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February 10, 2026

Chair Watson, Vice Chair Williams, and Members of the Senate Natural Resources & Energy Committee,

I am writing in opposition of the passage of Senate Legislative bill S.224 regarding delegation of authority to a municipality to regulate the use of public waters of the State being used as a water supply.

Currently the Vermont Department of Environmental Conservation (DEC hereafter) holds lawful authority over all public waters of the State of Vermont, see **29 V.S.A. § 401**. With this authority, the DEC has classified Thurman Dix Reservoir as A 2 public waters, and is suitable for “good quality boating, swimming, and fishing.”

In 2010 the City of Montpelier challenged the authority held by the DEC over the public waters of Berlin Pond. The Vermont Supreme Court disagreed with the City of Montpelier’s point of view, see **City of Montpelier v. Barnett, 2012 VT 32, 191 Vt. 441.**

After Montpelier's defeat at the Vermont Supreme Court, a bill was submitted that would grant the City of Montpelier delegated authority to regulate the waters of Berlin Pond, very similar to Legislative bill S.224. The bill did not pass.

The City of Montpelier then petitioned the DEC for a delegation of authority in accordance with the DEC's policies and procedures. The DEC denied the city's request.

Since all this has transpired, the issue of municipal control over public waters has gone silent, until now. Why now? On October 17, 2025, Barre City Manager Nicholas Storericastro initiated the process to create Legislative bill S.224.

In the past 14 years Barre City municipal employees, acting under color of the City of Barre, have interfered with, harassed, threatened, and verbally attacked me on 9 different occasions.

7 of those interactions were with Barre City municipal waterworks employees, who have no level of law enforcement capabilities.

The other 2 incidents were with Barre City municipal police officers. Both incidents resulted in my being cited for trespassing in violation of Barre City municipal ordinances. The second incident was on October 5, 2025. Cpl. Michael Reale cited me for trespass, stating the "only way on Thurman Dix Reservoir was by helicopter."

The City of Barre asserts that it owns all the land around the pond and therefore have the ability to prohibit access to the water. True, the city does own all the land around Thurman Dix Reservoir, however, the city does not have the authority to prohibit access to the water. The city has the legal ability to post their property in accordance with **10 V.S.A. § 5201(a)(1)**.

There are roughly 8 locations where Vermont's legally defined Public-Right-of-Way (PROW hereafter) overlaps the jurisdiction of public waters, see **19 V.S.A. § 702**. Berlin Pond was and is still being accessed via PROW across Montpelier's posted property on Mirror Lake Rd on the southern end of the pond, legally. Both incidents took place well within PROW, yet I am still ticketed for trespassing.

The **United States Public Trust Doctrine** is a legal principal requiring States to manage the waters, and the underlying lands, to the benefit of the people, rather than private, exclusive use. This Doctrine, this legal principal dates to Roman Law and has been affirmed by the U.S. Supreme Court in 1842, see **Martin v. Waddell 41 U.S. 367 (1842)**.

The **Vermont Public Trust Doctrine** mirrors its superior counterpart, citing that "navigable waters, and submerged lands, are preserved for public use and enjoyment."

As required by Federal Law, via the U.S. Public Trust Doctrine, the State of Vermont DEC has been assigned the jurisdictional authority to create policies and procedures for regulating and protecting public waters for the greatest enjoyment by all people, see **29 V.S.A. § 401**.

Vermont law prohibits cities, towns, and municipal governments from directly regulating hunting, fishing, trapping....., see **24 V.S.A. § 2295**.

The City of Barre has been restricting and prohibiting recreational activities on Thurman Dix Reservoir since the Berlin Pond case and before. Each time the city engages a person on public

waters, they are infringing on the jurisdiction of the DEC, as affirmed by the Vermont Supreme Court.

The City of Barre presents the argument that this Legislation is required to “protect the pond from dangerous toxins.”

First, what dangerous toxins are potentially being introduced by recreational users? Plastic, metal, and wooden watercraft pose no measurable threat to the pond. Worms, artificial flies and lures pose no measurable threat.

Second, if we are concerned about the dangerous toxins for recreational use, how are we going to address the significantly higher risk of dangerous toxins being introduced into the pond daily? I am referring to the vehicles that travel the roadways on 3 sides of the pond. What are the parts per million of gas, oil, grease, brake fluid, diesel fuel, and battery acid that are washed or plowed into the pond every day?

Third, what makes the City of Barre believe that they should have the ability to regulate the public waters of Thurman Dix Reservoir, and do so consistent with State and Federal law, when they have been unable to do so for the last 14 years? The City of Barre consistently refuses to acknowledge and uphold Vermont’s PROW laws. I am not the only person that has been ordered off the pond by municipal employees.

Fourth, the City of Montpelier argued the same issue before the Vermont Supreme Court. They presented increased trash and the potential for contamination would be introduced by recreational use. The Vermont Supreme Court ruled against municipal control.

Passage of Legislative bill S.224 would be the proverbial opening of the Pandoras Box of public waters. Several Vermont Statutes

would need to be rewritten. The Vermont Constitution, the Vermont Public Trust Doctrine, and several dozen policies and procedures currently in place by the DEC would all have to be rewritten.

Based on the laws, as I understand them to be, the City of Barre is asking for something they are not suited possess. The City of Barre wants to forever close the surface waters of Thurman Dix Reservoir, nearly the exact opposite of what law currently holds.

I very respectfully submit this for your consideration,

Rick Barnett

Fisherman, kayaker, recreational user