

**The Governor's Water Law Review Committee
Intrastate Subcommittee Meeting
November 14, 2003**

Present: Dr. Gene McCall
 Ms Elizabeth Hagood
 Mr. Lynn Cooper
 Mr. Lynn Youmans

Staff: Mr. Alfred H. Vang
 Mr. David Baize
 Mr. Hank Stallworth

Guest: Larry Schwartz for Fred Richardson

The meeting began at 1:00 PM as Dr. McCall suggested that the Subcommittee review the 1982 Governor's Water Law Review Committee Report and the 1984 Governor's Report on the Environment for an idea of how this Subcommittee's recommendations could be styled, adding other issues in the same format.

Dr. McCall then asked for comments on the Regulated Riparian issue.

Mr. Cooper stated that the bill as drafted by DHEC was too broad, too intrusive, unnecessary, required information that was already provided for, gave DHEC the authority to set minimum flows and that it could override FERC.

Dr. McCall explained that the State needs much more than exists in statutory or common law today. He pointed out that with substantial and ever increasing water use, we have no restrictions on withdrawals and no certainty about protection of even present uses.

Ms Hagood suggested that those who had a position on the bill should put their opinion into a very short memo to the Subcommittee explaining what they thought should be in the bill and what should be left out.

Mr. Youmans was concerned that the existing Interbasin Transfer Act language was incorporated into the Surface Water permitting bill. The Interbasin Transfer Act places the authority for interstate negotiations with DHEC and this might create a conflict for the Ga/SC Subcommittee if they recommend that the Governor should lead the interstate negotiations team. This led to a short discussion on interstate compacts.

Dr. McCall raised a concern over intrabasin transfers, or non-riparian uses. South Carolina courts employ the "Reasonable Use" Riparian Doctrine, which does not recognize offstream uses as legal. He strongly suggested that this situation was untenable and needed to be addressed so the law of the State was in alignment with reality on the

ground. He also suggested that other states were addressing instream flow issues because water users were beginning to develop conflicts and protecting instream flows was a major issue in those conflicts.

Mr. Cooper said that the State did not need to set minimum flows, that was regulated by FERC.

Mr. Baize stated that DHEC regulations would enforce the State Water Plan.

Dr. McCall said that the Water Plan was an important policy document. On page 98 of the Draft Water Plan he pointed out the recommendation that the State establish minimum flow standards and that the Subcommittee should look at protecting at least a bare minimum with regard to surface water withdrawals.

Mr. Cooper was willing to address a concept, but he reiterated it should not be developed into detailed, regulatory legislation.

Ms Hagood reminded the Subcommittee that the State Water Plan should reflect what the Committee recommends.

Dr. McCall next moved to the issue of impoundments, noting in the last drought that the Grand Strand area was severely dependent on them and that many water systems and industries in the Piedmont were on the verge of failure. He recognized the difficulty of establishing impoundments on major rivers such as the Pee Dee, but pointed out that if sites are not chosen soon, they will be all the more difficult to locate in the future. Referring again to the Draft Water Plan (pps 89-90) he suggested that State should begin investigating where and how such impoundments could be sited.

Mr. Youmans agreed and suggested that the State should also pursue a policy of supporting natural and artificial recharge where possible. He explained that he meant inducing surface recharge in the appropriate areas and conjunctive use systems such as Aquifer Storage and Recovery (ASR) operations. He stated this should include the use of incentives and regulatory solutions. He concluded by suggesting that the Subcommittee include a section on "Enhancing Water Reserves" that would address recharge, conjunctive use, ASR and impoundments.

Dr. McCall reminded the Subcommittee that the Grand Strand Water and Sewer Authority had addressed the need to possibly change the groundwater standards during drought and that others had also asked for consideration of allowing recharge of treated waste water into aquifers that were not of drinking water quality. He suggested that if that were not possible, perhaps the injection of raw water for later withdrawal and treatment would be possible.

Mr. Baize said that DHEC does not consider any aquifers to be non-potable. He added that Mr. Alton Boozer (DHEC) had recently attended a meeting that included reports on innovative groundwater techniques being employed in Florida and offered to send

material on them to the Subcommittee. Mr. Baize said safe yields need to be quantified and the shallow aquifers are essentially separate from the deep, confined aquifers.

Dr. McCall suggested that the Subcommittee should give further thought to other water quality issues in addition to safeguards that might be offered with the protection of minimum instream flows. He also asked the Subcommittee to consider that there is insufficient information on the safe yield determinations for aquifers and this will impact DHEC's ability to protect groundwater over the long term. Finally, Dr. McCall reminded the Subcommittee that amendments to the Drought Act would also need to be considered.

At 2:15 PM the Subcommittee adjourned.