

House Bill 5638 Testimony

To: House Natural Resource Committee

From: Michigan Trout Unlimited

May 2, 2018

Chairman Howell, and committee members, thank you for the chance today to speak with you about HB5638 and the large quantity water withdrawal statute. I am the Executive Director of Trout Unlimited in Michigan, and for many years now, have served as a member of the state's Water Use Advisory Council, formerly as a Governor appointee, and now at the bequest of the DEQ Director, and serve as co-chair at the pleasure of my peers on that council, along with the Farm Bureau and the Chamber of Commerce. My relevant educational background on this subject matter includes a doctoral degree in fisheries science from MSU, specializing in stream fish dynamics and fluvial geomorphology.

Almost 11 years ago today, I spent my first day on this job with TU, at a Senate committee meeting where the underlying framework for Part 327, the large quantity water withdrawal law was first proposed in bill form introduced by former Republican Senator Patty Birkholz. I participated in hundreds of hours of legislative workgroups shaping the formation of the statute, and have been intimately involved with every subsequent development of it. TU has had me involved like this, because despite all the other good works we do around the state to ensure coldwater fisheries are a vibrant and valuable asset to Michigan, no other effort we can make has as profound impact on our fish as ensuring sufficient cold groundwater continues to make it into our streams. Less groundwater in streams, less trout salmon and steelhead – period.

1. The Great Lakes Compact and Michigan's Implementation of it in Part 327, governing large quantity water withdrawals, is one of the more technical, scientific-based, and complex statutes we have. At its heart, the Great Lakes Compact requires each state to PREVENT adverse impacts to water and water dependent natural resources. Part 327, in which this bill seeks to amend, is our state's implementation of that compact. This is an important point to remember, as our legal responsibility is to PREVENT adverse impacts. I'll return to this later, as two major concerns of ours relate to provisions of this bill where it would seek to allow a withdrawal that is not

affirmatively determined to cause no adverse impact, or in scenarios of certain bedrock, where we know they can cause impact. These would create a noncompliance issue with the Compact.

2. Part 327, was developed from dozens of engaged water users and conservation interests over many years of work. It received several national awards for innovative policy. There have been several iterations of “water councils”, either convened in statute, or by the Department, with the Governor, Senate and House having made appointments to it. All the major water user groups are part of it, and several of the leading conservation or environmental groups, with additional members serving as scientific experts from various agencies and universities. It is that council, the Water Use Advisory Council that has uniquely taken responsibility for overseeing the continued development of the program in a collaborative manner. The last report of the WUAC came out 2 years ago, and had 69 detailed consensus recommendations in it, for development needs for the program, and that was not a comprehensive list of issues needing to be addressed. However, it should illustrate to you all, that groups from all sides of the water issue, can be expected to work together collegially, reasonably, and find durable and defensible solutions to our water use issues.
3. We were opposed to the original version of this bill. Since then, the sponsor held two workgroup meetings for stakeholders to discuss the bill and the issues with it. I found those both to be productive and respectful, and found all present committed to addressing the noted stressors of the sponsor’s, but in a way that all could support. I believe we hit agreement on the fundamental way to accomplish that. However, no actual redrafted language was discussed, the workgroups ended, and so I find myself here, to tell you about the problems we still have with it, and why we are still opposed to it. But, before I go into detailed comment, I’d share this. I believe the key to fixing these problems, is to make the site-specific review process for proposed withdrawals completely transparent and objective, for both the applicant, DEQ and for citizens of the state. That and some very modest funding for DEQ staffing for these and technical upgrades for the tool, would fix the problems better than what’s currently proposed. Despite this, I believe with just a bit more discussion and modifications,

that this bill can achieve widespread support rather than be divisive. The sponsor has made some important improvements to this bill. We oppose the current draft of the bill as written, but remain committed to working it to a supportable form with the sponsor, if given the chance.

