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**State of Vermont
Agency of Natural Resources**

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Senator Christopher Bray
829 South St
New Haven, VT 05472

sent via email

Dear Senator Bray:

Thank you for your memo dated July 17, 2017. On behalf of the Act 73 Working Group, I am pleased to provide you with this response.

I. Cost Assumptions

In your letter, you inquire about the assumptions regarding the scope of work upon which the Working Group's draft legislation will be built.

The Working Group will be revisiting the Treasurer's cost estimates for all four sectors - wastewater, agriculture, stormwater and natural resources – examining both the total 20-year estimates for each sector as well as the distribution of spending over the next 20 years, with particularized attention to FY20-FY24. The Working Group will also look at funding gaps by sector, and by type of property owner within sector (e.g., municipal, private, etc.), to provide a more nuanced approach.

It should be kept in mind that it is a policy decision for the Legislature to decide whether the state should cover 100% of clean water costs, or a match somewhere between 100% and 0% to leverage private and municipal investments, or no match consistent with the "polluter pays" doctrine. The Legislature may choose different match amounts from one sector to another, and from one property owner to another.

The Act 73 Working Group aims to elucidate these policy choices for the Legislature, and to offer guidance and draft legislation for the Legislature's consideration. While the Act 73 Working Group will offer to the Legislature a choice of funding methods, as required by statute, it will be the Legislature's decision how much to turn the knobs on these funding methods, and to decide the amount of public money to raise in support of clean water efforts. As a result, while it will be helpful to revisit the Tier I and Tier 2 cost estimates, this information alone is not likely to be dispositive of the Act 73 Working Group's recommendations.

II. Implications - Funding

Your second set of questions relates to whether or not the state will face a cumulative shortfall if the "gap" (Tier 1 and Tier 2) is not fully covered by state dollars.

This set of questions assumes that the state should cover 100% of the costs related to clean water. While the Legislature may decide to fully fund with state dollars the costs related to clean water, that is not an obvious outcome.

Indeed, it is more likely the state will decide to provide some percentage of the overall costs, and to leverage private and municipal investments.

The Treasurer's estimated costs likely overstated costs in some sectors in some of the early years. For example, we have learned over the past year that wastewater treatment facilities may be able to reduce phosphorus loading by optimizing operations, which may in the early years reduce compliance costs. In addition, a closer look shows that municipal wastewater, municipal roads and natural resources were overfunded in FY2018, while agriculture was underfunded, due in part to the mismatch between funding revenues and eligible expenses, and in part to the limited - but growing - capacity of the state to disburse money to the agricultural sector.

To answer your specific questions:

- The Working Group will not recommend the addition of years to the project timeline; our effort will be consistent with the twenty-year timeline provided by the EPA's Lake Champlain TMDL.
- The debt service on bonded monies will not reduce the monies available for water quality in future years. The state generally spends all of its bonded monies, so while spending bonded monies on water quality may displace other spending, it will increase monies available for water quality.
- The Act 73 Working Group will be looking at the relative benefits of bonded monies and revenues as part of its charge.

III. Implications – Planning

Your third set of questions relates to the state's capacity to identify and prioritize projects for clean water spending.

This set of questions assumes that the state is choosing projects when, in fact, most of the projects are regulatorily required. For example, in the municipal wastewater sector, upgrades to wastewater treatment facilities are required by individual NPDES permits. In the agricultural sector, best management practices are required by AAFM Required Agricultural Practices. In the developed lands sectors, projects are driven by the TS4 permit for state highways; the Municipal Roads General Permit (MRGP) for municipal roads; by the MS4 permit for larger municipalities; and by the 3-acre permit for existing impervious surfaces that are 3-acres or larger.

Because many of the costs of clean water compliance are related to permitting, the state does not anticipate large increases in staffing to implement the Clean Water Act, the Lake Champlain TMDL, or the 2016 CSO Rule.

Clean water projects funded by state dollars will be tracked by DEC's watershed projects database, compliance will be required as a permit condition, and monitoring will be conducted on representative projects to ensure effectiveness.

As to "public large-scale water quality documents" that establish the state's starting point for its clean water efforts, I refer you to the watershed basin plans for each of the state's fifteen basins, and to the EPA's Lake Champlain TMDLs. The state's watershed basin plans incorporate substantial monitoring data and are updated every five years. And finally, the State issues an annual Clean Water Report that summarizes the number of clean water projects funded by the state and the estimated phosphorus reduction resulting from those projects. I hope that this letter has answered your questions. I would be happy to meet with you in person to discuss your memo, along with any other concerns you may have.

Sincerely,



Secretary Julia S. Moore, P.E.