

Personalities in Politics — An Interview With Former DEQ Director Russell Harding

Russell HARDING was Department of Environmental Quality (DEQ) Director under former Gov. John ENGLER. He is currently the Senior Environmental Policy Analyst for the Mackinac Center for Public Policy.

With a background in geology, Harding came to Michigan government when he was hired to run the state park system with the Department of Natural Resource (DNR) in the former Gov. Jim BLANCHARD administration in the early 1990s. Later he became head of the environmental side of the DNR and ultimately head of the DEQ.

The interview, which took place Wednesday, was primarily pointed toward Gov. Jennifer GRANHOLM's proposed Water Legacy Act as a topic. The following are excerpts from that interview:

Q. How would you describe the changes that have taken place at the Department of Environmental Quality (DEQ) under Gov. Granholm?

A. The DNR has a culture that goes back a long ways that I would term as being bottom up. This certainly isn't all bad, but it does have some ramifications. I think under the Engler administration, particularly when we split off DEQ, due to the fact that environmental considerations and the economic life of the state were both so important, we paid an awful lot of attention to the way the agency conducted its business.

We took that approach because the one thing with DEQ, and I'd say this is more so than with DNR, is that when it comes to the business climate in this state, the DEQ is arguably the most important agency in state government. It has a major impact on economic development, even more so than MEDC (Michigan Economic Development Corporation).

So, to get back to your question, I would say that I've been getting a lot of reports from folks that DEQ is more difficult to deal with at the field level. By that I mean kind of the day-to-day interface. There doesn't seem to be as much supervision from the top, to sort of expedite things and make sure things are conducted in a fair and even fashion.

This is probably more typical of what used to be. By that I mean that our tenure was probably more of an anomaly. We put so much emphasis on the backlog and keeping things moving.

Q. On the issue of water diversion. Are you aware of any leaders in the past, former governors or just any leaders of any sort, who ever advocated diverting Great Lakes water?

A. No, I'm not aware of any. It's a nonpartisan issue. I can't envision any governor, Republican or Democrat, who wouldn't want to protect Great Lakes water from diversion. Former Governor Engler was very strong on that and his predecessors were, as well.

Q. From that standpoint, who's the enemy here? What are people referring to when they say, "We're not going to let this happen?" Where's the crisis?

A. I don't think there is a crisis. What happened is that back in the 1990s, the Great Lakes governors asked a group of auditors for an opinion about the approach that they were taking. This group of legal experts came back and basically said they weren't sure that the Water Resources Development Act (WRDA) and the Great Lakes Charter were sufficient to stand legal scrutiny in higher courts.

So, in other words, what they were saying is if California really wanted the Great Lakes water and really pushed the issue, they weren't sure that any governor could simply say "No."

In response, the Great Lakes governors started a different process to try to deal with that. Interestingly enough about a year or two after that, a second group of attorneys looked at it and arrived at exactly the opposite conclusion.

What's happening right now, I think, is there are really two issues in play and we're seeing a little intellectual dishonesty in linking them. Those two issues are water diversion and groundwater permitting. These are really two separate issues.

In Michigan we have riparian water use laws. Basically, what that means is that you own the water if you own the land. In other words in you have surface ownership of the land you have the right to use the water on it, as long as you don't interfere with your neighbor. That approach is typical of the Eastern states in this country. It's typical for the Great Lakes states.

Q. But the administration's position has been that Michigan is trailing behind the other Great Lakes states when it comes to these issues. Is that so, and if so, how did we fall behind?

A. I don't think the administration is being entirely accurate in their statements, at least as far as how those statements are being interpreted, when they indicate that Michigan is somehow lagging behind other Great Lakes states in the way we deal with ground water. That's just not true.

With exception of Minnesota, where the western half of the state is semi-arid, there is a ground water permit process that's based on a scheme that appears to be similar to what has been proposed with the Water Legacy Act.

No other Great Lakes state, including New York and Pennsylvania does that. Now, just this spring, Wisconsin did some legislation, but that was much more limited in scope than what's being proposed here. They have permitting process on very high quality trout streams. Their new permitting process is not general and across the board.

So to claim that we need a ground water permitting process in order for us to have a seat at the table, or equal stature with the other Great Lakes states, simply is not true.

Now, I do believe some of the other states are ahead of us on water use reporting. We asked for appropriations every year of our tenure to be able to do that. So, I would argue that that's appropriate. But what's being proposed with this Michigan Water Legacy Act takes Michigan water law and turns it upside down. It would take the ownership of water away from private landowners. So this isn't a tweak, or some small change.

And I would argue that it would be a change that was absolutely not necessary from an environmental standpoint.

Q. So you don't buy the idea that Michigan's water supply is somehow threatened?

A. We have an absolute abundance of ground water in Michigan. In fact most people have to have sump pumps to keep it out of their basements. So, it's not a water shortage issue, contrary to what some people might say.

Now, that doesn't mean there can't be local problems. If you have a large irrigation system for a farm in the Saginaw County area, you might impact an adjacent neighbor. But, as you're probably aware of, the Legislature passed a law, which the Governor signed, that would allow the agency

to file a water order and require that to be dealt with.

But what Governor Granholm has done is linked the ground water situation with water diversion.

Q. As you know, the legislature has passed legislation, which the governor signed into law, under which Michigan groundwater aquifers would be mapped. Do you expect to see the aquifers mapped in Michigan on a timely basis?

A. Well, I think we'll have a lot better information about the aquifers than we currently have. But I think you need to be realistic with your expectations. I think the technical staff at DEQ will say this, that the hydrogeology in Michigan is highly variable.

