally, yes, I would say that is probably at this point not the wisest way to go.

Senator Clifton Below, D. 5: Why's that?

Representative O'Connell: I believe, because of the magnitude of the issue, perhaps some would not agree. I think there is the possibility there of the loss of local involvement. Again, I think it is very important that the local municipal officials, local conservation interests, local business owners, and other stakeholders, have a very active role in the overall management advisory committee and having input in what affects the river that they are bordering.

Senator Clifton Below, D. 5: Thank you.

Senator Carl R. Johnson, D. 3: I just want to make a comment. I think if you look at what the Governor and Council do get involved in relative to other water issues, you will find that they are involved in a lot of those issues, particularly lakes issues and so forth. So, I don't think that is too big of a stretch to realize that this might be something that within their district they would be concerned about and want to get involved.

Representative O'Connell: No, I can see that.

Senator Carl R. Johnson, D. 3: Thank you.

Representative O'Connell: Thank you very much, Senator.

Senator Carl R. Johnson, D. 3: Now, Brian Hart.

Brian Hart: Thank you, Mr. Chairman. For the record, I am Brian Hart, Policy Specialist of the Society for the Protection of New Hampshire Forests. I have written testimony (**please see letter from Brian Hart, Society for the Protection of New Hampshire Forests addressed to The Honorable Chairman Carl Johnson, dated April 1, 2002, attached hereto and referred to as Attachment #2**). If I may, I will first talk about the bill that is before you and how we got there, real quickly.

HB 1449, when it first came out of the House Resources, Recreation and Development Committee, went to the floor and was defeated on an Ought to Pass motion. Then, Representative Frank Sapareto initiated a motion for reconsideration and the business community approached the conservation community and the legislators who lead the floor effort against the committee report. Over two weeks, we sat down and had hard discussions and negotiations over how to move forward with this program. The result of those discussions and the agreement that you, Senator Johnson, referenced at the beginning in that letter from business organizations, is what you have before you. It is a compromise for everybody. It is maybe not perfect, as most compromises are. For the conservation community, the compromises that are most relevant are the fact that it is only two rivers out of thirteen that will be addressed fifteen years after the program was first put into law, and a significant delay in getting there. Those are the biggest compromises that were made.

The business community made compromises as well. I am sure they will be able to explain those better than I can from their perspective.

This floor amendment then came to the House on April 4th and passed on a two-thirds motion for reconsideration and then passed on the floor by a vote of 212 to 126. So, as you can see, it is a very strongly supported measure before you from the House. The House specifically reacted to concerns about the appointment process for the original make-up of the committees, as well as legislative approval. The two issues that have been brought before you for consideration in the different amendments.

In the current bill, as passed by the House, there are both technical and water management committees for both rivers and the make-up of those are appointed from the specific interest groups identified. I believe that the reason the House decided to go with that process rather than the Governor and Executive process is the concern that Representative O'Connell, I believe, mentioned, that there would be maybe a little bit of undue political influence on the process if all the appointments were made in Concord. And, that is the remaining concern from the conservation committee, especially for the technical committees where science and science advice is supposed to be guiding the process, this is especially important.

I think the four major points about HB 1449 that brought the conservation community to the table is that, one, it provides certainty. We will, by October 1st, move forward on two rivers, October 1, 2005, by doing the appropriate science and then putting forward water management plans for the Lamprey and Souhegan Rivers. And, this is a first step. Then, it requires a one-year test period on its rivers before the Department of Environmental Services can initiate and then adopt any additional rulemaking processes for the remaining rivers.

Finally, it also maintains legislative scrutiny and oversight while not providing approval, and I think this is an important thing to recognize. First, there are two legislators, including the Chairman of the Senate Environment and the Chairman of the House Resources Committee, that will be involved in, I can't remember which committee it is at this point, but I think it is the water management committee, and one member of the House and one member of the Senate on instream flow technical committee.

Further, the SB 330 study committee, which you participated in, will continue through December 1, 2006, maintaining that ability for the legislature to be aware of the process.

And then, finally, after the first year of implementation of the water management plans and the protected instream flow levels on the rivers, Lamprey and Souhegan, there will be a public hearing, a public comment period, and then the issuance of a report on the impact and the success or failure of the pilot program, which will be submitted to the legislature, the Governor, and other respected interests. Again, no rules can be initiated for the remaining rivers until after this report is done, and that date is December 1, 2006.

I think one of the, as you can imagine, trying to pull together this amendment over a two-week period was very time restricted and there were some technical errors that were identified by Gary Abbott on lines 25 and 26 on page 3, and that is specifically that line 25 should not reference a date at all and it should leave the dates in sections (a), (b), and (c) as is. So, it should read the Commissioner of the Department of Environmental Services shall and then leave the dates forward.

The timeframe that we had pulled together was that by October 1st the perfected flow levels and management plans would be adopted for the two rivers in the pilot program. One year after that, in section (b), the Department will hold a public hearing and have a thirty-day public comment period. And then shall consider any such comments and any revisions to the water management plans. And then, finally, by December 1, 2006, which is essentially sixty days after the first year of the program being in place, the Department shall put forward a report on the pilot program, including impacts to users, wildlife and other interests on the river. And, then it will also include a summary of public comments and a completed instream flow study for water management plans.

As Senator Below pointed out, I think it is important to recognize that, even if the Department started initiating on December 1, 2006, the process for the remaining rivers would take six to nine months for those to actually be into place, and that six to nine months happens to be the six months that the legislature is in session, providing plenty of time for you all to intervene should you feel it is necessary to stop the Department from moving forward on the remaining rivers.

I guess I wanted to address some concerns I have with the amendment put forward by Senator Francoeur. I think it is an interesting idea and, from my first review of it, there are some concerns that I have. Moving forward the date, that is an additional six or seven months of time that I am not sure what it gains us by waiting that much longer. I think allowing the nominations to be from the Governor and Executive Council, especially with the technical review committee, is a problem. We need those people to be experts in geology, hydrology, fisheries, wildlife habitat, and other water management issues and making sure that they come from the appropriate agency, as outlined in the bill as is, is the right way to go.

Section 3, Roman III of Section 3, as in the proposed amendment, I am not sure what we are going to gain by requiring a report that details the science and projected impacts with the public hearing. There are public hearings throughout the rulemaking process, as you all know, and there is an appeals process that is in current statute that is required and that DES has to afford in their proposed rules, that allows water users to appeal through a petition process, and if that petition is granted on its basis and its merits, then it stays the implementation of the water management plans until it is settled. We are not going to have

any impact if someone feels that it is an unfair impact, because they will petition it and stop the process. That is another important opportunity for the legislature to then take action.

In section (b) under Roman III, my concern is that it only allows the rules to be in place for one year on the Lamprey and Souhegan Rivers. So, on May 2, 2007, we don't have rules anymore. There is a suggestion that DES go back through that entire process and spend additional hundreds of thousands of dollars to complete this. That is a major concern.

I guess I understand the concerns that have been put forward, but I think it is the consensus of the business community and the conservation community, as represented by the strong support for the current bill, that there is adequate opportunity and adequate timing throughout this process to allow the legislature to step in and intervene should there be actions taken by the Department that would unfairly interpret existing state policy set through RSA 483:9-C.

When the rivers management program was enacted in 1990, it specifically had a statement of policy and a statement of intent that I think outlines what the State's policy is regarding these rivers. With that, I will answer any questions.

Senator Carl R. Johnson, D. 3: Thank you, Brian. Questions?

