

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: March 11, 2008

FROM: Wayne Ives, Instream Flow Specialist **AT (OFFICE):** NHDES-Water Division
and Steve Couture, Rivers Coordinator

SUBJECT: Establishment of Souhegan Protected Instream Flows as Water Quality Standards

TO: Thomas S. Burack, Commissioner

THRU: Paul Currier, Watershed Bureau Administrator
Harry Stewart, Water Division Director

cc: Gretchen Hamel, Legal Unit

Attachments 1) Declaration of the Establishment of Protected Instream Flows for the Souhegan Designated River
2) Table 1 – Summary of the Protected Instream Flows for the upper and lower Souhegan River

Please review and sign the attached declaration establishing the Souhegan Protected Instream Flows.

BACKGROUND

The Rivers Management and Protection Act, [RSA 483:9-c](#) requires the Commissioner of DES to adopt rules for instream flow protection. [Laws of 2002, Chapter 278:3, III \(b\)](#) restricts rulemaking to the Lamprey and Souhegan rivers (the Pilot rivers) and requires the Commissioner of DES to establish the protected instream flows for these rivers. Instream Flow Rules [Env-Ws 1900](#) fulfill the rulemaking requirement. Since 2002 studies have been conducted on the Pilot rivers to recommend protected instream flows. The attached declaration establishes protected instream flows for the Souhegan River based on the recommendations of a completed study.

DISCUSSION

Instream Flow Rules

RSA 483-9c and Laws of 2002, Chapter 278 require the Commissioner of the Department of Environmental Services (DES) to adopt rules “specifying the standards, criteria, and procedures by which a protected instream flow shall be established and enforced for each designated river or segment.” Env-Ws 1900 RULES FOR THE PROTECTION OF INSTREAM FLOW ON DESIGNATED RIVERS (Rules) known as the Instream Flow Rules were adopted May 29, 2003. These are procedural rules. Actual protected instream flows are to be established by the Commissioner in a separate action, following the procedure set forth in the rules.

Technical Review and Water Management Planning Area Advisory Committees

Pursuant to Laws of 2002, Chapter 278:3, I (a) and 278:3, II (a), a Technical Review Committee and a Water Management Planning Area Advisory Committee for the Souhegan Designated River are required to be convened prior to beginning a protected instream flow study . The Souhegan Technical Review Committee was appointed and first convened February 6, 2004. The Souhegan Water Management Planning Area Advisory Committee was appointed and first convened March 5, 2004. Meeting minutes, presentations, and handouts are available on the [Souhegan Instream Flow website](#).

Instream Flow Study

In accordance with Laws of 2002, Chapter 278:2, II, an [instream flow study](#) (Study) has been conducted prior to establishing these protected instream flows. The Study was completed and the first draft of the Report was presented to the Technical Review Committee March 13, 2006. Review and comment by the Technical Review Committee resulted in the February 5, 2007 Proposed Souhegan Protected Instream Flow Report. Public testimony was received on this document at a public hearing.

Public Hearing and Comment Period

As required by Chapter 278:3, III(a), DES held a public hearing jointly with the New Hampshire Senate Energy, Environment and Economic Development Committee; Wildlife, Fish and Game Committee; (successors to the Environment Committee) and the New Hampshire House of Representatives Resources, Recreation and Development Committee to present the Report and the proposed protected instream flows and invite comments.

Public notification of the hearing and of the availability of the Report was made by newspaper advertisement, direct email and mailing, and internet posting. Copies of the Report were made available for review by February 12, 2007. The public hearing was held March 21, 2007 at the Milford Town Hall auditorium from 6 to 9 pm. Milford is a community on the Designated River. The comment period remained open until Close of Business April 20, 2007. DES documented the comments received. DES's responses to the comments and revisions made in response to comments are Appendix 18 in the final Report.

Commissioner action needed to Established Protected Instream Flows

The steps prescribed in law and rule to develop protected instream flows for the designated reaches of the Souhegan River have all been accomplished. The final step in the process is that "the commissioner shall issue a decision establishing protected instream flows for the designated river" in accordance with the rules Env-Ws 1905.04.

RECOMMENDATION

I recommend that the Commissioner review and sign the attached decision establishing protected instream flows for the Souhegan River.