

March 17, 2022

Testimony of David L Deen Member VT Trout Unlimited Council and chair of the CT River Valley chapter Trout Unlimited

Concerning H 466 - a bill that proposes to protect the surface water from unsustainable withdrawals and establish a review of interbasin transfers of surface water occurring in the State.

I will not repeat the history offered by previous witnesses in my oral testimony. What I will do is quickly summarize the Study Committee findings, and then offer a few closing remarks.

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.

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 diversions 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. Reports are due to DEC annually starting the following Jan 15<sup>th</sup>.

- (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 legislation before you because under current law unless a federal action is undertaken no 401 certification review to assure compliance by the sending and receiving waters to the Vermont Water Quality Standards 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 authorizes the Agency to develop a permitting program if warranted for surface water withdrawals on or before July 1, 2026. If needed, any 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 response requirements during droughts.

*(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 changes 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 types of 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 when necessary set in place limitations on 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 recommended the legislation as introduced in H 466/S 237.

*To conclude my testimony*, there was a good 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. All significant withdrawals as defined in the bill should be registered or we will still be driving blindfolded in our attempt to protect our public trust waters and water users businesses.

I will add that at the conclusion of our process, all members of the committee were invited to file their own comments as a minority report so to speak on the report and the single letter received prior to publication is attached as Appendix C of the report for your review.

There is no letter from AAFM about any findings in the report, the legislative proposals, about agricultural interests not heard from, about the inclusiveness of the process, nor about any outreach they did or did not do to the ag community during the committee process. AAFM was an active participant in the process, attending every meeting.

AAFM did present a variation of our proposal at one of the very last committee meetings but their proposal incorporated disparate information from different sources with different timelines that needed to be reconciled if that information were to be useful. For that reason the Study Committee chose not to include it in the final report. I for one am not sure even if we had used the information that it would have changed the report or draft legislation proposed.

As to road construction need for water withdrawals, they should not be exempt from reporting for all the reasons presented in the report. They too should develop a low water alternative use scenario so their water needs and the river's water needs are both served whether or not they need to file reports as part of a permit scheme. They at the very least should monitor the **drought.gov** site for Vermont, sign up for the email warning service provided by the site and not withdraw in drought conditions without prior DEC approval. Keeping a journal while working and reporting to DEC the following Jan 15 should not be a burden.

By the way according to drought.gov, the northern half + of Vermont is experiencing unusually dry conditions as of last Thursday, another impact of climate change that areas of wet or dry will be discreet and regional in aspect.

Vermont is behind the times on this issue - other states have already put in place programs to address the impacts of these withdrawals; climate change places existing users and water quality at greater risk of unsustainable use that could damage their businesses, their crops and the instream environment.

That concludes my testimony.