

The Governor's Water Law Review Committee
October 7, 2003

Present:	Dr. Steve Spitz, Chairman	Dr. Bob Becker
	Mr. Dean Moss	Mr. Fred Richardson
	The Honorable Thayer Rivers	Mr. Lynn Stovall
	Mr. John Tiencken	The Honorable Frank E. Willis
	Mr. Lynn Youmans	Ms. Elizabeth Hagood
	Mr. Mike McShane	The Honorable Bob Waldrep
	Dr. Gene McCall	Mr. Dana Beach

Present by Phone: The Honorable John Few

Guests: Mr. Darryl Jones (representing Mr. Ken Hill)
Mr. Joey Holleman, The State
Ms. Jenny Costa Honeycutt, USC Law School
Mr. Jacob Jordan, The AP
Dr. Bud Badr, DNR
Mr. David Baize, DHEC
Mr. Alton Boozer, DHEC
Mr. Danny Johnson, DNR
Mr. Hank Stallworth, DNR
Mr. Alfred H. Vang, DNR

Call to Order/Welcome: The October 7, 2003, meeting was called to order by Chairman Steve Spitz at 10:00 a.m. In compliance with the provisions of Section 30-4-80(e) (Freedom of Information Act), notification of this meeting was given to all persons, organizations, local news media, and other news media which have requested such notification.

Approval of September 5, 2003, Minutes: The "Establishing Subcommittees" eighth paragraph, page 5 was corrected to reflect that the committee to work on the vision/mission statement would be Ms. Hagood, Representative Rivers and Mr. McShane. With this correction, the minutes were approved.

Presentation on the 1982 Governor's Water Law Review Committee Report: Mr. David Baize, Hydrogeologist, Bureau of Water, S.C. Department of Health and Environmental Control
Mr. Baize reviewed the recommendations from the 1982 Governor's Water Law Review Committee report.

Recommendation A: The Committee recommends that the State's role in water resources be recognized so that water, in all its forms, be viewed as subject to a public trust. To that end, the Committee recommends that a comprehensive state water policy be enacted.

The Groundwater Use and Reporting Act partially addresses this recommendation. There is no such language in the Surface Water Act, the Drought Response Act, and the Interbasin Transfer Act.

Recommendation B: To protect the public interest, the State must be made aware of, and if appropriate, intervene in, actions affecting water rights. To this end, the Committee recommends that a notice/intervenor statute be adopted.

Recommendation B deals with a system to notify the State so it may take appropriate action. This recommendation was never adopted.

Recommendation C: Withdrawals of surface water, regardless of quantity, are not currently regulated in South Carolina and many large withdrawals of surface water are occurring or contemplated. The impact of these withdrawals is and will be significant. Therefore, the Committee recommends that the State analyze and review such withdrawals, and develop a State policy to regulate them.

Recommendation C deals with recognizing the effects of large withdrawals of surface water. There was specific concern about diversions from one river basin to another. The Interbasin Transfer Act was promulgated and another step was taken to register and report large surface water withdrawals. There is no permitting mechanism in place but withdrawals are recorded, allowing staff to track surface water use and ground water use. Anyone who withdraws up to three million gallons per month of groundwater or surface water anywhere in the State must register and report their usage to DHEC annually. These data are available to the public.

Recommendation D: A minimum amount of water should be maintained to support in-stream needs in rivers, streams and lakes. The State should, giving due consideration to existing uses, determine in-stream flow needs and consider those needs in reviewing present and future development.

Recommendation D provides for the establishment of maintenance of a minimum instream flow. The State Water Plan contains recommendations for maintenance of a minimum instream flow. There is, however, limited regulatory authority to directly enforce these minimum flow recommendations.

Recommendation E: The State's fundamental problem with regard to groundwater is lack of information. Therefore, the Committee recommends that a more comprehensive effort be undertaken to investigate, inventory, sample, and map South Carolina's groundwater resources.

