

March 17, 2022

Testimony of Jeff Crocker, Streamflow Protection Coordinator, Vermont Department of Environmental Conservation concerning H.466 An act relating to surface water withdrawals and interbasin transfers.

Good morning, Chair Bray and Committee members. Thank you for the opportunity to testify this morning on H.466 - An act relating to surface water withdrawals and interbasin transfers.

For the record my name is Jeff Crocker. I am employed as the Streamflow Protection Coordinator with the Vermont Department of Environmental Conservation within the Watershed Management Division. In this role I manage the Streamflow Protection Section within the Rivers Program which is responsible for reviewing the ecological impacts of projects and activities that affect streamflow and regulating these activities to ensure they are in compliance with the Vermont water quality standards and other applicable rules and procedures. These projects and activities include the review of dam operations and water withdrawals and diversions.

Currently, Vermont does not have a specific permit or registration/reporting program for surface water withdrawals, nor does it have regulations specific to interbasin transfers.

Therefore, the Streamflow Section currently uses multiple regulatory regimes to address water withdrawals and diversions on a case-by-case basis. These regulatory regimes range from using the State's authority granted under Section 401 of the federal Clean Water Act, Agency environmental rules, other State permitting programs, and providing recommendations for conditions as part of the Act 250 land use permitting process. The specific regime used to place regulatory conditions on the operations of a surface water withdrawal largely depends on the use of the water (e.g., water for snowmaking) and the infrastructure needed for the diversion. However, none of the current regulatory regimes are specifically designated to address the activity of water withdrawal itself, and if a proposed water withdrawal does not trigger a jurisdictional threshold for a regulatory regime, no permit would be required. These non-jurisdictional water withdrawals are typical for a surface water withdrawal that proposes to use a pump and hose and do not require any infrastructure be built that may trigger a regulatory regime. This may have significant impacts on Vermont's streams and the aim of H. 466 is first to collect the data to understand the potential impacts, and second develop an approach to ensure water withdrawals minimize impacts on these public resources.

As way of background, H.466 is the product of the work completed by the Surface Water Diversion and Transfer Study Group. The Study Group was convened by the Secretary of Agency to Natural Resources as directed by Act 173 enacted by the 2020 Session of the General Assembly. The Surface Water Diversion and Transfer Study Group was tasked to investigate and make recommendations regarding how the State regulates surface water withdrawals and interbasin transfers to the General Assembly.

The Surface Water Diversion and Transfer Study Group was a ten-member committee comprised of individuals representing a diverse range of interests including agriculture, non-governmental

organizations, legislators and commercial sectors. The Surface Water Diversion and Transfer Study Group began its work in March 2021, meeting ten times between March and December. The initial work of the Study Group entailed reviewing existing data and information on water withdrawals, current state laws, environmental rules, and regulatory regimes for surface water withdrawals and interbasin transfers to understand where there may be current regulatory gaps. In determining whether and how to fill the current information and regulatory gaps the Study Group sought input from the Vermont state climatologist, legal experts, and other state regulators.

The Study Group heard from legal experts on water use law who discussed components of a regulatory program that should be considered in any proposed regulatory regime, such as registration and reporting to get accurate inventory of water use, establishment of thresholds for permitting and registration, minimum conservation flows and term limits on permits.

Additionally, the Study Group heard from regulators from Minnesota and New Hampshire that administer surface water withdrawal registration and permitting programs. While each state program was slightly different, each state program was similar in that it had a registration, reporting, and permitting component if a water withdrawal exceeds a certain threshold. Additionally, permit holders in both states are required to have contingency plans describing how they may access water needs during times of low flow or drought.

With the information from the legal experts, other state Regulators and other invited guests, the Study Group had a series of discussions on how best to address Vermont specific situation regarding surface water withdrawals and interbasin transfers.

Regarding Interbasin Transfers the Study Group used the Killington-Pico interconnect associated with the snowmaking system at the resorts, as a case study. This is the only interbasin transfer known to be operating in Vermont transferring water from the Ottauquechee Watershed in the Connecticut River basin to the Otter Creek Watershed in the Lake Champlain basin. The transfer was reviewed by the Agency for compliance with the Vermont water quality standard and other applicable rules and laws and issued a Section 401 water quality certification in 2019. The certification conditioned the operations of the withdrawals and transfer to both the receiving waters as well as from donor waters.

