

High Rock Lake Nutrient Rules Engagement Process Stormwater Technical Advisory Group (TAG) Meeting #5

September 26, 2023 / 1 – 3 pm / Virtual via Zoom

Meeting Goals

For DWR to:

- Gauge support for investment-based mandate and load reduction mandate framework
- Gauge level of interest in forming an optional association for compliance purposes

For TAG members to:

- Identify criteria for determining individual local government responsibility
- Identify interest level in trading for credit beyond Existing Development retrofits

Participants

TAG members: Andy Allen, Jim Brown, Kelsie Burgess, Brent Cockrum, Danica Heflin, Keith Huff, Scott Leonard, Brian Lipscomb, Zack McKenzie, Chris Mills, Edgar Miller, Ben Parker

NC Division of Water Resources Team: Trish D'Arconte, Rich Gannon, Joey Hester, John Huisman,

DSC Facilitation Team: *This was a DWR-facilitated meeting.* Paura Heo was present for documentation purposes.

Observers: Judy Stalder of the Steering Committee

Meeting Summary

Agenda Overview

- ❖ Welcome / Introduction & purpose of the meeting
- ❖ Falls Jordan Existing Development rules
- ❖ Trading & One Water
 - Nutrient Trading
 - One Water & Interim Alternative Implementation Approach
- ❖ Ideas for managing existing development loading
 - Investment-based approach and load reduction goals
 - Establishing a compliance coalition and funding commitments
 - Funding practices and improvements
- ❖ Future Meetings
- ❖ Closing

What's Next

- DWR will move forward to draft Existing Development rules with TAG members input via email
 - DWR will reach out to other municipalities and counties in the watershed to include them in this part of the ED rulemaking process
- The TAG will again virtually at below times:
 - 11/6/23, 1 – 3pm
 - 11/28/23, 10a – 12pm

Key Links (for Quick Access)

- [Citrix ShareFile Folder](#)
- [IAIA - ED Rules, June 2022](#)

Detailed Meeting Summary

Introduction & Purpose of the Meeting

Joey Hester introduced meeting attendees who were new to the group. John Huisman joined the call from the nonpoint source planning department.

Brian Lipscomb joined the meeting as a representative of NC DOT and as a substitute for Andy McDaniel who was not in attendance.

Existing Development (ED) Rules

One of the main goals for the meeting was to discuss and deliberate the structure(s) and context of existing development (ED) rules. In terms of rules around ED, the only model in NC currently are the rules established in January 2021 for Falls and Jordan lakes.

DWR presented the components and considerations of these rules.

Key Points of Falls & Jordan Lakes ED

- Falls Lake rules presently in effect. Jordan Lake implementation of (overall strategy including) ED rules has been delayed.
- Local government load reduction program major components:
 - Overall load reduction goals
 - Identify retrofit opportunities and implementation schedule
 - BMP maintenance
 - Public education
 - Illicit Discharge Detection and Elimination (IDDE)
 - HRL watershed has a large number of predominantly septic communities
 - Systems repair
 - Existing landscapes that require repair and/or maintenance

Interim Alternative Implementation Approach (IAIA)

The Interim Alternative Implementation Approach (IAIA) presents a pathway to load reduction goals without rigorous pound per nutrient load calculations for existing development. It includes the components below:

- State-approved SCMs
- Green infrastructure
- Stream and riparian restoration/enhancement
- Programmatic measures (beyond baseline):
 - Fertilizer education
 - Onsite wastewater inspection, tracking, repair, replacement, education, etc.
 - Pet waste pickup education, stations, enforcement
- Infrastructure improvements:
 - Leaky infrastructure repair/replacement
 - Reduction of sanitary sewer overflows
 - Extension of sewer lines to areas using onsite systems or package plants
- IDDE (Illicit Discharge Detection and Elimination)
- Land conservation
- Floodplain restoration
- Greenways and parks
- Flood management w/ WQ benefit
- O&M
- Invasive species (hydrilla) removal (note: this requires special approval by DWR)

Key Considerations

- Retrofits are challenging to site and expensive
- Compliance will likely take decades
- Cooperation between local governments will be helpful
- Local governments will need to define an investment structure based on various metrics, including:
 - Total area
 - Impact to HRL
 - Proximity to HRL
 - Population
 - Water usage

Nutrient Trading & One Water

The model program for Existing Development incorporates nutrient trading and integrates a One Water Approach.

