

# High Rock Lake Nutrient Rules Engagement Process Steering Committee (Final) Meeting 7 Notes

December 12, 2023 / 1 – 3:30 pm / Kenersville, NC

## Meeting Goals

*For Steering Committee members to:*

1. Approve the Septic Load Management Proposal
2. Approve the Agriculture TAG consensus items
3. Provide feedback on the Agriculture TAG consensus items
4. Approve the Stormwater TAG report
5. Provide feedback on the Stormwater TAG consensus items

## Participants

**Steering Committee members:** Andy Allen, Ann Marie Clark, Jim Crawford, Jesse Day, Bill Davis, Alexandra (Allie) Dinwiddie, Danica Heflin, Julie Henshaw, Keith Huff, Bill Kreuzberger, Keith Larick, Grady McCallie, Andy McDaniel, Edgar Miller, Chris Millis, David Saunders, Helen Simonson, Judy Stalder, Hope Stuart and Adam Schull

**DWR Team:** Rich Gannon and Joey Hester

**DSC Facilitation Team:** Maggie Chotas, Will Dudenhausen, Paura Heo, and Laura Swartz

## Meeting Summary

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### Agenda Overview

- Welcome, Introductions, Purpose, & Agenda
- Review Steering Committee Trajectory
- Review and approve septic load management proposal
  - Septic inspection/ education repair
  - National Onsite Wastewater Recycling Association training materials
  - Review regulatory options and limitations.
- Review and approve consensus items from Agriculture TAG report
- Review and approve consensus items from Stormwater TAG report
- Identify Next steps, Adjourn

## Decisions made in the meeting

- The Steering Committee reached consensus in support of the septic load management proposal.
- The Steering Committee reached consensus in support of Agricultural TAG and Stormwater TAG consensus recommendations.

## What's Next / Action Items from the meeting

- Steering Committee members will email feedback on Wastewater, Buffer, Stormwater reports and Agriculture consensus items, with particular attention to:
  - The overall direction: are we on the right track?
  - Report omissions: what are we missing? Is there an alternative proposal?
- Committee members will email feedback Joey Hester with copy to all Steering Committee members before or on January 31, 2024.
- Joey Hester will include feedback into each of the TAG reports and prepare a draft of the Steering Committee report to DWR.

## Key Links (for Quick Access)

- [Updated Charge Document](#)
- [Steering Committee Meeting 7 Supporting Materials](#)
- [Meeting 7 Video Recording](#)
- [Meeting 7 Agenda](#)
- [DWR PowerPoint Presentation](#)
- [NOWRA Septic System Training Materials](#)

## Detailed Summary of Meeting

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### Introduction, Purpose, and Context

Joey Hester opened the meeting by thanking committee members for their continued participation in the process. In this final meeting, he shared the objectives for the meeting and reiterated the role of the Steering Committee.

- The role of the Steering Committee is to produce a comprehensive report to the DWR that shares findings of all TAGs.

The Committee will enact their role through these objectives:

- Through review and contextualization of final reports from the Agriculture, Riparian Buffer, Stormwater, and Wastewater TAGs.
- The Committee will also produce a separate report to the Division of Water Resources (DWR) noting where they endorse the positions of the TAGs, and where they may adopt a different position than the TAGs.

The meeting objectives are identified at the top of this document.

## Working Together & Defining Consensus

Maggie Chotas of DSC reviewed the committee's Working Agreements and shared the definition of consensus, per The HRL Engagement Process Charter.

- Consensus requires the active participation of everyone in the group and an atmosphere where disagreements are respected. When someone disagrees, the goal of the group shall be to discover the reason for the objection and to find a way to work toward meeting that need in a revised agreement. Consensus is being defined as at a minimum, "I can live with and support the decision."
- The committee will use a 5-point scale for voting.
  1. Strongly agree & support
  2. Minor concerns but still support
  3. Concerns but can live with it
  4. Major concerns & do not support
  5. Actively oppose
  - Votes of "1, 2, and 3" indicate support for the item at hand.
  - Votes of "4 and 5" indicate disagreement with the item.

Joey Hester reminded the group of these important distinctions.

- Consensus items are parts of DWR's proposals which the entire TAG voted to advance as recommendations for rulemaking.
- Non-consensus items are parts of DWR's proposals which TAG members did not agree to advance as recommendations for rulemaking.
- Steering Committee members will vote to endorse (or not endorse) TAG consensus items only.
- Members will not be asked to vote on non-consensus items but to provide feedback.