Senator Clifton Below, D. 5: Sure. Thank you. I think you mentioned that the Department couldn't initiate new rules until after the comment and report that follows the at least one year adoption of moving forward with water management. In fact, that date is October 1, 2006 whereas the comment and report wouldn't be until December 1, 2006, unless they got it done earlier, obviously, but...

Mr. Hart: I believe what happened there was a technical error again by Legislative Services, where that date should be December 1, 2006.

Senator Clifton Below, D. 5: On line 23, page 1 should be December 1, 2006?

Mr. Hart: Yes.

Senator Clifton Below, D. 5: So that it will coincide with completion of the other projects?

Mr. Hart: That was the understanding. We were at Legislative Services at 5:00 p.m. with the sponsors trying to get these changes.
Senator Carl R. Johnson, D. 3: Further questions? Thank you, Brian.

Mr. Hart: If I could also leave some testimony from the Appalachian Mountain Club. They couldn't make it this morning, but asked me to submit this testimony **(please see letter from Bruce Clendenning, Northern Forest Advocate, Appalachian Mountain Club addressed to Honorable Chairman Carl R. Johnson, dated April 17, 2002, attached hereto and referred to as Attachment #3).**

Senator Clifton Below, D. 5: Mr. Chairman, I am supposed to be in Finance this afternoon. No one else has shown up here today. Obviously, you still have some people here. But, I need to check in over there.

Senator Carl R. Johnson, D. 3: After all the testimony, I think perhaps a recess for an hour.

Senator Clifton Below, D. 5: I will call over to Finance. Senator Eaton is probably there now.

Senator Carl R. Johnson, D. 3: Carl Paulsen? Good morning.

Carl Paulsen: Good morning, Senator Johnson. For the record, my name is Carl Paulsen and I am Policy Director with the New Hampshire Rivers Council. I guess I wanted to quickly address a question that Senator Below asked actually, as he is getting ready to leave, on the expiration dates.

One of the, relative to the bill that came out of the House and the amendment that was discussed by Representative Cooney, the key difference between the two is that the amendments that were suggested by Representative Cooney would not have any implementable provisions, including the water management plan, until after the whole pilot project, until after the expiration of that, whereas the proposal that came out of the House would actually implement as of October 1, 2005. So, that is really the difference, so actually implementation could be done more quickly under the House version.

As you may know, the New Hampshire Rivers Council first opposed HB 1449 and we helped defeat the committee recommendation of Ought to Pass when it came to a vote on the floor of the House. Shortly thereafter, as Brian Hart mentioned, we were approached by the business community for a compromise, to which we ultimately agreed. Today, I am pleased to be able to request your support for a conservation bill that has broad support of conservationists, recreationists, and much, if not all, of the business community it would serve to regulate.

NOTE: Mr. Paulsen read from typewritten testimony. **Please see letter from Carl Paulsen, Policy Director, New Hampshire Rivers Council, addressed to Senator Carl Johnson, Chair, dated April 16, 2002, attached hereto and referred to as Attachment #4.**

I might add that the proposal that Representative Cooney recommended does not specifically invoke rulemaking and therefore, it does not contain any of the appeals procedures, hearing procedures, or waivers that exist in the rules of January of 2002, nor does it include a provision that would address 28-A unfunded mandates issue.

I would like to just quickly make a couple of comments on the amendment that was just passed out this morning by Senator Francoeur and Gary Abbott. I can't comment either one way or the other on support or opposition to that and I would certainly want to speak with the other partners in this coalition effort before I did. I would only raise a couple of questions and concerns that I have about portions of the amendment. One is the nomination of committee members by the Governor and Council. My main concern there is that one of the most important aspects of this process under the flow rules is that there is a scientifically based technical committee to help assess what the flow needs of the river are and those needs might vary throughout the year., It is a very involved process that requires technical expertise. I guess at this point at least I am more confident that DES has a better understanding of who those technical experts would be than the Executive Council. So, that is my concern there.

In addition, there are time frames that concern me and it seems like the amendment would be better drafted if it referenced to do by dates as opposed to not to do anything until that date.

I would be happy to talk with other folks to see if there is any agreement on it, but again, I think until we get a chance to get a look at this together, I can't really comment in support or opposition to it.

Senator Carl R. Johnson, D. 3: Thank you, Carl. Robert Beaurivage? Good morning.

Robert Beaurivage: Good morning. For the record, my name is Robert Beaurivage and I am President of the New Hampshire Water Works Association. We were part of the coalition group that sat down with the environmental community and hammered out the compromise amendment that passed through the House. For better or worse, I have also been, over the past twelve years, a good part of that and a member of the River Management Advisory Committee.

Frankly, I think most of us in this room are tired of working on this issue. It has been a long, long time. It seems I spend a good part of my workweek up here talking about this issue. We feel that it is time, as Representative Spang said, to move the issue off the dime and to do something with this. It seems that we are awfully close at this point in time in reaching some sort of consensus between all of the groups.

Senator Francoeur's amendment that was presented this morning, I don't have a great deal of heartburn over it. I think some of the points that have been made are reasonable. I think the issue relative to the Executive Council appointing these folks, as Carl Paulsen just indicated, it is important to have highly qualified technical folks in this committee and, if there is that concern, it might be appropriate to include language that DES would evaluate the qualifications of these people. This is another issue that is of concern.

In terms of the dates, obviously, there are problems with the dates and I would also disagree that we don't want to move the process out any more than we have to. So, between the two amendments, I think we are really close here and I hope that the Senate can see fit to move this issue forward and let's move on with this, do these pilot studies and see and determine what the impacts are going to be to the communities and environment on these rivers. At that point, we can really look at developing some meaningful rules that will apply across the State.

So, with that said, I would be happy to answer any questions.

Senator Carl R. Johnson, D. 3: Thank you, Robert.

Mr. Beaurivage: Thank you.

Senator Carl R. Johnson, D. 3: Mary Brown? Former Senator Brown.

Senator Mary Brown: Good morning, Senator Johnson.

Senator Carl R. Johnson, D. 3: Good morning.

Senator Brown: Nice to see you again. I will be very brief. I am here to represent the New Hampshire Wildlife Federation. We are an organization, statewide organization, with the sporting community, anglers, hunters, trappers and so forth, and are in support of the instream flow rules being implemented. In fact, our organization was a part of the joint resolution, national resolution, for the implementation of the instream flow rules.

We were happy with the compromise that came out of the House. It is unfortunate that, I guess, in drafting, there were some errors, and I don't know if those could be corrected through enrolled bills or if they would require an amendment.

So, I just have this suggestion. If you have to correct the dates through an amendment, and if the appointment of these members by DES is a problem, why not have the members nominated by DES and then reviewed or approved by Governor and Council? That might be a way to please everyone. Other than that, I really hope the Committee won't make any other changes to that which came out of the House. It really was a very good faith effort on the part of all of these folks and it surprises me the folks who had the opportunity to participate in that have brought something in here that we are all looking at at the last minute. I think it was a good compromise and I encourage the Senate to go with that. If you do need to make those changes, I understand. And, that's it. Any questions?

Senator Carl R. Johnson, D. 3: Senator Brown, if you were sitting in your Senate chair, how would you react to the amendment by Senator Francoeur?

Senator Brown: I would put it in the round file. No offense. I don't want to be fresh, you know me, but I am sitting here thinking that it is the elected folks that draft legislation and I would like to see that maintained.

Senator Carl R. Johnson, D. 3: Thank you. We have David Schaarsmith, who was here earlier, in favor of the bill as it came over from the House, did not indicate that he wanted to speak. We have Ted Sutton here from Ski, NH. Would you like to comment, Ted?

