
Upcoming Water and Wastewater Regulatory Challenges

KEY CONSIDERATIONS

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Federal Developments

- Waters of the U.S.
- Water Transfers
- Regulation of Flow
- Electronic Reporting
- Endangered Species Act
- Groundwater Regulation
- Integrated Permitting



State Developments

- Water Resource Management
- Groundwater Management
- Minimum Instream Flow/Environmental Flows

Waters of the U.S.

- Massive expansion of jurisdiction
- Multiple challenges filed
- Currently stayed

Waters of the U.S.

- Which court (6th Circuit v. district courts)
- Administrative record
 - Recent Corps documents

Water Transfers

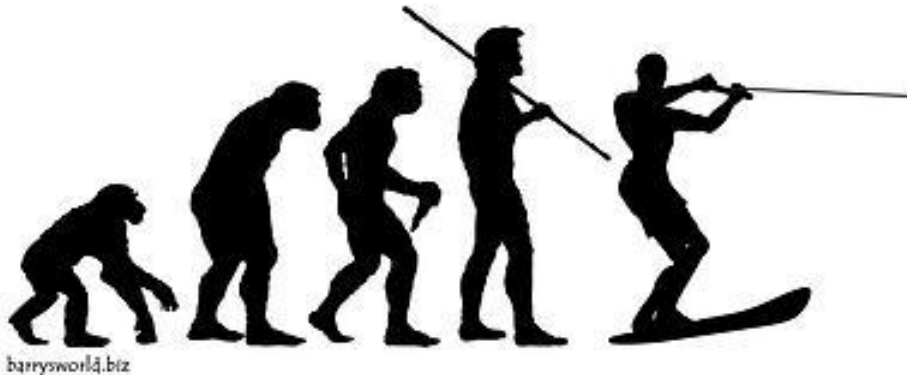
- 2008 EPA Rule
- Pending in 2nd Circuit
- Oral argument held December 2015



Changes in Federal Focus

Environmental Flows

- Water Quality Criteria for Flow
- Preservation of Instream Flow
- Hydrologic vs. Biologic



Regulation of **Flow**

- Flow as surrogate
- Role of flow in TMDL implementation
- Water Quality criteria
 - 10 states and 6 tribes
 - EPA Region 4 review of Alabama Water Plan

Example: Flow Water Quality Standards

State/Tribe	Water Quality Standard description of protected resource and corresponding goal
New Hampshire	<p>“surface water quantity shall be maintained at levels adequate to protect existing and designated uses”</p> <p>“These rules shall apply to any person who causes point or nonpoint source discharge(s) of pollutants to surface waters, or who undertakes hydrologic modifications, such as dam construction or water withdrawals, or who undertakes any other activity that affects the beneficial uses or the level of water quality of surface waters.”</p>
Rhode Island	<p>“quantity for protection of... fish and wildlife...adequate to protect designated uses”</p> <p>“For activities that will likely cause or contribute to flow alterations, streamflow conditions must be adequate to support existing and designated uses.”</p>
Vermont	<p>Class A(1)—“Changes from natural flow regime shall not cause the natural flow regime to be diminished, in aggregate, by more than 5% of 7Q10 at any time;”</p> <p>Class B WMT 1 Waters—“Changes from the natural flow regime, in aggregate, shall not result in natural flows being diminished by more than a minimal amount provided that all uses are fully supported; and when flows are equal to or less than 7Q10, by not more than 5% of 7Q10.”</p> <p>Class A(2) Waters and Class B Waters other than WMT1—“Any change from the natural flow regime shall provide for maintenance of flow characteristics that ensure the full support of uses and comply with the applicable water quality criteria.”</p>
New York	Class N fresh surface waters ... “There shall be no alteration to flow that will impair the waters for their best usages. ”
Virginia	“ Man-made alterations in stream flow shall not contravene designated uses including protection of the propagation and growth of aquatic life. ”
Kentucky	Section 4. “Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:... (c) Flow shall not be altered to a degree which will adversely affect the aquatic community.”
Tennessee	<p>Rule 0400-40-03-.03, Criteria for Water Uses: Section (3) The criteria for the use of Fish and Aquatic Life are the following, subsection (n) Habitat—“The quality of stream habitat shall provide for the development of a diverse aquatic community that meets regionally-based biological integrity goals. Types of habitat loss include, but are not limited to: channel and substrate alterations....stream flow changes....for wadeable streams, the instream habitat within each subcoregion shall be generally similar to that found at reference streams. However, streams shall not be assessed as impacted by habitat loss if it has been demonstrated that the biological integrity goal has been met.” Subsection (o) Flow—“Stream or other waterbody flows shall support the fish and aquatic life criteria.”</p> <p>“Section (4) The criteria for the use of Recreation are the following: Subsection (m) Flow—Stream flows shall support recreational uses.”</p>
Missouri	“Waters shall be free from physical, chemical, or hydrologic changes that would impair the natural biological community.”
Seminole Tribe of Florida	“Class 2-A waters shall be free from activities....that....impair the biological community as it naturally occurs....due to.... hydrologic changes. ”
Bad River Band of the Lake Superior Tribe of Chippewa Indians	<p>“Water quantity and quality that may limit the growth and propagation of, or otherwise cause or contribute to an adverse effect to wild rice, wildlife, and other flora and fauna of cultural importance to the Tribe shall be prohibited.”</p> <p>“Natural hydrological conditions supportive of the natural biological community, including all flora and fauna, and physical characteristics naturally present in the waterbody shall be protected to prevent any adverse effects.”</p> <p>“Pollutants or human-induced changes to Tribal waters, the sediments of Tribal waters, or area hydrology that results in changes to the natural biological communities and wildlife habitat shall be prohibited. The migration of fish and other aquatic biota normally present shall not be hindered. Natural daily and seasonal fluctuations of flow (including naturally occurring seiche), level, stage, dissolved oxygen, pH, and temperature shall be maintained.”</p>

EPA-USGS Technical Report

Protecting Aquatic Life from Hydrologic Alteration

- The natural flow regime and potential impacts of flow alteration on aquatic life;
- CWA programs that can be used to support the natural flow regime and maintain healthy aquatic biota; and
- A flexible, non-prescriptive framework to quantify targets for flow regime components that are protective of aquatic life.

