Vermont Council

TESTIMONY OF JARED CARPENTER
VERMONT COUNCIL OF TROUT UNLIMITED
ALSO ON BEHALF OF
VERMONT NATURAL RESOURCES COUNCIL, THE CONNECTICUT RIVER CONSERVANCY, AND THE NATIONAL WILDLIFE FEDERATION NORTHEAST REGIONAL CENTER
BEFORE THE SENATE NATURAL RESOURCES AND ENERGY COMMITTEE
SEPTEMBER 16, 2020

Good Morning Chair Bray and Members of the Committee,

Thank you for the opportunity to testify on H.833, an act relating to the interbasin transfers of surface waters, which will establish a study group to investigate and make recommendations regarding the environmental, economic, and recreational impacts of the use of surface water generally, as well as transferring surface water between watershed basins.

My name is Jared Carpenter and I appear before this Committee for the Vermont Council of Trout Unlimited and also speaking on behalf of Vermont Natural Resources Council, the Connecticut River Conservancy, and the National Wildlife Federation's Northeast Regional Center.

All four organizations support H.833 and strongly believe that Vermont is long overdue on gaining a better understanding of its existing surface water resources, current and projected usages, withdrawal impacts on wildlife and ecological health, and thoughtfully investigating measures to ensure the conservation and management of those resources into the future.

GENERAL TESTIMONY

Vermont has 7,100 miles of streams and rivers, encompassing 378.5 square miles of surface water.[1] Vermonters commonly associate our environment with snowy winters, rainy springs, temperate summers, and blustery falls that sustain those roughly 400 square miles of surface water to the state. Yet, climate change is altering these historic patterns and precipitation events

[1] Watershed Mgmt. Div., Vt. Agency of Nat. Res., State of Vermont 2018 Water Quality Integrated Assessment Report Clean Water Act Section 305(b) Report 4 (2018).

are becoming more erratic. Simultaneously, there is an increasing demand for the State's finite surface water resources from commercial, agriculture, and municipal usages.

Vermont is poised to experience an unprecedented demand for surface water use and transfers from one watershed to another. Such uses pose numerous threats, including the introduction of invasive species and other pollutants, decreases in water quantity needed for habitat and human consumption, and rising conflicts amongst water users. Put another way, Vermont's waters are at risk as the State is ill-prepared and does not have laws in place that can effectively manage this rising problem. Importantly here, and a foundational purpose of H.833, is that Vermont does not know the extent of surface water resource users, annual usage quantities, or the associated environmental impacts of those usages.

Neither the Agency of Natural Resources, nor the Agency of Agriculture, Food and Markets track surface water withdrawals—meaning there's no documentation on surface water usage quantity, usage purpose, water quality and ecological health impacts of withdrawals, and other potential environmental impacts. And Vermont is not the first state to experience this. Trout Unlimited chapters from western states sounded the alarm on impacts in drier states, including the complete dewatering of streams. States such as California highlight that water withdrawal overuse gone un-checked has resulted in critical streams going dry overnight. Industries like hemp and cannabis—some of which are online in Vermont, or coming on shortly—are extremely water intensive.

The interaction between interbasin transfers and surface water diversions is key. An interbasin transfer is a particular type of surface water diversion where water is transferred from one watershed basin to another. To date, Vermont has minimal experience with interbasin transfers and how to manage and monitor them.

For example, last year, Killington Resort proposed the first known interbasin transfer of surface water in Vermont. The proposal included a snowmaking interconnect system to improve snowmaking capabilities on Pico Mountain. Regarding surface water, the project proposed—and is currently—pulling water from the Ottauquechee River watershed (Connecticut River Basin) up Killington Mountain and over to Pico, discharging it into the Otter Creek watershed (Lake Champlain Basin). The project triggered several permits, many of which related to the construction of the pipeline and infrastructure improvements (Stream Alteration, 401 Water Quality Cert., 404 Dredge and Fill, Act 250, etc.), yet not one of those permits directly addressed the interbasin transfer and surface water diversion nature of the proposal.

A coalition of environmental organizations raised concerns about the interbasin aspect of the proposal because of numerous issues related to water quality including the possible transfer of invasive species, impacts to water quality, and water quantities in watershed basins. This project, which ANR approved last fall, sparked conversations amongst water groups and the State because it highlighted the State's lack of knowledge and data on surface water usages, quantities

used, impacts to river and stream health, and; a sizeable regulatory hole in Vermont law and regulations regarding a critical state resource with ever-increasing pressures.

There are several key points supporting the proposed Study Group established by H.833.

First, the forecasted predictions for climate change effects on Vermont's surface waters are something to take serious note of—simply put, Vermonters cannot take the State's seemingly infinite amount of surface water resources for granted anymore.

Second, the current regulatory framework that exists in Vermont today is piecemeal and fails to specifically address, and proactively monitor and manage, both surface water diversions and transfers. Fortunately, when ANR does perform a review under an existing authority (e.g. 401 water quality cert., snowmaking, etc.), the Agency does a flow level review and testing the result of the activity against the State's Water Quality Standards. However, because there's a patchwork quilt of regulations with nothing directly focused on diversions in particular, there's countless project diversions that fall through the cracks with zero analysis on the impacts to the ecological health of the water resources. The proposed Study Group in H. 833 investigates these major gaps and will pose reasonable mending solutions.

Third, the common law doctrine governing surface water usage in Vermont — "riparianism" and its "reasonable use doctrine" — are ill-equipped and purely reactionary. The doctrine is not designed, nor prepared to fully address State-wide surface water diversions, transfers, and major conflicts amongst users. More importantly, under a typical surface water diversion, if there's no permit trigger from ANR, there's no interaction with the water quality standards. Again, this highlights the sizeable hole in the law, whereby the State is in the dark about surface water users' withdrawal impacts on water quality, riverine health, and surface water quantities.

CONCLUSION

To summarize, Vermont knows little about its surface water resources—including current uses, users, quantities used, and impacts. Without proper oversight, Vermont's surface water uses and users pose numerous threats, including the introduction of invasive species and other pollutants, decreases in finite water quantities needed for water quality, habitat, and human consumption, and potential conflicts amongst water users. These threats combined with the uncertainty of climate change impacts places Vermont's water resources at risk.

Vermont stands on the forefront of pressing issues with proactive consideration of effective solutions and necessary responses. As we enter the era of climate change and shifting demands, it is vital that Vermont protect and manage its surface waters to ensure natural resource and ecological values are protected. This Study Group is needed to better understand this issue and investigate plausible effective solutions.