

**From:** Mears, David [David.Mears@state.vt.us]

**Sent:** Monday, December 15, 2014 2:00 PM

**To:** Miller, Elizabeth

**CC:** Martin, Trey; Markowitz, Deb; Gray, Laura; Ross, Chuck; Moulton, Pat; Spaulding, Jeb; Johnson, Justin; Schuren, Alyssa; London, Sarah; Cole, Chris; Minter, Sue; LaClair, Jolinda; Mackay, Noelle; Markowitz, Deb; Reardon, Jim; Clark, Sarah; Allen, Susan

**Subject:** Revised Clean Water Strategy Document

**Attachments:** Clean Water Strategy Talking Points.docx

**Follow Up Flag:** Flag for follow up

**Flag Status:** Flagged

Liz: The attached reflects our response to your comments.

A couple of items are worth noting as they are not spelled out in the document.

(1) Fertilizer tonnage fee vs. sales tax: We understand from a conversation that Trey had with Laura that questions were raised last week about the fertilizer tonnage fee and a suggestion made to consider increasing the sales tax on fertilizers as an alternative. I continue to like the idea of some type of fee specific to fertilizers given the nexus so recommend that we keep one or the other of these revenue approaches in our proposal, even if the amount raised is relatively small. There are pro's and con's to each and I will defer to Chuck and you on this.

(2) Section 1266(a) (State obligation to pay for phosphorus upgrades): The proposal to remove this language is the eyebrow raising item you noted in your comments. I propose to remove this item from our recommendation to the General Assembly and delete from the talking points.

The current language in Section 1266(a) requires the state to pay for wastewater treatment plant upgrades where the new permit limit is below 0.8 milligrams per liter. The reason we initially included a proposal to delete this requirement is that our legal counsel have advised that leaving the language in creates some risk of litigation in the future. I am comfortable taking that risk. Seeking to remove this language will create unnecessary headwinds for other aspects of our clean water legislative and budget proposals.

Quick background: This was an issue in the petition filed by CLF with EPA asking that EPA remove Vermont's authority to administer the Clean Water Act (de-delegation petition). CLF and EPA expressed concerns that municipalities could use the state's obligation to pay for phosphorus upgrades as a defense to compliance with a Clean Water Act permit in the event that no state funding was forthcoming.

EPA agreed not to press this issue in our final resolution of the de-delegation petition based on my interpretation as Commissioner of the department implementing the Clean Water Act in Vermont. My interpretation is that this language merely obligates DEC to ask the legislature for the funds. If the legislature does not appropriate capital dollars for the phosphorus upgrade, under my interpretation, that fact does not forgive the obligation for municipalities to comply with a Clean Water Act permit issued by DEC.

Chairman Deen may raise this issue in committee but your comment confirmed for me that we should position ourselves in opposition to removing an existing obligation that municipalities will want to protect.

Please let me know if any questions. I look forward to discussing further. David

**Clean Water Investment Strategy and  
Clean Water Bill**

**December 2014**

---

- I. Overview of Clean Water Fund and Clean Water Investment Report**
  - II. SFY 2016 Needs and New Revenue for Clean Water Fund**
  - III. Overview of Other Clean Water Spending**
  - IV. New Authority / Statutory Changes to Implement the Lake Champlain TMDL**
  - V. Other**
- 