Nutrient Trading practices can be implemented for “credit”

- Load reductions
 - Local governments build practices for direct compliance with NMS rules
 - Wastewater dischargers implement practices for increased permitted load allocation
- Nutrient offsets
 - Developers required to “offset” any nutrient load management that cannot be accomplished on site
 - Wastewater dischargers required to “offset” permit exceedances
- Transactions
 - Buyer purchases credits for compliance
 - Seller seeks opportunities to develop credits
 - Buyers can be point or nonpoint source

The One Water Approach

- Broader approach to implementation that goes beyond traditional “credit” transactions
- Can theoretically be used for rule compliance, but largely an unproven concept at watershed scale
- Unclear who/what is directly regulated by State, if not local governments

Ideas for managing existing development loading

DWR expressed support for an investment-based approach:

- Local governments form a coalition to tackle nutrient load improvements jointly
 - Coalition must self-determine funding formula for members
 - Investment level must be sufficient for demonstrable improvement
 - DWR expects to define total funding required for joint compliance
 - Incremental funding requirements are a possibility as coalition takes shape and gains acceptance
- Local governments would still be directly regulated by rule and held accountable for achievements
 - “Deemed compliance” could be used if participating with a coalition
 - Formation of a coalition is expected to take years (see: Jordan Lake One Water, UNRBA)
- Wastewater facilities are expected to over-achieve
 - Provides “cover” for local governments under joint compliance approach
- WW TAG has discussed “selling” over-achievements to local governments
 - WW = seller of credits
 - An unproven concept which seems to be more market-driven

Group Discussion Summary

After concluding his presentation, Joey Hester opened the floor for discussion.

- Danica Heflin expressed excitement about this opportunity to weigh in on an important issue involving watershed and for the greater community. She encouraged all group members to share their input.

Local Government Feedback/Questions

Davidson County

- Scott Leonard expressed support for a One Water, investment-based approach to existing development rules. He said he saw great benefits in a joint coalition since the County has already partnered with PTRC for education programs such as Stormwater Smart. (Stormwater Smart educates public school students about stormwater issues and their importance to the environment and the community at large)
- Mr. Leonard made clear distinctions between the built upon areas in the County versus in cities, suggesting that funding requirements should take factors like BUA,

proximity to the lake, population, etc., into account. “We certainly see different roles and capabilities for different communities,” he commented

- Additionally, Mr. Leonard expressed the importance of IDDE. He shared this comment, “while, years ago, many of the residents of HRL were part-time residents, now people are living at HRL full-time in many of the same communities in single family residences (SFRs) that are still using the same septic systems
- Finally, Scott Leonard re-emphasized his support for a One Water Approach, noting, “We are all in this together”
- Joey Hester shared a document with the group that showed the different levels of investment from municipalities to demonstrate the wide range of respective levels:
 - Raleigh: ~\$500k some of their drinking water originates from the watershed
 - Durham: ~\$300k
 - Town of Winston-Salem: ~\$10k
- Mr. Hester reminded the group that the Falls Lake Existing Development Rules are the only example in NC of an investment-based approach

Winston-Salem

- Keith Huff from Winston Salem had specific questions about implementation, specifically surrounding the funding formula determination. Mr. Hester deferred to John Huisman who is the Falls Lake NMS Coordinator
- Mr. Huff’s questions are listed below with the responses noted.
 - Does implementation happen on a local level? Response: Yes.
 - What is the process, if any, for having (local) projects approved?
 - John Huisman responded that local governments are in control of their local projects. There is no “approval” process for the projects, per se
 - IAIA outlines a list of eligible projects to serve as examples of projects that may be implemented. Local governments may consult with the Coalition to discuss eligibility further, if necessary
 - Local governments submit an annual report which explains how their investment was used
 - The structure is flexible, so permission is not sought out nor is it required; accountability is demonstrated via reporting
 - The Coalition serves as a council and as recordkeeper
- Keith Huff directed the following questions to Joey Hester:
 - How is efficacy or progress towards nutrient reduction measured?
 - What does the process for investment re-determination look like?
 - Are their nutrient credits for education?
- Mr. Hester responded by emphasizing the collaborative nature of the investment - based approach, not just between local governments in forming a coalition, but

especially in developing a commitment to this part of the nutrient management strategy.

- The parameters of the formula for reaching investment amounts would be reached after (1) further investigation into concrete and demonstrable factors of municipality and county use within the watershed; and (2) extensive discussion with municipalities and counties regarding their circumstances.
- Any revision to the investment would be collaborative, as well. That would apply to the rules re-adoption process (ten years after rule implementation)
- Meeting the initial proposed investment would count toward compliance of nutrient reduction goals in this model and that investment should be predictable and reasonable
- Joey Hester explained monitoring and enforcement in these terms:
 - Compliance would be based on participation in the program. Local governments would be deemed compliant as long as they met their investment promise
 - DWR would be responsible for transmuting that investment into impact or load reduction; i.e., “This local government investment X amount and completed Y and Z projects which we can attribute to A and B load reductions”
 - Define the process as we move forward
 - Rich Gannon added that DWR would expect a report tracking pounds of nitrogen and phosphorous nutrients where local governments have that information available, i.e., in wastewater treatment sectors; however, he acknowledged that there are many current practices where that data tracking is inaccessible

