

According to Tom McArdle's testimony yesterday, ANR is now saying they are taking a neutral position, and will neither support or oppose our charter change - trying to maintain a balance between their recreation functions and their protection function.

ANR also declined to participate in SCOVt case, "having taken a neutral position."

Yet as soon as the case was determined, DEC, the division tasked with water protection, opened the pond to recreation, a politically expedient action with no scientific evidence provided for the safety of that action. So much for balance.

There is no balance shown in the existing rules, which allow recreation in every body of water including public water supplies and so-called ecological waters.

There is no balance shown in myths propounded by ANR, that the SCOVt opened the pond, and that Montpelier's treatment plant can remove all contaminants.

There was no balance shown in the decision on the citizens' petition to re-close the pond, when DEC didn't consider the evidence or testimony, or follow its own rules.

There was no balance shown in H.33 hearings when both Commissioners Mears and Porter testified against municipalities controlling their own water sources.

There was no balance shown when Mr. Wichrowski from F&W showed up last Friday to promote his fishing access.

There is no balance shown when Mr. Mears is allowed to testify yet again.

The city is not here to debate with fishermen and hunters about their access - this is a governance issue, not an access issue. Both the SCOVt and Legislative Counsel have confirmed the legality of the city's position.

The city is here to discuss management control of the pond, which ANR now has, and ANR is suddenly claiming neutrality and refusing to engage in the discussion? I wouldn't blame you for being a little put out.

Take a look at the attached table, taken from the 305b report that ANR is required to submit to the EPA every other year, on the condition of the waters. It shows that, despite the flowery language and lofty goals that Rep. Kitzmiller quoted yesterday, Vermont's lakes and ponds are degrading at a rather alarming rate. ANR has not done a stellar job of conservation. The number of pond acres that are impaired for swimming has increased by 20% between 2010 and 2014. Of the 55,561 acres of inland lakes and ponds that exist in Vermont, only 32,000 - 58% - met Water Quality Standards for supporting aquatic life in 2014, and that was down 5.4% from 2010. Every bit of this degradation is caused by human activity - the spread of invasives, erosion, phosphorus pollution, algae, turbidity, and more. Fortunately, the 1200 acres of drinking water ponds, which until recently were mostly still protected by the municipalities that use them, are in relatively good shape. Although DEC has said, in testimony, that they want to open all those ponds, too, as they did Berlin Pond.

Also, as a point of interest, I draw attention to the table on the back of that chart, which shows information on designated uses of the various classes of waters, first as reported to EPA, and secondly as defined in the Water Quality Rule. Class A-2 refers to public water supply ponds, as

well as to about 150 other lakes and ponds that are not drinking water sources. Designated uses are the uses that are defined in the Water Quality Rule as acceptable for that class of waters. Effectively, DEC has been misinforming the EPA about the recreational uses of our water supply sources. It could be an oversight, but it was repeated in 4 successive reports.

Here's the real crux of the matter. It's actually not all ANR's fault. Vermont is - understandably - all about recreation, and its laws mirror that. I have no problem with responsible recreation - I've been a hiker, a skier and a snowshoer. We sailed on Lake Champlain for many years. Vermont is a glorious place to get out and enjoy the mountains, the woods and the water. But - as reflected in ANR - it may be that a little balance is needed with competing interests, as Mayor Hollar said. Safe drinking water is one of those interests - one which needs to be taken very seriously.

Let me draw attention to the table of Vermont municipalities that use surface water sources. Some of our major communities use small ponds as their source of public water supply, yet a total of only 1199 acres of ponds are used for this purpose, by all the communities. This is out of 231,000 acres of lakes and ponds, including Champlain and Memphramagog, or 55,561 acres of inland lakes and ponds (of which, as you saw, over 25% are already compromised by human activity.) We are not denying the fishermen and hunters their rights - they have plenty of places to exercise their rights. We are asking to be able to manage 250 of those acres, one-half percent, to control risk for the health and safety of the 20,000 people who use that water as a drinking water source. This would begin to provide a little balance between the interests of recreation and that of human health and safety. This, by the way, is all H.33 was aiming for - to grant municipalities control over 1199 acres of water, 2% of all the inland lakes and ponds.

