



Friends of the Winooski River

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Kari Dolan
Department of Environmental Conservation
State of Vermont
1 National Life Drive, Main 2
Montpelier, VT 05620-3520

Dear Kari:

The *Draft State of Vermont Proposal for a Clean Lake Champlain* (“Proposal”) is an important opportunity for the people of Vermont to develop a plan to reduce phosphorus levels in Lake Champlain to acceptable levels and improve the health of all of our waterways. As the largest watershed in the state, the Winooski River basin is home to both large urban and agricultural areas. Therefore, successfully reducing nonpoint source pollution, particularly the phosphorous contribution, from the Winooski watershed is critical to the success of the Proposal. The Friends of the Winooski River respectfully submit these comments with respect to how to meet the goal of a healthy Lake Champlain.

The debate is over as to whether and how much the phosphorus level in Lake Champlain must be reduced. Now, the question is how can we reach our shared water quality goal? Cleaning up Lake Champlain is going to require hard choices. In many cases, there will need to be a shift from voluntary to mandatory actions. Rightfully, the Proposal acknowledges that “every sector of society” must be involved in order for these policies to be successful. The Proposal is motivated specifically by the need to reduce phosphorus levels in Lake Champlain. However, unless the State is willing to place all or the majority of the regulatory and financial burden of the Proposal on those areas and entities contributing the majority of the phosphorus to the Lake, the components of this plan need to be seen as benefiting all of the waters of the State.

Resourcing and Enforcement

The success of the Proposal will require leadership at the highest levels of the State and the Proposal must be resourced appropriately. If we fail to find the political will and technical and financial resources to develop and implement the Proposal, the federal government will instead use the rather blunt tools available to them. These tools will be both expensive and unlikely to achieve our water quality goals.

Improving the quality of Lake Champlain will take a combination of voluntary efforts and expanded regulatory requirements. Extensive education and technical assistance programs will be needed for municipalities, developers, farmers and individuals to elicit and sustain these voluntary and regulated actions that protect the Lake.

Of greater concern than drafting new regulations is implementation and enforcement. While not described in detail in the Proposal, expertise and funding must be provided for regulated entities, particularly small farmers and municipalities, to educate them on new requirements and important management changes. Inspection of regulated entities and enforcement of regulations will need to be timely and consistent. Penalties will need to be meaningful.

The State needs to create a broad-based dedicated funding mechanism that will focus on the implementation of projects to reduce nonpoint source pollution. Improved targeting and leveraging of existing funds will only go so far. The scale and speed of change that is needed requires new and stable sources of funding. The Act 138 Report, produced in late 2012, described a variety of mechanisms for raising broad-based funds. To our knowledge, little has been done to further any of these approaches.

Also, the State needs to examine all current funding sources to determine if it is being spent efficiently and effectively. The State's largest non-agricultural pollution reduction program, the Ecosystem Restoration Program, is burdened by an administrative structure that has raised the cost of some projects and precluded the submission of some high impact projects. Specifically, projects in impaired watersheds or in stormwater-regulated (MS4) communities are not eligible. By definition, these areas are large sources of sediment and phosphorus. Rather than exclude them entirely, require a higher level of match.

In addition, the State has a variety of planning efforts and associated studies and reports, which are often requested or required by the Federal government or State elected officials, making coordination and integration difficult. The Friends, as an organization that focuses on implementation, have found the corridor plans, stormwater master plans (State, RPC or locally developed) and road assessments to be the most useful. In some cases, local knowledge, which has not made it into any plan, is a good source for the most severe problems. We recommend that the agencies involved integrate these efforts as much as possible. Focus and resources should be shifted toward implementation projects and planning efforts that identify and develop specific projects.

The State should more actively engage partners—watershed groups, RPCs, Conservation Districts, etc.—in education and technical assistance areas. Even with additional funding, the State will be hard pressed to expand staff to address all of the education, technical assistance, compliance monitoring and enforcement needs. The use of partners will provide flexibility; more intimate local knowledge and may often be cheaper than the use of State staff. The State should maintain and expand compliance monitoring and enforcement. We urge the state to utilize expertise from nonprofit organizations, many of whom are deeply committed to river and watershed protection, to help fill gaps that may exist in state resources.

Agriculture

Additional clarity and detail is needed on many points in the agriculture section of the proposal. In general, this section relies on expanded inspection and compliance with already established practices. Expanding regulatory oversight to small farms is a significant step forward. Success of the small farm certification program will depend on the capacity and will to inspect and enforce compliance. Simply bringing them under regulatory oversight is not sufficient.

The Friends would like to stress the importance of “a requirement to stabilize field gully erosion caused by site-specific agricultural management practices.” A current case in Plainfield along the Great Brook underscores the value of addressing gully erosion early. One unattended gully has grown to be at least 2,000 feet long and delivers tons of sediment to Great Brook. A recent study has found the cost to repair this gully may be as high as \$1 million. While this is an extreme example, it underscores the importance from an ecological and economic perspective for early intervention.

