

Statement from Brooks Family RE: Proposed Goshen Brook Stream Reclassification

Questions for the public meeting:

- Given the water quality of the Goshen Brook and the completely undeveloped surrounding land, why is it necessary to reclass the watershed? What is the source of potential pollution/run-off from the land-owners in the reclassification area that the petitioners and DEC are concerned about? Please be specific in the response.

This statement is from the collective owners of the property at 5330 SR 125 in Ripton, VT. Members are: Oliver Brooks Jr., Thomas V. Brooks, Elizabeth Brown Brooks and Joshua H. Brooks.

In principle, we have no objection to the reclassification of the Goshen Brook to 1A, however, it is our understanding that the water quality in the Goshen Brook is already excellent, and given the land ownership, we see no reason why it would not remain so even without the additional protections of reclassification. Reclassification without a specific source of new pollution is regulatory overreach.

We are concerned that the boundaries of the reclassification area have been established based on theoretical modeling of the local topography, and this has placed our home and associated development on our property just within the northern boundary of the reclassification area. In fact, the area around the house drains into an adjacent unnamed tributary, which naturally empties into the South Branch of the Middlebury River just east of the Goshen Brook. For many years, there has been a beaver habitat at the confluence of this stream and the Middlebury river, with the result that the exact location of the confluence is highly dependent on the condition of the habitat.

We have been told by DEC that today's regulations governing class 1A watersheds impose limitations on the capacity of residential septic systems and little else, and that this should have no impact on our property. Indeed, our septic field lies just to the north of the reclassification area, but it is close to the boundary. In the event that future restrictions on class 1A waters are created, we are concerned that we might be subject to expensive modifications to our home. While this is speculative, the simplest resolution would be to revise the classification area to reflect the natural topography and drainage, which would then exclude our home from the reclassification area. The proposed boundary would shift to the south by approximately 100 yards to the far side of the ravine of the unnamed tributary.

REVISED Statement from Brooks Family RE: Proposed Goshen Brook Stream Reclassification

This statement is from the collective owners of the property at 5330 SR 125 in Ripton, VT. Members are: Oliver Brooks Jr., Thomas V. Brooks, Elizabeth Brown Brooks and Joshua H. Brooks.

Following the public meeting on March 30, 2021, we feel compelled to amend our previous statement and comments to clarify our opposition to the reclassification.

When we were first presented with the petition materials, it was our assumption that the petitioners and DEC were proposing reclassification of the Goshen Brook because there was some perceived existential threat to the water quality of the stream that required greater restrictions be placed on the surrounding land to protect the aqua biota and habitats. To this end, we were willing to be supportive in principle. What we discovered instead at the public meeting was that DEC and the petitioners assert that the reason to reclassify these streams in Ripton was “because they can”; that the streams already meet the metrics of “1A”, therefore “it is easy to reclassify them”. The fact that the surrounding landowners have preserved the streams in “excellent” condition is NO reason to add restrictions and expense to their future use of the land, which is, in fact, the ONLY net effect of the proposed reclassification. This is a punitive action placed on these historically good stewards of the land, with no improvement to the health of the waterways, and no public benefit arising from the actions. It is an egregious example of regulatory overreach.

We are further disheartened to learn of the allegation that the prime mover behind the reclassification is not the petitioner, but rather DEC itself. At the public meeting, the comment was made that DEC approached the Ripton Conservation Commission and requested that they raise a petition for reclassifying the stream. If this is the case, we are extremely disappointed to learn that this public agency is working against the interests of private landowners for no purpose other than DEC’s own agenda. Furthermore, as absentee landowners, our options to resort to elected representatives to support our interests are significantly curtailed.

In our specific case, we are further dismayed that DEC has included an unnamed tributary of the Crystal Brook, which passes within 10 feet of our home as part of the Goshen Brook watershed. A spring that feeds this tributary has been the source of fresh water on the property since the foundations were laid for this house in the 1930’s. While we are told by DEC that the only restriction on our home and property would apply to the septic system, should that happen to be in the reclassification area, it is not obvious to us that there would not be future regulations and restrictions promulgated once the reclassification takes effect. Further, we are advised by DEC staff that if there was an error in including the unnamed tributary in the Goshen watershed that it will be our expense and responsibility to make the argument for excluding the tributary should this become a problem for us in the future.

Finally, we are disappointed by the insufficiency of communication with the landowners in developing this petition. It was stated that this petition has been in the works for several years, but our family has barely been contacted regarding the development of the petition and our interests or concerns were never considered. Yet we are the ones immediately effected. Our formal involvement began less than 30 days ago and we have been given little opportunity to present a coherent response, let alone understand comprehensively what the extent of the regulatory requirements of this change are for us as landowners. This is not indicative of an interest in creating a collaborative relationship with the landowners on the part of the petitioners, nor DEC.

