

STREAMFLOW PROTECTION IN 2010?

In 2005, we celebrated passage of An Act Concerning the Minimum Water Flow Regulations. A thirty-year fight to protect streams and rivers from harmful diversions appeared to be near an end. The state's old flow regulation, dating from 1971, applied only to state-stocked streams and provided no substantial protection even to them. Ongoing harmful water diversions led river advocates to challenge the system, the most famous instance being the expensive litigation by advocates in the towns of Washington and Roxbury to force the City of Waterbury to release more water into the parched Shepaug River.

The 2005 law was written to be an alternative to litigation and to apply to all watercourses. The science was brought up to date, calling for flow standards that would mimic the variation in flows that exists in nature. The law includes strong balancing language, requiring the Department of Environmental Protection (DEP) to write a regulation that would protect not just rivers but also society's need for clean water for health, agriculture, commerce, and industry.

The law having passed, only one step remained: to write and adopt the protective regulations that the Act required.

It can be much easier, however, to get a law than a regulation. A law can be passed with no public debate in a matter of hours. A regulation typically requires informational meetings, at least one public hearing, revisions as needed, approval by the Attorney General, and approval by the legislature's standing, bipartisan Regulation Review Committee, which can hold its own hearing in some circumstances. The process can stall a regulation for decades. The state's aquifer protection regulations took 14 years to pass, even though they provided only limited protection to public wells (not all aquifers); and then, just one year later, the DEP and legislature reduced the scope of the protection by authorizing a new mapping method.

The DEP has seemed determined to avoid another regulatory morass in the case of the flow-regulation Act. Since 2005, DEP representatives, including the commissioners, have been meeting with multiple parties representing a wide range of water interests to craft the regulation.

DEP's basic approach is to categorize streams by flow quality, ranging from high to low. The highest quality, most pristine waterways will be highly protected. Protections drop down from there. The required flows will be governed by a complex, sophisticated formula that takes into account bio-periods (such as spawning periods), natural variations in flow according to seasons and over years (both dry years and wet years occur naturally). The formula also allows for cutbacks in flow requirements when a drought threatens. In addition, the proposed regulation includes numerous exemptions and "off-ramps." Implementation will be slow, starting with a year-by-year categorization of flows within the state's five largest watersheds.

Earlier this year, a draft regulation reflecting this approach was circulated for comment. Water utilities did not react positively. They are faced not only with the proposed regulation in Connecticut, but a pending law in Massachusetts also requiring limits on water diversions. The utilities have responded with aggressive opposition in both states. The most extreme statements threaten that in some communities the new rules will halt all economic growth.

For water utilities in Connecticut and New England generally, the prospect of reduced access to water comes at a bad time. For at least a decade, water consumption per capita has been declining. The last two summers have been rainy; therefore fewer customers need water for farming or landscaping; therefore revenues have tanked.

Water Utilities in Transition?

The silver lining in this picture is that many utility leaders realize that the challenges will not just go away. A new business plan may be needed. A key question is: Should growth in revenues continue to be tied directly to ever increasing water use? This appears to be unsustainable. Water supplies are finite. A more prudent approach would seem to be to adjust pricing so as to decouple revenues from use. This not easy, but the basic concept is to price water closer to its market value, so that revenues, even in a dry year provide for stable business operations, possibly with extra revenue coming from those customers who use water well above the normal rate.

An even more radical concept was brought forward at the influential Aspen Institute this summer in a report titled "Sustainable Water Systems: Step One -- Redefining the Nation's Infrastructure Challenge. This report, developed by experts in the field, recommended that water utility infrastructure be redefined to include not just traditional pipes, pumps, and reservoirs, but also *natural watershed systems*. An ample, clean supply of public water depends ultimately on the health of the entire ecology of the watershed.

A Fight Ahead

The Aspen concept unites the goals of environmentalists and water companies. Unfortunately we are not there yet. We are pretty much on opposite sides of the field. We anticipate that there will be difficult discussions ahead on every aspect of streamflow protection.

Rivers Alliance, The Nature Conservancy, and others are asking all their members and colleagues to learn about the proposed flow regulation, to suggest improvements as needed, and, above all, to testify in person, in writing, or by telephone. If there is a stream near you that runs very low or dry each year, let us know. Now is the time that the fish and frogs may get relief.

The regulation is posted on our website at www.riversalliance.org, along with explanatory materials. If you are in the CT Environmental Leader List or one of our network lists, you will be getting information by email. The public hearing opens officially on January 21, 2010, at the DEP. We hope you will submit comments or, if you prefer, sign on to a group letter.

If you know of a group, including one of your town commissions, that would like a presentation on the regulation, let us know. The DEP has offered to give presentations to watershed groups, regional planning agencies, and others. The Connecticut Water Works Association has been admirably active in making presentations of their view around the state. We hope that both sides will be fully heard in the end.

To reach us, email rivers@riversalliance.org or call 860-361-9349. The DEP has information on their website. The Water Bureau telephone at the DEP for asking questions or requesting a presentation is 860-424-3704.

The DEP proposed regulations are not perfect. The science behind them is excellent. (The Nature Conservancy was an important contributor.) But there are weaknesses in the law and procedures for implementation. We would like to see a stronger regulation. At the same time, we are listening to the points made by utilities, looking for issues on which we agree or might find common ground. We are determined to come out of the process with a good result.

This will be our best chance in the foreseeable future to get adequate state standards for flow in rivers and streams. Please take part in the effort. The little water creatures have no voice.

Margaret Miner

STREAM FLOW REGULATION

PUBLIC PARTICIPATION

PUBLIC HEARING:

Thursday, January 21, 2010

9:00 a.m. – until all comments have been heard

Department of Environmental Protection

79 Elm Street, Phoenix Auditorium, 5th floor, Hartford, CT

We hope you will submit comments or sign on to a group letter.

Written comments on the proposed regulations may also be submitted to Paul E. Stacey, Department of Environmental Protection, Bureau of Water Protection and Land Reuse, Planning and Standards Division, 79 Elm Street, Hartford, CT 06106-5127 by February 4, 2010.