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Testimony by American Whitewater, Before
Vermont House Committee on Fish, Wildlife & Water Resources
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CHAIRMAN DEAN, Ranking Member Highgate, Members of the Committee, I want to thank you for inviting me to testify today. My name is Robert Nasdor. I'm the Northeast Stewardship Director at American Whitewater. We represent the interests of more than 80,000 whitewater boaters nationally and 100 affiliated groups, including the Vermont Paddling Club, who share a common interest in protecting, restoring and enjoying America's rivers.

American Whitewater has been actively involved with hydropower relicensing for more than 30 years beginning with our work on hydropower projects on the Deerfield River in the 1980's. We are currently involved with hydropower relicensing projects in Vermont including the Green River in Morrisville and the Connecticut River at Wilder and Bellows Falls. Through our work on hydropower projects in the region, we and our partners have protected more than 50 river miles and more than 20,000 acres of riparian land, negotiated more than \$1 million in mitigation and enhancement funds, removed access fees, provided public notification of river flows, secured more than 600 days of recreational boating access, and have improved opportunities for other recreational uses including trout fishing and hiking on and along some of the most treasured rivers in the region.

FERC Licensing Process

Through our work, we know first hand that the FERC relicensing process provides stakeholders such as American Whitewater, watershed councils, fishing groups and other non-governmental organizations and individuals with the opportunity of a lifetime to advocate for measures that will allow for the protection, restoration and enjoyment of rivers that have been disrupted by dams and hydropower operations. Although we would always prefer that rivers be restored to their natural state and support dam removal whenever possible, we are not opposed to hydropower per se and understand the need for clean and renewable energy sources. We also support the FERC process because it provides transparency, and assures that all voices are heard and all viewpoints considered. While FERC's mission is to promote the development of safe, reliable and efficient energy infrastructure that serves the public interest, FERC is also mandated to give equal consideration to both power and non-power values.

Through the FERC process, we have participated in scoping meeting, requested studies on boating flows, access, and recreational use, sought to compare the value of power generation to the value of recreation opportunities lost, and have sought mitigation and enhancement funds to compensate for damage to the environment and lost use and

enjoyment of rivers. The involvement of stakeholder groups in the FERC relicensing process has provided the Commission with an array of viewpoints and data that it would not have otherwise considered in evaluating hydropower license applications.

Consider the situation as it existed when many hydropower plants were licensed prior to the passage of the 1986 amendments to the Federal Power Act mandating that FERC give equal consideration to non-power values. Prior to that time, FERC granted hydropower licenses that resulted in the dewatering of natural river beds, damaging river ecology and eliminating recreational opportunities. Unquestionably, the transparent and inclusive process that exists today has resulted in improved river health, expanded recreational opportunities, and helped restore the public trust in government through improved transparency. I also want to acknowledge the work of the Agency on Natural Resources and appreciate their efforts to put the health of Vermont's surface water resources above development and other factors that might have an adverse impact on the ability of boaters to enjoy the rivers and creeks throughout the State.

Act 165 Report

I understand that the passage of Act 165 stems from a desire to take advantage of opportunities for small hydropower generation where there are projects that are truly non-controversial, and we support that objective. We recognize that in some circumstances, the process of obtaining a FERC license can be lengthy. While the situation has improved under the Integrated Licensing Process where there are strict timetables and extensive stakeholder involvement with the development of studies, the process can still take five years to complete. Even the process of obtaining an exemption can itself be lengthy. We recognize that for small, non-controversial hydro projects, the costs of developing applications and performing studies may outweigh the benefits of power generation, and that is the situation that Act 165 was designed to remedy.

While we support these general objectives, we also urge this Committee to exercise caution. Act 165 should not be seen as a vehicle for circumventing the FERC process that has been so beneficial in restoring rivers, recreation and government accountability. Hydropower projects of less than 10 mW, while arguably low-impact, can have a profound impact on a variety of resources including boating, fishing and other forms of recreation. The issue is not the power generation potential of the project, rather the issue is what impact the project will have on aquatic life, recreational use and other values.

Reading through the Act 165 Report, I am concerned by the paucity of information on stakeholder consultation. While I both appreciate and admire the perspectives of the agencies that entered into the Memorandum of Understanding, the MOU does not take the place of meaningful dialogue with an array of organizations such as American Whitewater, Trout Unlimited, Connecticut River Watershed Council and Vermont Natural Resources Council to name a few. The fact that there was no process for

soliciting input from NGOs prior to the submission of the Act 165 Report to the legislature is itself a cause for concern. While the interests of these organizations and others may be adequately addressed in many instances, oftentimes this will not be the case. What may appear to some as a non-controversial project may appear very differently to others, and without a robust stakeholder consultation process, the agencies may not be sufficiently informed of all perspectives and concerns. These additional perspectives can only be obtained in an open and transparent process, and there is a risk that the agencies may select inappropriate projects for inclusion without appropriate consultation. While we appreciate the experience of those in Colorado who have entered into an MOU with FERC to facilitate approval of conduit hydro projects, the low-impact hydro projects that are the focus of the state MOU are very different and implicate other considerations. As such, greater stakeholder consultation and transparency are core elements that should not be ignored.

One aspect of the report that is particularly troubling is the lack of any consideration being given to the possible impact that these proposed hydropower projects would have on recreation. To the extent that the proposed projects will diminish the use and enjoyment of the rivers where they are located, these impacts should be taken into consideration by the agencies in the project selection process. The report should also clarify whether selection will be limited to new hydropower projects or whether selected projects may include those seeking FERC relicensing and those seeking to modify existing hydropower licenses. We would urge the Committee to specify that the screening criteria should be limited to new hydropower projects rather than those seeking relicensing or license amendments.

H.442 Legislation

American Whitewater opposes H. 442, and urges the committee to reject its passage. H.442 requires that ANR certify that projects meet the state's water quality standards and issue 401 Certification before the FERC application process is complete. The state has a responsibility to closely examine the impact of proposed hydropower projects on the state's waters, including its impact on fish and wildlife. The Federal Power Act authorizes ANR to use its mandatory conditioning authority in order to enforce the Clean Water Act protections to minimize adverse impacts. ANR can only properly exercise its authority at the conclusion of the licensing process after all necessary studies have been completed and all impacts understood. By prescribing flows in statute as proposed by H.442, the legislature would be forcing ANR to violate the federal Clean Water Act and rubber stamp projects rather than fulfilling its obligation to closely scrutinize project impacts on water quality standards. H.442 would allow a small group of hydropower developers to avoid their responsibility for meeting the same environmental standards that all other users of rivers are required to meet. We strongly urge the Committee to reject this attempt to undermine the Clean Water Act.

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Thank you for the opportunity to provide testimony to the Committee on these important issues. If you have any questions about our testimony, please don't hesitate to contact me at bob@americanwhitewater.org, (617) 584-4566.