

9/22/2017

Dear Secretary Moore,

Thank you for the opportunity to share this proposal on behalf of the undersigned members of our clean water working group, a coalition of municipal and regional leaders, environmental advocates, Vermont business people and attorneys. Our group has been working together since before the end of the 2017 legislative session to identify strategies to advance our shared goal of broad public funding and support for clean water. The proposal below represents our common vision for a new approach to help meet those goals. Vermont's investments in clean water require the leadership of a publicly-accountable and politically-independent Clean Water Authority tasked with supporting the implementation of Act 64 of 2015, total maximum daily loads (TMDLs) across the state, the Combined Sewer Overflow Rule (CSO Rule), and the goal of meeting or exceeding Vermont Water Quality Standards in surface waters statewide. We believe that a Clean Water Authority, as described below, could help raise the needed revenue and administer those funds in order to meet the significant water quality challenges facing Vermont by complementing the vital work of the Agencies of Natural Resources, Agriculture, Food and Markets, and Transportation.

1. The Purpose of a Vermont Clean Water Authority:

The primary purpose of the Clean Water Authority would be to ensure that the State of Vermont has an equitable, broad-based, long term and flexible mechanism to make public clean water investments to meet water quality standards and assist in implementing Act 64, TMDLs and the CSO Rule. A secondary purpose would be to instill through those sustained investments a collective clean water ethic predicated on collaborative action, public-private partnerships and community development. The Authority would ensure government accountability for expenditures on clean water priorities that provide long term environmental benefits, as well as protecting our communities and the Vermont economy from the long term costs of failing to protect Vermont's most vital natural assets.

2. The Nature and Scope of the Clean Water Authority:

The Authority's role to direct clean water investments by the State of Vermont would begin with the power to develop clean water budgets for the State, raise revenue through a statewide fee based on the options described in the 2017 Vermont Treasurer's Report on Clean Water and deliver services necessary to achieve the State's water quality goals. The Authority would also have the normal powers and authorities Vermont law provides to municipal and regional entities and utilities in order to enforce the fee payment requirement and/or collect unpaid water quality fees through the sale or lease of property (similar to municipal authority relative to water and wastewater bills), as well as the power of condemnation and eminent domain after demonstrating necessity. However, the Authority would not supplant, but rather would work in concert with local and regional entities. Moreover, the Authority would not administer money from the Vermont clean water state revolving loan fund or the Clean Water Act Section 319 Nonpoint Source Management grant funding program. The authority to manage these funds would remain with the Agency of Natural Resources (ANR). The Authority would be governed by a board of not more than nine members appointed jointly by the Governor, the President

Pro Tem of the Vermont Senate and the Speaker of the Vermont House. Members of the board would have relevant experience in public policy, public management, and/or relevant disciplines such as civil engineering (i.e. stormwater and wastewater management), agriculture, ecology, forestry, transportation, law and finance. In addition, the Vermont Treasurer and the Secretary of the Vermont Agency of Administration would be ex-officio members of the Board. The Board would hire and oversee an Executive Director and such professional staff as its budget allowed.

3. Overview of Funding Mechanism for Clean Water Authority.

In addition to capital investments in clean water projects to be made by the State of Vermont, the clean water dollars invested by the Authority would be raised through a statewide tiered parcel fee, based on the type, size and use of the parcel, as well as the extent of stormwater treatment and/or nutrient management on the parcel and relative contribution of polluted runoff to surface waters. The fee would be applied equitably to all properties statewide, with provision for fees to be offset based on financial hardship and other factors. Implementation of the fee would take place following an appropriate public process to develop the details of the fee setting and collection model and a campaign to educate Vermonters about the state of surface water pollution, needed investments and the plan for making those investments wisely and cost-effectively. The fee would be collected by the Authority, either directly or through a third party acting on behalf of the Authority.

The fee would be set by the Authority, based on projected clean water budgets over a three year cycle, following public notice and an opportunity for stakeholders to comment on the proposal. The budgets and fees set by the Authority would be approved by the Authority's board following that public process, or by an independent third party regulatory entity with the necessary expertise and authority to approve budgets and fees of this magnitude (e.g. the Vermont Public Utility Commission for utility rates or the Green Mountain Care Board for health care rates). In addition to setting budgets and fees, the Authority would also be responsible to provide an annual audit of collections and investments, and it would publish an investment report tracking implementation of Act 64, statewide TMDLs and the CSO Rule, and measuring progress against the requirements of the Vermont Water Quality Standards.

The Vermont Legislature would have a key role in creating the Authority and determining the limits of the Authority's powers. In addition, the Legislature would be privy to the Authority's transparent budget setting process and/or any independent third party regulatory that may be established. Of course, the Legislature may address concerns about the Authority at any time through the legislative process.

4. Priorities for Clean Water Authority Investments.

The primary basis for Clean Water Authority investments would be those priorities established by the Vermont Department of Environmental Conservation in the Tactical Basin Plans with the greatest water quality benefits. In addition, the Clean Water Authority investments would focus investments on projects that promote public/private partnerships and collective action, incent early implementation of regulatory requirements and drive projects to implement measures that go beyond regulatory requirements. The Authority would be able to make grants, loans or directly contract to deliver on

Vermont's clean water priorities; however, it would be prohibited from paying for private compliance requirements on individual parcels.

Again, we thank you for the opportunity to present this vision for a new Vermont Clean Water Authority. We recognize that the ideas set forth in this short summary provide only the outline of a proposal. We look forward to working with you and the Act 74 Working Group to refine and hone this concept.

