

**The Governor's Water Law Review Committee
Georgia/South Carolina Subcommittee Meeting
November 7, 2003**

Present: Dean Moss
Dr. Bob Becker
Lynn Stovall

Staff: Alfred H. Vang
Dr. Badr
David Baize
Danny Johnson
Hank Stallworth

Guests: Ms. Karen Addy (Reporter)

Mr. Moss opened the meeting with an overview of what the Subcommittee needed to do for the final report, the format for the report and some intermediate steps. A major issue is the effort to secure a compact with Georgia. What should the compact address and when should the negotiating process begin, bearing in mind that once this process begins it's going to be fairly dynamic?

Dr. Becker suggested that a clear definition of South Carolina's issues and interests is needed prior to establishing a compact. He said the Subcommittee needed a clear statement of practices for enhancing water resources including watershed management BMP's. The best negotiating positions should be identified as well as the threshold that we cannot go beyond.

Mr. Moss agreed; what is needed in this process is an internal consensus.

Dr. Becker suggested the Subcommittee likely outcomes in addition to an internal consensus. For example, we are growing at about a million people every fifteen years, Georgia is growing at three times our pace. So, our optimal position might not be one that is sustainable unless we find some other activities to put in the mix that strengthens what we do, i.e. water quality.

Mr. Vang (DNR) asked Dr. Becker if he was using the Boston example that Professor Spitz presented at the November 4, 2003 Governor's Water Law Review Committee (where Boston received Connecticut River water because the water quality of other sources available to them was insufficient)?

Dr. Becker responded that was correct and as he reviews other materials the question of equitability is certainly the one that is most open. What makes up for an equitable allocation and then how do we enforce it?

Mr. Moss stated those are key questions. In looking at the Sherk book and looking through the various examples which are pretty all encompassing, in general, those compacts are pretty narrow. The majority of them, particularly the allocating ones deal with upper basin/lower basin situations. Where you have an upstream state like North Carolina and a downstream state like South Carolina. He pulled the New Hampshire and Vermont Compact that deal with the Connecticut River, which is roughly analogous with what we are facing. Most of the compacts don't try to encompass kind of the range of things the Subcommittee has been talking about—water quality and water supply until you reach compacts like the Susquehanna or Delaware River Compacts. These compacts impose a fairly overall kind of self-perpetuating management program.

So, the Subcommittee is going to be breaking new ground if this is the direction that is taken. This is mostly because of the way the river works between our two states. We may be looking at how to deal more comprehensively with water related issues between the states, which would include water quality. Mr. Moss feels Dr. Becker is correct in that there needs to be a section in the report that identifies a more formalized process in South Carolina before we move any further down the road. The Governor needs to establish that process and put a tight time constraint on it. First, Mr. Moss suggested that the two governors need to identify a negotiating group. In some cases, if you read those compacts there were just individuals negotiating. Each governor appointed one individual and the Federal government appointed one individual and the compact was negotiated between those three individuals. Mr. Moss envisions this needs to be a more expansive process.

Mr. Moss went on to say that it is likely that there will be a single federally designated individual. The President will appoint someone as a responsible federal official. That is a key point when you look through some of the Sherk readings and other material. This seems to be a critical thing, to have the federal relationships on the river working through one agency.

Mr. Stallworth added that this is commonly done. The Federal government chooses one agency to be the lead agency, but they consult with the Fish and Wildlife Service, the Corps and the EPA. They speak with one voice but are all represented.

Mr. Moss agreed, but pointed out that there is a formal process that has to happen. The President would have to say this.

Mr. Moss also agreed that Dr. Becker's suggestion is good. Somewhere in the process there must be a period of time for South Carolina to articulate internally what its critical position is.

Dr. Becker stated we should put into place in South Carolina certain activities that we feel are essential to maintain water quality and water quantity in the watershed. If we set up them up ahead of time, that might strengthen our position when we want those same issues in a basin compact.

Mr. Moss agreed, but if you do those sorts of things before you sit at the negotiating table, you may lose them as a negotiating point. You are asking for a good response from the Georgia side rather than saying “if you put these things in place we'll put them in place.”

A discussion ensued over assumptions for a division of water based on population dynamics, percentages of the drainage basin, volumes of water presently diverted and desired, and the value of water.

Mr. Moss said the discussion illustrated Dr. Becker's point that these issues need to be talked through before we go any further and he thought that may be the extent of our recommendation. We may need to say simply that such an exercise needs to be done prior to beginning negotiations with Georgia.

Dr. Becker agreed that the Subcommittee suggest that position development and strategy design should be accomplished prior to going to Georgia. In that process, South Carolina should consider our interests in allocation strategies, administrative arrangements, the comprehensiveness of the scope, and issues of quality as well as quantity.

Dr. Becker agreed to draft a short paragraph on that and include a suggestion to at least to start our discussion about how we should recommend the Governor do that.

