

Governor's Water Law Review Committee
Public Meeting Notes
November 19, 2003

MISSION STATEMENT *“To advise the Governor about initiatives needed to conserve, maintain, and manage the water resources of this state to ensure available and affordable quantities and qualities of water for present and future multiple uses.”*

Governor Sanford created the Water Law Review Committee by Executive Order. It held its first meeting in September, 2003. Given the very limited time within which it had to do its work and the broad subject area to be considered, the Committee in October divided itself into three subcommittees. These subcommittees can and do meet more frequently than the full committee and are now developing recommendations to be considered by the full committee in its report to Governor Sanford.

This meeting is being attended by members of various subcommittees and is not limited to issues being examined by any one of them. It is open to the full gamut of water issues in South Carolina.

To help understand where we are now, these are the subcommittees and the issues that are being addressed.

The Georgia/South Carolina Subcommittee is principally addressing issues that affect the Savannah River Basin. During the recent drought, lake levels were dramatically lowered, river flow diminished, conflicts developed and businesses, industries and the environment all suffered. There is some concern that Atlanta is looking to the Savannah Basin for the water it will need in the future. Were this to happen, it may cause further stress on the water supply there.

This Subcommittee is therefore considering the utility of an interstate agreement with Georgia, South Carolina and the Federal government as members. This could take the form of an Interstate Compact or, alternatively, a less formal Memorandum of Agreement (MOA). A third method could be a “Market” driven approach using a water pricing model. Under any scenario, there are data needs that have been identified to be sure that whatever route is taken, the information and science necessary to make good decisions will be in hand.

Under either the Compact or MOA approaches there are sub-issues. These include:

- Quantity allocation—how much water does each state receive for its use, how much can be taken out of the basin, and how much is reserved for instream uses such as ecosystem needs, recreation, navigation, power generation and waste assimilation?
- Quality Allocation—how much of the assimilative capacity should be allowed to each state? Our cities and industries count on the ability of rivers to assimilate

treated wastewater. While this is dependent on the amount of water in a stream (see the first bullet), it is also limited by regulatory agencies in both states. Is it fairly divided?

- Should non-point source pollution or habitat protection be a part of any agreement?
- How should the Corps of Engineers and the other Federal agencies (EPA, US Fish and Wildlife Service, the Federal Energy Regulatory Commission, and the Southeastern Power Administration) be involved? They all have an interest in the management of the Savannah River Basin.
- The Federal Energy Regulatory Commission issues licenses for the operation of major (non Corps) hydroelectric reservoirs. While this is an area that is addressed in another Subcommittee, it arises here as well since there are eight “private” reservoirs in this basin in addition to the three major Corps reservoirs.
- Finally, if a Compact is recommended, which of these issues should it address and how should it be organized?

The North Carolina/South Carolina Subcommittee is principally addressing issues that were identified in the recent drought. Several major rivers form in North Carolina and flow into South Carolina. Over time, we have become more and more dependent on that flow for public supply, businesses, industries and recreation. During the drought, as in the Savannah Basin, reservoirs on those rivers were lowered and downstream flows diminished. By the end of the recent drought (Summer, 2002) we nearly came to disaster on the Pee Dee River and the Catawba was in trouble, too. How the lakes in North Carolina are managed can and will make a significant difference in our State. As discussed in the previous section, the Federal Energy Regulatory Commission licenses these reservoirs and determines how they will operate. The question for this Subcommittee is whether that relicensing process can protect the riverine uses in South Carolina or should some form of interstate agreement be sought? Are our laws in South Carolina in line with the position we are taking before the Federal Energy Regulatory Commission (FERC)? This is important because FERC will be looking at those laws to see if what we are doing here is the same as what we are asking them to enforce in North Carolina.

Since this Subcommittee is focusing on the FERC issue with regard to North Carolina, it is also looking at the FERC process for the reservoirs in South Carolina to be sure we are consistent there also. This cannot be one of those “do as we say, not as we do” situations.

As mentioned earlier, the drought brought attention to our dependency on streamflow from North Carolina. While the Subcommittee is spending a great deal of time on those issues, it is also looking closely at what South Carolina can do to reduce this dependency. This brings up issues such as impoundments, regionalization of public water suppliers, conjunctive use of groundwater and surface water, and developing technologies such as Aquifer Storage and Recovery Systems.

The Intrastate Subcommittee, as its name implies, is looking at issues that principally are of in-state only derivation. However, because this is water we are talking about, there are no easy divisions and you will see some overlap between this and the other subcommittees.

South Carolina operates under a “Reasonable Use” Riparian Law System. Our original water law came with the early settlers from England and through the years this “common law” was the basis for how we resolved water quantity problems. It has been amended to some degree by both the courts and the General Assembly, but with substantial and ever increasing use and a static supply, the question is should South Carolina do as many other states have and adopt a more modern system? This is a difficult question that is made up of difficult subparts. Should the State regulate surface withdrawals? Should we establish protected minimum streamflows as we are asking the Federal Energy Regulatory Commission to do on rivers below reservoirs?

A related “common law” question is, should the State require that it be given notice of “private” lawsuits that through the precedents they establish in our judicial system become the “law of the land?” By requiring this, the State could step in to insure that a case that could affect us all receives the proper attention.

Our groundwater laws have been addressed recently and therefore are not being considered extensively. As mentioned earlier, they are under some degree of review by the North Carolina/South Carolina Subcommittee in regard to new technologies such as Aquifer Storage and Recovery and under a conjunctive use of surface and groundwater program. In their case, it is mostly to look at incentives and alternatives for augmentation of supply.

There is a formal South Carolina Water Plan in place, but it is currently under revision. The Intrastate Subcommittee is reviewing this document. It includes recommendations on surface and groundwater storage, reservoir management, surface water regulation to include minimum streamflows, minimum aquifer levels, intrastate and interstate river basin commissions, conjunctive use of surface and groundwater, water conservation, the use of treated wastewater for irrigation, water quality and quantity monitoring, methods for improving water quality, and data and research needs so we can assess where we are and where we are going.

Web site address <http://scwaterlaw.sc.gov>

Many of the documents being used by the Committee are located here as well as meeting notices, agendas, Subcommittee and Committee minutes, membership information and a place for you to offer comments to the Committee.