IMPACT OF RECENT LAWS AND REGULATIONS ON WATER RESOURCES

by

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INTRODUCTION

There have been several laws enacted in the last few years that are significantly affecting our water resources and the planning for water resource development. Depending on the viewpoint, some will consider these laws as having adverse effects, while others will consider them in a favorable light.

My experience has been for the most part in river basin planning, so I will confine most of my remarks to the laws and regulations that affect the planning process, and point out a few new laws on a state or local level that affect water resources more directly.

The first law I would like to discuss is Public Law 89-80, the Water Resources Planning Act. This is not a new law, having been created in July of 1965, but some of the latest planning guidelines that have been proposed will materially change the customary ways of doing the job of water resource planning.

For the benefit of those present who are not too familiar with this Act, I will give a brief rundown on it. Title I of the Act created the Water Resources Council which membership includes the Secretaries of Interior, Agriculture, Army, H.E.W., Transportation, Commerce, H.U.D. and the Chairman of the Federal Power Commission. Title II authorizes the Council to make recommendations to the President for the establishment of river basin commissions. Title III authorizes the Council to make financial grants to the States for water and related land resources planning.

One of the functions of the Council is to establish planning standards - and this is where some new proposed regulations come in.

Senate Document 97, which has been in effect since May 29, 1962 provided "Policies, Standards, and Procedures in the Formulation, Evaluation, and Review of Plans for Use and Development of Water and Related Land Resources". Public and Congressional dissatisfaction with these guidelines for evaluation of projects led to the development by a Water Resources Council special task force of some new principles and standards for planning water and land resources. There have been numerous hearings and comments received on these, and it appears that the new principles and standards will soon get

Presidential approval. The latest version of these principles and standards was published in the Federal Register, December 21, 1971.

Under present procedures, plans are supposed to be formulated under rather rigorous economic standards to achieve maximum net economic benefits. Adjustments are supposed to be made in this most efficient plan to take account of other items such as the environment, public health, or income distribution effects. This has not worked out too well - monetary values carried too much weight - not enough information has been given to alternative plans. The decision makers have not had enough information available to them on tradeoffs between monetary and non-monetary values - there is no basis for planning for non-efficiency objectives.

The Council's Task Force has recommended the planning be multi-objective and carried out under four broad headings - national economic development, environmental quality, quality of life, and regional development. Under this approach, a system of accounts will be prepared for each alternative plan. All positive or beneficial effects are to be evaluated, as are all negative or adverse effects. Values will be represented in appropriate monetary or quantitative units or qualitative terms.

Under the multi-objective approach, plan formulation will be complex. The selection and justification analysis for recommended plans will be more exhaustive. More public participation in plan formulation and more interests will be involved.

The WRC's recommended planning interest rate has been proposed at 7 percent for the next 5 years. The current planning interest rate is 5 3/8 percent. Initially, as I see it, the higher interest rate will reduce the number of projects having a favorable benefit-cost ratio. In time, as evaluation techniques improve in the area of what formerly was not evaluated, I believe that re-evaluations of some projects will prove them to be feasible.

To sum up on these new policy recommendations, I believe they will result in much better plans than are currently being made, and will offer decision makers a better choice of options. Initially, at least, these plans will cost more and take more time.

The next law I want to discuss is the National Environmental Policy Act of 1969 (PL 91-190). This Act created a Council of Environmental Quality, a big job of which is to formulate and recommend national policies for the improvement of the quality of the environment. Section 102 of the Act requires in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement on: 1, the environmental impact of the proposed action; 2, any adverse environmental effects which cannot be avoided should the proposal be implemented; 3, alternatives to the proposed action; 4, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and 5, any irreversible and irretrievable commitments of resources which would be involved in the

proposed action should it be implemented.

Fulfilling the requirements of Section 102 has been a monumental task for a number of agencies with a back-log of projects approved for construction. In many cases, there have been lawsuits bringing construction to a halt until an adequate environmental statement has been prepared.

Preparing statements for a proposed project is quite a task. However, expertise is rapidly developing and the task is becoming a normal part of the planning process, and in time will not have the significant time requirements it is now taking.

The intent of the requirement for an environmental statement, as I see it, is to help provide the Congress or other decision makers with enough information on which to judge the merits of a project. This is good. Better projects should be the result. So far, however, the National Environmental Policy Act has been more noted for its use by conservation groups as a basis for lawsuits to stop or slow down water resource projects. One fairly recent newspaper article was headed "Environmental Policy Act Slowing Federal Pollution", and went on to list all the different groups that were going to the courts to hold up developments until, or at least, the environmental consequences were thoroughly studied. Once the construction agencies get on top of the job preparing statements for authorized projects, I see a big reduction in the lawsuits.

