

NORTHWEST WATER PLANNING ALLIANCE

May 10, 2018

Executive Committee Meeting Minutes

The Centre, 100 Symphony Way, Elgin Illinois

**Present:** Mayor David Kaptain of Elgin, President; Tom Weisner, NWPA Past President, MPC Fellow; DeKalb County Board member Misty Haji-Sheikh, Vice-President; Kane County Board member Deborah Allan, Treasurer; Mayor Karen Darch of Barrington; President Paula McCombie of South Barrington; President Mayor Gary Golinski of Yorkville.

Also present: Peter Wallers, TAC Chairman; Janet Agnoletti, Barrington Area Council of Governments, Mary Randle, Metro West Council of Government Executive Director. Guests: Gary Clark, former Water Resource Director of Illinois Department of Natural Resources, Brian Faivre, City of DeKalb, Tim Holdeman of City of DeKalb.

David Kaptain called the meeting to order at 10:10 a.m

**Approval of Minutes:** The minutes of March 8<sup>th</sup>, 2018 were approved as presented after a motion by Gary Golinski and a second by Deborah Allan.

**Financial Reports:** Financial reports for March and April of 2018 were approved as presented after a motion by Karen Darch and a second by Paula McCombie. The account balance as of April 30, 2018 was \$37,945.54.

**President's Report:** Mayor Kaptain reported that he and Pete Wallers made a presentation about water supply at Gail Borden Library in Elgin on April 30. It was well attended.

**Program: Gary Clark, former Water Resource Director of Illinois Department of Natural Resources, spoke about Illinois Water Use Law: Who Regulates the State's Water.**

There is no comprehensive statute.

There is no statewide statute.

No comprehensive regulatory review for water development projects.

No legal way to perfect a water use right.

Mr. Clark has studied Illinois water use since the 1950s. It is very difficult to develop comprehensive statewide law on this subject.

Major types of law: 1) constitutional 2) common law 3) statutes/orders 4) administrative rules and 5) other treaties, compacts and executive orders.

Water law is the doctrine on which we rely to provide enough water for those who need it.

What law do we have?

- 1) Common law riparian law. – Illinois goes by the rule of reasonable use.
- 2) River, lake and streams law.
- 3) Water Use Act of 1983
- 4) Municipal Code and Special Districts
- 5) Level of Lake Michigan Act and the Great Lakes Compact
- 6) Kaskaskia River Watershed and Basin Law

Riparian Rights: You have a right to use water if you have property bordering it.

Some of the questions involved: 1) Do you own the property, 2) Do you have a statute, 3) Do you have to get a permit and 4) Are there priorities of restrictions or exemptions to use?

Wants of man regarding water: natural or artificial. Illinois common law on ground water has evolved since 1899 *Edwards v. Haeger*.

1959 – Doctrine of Reasonable Use.

1981 *Lee v. City of Pontiac*

The absolute ownership doctrine is dead.

“Real and reasonable use:” Groundwater rights of landowners are usufructuary.

Seniority in use does not increase the right to water supply.

Wasteful/malicious uses are unreasonable.

1951 Water Resources Act. Passed to build Lake Sarah for special purpose. Unit of local Government's board's water management powers: inspection and registration of water. This exempts agriculture, irrigation and domestic use.

There are 15 current water authorities (as of 1999) in Illinois. Sugar Grove is one of them.

Water Use Act of 1983. Public notice of planned water use greater than 100,000 gpd. Groundwater emergency restrictions.

This has never been implemented a unified Illinois ground and surface water law. There is a mandatory water use ground and surface waters added in Illinois by State Water Survey.

Municipal Code and Special Districts:

Authority to sell water and develop any water sources including outside of corporate limited with condemnation powers.

Also, river and conservancy districts and water authorities have water development powers.

Eighteen communities use Rend Lake. Rivers, Lakes and Streams Act 1991 There are a total of 33,000 miles of streams in Illinois. Only 8% are public waters.

What is reasonable use? Natural and artificial are in

just proportions. What if your well affects others? There is no direct duty under the law.

Statewide – no one

Public waters: Illinois Department of Natural Resources, Office of Water Resources

Local – water authorities.

Rules regarding deportation outside of aquifer/watershed. No common law against it.

There are broad powers to protect all public rights:

- 1) Navigation 2) encroachments 3) natural condition 4) non-riparian water use
  - a) industrial manufacturing, b) public utility and c) 40-year permit by statute.

Level of Lake Michigan Act 615.ILGS.50 –

Was passed in response to 1967 U.S. Supreme Court

Gave IDNR Office of Water Resources responsibility to allocate Lake Michigan waters.

Domestic use has priority. Act directs that the goal of the allocation is to reduce the deep aquifer withdrawals.

There are currently 210 allocations serving 7 million people.

Water supply plan for 60 Northwest Illinois region.

Water conservation requirements

Great Lakes Compacts – Eight states

#### **Holes in Illinois Water Law:**

Instream flow protection – statewide

Drought and emergency management

Groundwater development – domestic well impacts

Codification of water quantity laws

Future needs for public water systems.

Data: hydrology, smart growth, geology, mapping and modeling

State versus local control – protectionism.

We also have information on water laws that are in effect in surrounding states.

Peter Wallers will send out a copy of this presentation.

**Strategic Plan Review** has been tabled until the next meeting.

**Springfield Drive Down Report:** Pete Wallers presented a report on Metro West COG's Springfield drive down. We also met with agencies on behalf of NWPA and

gave them a progress report on what the NWPA has accomplished. We presented a funding request for water supply funding for Northwest Water Planning Alliance to the Director of the Illinois Department of Natural Resources. They did not make a definite commitment but they seemed receptive to the requests. The NWPA is the only active water supply planning group in Illinois.

**Technical Advisory Committee Report:** Peter Wallers. Mr. Wallers reminded the group that the nwpa.us website has a resource center that includes all the presentations we have received at our meetings. Mr. Clark's report has already been posted.

The TAC is still working on the sensible salting resource for owners of large parking lots owned privately such as shopping centers and hospitals.

Tom Weisner Report: He is now working with the Metropolitan Planning Council as a senior fellow. Tom Weisner reported that they are still working on issues with City of Joliet and Will County. They have now met with the mayor of Joliet several times. The Will County Governmental League held a meeting on this subject. They are now talking to the NWPA about how to start a water supply planning group.

The Joliet Mayor is going to start an environmental committee to address issues such as water supply. They are also hiring a consultant to help with the possibility of finding another water source. The Illinois State Water Survey representatives are talking to industrial businesses in the Joliet area.

The meeting was adjourned at noon.

The next meeting will be held on July 12.

Respectfully submitted by \_\_\_\_\_

Mary Randle, Recorder