

INTERBASIN WATER TRANSFER POLICY IN GEORGIA: RECOMMENDATIONS FOR CHANGE FROM THE JOINT COMPREHENSIVE WATER PLAN STUDY COMMITTEE

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Abstract. While Georgia has provisions in place to address interbasin water transfers, there are concerns that these provisions will not be sufficient to meet future demands for interbasin transfers. Consequently, the Joint Comprehensive Water Plan Study Committee, created by the 2001 Georgia Assembly, charged the Interbasin Transfer Working Group with identifying and evaluating policy options relating to interbasin transfers. As a result of meetings held in 2002, the Working Group produced a report which set forth a series of options for policy changes for consideration by the Study Committee. The Study Committee, based on the Working Group's report, made a series of recommendations for changes to Georgia's interbasin transfer policy to the Governor and the General Assembly. These recommendations include: expansion of the definition of interbasin transfer to include groundwater, creation of a policy statement on interbasin transfers, determination of specific criteria, terms, and conditions for approval of interbasin transfer permits, setting a distance criterion for interbasin water transfers, expansion of the public notice provision, inclusion of an emergency drought provision, and the addition of a basin-of-origin protection provision.

INTRODUCTION

Population growth, particularly urbanization, is increasing water demand relative to supply in Georgia. Georgia is one of the fastest growing states in the country. The most recent census report ranked Georgia as the sixth-fastest growing state in the 1990s, growing over 26.4 percent during this decade. The pressure created by population growth and development brings about localized concentrated demands for water, which are placing stress on a number of Georgia's rivers. Increasing withdrawals of water for public supply, industrial uses, power production, and irrigation are

making it more difficult to meet instream flow needs for such uses as water quality protection, recreation, and fish and wildlife habitat.

Interbasin water transfers are one method communities may use to meet their water demands. Generally, interbasin transfers are defined as the diversion of water from one river basin to another. Interbasin transfers often occur where communities are located on a ridgeline between two river basins. Such communities typically obtain their water from one river basin and transport it to citizens located in another river basin. Interbasin transfers have existed in Georgia since the early 1900's, but today most interbasin transfers occur in the 20-county metropolitan Atlanta area, which has five river basins either passing through or starting their headwaters in these counties.

Georgia's increasing demand for water has created concerns that the metropolitan Atlanta area or some other large water user will attempt to transport water over a long distance from one region to another. Interbasin transfers can have negative economic and environmental impacts on the basin-of-origin, or donor basin. Withdrawal of water for use in another basin can alter the stream flow which affects instream uses of the water and precludes potential future water uses both instream and offstream. There may also be negative environmental impacts associated with releasing greater amounts of treated wastewater into the receiving basin. In addition, withdrawing groundwater that feeds one river basin and discharging it into the surface water of another river basin may have negative impacts on both river basins.

In response to these concerns, the Joint Comprehensive Water Plan Study Committee (Study Committee), created by Senate Resolution 142 in the 2001 session of the Georgia General Assembly, created the Interbasin Transfer Working Group (Working Group) to identify and evaluate policy options relating to interbasin

transfers in Georgia. Specifically, the Working Group was charged with considering the following policy questions: (1) Is Georgia's current policy towards permitting interbasin transfers adequate; and (2) should any adverse impacts caused by interbasin transfers be addressed through basin of origin protection? In considering these questions, the Working Group reviewed numerous research articles and reports as well as the interbasin transfer policies of other states (statutes and regulations), and the recommendations of the Regulated Riparian Model Water Code. Following a series of six meetings held between January and July 2002, the Working Group produced a report which detailed a series of options for changes to Georgia's interbasin transfer policy. Based on consideration of the Working Group's report, the Study Committee drew up a set of recommendations that were subsequently adopted in August, 2002. These recommendations will be presented to the Georgia General Assembly in the 2003 session. This paper will give a brief discussion of Georgia's current policy on interbasin water transfers followed by a description of recommendations for changes to that policy made by the Study Committee, based on the Working Group's report.

