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Land and Water Resources Council

2011 Biennial Report

to

Governor Paul R. LePage

and the

**Joint Standing Committee
on Environment and Natural Resources
of the
One Hundred Twenty Fifth Maine Legislature,
First Regular Session**

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INTRODUCTION

The Land and Water Resources Council (“LWRC”) provides this report to the Governor and the 125th Legislature's joint standing committee with jurisdiction over environment and natural resources matters pursuant to 5 M.R.S. §3331(4). The LWRC is established to consider natural resources issues of statewide significance and to counsel the Governor and Legislature on policy options for management and protection of natural resources. (5 M.R.S. §3331(2)). The Council's agenda may include matters assigned to it by the Legislature or the Governor, as well as projects initiated at the request of a state agency or by the Council itself.

LWRC AND RELATED ACTIVITIES

Overview

During the period covered by this report (2009-10), the administration used means other than the LWRC, namely its natural resources sub-cabinet and issue-specific task forces, to ensure a high degree of inter-agency consultation and coordination in the development and implementation of state natural resources-related policy; and the LWRC did not formally meet.

Governor Baldacci's natural resources sub-cabinet, which was comprised of natural resources agency commissioners (who are also LWRC members) met regularly to discuss and coordinate executive branch actions on environmental and natural resources-related issues and opportunities. SPO's deputy director served as lead staff and coordinator of this cabinet-level group. Since 2003, the LWRC has adjusted its meeting schedule and approach to agenda setting to coordinate its role with that of the Energy Resources Council¹ and the then-organized natural resources sub-cabinet. The LWRC resolved to use the sub-cabinet discussions to identify issues for consideration by the LWRC or in another more public forum and to help guide LWRC actions on matters assigned to it by the Legislature or Governor, as well as other matters which may benefit from inter-agency coordination but may not require the LWRC's direct involvement. This approach proved an efficient and effective means for ensuring timely discussion of and coordinated action on natural resources policy issues.

Interagency coordination and policy development

During this period, the prior administration used issue-specific task forces, in lieu of the LWRC, on several matters that may otherwise have been assigned to the LWRC. This approach helped facilitate broader agency and stakeholder involvement and public participation in addressing closely inter-related energy, economic development, and natural resources policy issues. In keeping with its core statutory function of enhancing policy development and coordination among executive branch agencies and the depth and

¹ Legislation formally establishing this consultative body was later repealed. See P.L. 2009, c. 372, Pt. A.

capacity of its professional staff, the State Planning Office (SPO) played a central role in designing, staffing, and implementing aspects of these multi-faceted initiatives.

Ocean Energy Task Force. The Ocean Energy Task Force (OETF) was a major focus of SPO's natural resources policy development and coordination responsibilities during this period. Having assisted the Governor's office in crafting the executive order creating it, SPO served on and provided lead staff support for the OETF. The OETF's final report and recommendations, developed with the benefit of bipartisan legislative involvement and leadership and significant stakeholder input, led to enactment of significant legislation (P.L. 2009 chs. 270 and 615). This legislation has helped jump start Maine's renewable ocean energy industry, harmonize and streamline the pertinent regulatory framework, and make the State a national leader in this emerging business sector.

SPO continues to advance and coordinate implementation of the OETF's recommendations. SPO serves as co-chair of the joint Bureau of Ocean Energy Management, Regulation and Enforcement-State task force formed to lay the ground work for streamlined, well-coordinated federal-state review of offshore wind energy development in federal waters off Maine's coast. SPO also represents the State on the Atlantic Offshore Wind Energy Consortium formed by Interior Secretary Salazar to develop regulatory streamlining and other recommendations to speed growth the nation's renewable ocean energy industry.

Quality of Place Council. P.L. 2009, ch. 483 established the Maine Quality of Place Council (council) to develop and coordinate strategies to create jobs and economic opportunity that take advantage of Maine's distinctive, place-based assets. SPO and the Department of Economic and Community Development staff the council, which is directed to report annually to the Governor, and seek input from and report annually to the Legislature's Labor, Commerce, Research and Economic Development Committee. The law calls for regionally-developed quality of place investment strategies. The Sunday River and Sugarloaf ski areas, the Farnsworth Museum in Rockland, and the Maine Winter Sports Center in Fort Kent illustrate the type of successful, private sector-driven, quality of place investments at which such strategies may aim. The council has adopted a work plan for 2011.

The council's work and mission stem from and further economic development-oriented recommendations from the 2006 Brookings Institute study, *Charting Maine's Future*, SPO's economic research confirming that quality of place is a key economic driver for Maine (www.maine.gov/spo/specialprojects/qualityofplace), and subsequent public-private recommendations by quality of place councils created by Governor Baldacci focused on devising a quality of place investment strategy to complement Maine's traditional economic and community development programs. During 2009-10, and previously, SPO played a central role in these and related quality of place initiatives, which necessitated inter-agency and stakeholder coordination as well as consideration of inter-related economic development and natural resources protection issues.

