

Pursuant to notice, the quarterly meeting of the Connecticut River Valley Flood Control Commission was held at the Dept. of Conservation and Recreation office in Northampton, MA on December 7, 2007.

PRESENT:

Connecticut	Commissioner Charles Berger Commissioner Denise Ruzicka Commissioner Barbara Ruhe
Massachusetts	Commissioner Mike Misslin Commissioner Eugene Cavanaugh Vacancy
New Hampshire	Commissioner Robert Kline Commissioner Fred Parker Commissioner Robert Grimley
Vermont	Commissioner Evan Hammond Commissioner William Pettengill Commissioner Gary Moore
Guest	Vermont Legislative Rep. Rick Hube

Since there wasn't a quorum at the meeting on September 21, 2007, we need to ratify the motions that were made at the meeting and accept the Minutes of the September 21, 2007 meeting after that. **Vote was unanimous.**

Since we have a guest, Denise moved to amend the Agenda to include a public discussion with Vermont Representative Rick Hube. **It was voted unanimously.**

Representative Hube was present because of concerns about the tax loss payments that were made to the Vermont towns that he represents, particularly Londonderry, Jamaica, and other Compact members. Rep. Hube said he had seen the Compact, which was entered into in 1953 and he said growing up in Farmington, CT, he remembered the flood of 1955 and the impact it had, what it did to the communities that were close to the River.

He came to our meeting because he had heard from some of his constituents, especially from Jamaica, regarding the Compact and the resulting tax loss money that the towns received because they had had land taken from them to construct the dams. Beyond that, he felt he wasn't fully informed about what takes place in the computation of those tax loss figures. He did hear that the reimbursement figures had been "frozen", the states of Massachusetts and Connecticut reimburse the states of Vermont and New Hampshire and Vermont and New Hampshire distribute the money to the impacted communities.

Evan asked Polly to comment since she was somewhat involved, as secretary to the Commission, in 1982 when the "freeze" was implemented. She had brought copies for everyone of the

January 15, 1982 Minutes, which included much information about the step that the Commission was going to take, i.e., “freeze” the amounts of money that were paid to the states as reimbursement. She stated all of 1982 was taken up with the issue of finding a workable formula. They had looked at all the formulas they had used in the past, trying to come up with a formula that would work. Naturally, the Vermont Commissioners were opposed to the “freeze” idea and Mr. Paul (VT) thought they should include the words, “subject to review annually”, but that didn’t seem to be what Commissioners from other states were thinking about. Mr. Kennedy, (MA) referred to it as “we are setting a rate now, but we must look at it every year.” Mr. Warner, from CT, stated he thought the Commission should set criteria for whenever they are considering a change or an adjustment. In the end, they voted unanimously in favor.

Polly said this exercise of trying to determine tax losses every year for the past 10 years had become a huge problem, that’s why a subcommittee had been appointed and they had come up with the “freeze” because it would accomplish three things: 1) remove the annual problem which the Commission has been dealing with for 10 years; 2) the two downstream states that have to make payments would know what the amount required is and could budget for it, and 3) upstream states would know in advance what they’re going to receive and could plan appropriately.

Barbara questioned how much land was involved – the Compact indicates (on page 7) at Ball Mountain a net drainage area of approximately 132 square miles – that’s a drainage area, not what we’re looking for. She also questioned how that land would be zoned if it was not being used? Mr. Hube said certain areas would be zoned differently than others probably. She said she was curious. Mr. Hube said he was only here for information, not drawing any conclusions.

Mike Misslin said the issue becomes a slippery slope because you have certain land use when the Compact was initiated and of course zoning has changed, certain land values have skyrocketed since 1953, the whole demographic has changed and how would you equalize that among all the states? Mr. Hube said his reading of this was that the revenues that were lost as the result of the construction of the dams would be reimbursed on the schedule that was put in and he didn’t see an equalization issue in there. Mr. Misslin said he was searching for the phrase, *highest and best use*.

