

1 TO THE HONORABLE SENATE:

2 The Committee on Agriculture to which was referred House Bill No. 466  
3 entitled “An act relating to surface water withdrawals and interbasin transfers”  
4 respectfully reports that it has considered the same and recommends that the  
5 Senate propose to the House that the bill be amended by striking out all after  
6 the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 10 V.S.A. chapter 41 is amended to read:

8 CHAPTER 41. REGULATION OF STREAM FLOW

9 \* \* \*

10 § 1002. DEFINITIONS

11 ~~Wherever As used or referred to in this chapter, unless a different meaning~~  
12 ~~clearly appears from the context:~~

13 (1) “Artificial regulation of stream flow” means the intermittent or  
14 periodic manipulation of water levels and the intermittent or periodic  
15 regulation of discharge of water into the stream below the dam.

16 (2) “Banks” means that land area immediately adjacent to the bed of the  
17 stream, which is essential in maintaining the integrity thereof.

18 (3) “Basin” means the third-level, six-digit unit of the hydrologic unit  
19 hierarchy as defined by the U.S. Geological Survey (USGS), Federal Standards  
20 and Procedures for the National Watershed Boundary Dataset, Chapter 3 of

1 Section A, Book 11. “Basin” is also referred to as “Hydrologic Unit Code 6”  
2 or “HUC-6”.

3 (4) “Bed” means the maximum area covered by waters of the stream for  
4 not less than 15 consecutive days in one year.

5 (5) “Berm” means a linear fill of earthen material on or adjacent to the  
6 bank of a watercourse that constrains waters from entering a flood hazard area  
7 or river corridor, as those terms are defined in subdivisions 752(3) and (11) of  
8 this title.

9 ~~(4)~~(6) “Board” means the Natural Resources Board.

10 (7) “Capacity” means the maximum volume of water capable of being  
11 withdrawn by the water withdrawal system.

12 ~~(5)~~(8) “Cross section” means the entire channel to the top of the banks.

13 ~~(6)~~(9) “Dam” applies to any artificial structure on a stream, or at the  
14 outlet of a pond or lake, that is utilized for holding back water by ponding or  
15 storage together with any penstock, flume, piping, or other facility for  
16 transmitting water downstream to a point of discharge, or for diverting water  
17 from the natural watercourse to another point for utilization or storage.

18 ~~(7)~~(10) “Department” means the Department of Environmental  
19 Conservation.

20 (11) “Existing surface withdrawal” means a surface water withdrawal  
21 that exists prior to January 1, 2023.

1           (12) “Frequency” means how often water will be withdrawn from a  
2           surface water over a period of time.

3           ~~(8)~~(13) “Instream material” means:

4                   (A) all gradations of sediment from silt to boulders;

5                   (B) ledge rock; or

6                   (C) large woody debris in the bed of a watercourse or within the  
7           banks of a watercourse.

8           (14) “Interbasin transfer” means the conveyance of surface water  
9           withdrawn from a basin for use in another basin.

10           (15) “Large woody debris” means any piece of wood within a  
11           watercourse with a diameter of 10 or more inches and a length of 10 or more  
12           feet that is detached from the soil where it grew.

13           ~~(9)~~(16) “Person” means any individual; partnership; company;  
14           corporation; association; unincorporated association; joint venture; trust;  
15           municipality; the State of Vermont or any agency, department, or subdivision  
16           of the State; any federal agency; or any other legal or commercial entity.

17           (17) “Rate of withdrawal” means the volume of surface water that is  
18           withdrawn over a period of time, as reported in gallons per minute.

19           (18) “Reasonable and feasible” means available and capable of being  
20           implemented after consideration of cost, existing technology, logistics in light

1 of the overall project purpose, environmental impact, and ability to obtain all  
2 necessary approvals for implementation.

3 (19) “Secretary” means the Secretary of Natural Resources or the  
4 Secretary’s duly authorized representative.