Many efforts have been made over the years to map aquifers and quantify resources. The Department of Natural Resources can provide information in detail on this effort.

Recommendation F: The Groundwater Use Act of 1969 is a significant start in responding to potential as well as actual threats to groundwater problems addressed in the act. The Committee has endorsed several amendments to the act.

Recommendation F recommends updating the Groundwater Use Act. The committee was concerned that under the existing act a local municipality had to request that it be designated as a capacity use area. In 2000, DHEC updated the act. Some of the major changes: (1) anyone could designate or start the process; (2) DHEC would begin permitting at three million gallons per

month; and (3) reporting was reduced to annually. The local groundwater management plan concept is in place to allow regulation at the local level. Water use reporting is enforced and prior to that change, water use reporting was not enforced. The water use database is being improved. In 2002, the Trident area was added; DHEC is looking at adding the Pee Dee region.

There were questions and discussion about the meaning of the phrase “safe yield.”

Chairman Spitz commented that this committee’s predecessor committee did a lot of work, some of which some became legislation. On the other hand, it is clear that there is work left to be done.

Mission Statement

Mr. McShane reported on the proposed Governor’s Water Law Review Committee Mission Statements. The committee tried to capture the components that seemed to be of the greatest interest and would be consistent for all the subcommittees to work with. Suggestion A was a first draft. Suggestion B contained some of the input from the Committee, and Suggestion C has additional feedback. The mission statement committee recommends either Suggestion B or C.

Ms. Hagood stated the difference between “B” and “C” is that “C” includes quantity in addition to quality. Also, it contains language relating to preservation as well as management.

Mr. Youmans stated he liked “C” but suggested changing “preserve” to “conserve.”

Mr. Beach raised a question about the term “use:” does it apply to human use or include the population of living things in the creeks or streams?

Chairman Spitz noted that the mission statement doesn’t need to be too detailed. The word “uses” refers to all the present and future uses of the water.

The committee voted to change “preserve” to “conserve” and to add “multiple uses” to “present and future uses.” The mission statement was approved with unanimous consent.

“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.”

Water Law Review Committee Website

Mr. Stallworth briefed the Committee on the website, <http://scwaterlaw.sc.gov> (This is a correction, the wrong address was given at the meeting). The site includes minutes, presentations, Committee members’ names and addresses, and scanned material for the Committee to review.

Chairman Spitz would like future meetings added to the site to keep the public as informed as possible through this website.

Invitation to Entities, Cohorts, etc.

Deferred until the subcommittees meet.

Subcommittees

The Committee had lengthy discussion as to the number of subcommittees needed. Three proposals involved three subcommittees: GA/SC Issues, NC/SC Issues, and In-state issues. A fourth proposal called for more than three subcommittees. A question arose over where interbasin transfers would reside. Chairman Spitz stated that all these things by definition interact but he saw interbasin transfer issues as being inside the state of South Carolina even though that is a question that clearly affects Georgia/South Carolina and North Carolina/South Carolina.

There was agreement that these issues share a common base and it is going to be very difficult to separate them. There was a suggestion that the Committee could start to look at some of the questions about natural capital in a basin and who has to sustain that natural capital.

Chairman Spitz noted the instate issues committee will examine the State Water Plan as well as other issues left from the 1982 report.

There was concern that too much fragmentation would lead to topics such as interbasin transfer being dealt with in more than one subcommittee. It was pointed out that the most pressing interbasin transfer question is in the Savannah Basin. It was suggested that some of the subtopics be primarily assigned to one of the two larger committees. Chairman Spitz offered to assist in coordinating and assigning topics to avoid overlap.

Ms. Hagood pointed out it is a large task force. She suggested, without looking at the substance of the committees but as a shear dynamic of numbers working together, there is an opportune number. The range of 4 to 6 seems to work well in subcommittee work.