Mr. Hube said he hadn’t come to the conclusion that anything is wrong – in fact he thinks that’s a poor choice of words, but the way he looks at it is obviously there are the payee states of Connecticut and Massachusetts and the payors are Vermont and New Hampshire. The motivation could be different for the states in terms of this issue. Looking back at the 1982 version, in one perspective, yes, it could be hard making the calculations from year to year, and at the same time he thought that there are a lot of demands on every state’s revenue. From the perspective of Jamaica, he thinks it’s worth it to take a look at this.

Denise said the idea of a freeze is not unusual. She and some others from this board sit on the Thames River Valley Commission and they have frozen the tax losses as well. She didn’t know about the Merrimack River. Mike Misslin said the Merrimack has been modified. Denise said the Compact required a lot of stuff from a variety of states. The genesis of some of this goes back to the 1936 floods which occurred in the Connecticut River Valley and 1955, which is why there has been significant work done in Connecticut and Massachusetts in building levees and significant payments that are now being made. Hartford, CT is now in the middle of Phase I

levee repairs; Phase One alone is \$15M, East Hartford is \$7M, Chicopee, West Springfield and Springfield in Massachusetts are in similar situations. There are obligations in the Compact of things they have to do for downstream communities as well. We have absolutely restricted growth within the flood plain areas. Under the Compact Connecticut is *obligated* to protect what's called both storage and conveyance. Under NFIP, which is FEMA's rules for national flood insurance, we actually could fill within the flood plain. We have state laws which kind of umbrella over that and they are much more rigorous in CT, which restrict that, in which we take a zero loss, as opposed to FEMA allowing the one foot law increase in flood height. We allow 0.000 and that's why when you go down 91 through Wethersfield meadows that is protected and we haven't allowed any growth or development. If you were to look at aerial photos from back then versus now you'd find that within the flood plain, we've been very protective of it because we do have obligations. The burden is not just on the upstream states, but also the downstream states have obligations to make sure that we're not growing in those zones and we're protecting the flood plain as well.

Barbara said what has also changed tremendously since the Compact was first done in the early 50's is the whole zoning and environmental restriction thing is much more developed and everything is much more complicated. Rick Hube said what is interesting is that many Vermont communities have zoning or planning laws, but Jamaica doesn't have any. Denise questioned, "Do they participate in the NFIP?" and Rick replied "Yes".

Evan said he had a nice conversation with Mr. Olson (from Jamaica) and Evan just put it on the table – those facilities protect the downstream areas as well as offering recreations areas for residents. Rick said Ball Mountain is also a well-known white-water kayaking area as well.

Barbara said she thought towns are beginning to realize that frequently when new development comes into a town, there is no cost/benefit. If you're going to build residentially in open space, it's going to cost you more to educate the kids who live in those houses and you could never collect enough taxes, and sometimes in commercial development you've got other issues that create problems.

Rick said that this sounds counter-intuitive, but in VT it's more beneficial to have more kids in town. Rick said he assumed the Compact must been approved by the federal government in some manner and also approved by the 4 states. Denise said each of the states had to ratify it into law and then Congress had to approve.

He said one of the obvious questions is who had the authority to "freeze" the values? Is it clear that that board (in 1982) had the authority to "freeze" the values? Was there legislative approval? It might not have required legislative approval? Denise said she reads the Compact to say that the Commission has that authority. It doesn't require that we go back to individual legislatures for that. If there's a dispute among Compact participants, because it is an Interstate Compact, that gets resolved at Federal Court level.

Barbara pointed out that the Compact says the Commission may use such revaluation, so it's not directed that we have to use revaluation and therefore it does give the Commission the authority to set it however we choose.

Mr Hube said he had come down to the meeting to try to get a better understanding of how this thing is pieced together, etc. He has a responsibility to the people he represents to make sure that their interests are protected, and they may very well be. He said he appreciated the time we took to explain things and he will keep in touch. He will discuss it with the Jamaica Town Clerk and he wished everyone a Merry Christmas.