4. The first of two major issues we have with the bill, involves the bedrock automatic pass provision. It proposes to grant an automatic approval for any well proposed to be drilled into bedrock, at any depth. The WUAC discussed this issue in great detail in its last report. Essentially, the USGS has found that of 5 major bedrock formations in Michigan, wells drilled into 2 of them, can and do lead to streamflow depletions. 3 do not. The consensus recommendation, which included this bill's proponents, was to fix the online screening tool so that 3 of the bedrock formations would get automatic approvals, while the remaining 2 would use estimates of the transmissivity of those bedrocks. The funding to do this technical fix, predicted to roughly be 50,000 – 70,000\$, has not been acquired yet to fix this issue the right way. What's proposed in this bill, is granting automatic passes to all 5 formations, which is knowingly violating our obligation to prevent adverse impacts. As Co-Chair of the WUAC, I can not support this provision of the bill, when the solution to this issue has already been identified and received consensus from all the stakeholders. My request, is to strike this provision of the bill, and to appropriate the funding necessary to fix this issue the right way.
5. The second major issue we have with the current draft of the bill, is the 10 day review time for these "enhanced site specific reviews", with an automatic approval by default if it is not met. First, 10 days will not be adequate time in all cases, to do the review of a new request, where piles of new geologic and hydrologic data are submitted and need to be reviewed, and where applicants use this data with new modeling platforms to predict their impacts. The applicant can submit this in any form, and it takes time to orient to it, review it, check it for QAQC, and then verify that every calculation is correct or not. Perhaps many can be done, but 10 days is not long enough to expect they all can be. Also, this bill is now proposing that the DEQ go back and retroactively rereview all past withdrawals in a watershed as part of a site specific review, and that work will certainly

require more time than allotted. The number of days needs to be increased.

- a. We must remember, that the time for site specific reviews to be completed has risen for several reasons at the benefit of applicants (like, the DEQ keeping the files open to continue working with an applicant to avoid a straight denial). However, it is inherently because the number of requests has risen with the agricultural irrigation sector. There are no fees for them, and the demand has outgrown the staffing capacity. Putting these “enhanced site specific reviews” in front of the line with a time deadline, without new dedicated staffing, will only mean that all of the other applicants, without paid consultants, will wait longer. Time to review these is a function of staffing – and this could all be addressed with adequate new funding for that.
  - b. Lastly on this, an automatic approval if time period is not met, is not an affirmative determination by the DEQ. It doesn’t prove there is no adverse impact, and we are legally obligated to prevent those impacts. Its not ok to let them proceed administratively then later prohibit them. This will cause a serious compliance issue with the Compact, and we really shouldn’t want any applicant to spend the money on a new well, only to have it prohibited later via enforcement or lawsuits. We need to strike this automatic pass provision, set a reasonable amount of time, and then expect it to be met; and we should really be talking about the funds for a new dedicated FTE at the DEQ to actually give them the means to meet this expectation.
6. Throughout the new draft of the bill, there are numerous smaller concerns or errors that need to still be addressed. For example, one is simply a section reference that needs to be updated correctly. Another example, is in the phrase about the applicant’s analysis determining no adverse resource impact. What it should say, is the applicants determination of streamflow depletion. To be accurate, determining an ARI requires access into the “water accounting database” where all other streamflow depletions in the watershed are tracked, an accounting database only the DEQ has access into. An applicant cant determine an ARI, but can

determine a streamflow depletion, in which the DEQ would use with the up to date database to determine an ARI. In the provision on water conservation measures, the language is not consistent with other portions of the statute that refer to adopting industry developed standards for these. These and the other points needing modification are accounted for by us, in writing, and can be provided following the hearing.

7. In closing, water could not be of greater concern today to citizens of Michigan. There are so many headlines stories lately to disappoint people and erode their trust in how we are managing water, using water, protecting or delivering water. This bill can continue to be another one of those headlines or it can compelled back for a bit more feasible work, and come back before you as something reasonable and productive. I'm committed to achieving that, and know that others are as well. If you hold us to that expectation, I think we can come back with a widely supportable bill.

Thank you.

Dr. Bryan Burroughs  
Michigan Trout Unlimited  
517-599-5238  
[bryanburroughs@michigantu.org](mailto:bryanburroughs@michigantu.org)