

## **Watershed Citizenship –March 12, 2019 Iowa water conference**

Prof. Neil D. Hamilton – [neil.hamilton@drake.edu](mailto:neil.hamilton@drake.edu)

Introduction - I want to thank Melissa and Rick - and the planning team for the invitation and opportunity to be back here today. I last spoke in 2015 on the topic “Sixteen Things You Need to Know About the Des Moines Waterworks Lawsuit.” It was a timely and important topic then – and still is today. I know not everyone agrees but my view is the lawsuit was much needed – a watershed event that changed for the better the trajectory of the water quality debate in Iowa. If there is time at the end for questions perhaps we can discuss what lessons we learned from the suit – here is a hint – apparently not many.

In shaping today’s talk our hosts asked me to address the idea of watersheds – and citizenship – concepts familiar to us all– but perhaps ones we don’t think of joined together. Since being invited I have spent many hours thinking about Watershed Citizenship and am excited to share these thoughts – in good faith.

Our Water - As many of you know - last year we produced 30 episodes of a weekly educational video series Our Water Our Land. If you saw any episodes I hope you enjoyed them – if you have not seen them I encourage you to go to the Center’s web site to check them out. As you will see they cover a range of topics – several we will touch on today. The exciting news a new season of Our Water will start in May.

I call the series Our Water Our Land because it is the most effective way to approach the issues. Some are fond of the One Water idea but to me that label seems abstract and impersonal. The key log we lack in our water quality efforts is personal responsibility, an obligation to the land, the sense of consciousness needed to underpin stewardship and citizenship. We will never have clean water if we think it is someone else’s job or responsibility – the truth is it is ours.

My goal with Our Water is to present an honest and balanced discussion of land and water issues – not just happy talk and wishful thinking – by taking a more questioning approach – using stories about what people are doing with water and land. If you have a story to share or an issue you think should be covered – please let me know.

I am an optimist who believes Iowa and the nation can find the willpower and wisdom to protect our water quality and conserve our soil. But my optimism is tempered by a healthy vein of skepticism with a dash of cynicism for balance. Combined these make me a realist willing to question our claims and ask if we can do better. The Chinese artist and social activist Ai WeiWei notes “Liberty is about our rights to question everything.” The idea of Liberty is in our state’s motto – “Our liberties we prize and our rights we will maintain.” If we ever stop being willing to ask questions and look for better answers then society is in danger.

First an overview of our talk – we will start with some history – about our legacy of conservation leadership, then a bit of law, then some civics about citizenship, then a focus on the role of HUC 12 watersheds with a quiz – and end with some recommendations and questions to consider

It has been a special privilege to spend my life working at the intersection between law and policy – and farming. Since my days as a forestry student here at Iowa State and as a law student at Iowa, I’ve had a special interest in how we protect our land, soil, and water – as well as the economic and social futures of the farm families and rural communities like those I grew up with. My 36 years leading the Agricultural Law Center at Drake have focused on these issues.

Some History - Our state has a proud legacy of leadership on natural resource protection. We stand on the shoulders and in the shadows of these conservation leaders: Ding Darling, Aldo Leopold, John Lacey, Ada Hayden, and Henry A. Wallace – to name a few. Their work and insights help set the standards against which we can measure the actions

we take today. Their leadership presents a challenge - are we living up to their legacy or has our legacy become an ephemeral gully of inaction?

Protecting our water and soil are not simply political or economic issues – as some might suggest – instead they are essentially moral and ethical issues. This distinction can be hard to appreciate because in our society we often use political institutions and legal tools to articulate and embrace morality – for example, this is the basis of criminal law.

Some Law - Iowa's legacy of laws on soil and water marked us as leading the nation. Over seventy-five years ago we adopted the soil and water conservation law creating our 100 County Conservation Districts to partner with USDA and farmers. Iowa was first to appropriate state funds to cost-share installing conservation practices. In 1979 Iowa's Supreme Court upheld the constitutionality of the law requiring all landowners meet a duty to limit soil loss. Other legislation reflects our commitment to resource protection: creating county conservation boards; the 1987 groundwater protection act; and implementing REAP – the Resource Enhancement and Protection Act – providing million dollars for local resource protection and education projects. And we have newer laws to address water quality like the Watershed Management Authorities and HF 512.

