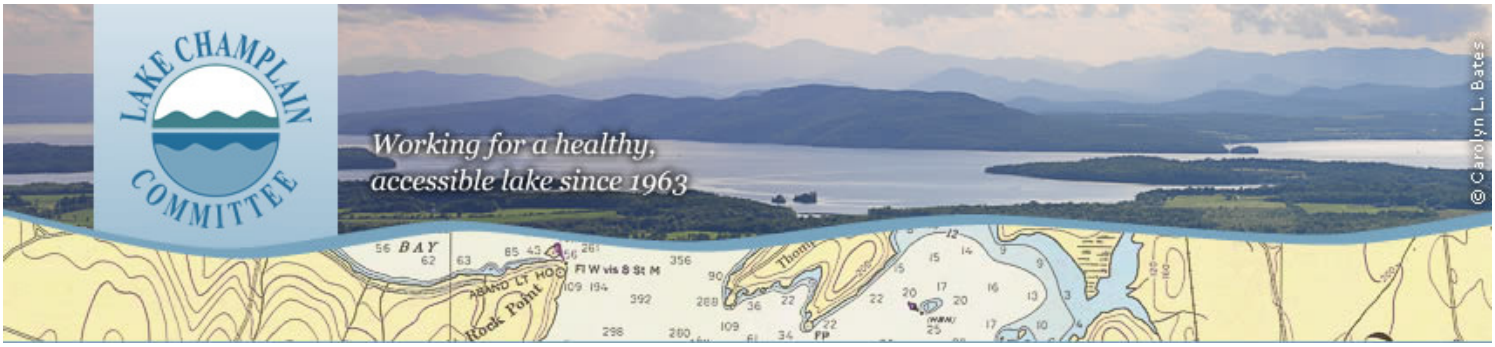

December 28, 2012

Kari Dolan, Manager
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Re: LCC Preliminary Comments on Act 138 Report

Dear Kari,

Thank you for the opportunity to comment on the draft Water Quality Remediation, Implementation, and Funding Report prepared in conformance with Act 138. We offer comments on the details of the report but for the time being we will withhold judgment on the potential of the funding proposals presented. However, we do note that the projected revenues from different funding mechanisms considered do not come close to meeting the needs identified to protect and restore our waterways. If all the mechanisms were implemented they would cover less than 20% of the projected need. The final report should discuss this shortfall and make recommendations for filling the gap.

General

The report should compare the results of this analysis with those that preceded it, such as the 2010 report on the revised Lake Champlain implementation plan submitted in conformance with Act 130 of 2008 (Table 1), and address any differences in recommended funding needs. While the 2010 report accounted for needs for Lake Champlain clean-up only and the scope of the current report is statewide, there are some discrepancies that warrant further explanation.

Table 1: A comparison between draft Act 138 report and 2010 revised Lake Champlain TMDL implementation plan. *Numbers in millions of dollars annually. 2010 report; numbers are as reported on page 21 divided by 15 to get an annual cost. Act 138 numbers are lumped by category from page 24 and rounded.*
NI = not included in report.

Cost Category	2010 Low	2010 High	Act 138 Report
Agriculture: farmsteads, cropland, and pasture	8.3	11.6	8.6
Stormwater: new and existing development	13.3	23.3	94.4
River corridor and wetland: protection & restoration	6.6	10	1.6
Other: wastewater, forestry, etc.	5	8.3	29.3
Drinking water infrastructure	NI	NI	21.5
Lake Shoreland Protection	NI	NI	0.2

Some discrepancies are easy to explain. The current report's call for $29.3 million for wastewater treatment up-grades represents a decision to include these costs in a way the 2010 report did not. Further, the Act 138 report addresses areas the 2010 report did not such as lake shoreland protection and drinking water infrastructure.

However, other discrepancies are more confusing. Why does the current report suggest that only $1.6 million is needed statewide for river corridor protection while the 2010 estimate for the Lake Champlain Basin alone was a minimum of $6.6 million? Surely Irene would have led to an increased estimate rather than a decreased estimate. Similarly, the $8.6 million estimated for agricultural programs statewide is at the low end of the estimates for agricultural programs in just the Lake Champlain Basin from 2010. On the other hand, the estimated need for stormwater management quadruples the highest estimate from 2010.

Specific Comments:

Intro Pg. 8 – The report states, "Vermont is the last remaining northeast state without adequate programs in place to restore and protect lake health." It is not clear whether the "adequate programs" refers specifically to shoreland protection or more broadly to water quality protection in general. The context suggests the former, but not explicitly and this quote could be pulled out to suggest the latter.

