State/Tribal/Federal Coordination Workshop:

The Clean Water Act: Applying Sound Science to Address Program Revisions, Court Challenges and Opportunities for Wetlands and Headwaters

March 27-29, 2007
National Conservation Training Center
Shepherdstown, West Virginia

Workshop Director:
Jeanne Christie, Executive Director, Association of State Wetland Managers, Inc. (ASWM)

Background: The coming year will once again be an eventful one for federal/tribal/state/ coordination in addressing wetlands and other aquatic resources. The multiple opinions in the Supreme Court case, Rapanos v. United States and Carabell v. U.S. Army Corps of Engineers raised many questions concerning the extent of Clean Water Act jurisdiction for wetlands and headwaters. Resolution of these questions including interpreting "significant nexus" will require using the best available science and other information to make jurisdictional determinations under the Clean Water Act. There are many other important policy initiatives. The U.S. Army Corps of Engineers has proposed rules for mitigation and nationwide permits which require review and discussion. The U.S. EPA is beginning planning for a 2011 assessment of the condition of the nation's wetlands. Other initiatives include a new wetland mapping standard, the Corp's new permit data base, changes in the FWS wetland mapping program, continuing work regionalizing the Corp's 87 Wetlands Delineation Manual, and renewed interest in state assumption and state programmatic permits. All of these important areas merit discussion between states, tribes, and federal agency staff.

The purpose of this annual workshop is to help state and tribal wetland program managers and federal agencies respond effectively and cooperatively to these and other challenges in the coming year. This will be a year of change in wetland and water program policy at the state, tribal and national levels. Workshop presentations and discussions during the three day workshop will help participants prepare for the challenges ahead.

Goal: To identify priority actions and to ensure the states, tribes, and federal agencies have information needed to effectively respond to changes in national and regional wetland policies and programs in the coming year. Specifically:

- Jurisdiction-Providing scientific information to support CWA jurisdiction decisions.
- Policy Changes-Identifying the potential impacts of rulemaking initiated in 2006 on states and tribes.
- Scientific Standards-Coordinating state, tribal and federal development of wetland delineation criteria, wetland mapping standards, and other innovations to support regulatory and nonregulatory wetland programs at the state, tribal and federal levels.
- State Program Development-Information to strengthen the application of 401 certification to federal permits that impact state water quality. Increasing delegated responsibilities through SPGP's and assumption; evaluating state/tribal program completeness. Supporting monitoring and assessment as well as wetland mapping. Encouraging non-regulatory program development and identifying opportunities to coordinate with other state programs to support wetland program development.
- Accountability-Discussion on national assessment methods under discussion within EPA in preparation for a national wetland condition assessment.
Host Organizations:
- Association of State Wetland Managers, Inc.
- International Institute for Wetland Science and Public Policy

Conference Supporters:
- U.S. Environmental Protection Agency
- U.S. Army Corps of Engineers

Cooperating Party:
- U.S. Fish & Wildlife Service

AGENDA
(PowerPoint Posted 4-18-07; Updated 4/26/07)

Day 1. Tuesday, March 27, 2007: Carabell/Rapanos.

8:00a.m.-8:30a.m. Registration

8:30a.m.-8:45a.m. Welcome and Overview of Workshop Goals. Jeanne Christie, Association of State Wetland Managers, Inc. and Peg Bostwick, Michigan Department of Environmental Quality-LWMD

8:45a.m.-9:00a.m. Introductions by Workshop Participants: Introduction from each participant: name, affiliation. Jeanne Christie, Association of State Wetland Managers, Inc.

9:00a.m.-9:30a.m. Invalidation of the Tulloch Rule. Donna Downing and Rachel Fertik U.S. Environmental Protection Agency

9:30a.m.-10:00a.m. Break

10:00a.m.-10:45a.m. Rapanos and Clean Water Act Jurisdiction Cases Post Carabell/Rapanos. Stephen Samuels, U.S. Department of Justice

10:45a.m.-11:05a.m. Guidance to the Field Following the Carabell/Rapanos Decision. Russell Kaiser, U.S. Army Corps of Engineers

11:05a.m.-11:35a.m. States’ Rights and Responsibilities Under the CWA: Rapanos and Nationwide Permits

11:35a.m.-12:05p.m. Congressional Outlook. Kelly Reed, Legislative Assistant, Office of Senator Feingold

12:05p.m.-1:05p.m. Lunch

Panelists:
- Dave Fowler, Association of State Floodplain Managers
- Ellen Gilinsky, Association of State and Interstate Water Pollution Control Administrators
- Carol Bambery, Association of Fish and Wildlife Agencies
- Peg Bostwick, Association of State Wetland Managers, Inc.

Three questions to answer:
1. Why are the waters that need to meet the significant nexus test important to resources/services that your organization works to protect/provide?
2. What is the potential impact of the loss of federal jurisdiction for these resources?
3. What information do your members work with, compile/develop/ that could be used to help make significant nexus determinations?