Ted Sutton: Please. My name is Ted Sutton. I am represent Loon Mountain as the government liaison person. I have also been a member of the Rivers Management Committee for twelve years and I represent BIA on that Committee. I have also been involved in water issues for all of those twelve years, and even more. I am fully aware of the regulations and the laws and the workings of DES, and the legislature, and I would not be supporting this bill today for Ski, NH, other than the fact that we are fully aware of the options and the compromises that have taken place in this coalition.

I think the most important thing that the Senators and this Committee should be aware of is that this may never have happened. This coalition between business communities and conservation groups is something that I have been working towards for all of these twelve years and I am very excited to see that this is finally happening. This is the only way in which we are going to be able to move into the pilot program, by having this coalition stay together. So, I would not support any other changes to this House Bill 1449. We feel that it is necessary for us to maintain this coalition that has been developed, and you received all those letters today and that would bring us moving forward rather than have something to break this apart at this time, this very late date.

So, we support 1449 and we look forward to moving forward and getting this process going after all of these years of difficulty.

Thank you.

Senator Carl R. Johnson, D. 3: Thank you, Ted. Does anyone wish to speak for a second time? Yes, would you like to speak?

Ralph Pears: I apologize. I got here a few minutes late and was not able to sign up. I will be very brief. Mr. Chairman, my name is Ralph Pears and I represent Monadnock Mountain Spring Water Company in Wilton. They are a bottled water manufacturer.

We are supportive of HB 1449 as it was amended, as it came out of the House. I do think that Senator Francoeur's proposed amendment does have some merit. I do think that some of the dates could conceivably be adjusted. I don't think the intent of the amendment, at least from my perspective, I only saw it today, but I don't believe there is a desire to move back the process, to delay implementation.

In some of the conversations that I had with Representative Spang prior to the House amendment being adopted, my understanding, based on the conversations we had, was that the process as it was being envisioned relative to these pilot programs was that once the pilots were completed, that there would be an opportunity to come back before the legislature for all parties and to testify on the process, how it has worked, any shortcomings that there may have been perceived in that process, or lack of same. Quite frankly, I am hopeful that if that were the case, at the time of those hearings, basically all parties to the instream flow pilot projects would be able to come forward and say yes, indeed, the project worked appropriately, it was fair, even-handed, the science was accurate and was pertinent, and that there would be consensus on moving forward with them. I was never at any point supportive of a graduated approval process whereby each and every designated river would have to come back before the legislature for approval insofar as the rules are concerned. I felt that there should be one final review by the legislature prior to formal implementation of the instream flow rules for all of the remaining rivers in the State and I think that is basically what the amendment adopted by the House was intended to do.

I think that DES has been under intense pressure during the course of the past few years, from both the business community and the conservation community and I think, quite frankly, that DES would welcome the opportunity to have the Governor and Council make the actual appointments to these committees. The suggestion that Mr. Beaurivage made regarding DES reviewing the qualifications of candidates for those committees I think is an excellent one. I would point out that I think that having DES simply make the nominations with approval by Governor and Council is tantamount to have the DES simply make those appointments themselves. I think that having the Governor and Council make those appointments removes one further step from DES the appointment process. I encourage and would encourage consideration of their review of the qualifications of the candidates for the Governor and Council.

I think that there are concerns that some of us in the industry still have regarding how the process will work and I felt that ultimately when the projects have essentially been completed, the management plans have been adopted, the instream flow levels have been established, that there would be one final review by the legislature.

I guess I would close simply by saying that if the process works appropriately, I don't think that anyone should have anything to fear by legislative review of what has gone on. With that, I will conclude.

Senator Carl R. Johnson, D. 3: Thank you. I think that is the last signature that I had.

Marjorie Swope: I'm sorry. I was also late. My name is Marjorie Swope. I am the Executive Director of the New Hampshire Association of Conservation Commissions. We were not working on the compromise, but support it.

One thing that was not pointed out about the amendment that Gary Abbott submitted, is that he has moved a fairly massive public hearing prior to the adoption and implementation of the instream flow rules in the Lamprey and Souhegan, whereas the compromised bill puts that hearing after the pilot project and rules have gone forward for a year. I think that, to me, seems to be significant and I don't know whether other people would think it would be, too. But, that certainly is what I see as one big difference that nobody has yet pointed out. As I understand the scheme, DES would adopt and implement the instream flow rules in the two rivers proposed by 1449 and then, after they have been in effect for a while, assemble a hearing and say, "OK, troops how is this working? What do we need to change?" That hearing and the amendment precedes the adoption. I think that may be a mistake and that is all I have to say about this and we are in support of 1449.

I would also say that nominating to the Governor and Council, speaking as a group that does that from time to time, does not necessarily gets your nominations approved. They are perfectly capable of saying we would like different nominations. So, I am not sure that if you go the route of having of DES nominate to the Governor and Council, that is the same as DES doing it.

Senator Carl R. Johnson, D. 3: Thank you.

Marjorie Swope: Thank you, and I would be happy to answer questions.

Senator Carl R. Johnson, D. 3: Gary?

Gary Abbott: Thank you. Just for a second time, just to explain a couple of points that were made, that I missed. Again, Gary Abbott, Executive Vice President of the Associated General Contractors.

I would concur with the Senate in the sense that some of the testimony that if you want the technical committee to have the qualifications pre-approved by DES, I think that would be appropriate for the technical review committee.

It was, as Marje Swope thought was a mistake, but it is intentional that the science and the impacts, and the reason for that is, if you are one of the companies that are in the pilot program and the science says you will be shut down or you will have to require some storage facilities, that those opportunities for those businesses would be at that public hearing, not after they have been told that they can't operate or whatever, in the worst case scenario that the management plan. So, the intent there is to give opportunity at that critical stage versus at the end. I can recognize that at the end of the program the analysis would help all of those others that are not affected by this study, but this window of opportunity opens it up for those companies that are affected between the science and the implementation.

Brian Hart also mentioned on (b), it was not my intent that the two rivers, after the study of one year, that it ends and dies. I would be glad to work on language there with anybody that is concerned. The intent was that, before you do the final report, there is a one-year period in which there was those businesses that are a part of the study, the management plans were implemented to see what those results and those concerns and issues are. So, I don't think it, it doesn't give the full legislative oversight, but the dates, I would be happy to work with Senator Below or Senator Johnson as far as the dates, if that is a critical concern, and moving those around so they fit with the other group's recommendations. We are just trying to make this thing work so it is clear that everybody agrees that there needs to be a pilot study.

I think this section is critical to understanding, as we finish the study, or as we go through the study, what steps will take place. I think, under the current law, a lot is left up to the internal operations of the other committees and, if you are not one of the businesses selected to be on that or part of that, you may not have input until towards the end, and that is the concern I have. Since we have changed the rivers in the House from the study committee to the Souhegan, a lot more businesses are going to be affected than the original compromised study committee recommendation. That is where the concern comes up.

I will end it there and hope that we could work on something.

Senator Carl R. Johnson, D. 3: Thank you. Anyone else speak for a second time?

Unidentified speaker: I just wanted to make it clear that there are some opportunities for those businesses affected, business water users, to seek changes within the process of the rules themselves, and since the rules themselves are not spelled out in the bill, sometimes we forget what is in those rules, and the intent in those rules is that there are appeals processes that, after the protective flows are established, the numbers basically, are established, there is an appeals process in which the affected water users who aren't sitting on the committees perhaps can come in and say, "Hey, wait a minute. I don't agree with this" and then that starts the whole appeals process. In addition, the water management plans also have an appeals process.

