

Mark and fellow WSTF members,

I would first like to commend the IDNR and the Water Shortage Task Force (WSTF) for the two years of effort that all have dedicated to creating a system and plan to address periods of water shortage. These efforts have realized progress and will be critical to the direction of HEA 1224-09 that creates a Water Resources Task Force (WRTF) with the more-comprehensive task of developing a statewide water resources plan.

As discussed through the course of the WSTF meetings, we attempted to identify a clear path for the responsible parties to address a water shortage. Also, that the process be defined, consistent, predictable and based on sound science. The Task Force reviewed and studied multiple methods to assess the level of water shortage that would direct appropriate action by a responsible regional authority.

All of this is good but there remains work to be done. While the report provides some direction, it poses a number of questions that the WRTF will likely address. Those questions may include:

- What are the necessary legal mechanisms and principles for decision-making that should be in place and approved by appropriate governing bodies with proper resources to implement – or, is there clearly defined authority (state, local or regional) that would allow the implementation of a shortage plan?
- Who will have the authority to determine when there is a shortage event and what actions will be taken?
- How will various regions, with overlapping shortage events, consistently and fairly rule?
- Should the state or all communities adopt consistent rules that would provide the authority to take appropriate action?

- If it is determined that some level of enforcement during a shortage is necessary, what should that enforcement include – graduated fines, jail, ticketing...?

Having invested in this work, I appreciate all of the time and energy that went into this project. However, it is clear that this remains a work-in-progress. The results of the Water Shortage Task Force is a necessary element to help guide the HEA 1224 Water Resources Task Force.

Sincerely, Vince

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I am out of the office routinely and not always able to access emails. If this is urgent or of a timely nature, please leave me a voice mail message.



INDIANA
AMERICAN WATER

July 17, 2009

Comments from Indiana American Water Company on Indiana's Water Shortage Plan
Draft

Section V.B.3 It appears that the Plan would call for the IURC to change rate block structures from declining rate block to something else. -- WILL THAT BE AN ITEM THE TASK FORCE TAKES ON, OR WILL IT BE THE RESPONSIBILITY OF THE UTILITY OR TOWN?

Section V.B.5 The Plan calls for peak demand rates -- NOT SURE HOW THIS COULD BE IMPLEMENTED UNLESS WATER SHORTAGE RATES ARE ESTABLISHED.

Section V.B.7 The Plan calls for an unaccounted for water target of 10% -- WHAT IS THE POTENTIAL IMPACT ON WATER SYSTEMS TO INVESTIGATE AND REDUCE UNACCOUNTED FOR WATER? WILL THERE BE A REGULATORY COMPLIANCE ISSUE AND WILL THERE BE FINANCIAL PENALTIES?

Section V.B.9 The Plan calls for individual water audits to be conducted by Utility for our customers -- WILL IURC RECOGNIZE INCREASED STAFFING LEVELS AND COST -- RECORD KEEPING ISSUES?

Section V.B.10 Retrofit kits available to customer at no cost -- WHO WILL BE PROVIDING THE KITS?

Some of the above questions and concerns may be addressed in Section V.D thru loans and grants.

Section V1.C.4.c This section talks about public water supplies --- I assume this section would include Indiana American Water or should there be a reference to Private Water Systems? The same comments holds true for Water Shortage Watch -- Water Shortage Warning -- Water Shortage Emergency

Section VI When Water Shortage Watch or Warning or Emergencies are declared for a region individual towns, cities or utilities should have the right to increase or decrease the level based on the immediate impact to their system

Item #1

IX - Overview of Water Shortage Plan Development D - Determination of Criteria to Identify Onset of Water Shortages 3. - Streamflow

May I suggest that the White River at Noblesville station replace the White River at Nora station. The Nora station is influenced by the Morse Reservoir releases, the discharges from two waste disposal plants and the dewatering of a gravel operation. The Noblesville station is a far superior drought indicator.

Item #2

X - Identification of Additional Water Supplies Available During a Water Shortage A - Increased Ground-Water Withdrawals 3. - Statewide Ground-water Availability

"With the exception of portions of the southern part of the State, ground water can be relied upon to furnish an adequate supply of water for much of the population."

The city of Indianapolis currently has a problem on the south side of the city in non-drought years and it will become a very serious problem in a drought year. This situation needs to be recognized in the above sentence or that sentence needs to be eliminated so that the reader does not conclude that all we need is more wells.