But Iowa has another legacy, a series of laws setting goals to protect natural resources - but ones we have never met. Among these are:

- In 1981 we enacted T by 2000 with soil conservation plans and folders to be created for every farm - §161A.62
- In 1987 we set a goal of 10% of the state being protected as public land by 2000 - §465A.1(2)(b).

Granted, some legislative promises were over taken by other events – much of our T by 2000 soil law, was subsumed by the 1985 Conservation Title – but there is still no requirement Iowa farms have a

conservation plan. Others were aspirational from inception – like our 10% open space goal – today we are at less than 3%. Some simply reflect a lack of commitment and our priorities – we continue to short-change REAP, it has never been fully funded at \$20 million. In 2017 it was reduced to \$12 million from \$16 million in 2016 and in 2018 reduced below \$10 million.

Most recently in 2010 voters approved by 63% Constitutional Amendment #48 to create the Natural Resource Trust Fund and fill it with the next 3/8 cent increase in the sales tax. For eight years the Legislature has refused to consider raising the sales tax – known as IWILL – the Iowa Water and Land Legacy – to fund the Trust.

If there is one message you take away from my talk it is the importance and need for Iowa to pass IWILL with the existing formula. It is hard to understand why anyone interested in water quality and conservation – people like many here– especially farmers, can oppose raising the sales tax to generate these funds.

First, it is a significant amount of money - for conservation and water quality alone it will be over \$120 million per year as set out in Chapter 461 – the funds needed to scale up and make progress on the NRS.

Second, the money will flow into rural economies to farmers, landowners and businesses engaged in installing conservation measures – it is a long-term rural economic development job creation program.

Third, because agriculture is largely exempt from paying sales taxes on most farm inputs the funds will come from other sources.

Fourth, the funds go to IDALS and IDNR and through them to local SWCDs – so these are institutions you know and in many ways control.

Finally - by law, the funds can't be used for regulatory efforts or enforcement actions so there is no threat or legal risk. What is there not to like or support about that?

Funding IWILL is the single most important thing Iowa can do – and until then we are fooling ourselves about the adequacy of funds we put into our efforts. Our lack of support for adequate funding undermines any claims we make about being serious in addressing water quality.

Demonstration projects are nice but when do we quit demonstrating and actually start doing? What is the strategy for scaling up our efforts? When will we deploy the tools we know work – planting cover crops, planting buffer strips, and constructing wetlands?

Our patience in working on water quality is admirable – but when does patience mask what is really complacency? The truth is our efforts are too few and the number of people engaged too small. Our citizens and communities want and deserve more – farmers and conservationists working to protect water know more is needed. We owe it to our children and the resources - to be responsible stewards rather than apologists – to embrace the Land Ethic Leopold so eloquently set out.

No, I don't share the view our efforts are adequate and believe many of you don't either. Too much of our water is in jeopardy to be complacent. Iowa does not need a collective exercise in can-kicking – of delay and denial on resource protection – of lip service and eye wash.

What we need are more efforts to localize and personalize the work to improve water quality. This is why the ideals of citizenship as applied in watersheds are so critical.

Ideals of Citizenship - Now let's turn to citizenship and watersheds - or Watershed Citizenship. To begin we are all aware of the concept of citizenship – it is embedded in our culture and education and embodied in ideals we have learned since childhood – in the pledge of allegiance, the 4-H pledge, the Boy Scout oath, and the Golden Rule.

Of course, we are all good citizens – how could we admit to being anything else? But what does it mean to be a good citizen? Is it only:

obeying the law; paying your taxes, voting when you feel like it, and saluting the flag?

These come to mind as ways we experience citizenship - but isn't it really about more – about being an active, responsible, contributing member of whatever community you are part of?

As I see it, citizenship is based on 5 pairs of related concepts:

First is being accountable and taking responsibility for your conduct.