I just wanted to make sure that everybody understood and remembered that those recourses do exist in the rules. Again, not to endorse or oppose what Gary Abbott has suggested.

Senator Carl R. Johnson, D. 3: Anyone else wish to speak for a second time? Where we are light on Senators here, I think what I would like to do is recess until I can come up with, at least, Senator Below, and I would like to have you sit down with Senator Below perhaps, and go over what you and he discussed and anyone else. Brian, would you like to be on that? Anyone else that would like to, I certainly want to give everybody a last opportunity to try to come to some consensus, if it is possible. I think, like it or not, politics are going to be involved and I think we all have to recognize that. So, I want to give everybody as much leeway as we can because I do have to address this bill out today, which is kind of unfortunate, so let's see what we can do. So, I will recess the hearing, at least for, lets say, until 11:00.

Angela Richardson: I don't think Finance is going long. I think I can just go get him.

Jennifer Williams: My only concern is that the calendar needs to go out and they do have deadlines.

Angela Richardson: Are you going to recess or close? Because then you are just going to go into executive session.

Senator Carl R. Johnson, D. 3: Well, let's recess until 11:00. We will come back here at 11:00.

Angela Richardson: So, you want to recess it, not close it?

Senator Carl R. Johnson, D. 3: Recess. Come back at 11:00.

Senator Clifton Below, D. 5: So, this amendment?

Senator Carl R. Johnson, D. 3: Let's get out of recess. Coming out of recess at 11:15. All those in favor, opposed? Senator Below?

Senator Clifton Below, D. 5: OK, so this amendment represents sort of a compromise resolution of these issues. It does make the corrections on lines 22, 23 of the bill. The dark print in italics, bold italics, some of the changes in the current text are from the previous proposed amendment. The current bill references (b) now becomes (d) 'cause that is what has been done below. But, not before December 1 instead of October 1 as in current bill, so they can start initiating rulemaking for other rivers. Puts the conclusion of that rulemaking smack dab, well into the legislative session of 2007. Then, in Section 3, Roman I, which is the appointment of the technical review committee, doesn't change current bill, which is DES appoints the technical review committee. However, under 2(c), which is the appointment of the, what is it called, the other committee, the water management planning committee? Water Management Clean Area Committee, that appointment, those members would be nominated by the Commissioner of DES in consultation with the Rivers Management Advisory Committee and shall be appointed by Governor and approved by the Executive Council so that it has all four entities participating. The Commissioner is going to appoint, after consulting with the advisory committee, I mean, nominating, the Governor actually appoints.

Senator Carl R. Johnson, D. 3: Now, there was some talk about having some of the appointees named by Governor and Council and some by DES.

Senator Clifton Below, D. 5: I think that gets complicated. Obviously, the Governor and Council could block an appointment and therefore have input and say, I mean, the then Commissioner of DES is obviously going to want to nominate people that don't have...

Senator Carl R. Johnson, D. 3: Mr. Abbott?

Mr. Abbott: I think maybe where the Senator is going is that we crossed out the technical committee, stripped from DES, and the rivers management committee, as a compromise. Other committees have this other check and balance.

Senator Carl R. Johnson, D. 3: OK. Good, because I know, I just wanted to be sure you had addressed that. I'm sorry. Thank you.

Senator Clifton Below, D. 5: Um, so in Roman III, which is the Commissioner of the Department of Environmental Services shall, and one step has been added, which is really part of what is current (a), which is conduct a study and adopt the management plan. So (a) becomes conduct the study and submit a report, hold a hearing with Senate Environment and House Resources within sixty days of that. So, April 1, 2005 is right smack in the first year of the biennium's legislative session. Within sixty days, you know, this is the latest date. It means that should occur when the legislature is still in session. And, since it is probably a budget year, we probably will be working well into June, so that there is an opportunity to react if the legislature needs to and be open for public comment. So, at the outside, that would all end by June 30th. Obviously, if they get it done, it will start earlier. And then they consider those comments.

And then, we move to (b), which is by October 1, 2005, which is the current date of adopting implement the instream flow and water management plans, relative to those rivers. OK? And, then we go to (c), which is the same as current (b), which is the additional hearing after the one-year adoption and implementation. So, (c) becomes that additional comment that is, at the latest, between October 1st and December 1st of 2006.

And then (d), which is new, becomes the old (c), which is submit the report to the legislature on the same timeline.

And the last thing is struck out from the previous proposed amendment 'cause that is the report by the legislative study committee, which has a report date on the same date as the recommendations.

So, I will move Ought to Pass with Amendment.

Senator Carl R. Johnson, D. 3: Does anyone else wish to speak on the amendment? Thank you. No further discussion. All those in favor, opposed? Two to nothing.

Senator Clifton Below, D. 5: Don't we have another bill?

Jennifer Williams: Don't you have to go into executive session?

Angela Richardson: Well, you recessed the hearing.

Senator Carl R. Johnson, D. 3: Yes, we recessed the hearing.

Jennifer Williams: And then you re-opened the hearing.

Angela Richardson: And then you re-opened the hearing.

Senator Clifton Below, D. 5: Well, I move we go into executive session.

Hearing concluded.

Respectfully submitted,

Recorded by Jennifer Williams
Transcribed by L. Gail Brown

4 Attachments

ATTACHMENT #1

Amendment to HB 1449

Amend section 2

III. The commissioner of the department of environmental services shall initiate and adopt rules pursuant to RSA 541-A for other rivers designated under RSA 483:15 only after the adoption and implementation of the rules relative to protected instream flows pursuant to RSA 483:9-c for the Lamprey and Souhegan rivers and completion of the report required under section 3, III*(d)* of this act, but not before ***December 1,*** 2006.

Amend section 3

~~I. (c) A committee member shall have either education or experience in water resources management or protection. The members shall be nominated by the governor and approved by the executive council, as follows:~~

II. (c) The members shall be ***nominated*** by the commissioner of the department of environmental services in consultation with the rivers management advisory committee ***and shall be appointed by governor and approved by the executive council,*** as follows:

III. The commissioner of the department of environmental services shall ~~by~~:

(a) By ~~October~~ ***April*** 1, 2005, conduct protected instream flow studies ***and submit a report that details the results of science for the pilot program, including the projected impacts of the protected instream flows and water management plans to be implemented on water users, wildlife, recreation, and other interests along the rivers and any recommendations for proposed legislation. The Department shall hold a public hearing jointly with the Senate Environment Committee and House Resources & Recreation Committee within 60 ~~90~~ days and be open for public comment period for an additional ~~60~~ 30 days. The department shall consider the public comments received in any revisions to the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River; and***

(b) ~~On~~ By ~~May~~ October 1, 2005~~6~~, adopt ***and implement*** the protected instream flows and water management plans relative to the Lamprey River and the Souhegan River for ~~one year~~; and

(c) One year after the adoption and implementation … [same as current (b)]

(d) By Decmber 1, 2006 … [same as current (c)]

~~Amend section 6~~
~~242:5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before June 1, 2007.~~

Brian Hart

ATTACHMENT #2

Celebrating 100 YEARS

SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

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Concord, NH
03301-5400
Phone: 603/224-9945
Fax: 603/228-0423
info@spnhf.org
www.spnhf.org

April 17, 2002

The Honorable Chairman Carl Johnson
Senate Environment Committee
Legislative Office Building - Room 104
Concord, NH 03301

RE: HB 1449, as amended by the House

Dear Mr. Chairman and Members of the Committee:

I testify today on behalf of the Society for the Protection of New Hampshire Forests (SPNHF) in strong support of HB 1449, as amended by the House.

