



For a thriving New England

CLF Vermont 15 East State Street, Suite 4
Montpelier, VT 05602
P: 802.223.5992
F: 802.223.0060
www.clf.org

December 15, 2017

Ethan Swift
Watershed Coordinator
Monitoring, Assessment and Planning Program
VT Dept. of Environmental Conservation
1 National Life, Main 2
Montpelier, VT 05620-3522

Re: CLF Comments on the South Lake Champlain Tactical Basin Plan

Sent via email: ethan.swift@vermont.gov

Dear Mr. Swift:

Conservation Law Foundation (CLF) appreciates the opportunity to comment on the South Lake Champlain Tactical Basin Plan and Tactical Basin Plans (TBP, or Phase 2 Plans) more broadly. Basin planning is the backbone of implementing the Lake Champlain Phosphorus TMDL¹ and meeting Vermont's water quality standards. The process therefore warrants close scrutiny.

The Department of Environmental Conservation (DEC) developed the TBP process to "coordinate watershed assessment, planning, project identification and funding."² CLF evaluated the South Lake Champlain TBP based on metrics outlined in the Implementation Plan as well as the assumptions highlighted in the 2016 TMDL. These include:

"Beginning in 2018, the accountability framework is built around the priority milestones contained in each of the Phase 2 Implementation (Tactical Basin) Plans."³

¹ Phosphorus TMDLs for Vermont Segments of Lake Champlain (June 17, 2016) (hereinafter 2016 TMDL).

² Vermont Lake Champlain Phosphorus TMDL Phase 1 Implementation Plan (September, 15 2016) (hereinafter Implementation Plan) pg. 133.

³ 2016 TMDL pg 55.

“...the Phase 2 basin-specific implementation plans will reflect a tactical basin planning process, which will identify the highest priority projects for each basin and ensure that available funding is prioritized and targeted toward those projects.”⁴

“Each tactical sub-basin plan will have an implementation table that identifies in more detail the specific point source and non point source measures and practices to be implemented by identified dates.”⁵

“These science-based assessments also serve to identify where additional regulatory program requirements may be brought to bear by the relevant programs.”⁶

To summarize, the 2016 TMDL and Implementation Plan require TBPs to prioritize projects, target funding to prioritized projects, include specific dates for project implementation, and highlight regulatory gaps that need to be filled to support TBP projects and priorities, and a discussion of backstops should TBP implementation schedules not be met.

South Lake Champlain TBP Prioritization

CLF commends DEC for highlighting the importance of not only improving water quality but protecting high quality waters as well. “Priority is given to those waters that are identified as facing the greatest challenges due to water quality stressors or that have exceptional quality and characteristics that should be protected.”⁷ CLF hopes some funds will be targeted at maintaining Vermont’s high quality waters. It would be helpful to clarify if projects in the implementation table are focused on protecting high quality waters.

There are several sections within the South Lake Champlain TBP that rank projects, including Table 1 on high priority basins for restoration and protection, Appendix G on high priorities for river corridor management, and Table 12, which includes a list of top 67 projects to be completed within the basin. CLF appreciates DEC’s effort to

⁴ *Id.* At 30.

⁵ *Id.* at 5.

⁶ *Id.*

⁷ South Lake Champlain TBP pg. 12-13.

further refine the implementation table by highlighting priority sub-basins for each sector.

However, it is confusing to have three figures scattered throughout the basin plan that relate to a prioritization scheme. It is further puzzling that natural resource projects appear to be prioritized at a more granular level than projects in any other sector. Why is there not a similar figure to Table 1 or Appendix G for agriculture, stormwater, or wastewater projects? While there is ample information on reducing phosphorus loading from each sector in Chapter 3, this information appears to be more of a comprehensive summary than a prioritization scheme that ranks certain projects above others.

Furthermore, it is unclear how Table 1, Appendix G, and Table 12 relate. Table 12 includes projects that address unstable stream channels, Table 1 covers restoration projects, and Appendix G includes river corridor management projects. Are these three lists additive or duplicative? CLF recommends continuing to include a prioritization scheme in the implementation table. In addition, it would be helpful to have a separate section devoted specifically to how DEC prioritizes projects and could include Table 1, reference Appendix G, describe how these figures relate, and include additional prioritization schemes for other sectors.

CLF hopes to participate in further refining DEC's prioritization process. Apart from commenting on TBPs, CLF welcomes the opportunity to learn more and provide feedback on the "stage-gate" model. Finally, any prioritization scheme DEC employs should be included in the actual implementation table online so key information is readily available and partner organizations do not have to cross-reference a TBP to select projects.

South Lake Champlain TBP Targeted Funding

CLF appreciates the step forward of including a funding source column in the implementation table. In addition, Appendix I offers a helpful overview of funding sources. However, in order for funding opportunities to be better aligned with need, the actual dollar amounts of available funding and project costs is necessary.

The State Treasurer estimates an annual cost of \$62 million to clean up Vermont waters. While the majority of these costs align with regulatory programs, there is significant need to implement the list of voluntary practices included in TBP implementation tables. To advance the funding conversation at the State House and to elucidate the total cost, CLF encourages DEC to include cost estimates in the

implementation table. At a minimum, DEC should provide average costs for similar projects or a range of potential costs.

South Lake Champlain TBP Project Identification with Specific Dates

The South Lake Champlain TBP identifies roughly 220 projects in the online watershed database. Some of these projects have already been funded and implemented. CLF commends DEC for developing an online database that captures the implementation table. However, there are no specific deadlines with any project.

