

MINUTES FROM OCTOBER 12TH MEETING OF THE HB1774 WORKGROUP SUBCOMMITTEE 1

In attendance were Subcommittee 1 members Marcie Parker (VDOT), Lewie Lawrence (MPPDC), Shannon Varner (Troutman Sanders), Ann Jennings (CBC), Russ Baxter (Deputy Sec. of Natural Resources), Adrienne Kotula (JRA), Peggy Sanner (CBF), Greg Evans (DOF), Jeff Corbin (Restoration Systems), Kate Creef (for Chris Pomeroy, AquaLaw), Fred Cunningham (for Melanie Davenport, DEQ), and Eldon James (RRBC).

Also in attendance were Brandon Bull (DEQ), Carl Hershner (VIMS), Angela King (VCPC), Jason Powell (Senate Finance Committee), Steve Owens (VDOT), Ryan Brown (Kane Jeffries), John Olenick (VDOT), Mike Polychrones (VML), and Jamie Huffman (VCPC). The meeting was facilitated by Elizabeth Andrews (VCPC).

The meeting began at 2:30pm in the Pocahontas Building in Richmond. The minutes from the last Subcommittee 1 meeting were approved without comment. Since an ODU or VIMS representative was not present at the start of the meeting, the Subcommittee moved directly to a discussion of potential funding options for ditch restoration in rural Tidewater, Virginia localities.

FURTHER DISCUSSION OF THE 7 POTENTIAL FUNDING OPTIONS

Elizabeth reminded the group that they had been discussing roadside ditch management practices (based on the Talbot County, Maryland study example) and that the Bay program is examining such practices now as potential BMPs to address nonpoint source pollution. The Subcommittee discussed the seven potential funding options for such practices that they had developed at their prior meeting, with each one requiring differing degrees of regulatory and/or legislative changes. This approach may also require the acquisition of interests in private land, as some BMPs for ditch restoration may have to be on private land. Elizabeth suggested that the Subcommittee could word its recommendations to say that, upon the Chesapeake Bay Program establishing efficiencies for these practices, the General Assembly should consider these funding options.

I. STORMWATER LOCAL ASSISTANCE FUND (SLAF)

The Subcommittee first discussed the RRBC's draft legislation to amend the SLAF statute to allow coverage of localities' costs for administering grant projects. Ann pointed out that she does not necessarily want to amend the SLAF as a whole, particularly regarding reimbursement for administrative costs, but she recognized that such reimbursement under SLAF could be helpful to the rural coastal communities. Ann proposed Russ' previous suggestion of creating a subfund of SLAF that could be used for this purpose. Ann asked if we want to limit this to targeted localities that will have the greatest impact on the Bay. Russ said that generally the biggest localities will have the biggest loads and therefore funding their projects would have the greatest impact on the Bay, but such localities are not the target of this effort. Ann asked if relative effectiveness could come into play. Russ said that was a different question, and in that case, projects targeted at reducing agricultural loads typically have the most impact.

Peggy pointed out that large localities with permits actually need funds too, so segregating the SLAF funds and allowing the General Assembly to figure out the funding is a good idea. Jason Powell explained to the group the legislative funding sources for SLAF. He noted that, as it currently is operated, SLAF funds cannot be used for administrative costs; debt (here, bonds) cannot be used to fund operating costs, and administrative costs under SLAF are considered to be operating costs. Match requirements also were discussed. Russ discussed the possibility of eliminating the match requirement or using a sliding scale, as the Water Quality Improvement Fund (WQIF) currently does. Jason noted that a possible way to target the localities eligible for these lesser, or no, match requirements to those included in HB1774 could be to tie the language to localities in certain planning district commissions, population brackets, or a combination of factors. . Lewie suggested tying this to Delegate Hodges' Rural Coastal Virginia Community Enhancement Authority (HB 2055, 2017) in order to limit the geographic scope. Lewie noted that this authority already exists. Russ said matching is usually more attractive because it brings in more funds and stretches the Commonwealth's dollars, but it is not absolutely necessary. Russ stated that this could also be done under the framework of existing law re: the WQIF, the authority to give nonpoint source grants for water quality improvement, but amendments would be needed to make it locality-specific. Greg suggested taking the current language in option 1(a) and saying "for SLAF and WQIF." Russ noted that SLAF is for big projects (capital projects) and likely to focus on MS4s, which is why a SLAF subfund might be preferable. Jason noted that the idea being discussed by the Subcommittee is somewhat similar to Soil and Water Conservation Districts funding and Technical Assistance Funds in a WQIF subfund. Lewie noted the use of WQIF funds for septic system upgrades in the Middle Peninsula.

