

Senate Energy and Natural Resources Committee

Griffin Roberge 271-2878

SB 445, designating the Warner River as a protected river.

Hearing Date: January 16, 2018.

Time Opened: 10:05 a.m.

Time Closed: 10:58 a.m.

Members of the Committee Present: Senators Avard, Bradley, Innis, Fuller Clark and Feltes.

Members of the Committee Absent: None.

Bill Analysis: This bill designates the Warner River as a protected River.

This bill is a request of the department of environmental services.

Sponsors:

Sen. Feltes

Sen. Ward

Sen. Bradley

Sen. Fuller Clark

Rep. Carson

Rep. Mullen

Rep. Suzanne Smith

Rep. Myler

Rep. Luneau

Who supports the bill: Senator Martha Fuller Clark (District 21), Senator Dan Feltes (District 15), Representative Suzanne Smith (Grafton - District 8), Jim O'Brien (The Nature Conservancy & Hopkinton), Bill Baber (Dover), Matt Leahy (Forest Society), Senator Ruth Ward (District 8), Tracie Sales & Kathy Black (DES), Susan Arnold (Appalachian Mountain Club), Michelle Tremblay (NH Rivers Council & NH Rivers Management Advisory Committee), Kelly Buchanan (NH Lakes Association), Representative Judith Spang (Strafford - District 6), Nancy Martin (Warner River Nominating Committee), John Martin, Daniel Thomas Moran, Ray Martin (Warner Water District), Chris Connors, George Embley, Katerina Crowley, Sam Durfee, Beth Ball, Robert Ball, Roderick J. MacLean, Michael Amaral (NH Audubon), Frank Moltz (Warner), Michael S. Simon (Warner), Jack Noon (Sutton), Representative John Mullen (Strafford - District 1), Representative Clyde Carson (Merrimack - District 7), Doug Giles (Hopkinton).

Who opposes the bill: Senator Harold French (District 7), Representative Werner Horn (Merrimack - District 2), Representative Natalie Wells (Merrimack - District 25).

Who is neutral on the bill: Ben Nugent (NH Fish & Game).

Summary of testimony presented in support:

Senator Dan Feltes - provided written testimony

Senate District 15

- SB 445 will designate the Warner River as a protected river under the NH Rivers Management & Protection Program (RMPP).
- The RMPP considers five resource categories - natural, managed, cultural, recreational, and other - and the Warner River meets all criteria.
- Individuals in many communities worked together to make this designation happen.
- This designation will set in place a local advisory committee to work with the state on the management of the river.

Representative Judith Spang

Strafford - District 6

- Worked to get the Lamprey River designated into the RMPP.
- Advantages to being part of the RMPP:
 - Support from DES in making sure that any proposal that may impact the river will not slip by. Interested parties will have input.
 - Draws people together in a community to coordinate how the river is managed.
 - Different municipalities tend to manage things according to their own rules and priorities. The RMPP brings parties together on a common management plan.
- Senator Avard asked if this designation would have any impact on private landowners. Representative Spang said no. River landowners get notifications from the local advisory committee. This occurs on the Lamprey River. Landowners get public information on septic systems or fertilizer use. It does not have control over private property owners. There is no threat of eminent domain or federal intrusion in the program.

Tracie Sales - provided written testimony

Rivers and Lakes Program Manager, Department of Environmental Services

- The Warner River will be the 19th river designated into the RMPP. The program uses a two-tiered approach to manage and protect rivers at the state and local level through the advisement of the state Rivers Management Advisory Committee (RMAC) and the Local River Management Advisory Committee (LACs).
- The Warner River was nominated after the discovery of wild brook trout and a desire by community members to protect the river and its habitat.
- Concerns did arise about the ability of landowners to develop hydropower under the designation. The nominating committee invited those concerned to join the committee. The result was different classifications for different areas of the river to allow for dam development.
- Senator Avard asked if hydropower would be banned from the river. Ms. Sales said hydropower would not be banned from certain portions of the river. It depends on how the river is classified. If someone really wanted to put in hydropower, there are ways around it.

Michelle Trembley - provided written testimony

President, NH Rivers Council

- A designation into the RMPP requires a deep level of support from surrounding communities.
- Hydropower has been listened to throughout the nomination process. The "community river" designation allows for the redevelopment of some of the historical dams.
- Senator Avard said some dams are more than 100 years old on the river. Would the designation prevent any upgrades or redevelopment to those hydropower sources? Ms. Trembley said there are several designations a river can have when placed into the RMPP. "Community river" is one such designation that allows for dams to be developed and redeveloped.
- Senator Avard asked if there are any extra thresholds those hydropower facilities must go through if in a "community river." Ms. Trembley said no. It is an allowed right.

Michelle Trembley - provided written testimony

Chairwoman, NH Rivers Management Advisory Committee (RMAC)

- The Warner River qualifies for designation into the RMPP and has strong support from citizens and elected officials. The impetus for the nomination was an assessment of the Eastern Brook Trout population in the Warner River watershed.