Second is the need to be informed and to make choices.

Third is being engaged in the issues shaping your community and expecting others to be involved.

Fourth is participating in the process and pulling your own weight – citizenship is not something we sub out to others.

Fifth citizenship is based on understanding how law and society works and supporting the institutions underpinning the community.

Citizenship is premised on being part of something – we are individuals ourselves but we are citizens of something – a state, nation, county or even a watershed – so there is an implicit aspect of mutuality and reciprocity - other people are our fellow citizens.

Watersheds - Now let's turn to watersheds – a geographic area defined by the flow of water. Watersheds are an excellent vehicle to apply the ideals of citizenship - this is especially true for HUC 12 watersheds because they share these eight traits:

- the proximity, we live in them
- the scale, they average 22,000 acres
- our awareness and knowledge, they are our neighborhoods

- the visibility, we can see them
- the objective measurability, we can measure them
- our identifiable impact, we can change how they perform
- the personal relations, we know the people who live there, and
- the human dimension, they are influenced by our actions.

There are over 1600 HUC 12 watersheds in Iowa, averaging around 22,000 acres with approximately 16 per county. Our HUC 12 watersheds are the perfect size and scale to address water quality. Some of our most exciting and promising projects are happening there. One of my favorite episodes of Our Water is #19 about the restoration of Lake Darling in Washington County. The very existence of the lake was threatened by siltation and pollution but local residents organized to save it. Through private fund raising and state support a lake restoration plan took shape. A key to its success was agreement by most farmers and landowners in the watershed to install permanent conservation measures to protect the long-term health of the water. Their success demonstrates what can be achieved if we have the wisdom to apply the lessons from their experience across Iowa.

Watershed Citizenship takes the power of citizenship and applies it to the scale of a watershed to consider how this might inform our actions. It parallels Leopold's idea of a Land Ethic focused on the individual's role in stewardship - but Watershed Citizenship broadens the focus from the individual to a community. Watershed Citizenship helps us consider the moral hazard of seeing Water Quality as a "downstream" issue – someone else's worry. In a watershed we are upstream from some and downstream from others.

This reflects the reciprocity of citizenship and how it is premised on the Golden Rule – the idea we should treat others how we want to be treated. We learn this from childhood – it is reflected in many ways – some refer to it as the "Don't eat the last cookie rule." If you are polluting the stream are you taking your neighbor's last cookie? Are we taking the last cookies of the shrimpers in the Gulf?

The Golden Rule is really about our obligations to others. Leopold wrote about our relation to land – and how the idea of obligations is largely missing from our discussion of conservation. He said our education “makes no mention of obligations to land over and above those dictated by self-interest.” He noted “we have been too timid and too anxious for quick success, to tell the farmer the true magnitude of his obligations. Obligations have no meaning without conscience, and the problem we face is the extension of the social conscience from people to the land.” This is the key log Leopold identified 70 years ago – and it is in large part what is still missing in Iowa’s water quality efforts today.

Citizenship also reflects ideals of equality – we all have a role to play and we have expect others to play theirs. Being a citizen means you have responsibilities – but citizenship is not just about obligations it is also about rights. As citizens, we are co-owners of the public lands – our state parks, the county conservation sites; as citizens, we benefit from laws designed to limit anti-social behavior and protect the environment – as citizens we benefit from the neighbor’s cover crops. As watershed citizens we have the right to expect water not be polluted by others just as they expect us to meet our obligations.

I graduated from law school forty years ago and have spent my career teaching about agricultural law – working to seek justice and using the technologies of justice to create more opportunities for individuals and to build a better society.

I see citizenship in the context of our search for justice – just as stewarding the land is a form of justice - and of citizenship. It is not too far reaching to view protecting water quality and conserving soil as issues of justice. If we do an injustice to our water, we do an injustice to ourselves and to our neighbors – and more importantly to our children and future generations. Because citizenship also carries an obligation through time – it is not just a reflection of our current actions but is a way to honor those who made our way possible – and especially is an obligation to those who follow.