Elizabeth asked Ann if her preference for a SLAF subfund for rural localities to use would apply to just Tidewater localities. Ann asked Russ if these are the localities where projects would have the biggest impact on water quality. Russ said that it is the same regardless of if it is in Tidewater or bordering on Tidewater communities. Therefore, Ann asked that the language specify that this applies to the rural tidewater area, or the language from the legislation giving the Workgroup its charge.

The Subcommittee decided not to move forward with paragraph 1A on the Funding Options document (re: the draft RRBC legislation), as written. Ann suggested an edit that would include the SLAF subfund provision (and that, essentially, made it more restrictive). This would be changed to a subfund that could be used for reasonable administrative costs tied to localities that are members of the Rural Coastal Virginia Community Enhancement Authority. Shannon asked if the SLAF subfund would only cover administrative costs, and then on top of this the localities would have to get a SLAF grant in order to actually do a ditch restoration project. Ann said that she meant a subfund of SLAF that would allow for project funding as well. Russ pointed out that bond funds can only go to project funding and not administrative costs. So if the Subcommittee wants to have a grant fund, it must clarify how that will work and where the money will go. He noted that if the General Assembly appropriates cash that will be acceptable, but if some portion is bond funded it must be bifurcated between project funding and administrative funding. Russ also suggested it could be a 100% grant with no match requirement.

Jeff Corbin expressed concern about other groups attempting to get funding under this plan. Russ said there would need to be guardrails in the legislation creating the subfund to prevent this from happening. Greg suggested clarifying point v. nonpoint funding in the

legislation. Jeff pointed out that this is essentially authorizing language for an additional use of funds that are already over-allocated. Lewie stated, however, that this creates a pathway should funds become available. Elizabeth asked if the Subcommittee agreed to a SLAF subfund for use by localities that are members of the Rural Coastal Virginia Community Enhancement Authority, and that the subfund would provide 100% funding, including covering reasonable administrative costs. Russ asked who would decide grant recipients, whether administrative costs are reasonable, etc. Peggy suggested DEQ could do so, given their existing oversight of SLAF. The Subcommittee agreed that this should be done by DEQ. Fred Cunningham stated that this is simply a resource issue for DEQ.

Elizabeth reminded everyone that this will go before the full Workgroup tomorrow, and then the finalized language for the CCRFR report would go before the full Workgroup again in November.

Ann pointed out that under 1A, there is existing fiscal stress language from the WQIF statute that could be incorporated here, too. This would ensure that the funds go to the entities that need it. Lewie cautioned the Subcommittee on this because the fiscal stress language sometimes further complicates things because a locality may not be in fiscal stress but an individual needing a septic system upgrade, for example, may be in fiscal stress; and therefore the Subcommittee should consider who the end recipients are going to be. Peggy noted that in this case the localities would be the recipients, not individuals, so that concern would not apply. Lewie agreed.

Elizabeth asked if the Subcommittee wanted to endorse the RRBC draft legislation, make a recommendation that refines and edits the RRBC proposal, or make a recommendation to replace it? Shannon noted that the draft legislation as written did not focus on use of SLAF dollars for ditch restoration practices. Peggy said that we could come up with a recommendation on a separate piece of legislation focused on rural coastal localities that might address the issue for the localities in the RRBC that are most interested in it. Peggy asked whether those who proposed this idea in the RRBC meeting were thinking about the coastal communities. Greg said most of the problems discussed there were from people in the lower end of the basin.