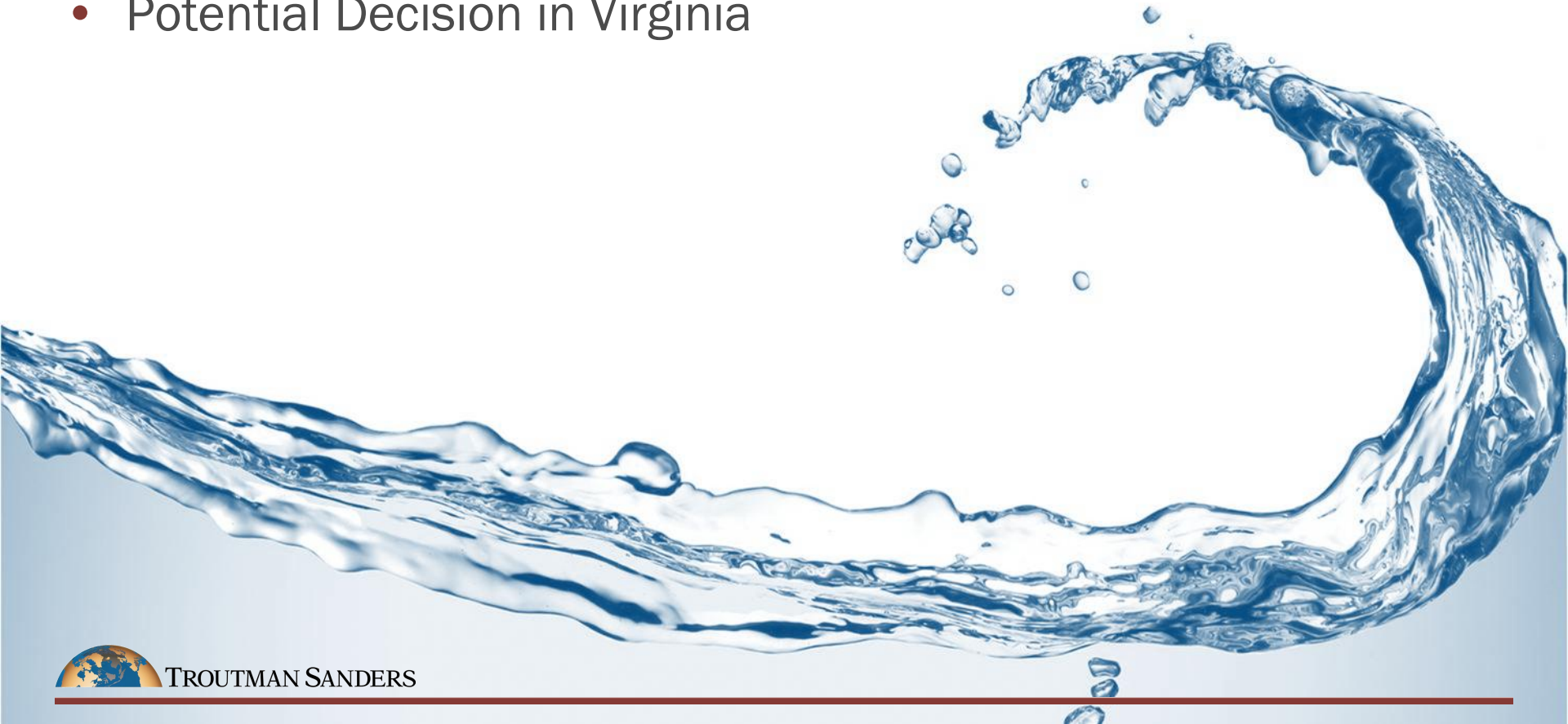
Endangered Species Act

- *The Aransas Project v. Shaw*, 756F.3d81
(5th Circuit 2014)



Groundwater Connection to **Surface Water**

- Groundwater Not Regulated by CWA
- Split in Federal Decisions
- Potential Decision in Virginia



Integrated **Permitting**

- Municipal stormwater and wastewater planning
- EPA Policy issued 2012
- Congressional Research Services Report October 2015
- Key issue = affordability

Electronic Reporting

- Rule finalized September 2015
- Phase I effective September 2016
- Phase II effective September 2020
 - Includes pretreatment program documentation

State Water Resource Management

- Water Supply Planning
- Impacts on Water Resources
- Most Notable: 7Q10

State Water Supply Planning

- Use of plan
 - Permitting (quality and quantity)
 - Development of alternative sources
 - Increasing Pressure on Surface Water

Environmental **Flows**

- Instream v. offstream
- How to prioritize
- Interaction with common law rights
- Permitting implications



Water Quality Trading

- Continuing Evolution
 - Sediment
 - Growth
 - Duration



Sufficiently Sensitive **Methods**

- EPA Rule
- Affects Permit Applications and DMRs
- Virginia Implementation

Triennial **Review**

- Finalized at January SWCB Meeting
- Outstanding Issue: Ammonia
- Compliance Schedules

QUESTIONS?

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