



Water Policy Task Force Report

JULY 2020



This report was created by the members of the Water Policy Task Force: Matt Cary (Gratiot County), Jodi DeHate (Missaukee County), Kristi Keilen (Clinton County), Bob Mantey (Tuscola County), Mike Mulders (Bay County), Larry Walton (St. Joseph County), and Jay Williams (Hillsdale County).

Michigan Farm Bureau (MFB) members at the 2019 Annual Meeting adopted [policy](#) stating we support: “MFB establishing a water usage member task force to examine and evaluate uses of Michigan’s vast freshwater resources and to make recommendations of steps to be taken to facilitate better water policy relative to agriculture, economic growth and population stability. The Task Force will provide a report to county leadership by policy development season in 2020.” The Water Policy Task Force members were selected by President Bednarski and met throughout the spring of 2020.

The Task Force identified the following top water policy questions for MFB members to consider:

- **Water use and withdrawal:**
 - Is there too much dependence on the current water use regulation given its lack of accuracy or ability to account for all surface/groundwater impacts?
 - What changes could be reasonably made to make the water withdrawal regulatory program work better?
 - How can farmers and MFB ensure farmers retain their riparian rights to access water for agricultural use?
- **Water Quality and Nutrient Management:**
 - Activists blame water quality concerns on large livestock farms – how can farmers and MFB encourage good practices and demonstrate their regulatory compliance?
 - There may be future regulations implemented for small livestock farms and crop farms – how can farmers and MFB show proactive stewardship and minimize regulatory impacts to affected farmers?
 - How can farmers and MFB get farms of all sizes involved in the Michigan Agriculture Environmental Assurance Program (MAEAP) and how can MAEAP techs address the need for practice improvements on non-participating farms?
- **Conservation Programs and Practices:**
 - How can farmers and MFB promote long term views of conservation practice benefits to reduce dependence on cost share or payment programs?
 - What programs are needed or how can current programs better address needs - and how can programs incentivize longer term or permanent practice changes?
 - How can farmers and MFB encourage conservation program administrators to be more responsive to the needs of farmers?
- **Communication and Education:**
 - How should farmers and MFB tell the story of farmer stewardship to non-agricultural decision makers and consumers?
 - How can farmers and MFB better communicate that environmental problems caused by many sources require everyone to be part of the solutions?
 - How can farmers and MFB better share communication and education with the Michigan Department of Environment, Great Lakes, and Energy (MDEGLE), County Drain Commissioners, and others?

THE TASK FORCE REVIEWED THE FOLLOWING KEY CONCEPTS GUIDING MICHIGAN'S EXISTING WATER POLICY:

The Great Lakes-St. Lawrence River Basin Water Resources Compact

The Great Lakes [Agreement](#) and [Compact](#) address how the states and provinces around the Great Lakes will responsibly manage water resources. They state that water cannot be diverted out of the basin even though the Constitution's [Commerce Clause](#) would normally prohibit the restriction of interstate or international sale of commodities, by establishing that the Great Lakes are not a commodity, but a resource the states and provinces bordering them will protect. In essence, the Compact says the Great Lakes are too important to be a commodity.

The Compact's ability to override the sale of water as a commodity is an important reason why MFB policy opposes efforts to charge fees or put prices on water withdrawals or uses. MFB Member [policy](#) states that we oppose "Diversion of water in its natural state from the Great Lakes Basin." If water withdrawal is taxed or users are charged fees, it undermines the Compact's statement that Great Lakes water is not a commodity and could possibly lead to legal challenges to the Compact's ability to deny water to other states or countries.

Michigan's Water Withdrawal Assessment Program

Michigan's water use regulation also comes from the Great Lakes Agreement and Compact. Each state and province in the basin is required to track and regulate water use. The other states only have a small portion of their jurisdiction inside the basin, so they developed permit programs for large quantity uses. However almost the entire state of Michigan lies within the basin and there are too many large quantity uses to go through permitting processes for all of them, so Michigan developed the [Water Withdrawal Assessment Program](#) and passed [state law](#) describing how it would protect both landowners' riparian rights and prevent stream depletion.