## Confirming Steering Committee Voting Members

Maggie Chotas confirmed voting members of the Steering Committee:

### In person at meeting:

- Danica Heflin
- Edgar Miller
- Bill Kreutzberger
- Keith Larick
- Allie Dinwiddie

### Via Zoom:

- Andy Allen
- AnnMarie Clark
- Bill Davis

- Chris Millis
- Dave Saunders
- Judy Stalder



## Steering Committee Trajectory

Joey Hester commended the group for their commitment and their accomplishments. Over the past year, the Steering Committee:

- Determined which nutrient sources to regulate
  - Decided to exclude septic load redistribution
- Decided to include the subwatershed above Kerr Scott Reservoir
- Reviewed and approved the following reports.
  - Buffer TAG Report
  - Wastewater TAG Report
- Proposed N & P % reduction goals

### Process

The relationships between the TAGs and the Steering Committee is cooperative. The Committee's objective is **not** to override the position of the TAGs. The TAG members are subject matter experts in their respective fields, who were tasked to dive into the complex layers of Agriculture, Riparian Buffer, Stormwater and Wastewater issues.

This meeting closes the first phase of the rulemaking process.

The committee will regroup in Phase II to review the rules that have been drafted.

## Consensus Item #1 – Approving the septic load management proposal

*The Steering Committee has decided to exclude septic loads from redistribution amongst other nutrient sources in the HRL NMS.*

### Key Points

- Current regulatory obligations remain in effect and inspections/repairs are limited by resources.
- Various education/repair proposals were examined (all of which were also limited by resources).
- There is a disproportionate cost burden relative to overall nutrient load benefit.
- DWR recommends:
  - Voluntary education and outreach, where feasible (new materials are available)
  - “Credit” in Existing Development rule for education, outreach, inspection, maintenance, and repair above baseline levels

### Key Considerations

- The septic load is 1% of the overall nutrient load.
- The recommendation(s) coming out of the septic load management proposal would be part of the Existing Development Rule.
- There are already regulations in place that fall under the purview of local governments.

#### Discussion:

- Andy Allen commented about an administrative rule that he believed is in effect in Forsyth County; whereby septic tanks that release frequently (at a rate of 1x/month) are tracked.
  - He offered this example up as a strategy that Davidson County (and other counties) could potentially employ for monitoring and requesting repair of older septic systems.
  - Neither DWR nor others could confirm this rule.
  - Joey Hester noted that he would not require that local governments **enforce a rule to repair old systems** since many of the communities with older systems do not have the resources to repair those systems.
  - Instead, there would be opportunities to receive credits.
  - Mr. Hester stated that he would discuss the issue further Davidson County.
- Grady McCallie made a comment noting that it would have been more in line with the overall rulemaking strategy to redistribute the septic load. He expressed that he can live with the exclusion as is because the septic load is just 1%.
  - Joey Hester remarked that since the septic load is only 1%, it would not impact the overall structure of the rule strategy.
- Danica Heflin inquired about new education materials.
  - Mr. Hester referred to recently published training materials from the National Onsite Wastewater Recycling Association (NOWRA).
  - Subjects covered in the materials covered include the importance of wastewater treatment, an overview of treatment in a septic system, typical onsite or septic system features, final treatment and dispersal, management, maintenance, safety, and system troubleshooting.
- Edgar Miller asked what category single family residential discharge permits fall into; and how they are addressed?
  - Bill Kreutzberger noted that single family discharge permits are historical. They are no longer being issued. (Residences that had been issued those permits would fall under the wastewater rule)

- Rich Gannon commented that he is not aware of any single-family residential septic permits in HRL. He went on to share, "to whatever extent that they exist, they would be eligible for remedying. You would get credit for repairing/improving those systems."

### **Consensus reached.**

The Steering Committee reached consensus to endorse the septic load management proposal as written.

## **Consensus Item #2 – Agriculture Consensus Items**

*Steering Committee is charged with determining whether to endorse the consensus items presented in the Agriculture TAG report.*

### **Key Points**

- Agriculture TAG Consensus Recommendations
  - 2-3-2-3 year reporting to align data collection with publication of 5-yr US Census of Agriculture
    - 2-year report will compile implementation data
    - 3-year report will provide comprehensive analysis and planning recommendations
  - Centralized oversight committee will be responsible for reporting
- No consensus reached on following proposals:
  - Requirement that livestock be excluded from streams
  - No proposal presented on Poultry nor waste management.

