

**Clean Water Initiative Legislative Package
January 2015 (DRAFT 1/12/15)**

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I. Overview of Clean Water Fund and Clean Water Investment Report:

- a. Fund Creation and Purpose. The Commissioner of Finance and Management will establish a Clean Water Fund in order to (1) receive state appropriations, federal grants, private donations, impact fees, environmental assessments and other monies; and (2) distribute those monies to state agencies in order to implement the Lake Champlain TMDL and other clean water initiatives.
- b. Fund Administration and Governance. The Fund will be administered by the Secretary of Administration who will establish administration and governance procedures in a guidance memorandum for a steering committee of cabinet appointees, including the Secretaries of Natural Resources, Agriculture, Food and Markets, Transportation, Commerce and Community Development. Fund expenditures will be authorized through the appropriations process, and the Fund will be subject to standard conditions that apply to special funds. The Fund steering committee will report annually, prior to the legislative session, to an external advisory committee composed of members of the General Assembly and other clean water stakeholders appointed by the Governor.
- c. Clean Water Investment Report. In consultation with the external advisory committee, the Fund steering committee will prepare a clean water investment report to the Governor and General Assembly, providing: (1) a detailed account of fund expenditures and other clean water investments made by the State of Vermont; (2) an annual progress report on progress towards meeting the goals of the Lake Champlain TMDL and other clean water initiatives; and (3) a description of resources needed for the upcoming fiscal year and recommended revenue sources to meet those resource needs.

Next Step: DEC is preparing a draft memorandum from the Governor to relevant Secretaries authorizing the creation of the fund. We will circulate for comments early this week.

II. Clean Water Fund Revenue Sources

- a. Clean Water Fund. The Clean Water fund will be funded through the following new revenue sources:
 - i. Impervious Cover Assessment. We estimate that roughly \$5M could be raised in SFY 2016 through an impervious surface tax imposed on all non-

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residential parcels in the Lake Champlain Basin, including commercial, industrial, and other non-residential lands. Annual fees would range from \$50.00 to \$300.00 depending on the type of use of the parcel. Given uncertainties about the ability of the state to collect this new assessment in FY 16, revenues in FY 16 will accrue to the fund to build a fund balance that will be appropriated for FY 17.

Next Step: DEC has shared bill language with Tax and is also working with Tax on the revenue estimate. This should be done by Tuesday. Once done, we need to work with House leadership to decide whether this language will go in the Misc. Tax Bill or a clean water bill. DEC's preference is the Misc. Tax Bill.

- ii. Donations and Impact Fees. The Clean Water Fund will have capacity to take in and utilize private donations and impact fees.
 1. Impact Fees: We are working with the Department of Public Service and Tax to develop a proposal to present to TDI as part of that company's PSB application for a certificate of public good that would include substantial payments into the Clean Water Fund for the purpose of funding pollution control in the Lake Champlain basin.

Next Step: PSD has prepared a memorandum to the 5th floor summarizing the recommendations of DEC, DPS and Tax and DPS is setting up an internal meeting within state government to develop a proposal.
 2. Keurig: Keurig has committed to providing \$1M per year for five years to address clean water goals in the Lake Champlain basin. The precise nature of how the funds will be spent will be determined in collaboration with Keurig, their consultant Tetrattech, and with support from UVM.

Next Step: Aly Richards is coordinating a meeting with Keurig. AAFM and DEC are participating.

- iii. Current Use Changes for Agriculture: We will seek legislation to revise the current use program to add a provision, similar to a provision applicable to forested lands, that would limit the amount of property tax relief available to farmers where they are not in compliance with water quality protection requirements (accepted agricultural practices). The additional property tax revenue resulting from this new policy would go into the Clean Water Fund.

Next Step: AAFM will draft bill language in consultation with Tax and FPR. Once drafted, we will need to determine which committee will take this up and in which bill.

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III. Clean Water Initiative Spending

- a. Clean Water Fund. We have estimated that we have needs in the range of \$4-6M per year from the Clean Water Fund for the first two to three years of the Lake Champlain TMDL Implementation Plan. During this time, we will be building capacity and better assessing the needs and gaps in existing funding sources. Priority needs include: (1) increased technical assistance to farmers; and (2) enhanced technical assistance to municipalities. This can be provided through existing state programs administered by AAFM, VTrans and ANR, and through expanding the capacity of Regional Planning Commissions and VLCT. Longer term needs include expanding grant and loan programs to fill identified gaps in current funding sources.

Next Step: DEC is preparing a more detailed description of needs and a spending plan to present to the legislature in support of the revenue proposals for the Clean Water Fund above.

- b. Federal Support. Federal partners have announced the following new or enhanced support for implementation of the Lake Champlain TMDL:

- i. In August 2014, USDA Secretary Vilsack announced that his agency would make \$45 million available over the next five years through the Natural Resource Conservation Service (NRCS) to continue to support implementation of agricultural nonpoint source controls specifically in the Lake Champlain Basin. Secretary Vilsack also announced that NRCS would provide an additional \$1M to implement cover cropping practices, in response to an increased request for cost-share for this valuable practice.

Next Step: DEC and AAFM will work with NRCS to develop a more detailed explanation of how this additional funding will be targeted to support the state's Lake Champlain TMDL implementation plan. We will present this information to the legislature in support of our Clean Water Initiative package.

