



February 28, 2018

House Natural Resources Committee
Lansing, Michigan

Re: HB 5638 – Delegation of decision authority on water use in Michigan

Dear Representatives,

This bill throws out the carefully crafted, award-winning program designed by scientists at the University of Michigan, Michigan State University, United States Geological Survey, and the State of Michigan. That program received multiple national awards for its application of science to regulatory decision-making. Scientists working with dozens of interest groups across the state reached a consensus that was passed with overwhelming bipartisan support by the legislature in 2008. None of those scientists have endorsed the approach taken in HB 5638.

The Michigan Environmental Council worked on each of the separate efforts over a period that spanned from 2003 through 2008 (meeting monthly and sometimes weekly) crafting this legislation. The current version of that workgroup continues to this day, the Water Use Advisory Council. It has scheduled a meeting on this legislation for tomorrow. Unfortunately, due to the speed at which this bill has come up, a number of the scientist involved have conflicts with that meeting.

Why this legislation is so important:

- It encompasses the most sensitive and valuable water resources in the state of Michigan, including our world-class trout streams that are the backbone of our tourism industry in many regions of the state.
- Protection of our water resources is critical to future economic development in the state.
- Introduction of invasive species and changes in weather patterns are already adding additional stress to aquatic species and resources.

Major problems with the bill:

Creates a presumption that a water withdrawal will not cause an “adverse resource” impact under any of the following conditions that are not supported by the scientific community:

- 1) That the withdrawal was within a river system or aquifer covered by a water study pursuant to 324.32706D.

- Measurement of streamflow are influenced by many other factors other than any individual well. Therefore, this data is insufficient to establish the existence of an adverse resource impact which may not occur until years later.
- It does not address what would happen if multiple wells were placed in the same watershed.
- The adverse impact may not occur in that subwatershed, but the subwatershed adjacent to where the well was placed. None of the provisions of this bill require the consultant to collect the data that would adequately predict where the water would come from, and therefore the location of any potential adverse resource impact.

The consultant, not the department, decides if the method they are using is equivalent to that currently being used by the department or the United States Geological Survey

The aquifer performance test cites two papers a hydrologist could use to make a decision (papers that disagree with each other in some respects), or use "a peer-reviewed functional equivalent as determined by the professional judgment of the hydrologist or hydrogeologist performing the analysis".

Problem with approach: All peer-reviewed papers or ideas are not equal. In some cases, the peers may discredit an approach, but this language still allows it to be the basis of a decision. The department needs to be the final decision maker on this point.

In addition, the aquifer performance test is not the only variable that goes into the calculation. First, the state must determine what the current flow of a river or stream is. The bill is silent as to how that determination is made.

Work done on behalf of agricultural withdrawals, the information submitted is exempt from disclosure under the Freedom of Information Act.

Problem with approach: The property owner would have no right to examine the consultant report which is the basis for the decision, no right to public comment, and no right to a public hearing. The only avenue for redress would be for a person to hire an attorney and file a lawsuit against the neighboring property owner. The bill undermines communities across the state and the current system that encourages efforts to reach a compromise when available water resources must be shared.

We urge the committee vote "no" on the bill and allow the scientific community and the water use Advisory Council the opportunity to refine the bill.

Sincerely,


James Clift, Policy Director