Mr. Moss stated that the subcommittee would try to have a draft document available for the full Committee by Tuesday, December 2, 2003. So, during the next three weeks, the Subcommittee has to craft some language, get it out for review, and assemble it. His suggestion is that there should be three main recommendations:

1. Pursue a Compact with Georgia. The Governor should take the initiative and should move as expeditiously with that as reasonably possible. A very short textual explanation as to why it is needed should be included.
2. Recommendations for the kinds of things that such a Compact would encompass. In the support text given to the Subcommittee there is some discussion of that.
3. Recommendations for the process to get us from here to there, as was just discussed.

Mr. Cooper agreed with the overall concept and added that he thought it would be helpful for the Subcommittee to have a brief summary of the Georgia, Florida, and Alabama situation. They tried to enter into a compact agreement and marched all the way to the church and then one of them walked away. It might be helpful for the Subcommittee to understand what they were trying to do and why it failed before we start to sit down and talk to Georgia.

Mr. Moss agreed. He added he has identified six compacts that he will put on the listserver, including the two Georgia compacts--the ACT and ACF, the Great Lakes Compact, the Potomac River Compact, Suquehanna Compact, and the Vermont New

Hampshire Compact. There are many others, including a lot of Western ones that deal with flood control and one that don't seem to quite fit our situation. All of them are structured very similarly. All organized in a similar way.

Mr. Moss asked Mr. Vang to contact state water staff in Alabama to determine what happened there from their perspective.

Dr. Becker will contact Mr. Jim Ledbetter (Ga DNR) to seek their perspective.

Mr. Stovall added if we know a little bit about what their hot issues are we can approach them at the appropriate times, not too soon and not too late.

Mr. Vang noted that this is a marathon, not a sprint.

Mr. Moss agreed that this effort will take years to accomplish.

Mr. Moss asked the Subcommittee to discuss what they think this compact should include, and started the conversation with the issues of water supply, water quality. He suggested that the folks who live around the lakes will see this as an opportunity to further exercise control over the Corps of Engineers with regard to lake levels. As Mr. Beach has reminded the group, there will be a need to address environmental habitat protection. And there are probably some things that we can't appreciate that will come up from local folks. The groundwater issues in the lower part of the basin may or may not be important here.

Mr. Stovall said the Subcommittee should outline for the Governor what we see as a recommended order of things. It would probably be good to suggest a one face to face meeting to start communication between the governors of the two states. If they don't agree it makes no sense in bringing in the Federal government.

Mr. Moss stated that is one of the items he would like to consider is the makeup of a governing board and the powers and duties of that board. The Committee needs to be in a position to suggest to the Governor or at least advise the Governor as to what we think. We really have two extremes here and a range of stuff in the middle. One of those is simply dividing the pot. Simply saying there is this much water; Georgia gets this much and South Carolina gets this much and this much must flow down the river and you make a deal. But also are we going to try establishing a continuing process to manage the basin and to work through disputes, which will inevitably arise.

Dr. Becker added even if you just divide it and say we have a deal, it is only limited to what we can foresee. If things subsequently change, the deal is gone as soon as one person pulls out.

Mr. Moss said if the Federal government is involved it becomes a federal law and that defines how the deal ends. You can create the compact so that there are ways to solve that problem. But some compacts we are looking at just split the water. He said he did

not advocate that, but would like a continuing management process. Some of the state agencies will say they don't want a third party agency in the mix. He agreed that we don't want to recommend an overall management process that we will have to bind ourselves to. The more complicated the management schemes become, the more politically difficult it becomes. He asked Mr. Vang for his opinion on this.

Mr. Vang agreed, but pointed out that we all work for the Governor. Mr. Vang advised giving the Governor options and suggested that the Subcommittee look at the long term, adding you must have the flexibility to deal with change. He thought there was momentum now that allows us to lay out the science, to lay out the engineering and to at least bring forward a process of resolution of the issues.

Mr. Moss said in terms of what we recommend to the Governor the compact should address, at a minimum, water supply and water quality. We may want to consider the notion of a continuing management process that allows for continuing planning in the basin, continuing coordination, continuing the way the Federal and state agencies relate to one another, and some process for the resolution of disputes, which will occur. Some of these compacts have a very elaborate dispute mechanisms.

Mr. Stovall stated that putting it simply is what the Governor is asking this Committee to do, to give him some talking points. He probably wants no more of five. These could be subdivided into a great deal more detail in the actual negotiations. But he said when the Governors first meet they should discuss the major issues. If there are too many issues, much time will be taken discussing how many there are rather than the substance of what is important.

Mr. McShane agreed.

Mr. Moss volunteered to draft something to get discussion started. Dr. Becker will draft a paragraph of points that may be should be included in our position.

Dr. Becker stated he will get something devised by the first of the week (November 10, 2003).

The **next audio teleconference meeting** will be **Friday, November 14, 2003 10:30 a.m.** A **meeting** is scheduled for **Thursday, November 20, 2003, 2:00 p.m.** in the **Dennis Building**, 1000 Assembly Street. (The DNR Board Room is on the third floor.) Contact for conference room: Rose Scheibler 734-4007. Audio conferencing will be available at this meeting as well for Committee members who would like to participate.