

Testimony on H 517

An Act Relating to the Classification of Waters

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Preface

- The Agency supports H 517.
- Intent of H517 is to address certain structural problems with WQS rule. The WQS establish the chemical, ecological, and certain physical goals and objectives for VT surface waters.
- H517 will provide for refinement and precision in the Agency's antidegradation rule, as directed by Act 64.



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The bill language we are discussing today represents the first step in a three step process borne of DEC's scientists and technical staff. Making more clear and transparent the classification and designated use framework in 10 VSA 1252 and 1253 is the first step necessary to update the Water Quality Standards rule, then promulgate an Antidegradation rule. The results of this three-step effort will result in a predictable, precise, and transparent framework for the application of the water quality standards. In this presentation, I will walk thru why the Agency supports this bill, and provide occasional specific waterbody examples along the way.

Background

- Act 138 shifted statutory authority for Water Quality Standards Rule (WQS) to ANR.
- ANR in 2014 updated and modernized many water quality criteria in WQS
- Looking at the classification structure is a natural next step in the Agency's efforts to modernize the WQS rule.
- Agency science or policy staff are available to discuss how these changes would play out in practice.
- Outreach process has already begun and there is interest from the community in working on the WQS rule amendments.



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Background: WQS contain

- Water Quality Classification and Associated Criteria
- Designated Uses
- Antidegradation Policy
- WQS translate the goals of the fed. Clean Water Act into state rules.



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The Water Quality Standards Rule (WQS, Environmental Protection Rule 29A) is consistent with Federal requirements under the Clean Water Act. The WQS contain water quality classes, designated uses, the criteria necessary to protect those uses, and an antidegradation policy. The WQS also contain additional policy statements as to how surface waters are managed. This testimony addresses the classification, uses, and to a small degree, the antidegradation components of the standards.

WQS are buttressed by 10 VSA 1252

§ 1252. Classification of waters; mixing zones

(a) The State adopts, for the purposes of classifying its waters, the following classes and definitions thereof:

Class A. (1) Suitable for public water supply with disinfection when necessary; character uniformly excellent; or

(2) High quality waters which have significant ecological value.

Class B. Suitable for bathing and recreation, irrigation and agricultural uses; good fish habitat; good aesthetic value; acceptable for public water supply with filtration and disinfection.



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10 VSA 1252 currently envisions two classifications; A, and B. Class A is divided into Ecological and Designated Public Water Supplies, of which there are relatively few. Class B comprises all other waters, and the quality of Class B waters is intended to support all designated uses.

The range of quality in Class B is quite large

- Many VT streams and lakes are significantly higher quality than Class B.
- Federal Clean Water Act requires protection of water within this range: That is Antidegradation.
- WQS currently feature Water Management Types – an earlier attempt to sub-classify Class B that can be improved upon.



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The Clean Water Act and VWQS require that waters exhibiting higher levels of water quality than the basic Class B criteria be protected from incremental reductions in quality. This is done thru the process of antidegradation review. Recognizing that there exists such large range in quality within Class B waters, in 1998, the Water Resources Board worked with ANR on an approach to recognize this higher quality called “Water Management Types.” Water Management Types envisioned three tiers of Class B: Very High Quality Waters; High Quality Waters, and Water Management Type B3.

Issues in WQS H517 Aims to Fix

- Water Management Types are confusing
 - Requires that all uses be managed to identical levels
 - The protection of certain very high use levels can conflict with the protection of others.
 - WMT B3 cannot express levels of quality less than Class B.
 - While there have been some very good analyses of prospective WMT designations, WMT has never been successfully implemented.

- Implementation of the Antidegradation policy language would be improved by allowing for true tiered classes.



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Water management types have been looked at by many in the water quality management community as a good solution to that wide range of Class B. However, there are significant shortcomings in how typing was put into the WQS rule which have limited our ability to use this otherwise good and well intended concept.

- 1) The WMT require that all uses be maintained at the same level, e.g. that the aesthetic, ecological, habitat, fishery, and recreational conditions of waters are all co-occurring, and that they can be co-managed to attain the same levels. In practice, this does not work.
- 2) The WMT B3 was originally intended to be applied to bypass reaches or other certain highly managed waters. However, this was viewed by many as some form of lessening of the Class B criteria. Having criteria in the WQS that do not fully protect the statutory Class B is not permissible under the Federal CWA and 10 VSA 1252. Thus, WMT B3 has never been used.

A further complication with Water Management Types

- Ecological uses are based on a deviation from the Natural Condition
 - Minimal, minor or moderate deviation from reference
 - Aquatic Biota
 - Aquatic Habitat
- Other uses are expressed on a gradient of value to people
 - Excellent, very good, good, consistent
 - Aesthetics
 - Recreation – swimming, boating, fishing
 - Water Supply
 - Irrigation



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The difficulty of co-managing waters to equal levels of augmented protection under the WMT framework is exacerbated by the fact that the quality of the uses themselves are measured against different “yardsticks.”

Different Very High Quality Uses are supported by different management approaches



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	North Branch Winooski	Middlebury River
Class B1 Uses	Boating Aesthetics	Aquatic Biota Aquatic Habitat
Class B2 Uses	Aquatic Biota Aquatic Habitat Drinking Water Supply Irrigation	Boating Aesthetics Drinking Water Supply Irrigation

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These three pictures serve to illustrate that the different very high quality uses to be protected by the WQS are reliant of different water quality conditions and criteria. One may not expect to see such an impressive largemouth bass in a high-elevation mountain stream of excellent ecological integrity. Likewise, naturally occurring high flows in waters favored by paddlers may be sufficiently variable and flashy to limit the establishment of very high ecological quality. A comparison of the North Branch Winooski and Middlebury River is also shown.