CURRENT GEORGIA INTERBASIN TRANSFER POLICY

Georgia's existing laws and policies allow interbasin water transfers to occur as long as appropriate environmental requirements in the donor and receiving basins are met. Interbasin transfers are defined under Georgia law as a withdrawal or diversion of surface water in which the used water is returned to a different river basin than that from which it was withdrawn (Rule §391-3-6-.07(2)(m)). The Georgia Department of Natural Resources (DNR) is authorized to manage the state's surface water, and the Environmental Protection Division (EPD) of the DNR issues permits for interbasin transfers (O.C.G.A. §12-5-23). Water discharged into the receiving basin must meet environmental criteria that protect water quality standards (O.C.G.A. §12-5-29; §12-5-30). The EPD currently places terms and conditions for permits of general surface water withdrawals of 100,000 gallons per day or more on an average monthly basis in interbasin transfer permits and provides for consideration of reasonable uses in the donor and receiving basins (O.C.G.A. §12-5-31). In evaluating interbasin transfer permit applications, the EPD currently uses existing

criteria for surface water withdrawal permit applications, as well as consideration of competing uses in the donor basin (O.C.G.A. §12-5-31(e)(g)). Georgia law presently requires a seven day notice of the proposed transfer and authorizes a public hearing if there is sufficient public interest (O.C.G.A. §12-5-31(n)(2); Rule §391-3-6-.07(14)). An exception to the general policy of allowing interbasin transfers is the prohibition against interbasin transfers of water into the eighteen county North Georgia Metropolitan Planning District (O.C.G.A. §12-5-570). EPD's current policy is to disallow long distance interbasin transfers which are defined as water transfers that cross more than two counties.

PROPOSALS FOR POLICY CHANGE

The Working Group considered options for addressing concerns surrounding various issues that could arise from future interbasin transfers in Georgia. The report by the Working Group included a description of a set of options for each issue, discussion of the pros and cons of each option, and the identification of which option, if any, the Working Group believed would be most appropriate for Georgia. The Study Committee drew on the report by the Working Group to compile the following set of recommendations for changes to Georgia's policy toward interbasin transfers.

Definition of Interbasin Transfer

An interbasin transfer under current Georgia law only includes the withdrawal and discharge of surface water from one river basin to another. The Working Group decided, and the Study Committee agreed, that a more comprehensive definition that included groundwater is necessary because groundwater withdrawals potentially affect the long-term viability of the groundwater source and flows in nearby surface waters. The Study Committee formulated the following definition of interbasin transfer to reflect these concerns:

“Interbasin transfer” means the withdrawal, diversion, or pumping of surface water from one river basin or the withdrawal of groundwater from a point located within or beneath one river basin and release of all or any part of the water in a river basin different from the basin of origin.

Policy Statement

An interbasin policy statement is a useful way for a

state to articulate why interbasin water transfers are a concern, and what the state means to accomplish through interbasin transfer regulation. The Working Group believed that the current lack of a policy statement in Georgia makes it difficult for permit applicants to understand the reasons why regulation of interbasin transfers is necessary. Consequently, the Study Committee formulated the following statement in order to express the purpose of the legislation:

The transfer of water to outside the boundaries of a river basin will have impacts on the water and other resources in the basin of origin and the receiving basin. Such impacts differ from those caused by uses of water within the same basin in part because any unused water will not be returned to the stream from which it is taken for further use in that river basin. It is the policy of the State of Georgia to protect the reasonable needs of donor and receiving basins through the regulation of interbasin transfers. Therefore, the waters of the State may not be diverted for use outside the river basin of origin except in compliance with Georgia law.

Criteria for Permits

There are currently no criteria relating specifically to interbasin transfers for the EPD to use when evaluating an interbasin transfer permit application. Due to the potential impacts an interbasin transfer could have on both the donor and receiving basins, the Working Group proposed, and the Study Committee concurred, that permit applications should be reviewed using objective criteria. These criteria are summarized as follows:

- quantity of the proposed withdrawal;
- protection of present uses;
- protection of water quality at low flow conditions;
- economic feasibility of alternative water sources;
- current and future water demands of donor and receiving basin;
- current water supply of receiving basin;
- beneficial impact of transfer on receiving basin;
- reasonable and beneficial use by receiving basin;
- whether the transfer will promote water conservation;
- number of miles water will be diverted;
- consultations with affected local governments;
- the quantity, quality, location, and timing of water returned to the receiving basin;

- whether the transfer will have any detrimental impact on fish and wildlife habitat, aesthetics, or recreation;
- availability of water to respond to emergencies in the donor and receiving basins;
- the cumulative effect of transfer on donor basin;
- the correlation between surface water and ground water in the donor basin, and whether the transfer will be harmful to the supply of either; and
- impact on interstate use.

