

Water Regulation: Water Agency Coordination

Water Resource Management Authority

From “The Architecture of Water Resources Management in Minnesota,” Chuck Holtman (2.14.06 presentation), also Leg. Auditor rpt January 2007

Principles:

- Different activities are best done at different levels of govt – MN does pretty good job
 - If you split management responsibilities among different levels of govt, need mechanisms to reintegrate them – end up with inefficiencies, duplications, coordination costs, and conflicts – bigger issue for MN
- Watershed –based organizations are key to both

Features of unit of govt relevant to ability to perform tasks well, cost-effectively include:

- Expertise (generally higher levels of govt)
- Money (higher levels)
- Access to technology (higher levels)
- Familiarity with water resources (local levels)
- Access and responsiveness to community (local)
- Resistance to “capture” (can be function of agency’s expertise, focus)
- Economies of scale (higher)

1. FEDERAL

EPA administers CWA and other laws. Delegates much of its authority to state govts
Army Corps of Engineers under CWA, with EPA oversight, regulates filling in waters of the US. Delegates very little authority to states

Array of federal laws and programs including programs under Natural Resource Conservation Service under Dept of Agriculture, floodplain delineation and flood insurance programs under Dept. of Homeland Security

2. STATE

Carry out delegated federal responsibilities including:

- TMDL (wide-ranging)
 - Involves PCA in setting standards, assessing surface water, reporting to EPA
 - PCA can’t do all this, delegates to local governments
- Issue technology-based permits to industrial dischargers (focused)

DNR is responsible for

- Water resource quantity issues – regulating higher-volume appropriations of surface and groundwater
- Regulates any work in “public waters”
- Acquires conservation easements to protect riparian areas, manages aquatic and riparian habitats for animals

Other state agencies, including:

MN Dept. of Health regulates drinking water supply and septic systems, oversees program for local designation and (thought zoning ordinances) protection of drinking water wellhead areas

MN Dept. of Agriculture oversees best management practices programs for agricultural operations and feedlots, prescribes conditions for pesticide and herbicide use in riparian areas

Board of Soil and Water Resources carries out laws that authorize/require counties, cities, watershed districts and watershed management organizations to prepare water resource management plans for local resources/needs. Those plans drive all watershed-based programs and identify undertakings for which watershed agencies will budget and levy.

- No direct regulatory authority but writes regulations for MN Wetland Conservation Act and oversees implementation of the law by local authorities
- Oversight responsibility for watershed districts, soil and water conservation districts, joint-powers agreement watershed management organizations
- 12 members appt'd by Governor and 5 nonvoting members representing state resource agencies and U of M.

3. *Local*

- Operate under substantial mandates from above, some obligatory, some voluntary.
- Cannot always exercise authority they want to – sometimes its withheld by state/fed govt (“doctrine of preemption”)
- Shouldn't exercise authority where it will duplicated state/fed regulation

Metro Cities in 7-county area (Ramsey, Hennepin, Anoka, Washington, Carver, Dakota, Scott)

- Every 10 yrs submit comprehensive land use plan governing city development to Met Council for approval. Must contain water resource plan approved by local watershed district as consistent with watershed-wide plan

Met Council plans, builds and operates sewer and wastewater treatment system in metro. Coordinates with metro cities and towns re. connecting with the system and using system capacity. Manages grant programs re., among other things, protection of riparian corridors

Cities/incorporated areas largely set own policies and regulatory programs, and counties stand aside

Towns share authority with counties over land use and development, water resource planning

Categories of local govt water resource activities

- For residents
- “Police power” – to advance the public welfare
 - Regulates land use and development
 - May directly regulate steep slopes, wellheads, etc to protect wetlands

4. Watershed-Based Governance

- MN may be the most developed state re. maturity and authority of watershed-based govt'l units
- Manage water in about 30% of MN
- State law requires all metro areas to have district or WMO; not all greater MN does

Justifications:

- Principle that optimal size of a govt'l unit should be that which encompasses as fully as possible the geographical area that bears the benefits and costs of that unit's decisions
- Watershed districts can address land use issues with an exclusive focus on water resources. (Counties, cities, towns are also interested in promoting tax base, econ development, etc)
- When money for projects and programs raised through property taxes, watershed-based levies generally fairer than city-, town-, or county-based levies – cost of management efforts can be placed on property owners who contribute to drainage and who most directly benefit from good management of water resource
- Keeping management local maximizes citizen engagement and govt accountability

Watershed Districts

- Governed by board of 3-9 managers appt'd by County Commissioners of counties in which the district lies
 - Managers feels accountable to appointing commissioners and often consult them, though district boards are technically independent
- MN has 47 watershed districts
- Powers – similar to powers of city
 - To raise revenue – counties obligated to include necessary levy on property tax based on what districts say they need each year
 - To hire, enter contracts, incur debts., etc
- Activities:
 - Acquiring and managing land use and water resource data
 - Performing water research
 - Regional water resource planning
 - Public communication and education
 - Work on waterbodies, stormwater, drainage and wastewater systems
 - Financially supporting resource management efforts of others

- Acquiring and holding conservation lands
- Regulating activities of property owners
- Regulation includes: erosion control at disturbed sites, stormwater management, flow diversions, floodplain preservation, wetland protection,
- Under state law, many watershed districts responsible to maintain and manage public agricultural drainage systems (carried out by counties in some areas)
- Law requires districts to adopt and apply permitting regulations

Metro vs. Outstate Watershed Districts

Metro:

- Unlimited property tax levy
- Operate more efficiently – governing laws are more give managers more discretion. Citizen engagement requirements operate mainly through cities
- Can exercise leadership through watershed planning process – district plans prepared every 10 years; within 2 years, all cities and towns within district must prepare their own plans that are consistent and approved by their district(s)
- **Role in Municipal Water Management**
 - Districts have substantial legal authority, but cities may be reluctant to grant “full dose of legitimacy” or may not like district’s funding priorities
 - Cities tend to have ear of county commissioners, who have ear of watershed board members they appointed
 - Actions are watched by variety of stakeholders, so can’t do everything they might like to

Outstate:

- Limited property tax levy – can be highly dependent on grants of collaboration with monied partners; may issue bonds to raise money for projects, but bonds less attractive because hard to raise \$ to pay back with limited levy
- Often less efficient – governing laws are outdated (based on limited landowners farming, or small towns), don’t give managers as much discretion
- Prepare watershed plans, but govern activities of district only. Can be subsumed into general water plans prepared by outside counties

Joint-Powers Watershed Management Organizations (WMOs)

- Only within 7-co metro area – result of 1982 legislative compromise as alternative to watershed districts. Much more closely tied to cities than districts are
- Created by agreement among cities within watershed, governed by board of reps from each city, appt’d by city councils
 - Too responsive to city councils

- Can't levy property taxes (except for 2 WMOs benefited by special legislation) – each city has to approve proposed budget, including that city's share
- Substantial projects must be approved by supermajority of members
 - Cities often don't want to tax residents to pay for projects in other cities – WMOs do few capital projects
- Adopting and applying permitting regulations is voluntary – most don't because cities want to do it themselves
- WMOs involved more in public education, demonstration and cost-sharing projects with homeowners, collaboration with other resource agencies

Soil and Water Conservation Districts (SWCDs)

- Operate everywhere in the state on a county bases
- Responsibility primarily to encourage private landowners to implement best management practices