Item #3 General Comments relative to "Regional" activities

I look at this document as a very comprehensive "Reactive" plan. Within the individual meetings there has been a great deal of discussion on "Proactive" planning at a regional/local level and some reference to regional/local planning is stated in the plan document. In my opinion the impact of a drought can be reduced significantly if the local regions generate their drought plan before the drought occurs. I understand the argument that "Regional Planning" is beyond the scope of this Task Force, but if it is not recognized as a future need by the reader we have lost a significant opportunity for drought impact reduction.

Roger N. Goings

Basch, Mark

From: cec [curry_inc@comcast.net]
Sent: Thursday, July 09, 2009 8:54 PM
To: Basch, Mark; Bell, Scott; Dennis Wichelns; Jack Wittman; James Facemire; Jim Butcher; Jim Facemire; John Goss; Michael Brooks; Vince Griffin; William Etzler
Cc: McAhrn, Ron; Neyer, Mike; Hebenstreit, Jim; Unterreiner, Jerry; White, Charlie
Subject: Re: Updated Documents for Water Shortage Plan

Gentlemen:
Here are my comments for your consideration:

Water Use Priority (Goals, Actions)

- Suggest that the word "**current**" be deleted from Goals column, block number 6
- Suggest the Actions column, Row 4 be reworded to read: **Implement policies and programs that encourage efficient use including conservation of water in wet and normal years and allocation during dry years.** The reason for re-ordering the classifications for years is to avoid arguments or misunderstanding from those charged with enacting state or local legislation about the tasks needed to respond to climate conditions. There should be no need (at least in my opinion) to allocate water to specific users during times of normal precipitation. Moreover, it is my strong belief that our report of findings should focus upon managing raw water supply made available for treatment unless and until drought conditions occur. Then the allocation of treated water may become critical. It is also my belief that the WSTF charge was to deal mostly with raw water supply and not to deal directly with results of plant failures having a subsequent shortage of treated water. The fact is that nearly all of the treated water systems are not able to strictly enforce selective distribution of treated water to their customers.

Streamflow Policy

- Use as is.

VIII Water Use Priorities

- I can live with this portion of the document as written. Most of any comments I might suggest are minor word crafting as opposed to substantive.

----- Original Message -----

From: Basch, Mark
To: Bell, Scott ; Carlton Curry ; Dennis Wichelns ; Jack Wittman ; James Facemire ; Jim Butcher ; Jim Facemire ; John Goss ; Michael Brooks ; Vince Griffin ; William Etzler
Cc: McAhrn, Ron ; Neyer, Mike ; Hebenstreit, Jim ; Unterreiner, Jerry ; White, Charlie
Sent: Monday, June 29, 2009 10:27 AM
Subject: Updated Documents for Water Shortage Plan

Good Morning Task Force Members,

Attached are updated drafts of the "Water Use Priorities", "Baseline Streamflow Policy" and the "Goals and Actions Summary Chart" that reflect all (I hope) suggested revisions made at last Friday's WSTF Meeting. Please look them over at your earliest convenience and let me know if you have additional comments. Also, the next WSTF Meeting has been scheduled for 10:00 am to 12:00 noon (EDT) on July 23, 2009, in Conference

7/10/2009

Mark,

We have reviewed the Indiana Water Shortage Plan and have the following comments.

1. On page 64 (of 76), in Appendix IV, at the bottom of the page it mentions that the IDNR and USGS maintains a network of approximately 90 observation wells. The number of wells currently in the network is 37.
2. On page 65, in Appendix IV, the first paragraph under "Streamflow" mentions that in 1988 there were 27 stations that were monitored weekly. It might be worth adding a sentence that real-time data from the entire Indiana stream gage network is now available to everyone with internet access.
3. Section IV. D. 3 (Streamflow). 4th paragraph, states that "The USGS, in cooperation with the Department of Natural Resources, maintains a network of approximately 165 gaging stations in Indiana." The number of streamgages should be "approximately 190," and we suggest that the statement should read "in cooperation with IDNR and a number of other Federal, State, and Local agencies."
4. A very minor thing -- on page 27, in item E the word "proposed" was used, but the intended word was probably "purpose."
5. We're sure it's already planned, but when the final draft is completed it is important to have a year or date on one of the title pages so that manuscript can be properly cited.

Overall, the plan looks excellent. Please let Don or I know if you have any questions on the comments. Don will be attending the next Water Shortage Taskforce meeting.

Regards,
Scott

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July 16, 2009

Mr. Mark Basch
Indiana Department of Natural Resources

Dear Mark,

Thank you for allowing public comment on this draft report of the Water Shortage Task Force. I appreciate all of the work that the Task Force members, other IDNR staff and you have devoted to this effort.