The current situation

Class A1 or A2	Ecological or Designated Water Supply	
	WMT B1 - Very High Quality for all Uses	
	WMT B2 - High Quality for all Uses	
Class B Waters	WMT B3 - Also High Quality for all Uses	



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This figure shows the relationship between the water management types and the current classification enacted in 10VSA1252. The Water Management Types (WMT) in the WQS Rule represent an attempt to create tiered water quality uses that are not envisioned in statute. Since WMT's are in the WQS rule but are not substantiated by statute, there has always been the possibility of legal challenge, should a water be managed in a permit explicitly as a particular water management type.

H 517 codifies in 10 VSA 1252 the tiered classes intended by Water Management Types

Class A1 “Ecological Waters”
Class A2 Public Water Supply
Class B1 Very High Quality Waters
Class B2 High Quality Waters



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H 517 does two simple things. First, it explicitly recognizes the tiered classification system that is implicit in the Water Management types in statute, which provides regulatory clarity.

H 517 also allows that uses, not waterbodies, are classified.

- Classify uses independently
- All waters continue to support Class B uses (Class B2)
- Certain waters can have individual uses designated to Class B1, or even A1.
- No change at all to Class A2 – Public Water Supply.
- Allows the WQS rule to be restructured in a very clear manner with respect to the level of designated use support, and water quality criteria necessary to support the uses.



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Second, H 517 allows that uses be independently classified. This will allow the Agency to restructure the WQS rule in a much more transparent manner than the current Rule. The Water Management Types would be removed from the WQS in favor of a true tiered classification system, where each designated use would always benefit from maintenance current Class B levels, but could be upwardly classified to support higher tiers of quality. This is much more transparent and clear than the current framework of all uses being supported to equally high levels.

How would the uses be upwardly classified?



- Tactical Basin Plans presently list waters that are of higher quality than Class B already.
 - Waters attaining Class A1 ecological condition
 - Waters attaining Very High Quality (e.g., B1) for their ecological, fishery, recreational, or other conditions.
- Agency monitoring programs are consistently assessing waters in a rotating manner, through our 15 Planning basins.



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Since 2012, all tactical basin plans have contained sections that document the existence of uses at very high quality, or B1 attainment levels. In addition, the tactical plans also list waters that meet Class A1 attainment levels. The process of reclassifying a use would be the same as opening the WQS Rule, and updating Chapter 4 or the WQS to reflect the new classification level for the specific uses of the specific waterbody in question. This would be done through rulemaking.

How does H517 help ANR apply Antidegradation?

Current WQS policy indicates NO lowering, unless NOT lowering results in widespread social and economic impact to citizens of VT.



Procedure: "Lowering" measured against baseline of Class A or B.



Class B Criterion

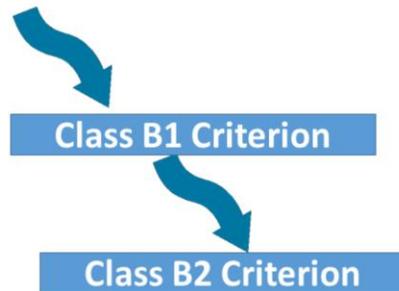
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There is more to the antidegradation policy than this slide implies. For clarity in this testimony, we present focus on the process by which the Agency evaluates whether to authorize a lowering of water quality. The present policy indicates that there can be no reduction in water quality, unless not reducing that quality presents widespread socio-economic impacts to citizens of the State. For all Class B waters, that reduction is evaluated against the full range of condition from the current condition to the Class B "floor," while ensuring the protection of existing uses.

How does H517 help ANR apply Antidegradation?

Enacting the statutory changes to 10 VSA 1252 and 1253 provides that any lowering becomes examined against the baseline of Class B1 **or** Class B2, depending on the classification and the existing condition, and *specific* to the use so-designated.



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H 517 will help the Agency In the of applying Antidegradation review in two ways:

- 1) The evaluation of whether to authorize a proposed activity that will reduce quality by some increment towards the Class B floor will now take place within a narrower range of evaluation. In technical terms, the assimilative capacity of the water can be managed more conservatively.
- 2) Current Class B waters that exhibit consistent existing use attainment above the B1 Line will be managed to B1 criteria, even if they are not yet so-designated. That is the Existing Use protection of the antidegradation policy.

In consideration of the goals of Act 64 of 2015, this proposal presents is a clearer and more predictable framework for the management and protection of surface waters through Antidegradation than has to date been in place.

Summary

- The Agency supports H 517. Considerable staff time has gone into designing a set of revisions to the WQS that will translate the statutory changes into practice.
- Outreach process has already begun and there is interest from the community in working on the WQS rule amendments.
- Enactment of this statutory proposal will start that process.
- Agency science or policy staff are available to discuss how these changes would play out in practice.



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In consideration of the goals of Act 64 of 2015, this proposal presents is a clearer and more predictable framework for the management and protection of surface waters than has to date been in place. Replacing the confusing Water Management Types with a consistent classification framework and independent designation of uses is consistent with how other States' WQS rules are structured. The Agency has done outreach on this proposal with advocacy and representatives from the consulting and development communities. Thru this process, the Agency has received valuable feedback on how to structure the WQS in such a manner as to present clarity, and to avoid unintended consequences. In general, those to whom we have spoken express support for the concept and the amendments themselves, and look forward to participating in the WQS rule revisions that will follow.