

ANR has reviewed the Senate's proposed changes to H.466 and AAFM's additional proposed revisions, both of which were addressed during today's committee presentation. In response to each, please see below:

Senate Proposed Changes (Draft No. 1.1 – H.466, dated 4/4/22)

• **First: Methods of reporting withdrawals**

- **(c)(1) through (c)(2):** ANR does not agree to the addition of "averaged over any 30-day period in a year" as a means of estimating withdrawals under (c).

This change significantly changes the threshold for reporting and registering and undermines the intent of the effort to develop an informed and data-based permitting program. This threshold will only collect data on those users who average use over 5,000 gallons in a 30-day period. This is inconsistent with ANR's perspective on stream flow protection. In regulating stream flow, ANR focuses on the instantaneous value of stream flow to protect aquatic habitat and biota, which is codified in the VWQS. As proposed, an actor could withdraw (e.g.) 5,000 gallons a day for a 20-day period from a small headwater stream during a low flow period potential in violation of WQS and would not have to report that use as part of the program.

It is ANR's preference to keep the reporting estimation language proposed by the Act 173 Study Group. If any averaging is included as an estimation methodology, ANR can agree to the concept so long as it be *in addition to* the 5,000 gallon per 24-hour period. For example, "Withdrawals of between 5,000 and 50,000 gallons of surface water in a 24-hour period or 150,000 gallons over any 30-day period."

ANR also does not support expression of the volumetric threshold being based on a "a day", and would seek for reinstatement of the "24-hour period", as it used throughout the rest of the bill.

- **(c)(2):** (withdrawals for irrigation or watering of livestock). ANR can agree to this proposal with the following addition (in underline): "may provide an estimate of the total volume withdrawn based on log records pursuant to a technically appropriate method approved by the Secretary" to mirror the language in (c)(1)(B) above and to ensure consistency among data received from these logs/reports.

• **Second: Permits**

- **(c)(2):** ANR can agree to this proposal with the following addition (in underline): "The general permit shall establish rate and withdrawal volume that only require notification..." to ensure that rate of withdrawal is considered in determining appropriateness for general permit approval.

ANR can otherwise agree to the Senate's proposed amendments.

AAFM additional proposed revisions (AAFM Draft Language in Teal) (as presented to SNRE on 4/6/22)

- **Definition of “surface water”:**
 - **(20):** ANR can agree to clarifying the types of springs that constitute surface waters. ANR proposes to replace “and springs” with “and surface water springs” to clarify that groundwater springs are not included in the definition of “surface water” consistent with the definition of “groundwater”.
 - **(20)(D):** ANR agrees to this proposal with the following addition (in underline): “constructed off-stream farm ponds or other impoundments...” for clarification purposes.
- **Permit requirement; program development:**
 - **(i)** ANR doesn’t interpret this as adding any substantive policy or requirement to the permitting program requirements. However, ANR can agree to this proposal with the following revision (in underline): “It is recognized that the impact of certain withdrawals are so small in relation to the stream flow even during periods of drought, that the resultant impact on the natural stream is negligible as determined by the Secretary.” This change would be to clarify that cumulative impacts of multiple small withdrawals may be considered – this is consistent with ANR’s Stream Flow Procedure.

ANR otherwise can agree to AAFM’s additional changes.

Thanks for your consideration. Please let us know if you have further questions.

Sincerely,

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