We are encouraged to see the inclusion of buffer requirements in the AAP section. However, the minimums of 25 and 10 feet for streams and ditches respectively may often be insufficient to provide pollutant removal and stream channel protection. These widths are inconsistent with the State’s own Technical Guidance for the Conservation Reserve Enhancement Program. According to that guidance, 25 feet is the minimum under the best of circumstances—low slope, permeable soils and a small contributing area. Generally, 35 feet is considered the minimum for an effective buffer. Similarly, the State should reduce or eliminate tilling in high flood zones or permanently take this land out of production.

We believe there should be mandatory licensing for custom manure spreaders/operators. Currently, there is little or no regulatory recourse against custom operators who adversely impact water quality (the regulatory “hook” is with the farmers who hold the permit, not the guy he hires to spread his manure). Other states, such as Wisconsin, have implemented a similar program which could serve as a model for Vermont.

Development and Stormwater

Improving stormwater management on new development should be aggressively pursued. Studies documenting the environmental and economic value of conservation design and low impact development date back to the 1990s. The use of low impact development practices often saves the developer money. The obstacle to use is ingrained standard approaches, not a lack of suitable alternatives or expense. The use of conservation design and low impact development practices to reduce the volume and improve quality of stormwater should be required where permitting programs exist. Permit programs and local ordinances should be expanded so that more development is covered. Much of Vermont’s development is small scale and is not covered by current State regulations. Municipalities will need assistance in getting new ordinances in place. There also needs to be aggressive follow up enforcement to ensure that practices are installed and maintained as designed.

In general, the Proposal does not account for increased load due to population increase, increased development or increased agricultural practices. Stormwater regulations must encourage infill and redevelopment. The State and municipalities should create incentives for redevelopment and disincentives for new development. We encourage the State to look at and adapt tools from elsewhere such as Maryland's Accounting for Growth plan for the Chesapeake Bay. Under this rather aggressive program, all new development must purchase nutrient credits and all redevelopment is exempt for such requirement. This policy is expected to have profound implication and help encourage smart growth.

The Friends have worked on a number of retrofit projects. One of the biggest challenges to implementing retrofits is that while the stormwater is generated from a number of different properties, the practice(s) needed to mitigate it must often be located on one property. That property may not be responsible for much, if any, of the runoff. Not only does the property owner not benefit from the stormwater practice, they may incur maintenance costs. In some cases, providing incentives or relieving them of maintenance costs may be warranted.

The TS4 permit is a strong component of the plan and overdue. VTRANS must be committed to the development and implementation of the program for State roads. The municipal road system presents a greater challenge due to the multitude of jurisdictions and the variability in resources and commitment. Municipalities will need assistance with the collection of data on their road systems; management of that data and implementation of improved practices. The Friends have partnered with the Central Vermont Regional Planning Commission on dirt road assessments in the many towns in Washington County. In general, the towns are eager to do address the issues that the assessments uncover. It not only protects water quality but often saves them money.

Also, the Proposal should include Urban Tree Canopy ("UTC") goals for Vermont communities. These goals should be similar to those the Department of Forests, Parks and Recreation. The Urban Community Forestry Program have developed or are developing for Burlington, South Burlington, St. Albans City, Rutland and Montpelier. Research shows that expanding the UTC at the municipal and watershed scale can improve water quality in developed areas. Thus, our recommendation is for the State to draft a plan outlining steps to account for new or increased phosphorous load in Lake Champlain.

Stream Stability

Achieving stream stability with well-vegetated riparian zones is critical not only to reducing phosphorus laden sediment from reaching the lake but also to improving instream habitat and flood resiliency. Unstable streams are a product of poor land use practices, agriculture or development. The Friends have done a lot of education around this topic. While knowledge levels have improved there remains a tremendous lack of understanding of river processes. There is still a strong inclination to want to 'control' streams.

The State and EPA should focus regulations and financial resources on reducing the causes of stream instability. Under the TMDL, there may be added pressure to armor banks to reduce phosphorus loads. If any active strategies are taken to hasten the in-lake water quality goals, they

must be targeted and limited to minimize impediment to long term stream stability and the ongoing financial burden to maintain such practices. We strongly concur with this proposal goal: *Stream alteration activities that result in conditions that depart from, further depart from, or impede the attainment of an equilibrium condition (i.e., an equilibrium standard) should be limited.*

Also, conservation easements are an expensive approach to providing permanent stream protection. Easements should remain a tool for use by the State and non-profits. However, more needs to be done to encourage municipalities to develop better zoning laws to protect river corridors and riparian zones.

Conclusion

The Lake and all of Vermont's waterways are both natural treasures and key parts of the State's economy. A clean Lake Champlain and healthy waterways will require strong leadership and a shared sense of purpose throughout the Basin. We cannot stress enough that the State must adequately resource the Proposal to protect and clean up our waterways. Without the resource commitment, the Proposal will not succeed and Vermont will be forced to implement a plan imposed from the outside.

Thank you for the opportunity to comment on the Proposal. The Friends look forward to continuing our strong relationship with the State, our watershed's municipalities and other nonprofits to make a clean Lake Champlain a reality.

If you have any questions on this response, please contact Ann Smith at info@winooskiriver.org or 882-8276.

Sincerely,



Ann Smith
Executive Director