Distance Criterion

Interbasin transfers can involve large amounts of water moved over potentially long distances. Because of the degree of concern over such potential transfers, the Working Group believed it was important to devise statutory language that would place distance restrictions on interbasin transfers. The Study Committee, following extensive discussion, agreed to recommend the following permit criterion which would codify the EPD's current policy of setting a two-county limit on interbasin transfers:

An interbasin transfer that crosses more than two adjacent counties is prohibited, except to satisfy critical needs, which are temporary, short-term needs such as equipment failure, source contamination, or severe drought impacting public health and safety.

Permit Terms and Conditions

There are currently no terms and conditions specific to interbasin transfers that the EPD uses to issue or renew a permit for an interbasin transfer. In order to better minimize adverse impacts on the donor and receiving basins, the Working Group proposed that a set of terms and conditions be spelled out which would establish specific requirements to be met for an interbasin transfer to occur. The terms and conditions to be applied to interbasin transfer permits that the Study Committee recommended are summarized as follows:

- location, timing, uses, and amount of the withdrawal;
- any required conservation measures;
- amount of return flow and place of discharge;
- any provisions necessary to promote an adequate water supply for the state or to mitigate any future adverse conditions caused by the transfer;
- any requirements for metering, surveillance, and

reporting the EPD deems necessary to ensure compliance with the permit terms;

- the time within which the withdrawal or use of water must be made; and
- any other conditions necessary to protect the public interest, the environment and ecosystems, the public health safety and welfare, and to ensure the conservation, proper management, and aesthetic enhancement of the waters of the State.

Public Notice Provision

Georgia's current public notice provision of proposed interbasin transfers is inadequate for rural areas served by weekly newspapers whose publishing date may not provide communities potentially impacted with sufficient notice. Furthermore, the Working Group believed it would be useful to provide notice to the receiving basin as well as the donor basin since the effects of the transfer could be felt by both basins. Consequently, the Study Committee recommended inclusion of the following public notice provision:

After receipt of a completed application and at least thirty days prior to acting on the application, the Division will notify city and county governments and public utilities in each county located entirely or partially within the river basin that is the source of the proposed transfer and the receiving basin and to all persons who have filed a written request with the Division that their names be placed on a mailing list for receipt of such notice. Any person desiring to be placed on such mailing list must so request in writing and renew such request in December of each year. The name of any person who has not renewed such request shall be removed from the list. The Division shall cause a notice of the proposed interbasin transfer which shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the basin-of-origin and receiving basin to be published in the legal organ or a newspaper of general circulation in each potentially affected community in the basin of origin and the receiving basin. Whenever there appears to be sufficient public interest, the Division may call a public hearing. Notice shall be given of the public hearing at least thirty days prior to the hearing.

Emergency Drought Provision

Due to the serious impact an interbasin transfer may have during a drought emergency, the Working Group felt it was important for the EPD to act consistently with the drought management plan that is currently under development. The Study Committee agreed and recommended inclusion of the following provision:

In the event an emergency period of water shortage exists within an area of the state, the Division may modify or revoke and reissue any interbasin transfer permit subject to the terms of the Georgia Drought Management Plan.

Basin-of-Origin Protection

Because of the possible negative economic and environmental impacts to the donor basin that might arise from an interbasin transfer, the Study Committee believed it was important to include statutory language that would provide protection against any such impacts. The Study Committee crafted the following recommendation which would codify such protection:

In making a determination on any application for a new interbasin transfer or modification of an existing interbasin transfer, the Division shall consider the present and future water needs of both the basin of origin and the receiving basin and all the possible effects the interbasin transfer could have on communities in the basin of origin including environmental impacts, social impacts, and economic losses, including those due to subsequent declining property values and population decline. When feasible, the non-consumptive portion of the interbasin transfer shall be returned to the basin of origin. Water users receiving water as the result of the proposed interbasin transfer shall implement water conservation procedures and must demonstrate that there are no cost effective alternatives to the interbasin transfer.

CONCLUSION

Interbasin water transfers can be contentious when there is a lack of adequate policy guidelines for implementing agencies to follow when considering permits. Many states, such as North Carolina (N.C.G.S. §143-215.22), South Carolina (S.C.C.A. §49-21-10 *et seq.*), and Tennessee (T.C.A. §69-2-201 *et seq.*), have

already acted to regulate interbasin water transfers. Such regulations are designed to minimize negative impacts to the donor basin by setting strict limits on the conditions under which a transfer permit will be granted. These restrictions also act to protect the economic viability and environmental well being of communities located within a donor basin. The Study Committee's recommended changes to Georgia's current policy on interbasin transfers, based on options presented by the Working Group, are designed to ensure that the water resources of this state are given comparable protection. The citizens of Georgia deserve no less.

SELECTED REFERENCES

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