

January 19, 2022

Testimony of David L Deen (speaking also for Jon Groveman VNRC water program director)  
Concerning H 466 - a bill that proposes to regulate the surface water withdrawals and interbasin transfers of surface water occurring in the State.

In 2019 Killington/Pico ski area applied to alter their snow making permit. DEC held a public hearing in Killington and three chapters of Trout Unlimited (CT River Valley, MadDog, Greater Upper Valley), the CT River Conservancy and VNRC showed up to discuss the application. After that initial hearing, several further discussions ensued about the permit but due in part to the cooperation among the parties around the issues in that permit, eventually the permit issued with all the parties satisfied that the waters of VT would be protected despite there being no provisions for DEC review of interbasin transfers because this was the first one in VT in anyone's memory.

During the discussions that lead to permit agreement, it became apparent that there need not have been a review of the interbasin transfer for compliance with the Water Quality Standards nor would there necessarily be a review under the 401 water certification program for the withdrawal or the discharge of that interbasin transfer. And if this had been a non-drinking water withdrawal for any purpose other than snow making there would not have been an environmental impact review of the withdrawal since VT riparian common law that addresses water usage on a case by case basis does not consider the environment when determining appropriateness of any single or combination of water withdrawals.

The NGOs parties initiated a series of meetings with VLS and Environmental Law Center interns to address the two identified holes in VT water law: i.e. Anyone who took water from the surface waters of VT did not need to say anything to anyone that they were doing so nor take any steps to protect the ecology of the stream; and there is no environmental impact review of interbasin transfers. The parties approached the legislature that crafted what eventually became Act 173 approved by this committee and the legislature last year.

I am here today to give a brief report on the report submitted to this committee as per the provisions of Act 173 that formed the Surface Water Diversion and Transfer Study Group (the study group)

The charge to the Act 173 study group was:

- 1) develop a baseline inventory of the current and projected quantity, location, and usage of diversions and transfers of surface water in Vermont;*

The study group recommendation is that the Agency create a surface water registration and reporting program to collect information on surface water use in the State. The registration and reporting program should be implemented by the Agency by January 1, 2023 for all users that withdraw 5,000 gallons or more of water in a 24-hour period register and report their water use to the Agency.

- (2) recommend whether or not inter basin transfers of water should occur;*

The study group decided that interbasin transfers in and of themselves need not do damage to the sending or receiving basin if there are review provisions in place to protect VT waters.

The study group recommendation is that the Agency of Natural Resources be given the authority to review interbasin transfer of water between watersheds with a hydrologic unit code (HUC) of 6 based on U.S. Geological Survey classification system to ensure transfers meet water quality standards. This authority is specifically set out in the draft legislation before you because under current law unless a federal action is undertaken no 401 review need take place.

*(3) identify whether the State of Vermont should develop and implement a state-wide permitting or other regulatory regime for diversions and/or transfers of surface water;*

The study group recommends that the Agency develop a permitting program for surface water withdrawals on or before July 1, 2026. The permitting program would use the information collected from the registration and reporting program to develop rules for the program to set water withdrawal thresholds and requirements for permitting.

*(4) analyze potentially viable regimes to address the unplanned, uncoordinated, and uncontrolled use of surface water in Vermont;*

The study group found that without reliable baseline data on the current use of surface water it is not possible to project how use of surface water will change in the future. Nevertheless, it should be acknowledged that Vermont's climate has changed and will continue to change. Water usage will change in response to those weather changes and in response to population and water usage. The legislation proposed requires that an applicant for a water diversion permit conduct an alternatives analysis for use of surface waters and can set in place limitations of withdrawals based on low flows analysis.

*(5) if necessary, propose legislative changes that may effectuate the recommendations or proposals in the report;*

The study group is recommending the legislation as introduced in H 466

To conclude my testimony I would offer that there was a great deal of agreement to the provisions of the report and the proposed legislation and that is important to note because of the wide variety of interests that participated as study group members. I would urge the committee to respect the language in the proposed bill as a product of a productive collaboration among water users. Lastly I will add that at the conclusion of our process, all members of the committee were invited to file their own comments on the report and the single letter is attached as Appendix C of the report for your review.