Unlike the rest of the New England states, Vermont has no laws, that I've found, that even address drinking water, except to make the invalid assumption that disinfection can correct all ills. There are two federal laws that pertain to water, the Clean Water Act and the Safe Drinking Water Act. The Clean Water Act intends to maintain water quality for human recreation. The Safe Drinking Water Act is intended to provide water quality fit for human consumption. All of Vermont's water laws are based on the Clean Water Act. Recreation is paramount. In 2014, DEC Commissioner Mears made the following statement in a paper on the decision to open Berlin Pond to recreation: "The Safe Drinking Water Act gave states the option of implementing the national standards to protect the drinking water supplies. Vermont chose to take this option, and so the Department of Environmental Conservation enforces the federal drinking water standards for our state." Yet on DEC's website, there is a document entitled, "Vermont Regulations Pertaining to Surface Water Management." Within that document there are 11 references to the Clean Water Act. There are zero references to the Safe Drinking Water Act, zero references to drinking water, zero references to public water supply. Giardia and Cryptosporidium, which are on the EPA's current list of biological contaminants, are not on Vermont's list of contaminants. I have written to Alyssa Schuren, Commissioner of DEC, asking where the Safe Drinking Water Act is implemented in DEC regulations, but have received no reply.

I draw attention to the table of what can be done in other New England states to protect drinking water sources. This is not saying that all methods are used everywhere, on every water source - these are management techniques that utilities are allowed to use. Quabbin Reservoir is a good example, as Jed mentioned yesterday: yes motor boating is allowed, but that's a compromise based on the reservoir's history, and there are many restrictions: the 35 square mile reservoir is fenced and gated, the entrances are staffed, it's only open during daylight, it's patrolled and monitored 24/7, the type of boats used are restricted, boats have to be decontaminated for invasives, and 10 square miles of that reservoir are a no-access intake protection zone. In most cases the water utilities - which equate to municipal water departments in Vermont - manage their

own water sources and can allow or deny access as they see fit. And in most cases they manage the risks using these techniques. What do they know that we don't? As Warren asked, are they all wrong?

The risks are not worth the potential outcomes - for example a cryptosporidiosis outbreak, to say nothing about exorbitant costs. In 1993, Milwaukee's water treatment plant failed - electromechanical devices can fail - and 400,000 people were diagnosed with cryptosporidiosis, a very nasty intestinal malady which can last several weeks. 100 people died. Jeff Griffiths will talk more about this - he treated many patients. Closer to home, Berlin, NH had a crack in its filter system, allowing untreated water to mix with treated water, and 37 people came down with cryptosporidiosis. It takes only one person with the disease to contaminate the water, as Red Dufresne mentioned yesterday. The risks need to be managed, and given the limitations of treatment facilities which you've heard about, protection of the source is the best way to manage them.

I should note that in Mears' testimony in H.33 hearings, he first said that recreation posed minimal risk. Then he added, "I would say, just as an aside, that for drinking water risks of the kind that we're talking about, it would be people who had kind of impaired immune systems, very young, very old or people who were suffering immunological diseases and so forth. But it wouldn't be healthy adults like myself."

Are all those people simply "an aside?" What percentage of the population has to be impacted before a risk becomes substantial? How many negligible risks does it take to make a significant risk? This is the population, by the way - the young, the old, and the immunologically impaired - who are particularly vulnerable to cryptosporidiosis.

Please understand that granting municipal control over water supply sources, given the total absence of state laws about management of surface drinking water sources, is the only way to begin to achieve the needed balance with recreation, and manage the risk, to provide the absolute human requirement of clean water. Montpelier is not setting precedent - note the charter language described for Bellows Falls, Barre, St. J. in the table of municipalities using surface water sources. In fact, if you look at the pond names on that chart, you'll notice an asterisk after most of them, including Berlin Pond - this refers to a footnote in the Use of Public Waters Rules, which states, "Restrictions adopted by authorities other than the Natural Resources Board may also apply - for example, restrictions on recreational uses established by the state or a local board of health to protect public water supplies." This footnote clearly acknowledges some municipal regulation.

Montpelier is only asking for authority it previously had, and that other towns have, to provide for the absolute requirement of clean, safe water and protect the consumers of this water from the potential risk of pathogens and other contaminants which are slowly, sadly, degrading all of Vermont's waters. And granting this authority would be a big step toward beginning to achieve a necessary balance with the recreation interests.