

**Governor's Water Law Review Committee
Instate Subcommittee
Notes**

October 22, 2003, 9:00 a.m.
SC Coastal Conservation League
328 E. Bay Street
Charleston, SC

Members Participating: Dana Beach, Lynn Cooper, John Few, Elizabeth Hagood, Gene McCall, Fred Richardson, and Lynn Youmans.

Staff: David Baize, Hank Stallworth

Guests: Mike Vaquer, Lynn Murray, Neal Walsh, Gerrit Jobsis, Larry Schwartz, Chuck Jarman, Gary Gilchrist

The meeting began shortly after 9:00 AM and ended at approximately 12:30 PM.

Notice/Intervener

The meeting began with a discussion of the notice/intervener recommendation of the 1982 Committee. Permissive intervention is currently allowed by the South Carolina Rules of Civil Procedure; the real change is the proposed requirement to provide Notice to the SC Attorney General when a lawsuit is filed where a cause of action relates to water rights. The logistics, and potential difficulties, of the notice requirement were discussed. The 1982 recommendation placed the notification burden on the attorney filing the suit. It's possible that when a case is filed, it may not be clear at times that a water rights issue is an important aspect of the case.

Subcommittee Recommendation: A motion was made by Lynn Youmans and seconded by Fred Richardson to include the Notice/Intervener recommendation in our report to the Governor. We discussed how detailed this recommendation needs to be and it was decided to look at the past water law cases to determine what should be the exact wording of the recommendation. Additionally we'll look further at who should be required to provide this notice. The motion passed by a unanimous voice vote.

Regulated Riparian

The Subcommittee next discussed Regulated Riparian. Staff gave a summary of a recent presentation by Joe Dellapenna on this subject. Prof. Dellapenna was the chair of an American Society of Civil Engineers committee who developed a Regulated Riparian Model Water Code. Dellapenna proposed that water should not be treated as a

commodity, but as the paradigm of a public resource. Regulated riparian is a possible approach to utilize water effectively and equitably while maintaining more intangible public trust goals.

South Carolina already has a regulated riparian system to a limited extent, e.g., the Interbasin Transfer Act, Surface Water Withdrawal and Reporting Act and the Groundwater Use and Reporting Act. It was decided to postpone a decision on this issue until we looked more closely at other less complex issues to see where they lead us with regards to regulated riparian. Additionally committee members should read more about the Model Code and the current proposed SC amendment to the Surface Water Act to better facilitate discussion of this subject.

Instream Flow

The subcommittee next addressed minimum instream flow. As a result of the 1982 Committee's recommendation, the legislature instructed DNR via a resolution to begin monitoring instream flow. The 2003 Draft State water plan discusses and proposes maintenance of some minimum instream flow for protection of fisheries, navigation and downstream users. The primary questions are: what should this instream flow be, is minimum an appropriate adjective, should it be variable (seasonally and dependent on rainfall amount) and how should it be quantified?

Review and Consolidation of Current Laws into One

The current draft combines surface water withdrawal permitting and interbasin transfers into a single act and essentially makes the permitting portion for surface water equivalent to the current groundwater permitting requirements. The committee needs to study this draft in-depth and provide recommendations regarding additions and changes if any.

State Water Plan

Committee members should read and comment on the current draft. Members suggested that the plan, and possibly our recommendations, should address wetlands and particularly isolated wetlands.

Subcommittee Recommendation: Education of conservation measures should also be promoted to encourage water savings. Dana Beach moved and Elizabeth Hagood seconded a motion to include as one of the committee's recommendations that the State: Promote policies that promote educational programs for water conservation, adopt incentives for conservation and provide rate structures that encourage water conservation. The motion passed unanimously by voice vote.

Impoundments and infiltration

South Carolina is being developed at an alarming rate. If we want to consider building impoundments to provide additional drinking water resources during periods of drought,

we need to do it soon; otherwise, large enough parcels on which to site impoundments will no longer be available. A series of impoundments could be used to divert streamflow and store water during high flow periods in order to provide water supplies during drought. Reservoirs could be either state owned or private/public, but the state would likely have to play a large part in order develop reservoirs of significant size. Georgia is looking at this seriously and we should obtain more information. We also need to be able to quantify safe yield for surface waters and groundwaters.

In addition to impoundments, promoting infiltration of significant quantities of storm water and wastewater could assist in replenishment and maintenance of groundwater levels and improved instream water quality.

Water Quality

The subcommittee discussed water quality issues as related to quantity. Is 7Q10, currently used for wastewater permitting, the correct “minimum flow?” Wetlands should be promoted as water quality enhancers. We should supplement wetlands with flow to provide healthy ecosystems and promote groundwater recharge. Isolated wetlands need to be addressed.

Regarding coastal stormwater, the Coastal Futures Commission recommend against permitting on the local level, but maintain that at the state OCRM to ensure consistent application of controls.

Other Topics

Outside speakers: Because of our limited time frame, the Committee should first identify water law gaps ourselves and then see if we have time for and whom from outside might be helpful.

Public input: We should forward Committee press releases to our local reporter contacts to hopefully obtain local coverage. We need to identify times and locations for the entire Committee to hold public input meetings around the state.

Riparian Buffer, should this be a Committee recommendation?

We need to better define some terms, such as, consumptive use and water rights.

Assignment: For next week, subcommittee members should read postings on the listserv; proceed with identifying dates and locations for public impact meetings; prepare draft wording for recommendations we each would like to see; and identify gaps in water law.

The next meeting is Wednesday, October 29, 2003 from 11:00 a.m. to 1:00 p.m. via Conference Call.