### **Key Considerations**

- There was lengthy discussion covering two meetings regarding a livestock exclusion.
  - DWR presented several ways in which producers could operationalize a livestock exclusion.
  - Collective compliance target for the entire watershed
    - Collective compliance target for entire watershed with required exclusion on individual facilities in the event of watershed noncompliance
    - Target operationalization flexible
      - Fence X stream miles by 20XX

- Failure for the watershed (in aggregate) to achieve the collective mandate triggers individual compliance with exclusions.
- DWR to form a technical committee to address poultry productions and waste management.
  - DWR made a strong attempt to recruit poultry representatives to a TAG meeting.
  - DWR along is not s not familiar enough with current poultry permitting process/rules to make a proposal.
  - The Poultry Technical Committee will include experts familiar with current poultry regulations with the usual stakeholder representation (NC Farm Bureau, producers, DWR legal team, and others).
    - Expected to be smaller and more focused than the TAGs have been
  - Waste management to include bio-/solid wastes, not just poultry waste

### Discussion

Joey Hester opened the floor for discussion emphasizing that he wanted to hear feedback especially from non-agriculture Steering Committee members.

- David Saunders asked for clarification around waste management (for treatment plants, and biosolids). Are the same requirements in place for those facilities and are they enforced or voluntary?
  - Joey Hester: You mean the application setbacks? Yes. They are. And if it is a dedicated land application site, then it must comply with the setback rules in that permit. Specifically, DWR is interested in moving forward with residuals application and dedicated land application sites for municipal waste.
  - Poultry waste sites may not be dedicated disposal sites, however.
  - Joey Hester expressed that he did not have information about poultry waste permitting. He Noted that that Poultry workgroup with investigate the issue further.
- Edgar Miller wanted to understand the Agriculture TAG's perspective regarding livestock exclusion. "Was there sentiment that the exclusion was not valuable?"
  - Joey Hester: The TAG saw value in exclusion, but there was no consensus regarding the operationalization of an exclusion rule.
- Helen Simonson brought up the issue of fertilizer use. She shared scenarios in which farmers could educate themselves specifically on their lands' needs to avoid over fertilization.
- Ms. Simonson also mentioned stream mitigation banking and asked if that practice would be part of the rule?



- Joey Hester stated that mitigation and nutrient offset banking would be in place in this strategy. He noted that there would be time in later phases to discuss credits and possibly incorporate other practices that stakeholders are interested in pursuing.
- Allie Dinwiddie responded with this insight: “In other watersheds like, Jordan, and Falls/Neuse that have a separate agriculture rules. Some of the mitigation practices count towards the Buffer rule. In those cases, you can't count any of the practices that are implemented with mitigation funding towards our [Agriculture] credit target. So if you get that funding and you put it on your farm, farmers still won't be able to count that practice as part of nutrient crediting for agriculture.”
  - Joey Hester noted that that would not necessarily be the case.
  - Ms. Dinwiddie strongly urged continued discussion around operationalizing these specifics and incorporating into rule measures that would allow farmers to maximize credits and funding; acknowledging that stream bank mitigation may not affect livestock exclusion directly.
  - She expressed her intention was to present a scenario where there could be potential conflict or tensions acting against the favor of the farmer/producer.
  - Mr. Hester assured her and the group that the stakeholders' best interests would be considered since DWR's primary objective is to have the rules enacted and implemented (and actually followed)!
- AnnMarie Clark commented that in the absence of a livestock exclusion rule, the larger buffer zone seemed like a more reasonable requirement. She asked for further insight into buffer width and livestock exclusion.
  - Keith Larick noted that regardless of the width of the buffer, whether it is 50ft or 70 ft (or even 10 ft), the primary benefit of livestock exclusions would be reducing the likelihood of animal waste entering stream waters. Because animals tend to trample the ground, exclusion would also help with stream bank stabilization.
  - Joey Hester added, “How far they go out is at the producer's discretion, as long as they can demonstrate that the cattle don't have access to the stream banks, then that would check our box as far as we're concerned. At a minimum, exclusion is what we would like to see.”
- Grady McCallie shared this statement: My understanding of how agriculture rules work for the other basins is that there is collective compliance, but there was always the potential for individual requirement. That is important because it helps keep the pressure on the whole community to participate and for funding sources to ensure appropriate allocations to enable collective compliance to be effective.