**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.

## II. SFY CWF 2016 Needs and New Revenue Proposal

- a. *Clean Water Fund.* The Clean Water fund will be funded through the following new revenue sources:
  - i. *Impervious Cover Tax.* The State of Vermont estimates that roughly \$4M could be raised in SFY 2016 through an impervious surface tax imposed on all non-residential parcels in the Lake Champlain Basin, including commercial, industrial, institutional, institutional and agricultural lands. Annual fees would range from \$60 for small farms to \$600 for large industrial parcels though we are still refining these numbers. We propose to allow for a reduction or offset of the fees for landowners who will already be paying for stormwater pollution control through state or municipal stormwater fees.
  - ii. *Fertilizer Tonnage Fee or Sales Tax.* An increased fertilizer tonnage fee would apply to all fertilizer distributors in the State of Vermont. The current fee is \$0.25/ton, which would be increased to \$2.50/ton, and this cost could be passed at a small cost to fertilizer purchasers. Additional revenue generated would be roughly \$100K. Alternatively, the State of Vermont could raise additional revenue through by removing the current sales tax exemption for agriculture.
  - iii. *Donations and Impact Fees.* The Clean Water Fund will have capacity to take in and utilize private donations and impact fees. For example, TDI recently filed for a CPG at the Public Service Board to authorize construction of an electric transmission line along the bed of Lake Champlain. TDI's filing includes a proposal to invest \$82M over 40 years for phosphorus reduction practices in the Lake Champlain Basin, as well as an additional \$40M for habitat restoration. Should the Vermont Public Service Board find that an impact payment is in the public good, such payment should be paid into the Fund to coordinate with other state programs to comply with the TMDL.
- b. *SFY 2016 Needs.* Demands on the Clean Water Fund for SFY 2016 are roughly \$4M - \$6M in order to provide: (1) funding for increased water quality technical assistance and enforcement through AAFM; (2) support for enhanced DEC technical assistance and monitoring support for water quality programs not covered by DEC's FY16 fee bill; and (3) funding for additional assistance to municipalities through increasing the capacity of Regional Planning Commissions and Vermont League of Cities and Towns to support water resources management including water quality and flood resilience. The minimum amount necessary is \$3.7M. Additional revenue generated above that minimum would be allocated to communities through grants and loans to support clean water projects.

### III. Overview of Other Clean Water Spending

- a. *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.
  - ii. Also in August, 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.
  - iii. In September 2014, VAAFV submitted a \$20 million, 5-year proposal to the NRCS Regional Conservation Partnership Program, in collaboration with the State of New York, to increase implementation of agricultural water quality projects in the Lake Champlain Basin. If successful, this grant will allow Vermont to leverage up to \$25 million additional dollars from a variety of public and private partners for a total \$45 million investment in water quality protections.
  - iv. In November 2014, ACCD, with VTrans and ANR, submitted a threshold request to the U.S. Department of Housing and Urban Development pursuant to the National Disaster Resilience Competition Notice of Funding Availability (NOFA). If selected to continue in the next round of the competition, Vermont anticipates presenting a proposal to fund resilience efforts in eligible communities, with potential benefits for water quality.
  - v. Also in November, 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.
  - vi. 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
  - vii. 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. We anticipate hearing if our proposal will be forwarded for national competitive funding by December 17.

- b. *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 that roughly doubles past requests for clean water funding, including \$1.9m for the Clean Water State Revolving Fund and \$5.35M for the Ecosystem Restoration Program.
  - ii. AAFM has proposed a clean water capital budget for SFY 2016 that roughly doubles past requests for clean water funding, including \$2.9M for the Best Management Practices Cost Share Program, \$300K for livestock exclusion, and \$100K for small farm best management practice implementation.
  - iii. VTrans has proposed \$3.2M for stormwater retrofits and other clean water projects in the SFY 2016 Transportation Capital Bill.
- c. *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.

#### **IV. New Authority / Statutory Changes to Implement the Lake Champlain TMDL**

- 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; (2) mandate to create a small farm certification program; (3) enhanced nutrient management requirements; (4) civil penalty authority for enforcement of AAPs; (5) transfer authority for backyard farming regulations to municipalities; and (6) eliminate funding requirement for BMPs required to address threats to water quality on farms.
- 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.

#### **V. Other**

- a. *Water Resources Coordinators in RPCs and VLCT.* The State of Vermont is proposing to: (1) establish new duties for RPCs and VLCT 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; and (2) appropriate \$1.1M of new CWF revenue to ANR in order to establish contract with RPCs and VLCT for planning coordination, as described above.
- b. *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.