By that I mean that in one area you may have a lot of sand, while you may have bedrock in another area. We have a very complex hydrogeologic situation. So, what I'm saying is that it probably would not be accurate to say we're going to map all of Michigan and know exactly what exists everywhere is probably not accurate.

However, I think what they're doing probably makes a lot of sense because I think we'll be able to find a lot of the broader trends.

Q. But, politically, you don't expect to see the administration dragging its feet on the mapping?

A. No. I think what you'll have is the same thing you almost always have with government. I think they'll come back and say there isn't enough money. So, as I say, I think you'll end up with better information than we currently have. But if you want to know precisely about ground water levels anywhere in the state, you're not going to get that.

Now, there's a way to remedy that, which is what we did with Nestle water when they came to Big Rapids. We had a very high quality hydrogeologic mapping of the aquifer done before they were issued a permit.

So, if you have a large withdrawal that someone is proposing for bottled water or any other purpose, such as agricultural processing, washing cherries or whatever, you can get individual data. But to try to do that across the entire state would take a lot of money and time.

So, I don't think the administration will drag their feet on that. I understand that the governor is saying that it's not necessary to do that for her to move ahead with her Water Legacy Act. Generally, the agencies do pretty much what they're told to do.

Q. Now, back to your intellectual dishonesty statement. If as a result of that approach, the Water Legacy Act were enacted — how would that be damaging?

A. Let's put it this way, if I could come up, in the abstract, with anything from an environmental standpoint that would kill jobs in Michigan, this (Water Legacy Act) is what I would come up with.

I say that because one of the competitive advantages we have here in Michigan, particularly in regard to manufacturing, is an abundance of water. You're not going to have an assembly plant in Phoenix, Arizona.

I spent 19 years in Arizona. In fact I worked in the Arizona Land Department. Often times you have to drill 1,500 feet down to find ground water in Arizona. But in Michigan we have an abundance of water and that is one of our solid competitive advantages.

But even more so than that, if you subject folks to a rigorous ground water permitting process, which is exactly what the Governor has proposed with this Act, we will have created an environment that is very damaging to growing Michigan's economy.

This Water Legacy Act is very friendly to people objecting to ground water usage for almost any reason. It's very friendly to land use issues. In fact, I would argue that the real impetus behind this is not a shortage of water, it's that the Act would be a tool to regulate land use.

So this would aid those who do not want to see development.

Actually, getting back to the Big Rapids situation, which was sort of the poster child for this whole thing. I would argue that most of the opposition to the plant going in there was based on classic land use issues. That's not to say that some people, I think needlessly, were concerned about the water withdrawals, but for the most part it was a question of some people who just did not want it (the plant) to be built there.

You couple that with the fact that there will now be more stringent regulations under the Clean Air Act affecting 25 Michigan counties, and you start painting a picture that this state is really not a good place to do business.

Q. So these regulatory issues are part of what have to be weighed when one tries to balance economic concerns with environmental concerns?

A. I would argue that if we needed to do this sort of thing because we were really running out of water that would be a justification for doing it. In other words, you'd have to bite the bullet and say; "As much as we hate losing jobs, water's more important." But I think any examination of the data shows that's not the case. Across this state we have plenty of ground water.

And when you're talking about the ground water permitting, and environmental permitting in general, you're talking about the gate you have to enter before you can get anything done as a business. If you never get through that gate, you never

even get to the other issues — so it might not make any difference what the worker compensations laws are and other issues if you can't get your permit.

Q. According to the sedimentologists specializing in the Great Lakes, we can expect the Great Lakes water levels to head back up again as part of the regular cycle. In your judgment will this water diversion issue lose its viability when we're at a point where people are complaining about high water levels as they did in the 1980s?

A. That's a big part of where I think there has been a certain amount of intellectual dishonesty. I think with the abundance of water we have the idea of going to permitting is going to be a tough sell. So I think the way you do this, if this is the goal, is to try to tell people that this is all about diverting Great Lakes waters.

Obviously, the vast majority of Michigan residents will consider preventing the diversion of Great Lakes waters as a high priority. So that's where I think there's some dishonesty here — tying the diversion issue to ground water permitting at a time when the Great Lakes are at the lower end of the cycle.

But, beyond that, I don't think you can sell this unless it's on the basis that the other Great Lakes states are ahead of us. And that, as I've said, just isn't accurate.

Q. Now, what do you think about the 2001 Great Lakes Annex, which has been back in the news recently?

A. Michigan is the only state completely surrounded by the Great Lakes. So we look at things somewhat differently. So if you're (Gov.) Bob TAFT in Ohio, for example, the other part of Ohio is going to exert political influence on you.

I would argue that the greatest threat for diversion is not Arizona, it's our fellow Great Lakes states that are not entirely in the Great Lakes basin. I'm a lot more worried about Akron than Arizona.

We currently have a gubernatorial veto granted by Congress. Why would we want to trade that for a super-majority vote of Great Lakes governors? This just doesn't make common sense.

Not that I have anything against the other governors, but I don't trust them on Great Lakes waters. I would think any governor in the state would stand tall on the issue of preventing diversion. If they didn't they'd get booted out.

So why would we abandon what's worked? Now I know the governor and others will say that they still wouldn't be giving up the veto. But if I'm the governor, why would I want to subject myself to signing onto this supermajority vote if I still wanted to fall back on the veto?

I think that would open the door for a lot of political pressure from the other governors to honor the agreement you've just signed up for.