2:35p.m.-3:00p.m. Break

3:00p.m.-3:30p.m. Cumulative Impacts Analyses in Assessing Significant Nexus. Pat Parenteau, Vermont Law School

3:30p.m.-4:00p.m. Discussion Session: Making the Case for Significant Nexus. Moderators: Jon Kusler, Association of State Wetland Managers, Inc. and Pat Parenteau, Vermont Law School

4:00p.m.-5:15p.m. Identifying Information Available Nationally and/or State-by-State to Provide the Basis for Significant Nexus Determinations (qualitative and nonqualitative information, maps, GIS, watershed plans, literature, etc.). Moderator: Jeanne Christie, Association of State Wetland Managers, Inc.

Federal Panel:
- Concepts and Data Relevant to Establishing the Significance of Headwater and Wetland Connections to Navigable Waters. Jud Harvey and Richard Alexander, U.S. Geological Survey
- Peter Stokely, U.S. Environmental Protection Agency

5:15p.m.-5:30p.m. Next Steps, Collaborative Federal/State Information Gathering, General Discussion.

5:30p.m. Reception

8:00 a.m.-8:30 a.m. ORM2. Jon Soderberg, U.S. Army Corps of Engineers

8:30 a.m.-9:30 a.m. Section 404 Policy and Program Changes Outlook for 2007. Moderator: Jeanne Christie, Association of State Wetland Managers, Inc.

- Upcoming Policy and Program Changes. Mark Sudol, U.S. Army Corps of Engineers
- Upcoming Policy and Program Changes. Brian Frazer, U.S. Environmental Protection Agency
- Proposed Mitigation Rule. Palmer Hough, U.S. Environmental Protection Agency

9:30 a.m.-10:00 a.m. Break

10:00 a.m.-11:00 a.m. Compensatory Mitigation Success—Improving Performance Moderator: Lynda Saul, Montana Department of Environmental Quality

- James Robb, Indiana Department of Environmental Management
- Collis Adams, New Hampshire Department of Environmental Services
- Randy Bournique, Ohio Environmental Protection Agency, Division of Surface Water

1. From your perspective, what are the most significant changes in compensatory mitigation that have occurred in recent years? Are they reflected in the proposed rule?
2. What are the priority actions that need to be undertaken to improve success in compensatory mitigation?
3. Has the proposed rule changed mitigation policy in your state?

11:00 a.m.-12:00 p.m. Federal Delineation Manual Supplemental Changes
Panel of Members of Regional Supplemental Workgroups
Moderator: Mark Sudol, U.S. Army Corps of Engineers

State/Federal Panel:

- West Mountains and Valleys. Bill Kirchner, U.S. Fish and Wildlife Service
- Arid West. Janet Morlan, Oregon Department of State Lands
- Midwest. Sue Elston, U.S. Environmental Protection Agency
- Great Plains. Ted LaGrange, Nebraska Game and Parks Commission
- Atlantic and Gulf Coastal Plain. Jennifer McCarthy, U.S. Army Corps of Engineers

Panel Questions: (Answers will be prospective where supplements are still under development.)

1. What were the important revisions in this supplemental?
2. What still needs to be addressed (may not have been addressed due to insufficient information; may be an issue that really isn’t part of the supplement)?
3. What advice do you have for supplements that are just being started and have not yet begun (what to do; what to avoid)?
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<td>12:00p.m.</td>
<td>Lunch</td>
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<td>1:00p.m.-1:30p.m.</td>
<td><strong>Evaluation of Wetland Grant Programs</strong>, Lynda Hall and Romell Nandi or Rebecca Dils, Wetlands Division, U.S. Environmental Protection Agency</td>
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<td>1:30p.m.-5:00p.m.</td>
<td>There will be two breakout sessions.</td>
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**Track 1:**

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<td>1:30p.m.-2:30p.m.</td>
<td>Progress and Challenges Applying 401 Certification to Federal Permits. Moderator: Brian Topping, U.S. Environmental Protection Agency</td>
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<td>Civil Works MOA. Jim Stoutamire, Florida Department of Environmental Protection</td>
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<td>401 Cert Compliance. John Dorney, North Carolina Division of Water Quality</td>
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<td>Conditioning Federal Waters. Scott Satterthwaite, Kansas Department of Health and Environment</td>
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<td>2:30p.m.-3:00p.m.</td>
<td>Break</td>
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<td>3:00p.m.-3:30p.m.</td>
<td>Tribal Wetland Programs: Opportunities and Challenges. Ric Gitar, Fond du Lac Reservation</td>
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<td>3:30p.m.-5:00p.m.</td>
<td>Expanding State/Tribal Leadership-Opportunities and Challenges. Moderator: Kathy Hurld, U.S. Environmental Protection Agency</td>
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<td>Chris Potter, California Resources Agency</td>
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<td>Jenny Garland, Kentucky Division of Water</td>
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<td>Kevin Herkamp, Oregon Department of State Lands</td>
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<td>Pat Reixinger, New York State Department of Environmental Conservation</td>
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<td>Dave Davis, Virginia Department of Environmental Quality</td>
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**Track 2:**