- Concern was expressed by a small minority of owners of existing and breached dams along the Warner River. The Warner River Nominating Committee worked with the landowners to facilitate a compromise, which will allow the development of hydropower within areas designated "community river."

Nancy Martin

Warner Conservation Commission

- The Warner Nominating Committee was formed after the discovery of Native Brook Trout in the Warner River. These trout are indicative of high water quality.
- Water quality and the protection of the trout would be part of the mission.
- This designation places no additional regulations on landowners beyond what local zoning boards or ordinances require. The Shoreland Water Quality Protection Act is already in place and offers strong protections. Current law regulates the dumping of chemicals/toxins in the water and the designation will not supersede those laws.

John Warren - provided written testimony

- He owns 1800 feet on the river and an old dam. The designation will go far in preserving the river's rural character.

Daniel Thomas Morin - provided written testimony

- Property owners with 900 feet on the river and they support the designation with a poem.

Ray Martin

- Represents the Warner Village Water District.
- The district relies on its water supply from wells near the river.
- Upstream land uses can affect the aquifer that supplies water to Warner wells.
- The Warner River is a high quality water source and the designation will help preserve it.

Chris Connors - provided written testimony

Vice President, Basil W. Woods, Jr. Chapter Trout Unlimited

- After DES Commissioner Robert Scott approved the Warner River's nomination, Trout Unlimited sought letters of support at community events.
- Out of all the nominated rivers, the Warner River received the most support from surrounding communities.

Sam Durfee – provided written testimony

Regional Planner, Central New Hampshire Regional Planning Commission (CNHRPC)

- The beginnings of the nomination started out from a joint watershed study conducted by the NH Fish & Game Department and Trout Unlimited.
- In order to educate the public and get support for the designation, the CNHRPC explored the possibility of a five-town river nomination with help from residents in Bradford, Sutton, Warner, Webster, and Hopkinton.
- A small grant was given to the CNHRPC from the New England Grassroots Environmental Fund (NEGEF) to support technical assistance to write a Warner River nomination document. The nomination commission met with the five towns and had public informational sessions. This led to an adjustment of the river classifications to accommodate the needs of landowners and river uses.
- The RMPP will allow for greater regional communications across the five towns sharing the Warner River. It will open the door for future grant funding and further study of the Water River watershed. It will also strengthen local authority when making decisions that impact the Warner River.
- Senator Avard asked what a deed of riparian rights. Mr. Durfee said it allows a landowner to use the river as they see fit. The river is a state resource. The state protects the public ability to use it. The landowners own the land under the river. They have the ability to post the land.

- Senator Bradley asked if the use of hydropower is addressed in the different classifications of the river: a rural-community river, a rural river, a community river. Mr. Durfee said that there are four classifications, but only three classifications are made on the Warner River. After speaking with landowners, SB 445 will apply the "community river" classification to dam sites. There are 13 dam sites on the river. 12 are under "community river" classification, allowing them the ability to develop the sites. One is not under a "community river" classification. John Warren does not want his dam developed as a hydropower dam.

*Representative Clyde Carson
Merrimack - District 7*

- What occurs upstream can affect communities downstream, requiring regional involvement.
- Warner is a community that supports renewable energy and support hydropower. All property owners along the river should have received notification about the nomination of the river.
- Warner has an active historical committee in town and worked to make sure that the needs of John Warren were addressed.
- Local ordinances are stronger than any requirement that could be put forth under the RMPP.
- Senator Fuller Clark said some testimony implied there will be an impact on property owners who own land on the river where there are not historical dam, but would like to install a dam. Representative Carson said the river classifications have been set up to allow for dams in certain parts. He is not sure if there are other dam sites that will come into play. There are not many historical dams left.

*Judith Ann Eldridge - provided written testimony
Chairwoman, Bradford Conservation Commission*

- SB 445 will advertise to local communities the importance of the Warner River.

Summary of testimony presented in opposition:

*Representative Natalie Wells – provided written testimony
Merrimack - District 25*

- Opposed to SB 445 on behalf of constituents who do not want the Warner River designated.
- The Shoreland Water Quality Protection Act offers plenty of protections for the river.
- Unless the designation is a "community river," a dam cannot be used. If John Warren were to sell his house in the future, the new property owner cannot develop the land.
- Based on data, there is no difference in water quality from 2007 to 2017.
- The RMPP offers an inter-municipal forum. This elaborate involvement is unnecessary. Conservations commissions in town should be doing that rather than local volunteers.
- Senator Avard said testimony has indicated that hydropower is not restricted under a "community river" classification. Representative Wells said that other classifications for other areas of the river restrict any future hydropower development.

Neutral Information Presented: None.

Future Action: Ought to Pass.

GJR
Date Hearing Report completed: January 16, 2018.