Without associated timeframes it is challenging to hold the State accountable for actual implementation. For this reason, the 2016 TMDL explicitly states that “[e]ach Tactical Basin Plan will include an “Implementation Table” that lays out the priority actions to be taken by *specific dates*” (emphasis added).⁸ The South Lake Champlain TBP fails to follow this assumption.

Moreover, there are far fewer projects identified in this TBP than the Lamoille River and Missisquoi Bay TBPs released last year. CLF recognizes the watersheds are distinct; however, it would be helpful to better understand why there is a disparity in the number of identified projects.

Regulatory Gaps Identified in the South Lake Champlain TBP

Chapter 3 provides a good overview of the regulatory programs and obligations under both Vermont’s Clean Water Act and the federal Clean Water Act. The South Lake Champlain TBP identifies agricultural best management practices, stormwater treatment, natural resource protection, and investment in wastewater treatment facilities as top priorities to achieve regulatory mandates.⁹

Agricultural Best Management Practices

The regulatory program identified to achieve implementation of agricultural best management practices (BMPs) is the Required Agricultural Practices (RAPs). However, RAPs are not BMPs, meaning the RAP standards do not reflect the practices modeled by the Environmental Protection Agency to achieve the required phosphorus reductions from the agriculture sector.¹⁰ Rather the RAPs set a lower bar, including

⁸ 2016 TMDL pg. 57.

⁹ South Lake Champlain Tactical Basin Plan pg. 62.

¹⁰ Lake Champlain BMP Scenario Tool Requirements and Design (November 2013 draft) pg. 22 tbl. 10.

only partial livestock exclusion, allowing uses that could increase phosphorus loading within riparian buffers, and relying heavily on nutrient management plans to anticipate BMP implementation.

Given the import of widespread implementation of best management practices, CLF is concerned the South Lake Champlain TBP only references the RAPs as the regulatory framework for achieving this goal. Instead, CLF encourages DEC to include the Agency of Agriculture, Food, and Markets Revised Secretary’s Decision Regarding Farm Best Management Practices in Missisquoi Bay Basin, and to articulate the need to expand this program, which will result in extensive BMP implementation, to St. Albans, Otter Creek, and South Lake watersheds.

Stormwater Treatment

To achieve the mandated phosphorus reductions from developed lands, DEC is crafting a permit to control stormwater discharges on sites with three acres of impervious surface and requiring Municipal Separate Sewer System (MS4) communities to create plans to manage phosphorus. Unfortunately, DEC is slated to miss the December 31, 2017 deadline to establish these essential regulatory programs. CLF is concerned the South Lake Champlain TBP continues to assert the MS4 and three-acre permits will be issued in 2017 when this is clearly not the case.¹¹

The South Lake Champlain TBP admits that “[t]he capability for the State to compel reductions in the first five-year iteration of this tactical plan cycle is limited by the timelines set forth by Act 64 for the establishment and promulgation of the permit programs and the availability fo funding.”¹² Given the reliance on Act 64 deadlines and funding to meet phosphorus reduction mandates, it is troubling that DEC is blowing past deadlines, delaying critical regulatory programs, and roadblocking the funding conversation.

At a minimum, the TBP should articulate why the Agency is missing a statutory deadline, provide a realistic timeframe for completion, and emphasize the need to establish these regulatory programs to meet stormwater treatment targets.

Natural Resource Protection and Investment in Wastewater Treatment Facilities

Investment in natural resource restoration projects and wastewater treatment facility upgrades is critical to improve water quality. CLF appreciates the South Lake

¹¹ South Lake Champlain Tactical Basin Plan pg. 63.

¹² *Id.* At 110.

Champlain TBP's emphasis on these two sectors. These types of projects demonstrate the need for additional clean water funding. CLF encourages DEC to articulate the extensive costs of implementing widespread river corridor, wetland, and floodplain protections in addition to wastewater treatment facility upgrades.

Furthermore, there are no statewide regulations that focus specifically on reducing phosphorus loading from unstable stream channels. The South Lake Champlain TBP highlights this need. "The Lake Champlain Phase I Implementation Plan recognizes that we will never achieve the load reduction targets for unstable streams if we focus entirely on restoration (manipulation-type) activities. If the river corridors along our incised and straightened stream channels are not protected from encroachment, they will be developed, and the potential for restoration will be lost forever."¹³ While CLF commends DEC for emphasizing the importance of protecting against encroachment, the TBP is remiss is not even considering the potential need for regulatory programs to protect river corridors and floodplains.

In addition, Appendix H is meant to provide an overview of regulatory and non-regulatory programs; however, the links provided merely take the reader to DEC's Watershed Management Division's homepage with little guidance on how to find pertinent information.

Backstops in South Lake Champlain TBP

The South Lake Champlain TBP does not highlight what the State intends to do should projects not be implemented. A successful TBP must include specific projects and deadlines in addition to what measures the State is committed to taking if we're not on track. What if projects simply aren't being implemented, or projects aren't removing sufficient phosphorus? The State needs to have backstops. What actions does the State intend to take?

The South Lake Champlain TBP provides in-depth information, and includes a number of important tables and graphics that showcase the data. However, it lacks the level of specificity necessary in successful planning. The TBP falls short of providing deadlines, costs, and a regulatory gap analysis. Without these essential details, it is impossible to provide guidance on how to move forward and craft alternative action plans should targets not be met.

¹³ *Id.* at 81.



Thank you for the opportunity to comment. The South Lake Champlain TBP is a solid step forward in basin planning. CLF hopes you take these comments into consideration to further strengthen clean water efforts in the basin.

Sincerely,

Rebekah Weber
Lake Champlain Lakekeeper
Conservation Law Foundation