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Testimony on H.394
January 30, 2014

The Vermont Natural Resources Council wishes to present its position on H.394, an Act Relating to Authorizing the Secretary of Natural Resources to Make Site-Specific Resource Determinations.

VNRC presented comments on this bill to the committee in April of 2013 and the comments below are consistent with our position at that time.

VNRC is concerned about any wide-reaching decisions related to specific resources that might have detrimental effects on the protections for our waters. To that end, any decision of the Secretary to increase protections for our waters should be enabled through this legislation when based in scientifically defensible standards and robust opportunity for public comment.

Legislation that enables changes in the level of protection – for example, embarking on a Use Attainability Analysis or changing the classification of a stream (e.g. from Class A to Class B) to accommodate development at the cost of water quality protection, or to avoid costly or intensive restorations efforts must be rejected. These types of long-range decisions deserve legislative and public scrutiny.

That said, it is our understanding that the bill as proposed would not allow, for example, reclassification from Class A to Class B. Under the Clean Water Act, a Use Attainability Analysis would be required to eliminate the uses of water or to reclassify a waterbody. Our support of this bill is dependent on this safeguard.

We continue to maintain that all public comment periods be for at least 30 days to encourage public participation.

We continue to maintain that the Secretary *shall* be required to implement by rule the “rules, requirements, procedures, process and other requirements”. Given the far-reaching nature of such actions, the rulemaking

process with its public notice requirements appears is favorable to the adoption of an internal procedure, which does not require public input.

VNRC continues to have significant concerns with the Draft Rule of Procedure to implement the transfer of certain rulemaking authority from the Water Resources Panel to the Agency of Natural Resources. That is outside of the purview of this bill, but directly related to both this bill and the passage of Act 138 in 2012. We have requested an audience with the Agency to discuss these concerns.