Item 1.3 pg. 12 suggests an annual cost of $635,000 for compliance with AAPs and cites as a needed action "Rank by water quality needs on an ongoing basis to determine **funding priorities**" (emphasis ours). By definition AAPs should be "cost effective for famers to implement without government financial assistance" (from the 2006 AAPs cited in the footnote) so it is not clear why "funding priorities" need to be determined. Compliance with AAPs is the basic cost of farming in Vermont, and expenses for AAP compliance must be born by the farmers.

Item 1.4 pg. 13 states, "Currently, only some small farms engage in nutrient management planning". However, a requirement of the AAPs is that, "All sources of nutrients shall be accounted for when determining recommended application rates for crops. … Nutrient applications shall be consistent with university recommendations, standard agricultural practices or a nutrient management plan for the farm approved by the Secretary." If any farm in the state is not engaged in nutrient management planning then they are in violation of AAPs and enforcement steps should be taken. We need to start with enforcement of existing laws before we seek public funds to support private farm businesses.

Item 1.6 pg. 15 offers as an action "Assist with major changes in farm management from annual cropland to permanent grass, improved floodplain management …, and conversion from liquid to solid or semi-solid manure." The list of examples should include transition away from dairy production to other agricultural options.

Item 1.9 pg. 17 says "Municipalities require training in standard operating procedures for river management during large storm events…" Does "require" in this sentence mean such training is currently a legal obligation of municipalities or is the sentence identifying a need?

Items 1.11 through 1.18 lack a bulleted list of Actions Needed. Why the inconsistency? The stormwater related items in particular deserve such targeted attention given the importance of pollutant loading from developed lands, and the high costs associated with management of stormwater outlined.

Chapter 2 Financing Mechanisms:

One option that has not been considered as a funding mechanism is the option for offering "Water Protection Bonds" that the public could purchase to invest in and support protection and restoration of

our natural resources. The revenue generated may be hard to estimate, but it would be a vehicle that enables citizens to directly invest in water protection.

Funding Tools:
The description of what "Administration and Compliance means is unclear. Based on the description it would seem that a 'high' score would indicate less of a burden on A & C, but the items that scored 'high' look to be those with the greatest A & C burden. We suggest revising the description of the term. It is not clear how you determined "Public Acceptance". If it is just based on focus groups, it ignores the much larger segment of the public not involved with focus groups. This works to artificially suggest support for some of the broad based revenue mechanisms (eg. Statewide stormwater fee) and increase opposition for some of the more focused options (eg. Fertilizer tax)

Administration:
3.2 pg. 35 – NRB – section lacks separate paragraphs for Advantages and Disadvantages which makes it different from other administration proposals considered.

3.3 pg. 36 – The disadvantages of VHCB section states, "additional personnel would be needed to administer a water quality trust fund". This is true if the 'trust fund' is separate from their other funds (not sure if this is how it works in the breakdown between conservation and housing). However, if additional funding tools were directed to VHCB with their expanded mandate as described in the Advantages (above on pg. 36), then VHCB could meet the purpose of a 'water quality trust fund' without the explicit establishment of a separate fund. Perhaps there could just be a direction to them to spend a minimum percentage of their resources on projects that improve and protect water quality. With this shift there may still be a need to add personnel, but some of the administrative complexities of a separate fund could be eliminated.

Funding Mechanisms:
Why is the revenue potential for an excise tax on fertilizer which could generate $250,000 considered high, but an excise tax on gasoline which could generate $3.9 million or a flushables tax which could generate $1.3 million considered moderate?

Pg. 51 states, "In Vermont, there are currently two municipal stormwater utilities in Burlington and South Burlington that are financed with stormwater user fees." While Burlington does collect user fees to finance stormwater management they do not technically have a stormwater utility.

Pg. 67 We are surprised that you rate the Administration and Compliance cost of a non-motorized boat use fee as Low. At least one state, Arizona, repealed a non-motorized boat registration program because the administrative costs exceeded the revenue generated.

Section D.6 claims that it "evaluates how these existing programs could be modified to improve incentives to achieve the state's clean water restoration and protections objectives" (pg. 75). Sections D.6.3 the State Municipal Bond Bank, D.6.4 the Vermont Economic Development Authority, and D.6.5, USDA Rural Development Loans and Grants, do explain these entities and identify them as potential funding sources but these sections fail to evaluate how the entities could be modified to better meet water protection goals.

Sincerely,

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