HB 1449 represents a carefully crafted, compromise bill that addresses concerns voiced by business, agricultural, forestry, conservation, recreation, and municipal organizations.

The bill before you is the result of two weeks of discussions and compromise between business and conservation organizations that resulted after the House voted the original HB 1449 as Inexpedient to Legislate. The SPNHF actively participated in these negotiations, which concluded with an agreed upon amendment, fully supported by the conservation community and the business community, including the Business and Industry Association of NH, Ski NH, and the NH Waterworks Association. These organizations collectively advocated for the reconsideration of HB 1449 and the subsequent passage of a floor amendment. The motion for reconsideration passed by the necessary 2/3 vote, and the subsequent floor amendment passed the House by a vote of 212-126. This strongly supported compromise measure is what is before you.

HB 1449 allows DES to move forward with the implementation of protected instream flow levels for our state's designated rivers through a unique pilot program on the Lamprey and Souhegan Rivers, two of the 13 rivers designated under the 1990 Rivers Management and Protection Program (RMPP).

Specifically, by October 1, 2005, DES will complete scientific studies of these two river systems with input from an Instream Flow Technical Committee. This committee includes two members of the General Court, scientists from state and federal agencies, and technical representatives of business and conservation interests. After completing such studies, DES will determine the protected instream flow level, as required by RSA 483:9-c, I, for each river.

Following this, a broadly representative Water Management Planning Advisory Committee composed of local community officials, conservationists, business owners, dam operators, farmers, and other affected interests, will assist DES in the creation of a water management plan for the river to maintain the protected

instream flow level. This committee process allows for tremendous input and discussion by affected water users, and is a creative approach worthy of a pilot program.

In addition, HB 1449:

- **Provides certainty for all affected water users and communities by providing a firm deadline of October 1, 2005 for the completion of the protected instream flow studies and water management plans for the Lamprey and Souhegan Rivers.**

- **Requires a one-year test period on the two pilot rivers before DES can initiate rulemaking for other designated rivers under the RMPP**, allowing DES and the legislature an opportunity to review the pilot and make changes via rulemaking or legislation to address any lessons learned.

- **Maintains legislative scrutiny and oversight of this program:** HB 1449 provides legislative oversight by including 2 legislators as members of both the Instream Flow Technical Committee and the Water Management Planning Advisory Committee. Further, it extends the operation of the Instream Flow (SB 330) statutory study committee until December 1, 2006.

- **Ensures adequate public input and a formal review of the pilot program prior to further adoption of the rules for other designated rivers.** Following the first year of the pilot program, HB 1449 requires a formal public hearing and comment period and the completion of a report to the legislature, outlining the results and impacts of the pilot project. No rules can be initiated or adopted for the remaining rivers until the public comment period and report have been completed, and not before December 1, 2006.

Further, it should be understood that HB 1449 maintains existing requirements for administrative appeals of protected instream flow levels, as required under RSA 483:9-c, VI. Under existing law, the filing of a petition regarding the protected instream flow level for a designated river requires a stay of implementation of such a flow level. This current law provides additional time for legislative scrutiny and action, if necessary, and allows affected interests along a river an opportunity for their concerns to be voiced.

HB 1449 represents a critical step forward in implementing the fair and scientifically based management of our state's most important rivers. Thank you for this opportunity to testify, and I urge the Committee to recommend HB 1449 as 'Ought to Pass.'

Sincerely,

Brian Hart
Policy Specialist

Attachments: *Concord Monitor* Article from April 5, 2002 (gray)
Summary of HB 1449, as passed by the House (blue)

CONCORD MONITOR Online

PRINTTHIS

Opposing sides on river policy bridge their differences

Friday, April 5, 2002

By JIM GRAHAM
Monitor staff

Two weeks ago, it was as though businesses and environmentalists stood on opposite sides of a raging river when it came to deciding rules for industries, farms and communities that pump huge amounts of water from New Hampshire's largest rivers.

Yesterday, they were happily sitting in the same boat.

After reaching one of the more uncanny bipartisan compromises of the political season, lobbyists for environmental groups and business interests stood side by side outside the House chambers, chatting as if they were old buddies and passing out the same leaflets urging lawmakers to adopt a new rivers management blueprint.

"It was bizarre, but it was good, too," said Brian Hart, a lobbyist with the Society for the Protection of New Hampshire Forests. "And the outcome will be a positive step in the end for rivers management."

Twelve years in the arguing, the bill that passed yesterday will set ground rules for how the state crafts new regulations for one of its most precious commodities - water flowing in 12 major rivers. With record drought conditions persisting, river levels dropping and water use rising, the issue was one the more hotly debated, and lobbied, of the session.

Environmentalists prevailed in the House two weeks ago, helping to defeat a bill that would have given political leaders broad latitude to determine how and when water in the most heavily used rivers can be withdrawn. Environmental groups opposed the proposal, saying the decision should be made by scientists who best know how to manage water supplies.

Without the bill, the process would have been left up to the state Department of Environmental Services.

"That there's a bill at all now is somewhat of a compromise, because we wanted the rule-making process to go forward," through the department, said Julian Zelazny of the New Hampshire Audubon Society.

But amid fears that continued political pressure would slow the process and burden the agency, business leaders were able to bring environmental groups back to the bargaining table and a new bill back to the House.

The result, passed by an overwhelming margin in the House yesterday, will let environmental scientists,

water-dependent businesses, local communities and state lawmakers share a say in how regulations are set for each river.

"If it doesn't work out, the checks and balances are still in place, and the Legislature can intervene anytime between now and 2006, when the new rules are set," said Mike Giamio of the Business and Industry Association.

At the crux of the debate is how each side values water. For many large water users, including public water suppliers, farmers and downhill ski areas (which use the water for snowmaking), water resources are critical to the state's economy. And any attempts to limit withdrawals from rivers are tainted by worries that they will hurt business.

For environmentalists, maintaining traditional, seasonal flows in the rivers is critical to protecting the health of fish, waterfowl and other wildlife, and to maintaining overall water quality. They say the current rules are woefully inadequate, allowing users to withdraw so much water that seven large rivers are under stress.

Since 1990, the Department of Environmental Services has spent $250,000 to draft rules governing 12 rivers but was unable to put them in place, in part because the Legislature sought to intervene. In a final effort to rescue the stalled rules, the department proposed a pilot program that would study just two rivers, the Lamprey and Souhegan, over three years, at a cost of about $450,000.

Once those results are in, the department and river use committees - approved by the Legislature yesterday - will draft rules for the remaining rivers, including the Merrimack.

Environmental groups said the makeup of the committees is much more balanced now than under a version of the bill defeated two weeks ago. The compromise bill passed yesterday, 226-112. It now moves to the Senate.

5th New Hampshire Regiment

Find this article at:
http://www.concordmonitor.com/stories/news/local2002/river%5Frivals%5Freconsider6628%5F2002.shtml

Support HB 1449-A, as passed by the House

In late March, members of the business community, conservation community, and the General Court, met to discuss a compromise regarding the implementation of the protected instream flow level and water management plan required under the Rivers Management and Protection Program, passed in 1989 by the General Court. A significant compromise measure has been developed and adopted by the House of Representatives, and is fully supported by the New Hampshire conservation community and major business interests, including the following organizations:

Business and Industry Association
NH Wildlife Federation
NH Waterworks Association
NH Municipal Association
Society for the Protection of NH Forests
NH Timberland Owners Association
Connecticut River Watershed Council
Ski NH
NH Rivers Council
Appalachian Mountain Club
Audubon Society of NH
NH Farm Bureau Federation
Connecticut River Joint Commissions

HB 1449, as amended by the House, represents a carefully crafted, compromise bill that addresses concerns voiced by business, agricultural, forestry, conservation, recreation, and municipal organizations. In order to maintain the broad support for this measure, we ask you to support this bill as amended by the House.

