

Nutrient Scientific Advisory Board Meeting Summary

April 6, 2018 @ TJCOG

9:30 am – 12:00 pm

Attendees

Members / Advisors

Michael Burchell - NCSU
Sally Hoyt - UNC
Bill Hunt - NCSU
Josh Johnson - AWCK
Eric Kulz - Cary
Andy McDaniel - NCDOT
Deanna Osmond - NCSU
Haywood Phthisic - LNBA
Peter Raabe - American Rivers
Peter W. Schneider - Greensboro
Allison Schwarz Weakley – Chapel Hill
Forrest Westall - UNRBA
Sandi Wilbur - Durham
Michelle Woolfolk - Durham

DWR Staff www.deq.nc.gov/nps

Patrick Beggs
Trish D'Arconte
Rich Gannon
Jim Hawhee
John Huisman

Guests

Teresa Andrews - Guilford County
Anne Coan - NC Farm Bureau Federation
Gerald Featherstone - Haw River Assembly and
Cape Fear River Assembly
Julie Henshaw - NCDACS, Division of Soil and
Water Conservation
Joey Hester - NCDACS, Division of Soil and
Water Conservation
Barrett Jenkins - Restoration Systems
Alix Matos - Brown and Caldwell
Dan McLawhorn - Raleigh
Frank Park - Guilford County
Sushama Pradhan - NC DHHS
Jaime Smedso - UNC-CH
Steve Tedder - Tedder Farm Consulting and
Black & Veatch
Sarah Waickowski - NCSU
Alex Woodley - NCSU
Brian Wrenn - DWR

Facilitator – Dispute Settlement Center

Andy Sachs

Agenda Topics

Discuss new concepts about nutrient trading

Meeting Materials are available online: www.deq.nc.gov/nps

Meeting Summary

Andy Sachs opened the meeting with introductions and a review of the agenda.

The March 2, 2018 meeting summary was approved.

Trading Framework Discussion - Part 2

Jim Hawhee (DWR) presented additional nutrient trading framework concepts building upon the first conversational draft framework and the comments/responses received.

Jim's presentation and outline can be [found on the website](#).

The presentation and discussion was organized into five issues.

1. **Location of nutrient reduction practices**
2. **Who gets credit for a nutrient reduction practice**
3. **Who can generate nutrient offset credits**
4. **Jurisdictional compliance**
5. **Permanent credits vs term credits**

A summary of the discussion and questions follows. Comments have been combined and categorized for ease of reporting and review.

Keep it simple

- Economists agree to be aware of over-designing a process which takes away from the simplicity trading hopes to afford. Logistics are hard to determine at this stage.
- Don't overcomplicate. It may be hard to know the need now so start small, monitor, and change the framework as needed.
- The first thing we, implementers, look for is how to solve a problem, and then we concern ourselves with credits.
- Guidance is describing what is possible.

Jurisdictions and Watersheds

- Don't constrain us. Don't restrict jurisdictions about where they can get credits.
- Allow us to manage the whole basin. It's imperative that we be allowed to go outside our jurisdictional boundaries, or we won't meet our goals. Some small entities may not have the ability to go outside their bounds but large entities may need that allowance.
- Communities have land, lakes for example, outside of their jurisdiction but are using them to improve water quality locally and beyond. We need flexibility so things like this can occur.
- Trading guidance may be different between watersheds, such as Falls and Jordan.
- Some local governments have the perception they may get their credit opportunities raided by other local governments. Need to consider that jurisdictions with more money can come in and take all the credits from another jurisdiction who needs them. (Same may be true for agriculture community.)

- Theoretically all jurisdictions could work together and coordinate joint projects across the entire watershed. More collaboration could benefit all jurisdictions. Is there a way to organize this type of collaborative?
- Watershed wide means a bigger marketplace, that is a good thing.
- It is best to work within subbasins and have the credit projects as close to the impairment as possible.
- Watershed boundaries vs. government jurisdictional boundaries are always going to be an issue.
- Make it ecologically logical and work toward watershed boundaries.

Agriculture

- Ag doesn't have a jurisdiction.
- For Jordan rules, Ag had to get reductions first, before trading. How will that factor into trading?
- It would be helpful to better understand Ag accounting methods.
- What about Ag land that isn't farmed anymore?
- Who has jurisdiction when a farmer sells off 20 acres of his 100 acre farm?
- Agricultural lands need to be specifically considered. That entity doesn't work the same as local governments. Be sure they don't hinder one another. Make sure Ag is as well thought out as the municipality discussion.
- Ag has Watershed Oversight Committees that need to be involved.