Funding / State Revolving Loan Funds

- Danica Heflin introduced the topic of State revolving loan funds as a method by which local governments could secure funding for water quality improvement projects:
 - Wastewater treatment facilities apply for large loans and the interest earned on those loans generates funding for nonpoint source and other projects
- Ms. Heflin noted that this funding source was identified by her work with HDR, Inc., an engineering firm based in Raleigh
 - Her contact at HDR is Kim Colson, former finance director of DWR
- She shared these benefits associated with this type of funding:
 - An effective alternative to nutrient credit selling between point sources and nonpoint sources
 - Funding without a “match” requirement
 - Funds are available for other grants/projects, as well
 - Low-interest rates

- Additional discounts and savings
- Incorporates a One Water approach (includes other stakeholders)
- Case studies in Iowa and Ohio
- State revolving loan funding considerations
 - Eligibility questions (NMS and/or IAIA)
 - Equity-focus in distribution of funds? Reduction potential priority?
 - Education and outreach
 - Ramping up with NMS
 - 18-months for framework development of the sponsorship program
- Current and forthcoming 205J WQ management planning grants will include a survey
- Trish D'Arconte checked in with Joey Hester regarding eligibility issues. She noted that her interpretation of NMS rules do not generally allow grants (205J, 319, etc.) to meet rule requirements. State revolving loan funds may or may not be eligible to meet IAIA requirements, either
- There was robust discussion around the topic of grant funding and IAIA funding requirement:
 - Allie Dinwiddie shared that she has seen other investment programs utilize State revolving loan funds in her research
 - Rich Gannon noted that every grant has its own set of requirements
 - As an example, he clarified that the 205J is a planning grant, and would be used just for that, "planning"
 - Mr. Gannon also noted that HRL ED rules would have their own set of requirements
- Rich Gannon made clear HRL's IAIA would have its own funding requirements
- Edgar Miller asked if enabling legislation would be required to implement a program like IAIA?
 - This question arose because there was an excerpt of legislation included in one of the documents Joey Hester shared with the group in advance of this meeting
 - John Huisman commented that that legislation excerpt was likely included because it impacted the implementation timeline of the ED rules
- Joey Hester reassured the group that restructuring statute would not be required for IAIA in HRL

Education

- Early on in the meeting Keith Huff had a question about receiving credit for education programs and in general existing programs that contribute to reductions in nutrient loading

- Joey Hester commented, “We see education as an important component of an overall compliance portfolio, but education alone has not demonstrated meaningful reductions”
- Danica Heflin noted the importance of education and shared that it could and should be flexible. As an example, she shared that for this NMS strategy, education specifically targeting County Commissioners and Town Councils may be effective in having WQ projects approved. She expressed it should be a requirement in some form but emphasized her support of the most reasonable and flexible path for HRL NMS rules moving forward, whatever that would look like
- An important part of the IAIA is that members of the Coalition (UNRBA) decide eligible practices. They vote on it, so if HRL decides to form a Coalition and that Coalition were to decide to fund education; they exercise that decision and put it into practice
- DWR’s role is to review and ensure that the entire Coalition’s effort is working towards that overall reduction
- Trish D’Arconte stated that education is a required component NPDS MS4 permitting, stating these key points:
 - Education is not included as a requirement in IAIA because a lot of the members are in phase I or II of MS4 (where education is already required). Because of that, she recommended having education as a requirement outside of existing development rules. “Since it does not involve a retrofit, it’s a standard for minimum management that all the local governments could implement”
 - Using education as a requirement for IAIA creates a disparity between those who are already required to implement education and those who do not
 - Having education as a requirement would also be leaving some rather reasonable requirements on the table that could be part of the general rule
- Rich Gannon added these key points to the discussion:
 - Practices and activities that count toward the investment would need to be new since baseline; can’t count the programs already in place
 - We might set a minimum investment expectation for the load-reducing practices and track other practices, like conservation and education, separately
 - If there was a marketplace for nutrient credits as there is in other strategies, then local governments could purchase credits and have that count towards their investment
 - Mr. Gannon shared examples of joint and collective compliance practices, too
 - The concern with overfocus on education is that there is no clear connection between education and load reduction

Joey Hester asked other local government representatives to share their thoughts and concerns.

- Zack MacKenzie wanted to ensure that the HRL NMS would not interfere with the city of Lexington's MS4 schedule
 - Joey Hester stated that open communication channels, continued collaboration, and onboarding would ensure that NMS would not interfere with MS4 or other permit requirements and schedules
- Ben Parker shared similar concerns with Salisbury's stormwater management plan
- Kelsey Burgess expressed capacity limitation concerns citing an already overburdened stormwater department in High Point
- Having heard from all local government representatives present, Joey Hester sought permission from the group to begin outreach to other municipalities and counties in the watershed
- The group agreed to continue moving towards a draft for ED outside of meetings, via email
- The group scheduled future meetings, as follows:
 - 11/6/23, 1 - 3pm
 - 11/28/23, 10a - 12pm