Gary Moore said following the call that he'd gotten from the Jamaica Selectman, he was a little embarrassed that he couldn't answer much of his questions and quite frankly after he had read all this stuff, he still isn't sure he could articulate a real answer why the amounts were frozen. He's not sure he could explain to any of his towns why the situation is what it is. He feels he needs a much better understanding.

A general discussion with all kinds of ideas ensued among the Commissioners with no particular conclusion – just to think through what we needed to do.

Barbara suggested that perhaps she could read through the Compact with her lawyer eyes and at another meeting perhaps articulate why things are the way they are. Gary thought he had been remiss in not asking more questions before voting on anything. Barbara said it would really be useful to spend a meeting walking through the Compact so everyone understands it. It's a statutory scheme and the way you interpret statutes is you look at the plain language. She suggested contacting each state's Attorney General's office and asking for the legislation which established the Compact.

Mike said he thought Barbara was right – we need to re-visit the whole scheme of how this was concocted - we weren't there in 1982 – and see if it's valid and maybe it is or it isn't. Maybe it's time to re-visit the whole issue but it would take a considerable amount of time to re-calculate everything, but that should not be precluded at this time. Rick said that would be his sense. Barbara said before we do that, she's going to have to become familiar with the Compact. She said while she was in the process of being appointed to the Commission she read it and thought it was fascinating (if you have trouble sleeping). It works extremely well. She said she's used to reading dry stuff without a plot and it's better than a phone book! Barbara also said we need to find out how much land we're talking about.

At this point Rick Hube left the meeting.

Evan suggested perhaps Polly could search the files for the 3-pages of figures referenced in the Minutes of 1/15/82. Robert Kline said it might be a good idea to schedule our March meeting and concentrate on reading the Compact. Polly questioned whether we would need to talk with the Corps or were they strictly involved in building the dams? Denise said they built the dams so they could give us information on pools and stuff, but she didn't know how you could solve questions like how much protection protects one state versus another. Gary said he was sure that the Vermont towns are going to start talking to each other, there are 11 towns that are affected, and he can almost guarantee that in January when the legislature re-convenes, that the three Vermont Commissioners are going to be asked to testify about this issue, so he wants to gather as much information as possible. Denise said she thought that if we went back to the Army Corps documents for each of these dams we could find out what the federal government acquired, such as pool elevations, the acreage acquired, etc. Barbara said it probably makes sense to gather data

at this time. Even if don't have to use it at this time, there may come a time in the future when it will be necessary. When you begin to lose the institutional memory of an organization you begin to develop some of these problems. Further down the road, there might be a point in time when we should look at our documents, figure out what we have, what we need and what we don't need. She also suggested that we may need to go to our Legislators, inform them of the project we have ahead of us and explain that we will need to hire someone to go through our Archives, decide what needs to be kept, what can be thrown out, scan documents, post them to the website, etc. Mike Misslin said they had just finished a scanning project for their Dam Safety Project and it worked out to 10-11 cents a page. Once it's finished, the beauty of it is that it's always there, etc. Bob Grimley suggested that one of the problems of searching for documents is that you have to know the right combination of words that will bring up what you're looking for. Denise said it might be a good idea to go to the website and add more information such as the maps of the pools behind the dams, etc. Evan said when we start adding things, we'll have to upgrade the website. Evan said he thought we needed to go forward in our discussion of the Compact and go from there.

Evan suggested that we move back to Old and New Business and take care of those items.

Agenda #2 – Old Business

a) Discussion about plaque and letter sent to Mike Gildesgame

Evan read the letter and showed everyone the plaque which he is sending to Mike Gildesgame, and every one thought it was great.

b) Audit Report from Chuck and Denise

Chuck reported that he and Denise have not had a chance to go over the Commission's records; they have set a date of January 9, 2008 to do that. Polly said she will need some of the documents to complete the end-of-the-year business; Chuck said he had brought the documents with him in case she needed them, so she will complete her business and then get the documents back to Chuck and Denise to audit

c) Evan said we had discussed the fact that FERC was not going to be sending FERC notices any more – you can access them on line. Evan said he went on line – the only way we could subscribe is by docket number and that's useless for us because we need them by site, not by docket. When he called Washington, they don't do site notices and don't know when they will do it. Mike Misslin said the Dam Safety Office receives the notices – maybe we can get on the forwarding list and only those projects in which we have an interest would be mailed to us.