Given that there is no need to make this reclassification for the purposes of improving or maintaining water quality; given that our family has a demonstrated commitment over 90 years of ownership for maintaining the pristine health of the waterways around our land; given that the burden of reclassification falls on the owners of the land, who have preserved the streams for decades; given that the petitioners and DEC appear not to be willing to work with the landowners, we can see no reason to support this reclassification as an action.

From: [Rosalind Stowe](#)
To: [Sargent, Bethany](#)
Cc: [Robert Stowe](#)
Subject: VT Stream reclassification
Date: Saturday, April 3, 2021 3:35:25 PM

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Hello Bethany,

I wanted to inform you that Robert and I have read Toby Brooks's revised statement of March 31, 2021 and support his family's position on the issue of the Goshen Brook reclassification project.

Please include this email as part of the official record on this matter.

Thank you,

Rosalind and Robert Stowe
Beaverbrook Farm
Ripton, VT
802-989-2003

From: [Toby Brooks](#)
To: [Sargent, Bethany](#)
Cc: [Tom Brooks](#); [Josh Brooks](#); [Libby Brooks](#)
Subject: One Additional Comment
Date: Saturday, April 3, 2021 4:06:44 PM

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Bethany:

In reading through the petition materials further, I see that Mark Nelson is the only signed petitioner. The petition references the "Ripton Conservation Commission" as a co-petitioner, but does not list any individuals. This seems like a deficiency in creating a valid petition to me. Without the additional signatories, these "petitions" amount to no more than a request from a single individual to the DEC to reclassify these waterways. Am I missing something here? Are there more signatories that I cannot see in the petition? Where is the evidence of public support for this initiative beyond a few individuals? I cannot see it.

Toby Brooks

Sent from [Mail](#) for Windows 10

From: [Toby Brooks](#)
To: [Sargent, Bethany](#)
Cc: [Tom Brooks](#); [Libby Brooks](#); [Josh Brooks](#); [Rosalind Stowe](#); [Robert Stowe](#); dtifor@ctcn.net; lcox@riptonvt.org; [JosephDickinson, Alison](#); thanson@riptonvt.org; [Mark N](#)
Subject: FW: Minutes from Select Board Meeting 12/14/2020
Date: Thursday, April 8, 2021 10:05:43 AM

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Dear Bethany:

One more comment for the record on the Goshen Brooks stream reclassification petition. In researching the Ripton Select Board discussion of this matter, I came upon these minutes from the December 14, 2020 discussion. At that meeting, Mark Nelson approached the Select Board to complain that DEC was slow in taking action. Among the reasons he cited (highlighted in the minutes) was that this was the first application of this type. My interpretation of this comment is that this is an **unprecedented** request that was made for DEC to reclassify these streams. This only reinforces that reclassifying these watersheds and potentially harming the landowners is truly a whimsical regulatory action, unnecessary with regards to stream water quality and public benefit, and now, apparently, outside the bounds of regulatory precedent. Yet one more reason to deny this petition.

4. Stream Reclassification: Mark Nelson 7:03 - 7:20, Warren & Barry King 7:10-7:20 (Barry stayed after the close of this discussion, and Warren re-joined the meeting at 7:57)

Mark Nelson provided a memo and described the status of the Conservation Commission's application to reclassify three headwater streams in Ripton from class B(2) to class A(1). The Selectboard approved the reclassification effort 04/24/2017. The Conservation Commission held public meetings and worked with VT Dept of Environmental Conservation (DEC) from 05/2017 - 12/2019 on reclassification petitions. This involved hundreds of hours of work, including data collection and water sampling. The petitions were submitted to the DEC 12/20/19. Per Section 806 of Title 3: Executive, Chapter 25: Administrative Procedure, the DEC should have taken action on and responded to the petitions within 30 days of their receipt. They have not, despite several conference calls and emails between then and now, including a 09/11/2020 email from DEC stating that they anticipated acting on the petitions by the end of September. ***Reasons for the delay include that these are the first applications of this type and the DEC is working on internal review considerations.*** The Commission is concerned that if the petitions are not acted upon soon, water sampling will have to be redone. Mark has discussed the project and its status with the Conservation Law Foundation (CLF) and the Vermont Natural Resources Council (VNRC). They are available to assist with urging the DEC to act. The Conservation Commission requests Selectboard approval to work with the CLF and VNRC. There is no cost anticipated, but if there is the Commission will come back to the Selectboard for approval. The Selectboard approved that the Ripton Conservation Commission enlist the help of the CLF and VNRC to move the stream reclassification petition process along (see motions/votes).

Thanks for your consideration,

Toby Brooks