5 (20) “Surface water” means all rivers, streams, creeks, brooks,  
6 reservoirs, ponds, lakes, and all bodies of surface waters that are contained  
7 within, flow through, or border upon the State or any portion of it. “Surface  
8 water” does not include the following:

9 (A) groundwater as defined in section 1391 of this title;

10 (B) artificial waterbodies as defined under section 29A-101(d) of the  
11 Vermont Water Quality Standards;

12 (C) treatment ponds, lagoons, or wetlands created solely to meet the  
13 requirements of a permit issued for a discharge; and

14 (D) constructed off-stream farm ponds or other off-stream  
15 impoundments that are used for irrigation **for farming** or watering of livestock.

16 (21) “Vermont Water Quality Standards” means the standards adopted  
17 pursuant to chapter 47 and subdivision 6025(b) of this title.

18 ~~(10)~~(22) “Watercourse” means any perennial stream. “Watercourse”  
19 shall ~~does~~ not include ditches or other constructed channels primarily  
20 associated with land drainage or water conveyance through or around private  
21 or public infrastructure.



1           Subchapter 4. Surface Water Withdrawals and Interbasin Transfers

2           § 1041. POLICY ON SURFACE WATER WITHDRAWALS FOR

3                   OFF-STREAM USES OTHER THAN SNOWMAKING

4           (a) This subchapter is intended to establish policy and standards for surface  
5           water withdrawals that are consistent with section 1001 and chapter 47 of this  
6           title, including the Vermont Water Quality Standards.

7           (b) The policy established under this subchapter is to:

8                   (1) assure the protection, maintenance, and restoration of the chemical,  
9           physical, and biological water quality, including water quantity, necessary to  
10           sustain aquatic communities and stream function;

11                   (2) help to provide for and enhance the viability of those sectors and  
12           industries that rely on the use of surface waters and are important to Vermont's  
13           economy;

14                   (3) permit surface water withdrawals and the construction of  
15           appurtenant facilities and related systems for uses other than snowmaking,  
16           based on an analysis of the need for water and the consideration of alternatives  
17           and consistent with this and related policies and other applicable laws and  
18           rules; and

19                   (4) recognize that existing users of the State's waters for off-stream uses  
20           that may have an adverse effect on water quality should have time and  
21           opportunity to improve water quality.

1     § 1042. REGISTRATION AND REPORTING; EXCEPTIONS

2           (a) Registration. Beginning on January 1, 2023, any person withdrawing  
3           10,000 gallons or more of surface water within a 24-hour period or 150,000  
4           gallons over any 30-day period shall register with the Secretary:

5                 (1) the location of each withdrawal, including each impacted surface  
6           water;

7                 (2) the frequency and rate of each withdrawal;

8                 (3) a description of the use or uses of the water to be withdrawn;

9                 (4) the capacity of the system to be used for the withdrawal; and

10                (5) a schedule for the withdrawal.

11           (b) Report. Beginning on January 1, 2023, a person that is required to  
12           register a surface water withdrawal pursuant to subsection (a) of this section  
13           shall file an annual report with the Secretary. Reports shall be filed annually  
14           by January 15 of the following year. The report shall be made on a form  
15           provided by the Secretary and shall include all of the following information:

16                 (1) the total amount of water withdrawn each month;

17                 (2) the location of each withdrawal, including each impacted surface  
18           water;

19                 (3) the daily maximum withdrawal for each month;

20                 (4) the date of daily maximum withdrawal; and

21                 (5) any other information required by the Secretary.

1        (c) Methods of reporting withdrawals. The following methods shall be  
2        used to report the amounts of withdrawn surface water required to be reported  
3        under subsection (b) of this section:

4            (1) For withdrawals of between 10,000 and 50,000 gallons of surface  
5        water within a 24-hour period or 150,000 gallons over any 30-day period, the  
6        person shall either provide an estimate of total volume withdrawn or provide  
7        meter data. The report shall describe how any estimate was calculated.

8            (2) For withdrawals of more than 50,000 gallons of surface water within  
9        a 24-hour period or 1,500,000 gallons over any 30-day period, the person shall  
10       provide meter data or measured data by a technically appropriate method  
11       approved by the Secretary.