I am writing my comments not to praise the many solid and worthwhile observations in the report but rather to draw attention to areas to consider to enhance observations directly related to the main objective of the Task Force about developing priorities. I quote your sentence "Senate Bill 369 charges the Water Shortage Task Force with developing water use priorities to be implemented during periods of water shortage."

I believe the findings of the task force should be divided into two categories: 1) those findings related directly to developing water use priorities during a water shortage and 2) those important observations about State water policy not directly related the priority-setting during a shortage.

The Task Force has been given no authority to set priorities but it has been given the responsibility to evaluate the different types of water shortage situations that can be expected to be faced by different local and State governmental entities and ask whether the legal tools and criteria for decision-making are in place and approved by appropriate governing bodies with appropriate resources to implement. In other words, if the Governor or County Commissioner or Mayor or Township Administrator said this is how water users should or must behave with respect to significantly reducing their water use, are the priorities set and generally understood and accepted by the many publics that could be affected, do the water contracts among accountable parties contain provisions for reduction in use consistent with those priorities and are the education and enforcement mechanisms in place and funded to be effective enough?

The Task Force was appointed as a group of specially informed professionals representing all key stakeholders. It was to make observations about the vigor of the existing State and local structures to handle this. That report would be sent around to

stakeholders and professionals to form the base of discussion through the State. Ideas from that state-wide debate could be incorporated into a final modification of the existing plan for the appropriate bodies to evaluate and act upon according to their authorities and procedures.

At this point in the final weeks of report drafting, I believe the most useful action the Task Force could do towards this end is not offer specific advice about these matters but rather 1) to explain the existing pieces of such a policy in State law and rule and 2) to set out for the next Task Force precise instructions about how to help the State to "develop water use priorities to be implemented during a water shortage."

Below are some suggestions that could help fashion the existing report language into one of use for the broader state-wide discussion.

I would be pleased to assist the Task Force and you in any way if you would see that to be of benefit.

Sincerely,

Bill Beranek
President
Indiana Environmental Institute

I. Comments on VIII. Water Use Priorities (6/29/2009 draft)

Overall impression of priorities section of report:

It contains well-written summary of fragments of existing law. This is a good foundation. However it would be of even greater help to legislators and parties throughout the state if you lined up the laws and rules in a matrix explaining the gaps, inconsistencies and conflicts.

As for how to choose who gets water in middle of shortage, the report lists six ways to decide. It does not give advice on implications of each, does not say who in particular should be the decider for different types of situations and does not recommend specific process with responsible positions to execute (important because most of the ways require change to existing water law or executive authority).

There is no distinction among types of shortages when discussing options. Some options are more useful for certain types of water shortage situations than others.

It does not offer advice about for which situations who would be favored by being addressed by an option much less who should be favored. The closest to a specific recommendation is that "non-essential use" shall be given lowest priority. It does not even presume the existence of a standing governor advisory committee to help the Governor decisions in the crisis.

It seems to leave everything up to "they".

So a global suggestion I have to most observations is to be more precise about whom are you speaking. In other words who should do it and by what authority under which type of water shortage? Local govt? Private utility? Private industry or farmer? State agency? Governor?

Specific comments

A. Introduction

Parag 1

Sentence one. I would add the distinction between finished and raw water because failure to maintain that distinction can cause serious miscommunication in water shortage priority setting. There are one set of issues about a raw water shortage and another about a finished water shortage. Both are important to address and they at times are related but at times they are completely independent. One solution does not address both.

Parag 2

It probably is good to describe a universe of options but these specific ways need to be fleshed out more. It seems these are not all same type of an option but are overlapping thoughts.

For instance, in option one if "first" refers to time, "first come, first served" only works if that chronological water right is an allocation in law such as Western water rights law. If the "first come" allocation is not a right, "no allocation" always results in tragedy of commons where all users, first and last together, consume a smaller and smaller resource equally. An aquifer or a lake would be drained this way. If "first" refers to position in watershed for flowing surface water, then whoever has the highest elevation water withdrawal point can take all leaving the last with nothing. (A corollary situation could be finished water in public water supplies in series where the supply closest to the treatment plant could take all before the points farther in distribution system.) Whatever is meant by this option needs to be articulated precisely, along with its implications.

Option three seems to be distinguished because the allocation is established in public law. However the option two of "administrative law" also requires a public law in order for it to happen. In fact, all options except for option one require public law to establish (unless option one means western first-come-first-served water rights in which case all options require new law).

