

Proposed Talking Points: House Bills 5065, 5066, 5068, 5069, 5070 and 5071

(5067 and 5072 passed on 5/14/08)

Protection of cold water streams

The Michigan Chapter of Trout Unlimited supports the House cold water protection language, which only allows the destruction of 1% of fish habitat in cold water rivers and streams. The protection of our cold water rivers and streams is critical to Northern Michigan's recreation and tourism industry. Businesses across the state rely on our trout fisheries to bring them business.

SB 860, which cleared the Senate on May 15, 2008 allows large water users to reduce flows by up to 20%. The Senate bill allows three times the habitat destruction as the House bill. A floor amendment to adopt the House standard failed on a tie vote (19-19). [Note: The Lt. Governor was on-hand to break the tie if a vote for reconsideration was to have occurred. However, the Senate Republicans were prepared to pull a vote from the board on reconsideration, which would have prevented a tie and thus eliminated the possibility for the Lt. Governor to cast the tie-breaking vote.]

Public Trust

When the legislature passed the first phase of water use legislation in February 2006, it included some very important language in the intent section: Section 32701(1)(c) The waters of the state are valuable public natural resources held in trust by the state, and the state has a duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment.

The legislature declared what the scientific community already knew: the waters of the state – Great Lakes, inland lakes, streams and groundwater – are all one system. And, in 2006, the legislature acknowledged in statute the state's public trust duty. However, the statute falls short of allowing the formal permitting process to include a public trust review of large water withdrawals.

In the words of former Governor William Milliken taken from a January 29, 2008 letter to Michigan lawmakers: 'Under principles of international trade law, states must be clear and empathic about imposing conservation standards for use within their borders, and reserving rights and authority as sovereign owner on behalf of the people of all waters of the state, including the Great Lake within our borders. Because all of Great Lakes and most of our lakes and streams are protected by the public trust doctrine, it is important that this principle also be preserved and applied without diminishment or dilution.

The House bill includes clear language for permitting large water withdrawals. The Senate refused to do this – even after a majority of that chamber voted last Thursday for an amendment requiring inclusion of public trust language. [Note: The majority voted for the amendment (19 to 18) but Senate rules require 20 votes on "3rd reading". The Senate Republicans refused to put up the 19th vote (Alan Cropsey did not vote) so there was no tie which would have allowed the Lt. Governor to break the tie, give us the 20th vote and attach our amendment to the final bill.] The House could lead the way in guaranteeing Michigan's water security by including this language in their bill on final passage.

Permitting in sensitive areas

Last week, the Senate approved legislation that keeps permitting at 2 million gallons a day, which means Michigan really doesn't have a permitting program since very few users require this massive quantity of water (e.g., new or expanded power plants and municipal water supplies). Further, under the Senate proposal, large water

users could use up to 24% of the flow of a stream and not have to get a permit ... thus no public input, no assessment of the impact on other users, nothing.

The House package started with permitting for withdrawals at 1 million gallons per day or that may otherwise be close to causing an adverse resource impact -- that compares to 10,000 gallons per day in Minnesota and 1 million gallons per day in Wisconsin. The version on the House floor relaxed the threshold to capture only those withdrawals that are close to causing an adverse impact and are either 1 million gallons per day or would otherwise use up most of the "available" (based on habitat destruction values) water within a stream reach. Additional proposals to loosen the threshold further have been proposed to the Senate and rejected.

Permits are important in sensitive areas and when one proposal wants to use most of the remaining available flow. Without permits, the question of reasonable use can not be asked. Without permits, communities are unable to question whether the proposed new use was consistent with community values or whether it would interfere with other users or uses of water.

Our water should not be dispensed like an ATM – no permits, no questions asked. We paid scientists over a million dollars to design a system where we would be able to identify those withdrawals which have the greatest potential to impact our water – and the Senate package asked us to ignore the science.