

## New Century - New Water Law

By Dan Gorenstein, NH Public Radio Thursday, August 9, 2001.

Water is a finite resource. But it's hard to remember that when you water your lawn or fill up your pool. Water shortages have been a fact of life for centuries in the Western United States. Now Easterners are beginning to feel the pinch. NHPR's Dan Gorenstein reports.

In the movie "Angel and the Bad Man", John Wayne finds himself in the middle of a dispute over water.

Wayne ultimately persuades a guy to share some of his water supply with the adjoining neighbors. But fights over water, certainly are much older than this 1947 Western, especially west of Kansas City. Water law there was simple: first to grab it, gets it. In perpetuity. If you move to town too late, you might not get any. Maybe not the best system.

Back east, riparian rights, or the right to a reasonable amount of water was the standard. You could take as much as you wanted, so long as it didn't affect your neighbor. Water was plentiful; the few conflicts that surfaced were settled in court. Now that system is under strain. Villanova Law Professor Joseph Dellapenna says the resource just isn't as available as it used to be.

If you go back 40-50 years, shortfall was an almost unheard of situation. Today it is becoming normal. In the Delaware Valley? The first twenty years, it had one drought emergency. And in the past 20 it has had about 7-8.

University of New Hampshire Professor Tom Ballestero says water, like all natural resources gets gobbled up as areas become more populous. He points to coastal New Hampshire as an example.

To see population expansion, we are starting to ask the questions that weren't asked a century ago in the Philadelphia's, and the Washington DCs, urban areas that let the growth occur.

Questions like what would happen if all the water ran out. With increased competition, eastern states are shying away from a system that lets neighbors or courts figure out reasonable use. Since droughts hit this side of the country in the late 50's and early 60's, states have begun adopting a third model of water law. Regulated riparianism.

Basically that jargon packed name means water is considered a publicly owned resource. A state agency decides who uses the water, where, when and how. Professor Dellapenna has developed a regulated riparian model for the eastern states. He says for this model to work, water management must be done water basin by water basin. That's difficult because water basins don't respect things like town lines.

We are losing sight of the magnitude of this. This not only affects the town of Nottingham, but it will also affect Barrington, and Northwood.

That's Jim Ryan of the Northwood Conservation Commission talking about a request by the water bottling company USA Springs to withdraw 439,000 gallons a day from their property in Nottingham. Ryan estimates removing that amount of water is like increasing the population by 11,000. At a recent meeting of the Nottingham Planning Board, he urged the board to look at the impact of the company's request on the entire region. Many local residents are concerned about the bottling proposal. But at this point it's hard to know how much impact a big withdrawal would have anywhere in the state. Brian Mrazik of the US Geological Survey says state and federal officials are still in the process of researching New Hampshire's water basins.

Right now we are kind of scrambling, looking at all sorts of hypothetical impacts without an understanding of this large a withdrawal. Is this withdrawal going to push us over the edge of supply and demand, we don't really have the answer to that question.

State law is also scrambling to catch up with situations like the one in Nottingham. Currently the state Department of Environmental Services can regulate water use. But DES isn't required to look at the effect of a withdrawal on the whole water basin. Nottingham Planning Board member Jon Karon.

Right now the state has made progress to institute new laws to try to regulate large withdrawal, as well as administrative rules to define a lot of the terms in terms of impact and everything, but it is just a first step. We do need to look at the longer term issues of are we going to run out, and how do we preserve the water for us, as well as balancing the rights of property owners to make sure they can use the water on their property, reasonably.

DES has supported bills that would allow it to factor in economic and social needs when granting water permits. For example, a golf course would get lower priority than a public drinking water system. But so far those bills have died in the legislature. Meanwhile, some observers say it's time to take a serious look at conservation. Villanova Professor Joseph Dellapenna says water bills should reflect the true value of water.

Anyone who uses water should pay something. There is no cost to wasting water. That's true in the East. Water still remains a free good.

While the Nottingham proposal has caused a lot of consternation, Brandon Kernon of the DES says that's not necessarily a bad thing.

I think the really important thing that the Nottingham facility has initiated, is that the average citizen in NH, especially in that area, gets it. That water is important. That measures need to be taken to plan for and protect resources, and that competing uses can affect the environment. And that there are things that need to be done up front proactively to protect resources.

According to DES's Pillsbury, state lawmakers are watching the Nottingham process evolve, and they're taking notes.

Given the interest by legislators in this particular permit, I think the dept. anticipates we will be back with the legislature considering these concepts such as broadening the scope of the analysis of a large withdrawal to include economic, social factors, ideas about what it means to have water supply into the future? The areas where there are gaps, I think we are going to see leadership from the legislature, and the dept awaits begin part of the process.

But the legislature probably can't address New Hampshire's water issues on its own, because water doesn't respect state lines any more than town lines. New Hampshire may someday find itself involved in a multistate pact like the Great Lakes Charter. That agreement shares 989 billion gallons a day among eight midwestern states, two provinces, and two federal governments. Regulation on that scale still seems far away for a region that's just beginning to put a value on water. For NHPR, this is Dan Gorenstein

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