Elizabeth noted that the proposed draft that came from the RRBC was about amending the SLAF in general, but this Subcommittee was considering funding for ditch restoration projects as an agricultural BMP, which is more of a targeted issue. Therefore, the group does not need to have specific statutory language at this time because the Bay Program has not approved an efficiency for this practice yet. Elizabeth asked if the Subcommittee wanted to note that legislation re: the SLAF has been proposed by RRBC, but that what the Subcommittee is proposing is that which is outlined above. Greg said, in addition to the above, the language should caveat that the Subcommittee is confining its recommendations to rural coastal communities, because that is the Workgroup's charge set forth in HB1774.

II. WATER QUALITY IMPROVEMENT FUND (WQIF)

Elizabeth asked if the group wanted to add more parameters to this item, or if they just wanted to highlight that WQIF funding is a possible source of funding for ditch restoration projects once the Bay Program assigns an efficiency to these practices. Adrienne said that is sufficient. Jeff suggested some clarifying language and asked if it is even necessary to include a

statement of support for WQIF dollars being used? Russ said what that does is make ditch restoration projects eligible to get agricultural cost-share funding if those ditches are on agricultural lands. This is different than funding one could get for a roadside ditch not on agricultural lands. Russ said that money could be used for approved BMPs now, without this language. Lewie asked if there must be 100% land ownership for these ditch projects, because if so this will never work for these rural localities. Russ said there should be research for each project proposal to make sure that a person is eligible for grant funds (including proof of fee simple ownership of the underlying property or acquisition of easements), which he believes is the case under the existing language.

The Subcommittee decided on a statement of support for using WQIF dollars for these projects (and not amending the Code).

III. ENVIRONMENTAL IMPACT / NATURAL RESOURCES BONDS

The Subcommittee agreed to include this language among its recommendations. Ann asked if, for the report itself, Peggy would want CBF's recent effort (an environmental impact bond project that involves private funding) appended to the report and Peggy said yes, as a specific reference to an example of this form of funding.

Adrienne asked if both sections 3 and 4 were necessary. She suggested incorporating 3 into 4. The Subcommittee agreed to do this. Greg then pointed out that 4 is much more specific regarding nutrient credit trading and nonpoint sources, and that what he meant for 3 was much broader. So the Subcommittee then agreed to leave 3 and 4 as separate options.

IV. PRIVATE SECTOR OR STATE AGENCY PARTNERSHIP WITH RURAL COASTAL LOCALITIES

Elizabeth said that a) is different from b) and c) in that it incorporates the concept that the legislature could appropriate funds to state agencies to do water quantity or quality improvements to comply with the Bay TMDL. This was a concept raised early on at a prior Subcommittee meeting. Ann expressed concern about a) because state agencies may not have the expertise or ability to do this efficiently, and she also expressed concern about the workload on DEQ. Jeff asked how a) is any different than the current nutrient credit fund? Russ said if they are going to give out money why not use the existing agencies and means. Elizabeth asked if the Subcommittee wanted to delete a), and they agreed to delete a).

As for b), Ann asked about the water quantity credit language. Elizabeth asked if the Subcommittee wanted to delete "and/or quantity." Shannon agreed that it should be deleted and suggested that maybe a parenthetical could be added that such a project could have water quantity benefits as well. Lewie asked if the group was using the broader definition of locality that includes political subdivisions such as public access authorities, since they can own property. The Subcommittee agreed to use this broader definition. Shannon pointed out that this is an option that is available everywhere today. Ann raised the issue of water quantity with respect to part c). Shannon said this is different because it does not involve credits. The participation of property owners was also discussed. After additional discussion, Elizabeth asked if the Subcommittee wished to propose an amendment to Section 15.2-2114.J.3 to add "...property

owners directly or through a third party.” The group agreed that they wished to recommend such an amendment.