Chairman Spitz pointed out that if there are two subcommittees and everyone serves on one, that is not the ideal number. With three subcommittees six people could serve on each. He reiterated that he wished members to work on subcommittees they are comfortable with and that their time, background, and expertise would assist. Chairman Spitz noted that some members wished to be on more than one subcommittee. While that is appropriate, he indicated he wanted all members to serve on at least one subcommittee. In about a month each will provide reports.

There was concern that the North Carolina and Georgia issues are very similar.

Senator Waldrep suggested there is a significant difference in upper and lower states and a truly shared "lateral" basin. The Savannah Basin also represents a potential sovereignty issue.

Mr. Moss agreed with Senator Waldrep and pointed out that in the Georgia/South Carolina matters involvement of the Corps of Engineers is a significant difference. Also, North Carolina brings in a different Federal agency (FERC) that has to be dealt with. Two different strategies will have to be adopted to deal with the Corps of Engineers and with FERC.

Mr. Beach raised a general concern about the questions the Committee is trying to answer. The question of how many subcommittees does not define what they will work on.

Senator Waldrep responded that much of what the Committee will address can be related to the issue of equitable apportionment. He then asked if the Committee was comfortable with water as a natural resource and not as a commodity.

Chairman Spitz responded that water can be seen as a natural resource or as a commodity that can be bought, sold, or treated in some property right form that allows transfer of those rights. He referred the question to Dr. Becker.

Dr. Becker said the issue was one of common resources. Common resources still have value. If they have no value then they are going to be overly used. They will be used in an inefficient manner and government regulations will be needed to control something that is more easily regulated when it is given a value and some value can be recovered from it. He does not see water as a simple commodity, but more as a common pool. The question is, is the common pool going to have a value or is the common pool going to be given away and then have to be highly regulated to keep it from being totally destroyed.

Senator Waldrep added that the concept of equitable apportionment resonates through the whole litigation involving interstate conflicts and could apply intrastate as well. Additionally, a huge amount of data is necessary to a decision. The case has to be clear and convincing.

The question of a priority of uses arose. Are some uses more valuable than others, and, if so, should this Committee recommend ways to institutionalize that set of priorities? In other words, we talk about minimum instream flows; so, we must assume that we believe collectively that there is a priority use of that amount of water in the streams—not to be withdrawn beyond. Are there other priorities? If we are going to be making equitable apportionments of water, are certain uses more valuable than others or are they all equal?

Dr. McCall pointed out that the Drought Response Act contains priorities and it should be examined to see if that's right or wrong and how that should be applied to normal as well as critical times.

Chairman Spitz concluded that the Committee will review the issues discussed. The tragedy of the commons recognizes if water has no value it will be totally misused and abused. If it's free to the public, everyone will use it and likely use too much. That problem underlies how one deals with water and will be something that this Committee philosophically and practically must examine. The other question involves a potential dispute with the neighboring states of Georgia and North Carolina. The chances of entering into disputes with neighboring states that share water, particularly where there is an up state and a down state, are historically very high. In the West, it has been going on for 100 years. In the East, it has been going on for nearly that long. None of those questions has been resolved. The only question right now is should we do it in two committees, eight committees, or four committees. He is seeking some type of structure only at this time.

Mr. Moss moved to create three subcommittees: North Carolina/South Carolina, Georgia/South Carolina, and an Intrastate Subcommittee. The motion was seconded by Mr. McShane and

unanimously approved.

The Committee recessed for 10 minutes.

Chairman Spitz suggested each subcommittee first address procedural issues: meeting schedules, how members will communicate. The subcommittees will meet for a brief time and each subcommittee should designate a spokesperson to give a summary of their discussion.

He pointed out that DHEC and DNR have offered to provide support to each of the subcommittees. The agencies will not direct the discussion but be available for assistance.

Breakout into Subcommittees

The full Committee reconvened and received subcommittee reports.