12        (d) Exceptions. The following withdrawals shall not be subject to the  
13       requirements of subsection (a) or (b) of this section:

14            (1) surface water withdrawals for fire suppression or other public  
15        emergency response purposes;

16            (2) surface water withdrawals required to report under subchapter 3 of  
17        this chapter for snowmaking uses;

18            (3) surface water withdrawals approved pursuant to chapter 56 of this  
19        title on public water supply and the rules adopted thereunder for use as a public  
20       drinking water supply;



1           (4) surface water withdrawals for irrigation for farming, livestock  
2           watering, or other uses for farming, as the term “farming” is defined in 6  
3           V.S.A. § 4802; and

4           (5) a surface water withdrawal reported to the Secretary under any  
5           project that requires the reporting of substantially similar data.

6           § 1043. PERMIT REQUIREMENT; PROGRAM DEVELOPMENT

7           (a) Program development. On or before July 1, 2026, the Secretary shall  
8           implement a surface water withdrawal permitting program that is consistent  
9           with section 1041 of this subchapter. The program shall be developed to:

10           (1) require a permit or other authorization for surface water withdrawals  
11           based on potential impacts to surface waters or other factors, and establish  
12           conditions of operation necessary to protect surface waters and the Vermont  
13           Water Quality Standards;

14           (2) consider surface water withdrawal registration and reporting  
15           information submitted pursuant to section 1042 of this chapter in the  
16           establishment of permitting thresholds and other permitting requirements;

17           (3) require efficient use and conservation of surface water;

18           (4) ensure that withdrawals comply with the Vermont water quality  
19           standards;

1           (5) establish limitations on withdrawals based on low flow or drought  
2           conditions and the development of potential alternatives to meet surface water  
3           withdrawal needs in such cases; and

4           (6) require assessment of any reasonable and feasible alternatives to  
5           proposed withdrawals that may have less of an impact on surface water quality.

6           (b) Application. Application for a permit to withdraw surface water under  
7           the program established under subsection (a) of this section shall be made on a  
8           form provided by the Secretary, and shall include the following information:

9           (1) the location of each withdrawal, including the identification and type  
10          of each impacted surface water;

11          (2) a description of the use or uses of the water to be withdrawn;

12          (3) a description of the proposed method of water withdrawal;

13          (4) the frequency and rate of the withdrawal;

14          (5) an estimated schedule for the withdrawal;

15          (6) the capacity of the system to be used for the withdrawal;

16          (7) the location of the proposed return flow of the withdrawn water, and  
17          whether the withdrawal is an interbasin transfer;

18          (8) an estimate of the volume of water needed for the proposed use or  
19          uses;

20          (9) a description of the alternative means considered for the proposed  
21          uses of water that will have less of an impact on surface water quality; and

1           (10) any other information required by the Secretary.

2           (c) Permits.

3           (1) The Secretary may issue a general permit to authorize certain  
4 withdrawal activities.

5           (2) The Secretary shall issue a general permit under this chapter for the  
6 withdrawal of surface water for State or municipal infrastructure projects. The  
7 general permit shall establish a rate and withdrawal volume that only requires  
8 notification of the Secretary and does not require Secretary approval prior to  
9 withdrawal.

10           (3) A permit issued under this subchapter shall be for a period of not  
11 longer than 10 years from the date of issuance.

12           (d) Exceptions. A permit required under this subchapter shall not be  
13 required for:

14           (1) surface water withdrawals for fire suppression or other public  
15 emergency response purposes; or

16           (2) surface water withdrawals for irrigation for farming, livestock  
17 watering, or other uses for farming, as the term “farming” is defined in 6  
18 V.S.A. § 4802.

19           (e) Existing surface water withdrawals.

1           (1) Snowmaking withdrawals. Existing withdrawals approved pursuant  
2           to subchapter 3 of this chapter for snowmaking shall be reviewed pursuant to  
3           subdivision (f)(1) of this section.

4           (2) Nonsnowmaking withdrawals.

5           (A) A permit required under this subchapter shall not be required  
6           until July 1, 2030 for an existing surface water withdrawal for nonsnowmaking  
7           purposes, provided that:

8                   (i) the existing surface water withdrawal is both registered and  
9                   reported to the Secretary pursuant to section 1042 of this title on an annual  
10                  basis; and

11                   (ii) no expansion of the existing surface water withdrawal occurs  
12                  on or after January 1, 2023.