Gary talked about the river gauges and Barbara asked what they were. He explained that they tell you what the flow is – they can tell you exactly how long it takes for water to get from one place to another. Denise said they're installed and serviced by the US Geological Survey, whose budget keeps going down and they're operating costs keeps going up. They can tell you low flow, high flow, average flow, these flow numbers are used for a variety of purposes – for kayakers, flood control, etc. Mike said all the information is on line and the states cooperate in the management of these gauges. Gary said he and Bob serve on the Connecticut River Joint Commission (for Vermont and New Hampshire) and they've been trying for years to keep the gauges on the Connecticut River tributaries because they're just as important as the main stem. When there is a high water event, with gauges on the Upper Connecticut, they get calls from Springfield, MA and Hartford, CT wanting information about it and Gary said they can tell them, within a half an hour, exactly when the water is going to reach those areas.

Barbara said people forget how bad the 1936 and 1955 floods were – this next generation hasn't experienced a flood. Evan commented on the Corps presentation to us about the 2005 Alstead, NH storm and how two of the dams were very nearly topped, which would have been even more disastrous than it was for the residents.

Gary said, he thought if anyone happened to hear that any of the gauges were being eliminated on the river or the tributaries, the position of this Commission should be that ***“we don't want any gauges eliminated”***, and a letter from this Commission should be sent. Polly questioned how one would hear about gauge use being discontinued? Gary said individual commissioners have the opportunity fairly regularly, going to meetings, etc. Barbara stated perhaps we should propose a motion, “the position of the Connecticut River Valley Flood Control Commission is that all gauges on the Connecticut River and its tributaries are essential to public safety and proper maintenance of the watersheds”) and if we have such a policy statement on record, and if something comes up that means our Chair would be able to send a letter right away.

It was questioned who controls the gauges and Gary said it used to be the Corps and Mike Misslin said supposedly the US Geological Survey (USGS) was supposed to notify people, but it doesn't happen that way.

Denise said the federal government owns and operates them and they do a great job in terms of quality of data – stuff that you can run long-term statistics on and why it's important that they be there for a long time. Robert questioned - any complaints would have to go to the federal government or USGA? She said also your state because by law USGS can only fund up to 50% of the gauge so what they have is what they call co-operators and that may be the Corps or the states, etc. Gary said the states have the same issue – NH is trying to decide whether to keep more on the Merrimac and less on the Connecticut. Evan questioned what the cost might be and Denise said she thought it was about \$12,000 a year for each gauge in Connecticut

Barbara motioned and Gary seconded it: *move that the Connecticut River Valley Flood Control Commission, as a matter of policy, supports the retention and maintenance of all the gauges on the Connecticut River and its tributaries as being critical for public safety in the land areas that are the watersheds. The Chair is specifically authorized to write letters supporting the gauges to the appropriate authorities.* Evan called for a vote and it was unanimous.

Denise wanted to give everyone an update on the levee situation in Connecticut: Hartford spent \$15m to date just on Phase One of the levee repair. They have a budget authorization before the state legislature for over \$30m to complete it. They've done all the physical work now and it's the operational work they have to do because there are around a dozen openings in the dike walls where the train tracks go through and they need to make sure that those stop logs and those operational plans are up to date. They still have the next phase and what they need to do there. East Hartford was in the same situation as Chicopee and West Springfield where they had been told their dikes were fine, but then after Katrina the Corps said, oops - we've taken another look and we find a flaw in one of your designs so you went from being good to deficient and you only have a short period of time to fix it. Once again everyone went to bat for them and said – you've got to give them time to make the repairs – it's not like they had done something wrong. There's still a lot of things going on – they're now proposing a