After reviewing, the Study Group recommended to fill the existing regulatory gap with respect to interbasin transfers, the Agency be given the authority to review the transfer of water between watersheds with a hydrologic unit code (HUC) of 6 based on U.S. Geological Survey classification system to ensure water quality standards are met. This review process would be similar to water quality certification process but differ as it would not be under Section 401 of the federal Clean Water Act. Additionally, the Study Group acknowledged that there may be transfers between small watersheds that may need to be reviewed for compliance with water quality standards, therefore, the Study Group recommended legislative changes to provide the authority to the Agency to review and require conditions for other transfers of water that may not be in compliance with the Vermont water quality standards. These recommendations of the Study Group are captured in H.466.

Further, to fill the current gaps for surface water withdrawals the Study Group recommended a phased approach be adopted to address the current information and regulatory gaps. The first phase would be the development of a registration and reporting program to be administered by the Agency to get an accurate inventory of the existing water withdrawals and the quantity of surface water being withdrawn in Vermont. The recommendation from the Study Group is that all users that withdraw 5,000 gallons or more of water within a 24-hour period register and report their water use to the Agency of Natural Resources on an annual basis. This is the first step to understanding the current quantity of surface water being withdrawn in the Vermont and to develop tools to ensure sustainable uses.

The Study Group selected the threshold of 5,000 gallons of water to capture a wide array of potential water withdrawals while still setting the threshold high enough to excluded residents that may withdraw water intermittently to water their gardens or for other domestic uses. Additionally, the threshold was selected based on the fact that most of Vermont's rivers and streams are relatively small with an estimated 75% of Vermont stream miles being in drainage areas of less than 2 square miles. These small streams can be more susceptible to excessive water withdrawal during low flow periods.

Additionally, as recommended by the Study Group and captured in H.466 water withdrawals between 5,000 and 50,000 gallons of surface water within a 24-hour period would be able to estimate the total volume by calculating the withdrawal rate (gallons/minute) or capacity of the pump by the duration pump operated. Greater than 50,000 gallons within a 24-hour period would need to meter their use for reporting total volume of water used. No real time stream flow monitoring is required.

The second phase of the recommendation as captured in H.466 is that the Agency be authorized to develop a permitting program for surface water withdrawals. The permitting program would use the information from the registration and reporting program and be developed through the rule making process which would set water withdrawal thresholds and requirements that would require a surface water withdrawal permit. Additionally, the rules for the permitting program would establish requirements as it relates to efficient use and conservation of surface water for sustainable use of Vermont's surface waters, ensure that withdrawals comply with the Vermont water quality standards, establish limitations on withdrawals based on low flow and drought conditions, and require the development for alternatives to meet water needs in such cases of low flow or drought.

Additionally, the Study Group recognized that existing users with water withdrawals need to be given time to come into compliance, if a permit is deemed necessary. Therefore, H.466 states that an existing surface water withdrawal shall not be required to obtain a permit until July 2030 as long as there is no increase in withdrawal rate or capacity of withdrawal system after January 1, 2023.

Further, the Study Group acknowledged that some sectors that rely on surface water withdrawal already have an extensive review process as required by an existing environmental rule. Most notable of these is water withdrawals used for snowmaking. It is not the intent of the Study

Group to create another level of review for these proposals, but it is recommended that proposals that are being reviewed as part of the environmental rule for water withdrawals for snowmaking be able to obtain a permit under the surface water withdrawal permitting program. This approach would limit redundancy and create a more efficient process for the regulated community and Agency staff.

In closing I would like to mention that there was a lot of discussions that occurred amongst the Committee members through this process and in the end there was a great deal of agreement on the report and recommendations put forth which subsequently became H.466.

Additionally, I will share with the Committee that the Agency has met with our colleagues at the Agency of Transportation and heard their concerns regarding H.466. However, it is our position that the Agency first needs to collect information and data as part of the initial registration and reporting process. Any additional and specific concerns could then be worked out during the subsequent rulemaking process. This will allow us to first identify those water withdrawals that may need a permit due to their deleterious effects on the State's surface waters, and also those withdrawals that because of their location, rate, or volume do not need to be regulated through permitting.

With that this concludes my testimony and I would be happy to answer any questions the Committee may have.

Thank you.