- ii. We recently learned that Vermont is likely to receive a large grant (in the range of \$13M over five years) from the NRCS Regional Conservation Partnership Program, in collaboration with the State of New York. We will use these funds to increase implementation of agricultural water quality projects in the Lake Champlain Basin. If we do receive this grant, we will leverage significant additional dollars from a variety of public and private partners.

Next Step: Wait for the NRCS announcement this week and then AAFM and DEC will work with NRCS and other partners to develop a plan for implementing the grant proposal. We will describe this plan to the legislature once finalized. We need to discuss how to staff

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this project which will require significant coordination and support to implement.

- iii. Also in November 2014, EPA announced that the City of Burlington would receive a grant of \$65K for integrated planning in order to develop community evaluation criteria, develop a list of example projects, and evaluate innovative methods of pollutant reduction.

Next Step: DEC will work with Burlington to implement an integrated planning approach once they complete the process.

- iv. In December 2014, Senator Leahy's office announced that \$3M of new funding for Lake Champlain through EPA has been included in the comprehensive budget package that will be considered by Congress. The total allocation under the program for Lake Champlain is \$4.399M.

Next Step: The Lake Champlain Basin Program steering committee is meeting in the next month to make decisions about how to allocate these funds. DEC, AAFM and VTrans represent the State of Vermont on this committee. DEC and is coordinating with the State of NY DEC to develop a set of shared priorities for using these funds to implement projects that will reduce nutrient pollution into Lake Champlain.

- v. DEC applied for funding through the AmeriCorp Program for our ECO Vermont Program. We proposed 15 full-time and 10 half-time AmeriCorps members to be placed at local host sites throughout the state, focused on implementing strategies to protect and improve water quality in the Lake Champlain watershed. Grant funds would be approximately \$265K, with a required state match of \$105K and municipal match of \$113K.

Next Step: Our proposal was selected for consideration in the national competition. We will learn whether we are successful in the spring of 2015. If successful, we will work with municipalities to locate the Americorps members and will report to the legislature on the project.

- c. Capital Investments. The following clean water capital investments are proposed for SFY 2016-17:
 - i. ANR has proposed a clean water capital budget for SFY 2016 to increase clean water funding, including \$1.6M for the Clean Water State Revolving Fund and \$3.75M for the Ecosystem Restoration Program.
Next Step: DEC to confirm with BGS what the final capital bill numbers in the Governor's budget will be.
 - ii. AAFM has proposed a clean water capital budget for SFY 2016 that increases to \$1.4M funding for the Best Management Practices Cost Share

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Program, livestock exclusion, and small farm best management practice implementation.

Next Step: AAFM to confirm with BGS what the final capital bill numbers in the Governor's budget will be.

- iii. VTrans has proposed \$3.2M for stormwater retrofits and other clean water projects in the SFY 2016 Transportation Bill.

Next Step: VTrans to support this proposal and will invite DEC to participate in Transportation committee hearings as necessary. VTrans is also exploring other options for increasing clean water funding using transportation funds and will let DEC know if those options mature into ideas that can be incorporated into this Clean Water Initiative package.

- d. DEC Fee Proposal. DEC has proposed a mix of new and enhanced fees for clean water permits in order to raise \$1.5M in SFY 2016 for enhanced program capacity to implement the Lake Champlain TMDL and other clean water initiatives

Next Step: Language drafted and sent to Finance and Management for inclusion in Administration fee bill. DEC to support fee proposal in front of House Ways and Means.

- e. Fertilizer Tonnage Fee. An increased fertilizer tonnage fee will apply to all fertilizer distributors in the State of Vermont. Additional revenue generated would be roughly \$1M.

Next Step: AAFM to work with Finance and Management to ensure that this proposal is in the Administration fee bill. AAFM will support in front of Ways and Means with support of DEC.

IV. Statutory Changes Need to Implement the Clean Water Initiative

- a. Agency of Agriculture, Food and Markets. New authority is needed at AAFM in order to: (1) mandate to adopt enhanced AAPs for protection of water quality that include livestock exclusion requirements, nutrient management planning, management of soil loss to 1T, and treatment of new tile drains by 2018; (2) mandate to create a small farm certification program; (3) clarification that mandatory water quality BMPs do not require funding prior to implementation; (4) revision to AAFM enforcement authority to grant emergency order authority, civil penalty authority for AAP violations, and other additional enforcement authority for AAFM.
- b. Department of Environmental Conservation. New authority is needed at DEC in order to clarify DEC authority to require stormwater best management practices on developed lands within impaired watersheds. New authority is also required for the management of impervious surface from municipal roads.

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- c. RPC Authority. The State of Vermont is proposing to establish new duties for RPCs in state statute to: assist ANR with basin planning, including outreach and education for member municipalities; coordinate municipal planning and regulations to support implementation of the Lake Champlain TMDL and other clean water initiatives; and develop regional / local stormwater management plans, coordinated with regional / local transportation plans and land use plans.
- d. Clean Water State Revolving Loan Fund Eligibility. DEC is proposing to expand eligibility for these low interest loans to include private entities under new authority from the Water Resources Reform and Development Act of 2014.

Next Step: DEC collaborated with AAFM on language that has been provided to legislative counsel for inclusion in a clean water bill being developed for House Fish, Wildlife and Water Resources Committee Chair David Deen. DEC will track and testify on this legislation in coordination with AAFM.