Wastewater / point sources

- Combining wastewater and storm water obligations exists in Falls but not in Jordan.
- Point source programs are subject to audit and litigation/challenges/penalties for not meeting numbers. Some are required to have a 25% buffer on stormwater in case they get audited.
- Is this joint compliance, trading, or something else altogether?
- If not talking about compliance bubble permit, is that direct compliance or nutrient offset credit?
- Wastewater package plants are good opportunities for overtreatment.

Improving Nutrient Reduction Practices

- We need to allow for improving the physical project which may increase the credit received.
- Some practices are better now than they were 15 years ago. Designs have improved and biological maturity in situ has sometimes improved nutrient reduction results. For example, bioretention is working better now than when it was originally credited. How do we account for these improvements?
- We need to be sure that if a currently installed practice can be improved, uplifting its ability, making it better at removing nitrogen for example, it can then provide more credit. / There should

be no problem with that, if the liability for the project is covered by someone. / Anyone, such as an HOA who retrofits an existing property would take on the liability and be responsible for managing it in the future.

Credits or water quality?

- Trading literature talks about lowering the cost of meeting regulation, not necessarily lowering the nutrient output. We need to be sure we are focused on lowering the total pounds of nutrients.
- We want a win here, not just a way to lower the cost.
- Jurisdictional goals are to achieve reductions.
- Trading credits needs to be a last resort, compared to lowering nutrient output.
- If we are not clear on what compliance means for existing development, how can we determine a trading system? We need loading numbers to be able to do this.

Who gets credit? Who can generate credit?

- Who pays for the credit will have a lot to do with who gets credit.
- Recommendation to the department: people who paid for the project or credit should receive the credit.
- It's up to local entities to negotiate, to figure out who gets what credit. Leave it to the market to figure those things out.
- Entities in any category (local government, state/fed, Ag) can work out credit ownership through contractual agreements.
- For trading to be successful it must be a win-win deal for both parties. Think about the situation where agriculture needs nutrient reduction and they get that credit through the transaction.
- Why not have people paying also get a differently defined credit for compliance.
- Can there be credits for nutrients and credits for paying and credits for providing land?
- Lots of local governments take over maintenance of something to use for its own purposes.
- Division of Mitigation Services and private mitigation companies can do this. Can others?
- Would like to see no bar to anyone creating nutrient offset credit for trading.
- Current rules allow local governments to be bankers.
- If the project is good and the credits reliable, anyone should be able to develop, buy, sell or own a credit.

Permanent credit vs term credit

- Is there flexibility for temporary credits?
- Permanent credits are always better. / There is no such thing as permanent credit.
- What happens to the permanent credit of previously permanent stormwater control measures is removed upon redevelopment of land. These things are permanent until they are not.

- The 30 year permanent credit came about from the 30 year design life of engineered structures.
- Some nutrient practices include language about temporary nature and provide flexibility in the practice document.
- Length of time of operation and management is always a concern.
- Can you apply for credit if you did restoration 10 years ago? Answer: Yes, but not for mitigation projects and not for certain grant funded projects.

Administration

- Jurisdictions may currently require approval from different counties. Need to be sure this is all legal form a state general statutes point of view.
- Don't make it more complicated than it needs to be.
- There needs to be documentation.
- Lay out general guidelines and let jurisdictions figure it out between themselves.
- These agreements are between the local entities - it is their responsibility.
- Inter-category guidelines, for example, between agriculture and local government(LG) may be more important than intra-category guidelines such as Ag-Ag or LG-LG.
- We may need to characterize credits in multiple ways. (owned/redeemed/etc.)
- It's a difficult language: direct compliance/joint compliance/trading - we need a good table of definitions.

Agreements

- Intergovernmental agreements need to be documented but make sure to keep it as guidance, not rule.
- Can it be a project by project agreement? / Strongly advise against a project by project agreement.
- Agreements will be very site dependent.
- Operation and Maintenance may be a part of the specific nutrient practice guideline but O&M responsibility needs to be spelled out somewhere.
- A lot of past projects have been constructed that will count toward. The framework needs to address that issue. Will we need to negotiate an agreement after the fact?
- Don't be too prescriptive in guidance. An appropriate agreement doesn't have to mean a contract. Can we get away using 'appropriate' in guidance or rule?

Other

- The root of all these problems is how to define a credit. Is it a narrowly focused definition? If so, we won't solve these problems. If we rewrite the rules, it's imperative to broaden the definition of credit.
- Washington DC is trading acres of water, not nutrients. Can you address this?

Closing comments

- A lot of our challenges are self-imposed by the rules, for example, and, we can change the rules.
- What do we really want out of our rules?
- Can we look at Durham's South Ellerbe stormwater restoration plan/projects?
- DWR staff will continue to work toward a new discussion draft of the trading framework.

The NSAB will meet June 1, 2018 9:30 am at TJCOG.