

**The Governor's Water Law Review Committee
Georgia/South Carolina Subcommittee Meeting
November 14, 2003**

Present: Mr. Dean Moss
Dr. Bob Becker
Mr. Lynn Stovall

Staff: Mr. Alfred H. Vang
Mr. David Baize
Ms Sally Knowles
Mr. Danny Johnson
Mr. Hank Stallworth

Guests: Mr. Alex Stalvey (McNair)
Mr. Gerrit Jobsis (SCCCL)

The meeting began at 10:30 AM with a discussion of Ms Hagood's communication to the Subcommittee, which is summarized as follows: she agreed with the need for a legally binding, enforceable agreement, but wanted to address questions that she foresaw arising down the road. She suggested the Subcommittee compare other forms of agreements (i.e. interstate MOA's) to achieve the same goals. She believes a formal "compact" may create another autonomous level of government allowing the State of Georgia and the federal government more influence over the natural resources of SC than currently exists. She pointed out that dealing with the issues outlined in the draft (assimilative capacity, quantity, FERC relicensing, etc.) will be highly controversial and the process for mutually agreeable passage in two state legislatures and by the Congress will be lengthy. She pointed out there are questions about how the regulated community in either state may react.

Dr. Becker discussed the three alternatives that the Subcommittee could consider: a compact, a contract, or the creation of a market system.

Mr. Moss spoke of the likely objectives of the downstream users (Savannah and Beaufort-Jasper) and the upstream users looking for better reservoir management as well as public supply issues.

Mr. Vang pointed out that the Corps in Savannah (on authority of the Colonel) could sell 10% of the storage of the Savannah lakes. A compact could become the custodian of that portion of the storage.

The discussion then turned to the "draft" notes that Mr. Moss distributed to the Subcommittee. Mr. Moss pointed out that by December 2nd a more formal draft of the Subcommittee's recommendations needs to be prepared. He went on to say that if an

agreement between the states is no more than what is offered in S.720 (addressing the Catawba River in North and South Carolina), then little long-term progress can be expected. He suggested that more than an MOA is needed.

Mr. Stovall pointed out that there was no one on the Subcommittee who was more opposed to unnecessary government regulation than Mr. Moss, and that he agrees with him that something stronger than a MOA is needed.

Mr. Baize suggested that the Subcommittee should consider the odds of success; he was concerned that a formal compact would be difficult to attain. He agreed that the issues in the draft recommendations were the correct ones, but thought that some less contentious agreement might have more chance for success. If that were not possible, then perhaps moving some issues to another method of agreement might help, giving as an example assimilative capacity.

Ms. Knowles added that ceding authority to an autonomous third agency could create regulatory problems.

Mr. Moss pointed out that his draft actually addresses this. He had suggested a small permanent staff with purview of the entire basin and to watch the work of both states, but to leave the regulatory functions with each state.

Mr. Moss stated that a “compact” is a legal instrument to create any structure. He felt that if this does not proceed along a formal path there will be little chance of success.

Dr. Becker asked that the Subcommittee lay out the positives and negatives of each approach. He added that the only reason he proposed a pricing mechanism is because it is self-regulating, noting that the water should be priced two ways: one for in basin use and one for out of basin.

Mr. Vang reminded the Subcommittee of Mr. Spitz’s observation that there are a series of steps (i.e. compact negotiation) that can be addressed before litigation, which should be the last option.

Mr. Moss continued that almost all the compacts in the US are upper basin/lower basin ones. There is the Vermont/New Hampshire compact that addresses pollution control on a shared river like the Savannah.

Mr. Jobsis suggested developing an MOA to address key issues until a compact is completed.

Mr. Stovall stated that the Subcommittee should recommend that the Governor start with negotiations on a compact. If something less than that became acceptable later, then that would be the way it went.

Mr. Moss asked Dr. Becker to describe a pricing model. Dr. Becker said it recognized the natural capital in a basin--all users in the basin have standing and all share the costs of maintaining quality. In times of plenty, the price is near zero, but as shortages develop, the price goes up. Mr. Moss asked who pays whom for what? Dr. Becker replied that after creating a natural capital bank, payments are made to it and distributed for water quality improvements. The cost depends on how much is returned and what the quality of the returned water is. If there is no reduction in quantity or quality, then there is no cost. If water is taken out of basin and not returned, that limits the water available for others to use directly and for waste assimilation. The cost rate for water that is not returned would have to be much higher and that is why Atlanta might not be in favor of this approach, but the Savannah Basin users would be.

Mr. Jobsis was concerned that those who have the most money win and ecosystem needs would lose. Dr. Becker replied that values would be established on a political basis and the decision makers can subsidize any values.

Mr. Moss recognized that the adoption of this method would have a dramatic impact on the existing rights of riparians on the river and that it could also impact the public trust doctrine. It might even affect how we treat other "commons" issues. Dr. Becker responded that this is a novel concept that he would like the Subcommittee to think about. When water is abundant, these are easy decisions, but when there is shortage, we need a solution that will work to equitably resolve conflicts.

Mr. Moss observed that even if this approach were adopted, a compact would still be needed to establish it. Dr. Becker agreed.

Mr. Stovall urged the Subcommittee to address the issue of whether or not a compact or a MOA is more appropriate. He believes that a compact that deals with quantity and quality allocations based on water generated from each state is the best option. Dr. Becker stated that this would not accommodate diversions or other current uses from a quantity or quality perspective.

Mr. Moss pointed out that the situation between SC and Georgia is different from the ACF or ACT situation. There is no active dispute; the resource is our boundary; there are many Georgia users that are interested in a resolution to this problem. He has questions for Professor Spitz: if there are issues to be resolved with Georgia, what is the best way? Is there a mechanism to memorialize an agreement between the states other than a compact? The answer seems to be no, particularly given the significant involvement of the Corps on this river.

Mr. Baize said there was probably not a need for a compact to address assimilative capacity. Mr. Moss replied that Georgia uses virtually all the assimilative capacity in the river now. He continued that if SC is interested in anything approaching a 50/50 split, it would have to be done in a compact that addressed a broad range of issues and offered a chance to compromise. Mr. Stovall agreed with Mr. Moss. Mr. Baize (without trying to

speak for Ms Hagood) said he thought one of her points was that one method might not be the best solution for all the issues.

Mr. Moss returned to the draft for discussion purposes. Under 1(b) there are eight items. The first deals with quantity. Greenville is permitted to take 150 MGD out of the basin and Beaufort Jasper 60 MGD. Is there anything left to take out? Clearly this is an issue that must be addressed.

The second deals with quality. Should the Subcommittee recommend addressing it?

The third deals with NPS and Habitat issues. Include or not?

The fourth relates to the Corps' role. If a compact is not the method, how are they to participate?

The fifth deals with the FERC process for the non-Corps dams in the basin (four in Georgia, two in SC and two shared). How should that be factored in?

The sixth addresses a single point of contact to deal with the federal agencies. What has to be done to reach this point?

The seventh relates to one method of organization that a compact could be used to create. A three member board (appointed by the Governors and the President) with a small, non-regulatory, permanent staff.

The eighth addresses conflict resolution.

Mr. Moss strongly urged the Subcommittee to address these points. Edit, redraft, add new sections, but be prepared at the next meeting on November 20th to move forward with a recommendation.

The meeting adjourned at 12:00 noon.