The laws I have just covered affect mainly water resource planning. The ones I am going to cover next are mostly concerned with water quality.

Under this heading, I would like to mention an "oldie" - the River and Harbor Act of 1899. This has just recently been "rediscovered". This Act says depositing refuse in navigable waters is forbidden, but that the Corps of Engineers can issue permits to deposit refuse, if in their judgement anchorage and navigation will not be injured. As the result of the "rediscovery" of this Act and its enforcement, more has become known about polluters and the nature of their pollution. This is valuable information and can serve as a basis for reducing the pollution problem, as well as preventing potential pollution.

A problem has arisen in regard to this Act. A District Judge has ruled recently that the Federal Government does not have the right to grant permits for discharges into non-navigable waterways. The Environmental Protection Agency and the Corps of Engineers are continuing to receive and process applications, but they are not issuing any permits until the matter is cleared up. Strict legal interpretation of the ruling could mean lengthy environmental statements for the 20,000 industry applicants which have already filed for discharge permits.

The Federal Water Pollution Control Act (PL 84-660) as amended from July 9, 1956 through April 3, 1970 encourages: cooperative activities by the States for the prevention and control of water pollution; uniform State laws relating to the prevention and control of water

pollution; compacts between States for the prevention and control of water pollution.

I am not an expert on this law, by any means, but I have studied it in regard to how it can affect the forest landowner. Basically, he is affected to the extent his State has developed water quality standards, or by early law, his activities constitute a private or public nuisance. I find that very little in the way of standards has been specifically aimed at the management of forest land, thus far. Oregon is developing Special Water Quality Standards for specific intrastate waters. These standards include a statement on logging operations.

Federal agencies involved in the management of forest land must abide by water quality standards established by the States and Federal government for both inter- and intra- state waters.

Industrial and municipal pollution draw considerable attention and most of the effort seems to be made to do something about solving those problems. One of the major water pollutants, however, is sediment - most of which comes from agricultural lands, but a lot comes from construction in urban and suburban areas, too. Each year, between one and two million acres are stripped bare of vegetation for new housing developments, roads, streets, etc. Often the sediment coming from these areas undergoing development is 200 times the sediment coming from near-by farm land.

One state, Iowa, has come up with a new law (passed in 1971) designed to combat this sediment problem in both urban and rural situations. Under the new law, soil loss, measured in tons/acre, can be declared a nuisance if it is determined the damages are due to erosion. Property owners responsible for such soil loss can be compelled to establish conservation practices to halt such erosion. The responsibility for determining soil loss rests with the local soil conservation districts. The challenge is to establish locally the "permissible" amount of soil loss or erosion that cannot be charged to neglect of a property owner and then set up a yardstick for use in forcing property owners to adopt soil conservation practices once the soil loss exceeds the established local erosion limit. If a property owner is found negligent, with his soil loss damaging property of others, he can be made to take corrective action, and in most instances part of the costs will be paid by State and Federal funds.

Closer to home, just a couple of weeks ago, Gwinnett County, Georgia became the first county in Georgia to adopt a soil erosion and sedimentation control ordinance. This ordinance will force developers to specify soil erosion and sediment control measures for their projects. It requires proper provisions for water disposal and the protection of soil surfaces during and after construction.

Specifications for this ordinance are found in a 120-page booklet oriented to Gwinnett County, and developed from the Soil Conservation Services' "Standards and Specifications for Soil Erosion and Sediment

Control in Urbanizing Areas". This ordinance will be enforceable with fines by the County Recorder's court.

SUMMARY - I have reviewed here several laws which are affecting the way we plan our water resource developments, or bear directly on our water resources.

As a result of the Water Resources Planning Act, new planning quidelines are in the offing which should produce better plans and alternatives.

The National Environmental Policy Act has had the effect of slowing down - even halting some water resource projects, but as time goes by, meeting the requirements of the Act is becoming easier, and the ultimate goal of providing the decision makers with enough information on which to judge project effects on the environment is being reached.

The old "new" River and Harbor Act of 1899 is serving to require polluters to get permits, and will be effective in controlling new polluters.

The Federal Water Pollution Control Act is bringing about in the States water quality standards and uniform State laws relating to the prevention and control of pollution.

Iowa's soil loss law, and Gwinnett County's soil erosion and sediment control ordinance will each play a part in combating one of the major water pollutants - sediment.