

Governor's Water Law Review Committee Intrastate Subcommittee Minutes

October 15, 2003

Conference call

Attending: David Baynes, Bob Becker, Lynn Cooper, Gary Gilchrist, Ken Hill, Gene McCall, Dean Moss, Fred Richardson, Hank Stallworth, Lynn Youmans.

Committee chair Gene McCall began the meeting at 2:00pm.

Notice/Intervener

Notice - This was recommended in 1982. If an individual has a problem, they can take the issue to court; the judge may pass a law, but the public is not informed. This law protects the public's interests. Approximately half of lawsuits fit this, but very few are significant.

With the increased cost of demand on ground water, the laws need to be examined. What laws there are on riparian water are about 100 years old. Judges need be informed and remain updated.

Intervener – Proposed in 1982, it needs to be developed into regulatory procedure. How this works: Two parties notify the Attorney General of issue to see if it is of public interest (proved sustained interest). It is then presented before a judge. However, once the government intervenes, even if the two parties would prefer to resolve issues on their own, the government is already involved in the settlement of the dispute. The Rules of Civil Procedure already allow permissive intervention. This does not mandate the government to intervene, so the Intervener portion of the recommendation does not change existing rules. The proposed change is the Notice portion, where the Plaintiff must inform the state about the water issue litigation.

Other similar statutes will be examined before the next meeting.

Regulated Riparian

The Riparian doctrine is based on reasonable use and correlative rights; water users cannot adversely affect other riparian users. With Appropriation Rights, people tend to waste water to develop and maintain larger rights. Their water rights are separate from land; they can sell their rights. It is probably too late to shift from riparian to appropriation and probably not where we want to go anyway. Mississippi tried in 1955, but it was too late; there was a court battle and the statute was ignored.

The American Society of Civil Engineers developed a regulated riparian model. Most southern states have some regulations on water use and transfer. One reason states have

tried to make the shift to appropriation or permitted use was to legitimize the distribution of drinking water to non-riparian lands.

For the next meeting, the committee will assemble a more inclusive definition of regulated riparian and examine if this is beneficial to our state.

An article summarizing riparian laws, an electronic form of The Regulated Riparian Model Water Code and the Law of Water Allocation in the South..... will be placed on the list serve.

Instream Flow

There is currently no statute that regulates the in-stream minimum water flow, which is necessary to protect the flora and fauna of the environment. The minimum levels (7Q10, etc.) need to be identified, but also we need to determine what is satisfactory and necessary for health aquatic systems and how to maintain those levels.

Proparian law, unlike riparian, assumes consumptive use, which hurts in-stream water flow. The 1982 report discussed flow.

Review and Consolidation of Current Laws into One

We should probably not consolidate all water laws, just interbasin transfer and surface water permitting. The Interbasin Transfer Act has a list of questions to ask to help determine whether a water withdrawal is good or bad. Currently, a permit is required for interbasin transfer, but not for intrabasin transfer. A quality and quantity review is needed. In addition, a review needs to be completed of current statutes including the updated Georgia statute from 2000, which contains no major gaps.

The list serve will soon include statutes and references.

State Water Plan

The 1998 plan is currently in use and a draft of the 2003 Plan is on the website. We need to carefully consider the 2003 draft, as the state water plan needs to be consistent with the recommendations of the water law committee and vice versa. The decisions made by the water law committee may be used as evidence if allocation lawsuits were to occur with NC or GA; the judge would look at both our laws and Plan. Also the Plan has standing with FERC.

Outside Speakers

Speakers need to be found that can present a balance approach to issues or one speaker from each side. Joseph Dellapenna, a professor at Villanova, edited the Regulated Riparian Model Water Code and is an advocate for regulated riparian.

We need to encourage infiltration and renewable water uses. We will examine other states policies for language for surface water. Virginia has a Surface Water Management Act. The Delaware Compact is the oldest and reportedly successful watershed compact. The committee should collaborate with NC-SC and bring in a FERC speaker to discuss licensing issues. In addition, we may want to jointly look for speakers representing the National Hydropower Group and Hydropower Reform Coalition.

Public Input

The Committee, as a whole, should plan to hold 1-3 public meeting in each geographic location. We should check with Chair Spitz about the dates. Committee members may want to prepare a basic outline about the direction of committee and what topics they are considering, but mostly the purpose of the meetings are to gain public input. These meetings should involve activities of the full committee. Hank Stallworth will check on the MAP public meetings and see if we can follow their procedure to facilitate logistics.

Public Relations – A press release can be sent statewide to all newspapers and radio stations. The website will also be modified to include a link for questions, comments and requests for information.

A list of dates and places being considered for the public meetings will be put on the list serve. Specific dates for these meetings should be known by the next subcommittee meeting.

Other Topics

The committee should examine the viability of drinking water through small water system providers and their capacity to meet growth. DHEC has not taken any action against marginal water providers. The committee could send information about our work and request input via water bills in Columbia, Greenville, Myrtle Beach, Beaufort, etc. to get the word out.

Committee members would like to be notified when new material is added to the web site.

For next week, committee members need to read posted articles on the website. The next meeting is October 22, 2003 at 328 East Bay Street, Charleston, at 9:00a.m.