LNG. SPO continued to coordinate state participation in the Federal Energy Regulatory Commission's (FERC) review of LNG projects during this period. Designated by Governor Baldacci as FERC's point of contact regarding state and local safety considerations, SPO has coordinated development and submission of pertinent filings and helped facilitate communication and coordination among state natural resources and public safety agencies.

Coastal dredging priorities. In cooperation with MaineDOT and other state agencies, SPO continued to coordinate an interagency-stakeholder coastal dredging work group. This informal, consultative group provides a forum for identifying and communicating to Maine's congressional delegation state coastal dredging-related federal funding priorities, facilitating coordinated state agency action, and developing policy recommendations as appropriate.

Lakes Heritage Trust Fund

5 M.R.S. §3331, sub-§6 authorizes the LWRC to manage the Lakes Heritage Trust Fund and include in its annual report “an accounting of all donations to and expenditures from” the Fund. In 2009-10, the Fund received no donated or other funds and the LWRC made no expenditures from the Fund.

Water Resources Planning Committee

The Legislature established the Water Resources Planning Committee (WRPC) in 2007 to provide a means for coordinated scientific review and development of policy recommendations on withdrawal and use of groundwater and related matters. The WRPC, which is led and staffed by the Department of Conservation's Maine Geological Survey, is directed to report annually to the LWRC.

The WRPC's core mission is planning for sustainable water use. The first phase of this work involves developing more detailed water resource information in select watersheds identified through an earlier analysis of watersheds at risk. This effort is well underway. If required by the results of the first phase of work, a second phase would involve convening planning groups in watersheds to identify steps needed to remediate or avoid unsustainable water uses. A third phase, the need for which is intended to be avoided through the work of the planning groups, would involve recommendations to the Legislature to address water use issues in over-subscribed watersheds.

Improving water information in selected "watersheds at-risk" has been a primary focus of the WRPC's work since 2008. In 2009-10, efforts centered on waters in the Kennebunk-Kennebunkport-Wells water district, Branch Brook watershed in Wells-Sanford, and Freeport. The WRPC's 2009 and 2010 reports to the Natural Resources Committee and LWRC and related information may be viewed on-line at - <http://maine.gov/doc/nrimc/mgs/explore/water/planning/index.htm>.

P.L. 2009, c. 132, directed the WRPC, in coordination with the Office of the Attorney General and the Citizen Trade Policy Commission (CTPC)², to examine whether and how international trade agreements may affect the State's ability to manage its ground water resources, by, for example, limiting state authority to manage extraction and export of ground water by foreign companies. The WRPC and CTPC developed and reported their unanimous recommendations to the Natural Resources Committee in February 2010. The report provides the following summary of its detailed recommendations:

"The Maine Legislature should continue to make decisions regarding ground water and other natural resources using a transparent process with opportunity for public input, and state agencies should continue to apply the law in a manner consistent with due process. International trade agreements, which are currently negotiated without sufficient consultation with states, contain provisions that could expose Maine laws to challenges in international tribunals whose decisions take precedent over state and federal law. There is potential for these treaties to undermine our state's capacity to put laws into place that protect the health and well being of our citizens. The Legislature and the CTPC should take action to monitor these trade negotiations and agreements. They should further take action to seek to change this undemocratic system in which agreements are negotiated without transparency and without meaningful consultation with the states."³

The report further recommends that:

"In future policy deliberations, the Legislature should consider that the best defense against challenges under international trade agreements is to continue its existing process of adopting regulations that are clear, reasonable, have a sound basis, are applied equitably, and that are established through due process."⁴

A copy of the report and related information is available at the above-noted website.

Activities Anticipated in 2011

At this initial stage of Governor LePage's administration, it is neither possible nor appropriate to list policy priorities on which the LWRC will focus or a work plan for 2011-12. Governor LePage has clearly identified regulatory reform as one of the priorities for his administration. The LWRC would provide a cabinet-level vehicle well-suited to developing or reviewing recommendations in this area should the Governor or Legislature wish it to do so. SPO stands ready to continue to provide professional staff support on this and other matters that may be assigned to the LWRC.

² The Legislature created the Citizen Trade Policy Commission in 2003 to ensure on-going assessment of the effects of international trade policies and agreements on the State.

³ *The Potential Impact of International Trade Agreements on Ground Water Withdrawal Regulations: Report to the Joint Standing Committee on Natural Resources* (Water Resources Planning Committee and Citizen Trade Policy Commission, February 2010), p. 2.

⁴ *Id.*