

TESTIMONY
FOR THE ENVIRONMENT COMMITTEE PUBLIC HEARING
January 31, 2010

To Chairmen Ed Meyer, Richard Roy, and Members of the Committee:

Rivers Alliance of Connecticut is the statewide, non-profit coalition of river organizations, individuals, and businesses formed to protect and enhance Connecticut's waters by promoting sound water policies, uniting and strengthening the state's many river groups, and educating the public about the importance of water stewardship. Our 450 members include almost all of the state's river and watershed conservation groups, representing many thousand Connecticut residents.

Thank you for the opportunity to comment on the bills before you today. This testimony addresses seven of these bills, in their order on the agenda.

S.B. No. 60 AAC THE ENFORCEMENT AND PERMITTING DUTIES OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION [DEP]. The DEP has responded positively to recent criticism of the slow pace at which permits were being processed. These days, most applications are moving rapidly through DEP. (Complex projects, involving multiple authorities, are still problematic.) By all measures, however, the state falls short on monitoring and enforcement. Permits and mitigation plans are rarely monitored in the field by unannounced inspections or by independent experts. Enforcement relies on self-reporting, which from time to time may not be entirely accurate. Even when the state has received evidence that conditions in a permit or management plan are not met, the response is likely to be slow and weak. This is true of most agencies having project oversight, not just the DEP. These failings have frequently resulted in significant harm, cost, and danger to the public. Rivers Alliance strongly supports adequate staffing for permitting, monitoring, and enforcement. We believe that this could be revenue neutral if some costs (such as independent monitoring) were to be covered by applicants, and if fines (which should be reasonable) were to be collected promptly and consistently.

S.B. No. 834 AAC MUNICIPAL OPEN SPACE PRIORITIES AND FUNDING FOR THE PURCHASE OF SUCH PROPERTIES. This bill enables what is popularly called the "Green Fund." Rivers Alliance and many other environmental groups have supported the Green Fund for a number of years. The bill gives towns the authority to impose (if they wish) a small fee on someone buying real property in

the town. The fee is to be used for projects that have an environmental benefit, such as purchase of open space. In most cases, such projects will directly or indirectly benefit water quality. The Green Fund is an especially useful option at a time when state funding for municipal projects is dwindling.

H.B. No. 5202 AAC AUTHORIZING THE ISSUANCE OF BONDS FOR FARMLAND PRESERVATION. Rivers Alliance supports the preservation of farmland, and we have traditionally advocated for this cause either individually or as a member of a coalition. We ask that in the purchase of development rights and other support for farm space and operations, some attention and extra benefits be given to those farms that are willing to adopt practices that minimize negative effects on air, topsoil, and water -- and that, where practical, improve the quality of these natural resources. We believe that a sustainable, profitable farming sector is essential to the economic welfare of the state.

S.B. No. 831 AAC CONCERNING MUNICIPAL LIABILITY FOR RECREATIONAL ACTIVITIES ON CERTAIN OPEN SPACE LANDS. This bill would reduce the liability exposure of municipalities and certain non-private water utilities that open their lands without charge to members of the public for recreation. Prior to 1996, it was assumed that towns had the same liability shield that applies to private landowners who allow people to come on to their properties to hike, bicycle, and the like. However, in *Conway v. Wilton* (1996), the court ruled that the town was not an "owner" in the sense of the protective statute (Section 1. Section 52-557f). Rivers Alliance realized at the time that the ruling would eventually shut the public out of many public lands. We advocated then for legislation similar to what is before you today.

In 2008- 2009, our members and others began to request legal guidance on how to deal with liability concerns associated with paddling events, hikes, river cleanups, and so forth. We asked attorney Beth Critton, who is testifying here today, to give a legal overview of recreational liability at a small conference in 2009. This presentation proved of such interest that we scheduled a full-day conference for April 16, 2010. *The highest priority action item to emerge from the conference was to restore the traditional liability shield to municipalities and public utilities.* This goal was supported by the conference sponsors including American Canoe Association, Appalachian Mountain Club, Connecticut Forest and Park Association, Sierra Club - Connecticut Chapter. *Note, this was months before the adverse ruling in the MDC case.* Any suggestion that the present legislation is an overreaction to a single bad case is missing the point. Municipalities, especially small towns, are faced with conflicting pressures from residents asking for open-space access and advice from Boards of Finance that the chance of costly litigation is an unaffordable risk.

The proposed bill provides legal consistency as to the liability exposure of all landowners who are willing to allow the public to enter public or private open space without charge. The present inconsistency makes no sense: why should one part of a trail have a different liability status from another part of a trail depending which

might cross into town land? The bill safeguards for the public the valuable right and privilege to enjoy this state's wonderful open spaces. It encourages exercise and good health. It supports tourism and outdoor recreation, along with affiliated businesses. The bill will also save towns money, somewhat from lower insurance premiums, but most importantly by reducing the risk of costly legal defense in cases where there has been no wrongdoing.

We support the goal of this legislation, and would be happy to work with you if questions arise.

S.B. 59 AAC PROHIBITING THE SALE OR USE OF FISHING SINKERS, JIGS AND TIRE WEIGHTS THAT CONTAIN LEAD. We support the effort to keep lead, which is highly toxic, out of water. Sinkers and jigs lost in water poison fish, water fowl, and other birds, like eagles, that hunt in water. For example, a high percentage of untimely deaths in bald eagles, loons, and trumpeter swans are due at least in part to lead poisoning -- from 25% to over 50%. The underlying problem is apparently the sheer volume of lead in fishing waters. An Audubon Society Waterbird Conservation Study found that some 2,700 metric tons of lead fishing weights are produced annually, mostly to replace lost weights. (Losing weight is good. Losing weights is bad.) Both science and policy are trending toward the conclusion that lead should not be used in fishing sinkers and jigs. Lead sinkers are banned or limited in New Hampshire, Minnesota, Maine, Vermont, and Wisconsin - - and in Yellowstone National Park. Massachusetts has banned the use of lead sinkers at two reservoirs (Quabbin and Wachusett). There are alternatives already available in sporting shops. This legislation will protect the health of wildlife and humans without economic hardship or limits on recreation.

H.B. No. 6157 AAC STATE FORESTRY PROGRAMS. Rivers Alliance urges legislators to pass this bill this year. There is no better protection for water resources than forested land, and good state forest management will pay for itself and even generate profits.

H.B. No. 5068 AAC CREATING A REBUTTABLE PRESUMPTION FOR THE APPROVAL OF AN INLAND WETLANDS PERMIT FOR A DRY HYDRANT. This proposal shifts the burden of proof to wetlands commissions in applications for dry hydrants, that is, non-pressurized hydrants that access a body of water. Dry hydrants are typically used to draw water in case of fire. They need maintenance to be reliable. I am not aware that inland wetlands commissions are unreasonably prohibiting installation of dry hydrants. But if the bill is needed, the word "public" should probably be deleted from the reference to alternative access to a "public water supply." The alternative supply could be located on public or private land.

Margaret Miner, Executive Director