re-map of the areas around the flood plains because the levees haven't been fixed and it may mean that thousands of properties behind them will have to get very costly flood insurance. So now we're again crying foul and saying, "wait a minute – all they asked for is 18 months. Give them the 18 months to fix it; we're in the middle of winter, you need to get permits and get contracts out, etc." It is moving forward and both towns passed referendums for multi millions of dollars. Bob Grimley questioned whether they were still having a problem with the Corps, because we had sent a letter to Washington about it, but Denise said it hasn't been the Corps – it's FEMA that has been inflexible. Bob questioned whether we should now send a letter to Washington regarding FEMA? Denise said she'd have to think about that, and she might know more by the time of our March meeting.

As an add-on to the above, Mike Misslin stated that Jim Gallagher, (Massachusetts) past president of the Association of State Dam Safety Officials, called him the other day in relation to their upcoming board meeting. He was looking for issues that were of particular interest to us. Mike said the problem is with the Corps – they designed and built these structures, and then they turned around and said there are design deficiencies in the structures they designed! He's asked ASDSO to put the heat on the Corps to take responsibility for updating that which they have initially designed, rather than coming back to the states and saying this is deficient. If that's what you want to do, then whenever your engineers turn up a stamped plan, with a Massachusetts stamp on it, we're going to go after your boys and their licenses. They need to be responsible. Bob questioned who's responsible financially? Denise said they've said we turned it over to you and you're responsible.

Agenda #3 – New Business

a) Approve Tax Loss Figures for 2007

Chuck Berger moved that we accept the Tax Loss figures for 2007 as presented. This was seconded by Fred Parker. **Vote was unanimous.**

b) Approve the Annual Report for 2006-2007

Polly showed the kind of binding that we could use in place of the plastic binding and everyone agreed to use it. Discussion followed regarding having the Minutes in the Report and everyone thought they should be included. Denise motioned that the 2006-2007 Annual Report be accepted and that the Minutes be included in the Report. Barbara seconded the report. Chuck said we need to think about verbatim reports – Barbara said Minutes are a distinct legal document. It would probably be better to have the Summary in the Annual Report as we do now. Denise said she would amend her motion – Move to approve the Annual Report for 06-07 with the Minutes Summary included. Evan asked that those in favor of the amendment signify by saying "Aye". **Vote was unanimous.** Vote was called for on approving the Annual Report – **vote was unanimous.**

Agenda #4 – Any Other Business to Come Before the Commission

Polly said she hadn't gotten her support money from Connecticut yet. Denise will look into it.

Agenda #5 – Date of Next Meeting

The next meeting will take place on Friday, March 28, 2008.

Evan stressed that the March meeting will principally be to review the Compact and we may want to re-visit the idea of a letter regarding the levees. Denise said she and Chuck will also do the audit before the March meeting. Evan asked Gary – he was going to give the Compact to the Attorney General – did he think he'd have something to report on at the March meeting? Chuck said he thought it was going to be more of a working meeting for us, to understand the issues in the Compact.

Barbara said one of the ways you can set up the Agenda is that after you call the meeting to order, and if other people start to come, there's an opportunity for public comment and then you go into the business of accepting the Minutes, etc. (she's used to dealing with the Freedom of Information Act and we should at least be cognizant of that.) Gary said you can actually have the public comment before your discussion or at the end. During the discussion, it's strictly the board that's talking. Evan said he thought you can limit the time that a person takes to comment also.

Denise questioned whether we send the Agendas to the respective Secretary of State for each state? We have to notify the Secretary of State in each of the four states of our schedule of meeting dates and also the Agenda for each of those meetings, which was not being done before now.

Chuck asked that Polly try to find the 3-page summary of figures that is alluded to in the Minutes of 1/15/82 and mail it to the Commissioners.

Motion to adjourn was made by Denise, seconded and voted unanimously.