Is it unfair to ask what legacy we are leaving our children if we are unwilling to address the reality of water degradation and soil loss today? If we base our decisions on half-truths and wishful thinking. It is our decisions and actions – not words – that reflect our embrace of citizenship. What reality do our decisions reflect?

The question the landowners near Lake Darling faced – and one we must consider - is what is the farmer and landowner's responsibility to the community of a watershed – to our neighbors? I don't have a magic answer to this – instead this answer is one each landowner, farmer, and watershed citizen must provide. Certainly, it begins with recognizing you are part of a larger community – and as such asking what obligations you have to the others who reside there. How we meet these obligations is one measure of our citizenship.

A Quiz - Here is a quiz we can all take as a starter to think about Watershed Citizenship. There are five simple questions:

- Do you know your HUC 12 Watershed and can you draw a rough map of it? There are great tools for helping with this task.
- Can you identify where the water is after traveling 5 miles from your home?
- Have you ever tested the water in your tile lines or streams? Are you curious enough to want to know what is going on?
- Can you name one change you have made on your farm to improve water quality?
- Do you know who your SWCD commissioners are and could you describe anything they are doing in your county on Water Quality?

If you can answer yes to these questions then you are on your way to being a good Watershed Citizen. But if our answers are no then these questions are some places for us to start.

Conclusion - As I look at the future of our water quality efforts I am left with many questions. If we are good watershed citizens why aren't we doing more to protect and improve our water? Why are we happy with

the meagre funding, with the relative few demonstration projects, and with only a fraction of our fellow citizens being engaged?

What does our lack of progress and the lack of any real strategy to ramp up our efforts say about us?

Does it show our lack of vision – a bankruptcy of our imagination?

Does it reflect our unwillingness to ask more of ourselves and each other – and of our political leaders?

Does our patience and complacency mask an unwillingness to embrace our responsibilities and obligations as citizens?

We have staked our future on the NRS – an interesting scientific document but one deeply flawed from a policy perspective. Nothing about the NRS is bold or imaginative – in fact we only developed it because the EPA forced us to.

How different might an Iowa water quality strategy look if we developed an NRS 2.0 - one based on the context of our laws, on our legacy of conservation leadership – and on the ideals of Watershed Citizenship?

- Why can't we ask and expect each farmer and landowner to have a water quality plan?
- Why can't we have more HUC 12 watershed projects underway? I reviewed the water quality projects and demonstrations for this talk – and can identify at most 34 county Soil and Water Conservation Districts involved in a HUC 12 project. Why can't we expect each SWCD to have at least one HUC 12 project underway?
- Why don't the agriculture and conservation groups urge the legislature to fund the Natural Resources Trust Fund so we have adequate funds to actually make progress?
- Why can't we empower the drainage districts and engage them to use their reach and authority to improve water quality?

As a final comment let me share some common elements for this vision - a foundation to build on. These are the eight lessons to learn from the restoration of Lake Darling:

1. We need a sense of urgency, the recognition of our need to act.
2. We need a vision, a plan for what we are doing and a shared understanding of the reasons why – the values we are promoting.
3. This vision will help us identify a strategy for the actions to take, the priorities to set and where our attention should focus.
4. We need ways to measure progress so we know our efforts are working and our investments of public funds are wise.
5. We need community support, whether in a region, a watershed or in a state's citizenry to support the actions needed.
6. We need adequate funding, from public sources and private investment. The funding Iowa devotes to water quality is inadequate yet we can't even be honest with ourselves about it – as shown by our willingness to count CRP funds as NRS spending.
7. We need cooperation from farmers and landowners working at the local watershed level. We have to engage the structures and institutions we have in place – the Soil and Water Conservation districts, drainage districts and watershed authorities.
8. Finally, to develop this support and strategy, to obtain the funding, and to inspire action, we need leadership, people willing to invest their time and reputations – and willing to confront the dogma and inertia we may need to overcome.

When we do so, we will have used the ideals of citizenship and the organizational potential of watersheds to unleash the power of Watershed Citizenship.