



Vermont Council



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Mr. Neil Kamman
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Watershed Management Division
Vermont Dept. of Environmental Conservation
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Montpelier, VT 05620

Via email: neil.kamman@vermont.gov

Dear Neil:

We thank the Department of Environmental Conservation (DEC or Agency) for the opportunity to comment on the Draft Vermont Water Quality Standards (VWQS). The Connecticut River Watershed Council (CRWC) and the Vermont Council of Trout Unlimited (VTTU) would like to comment specifically about changes related to the Outstanding Resource Waters (ORW) language in the VWQS and, more expansively, on the need for broader changes to this long-dormant program.

The inclusion of changes to the ORW in the Draft VWQS reminds us that changes need to be made in both policy and process to establish what could be a valuable program for the protection of water quality. But the program is vastly underutilized and needs to be updated to become more accessible to citizens. We acknowledge that some changes will have to be made by statute, and therefore at the legislative level, but some changes could be made by the Agency to allow the program to be better utilized in water resource protection.

Only four areas have been designated ORWs and none since 1996. They include the Batten Kill and its West Branch, Town of East Dorset and Arlington; Pikes Falls / Ball Mountain Brook North Branch, Town of Jamaica; the lower Poultney River in the Towns of Poultney and Fair Haven; and Great Falls on the Ompompanoosuc River in Thetford. The fact that none have been

designated in the past twenty years shows the need to update the policy and procedure for designation.

First, in terms of policy, it is our understanding from the slides from the Pre-Rulemaking Public Outreach Meeting on May 16, 2016, that the Antidegradation Tier 3 ORW protections will remain unchanged and we thank you that this will continue.

However, we are concerned that some of the language in the Draft VWQS will further narrow and limit the use of the program. Specifically in §29A-105(d), the language does not strengthen the program, but instead just trues it up to the language in the statute.

Also in the Pre-Rulemaking Meeting slides, it is indicated that an “area in which the waters are located” will replace the “statewide” test for socioeconomic justifiability. It has been noted that this geographic region may be the boundaries of the watershed. This narrowing is somewhat arbitrary as people are concerned with environmental and resource protection beyond their immediate backyards. Such a change would exclude some citizens from participation in environmental protection, thereby limiting those that could petition for an ORW. We are concerned that this change will limit citizen participation as well as make it easier to justify the lowering of water quality. Please clarify if this is the intent of the proposed change. If this is the intent, we object to this weakening of the VWQS.

Moreover, we would appreciate assurances that ORWs will be exempt from §29A-105(c)(2). This section allows the lowering of water quality to prevent adverse economic or societal impacts. We would hope that the designation of an ORW itself would exempt these waters from the economic considerations that allow such lowering.

Second, the adjudicative process for designation of an ORW is too onerous and expensive for the average citizen, effectively locking them out of the process and thereby limiting the potential for designation. Moreover, the Agency may not have the same expertise as the shuttered quasi-judicial Water Resources Board to carry out this type of adjudicative process. While the Agency inherited this process, it was created for the Board. Instead, the Agency should develop, working with the Legislature as necessary, a simpler, but thoughtful, process.

Additionally, the Agency should make it easier for citizens to petition for the inclusion of certain waters. For example, a possible way to encourage public participation in the designation of potential ORWs would be to include this as part of the criteria for Tactical Basin Plans in §29A-103(c).

The subject of simplification or guidance in the designation process has been broached before, but we are unsure of the results. In the July 2013 White River Tactical Basin Plan, the Vermont Natural Resources Council (VNRC) commented:

Comment 4 – VNRC urges the Agency to consider creation of a document that guides organizations through the Outstanding Resource water designation process. This document would be of tremendous value to local and statewide

organizations wishing to recommend such a list. However the Agency should also consider the benefits of them undertaking these designations as well.

DEC Response – The idea of developing a document to guide organizations through the ORW designation process is a good one. DEC will seriously consider developing such a document. DEC is currently developing more specific, science-based criteria for reviewing potential waters for Outstanding Resource Water Designation. Additionally, DEC is working with the Legislature in determining the process of designating waters as ORW. (pg. 110 – 111).

Has DEC made any strides in drafting a guidance document? Were the specific, scientific-based criteria every developed? And were there any results from working with the Legislature? DEC seems genuinely interested in expanding the ORW program, making it easier to petition and implement, as well as easier to understand. We would be very interested in assisting in any work that is underway, or help jump-start any such work that may have stalled over the years.

In conclusion, the ORW is a long-dormant program that should be updated to allow for better citizen understanding and access. As we move forward in implementing Act 64, ORW would be a valuable tool to help set aside specific waters of Vermont for extra protection measures.

Sincerely,



Clark Amadon, Chair
Vermont Council of Trout Unlimited



David Deen
Upper Valley River Steward
Connecticut River Watershed Council