13           (B) For purposes of this subdivision (2), an expansion includes an  
14           increase in reported surface water withdrawal rate or volume or increase in  
15           reported capacity of the system.

16           (f) Surface water withdrawals for snowmaking.

17           (1) Existing withdrawals. Existing surface water withdrawals for  
18           snowmaking purposes that have been reviewed and approved pursuant to  
19           subchapter 3 of this chapter shall not require additional technical review by the  
20           Secretary under this subchapter, provided that the approved snowmaking  
21           activity is operated in compliance with the terms and conditions of the

1 Secretary's approval. For such activities, the Secretary may issue a permit  
2 under the rules adopted pursuant to this subchapter.

3 (2) New withdrawals. Proposed surface water withdrawals for new  
4 snowmaking activities that require review pursuant to subchapter 3 of this  
5 chapter shall be reviewed by the Secretary in accordance with the rules  
6 adopted pursuant to section 1032 of this title. If the Secretary determines that  
7 the proposed activity is consistent with those rules, the Secretary shall issue a  
8 permit required by section 1043 of this section for that activity.

9 (g) Enforcement.

10 (1) The Secretary may require a person to obtain a permit under this  
11 subchapter when the Secretary, in the Secretary's discretion, determines that a  
12 withdrawal or other action circumvents the requirements of this subchapter.

13 (2) If the Secretary finds that a withdrawal subject to this subchapter  
14 results in the construction, installation, operation, or maintenance of any  
15 facility or condition that results in or can reasonably be expected to result in a  
16 violation of the Vermont Water Quality Standards, the Secretary may issue an  
17 order establishing reasonable and proper methods and procedures for the  
18 control of that activity in order to reduce or eliminate the violation.

19 (h) Reservation. Nothing in this subchapter shall be interpreted to  
20 supersede, limit, or otherwise effect the Secretary's authority to take action

1 pursuant to section 1272 of this title or other applicable provision of law or  
2 rule.

3 § 1044. INTERBASIN TRANSFERS OF SURFACE WATERS

4 (a) Review of HUC 6 interbasin transfers. The Secretary shall review any  
5 interbasin transfer pursuant to the Vermont Water Quality Standards and other  
6 requirements of State law listed in subdivision 1253(h)(1) of this title. This  
7 review shall be in addition to any applicable standards and permitting  
8 requirements adopted pursuant to subsection 1043(a) of this title.

9 (b) Review of other transfers likely to violate Vermont Water Quality  
10 Standards. The Secretary may review any other surface water withdrawal that  
11 includes the transfer of surface water from one watershed to another watershed  
12 under the requirements of subsection (a) of this section if the Secretary  
13 determines that the activity is likely to result in a violation of the Vermont  
14 Water Quality Standards. The Secretary shall make a determination under this  
15 subsection based on a review of information set forth under subsection 1043(b)  
16 of this title that is readily available to the Secretary.

17 § 1045. REPORT TO GENERAL ASSEMBLY

18 Beginning February 15, 2023 and annually thereafter, the Secretary of  
19 Natural Resources, after consultation with the Secretary of Agriculture, Food  
20 and Markets, shall submit to the Senate Committees on Agriculture and on  
21 Natural Resources and Energy and the House Committees on Agriculture and

1 Forestry and on Natural Resources, Fish, and Wildlife the data submitted to the  
2 Secretary pursuant to subsections 1042(a) and (b) of this title, data submitted  
3 as part of a permit required under section 1043 of this title, and the data  
4 submitted to the Secretary of Agriculture, Food and Markets under 6 V.S.A.  
5 § 4927.

6 § 1046. RULEMAKING

7 The Secretary shall adopt rules to implement the requirements of this  
8 subchapter.

9 Sec. 2. 10 V.S.A. § 1253(h)(1) is amended to read:

10 (h)(1) The Secretary shall administer a Clean Water Act Section 401  
11 certification program to review activities that require a federal license or  
12 permit or activities subject to regulation under chapter 47, subchapter 4 of this  
13 title to ensure that a proposed activity complies with the Vermont Water  
14 Quality Standards, as well as with any other appropriate requirement of State  
15 law, including:

16 (A) 10 V.S.A. chapter 37 (wetlands protection and water resources  
17 management);

18 (B) 10 V.S.A. chapter 41 (regulation of stream flow);

19 (C) 10 V.S.A. § 1264 (stormwater management);

20 (D) 29 V.S.A. chapter 11 (management of lakes and ponds); and

1 (E) the Agency of Natural Resources Rules for Water Withdrawals  
2 for Snowmaking.

