

**STATEMENT BEFORE THE  
HOUSE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE  
ON PENNSYLVANIA WETLANDS ISSUES AND LEGISLATION  
POCONO MANOR, PA AUGUST 25, 1995**

Thank you for holding this hearing on wetlands issues and legislation in Pennsylvania. The League of Women Voters of Pennsylvania appreciates the opportunity to present its views to this Committee on wetlands issues in the Commonwealth.

Thank you also for holding a hearing in the Pocono Mountains, an area that has been written off in many minds as the home of the heart shaped bathtub but truly an area that should not be so dismissed. The Poconos are a unique area that demonstrate very clearly why we cannot write a "one size fits all" policy on wetlands protection for Pennsylvania. You will hear from many local organizations and individuals today who will provide excellent information about the area and its wetlands. We urge you also, to look around you and observe the beauty of the land, the beauty that brings visitors back year after year and provides the basis for a vibrant tourist economy. Much of this beauty depends on the wetlands that occur throughout the region.

The League of Women Voters of Pennsylvania is a longtime supporter of wetlands protection in the state. We supported the 1979 amendments to the Dam Safety Act which added regulation of water obstructions and encroachments to the already regulated activities (dams and reservoirs) of the Act. Our support was based on a recognition that wetlands would be better protected by the amendments that were adopted.

In 1983 we saw a need to increase public awareness of the wetlands protection provisions of the Dam Safety and Encroachments Act and published a fact sheet designed to explain the various state and federal programs which regulated activities in wetlands. In 1990 we published a position paper on wetlands issues in the state. That position paper dealt with many of the issues that have been resurrected in the legislation recently proposed as "Wetlands Conservation and Management Acts" specifically HB 200 and HB 1049.

We would like now to summarize our position on several of those issues:

**MAPPING or WETLANDS IDENTIFICATION AND CLASSIFICATION**

Both HB 200 and HB 1049 require the Department of Environmental Protection to "identify and classify all wetlands in the Commonwealth." This would be a mind boggling task and would



require a great deal of unnecessary work. Most of the wetlands in the state are not on property destined for development. What is the point in identifying wetlands on state gamelands or lands held by the Nature Conservancy?

The League believes that identification of wetlands is the responsibility of the landowner wishing to use that land, just as it is his responsibility to identify other watercourses or soil types. The expense of mapping wetlands should not be borne by the taxpayers.

HB 200 and HB 1049 attempt to develop a classification scheme to apply to all wetlands across the state. We do not believe that is a proper role for the legislature. Wetlands vary in their functions and values, that is true. But that variation can only be defined by good science. We have developed good science in Pennsylvania over the past few years and the League believes that the scientists who are doing their job should be allowed to continue to do so.

The National Academy of Science recently released a report on wetlands delineation which notes that relying on broadly drawn categories to determine the usefulness or value of specific wetlands is probably not possible. As we said before, we do not believe a "one size fits all policy" will work and should not be attempted.

#### COMPENSATION

HB 200 and HB 1049 take different approaches to the subject of compensation. HB 200 establishes a principle of "Inverse Condemnation," that the denial of a permit "constitutes a compensable injury without a declaration of taking.." The League believes that the determination of when regulation goes so far as to constitute a regulatory taking belongs in the courts where it has rested for many years. Again, this is a situation where each case will differ and must be considered on its individual merits. Our review of various court decisions on regulatory takings leads us to the opinion that the courts look closely at each case and determine each on its particular circumstances. This is proper and attempts should not be made to legislate a blanket definition of a regulatory taking.

HB 1049 provides that property containing wetlands should be assessed at a lower value, depending on the classification of wetlands. We support this concept. The presence of extensive wetlands may decrease the development value of some land and should be considered in determining the assessed value of property. However, legislation is not needed to do this. It is happening right now here in Monroe County and probably elsewhere in the state. Maybe additional education is needed, but we do not believe legislation is.

#### MITIGATION

Mitigation is not addressed in HB 200 or HB 1049 but we would like to include a brief comment on the subject.

The League believes that mitigation, or creation of replacement wetlands, should be allowed only as a last resort. Avoidance of wetlands should be the principle under which development planning occurs. Where replacement wetlands are required they should be located in the same watershed as the wetland destroyed.

## INDIVIDUAL LOT OWNERS

The burden on small lot owners who purchased lots before wetlands regulations were adopted has been a subject of great concern, particularly here in the Poconos where large landholdings with extensive wetlands systems were developed in the '60's and '70's. Frequently those developments consisted of roads in upland areas and many of the lots are in wetlands areas. Unsuspecting buyers purchased land they were unable to use when regulations changed after they bought the land but before they attempted to build on it.

We sympathize with those buyers. We believe a regulatory program should be developed to ease their burden. However, the recently proposed General Permit (GP-15) which would allow an unlimited number of half acre fills for individual lots throughout a subdivision goes much too far. Proposed GP-15 would apply to anyone who owned land at the time the regulation establishing GP-15 becomes final. Right now, speculators are buying lots at tax sales with plans for reselling them when GP-15 becomes final. Do we really want to reward this practice?

Discussions had been going on in recent years to develop a more limited scheme to ease the burden on lot owners who purchased their lots before wetlands regulations were adopted. A General Permit to cover this circumstance is appropriate provided suitable conditions that would allow townships a voice in how the lot is developed are included.

## BUYER NOTIFICATION

The League believes that buyers should be notified when land being transferred contains wetlands. This requirement would help to break the cycle of unsuspecting buyers being unable to build on their land. Such a requirement presently exists for lots not served by central sewage and could easily be adapted for lots containing wetlands.

In conclusion we would like to reiterate our belief that the wetlands regulatory program that has developed in Pennsylvania over the last several years is based on good science and is working well. We do not believe new legislation is needed at this time; modifications to the regulations to ease the burden on individual lot owners caught by poor development practices of the past are appropriate.

There appears to be a fever around to undo environmental regulations. However, poll after poll reiterates that the public does not support that movement. Now, more than ever, the public is aware of the importance of wetlands. Now, more than ever, the public is aware that wetlands can be protected and developments can be planned around, and even enhanced by, wetlands.

We call on this committee to demonstrate leadership in the area of wetlands protection. The clean water and clean air that we depend on for human survival depend on the existence of healthy wetlands systems. Your leadership is needed in order to assure the future. Please give us that.

Thank you.

