



State of Connecticut

HOUSE OF REPRESENTATIVES

STATE CAPITOL
HARTFORD, CONNECTICUT 06106-1591

REPRESENTATIVE MARY M. MUSHINSKY
EIGHTY-FIFTH ASSEMBLY DISTRICT

LEGISLATIVE OFFICE BUILDING
ROOM 4038
HARTFORD, CT 06106-1591
HOME: (203) 269-8378
CAPITOL: (860) 240-8585
TOLL FREE: 1-800-842-8267
FAX: (860) 240-0206
E-mail: Mary.Mushinsky@cga.ct.gov

CHAIRWOMAN
PROGRAM REVIEW AND INVESTIGATIONS
COMMITTEE

MEMBER
ENVIRONMENT COMMITTEE
FINANCE, REVENUE AND BONDING COMMITTEE
SELECT COMMITTEE ON CHILDREN

Testimony of Rep. Mary Mushinsky (85th District) Regarding H.B. 5477, An Act Concerning the Clean Water Act and Stream Flow Regulations

Before the Public Health Committee

March 12, 2010

Rep. Ritter, Sen. Harris and the committee, I am the co-sponsor of PA 05-142, the law that requires CT Department of Environmental Protection (DEP) to develop regulations to protect streams. The law passed unanimously in House and Senate and is also supported by Gov. Rell. The law was a response to the Shepaug River court case—an appeals judge ruled the state could only regulate stocked streams. The 2005 law required DEP to write regulations to protect all streams, whether stocked or not. The regulations have gone to public hearing, and about 400 people testified. This bill's Sec. 2 interrupts and halts the process—before DEP has finished its job and before the Regulations Review Committee has acted. The committee should strip out Sec. 2, or kill the bill.

Background

Since 1911, almost 100 years ago, state resource planners warned the state it must manage its water, or the resource will become unsustainable. Although CT receives 45 inches of rainfall per year—a plentiful supply—it must be managed carefully to serve all needs. There is a long history of failed water management efforts since 1911 laid out in Office of Policy and Management (OPM) and Program Review & Investigations (PRI) reports, which I will submit to the committee. Without regulations, our water system is like a bank account with too many users having access to a debit card—even though we don't know the total amount in the bank account.

The proposed regulations already give priority to drinking water in droughts, so drinking water is not at risk. The real issues are cost allocation and the timetable for implementation of modern water management in Connecticut. Those issues will have to be resolved with the help of the legislature, the Departments of Environmental Protection and Public Health, technology and funding, including the federal ARRA law.

Specific Problems with Sec. 2

1. Line 35 (a) sets out an impossible timetable. All basins cannot be studied by January 1st of next year. In fact, bonds that were in the budget for the first basin study at Institute for Water Resources have already been proposed for cancellation by the governor. Any basin study needs to calculate the available water in each basin, then look at demands on that known amount of water. The DEP anticipates a long process—at least 5 years for the first basin.
2. The study in line 39 (1) contradicts the rest of the bill, which stops the regulations. This study is supposed to review changes as a result of the regulations, but they will be gone.
3. In line 42, (2) calls for identification of impaired flows as a result of flow regulations. This is an erroneous statement: impaired flows are not the result of flow regulations; rather, they are the result of excessive diversions beyond the capacity of a river, stream or aquifer. Today in CT, some of the public's streams are killed not for drinking water, but to sell water as a commodity (example: Roaring Brook in Southington). Some streams are so depleted that in low-flow season, 50% of the flow is treated sewage effluent (this is the case for the river in my area). Impaired streams go on to impair water quality in Long Island Sound. And without scientific management, water resources in CT will be settled by lawsuit.
4. Line 43 assesses the impact of the regulations on public water supply systems. The impact will vary by basin. This is the point at which Department of Public Health (DPH) should become involved. The Public Health Committee correctly recognizes that both agencies, DEP and DPH, need to be involved in resolving the tension between water users—but this should occur after the regulations determine how much water is needed for aquatic life to survive. Ideally, OPM, DEP and DPH would resolve this tension together.
5. Line 51 (b) lays down a process that is out of sequence. DPH involvement needs to follow streamflow regulations. First, we must determine the amount of water needed to keep life alive, then determine how to manage the water resource system for multiple uses.
6. Line 71 (c) begins the worst part of Section 2. This language blocks the normal process of regulations, bypasses the legislature's Regulations Review Committee, and diverts the task to Department of Public Utility Control (DPUC). DPUC is the wrong agency for the science-based question of how much water is needed to sustain life. They should be consulted later as we seek to determine how to pay the costs of water management.
7. Lines 78-87 cover a set of key water management questions that must be resolved, but these should follow the streamflow regulations, not preempt them.

Conclusion

The committee should kill the bill or strike Sec. 2, and let the streamflow regulations proceed. DPH commented along with nearly 400 others, and the commissioners of DEP and DPH are discussing the regulations together. The regulations, decades overdue, are necessary to determine the minimal amount of water it will take to keep streams alive.

The state must then manage water for multiple purposes, use conservation to extend the resource (as we do for electricity), use technology to share water, and devise cost-sharing to pay for it. Almost 100 years after the first warning to establish water management, it is finally beginning to happen. Don't derail scientific water management now.

Also submitted:

Stream Flow (PRI Committee 2003)

http://www.cga.ct.gov/pri/2003.asp#03Stream_Flow

Managing Water in Connecticut (OPM 2009)

http://www.ct.gov/opm/lib/opm/igp/pubreps/water_resources_report-1-09.pdf

In a 2008 Office of Policy and Management (OPM) report, Managing Water in Connecticut, implementing Sec. 3 of PA-07-4 of the June Special Session, OPM noted:

Completion of the Department of Environmental Protection's (DEP) minimum streamflow regulations is a critical component of the state's water resource management. Not only can the regulations offer better protection for some of the state's most sensitive streams, but they will also add a sense of certainty to the water allocation process. Beyond the direct impact of the regulations, the process of developing the regulations is providing the state with additional information on, and different perspectives about, water resources. Both the regulations themselves and the process of developing them will help identify the additional water data that are needed for effective water resources planning.

OPM also noted the long history of failed state efforts to manage water, and addressed the problem of coordination between DEP, DPH, and DPUC:

OPM believes a significant part of the perceived coordination problem results in large part from uncertainties regarding stream flow requirements. To counter this, the new workgroup (of the Water Planning Council) should identify inefficiencies that would not be resolved by completion of the minimum streamflow regulations. To address this problem, the workgroup might consider procedures such as those promoted by the Department of Labor's LEAN Government Services to identify and correct inefficient systems.

I agree with OPM that additional work to address interagency coordination on water resources is needed by the Water Planning Council, but this work should be in addition to streamflow regulations, not in lieu of these regulations, which are designed to protect the natural resource of rivers and streams.