Georgia/South Carolina Subcommittee - The subcommittee elected Mr. Moss as spokesperson. Mr. Moss reported that the subcommittee set up a conference call for October 14, 2003. There was extensive discussion about what they are going to do. A clear consensus developed that the subcommittee would start with the development of recommendations to the Governor that South Carolina has to take the initiative to develop some type of agreement with Georgia. At this point, they are not specific as to whether that agreement should be a compact or in some other form. It must deal both with quantity and water quality issues. It needs to be based upon a consensus. The issue of Atlanta is clearly an overwhelming consideration and the subcommittee has work to do to determine the best approach to address that.

Members:

Dean Moss, Beaufort-Jasper Water Authority

The Honorable Bob Waldrep

The Honorable Thayer Rivers

Mike McShane, Chair, DNR Board

Bob Becker, Strom Thurmond Institute, Clemson University

Lynn Stovall, Greenville Water System

Intrastate Subcommittee – The Subcommittee elected Dr. McCall as its spokesperson. The subcommittee set up a teleconference for October 15, 2003, a meeting in Charleston on October 22, 2003, and a teleconference on October 29, 2003. The subcommittee will review the historical material to see what has been done, putting it in a summarized format for the committee to review. The subcommittee delegated to Chairman Spitz the regional input meetings where committee members should represent the full Committee in their regional areas so they won't have to travel too far. The subcommittee also suggested asking ETV, Roland Austin, or some other producer to have a water issues program. The subcommittee needs to ensure they are coordinating with the current water quality legislation – the Clean Water Act, SC Pollution Control Act, and also the quantity laws (FERC) and State laws – Interbasin Transfer and Drought Response Act. They also need to look at instream flow, maintaining existing uses, and transfers from impoundments. They must recognize the interconnection of water quality and quantity.

Members:

Gene McCall, McCall Engineering
Elizabeth Hagood, Chair, DHEC
Dana Beach, S.C. Coastal Conservation League
Lynn Cooper, S.C. Chamber of Commerce
Ken Hill, Chair, S.C. Forestry Commission
Fred Richardson, Grand Strand Water and Sewer Authority
Lynn Youmans, Agriculture

North Carolina/South Carolina Subcommittee – Mr. Tiencken reported that only two members of the subcommittee were present, Steve Spitz and himself. DNR and DHEC staff members reviewed the process and status of FERC relicensing for the Yadkin-Pee Dee and Catawba-Wateree hydroelectric projects. Some of the major relicensing issues will be streamflow requirements for water supply, water quality, fish and wildlife, navigation, and prevention of saltwater intrusion in areas of the lower Pee Dee basin. Development of comprehensive drought contingency plans will be important for projects in both of these basins. There may also be some legal issues regarding interstate water allocation, especially in the Pee Dee. The goal of the subcommittee will be to identify ways to assist the State agencies in the relicensing effort. Mr. Tiencken noted that Frank Willis is heading a group called the Pee Dee Coalition, which is working on water issues in that region and they would solicit input from them.

Members:

John Tiencken, South Carolina Public Service Authority
The Honorable Yancey McGill
The Honorable Marty Coates
The Honorable John C. Few
Frank E. Willis, Mayor of Florence

Chairman Spitz thanked DHEC for the presentation on the predecessor committee's recommendations, the mission statement committee for their work and the full Committee for theirs.

He invited the public to contact the Committee and visit the website.

Senator Waldrep recommended that care be given to ensure that the media and the public are aware of what is being done.

Mr. Moss suggested that DHEC and DNR collectively draw up a press release which would summarize this meeting. This was approved by the Committee.

Next Meeting Date

10 o'clock a.m., Tuesday, November 4, 2003.

The next meeting of the Governor's Water Law Review Committee will be Tuesday, November 4, 2003, at the Cohen Campbell (Styx) Fish Hatchery.

Adjournment: The meeting adjourned at 12:30 p.m.