The Water Withdrawal Assessment Program is based on an internet tool that models potential impact to a stream from withdrawals and either authorizes the use or directs the applicant to MDEGLE for a more thorough site-specific review if the model predicts the withdrawal could deplete a stream. It provides many users with quick approval for water withdrawals, but an increasing number of users have difficulty with the state site specific review requirements. MFB [policy](#) calls for several improvements to the water withdrawal program.

Clean Water Act Delegated Authority

Michigan is one of two states with delegated authority under the federal [Clean Water Act](#) to regulate [waters of the United States](#). This means Michigan landowners seek a permit from MDEGLE instead of the U.S. Army Corps of Engineers to alter a regulated wetland, stream, or lake. It also means that Michigan's [Natural Resources and Environmental Protection Act](#) (NREPA) defines what waters are regulated. Therefore, when the Environmental Protection Agency (EPA) finalized the new [Navigable Waters Protection Rule](#) redefining waters of the United States, those changes did not apply to Michigan, and MDEGLE still issues permits that comply with state law. MFB [policy](#) supports Michigan's delegated authority and wetland permitting program because it provides some important exemptions for agricultural and sets time limits for how long MDEGLE can take to reply to a permit application.

WATER POLICY DISCUSSION TOPICS

Water Use and Withdrawal

Water withdrawal registration under the [Water Withdrawal Assessment Program](#) and required annual [water use reporting](#) are two separate programs but are related to each other for regulatory purposes because they are both used to verify water uses and compliance with the law. Knowledge of the law's requirements may be uneven around the state. The Task Force believes Farm Bureau policy recommendations should acknowledge and address the need for farmers to better understand water use regulation. For instance, farmers may not know:

- Registration is required for any water use capacity of 70 gallons per minute or more from surface or groundwater sources which began reporting after April 2009.
- Reporting annual water use from any source with pumping capacity of 70 gallons per minute or more is required (farmers can report for free to the Michigan Department of Agriculture and Rural Development (MDARD)).
- Any differences between registration and pumping capacity or final well installation must be reported, and failure to do so is the responsibility of the landowner even if they hired a well driller to install the well and complete registration paperwork.
- If a small well fails because of a nearby large quantity use, the large quantity user is responsible for providing the small user with a replacement water supply, but the state has a [dispute resolution](#) process that allows the large user to defend themselves if they do not believe they caused the small well's failure.

The Task Force feels well drillers are key to farmers getting good information about water use regulations, and that better training would help them both understand requirements and share that information with farmers. The Michigan Geological Survey has begun this work, but Farm Bureau policy recommendations should recognize the need for more resources to reach well drillers and legislative changes to support continuing education and improvement in well reporting.

The Task Force observed that data collection and region-specific models are badly needed both to improve predictions of impacts from withdrawals and to protect users' access to available water. However, the state is reluctant to accept new models even if they are vetted by hydrologists. Additionally, while there are [efforts](#) in some areas of the state to collect data about water availability and impacts from use, the cost to collect it in other areas could prevent some farmers from participating. It also may not be able to be used to improve the water use program if farmers fear sharing it or if it is not analyzed by experienced hydrologists. Farm Bureau policy recommendations should acknowledge both the needs for and challenges of collecting data.

Another challenge the Task Force highlighted was in water use efficiency. Many western states prioritize funding through farm bill and other programs for improving technology to maximize water use efficiency. However, cost share programs in Michigan have not prioritized water use efficiency projects enough to provide sufficient trained experts available to help. This hinders farmers' ability to implement efficiency gains which would lower the need for water use capacity. Farm Bureau policy recommendations on water use efficiency should include consideration of the lack of access to sufficient affordable expert resources to advise efficiency efforts.