Sincerely,

Thomas W. Torti

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DCE

Dominic Cloud, City Manager, St. Albans, Vermont

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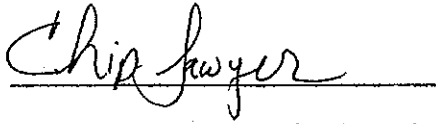
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Clean Water Authority (CWA) Funding Scenarios – Revised 2

Assumptions that Apply to Each Scenario:

- **Match**
 - Large treatment projects require 50% local match.
 - Smaller road drainage projects require 20% local match.

- **Project Administration**
 - Regular project reports are made to the CWA.
 - A CWA project manager is assigned to each award and calls/attends many local project team meetings.
 - Except for block grants CWA funding is administered via reimbursement requests submitted by the awardee showing proof of expenses.

Scenario 1. MS4 Project

Phase 1, Design: An MS4 community applies to the CWA for final design, land acquisition/ROW, permitting, and bid documents for a BMP in the community's Flow Restoration Plan. This phase of the project is estimated to cost \$50,000. The MS4 community applies to the CWA for funding with a 50% match. The community will cover their portion of the match with funds from their own stormwater utility, raised through a fee based on impervious land on parcels. The CWA awards the other \$25,000 to the community out of its project design funds. The project takes 1.5 years. The project is complete when the BMP construction is ready to go out to bid.

Phase 2, Construction: Now that there are final estimates and bid documents for the BMP, the MS4 community applies to CWA for funding for construction. The estimate for the project is \$1.5 million. The CWA awards the project with a 50% match. The CWA covers its \$750,000 using cash or bonds and using Clean Water Parcel Fees as revenue for the debt service. Likewise, the MS4 community passes a local bond of the same amount for its portion. Once the project is complete, the CWA closes out the grant. The MS4 community is now responsible for the BMP's O&M, paid for by its local stormwater utility. Annual BMP status reports are due to the CWA for a period of 10 years, during which the community must maintain the treatment facility. Betterment or expansion of the BMP is allowed without CWA approval, but the authority must be given notice for comments.

Scenario 2. Small Community Roadway Drainage Projects

One Community: A regional clean water advocacy nonprofit organizes a ditching project for a gravel road in a small community. This project would further MRGP-compliance for the community. State-issued standards are used for the design of the ditching. The nonprofit already has a \$3,000 grant from the Lake Champlain Basin Program for a portion of the funds, which include the non-profit's administrative time to coordinate the activities. In total the project will cost \$30,000. The nonprofit applies to the CWA for 80% of the project's cost, and

the award is made. The \$6,000 match is made up of the nonprofit's grant and in-kind services provided by the hours of the community's road crew and equipment on the project.

Multiple Communities: Three small communities that share borders apply to the CWA for technical assistance and funding for a ditching project for a gravel road that happens to serve properties in each community. CWA staff are assigned to the project for \$9,000, and the three communities each have to come up with their \$600 portion of the 20% match. The CWA staff develop the design, estimate and bid documents for the project. The project construction and continuing CWA assistance will cost \$60,000. The CWA then awards its \$48,000 portion of the project, and each community comes up with its \$4,000 portion of the 20% match. When the project is complete, each community's road crew must maintain their portion of the ditching.

Scenario 3. Public/Private Offset and Treatment Expansion Project

A private developer owns a pre-existing 4-acre parcel without a stormwater permit and needs to retrofit as part of the State's 3+ acre parcel program. The parcel is located in an MS4 community. The developer concludes that it would be more cost-effective to treat the parcel's stormwater offsite, based on current use and space limitations. The private parcel's run-off is currently directed to a catch basin in the public roadway. This storm line eventually discharges into an existing BMP facility that the MS4 community build for stormwater treatment, but the level of treatment is below that is required for the private parcel. The MS4 community and developer enter into an agreement to increase the treatment at the facility to include the level of treatment required for the developer. This also means that the level of treatment for all other impervious run-off handled by the BMP is increased, thus benefitting the community's phosphorous control obligations. The cost of construction is \$200,000.

Since there is expanded treatment beyond the level needed for the developer, they and the community are able to apply to the CWA for a portion of the construction costs. The developer's parcel accounts for 5% of the impervious area being treated by the BMP facility. So the developer's direct portion of the \$200,000 cost is \$10,000, which is not eligible for CWA funding. The CWA supplies 50% of the remaining \$190,000. The community/developer agreement is to split the remaining 50% match, since the project would not be happening but for the developer's needs. The final funding scheme for construction is:

Developer:	\$57,500
Community:	\$47,500
CWA:	\$95,000

Once the project is complete, the developer continues to pay local and state stormwater parcel fees, since no stormwater is being treated-onsite. However, this was a much more cost-effective way for the developer to come into compliance with the 3+ acre parcel rule.

Scenario 4. Agricultural Projects

A regional planning commission (RPC) applies to the CWA for \$1 million in block grants to address high priority stressors identified in a Tactical Basin Plan (TBP). Funds would be used for the following strategies:

- 10-25% matching funds for farms that implement no-till programs, cover cropping, critical source area crop mapping. Percentage would vary depending on the specific strategy deployed; and
- 50 percent of funds would be reserved to incent strategies in target areas that go beyond RAP requirements, such as additional buffer requirements and taking land permanently out of production in critical source areas.

The RPC administers the funds for the CWA, including all matching requirements, reporting, etc. The CWA approves the project with a three-year implementation schedule contingent upon successful passage of the CWA budget and fee schedule over the three years.