HB 1449, as amended by the House:

- **Provides certainty for both businesses and conservationists by providing a firm deadline of October 1, 2005 for the completion of the protected instream flow and water management plans for the Lamprey and Souhegan Rivers.**

- **Requires a one-year test period on the two pilot rivers prior to further adoption of the rules for other designated rivers**, providing an opportunity for any lessons learned to be discussed and incorporated prior to the rules being adopted for the remaining designated rivers.

- **Ensures adequate public input and a formal review of the pilot program prior to further adoption of the rules for other designated rivers.** HB 1449, as amended by the House, requires a formal public hearing and comment period and the completion of a report to the legislature, outlining the results and impacts of the pilot project. No rules can be initiated or adopted for the remaining rivers until the public comment period and report have been completed, and not before December 1, 2006.

Please see reverse for more information on HB 1449, as amended by the House.

Summary of HB 1449, as passed by the House

Instream Flow Technical Review Committee	**Ensures scientific experts participate on the Technical Committee while providing for legislative involvement.** The committee shall consist of: • 1 representative from each of the following: US Geologic Survey, US Fish & Wildlife Service, NH Fish and Game, US Environmental Protection Agency • Up to 4 representatives from business interests (one of whom shall be a municipal water supplier) • Up to 4 representatives from conservation interests • 2 representatives of the NH General Court (the Chair of the Senate Environment Committee and the Chair of the House RR&D Committee or their designees)
Water Management Advisory Committee	**Ensures direct input from affected water users, local citizens, and legislators into the water management planning for the river.** The committee shall consist of: • 2 members of the local river management advisory com. • 4 affected water users • Up to 3 local government officials • 1 representative from each of the following: local conservation commission, local recreation interest, community citizen, conservation interest, business interest, lake association, public water supplier, affected dam owner, agricultural affected water user • 1 state senator from within the watershed • 1 state representative from within the watershed
Legislative Oversight	HB 1449 provides legislative oversight by including 2 legislators in each of the above committees and extending the Instream Flow statutory study committee until December 1, 2006. It also requires a full year of implementation on the Lamprey and Souhegan Rivers, followed by a public comment period and the submission of a report to the Legislature reviewing the pilot program before DES can expand the rules to other designated rivers. This allows substantial time for legislative scrutiny of the pilot program. Further, it maintains the existing JLCAR review of all rules adopted by DES.

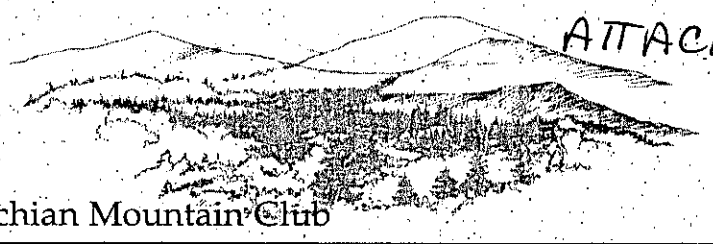
This bill is supported by many diverse New Hampshire organizations representing businesses, conservation, recreation, communities, and citizens throughout the state:

Business & Resource Groups
Business and Industry Association
Ski NH
NH Waterworks Association
NH Municipal Association
NH Farm Bureau Federation
NH Timberland Owners Association

Conservation & Recreation Organizations
Society for the Protection of NH Forests
NH Rivers Council
NH Wildlife Federation
Appalachian Mountain Club
Audubon Society of NH
Connecticut River Joint Commissions
Connecticut River Watershed Council

With Brian Hart

ATTACHMENT #3



Appalachian Mountain Club

April 17, 2002

Honorable Chairman Carl R. Johnson
Senate Environment Committee
LOB 104
Concord, NH 03301

RE: AMC support of HB 1449-A relative to establishing a pilot program to study and establish protected instream flows and water management plans on the Lamprey River and the Souhegan River.

Chairman Johnson and members of the Senate Environment Committee:

On behalf of our 9,500 members in New Hampshire and the 93,000 members throughout the Northeast, the Appalachian Mountain Club would like to thank the Committee for the opportunity to express our strong support for HB1449-A, and the pilot program it sets up.

For more than 12 years, efforts have been underway to implement the Rivers Management and Protection Program. We are proud to have been involved recently in crafting a compromise between business and industry groups, agricultural and timber interests, the conservation community, municipal interests, and members of the General Court from both parties. HB 1449-A is the product of that compromise.

This bill sets up a pilot program that ensures local public input, appropriate legislative oversight, and requires DES to report back to the legislature prior to initiating rules on rivers beyond the Lamprey and Souhegan. If there are problems pointed out by the pilot program, there will be ample opportunity to fix them.

The AMC believes that the pilot program in this bill creates a fair and balanced process ensuring that New Hampshire's important designated rivers will be protected in the future. We believe that this is a large step forward and request that the Senate passes this bill without adding damaging amendments that might put the delicate compromise at risk.

Respectfully,

Bruce Clendenning
Northern Forest Advocate
Appalachian Mountain Club

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ATTACHMENT #4

NEW HAMPSHIRE RIVERS COUNCIL

April 16, 2002

Senator Carl Johnson, Chair
Senate Environment Committee
104 Legislative Office Building
Concord, NH 03301

Re: HB 1449-A, An act establishing a pilot program to study and establish protected instream flows and water management plans on the Lamprey River and the Souhegan River.

Dear Senator Johnson and members of the committee:

I am very pleased to be able to request your support for a conservation bill that has the broad support of conservationists, recreationists, and much, if not all, of the business community it would serve to regulate. HB 1449 is a bill that would push forward the long stalled rules for instream flow protection, but would do so in the form of a pilot project that would allow ample opportunity for reflection on how the rules work. The bill represents sacrifices made by all sides involved, yet it does so in the interest of progress on one of the state's most important water policies.

As you probably know, instream flow rules have been in the making for 12 years. This unprecedented delay in rulemaking has left our showcase rivers without the single most important protection afforded under the Rivers Management and Protection Act. Through the rulemaking process, conservation, recreation and business interests have worked hard to find a policy that would meet the objective of flow protection while addressing the concerns of water users who would be affected by it. But as you can imagine, such a balance is difficult to strike, and the long delay in adoption at least partly reflects the difficulties encountered by the Department of Environmental Services in this rulemaking.

HB 1449, as amended by the House, goes a long way toward striking that balance. This bill provides positive movement forward in implementation of instream flow rules. It does so in the context of the rulemaking requirements of the Rivers Program statute (RSA 483), it maintains the scientific approach contained in the draft rules from January of 2002, and it provides significant new opportunities for legislative oversight.

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The bill, as passed by a bipartisan vote in the House, not only creates a pilot program for testing the rules, it also requires a minimum of a full year of implementation before the rules could be expanded to other rivers. It requires a public input process at the end of the implementation phase and requires DES to submit a report to the legislature on the details of the program including its impacts on users and the environment, public comment received, and more. The deadline for the SB330 statutory study committee on instream flow rules would be extended so that it, too, could report to the legislature on the pilot project. Finally, before any rules could be adopted for additional rivers in the state, the department would have to go through full rulemaking, including review under the Joint Legislative Committee on Administrative Rules.

