

ROUND TABLE DISCUSSION GROUP #13

Discussion summary: David Mears, Vermont Law School

Our questions were:

- (1) what changes to the law, if any, do you believe are necessary to advance protection and restoration of aquatic resources?
- (2) if you do not believe changes to the law are necessary, would you recommend changes to the enforcement or application of the existing laws in order to advance protection and restoration of aquatic resources?

Discussion summary:

I. Local government and land use:

The greatest need for change is at the level of local government. Current state jurisdiction is limited to the actual waters or wetlands but the real impacts are the result of upland management and land use decisions made at the local level.

For instance, there is a need for local governments to better regulate development in riparian buffer zones, wetlands, headwaters, floodplains and other sensitive uplands areas.

One option is to offer guidance and training to local governments. A similar option is to develop model ordinances for protecting sensitive upland areas like those listed above.

Local governments lack capacity and resources to develop regulatory programs to restrict or control development in ways that will reduce water pollution and are more susceptible to being influenced by local politics. Zoning is unacceptable in some communities and even in towns with zoning, enforcement is uneven.

Also, most watersheds run through multiple towns and cities so you can end up with a hodge-podge of different regulations all applying to the same kind of development in the same watershed. On a related note, local governments cannot take cumulative impacts of development across a watershed into account. Training programs can be a waste of resources because the local government leaders change so frequently. Finally, local governments may end up competing for tax base by lowering their standards to make development more attractive within their boundaries.

In response to these concerns, one option would be to create opportunities for local governments to work together to share property tax revenues across local government boundaries.

Another option would be to create new land use regulatory authorities with jurisdictional boundaries matching the watershed boundaries.

A final option would be to create a mandatory program for regulating development led by state government. It could require implementation at the local government level with guidance or minimum criteria set by the state. Or, it could be implemented directly by the state by expanding state jurisdiction to encompass local land use decisions affecting water quality. The problems with the state-lead approach is that it is more challenging politically and the state does not have sufficient resources to take on this burden without shifting from other work or adding new staff.

II. Selection Criteria for Agency Leadership

A problem with having political appointments of agency directors and top managers who do not have any experience or knowledge of environmental science is that it takes their entire terms before they understand what the agency does. This may be an inherent result of having political appointments but it may be worth adopting selection criteria for environmental agency directors and top deputies. Attorneys General are required to be lawyers in many states. In the same way, perhaps a background in environmental science should be a criteria for selection of an environmental agency director.

This may not be a practical solution since having someone with experience in air pollution would not necessarily help them understand water issues.

III. Riparian buffers

The CRP program administered by USDA is not fully effective, particularly now when corn prices are so high and farmers are planting in riparian zones because they can make more money that way. Need a better alternative and one that more strategically targets the highest priority watersheds.

Need money, perhaps from a fee assessed on developers based on square footage of impervious cover, to purchase riparian buffers.

IV. No net impact law: Require that all new development either completely control non-point pollution or off-set it.

V. Prioritization: Need further discussion of where to place priorities. Some said that the highest priority for agency resources should be on protecting headwaters and first order streams (and proximal uplands) before they are damaged. This would be a shift from the current prioritization placed on impaired watersheds first. Should we spend millions on the hopeless cause of restoring a highly damaged urban stream or the low-land watershed heavily polluted by agriculture, or use that money to protect headwaters and first order streams?

Others noted that there may be unrealized potential to make significant gains in water quality in impaired watersheds that would justify making them a priority. And others noted that we cannot give up on urban streams.

VI. Cumulative impacts: Either need to clarify and actually use anti-degradation provisions, or add a required assessment of cumulative impacts for all agency decisions affecting water quality.

VII. Global warming: Need to make water quality decisions and develop plans that take into account the fact that the global temperature is rising which will require making standards more stringent. For instance, a nutrient level set based on current temperature levels will not control algae at higher temperature levels.

VIII. Enforcement: we need to enforce the existing laws. States lack resources and political will to bring enforcement actions, particularly against developers and farmers. State laws authorize going after non-point source pollution but agency managers sometimes worry about losing that authority if they exercise it.

A resource that came up during the discussion is a set of documents prepared by the Environmental Law Institute compiling the various non-point source pollution control laws of the

fifty states. ELI's water pollution prevention program page can be found at <http://www2.eli.org/research/waterpollution.htm>

Topic table attendees

Moderator: David Mears, Vermont Law School

Round 1

Ethan Swift
Ginny Garrison
Ernie Pizzutuo
Mike Bilger
Paul Piszczek
Lauren Moore
Lisa Wahle

Round 2

Staci Pomeroy
Heather Pembroke
Kathie Dello
Paul Currier
Laurie Neronha
Nicole Hoyceanyls
Leon Tsomides
Bob Lizotte
Doug Burnham

Round 3

Dari Sassan
Kerry Strout
Bob Nuzzo
Tracy Lizotte
Betsy Colburn
Sandy Hyde
Tom Faber
Kellie Merrell