3 Sec. 3. 10 V.S.A. § 8003(a)(4) is amended to read:

4 (4) 10 V.S.A. chapters 41 and 43, relating to dams, surface water  
5 withdrawals, interbasin transfers, and stream alterations;

6 Sec. 4. 10 V.S.A. § 8503(a)(1)(C) is amended to read:

7 (C) chapter 41 (relating to dams, surface water withdrawals,  
8 interbasin transfers, and stream alterations, and regulation of stream flow);

9 Sec. 5. 6 V.S.A. chapter 215, subchapter 6A is added to read:

10 Subchapter 6A. Surface Water Withdrawals **for Farming**

11 § 4926. DEFINITIONS

12 As used in this subchapter:

13 (1) “Surface water” means all rivers, streams, creeks, brooks, reservoirs,  
14 ponds, lakes, and all bodies of surface waters that are contained within, flow  
15 through, or border upon the State or any portion of it. “Surface water” does  
16 not include the following:

17 (A) groundwater as defined in 10 V.S.A. § 1391;

18 (B) artificial waterbodies as defined under section 29A-101(d) of the  
19 Vermont Water Quality Standards;

20 (C) treatment ponds, lagoons, or wetlands created solely to meet the  
21 requirements of a permit issued for a discharge; and



1           (D) constructed off-stream farm ponds or other off-stream  
2           impoundments that are used for irrigation for farming or watering of livestock.

3           (2) “Withdrawal” means the intentional diversion from a surface water  
4           by pumping, gravity, or other method for the purpose of being used for  
5           irrigation for farming, livestock watering, or other uses for farming.

6           “Withdrawal” does not include direct consumption of surface water by  
7           livestock.

8           § 4927. NOTIFICATION OF SURFACE WATER WITHDRAWALS FOR  
9           IRRIGATION, LIVESTOCK WATERING, OR OTHER FARMING  
10           USE

11           (a) Notification of withdrawal. Beginning on January 15, 2023 and  
12           annually thereafter, any person who withdrew 10,000 gallons or more of  
13           surface water within a 24-hour period in the preceding calendar year or  
14           150,000 gallons over any 30-day period in the preceding calendar year shall  
15           notify the Secretary of Agriculture, Food and Markets of:

16           (1) the withdrawal;

17           (2) the location of the withdrawal, including each impacted surface  
18           water; and

19           (3) a description of the use or uses of the water that was withdrawn.

20           (b) Report of withdrawal. Any person notifying the Secretary of  
21           Agriculture, Food and Markets under subsection (a) of this section who

1 withdrew more than 50,000 gallons of surface water within a 24-hour period in  
2 the preceding calendar year or 1,500,000 gallons over any 30-day period in the  
3 preceding calendar year shall file a report with the Secretary of Agriculture,  
4 Food and Markets as part of the person’s annual notification. The report shall  
5 be made on a form provided by the Secretary and shall include all of the  
6 following information:

7 (1) an estimate of the total amount of water withdrawn in the preceding  
8 calendar year;

9 (2) the daily maximum withdrawal for each month;

10 (3) the date of daily maximum withdrawal; and

11 (4) any other information required by the Secretary of Agriculture, Food  
12 and Markets.

13 (c) Sharing of data. Beginning February 1, 2023 and annually thereafter,  
14 the Secretary of Agriculture, Food and Markets shall notify the Secretary of  
15 Natural Resources of the data collected under this section for the purposes of  
16 the report to the General Assembly required by 10 V.S.A. § 1045.

17 Sec. 6. EFFECTIVE DATE

18 This act shall take effect on July 1, 2022.

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3 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

5

Senator \_\_\_\_\_

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FOR THE COMMITTEE