WATER POLICY DISCUSSION TOPICS

Water Quality and Nutrient Management

The Task Force discussed water quality and nutrient management issues in both regulatory and proactive, voluntary stewardship practices. Most of the regulation of water quality and nutrients is for manure from large, permitted livestock farms. At times, MDEGLE has alleged that requirements and manifesting paperwork for manure being transferred or sold through brokers to other farms are not followed. This manifesting paperwork is required already under the 2015 CAFO permit, and requirements increased under the 2020 [CAFO permit](#) (currently being legally [challenged](#) by a coalition of farmers and farm organizations including MFB).

For smaller farms, the [MAEAP](#) program directs farmers to keep nutrient records and is an additional incentive to encourage farms to participate. It is designed to help farmers demonstrate responsible handling of manure, as well as soil testing, crop rotation, and yields, to determine proper application rates. Farm Bureau policy recommendations encouraging more farmer use of MAEAP are important to address manure management for both small and large livestock farms. Those recommendations should also include other accountability measures MAEAP helps farmers to address, such as water use reporting, nutrient management planning, yield calculation, and management of chemicals and fuel.

New programs to help farmers and custom haulers with responsible manure management may also assist with demonstration of better practices. Michigan State University and MFB are launching a voluntary [manure hauler certification](#) program for farm owners and custom haulers to offer continuing education on responsible manure handling practices, and when participants complete the education and on-site equipment inspection, they receive a discount on Farm Bureau insurance premiums, similar to the MAEAP program insurance premium discounts.

The Task Force discussed current incentives for MAEAP, including:

- The Farm Bureau Insurance discount
- Higher ranking for approval of farm bill program applications
- Personalized assistance with planning, record keeping, and practices

However, the Task Force recognized the MAEAP program needs additional incentives to encourage farmers to participate, as well as a robust support structure including MAEAP technicians, Conservation District staff, and Natural Resource Conservation Service (NRCS) staff. The Task Force recognized that fear of regulation - whether on manure or on fertilizer as has been done in other states such as [Ohio](#) - could be a strong motivator for farms otherwise reluctant to improve practices.

However, the Task Force also recognized the lack of economic advantage in conservation practices is a barrier for the average farmer to take on, unless they participate in cost-share or payment programs. There is no price incentive for sale of commodities grown using responsible nutrient management or protection of water quality, and the economic returns from better soil health or lower input costs can take a longer time than farmers can wait to see that return. Therefore, the Task Force believes Farm Bureau policy recommendations on MAEAP participation or more generally on nutrient management and water quality should include incentives to participate and economic analysis to help farmers better understand the advantages of participation, the disadvantages of such practices being regulated, and advocacy for economic support for implementing these practices.

WATER POLICY DISCUSSION TOPICS

Conservation Programs and Practices

Conservation programs range from [local watershed initiatives](#) that may pay for installation of practices in specific watersheds, to statewide programs like [MAEAP](#) that do not offer payments for practices but have other incentives for participation, to national programs offered through the [farm bill](#) or the [Great Lakes Restoration Initiative](#), which usually have the highest payment rates for practices, but which also have greater requirements for paperwork and accountability for participation. The Task Force noted that at each level, staffing and local connections with farmers are vital for program success, and that programs have challenges with adoption in areas where there are not enough trained staff proactively working to encourage participation.

Additional challenges with conservation programs, particularly through the farm bill, include sign up deadlines poorly matched to farmers' schedules, lack of communication from headquarters to county staff, software problems that interfere with timely sign ups, and others. Once farmers are signed up, compliance with program requirements can also be difficult, both because of the complexity of rules governing the programs, and because consultation and approvals from engineers, archaeologists, and other experts are required for many projects. Such challenges can disincentivize both first time and returning participation in conservation programs, which creates barriers for farmers to implement conservation practices when those practices have costs that are not returned in the short term to the farm's business model. The Task Force believes Farm Bureau policy recommendations should acknowledge systemic problems with conservation programs, not just at the local level, but at the state and national level, and that communication with [legislators](#) who create these programs is vital to addressing widescale improvement.