Option four is circular. All the listed options are ways that water would "be allocated". For option four to say that a way to allocate water is through water allocation is not helpful. (One way around this is to call the entire set of options "water use restrictions" instead of "allocations" – your market options are not water allocations as the term allocation is used in option 4.)

I think what you may be trying for is a statement that water use restrictions in a water shortage may happen

1) with no special government intervention – people take what is available when it is available

2) with government restricting use according to user category and location to match demand and supply by use restrictions or by rationing allocations

3) with government restricting use by changing the price structure to match demand and supply

(I did not know how “water sales” and “water marketing” differ from each other and from “water pricing” at this level of distinguishing practical options. If those thoughts are to be distinguished they should be stated more clearly along with implications.)

This statement of options would be of greater use if it included some examples of water shortage situations amenable to one option or the other. Examples should be sure to include those that distinguish raw water or finished water. For instance with finished water in a public water supply, if it is assumed that water pressure is to be maintained for public safety, option one is moot. Similarly with finished water, pricing seems to me unworkable as a sole option if public safety is to be maintained. How can we be confident we know the correct pricing structure for each particular water shortage situation among multiple users? Allocation of raw water depends on the source being allocated. Is it a single reservoir? A limited aquifer? A combination of unconnected aquifers? Multiple watersheds?

If raw water, the externality of maintaining stream flow to protect aquatic system is a consideration.

Page one parag 5

This is verbatim from state regulation.

However the rule seems internally inconsistent or at least ambiguous. Unless this is talking about people who live or have domestic livestock business on shores of the reservoir itself, IC 14-25-1-3 seems not to apply to the situation where 312 IAC 6.3-4-1 is setting allocation priorities for reservoir water. IC 14-25-1-3 says I have priority rights to the water before it gets to the reservoir and priority rights after it is released from the reservoir if I am on the public water course. Does this priority mean only that I can take water without restriction if the water is there in the flowing stream or does it mean that during a shortage all upstream users simultaneously must reduce withdrawal to assure availability of my volume?

B. Recommendations

Paragraph one

I would make paragraph one your first recommendation since it has such profound implications.

The Task Force is recommending State-financed reservoir allocation priorities (and wording of conditions) to be the guidance for all water allocation priorities during any type of shortage situation. It seems to me that this may make some sense for most raw water shortage allocations. But for you to recommend it as guidance priorities for ground water allocations seems to be in conflict with the significant water withdrawal law (itself in conflict with rights of the users along the shores of a public water course). And this priority order does not seem directly to apply to many finished water shortage allocation decisions.

How does IDNR use these priorities for water allocation from State-financed reservoir? Higher priorities get all they desire (or normally use) before the lower priorities or is there a sub-prioritization such as all users reduce according to preapproved contingency plans calibrated to different shortage situations and the priorities in the law are applied among the remaining "necessary water use" by users? And even for allocation of water among minimum necessary uses, are the priorities used to justify eliminating water to a category of user or is there further level of being able to restrict to a certain percent of "necessary" water?

Obviously state law demands that people on the shore get water for domestic use before all others. Does Task Force agree that the law is equitable? Does it make sense for well withdrawal? I think all might agree to the extent it is truly domestic use for a single family but do you agree if it is 4000 hog operation or a large trailer park or should they be required to conserve and share the water in some way? It is expected by the legislators that you not only explain implications of their law but that you make recommendations to change it if you have sound reasons.

The second reservoir allocation priority is "use of health and safety". For State-financed reservoir allocation that may be okay (although health situations should be explained) but for a general priority recommendation, it seems to me the public safety is the highest priority, far above public health. I believe the highest priority is that fire suppression water is available with adequate pressure and then work priorities from there.

Buried in options D and E is a provision for contingency planning which is excellent and wise and reasonable for contract negotiations about a future water withdrawal from a State-financed reservoir. The rules of the game can be explained and agreed to and monitored by written contract. However, it makes no sense as a priority during a water shortage to distinguish among users in other situations this way, certainly without giving

water users ample opportunity to understand and do it. And if we did it we need explicit authority to Governor to override it for cause such as the nursing home operator failed to do it or the previous incompetent mayor did not do it.

Additional Task Force Recommendations

I would rewrite these into two types of recommendations 1) principles for decision-making and 2) action items.

Some of these recommendations are not really carefully crafted actions to achieve an important purpose but instead are more either principles for sound water shortage water use priority setting or check list of factors to consider. I would list those as a group.

Then I would write those recommendations for action in a form incorporating who should do it and what benefit is expected. For instance "General Assembly should do X to achieve Y" Or Governor should do X to alleviate problem Z" "Or IDNR should do"

The most useful recommendations are those that have a person responsible to do a clearly defined action for a clearly stated important purpose.