As for part d), Shannon suggested changing the “developer” language to “third party.” Marcie said that, in concept, she has no issue with this proposal. Lewie said that the group may want to extend this beyond just a party’s own property, so that a developer could go offsite. Marcie said that this is fine as long as the responsible party transfers with ownership. She also would want the locality to be a part of this deal because they can do some things that VDOT cannot. Peggy suggested making it clear that nutrient credits are being discussed in the proposal. Lewie asked about sediment credits, and Ann said that we cannot specify sediment credits because this is only authorized for MS4s. Lewie asked to include language about allowing sediment credit trading later on for rural localities and not just for MS4s. Peggy stated that maybe we do not want to do everything at once and Russ agreed that that should be left for a separate discussion. The Subcommittee agreed to use the term “water quality credits to address water quality requirements.”

Elizabeth asked if the Subcommittee wanted to delete “offsite” in the first sentence because different terminology was necessary since all VDOT ditches are offsite from privately owned property. Lewie said you may have a prescriptive easement, though. Marcie said that the meaning of “offsite” depends on the context. The group therefore decided to delete “offsite.” Elizabeth said that for the last sentence the language could simply specify “developers and property owners” since both could benefit. Greg suggested saying “third party” instead.

Ann asked if the “third party” would be signing up to maintain that ditch forever. Jeff said yes, and that his organization does this all the time with stream restoration and land conversion. Ann said that she sees VDOT ditches being something different. Jeff said that long-term (perpetual) maintenance and repair is something that his company signs onto all the time. Marcie asked whether there is anything in this language to preclude VDOT pursuing this approach, and the group said there was not.

V. INCLUSION OF ROADSIDE DITCH MANAGEMENT PRACTICES INTO PHASE III WIP

Greg asked if the word “projects” is appropriate, and whether “project” in the Watershed Implementation Plan (WIP) means what this group is intending. Russ said that the language the proposal should include is instead, “funds may be used for practices.” Russ said in the WIP the word “practices” is usually used, not “projects.”

Ann said that she thought Melanie said that no § 319 money goes to WIP projects. Adrienne agreed. Peggy said that it is just DEQ policy to do this; Elizabeth asked Fred to report back on this at Friday’s full Workgroup meeting, to clarify statutory requirements and DEQ policy re: use of § 319 funds. The language was edited to say “the WIP or subsequent milestones.”

VI. SUPPORTING INCLUSION OF DITCH RESTORATION IN AG BMP COST SHARE MANUAL AFTER APPROVAL OF BAY PROGRAM, AND ENCOURAGE PARTICIPATION IN RDM PROJECTS SUCH AS THOSE IN TALBOT COUNTY, MD STUDY

Russ noted that for one of these projects to be eligible for cost-share funds, it would need to be defined as an agricultural ditch, which could be by a roadside but may not be; so use of the term “Roadside Ditch Management” may be too limiting. Eldon asked about roadside ditches adjacent to an agricultural field. Russ stated that it would have to be on agricultural property to get cost share funds. Eldon suggested using this in the same context as 4(d) above. Russ expressed concern about altering the tenets of cost-share since there are other options available.

VII. ENCOURAGE ENVIRONMENTAL ORGANIZATIONS OR LOCALITIES TO UNDERTAKE RDM PROJECTS SUCH AS THOSE IN THE TALBOT COUNTY, MD STUDY

Ann said that there were several instances where a Talbot County project was solely in an agricultural field, therefore she would not want to lose that if those projects are not already listed in the cost-share program. Ann suggested including language encouraging projects like the Talbot County projects, and Shannon agreed. Ann did not want anything in addition, she just did not want to delete this proposal.

PRESENTATION OF FURTHER RESEARCH BY VIMS AND ODU

Elizabeth asked Carl if there was any information that VIMS would like to present in support of Subcommittee 1’s work. Carl said he did not have anything to report at this time, but said he could show at the full Workgroup meeting the next day the work that VIMS has been doing to identify and prioritize hotspots. Elizabeth noted that that presentation already was as an item on the agenda for the Workgroup meeting.

Elizabeth asked for public comment. Hearing none, the meeting adjourned at 4:36pm.