The Task Force also discussed specific conservation practices, both from the standpoint of improving effectiveness, and from the need to implement practices that will continue long-term. The Task Force recognized standards for some practices like NRCS filter strips are counter-productive for water quality protection because these practices limit harvesting to protect wildlife, which accumulates phosphorus in plant material that can be released into waterways. Alternatives to NRCS filter strips with more flexibility are becoming available for farmers in some areas, such as through [reductions on drain project assessments](#) for farmers who implement filter strips. However, many local initiatives providing smaller economic incentive for participation can be a barrier for farmers to participate in a difficult farm economy.

Further, if conservation practices are removed, they can undo the environmental benefit they provided, such as when [phosphorus levels increased](#) in the River Raisin watershed when many farmers were forced to remove filter strips along the River Raisin because USDA incorrectly removed them from the Conservation Reserve Program. Removing conservation practices can perversely encourage regulators to require practices such as [Minnesota's](#) required filter strip program, instead of recognizing there are areas where some practices work better than others. The Task Force believes that Farm Bureau policy recommendations for conservation practices should consider the landscape needs for specific practices, economic needs of farmers, and how to increase participation.

WATER POLICY DISCUSSION TOPICS

Communication and Education

Sharing information, providing education, and open communication was a topic the Task Force discussed extensively in the context of the issues in this report as well as generally with regulators and the non-farming public. The Task Force recognized that farmers need more information and education on rules, laws, and policies affecting them, such as:

- What activities are covered by Michigan's [Right to Farm](#) law and how to comply with its Generally Accepted Agricultural and Management Practices
- Where to access [tools](#) for planting, nutrient, yield, and rotation management
- Rules for constructing or maintaining [drains](#), drilling irrigation [wells](#), and similar activities

The Task Force believes Farm Bureau policy recommendations for farmer education should not only include existing partnerships and tools such as MSU Extension and MDARD, but should also seek new partners, such as conservation groups like [The Nature Conservancy](#), [crop advisors and consultants](#), and [Drain Commissioners](#). Additional partnerships to help with promotion of good stewardship, local food production, the importance of rural economies, and farmers as members of local communities can reach a wider audience than traditional communication to agriculture-oriented organizations and media.

The Task Force additionally recognized the opportunity for farmers to share information and educate partner agencies and legislators. Whether such education comes in the form of [mentors for new NRCS staff](#), regular meetings between County Farm Bureau Boards and County Drain Commissioners, or stakeholder listening sessions with MDEGLE, MDARD, EPA, or other agencies making regulations that affect farmers, the Task Force believes Farm Bureau policy recommendations on communication should support and encourage direct farmer participation in these discussions. This would give farmers the opportunity to share their experiences and expertise with agency staff – especially those who are new on the job or who do not have farming experience.

Communication with the non-farming public is vital, especially with fewer farmers and more disconnection with how and where food is produced. The Task Force noted farmers need to share their stories about both the challenges they face on the farm and their efforts to produce safe, affordable food and protect natural resources. This becomes even more important as air and water pollution increasingly comes from multiple, complex sources. The public often has poor understanding that, for instance, when a rainstorm causes an urban sewer overflow, it can also cause nutrients to be lost from a farm field – and that when those nutrients or bacteria reach waterways, algal blooms and beach closures can happen regardless of the source. Most of all, the Task Force recognized the non-farming public needs to understand that when water quality or air quality problems have multiple sources, they require everyone to be part of the solution. Examples of this communication include the recent publication of the [Pine River Watershed Management Plan](#), created with the help of farmers and local environmental groups. The Task Force believes Farm Bureau policy recommendations on communication should include support for collaborations and partnerships to find solutions all parties can perform.

Michigan Farm Bureau is grateful for the efforts of the Water Policy Task Force to assist County Farm Bureaus and members with understanding water policy in Michigan and with recommendations to help members develop and advocate for policy important to agriculture. If MFB members, policy development committees, or County Farm Bureaus have questions or wish to discuss these policies further, you are encouraged to reach out to members of the task force:

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