Recommendation 1 – two ideas are here; one is to consider in-stream and withdrawal uses when making allocation decisions – that must be for surface water source only ("instream") (in fact the real recommendation is to "consider in-stream uses when making withdrawal allocations, even though current law does not require it"); the second recommendation is that a distinction should be made between ground water and surface water – that second point is not related to the first point

I would make the surface water versus ground water consideration its own point. Then the recommendation would be more meaningful if we explain what the consideration we have in mind that be given depending on whether it is surface water or ground water. For instance, "Water allocation priorities should consider impact on both surface water and ground water resources."

Recommendation 2 I agree that minimum stream flow is important but how is this different than recommendation one? Who is deciding? This recommendation would be much stronger if it were clear just who you mean to be making "all management decisions". Is this government entities? Or do we mean withdrawers like utilities? – Remember we do not have allocation decider, criteria or process worked out – all parties must allow enough for in-stream and that decision must be in law for it to be understood by withdrawers what their rights are when that flow is being reached someplace on the stream in order for this to be effective (it was not clear which sections were being referred to that the decisions will be made "in accordance with")

Recommendation 3 To favor "existing uses" over projected uses is making an enormous policy recommendation that deserves analysis and discussion - by this you are implicitly choosing a truncated version of the first-come first-serve water rights approach. What is

the date of your "existing use"? At start of formally declared water shortage? Use over past five years? 1972? 2009? I have corollary concern about ambiguity of the start and end dates for "existing" with your "existing users" recommendation 6.

This recommendation directly conflicts with recommendations on in-stream flow protection.

With respect to the phrase, "each water use category", we need to specify that it is the SWWF water use category we mean, since this whole set of Task Force recommendations is based on the state-financed reservoir categories. Note one of categories is "miscellaneous". You may wish to be more explicit since you are recommending advisory boards with specific membership. Could this be your in-stream interest?

Whom is the regional advisory board advising? Is the recommendation that it have allocation authority during a shortage for all shortage situations?

Recommendation 4. This recommendation is not helpful unless we delineate your idea of non-essential uses. Otherwise it is truism.

Recommendation 5. I disagree. A high priority user such as fire protection or a hospital or old folks home should not be given a lower priority during a water shortage than lawn watering just because of failure by managers to have contingency plan. That failure to plan should not harm the weak in favor of rich or favor those with competent officials over them compared to less competent. (It is fine for advance planning and contracts such as State-financed reservoir withdrawal but not for emergencies.)

Recommendation 6. First, this is in conflict with contiguous property owner state law, which itself is in effect independent of the State reservoir allocation law. Second who is an existing user? Is this person who used X gallons the year before the shortage? Or use X gals the year a water rights law is passed? Or historically used 100X gals but is temporarily shut down due to the economy? Is this only for big users recorded by IDNR?

Recommendation 7. Consumptive and non-consumptive use

This is of great significance for raw water allocation during a multi-year drought but of no significance in an emergency peak hour or peak day water shortage allocation.

Recommendation 8. This is good to consider but is not so simple as a principle for decision. This has complex implications for implementation given recharge modification. And while working through those implications, why not have similar protection for in-flow to water supply reservoirs?

Allocation policies based solely on basis of pricing have enormous negative social implications for small business, business whose product in fact is largely water or needs

cooling, poor people and fire protection. Price must be component but great care must be used when deciding in what manner and to what extent.

II. Document Two

For paragraph on in-stream flow policy - need to define "Local Action Process"

III. Document Three

First sentence of parag one is good – it should be focus of section

Need to restate final sentence of summary paragraph "TF finds health and safety to be highest priority and therefore recommends everyone acts wisely". – this is not a very profound or helpful overall recommendation. I would suggest an overall statement more on the lines that the TF finds that "great improvement is needed in the preparedness by State and local jurisdictions to develop and implement adequate water use priorities to protect public health and safety during times of serious water shortage. This must be given special attention."

I would split chart into those goals related to "developing water use priority to address a water shortage situation" and those related to sound long-term water policy. Other than first goal and a small part of the second, none of the other goals are related to "developing water use priorities to be implemented during periods of water shortage."

I would split first goal into 1) safety and 2) health as a start to redoing matrix to focus on task force objective.

The chart could be more useful if direction was given about who exactly is to do what exactly – there seem to be missing players (e.g. Indiana Dept of Homeland Security, Purdue University and local govt agencies). Again, if the chart is split between goals for developing priorities during a water shortage and other thoughts about water resource policy, it could be easier to assign responsibility to those accountable.