- There is a basic political question of for all [stakeholder groups];What is possible? It seems to me that collective compliance without individual compliance is a theoretical possibility.
- Joey Hester noted that he respected this viewpoint. However, he also pointed out that the Rules Review Commission may not agree to put a requirement in place without a method of enforcement.
- In other watersheds, collective compliance with no individual requirement has not demonstrated sufficient nutrient reductions.
- Mr. Hester also noted that the State is not able to allocate any funding nor weigh in on funding decisions. That is the purview of the Legislature, alone.
- Julie Henshaw shared this opinion regarding data tracking pertaining to a livestock exclusion rule. “DWR is not set up to track farmers and livestock exclusion efforts, so they wont be able to enforce this rule. Tracking has been most effective for programs that are run through the Division of Soil and Water Conservation.”
  - Joey stated that he respected her perspective and noted that DWR still had a job to do, per the Clean Air Act.

Keith Larick - I just want to make sure this point gets out to the non-ag members of the searing committee. When we talk about excluding livestock, it's more than just fencing. We also have to install a new water source - so they're typically drilling a well to do that and having to supply power to the pump. So it's more than the fence those other components. There are uncertainties about where the resources are going to come from.

Part of my hesitation personally was what number of stream miles? What date? What's our current baseline? It's going to take a lot of effort to firm up. It's going to be difficult to generate buy-in with a mandatory, individual compliance type approach given all those uncertainties.

- Edgar Miller revisited fertilizer overuse. He noted that there is an agronomic rate for nitrogen. Mr. Miller speculated that if there was an agronomic rate for phosphorus, it might be easier for stakeholders to track and ultimately reduce.

### **Consensus reached.**

The Steering Committee endorsed the consensus recommendations in the Agriculture TAG report. Consensus was reached.

## Consensus Item #3 – Approving the Stormwater TAG report

*Steering Committee is charged with deciding whether to endorse the Stormwater TAG's consensus recommendations.*

### Key Points

#### Consensus Recommendations

- All local government jurisdictions will be subject to New Development post-construction stormwater requirements.
- Existing Development rule mandate should be investment-based.

#### No consensus reached on the following proposals:

- Post-construction stormwater requirements based on presence of stormwater collection system and tiered by built upon area (BUA) thresholds of 6% and 12%
- Post-construction stormwater treatment that requires volume reduction
- High density post-construction stormwater treatment that requires stream protection from erosive flows
- New Development post-construction stormwater requirements trigger at 1 acre of land disturbance, except single-family lots less than 6% BUA

### Key Considerations

- There was a lot of time spent on the matter of rule applicability for New Development post-construction stormwater requirements.
- In conferring with local government representatives, DWR and the TAG agreed that from an administrative standpoint it simpler to have the rule apply to all jurisdictions rather than specifying certain ones.
  - Universal applicability for this rule also means that future development will occur on a more equal playing field rather than moving exclusively out to more rural or urban areas based on certain development rules.
- Regarding Existing Development, Joey Hester pointed out that the landscape in much of HRL has been developed or in development for the past 10, 20, 30, even 100 years. The issues we are addressing now are partly embedded in a system and correcting those issues is an incredibly challenging concept.
- The only significant precedent in North Carolina to address ED, is an investment-based approach used in the Upper Neuse Basin Association.
  - The alternative would be an overall reduction target: e.g., "Davidson county shall achieve, a X percent reduction in phosphorus and nitrogen, over a set time period."