The draft rules themselves contain a large number of hearings, appeal procedures and waivers, all designed to make sure both the regulated community and conservationists and recreationists have extensive opportunities to raise their concerns and seek solutions. On top of these provisions, this bill provides an unprecedented amount of additional legislative oversight for administrative rules, providing ample opportunity for the legislature to intervene should it become necessary.

With the newly amended version of HB 1449, a difficult balance has been struck. This balance relies on the structure of the bill as it was passed by the House. We have all committed to oppose any other language unless we can collectively agree to it. Any diversion from the current language threatens the compromise.

Please bear in mind that virtually the entire spectrum of affected interests is represented in this compromise bill. These kinds of coalitions don't come along often, and it would be a shame to lose such broad support. Please vote in favor of the House-passed version of HB 1449-A.

Thank you,



Carl Paulsen
Policy Director

Speakers

SENATE ENVIRONMENT COMMITTEE

Date 4/17/02 Time 8:30 am Public Hearing On HB 1449

Appearing in **FAVOR**: (Please print) *Please check box at left to speak.*

Speaking?	Name	Address	Representing
✓ ☒	Rep Richard Cooney	Rocte 26	Sutton
✓ ☒	Brian Hart,	St Forest Society, 54 Portsmouth St	
✓ ☐	David Schaarsmith	Concord	NH Lakes Assoc.
✓ ☒	Paul Currier	Concord	NHDES
✓ ☒	Rep. Tim OConnell	Hills-13	Milford
✓ ☒	Rep. Judith Spang	Straff-8	Durham
✓ ☑	Sen Francoeur	302 SH	Dist 14 - Co-Sponsor
✓ ☒	Carl Paulsen	54 Pomp. St Concord	NH Rivers Council
✓ ☒	Rep Jean Calliera		Hills #14
✓ ☒	Gary Abbott	Bow	Assoc. General Contractors
✓ ☒	Robert Beaurivage	NHWWA	N.H. Water Works Assoc.

Appearing in **OPPOSITION**: (Please Print) *Please check box at left to speak.*

☐	Supporting		
✓ ☒	Mary Brown		NH Wildlife Fed.
✓ ☑	Ted Sutton		SHI NH
☑	Ralph Peans	Monadnock Mtn Spring Water Co.	
☑	Maryanne Swope -		
☐			
☐			
☐			
☐			
☐			

Testimony

State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2457 · FAX (603) 271-7894

April 17, 2002

The Honorable Carl R. Johnson, Chair
Environment Committee
Room 104, Legislative Office Building
Concord, New Hampshire 03301

Re: HB 1449-A, relative to a pilot program to study and establish protected instream flows and water management plans on the Lamprey River and the Souhegan River.

Dear Chairman Johnson:

Thank you for the opportunity to comment in support of HB 1449-A which would establish a pilot program to conduct protected instream flow studies and develop water management plans on two "pilot" rivers, the Lamprey River and the Souhegan River. The bill directs the Department of Environmental Services (DES) to adopt rules for the two pilot rivers, and establishes four committees to advise and assist DES in developing protected instream flows and water management plans. Reports are required of the department, the committees, and the legislative study committee established by SB 330.

HB 1449-A, as amended after extensive discussion by the House and the SB 330 Study Committee, represents a unique consensus of diverse business and environmental interests and a significant opportunity to make real, long-term progress toward the goals of the Rivers Management and Protection Act, RSA 483. HB 1449-A is a well-crafted compromise developed by a coalition of environmental and business interests that will enable DES to implement a pilot program, when rules have been adopted and funding obtained, for two rivers with appropriate input and oversight by the legislature. This legislation is a tribute to the hard work of many members of the General Court, representatives of the environmental and business communities, and DES staff to establish a framework for the river-specific protection of instream flows and water management plans.

The Legislature, by amending RSA 483 in 1990, wisely set a course for the state to begin looking at a more systematic approach to protecting the biological integrity of our river ecosystems. The requirement for DES to develop rules on protected instream flows for rivers designated under the Rivers Management and Protection Act is firmly rooted in RSA 483:1, 9-c, and 11. In passing these statutes, the Legislature recognized that river flow modifications by human activity may be extensive enough to affect vital river attributes, and that the State should begin to take action to understand that impact and mitigate it. The protracted and serious drought that we are currently experiencing in New Hampshire and the Northeast lends further evidence of the need for the State to be considering how it will balance the competing needs of those who are relying upon water withdrawals from our rivers for their business operations and the watershed attributes that a community and the state believe should be protected.

Paul Currier
4/17/02

The mandate for DES to adopt rules establishing protected instream flows in the state's designated rivers has been in place for over a decade, during which time we have devoted countless hours to understanding the science of instream flow, developing draft concepts, and seeking input from those interested in the issue. The amount of outreach we have sought and the amount of input we have received on this issue is unprecedented for this agency. That it has taken more than ten years to reach the point of a viable approach towards instream flow is indicative of the complexity of the issue.

HB 1449-A complements, and is fully consistent with, the process envisioned in the proposed draft instream flow rules dated January 8, 2002, and adds the important element of legislative oversight. By creating a pilot program on two designated rivers, the bill provides for legislative input during the pilot with opportunity for legislative review and action before instream flow protection is implemented on other rivers. HB 1449-A with the draft rules provides a process that is tailored to the specifics of each designated river and that is designed to consider the concerns of those with a strong interest in each river. Technical studies to establish protected instream flows by DES for a specific river will be developed with continuous input from instream flow technical review committees established by HB 1449-A. Furthermore, water management plans will be developed using the water management planning area advisory committees to ensure active participation by all interested parties towards the goal of reasonable balance between instream flow protection and the interests of water users and riparian owners.

Thank you again for considering our testimony on the issue of instream flow management. If you have any questions, or need additional information, please contact me at 271-2958 or Paul Currier at 271-3289.

Very truly yours,

George Dana Bisbee
Assistant Commissioner

cc: Rep. Leon Calawa, Jr.
Rep. Richard Cooney
Rep. Michael Whalley
Sen. Gary Francoeur
Sen. Lou D'Allesandro

NEW HAMPSHIRE FARM BUREAU FEDERATION
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April 17, 2002

The Honorable Carl R. Johnson, Chairman
Senate Environment Committee
Legislative Office Building, Room 104
Concord, NH 03301

Re: Amendment to House Bill 1449, establishing a pilot program to study and establish protected instream flows and water management plans on the Lamprey River and the Souhegan River.

Dear Mr. Chairman and Honorable Committee Members:

The New Hampshire Farm Bureau Federation was one of the organizations that supported and worked for passage of the compromise floor amendment that passed the House on April 4, 2002. We did this with an understanding from House sponsors & supporters and supporting organizations that they supported amending the bill in the Senate to specifically require a member representing agricultural interest be appointed to the Instream Flow Technical Review Committes. It was agreed that this could be accomplished by adding to the Technical Review Committees (paragraph 3, section I(c) of the bill) as appointed by the Commissioner of DES in consultation with the Rivers Management Advisory Committee (amending language in bold type):

(5) Four technical representatives of business interest, one of whom shall be a municipal water supplier **and one of whom shall represent agricultural interest;**

We request your support for this amendment.

Thank you for your consideration,

Robert Callyn Johnson II

Robert Johnson II, Executive Director
NH Farm Bureau Federation

Vote for the compromise floor amendment to HB 1449-A

Amendment 2002-3236h, sponsored by (Spang-O'Connell-Hager)

On Thursday March 21, the House of Representatives voted HB 1449-A as 'Inexpedient to Legislate.' Rep. Frank Sapareto filed a motion for reconsideration on Friday, March 22.