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<td>1:30p.m.-2:00p.m.</td>
<td><strong>Destroying the Nation’s Kidneys: When a Wetland Becomes a Pollution Source</strong>, Mark Gernes, MN Pollution Control Agency</td>
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<td>2:00p.m.-2:30p.m.</td>
<td><strong>Marsh Die Back Short-Term or Significant Trend in Coastal Wetlands?</strong>, Amy Jacobs, Delaware Department of Environmental Control</td>
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<td>2:30p.m.-3:00p.m.</td>
<td>Break</td>
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<td>3:00p.m.-3:30p.m.</td>
<td><strong>Thresholds for Change: Developing Defensible Metrics for Determination of Significant Wetland Assessment in Cumulative Impacts and Permitting Decisions</strong>, Jane Awl, Tennessee Valley Authority</td>
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<td>3:30p.m.-4:00p.m.</td>
<td><strong>Mapping Ponds as Part of Status and Trends</strong>, Tom Dahl, U.S. Fish and Wildlife Service</td>
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<td>4:00p.m.-5:00p.m.</td>
<td><strong>The Real Truth About Wetlands: Outreach Efforts to Help the Public Understand Wetlands</strong>, Moderator: Lynda Hall, U.S. Environmental Protection Agency</td>
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States Panel Presentation:

- Cherie Wieloch, Wisconsin Department of Natural Resources
- Lynda Saul, Montana Department of Environmental Quality
- Denise Clearwater, Maryland Department of Environmental Protection

7:00p.m.-8:00p.m. Evening Discussion with Tom Dahl and Ralph Tiner, U.S. Fish and Wildlife Service

7:30p.m.-9:30p.m. Bonfire

Day 3. Thursday, March 29, 2007: State/Federal Cooperation Opportunities for Improving Program Delivery Through Sound Science

8:00a.m.-9:00a.m. **Progress Report and Opportunity for State and Tribal Input on EPA’s 2011 National Wetland Condition Assessment.** Mike Scozzafava, U.S. Environmental Protection Agency

9:00a.m.-9:45a.m. **Discussion of New Tools, Technology Available Through the NWI Mapping Program.** Dave Stout, Ralph Tiner, and Tom Dahl, U.S. Fish and Wildlife Service

9:45a.m.-10:15a.m. Break

10:15a.m.-10:45a.m. Establishing Shared State Wetland Mapping, Standards. Margarete Heber, U.S. Environmental Protection Agency and Bill Wilen, U.S. Fish and Wildlife Service

10:45a.m.-11:15a.m. **Overview of FEMA’s Mitigation Programs and Opportunities for Collaboration.** Mike Grimm, Deputy Chief, Federal Emergency Management Agency

11:15a.m.-12:00p.m. State Federal Challenges and Opportunities

- Craig Hooks, Director, Office of Wetlands, Oceans and Watersheds, U.S. Environmental Protection Agency
- Dave Evans, Director, Wetlands Division, U.S. Environmental Protection Agency

12:00p.m.-1:00p.m. Lunch

1:00p.m.-5:00p.m. EPA Meeting with States in the Pilot Wetland Grant Program (other states/tribes welcome)

1:00p.m.-1:10p.m. **Introduction and Objectives for Pilot Workshop.** Lynda Hall, U.S. Environmental Protection Agency

1:10p.m.-2:00p.m. **Direction of National Program: How to Continue to Address the Varying Needs of State/Tribal Programs through the Grant Program.** Group Discussion

2:00p.m.-2:15p.m. **HQ Summary of 1st Year Progress Reports.** Chanda Littles, U.S. Environmental Protection Agency

2:15p.m.-2:25p.m. Break
2:25p.m.-2:45p.m.  Examples of State/Tribal Program Implementation Efforts. Jim Stoutamire, Florida Department of Environmental Protection and and Alex Cabillo, Hualapai Department of Natural Resources

2:45p.m.-4:15p.m.  Panel: Discussion

Panel will address meeting environmental results, agency coordination/partnership, hurdles to program implementation and helpful resources/tools.

Panelists:

- Peg Bostwick, Michigan Department of Environmental Quality-LWMD
- Alex Cabillo, Hualapai Department of Natural Resources
- Mark Gernes, Minnesota Pollution Control Agency
- Kevin Herkamp, Oregon Department of State Lands
- Chris Potter, California Resources Agency
- Jim Stoutamire, Florida Department of Environmental Protection

4:15p.m.-4:30p.m.  Meeting Highlights/Next Steps/Wrap-Up. Connie Cahanap, U.S. Environmental Protection Agency

4:30p.m.-5:00p.m.  Adjourn