- Investment-based approach would credit the jurisdiction with compliance as long as sufficient resources are being devoted to the program

## Discussion

- Andy McDaniel: Would the mandate have the option for achieve targeted reductions over time?
  - Joey Hester: No, there would be no tracking towards the percent reductions. There would be the option to form a coalition which is what the Upper Neuse Basin Association has done. But the approach aims to make it easier to account for efforts against further nutrient loading from Existing Development.
- DWR and the TAG members spent many meetings discussing post construction requirements.
- Andy McDaniel stated concerns about DOT development and stormwater management.
- Joey Hester reviewed the non-consensus items for the group, since this TAG was high technical in its discussions.
  - Referring to the upper end of the 6 - 12% threshold;
    - There are low density requirements and exemptions that we would like to maintain because we want to incentivize that.
    - That 12 percent upper limit is important particularly along the water. Because these areas are not zoned for high density development, the only real jurisdiction over that is the local governments; some do not have stormwater programs.
  - Referring to the non-consensus item; *New Development post-construction stormwater requirements trigger at 1 acre of land disturbance, except single-family lots less than 6% BUA.*
    - 1 acre land disturbance- many homes in developments will likely be on less than an acre.
    - If the lots are on the smaller side, they will hit the 6% BUA threshold quickly but they'll likely be exempt through the common plan (of development).
    - Engineers mentioned that this could disincentivize LID
    - < 6% what happens below this threshold was a matter of debate.
    - Everyone was in favor of the single-family exemption, but it will still garner the attention of the public who may be fearful of the government infringing on personal home building.

- Referring to *Post-construction stormwater treatment that requires volume reduction*
  - o Almost reached consensus; all but one Stormwater TAG member voted to endorse this item
  - o They were concerned with how infiltration is operationalized in rule.
- Referring to the third item, *High density post-construction stormwater treatment that requires stream protection from erosive flows*
  - o This is a new concept, so this is the most difficult to conceptualize and operationalize.
- Keith Huff wanted to ask if the Stormwater rule would affect jurisdictions who were in the process of completing their MS-4 permit requirements. Danica Heflin wanted to ensure that there are parallel processes and continued smooth communication as DWR and stakeholders continues to move through this process.
- Edgar Miller wanted to make sure that the rules are consistent with MS-4 and other environmental permitting requirements, reiterating Keith Huff's point.
- Danica Heflin offered up two examples of cities in the region for a glimpse of what can be done when an opportunity presents itself. She encouraged being playful and collaborative so infrastructure and development could happen in parallel, even while upgrading systems/components.
- She was trying to think of innovative ways to fund some of the improvements required by the rule development calling to mind Bill Hunt.
- Allie Dinwiddie asked Andy McDaniel to speak further to his concerns about exemptions.
  - Andy McDaniel said he didn't support a blanket exemption for DOT. He noted that the rules for roadways versus parcel development are very different, and hoped the rule address those differences.

**Consensus was not reached.**

The Steering Committee reached consensus to endorse only one out of two consensus recommendations in the Stormwater TAG report.

- All local government jurisdictions will be subject to New Development post-construction stormwater requirements.

**Discussion**

- Bill Kreutzberger pointed to his history with EPA's Urban Stormwater program, and he cautioned that we should approach this process with an understanding that existing development impacts can only be addressed over long timelines, and making targets achievable will be important for buy-in.

- Edgar Miller asked if all jurisdictions had signed onto UNRBA's investment-based approach
  - Joey Hester clarified that only one had not (Roxboro)
  - Rich Gannon added that the group set up a dues structure that members sign onto
- Mr. McDaniel commented that that the jurisdictions in the Neuse basin have a history of collaboration. He noted that jurisdictions in the HRL watershed who do not share that history may not want to collaborate with one another.
  - He shared that it would be important to offer the option to choose either a target-based or an investment-based approach.
- Edgar Miller asked if this would include county governments
  - Joey Hester clarified that it would include all jurisdictions

All voting members except for one voted to endorse the below consensus item from the Stormwater TAG report. Consensus was not reach on this specific item.

- Existing Development rule mandate should be investment-based.
  - Andy McDaniel voted 4: expressing "major concerns and does not support."

## Next Steps

Joey Hester thanked everyone for their participation in the discussion and voting.

- He shared the overall framework for how the TAG reports
  - There will be bulleted points that name the major concepts discussed and voted on.
  - Specific feedback from Steering Committee members will be copied and pasted into the TAG reports.
  - He noted that at this point, he has only written feedback from Andy McDaniel.
- Mr. Hester will draft the Steering Committee's final report.
- Danica Heflin asked if it would be helpful to meet as a group to draft criticisms to be entered into the report.
  - Edgar Miller and Will Dudenhausen noted that meeting after the final reports are completed during the rule drafting phase, or even after rule drafting, might be more productive.
  - Committee members agreed.