Over the past two weeks, members of the business community, conservation community, and the General Court, began meeting to discuss a compromise measure. A significant compromise floor amendment has been developed and is fully supported by the New Hampshire conservation community and major business interests, including the following organizations:

Business and Industry Association
NH Wildlife Federation
NH Waterworks Association
NH Municipal Association
Society for the Protection of NH Forests
NH Timberland Owners Association
Connecticut River Watershed Council
Ski NH
NH Rivers Council
Appalachian Mountain Club
Audubon Society of NH
NH Farm Bureau Federation
Connecticut River Joint Commissions

In order to pass this amendment, the House must complete a series of votes:

1) Vote to suspend the rules for reconsideration of HB 1449-A . **YES** is the vote to allow consideration of the Spang-O'Connell-Hager floor amendment
2) Vote to reconsider HB 1449-A. **YES** is the vote to allow consideration of the Spang-O'Connell-Hager floor amendment.
3) Vote on the motion of ITL on HB 1449. **NO** is the vote to allow consideration of the Spang-O'Connell- Hager floor amendment. (A **NO** vote will overturn the previous House vote of ITL.)
4) Vote on the Spang-O'Connell-Hager floor amendment. **YES** is the vote to support the Spang-O'Connell-Hager floor amendment
5) Vote on the motion of Ought to Pass as amended. **YES** is the vote to support the Spang-O'Connell-Hager floor amendment

The Spang-O'Connell-Hager amendment represents a carefully crafted, compromise amendment that addresses concerns voiced by business, agricultural, forestry, conservation, recreation, and municipal interests. In order to maintain the broad support for this measure, we also ask that you vote NO on any other amendments that may be offered. **The Spang-O'Connell-Hager amendment:**

- **Provides certainty for both businesses and conservationists by providing a firm deadline of October 1, 2005 for the completion of the protected instream flow and water management plans for the Lamprey and Souhegan Rivers.**

- **Requires a one-year test period on the two pilot rivers prior to further adoption of the rules for other designated rivers,** providing an opportunity for any lessons learned to be discussed and incorporated prior to the rules being adopted for the remaining designated rivers. It also requires a formal public hearing and comment period and the completion of a report to the legislature, outlining the results and impacts of the pilot project. No rules can be adopted for the remaining rivers until the public comment period and report have been completed, and not before December 1, 2006.

Please see reverse for more information on the Spang-O'Connell-Hager floor amendment.

Comparison of Original HB 1449 and Spang-O'Connell-Hager Amendment

	HB 1449-A, as Considered Last Session	Spang-O'Connell-Hager Amendment
Instream Flow Technical Review Committee	**Removes scientific expertise and replaces science with political influence.** Under HB 1449, the committee shall consist of the following: • 2 members of the Senate • 2 members of the House • 7 members appointed by the Governor and Executive Council representing conservation, business, recreational interests and dam owners on the river (each group shall have at least one member but not more than 2 members).	**Returns scientific expertise to the Technical Committee and allows science to guide the process.** Under this amendment, the committee shall consist of: • 1 representative from each of the following: US Geologic Survey, US Fish & Wildlife Service, NH Fish and Game, US Environmental Protection Agency • Up to 4 representatives from business interests (one of whom shall be a municipal water supplier) • Up to 4 representatives from conservation interests • 2 representatives of the NH General Court (the Chair of the Senate Environment Committee and the Chair of the House RR&D Committee or their designees)
Water Management Advisory Committee	**Replaces a locally based process with Concord-focused political appointments.** Under HB 1449, the committee shall consist of the following: • 2 members of the Senate • 2 members of the House • 7 members appointed by the Governor and Executive Council representing conservation, business, recreational interests and dam owners on the river (each group shall have at least one member but not more than 2 members).	**Ensures direct input from affected water users and local citizens into the management planning for the river.** Under this amendment, the committee shall consist of: • 2 members of the local river management advisory com. • 4 affected water users • Up to 3 local government officials • 1 representative from each of the following: local conservation commission, local recreation interest, community citizen, conservation interest, business interest, lake association, public water supplier, affected dam owner, agricultural affected water user • 1 state senator from within the watershed • 1 state representative from within the watershed
Legislative Oversight	The bill requires the JLCAR review of the rules and provides the normal legislative oversight. In addition, the legislature would have to approve all protected flow levels, water management plans and water use requirements for each river before they can be implemented.	This amendment maintains the JLCAR review of all rules adopted by DES. It provides legislative oversight by adding 2 legislators to each of the above committees and extending the Instream Flow statutory study committee until December 1, 2006. It also requires a full year of implementation on the Lamprey and Souhegan Rivers, followed by a public comment period before DES can expand the rules to other designated rivers. This allows substantial time for legislative scrutiny of the pilot program.

Committee Report

|HB1449 Docket

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Bill Title: (New Title) establishing a pilot program to study and establish protected instream flows and water management plans on the Lamprey River and the Souhegan River.

Date	Body	Description
1/31/2002	H	Introduced and ref to Res, Rec and Dev; HJ20, p735
1/31/2002	H	Reps Hess & Burling Susp Rules on deadlines, MA 2/3VV; HJ14, p580
2/6/2002	H	Copy to Chairman on 2/6/2002 Report due EARLY on 1/24/2002
2/6/2002	H	Hearing Feb 12 1:00 RM305-307,LOB
2/13/2002	H	Subcom Work Session Feb 19 10:00 RM305,LOB
2/19/2002	H	Subcom Work Session Feb 20 9:00 RM305,LOB
2/20/2002	H	Subcom Work Session Mar 5 10:00 RM305,LOB
2/21/2002	H	Reps Scanlan and Burling Susp Rules for deadlines, MA 2/3VV; HJ21, p826
3/14/2002	H	Maj Report OTP/AM for Mar 21 (vote 10-5;Reg)
3/14/2002	H	Min Report ITL
3/14/2002	H	Prop Comm Am{2881}(New Title); HC24, p928-930
3/21/2002	H	Comm Am, AL RC(153-180); OTP, ML VV; Rep Blanchard moved ITL, ITL Report Adopted VV; HJ28,
3/21/2002	H	p1126-1131
3/22/2002	H	Notice of Reconsideration, Rep Sapareto
4/4/2002	H	Reps Scanlan and Burling Susp Rules to Reconsider, MA by nec 2/3DIV(228-105); Rep Sapareto moved to
4/4/2002	H	Reconsider, MA VV; ITL Report, ML VV; Rep Spang moved OTP/AM; Rep Spang et al Fl Am{3236}(New
4/4/2002	H	Title), AA RC(212-126); Passed with Am VV; HJ32, p1278-1283
4/8/2002	S	Introduced and Ref. to Environment [03/21/02]; SJ 8, Pg.244
4/8/2002	S	Hearing; April 17, 2002, Room 104, LOB, 8:30 a.m.; SC23
4/17/2002	S	Committee Repot; Ought to Pass with Amendment {3575}, [04/18/02]; SC26A, Pg.12-14
4/18/2002	S	Ought to Pass with Amendment {3575}, AA, VV; OT3rdg, MA,VV; SJ 12, Pg.406-408
4/25/2002	H	House Conc with Sen Am, Rep Royce MA 2/3VV; HJ38, p1448
5/2/2002	S	Enrolled Bill Amendment {3749}, Adopted; SJ 14, Pg.570
5/2/2002	H	Enrolled Am{3749}, Am Adopted;
5/2/2002	H	Enrolled;
5/2/2002	S	Enrolled; SJ 14, Pg.580
5/18/2002	H	Signed by the Governor on 5/18/2002 Eff: 5/18/2002 Chap: 0278

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Docket Abbreviations