

# GEORGIA WATER RESOURCES: WHERE ARE WE; HOW DID WE GET HERE; AND WHERE ARE WE HEADED?

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**Abstract.** The 2003-2004 Term of the Georgia General Assembly included monumental political change with the Republicans taking over the Governor's Office with the 2002 election, the Senate at the beginning of the 2003 legislative session, and the House with the 2004 election. The implications of this political change on water-related matters remains to be seen.

Budget shortfalls resulted in cutbacks in state programs, directly affecting water-related efforts. To help balance the budget, legislators used funds from the solid and hazardous waste trust funds, community greenspace program, and fees generated by land disturbing activities that were to be used for nonpoint pollution control programs. Lack of funding also affected other water-related projects and programs.

Water issues would likely have been contentious during this legislative term, with or without the political changes and budget problems. Major controversy focused on voluntary transfers of water permits and restrictions on long-distance water transfers included in House Bill 237. The uneven distribution of water and water uses coupled with increasing demands, support an open and thoughtful review of how water is allocated under the regulated riparian system and whether changes are needed to address the evolving water situation. Although the debate on HB 237 was highly charged, the level of discourse increased markedly during the period, resulting in a broader understanding of the issues and the implications for how they might be resolved.

The interrelatedness of the water challenges before us requires that we manage water in a comprehensive manner. Although it was difficult to reach agreement on legislative language for developing the state comprehensive water management plan, legislation was passed to do so.

The interrelationship between land and water was involved in some important legislation and related efforts during the legislative term. Although considerable support was evident for merging requirements relating to erosion and sedimentation and stormwater control, debate was intense over provisions to reduce riparian buffer requirements included in Senate Bill 460. Governor Perdue also began efforts to develop a land conservation partnership program.

## INTRODUCTION

The 2003-2004 Term of the Georgia General Assembly may be viewed as an important transition period, not only in state political leadership, but also in how water is managed in Georgia. It is, therefore, timely to look at what changes occurred during the term and what these changes might mean for the future.

The 2003-2004 legislative term witnessed a momentous shift in political leadership in Georgia. Governor Sonny Perdue, elected in 2002, became the first Republican governor of Georgia since the Reconstruction Period and the Senate changed from a Democratic majority to a Republican majority. This shift was further solidified in the 2004 election when the House also changed to a Republican majority. Consequently, the Republicans are currently in charge, controlling the Governor's Office and both Houses of the General Assembly. As a result of these changes, different people are in key leadership positions and the political climate of the General Assembly has been altered. How these changes will affect water-related matters is not currently known.

Within this new political climate, water legislation was hotly debated. The major areas of focus during the term included:

1. Financing water-related programs and activities;
2. Water planning and water allocation; and
3. Addressing issues related to the land/water interface.

## FINANCING WATER-RELATED EFFORTS

Beginning in the fall of 2002, it was apparent that state revenues were decreasing. This budget shortfall has affected water-related efforts in a number of ways. It resulted in moneys being taken from the solid and hazardous waste trust funds to help balance the budget. These funds are used to clean up scrap tire piles and support solid waste reduction and management programs and to clean up sites contaminated with hazardous substances. Community

greenspace funds and fees generated by land-disturbing activities that were to be used for nonpoint control programs were also used to help balance the budget. Loss of these funds slowed or stopped these efforts and pointed out why a dedicated source of funding is necessary to ensure that funds will be used in a specific way. It also shows why the legislature is hesitant to create such dedicated funds in that it limits their options for balancing the budget.

At the same time that state moneys were tight, there were some efforts requiring significant funding. Upgrade of Atlanta's wastewater infrastructure in accord with the consent order requires significant new funds. Increasing rates could fund part of the effort, but not all. To raise the rest of the necessary funds, an additional one percent sales tax was legislatively authorized for the city.

Additionally, comprehensive water planning, including regional water management plans, is expensive. Whereas the state component of the plan is a policy document designed to ensure that policies and programs are in place to be able to reach state goals and to provide guidance for regional planning, regional plans are data-intensive water management plans that are more costly to develop. Although it is recognized that the regional component of the plan is necessary, the decision was made to fund the state part initially and to finance the regional planning when the budget situation improves. Depending on how that transpires, the entire state may be divided into water planning regions, reflecting river basins and aquifers, or it might focus on the most critical areas first.

In addition, overall state operations were affected by the revenue constraints which results in state agencies having more limited capacity to fulfil their missions. This applies to water management as well as other areas of state responsibilities.

## WATER PLANNING AND ALLOCATION

Much of the water-related action during the 2003-2004 legislative term focused on water quantity issues, following the work of the Joint Comprehensive Water Plan Study Committee and Water Plan Advisory Committee. House Bill 237 focused on the issues worked on during the 15 month study committee process: developing a comprehensive state water management plan; monitoring and reporting of agricultural water use; long-distance water transfers; and voluntary transfers of water withdrawal permits. Note that the issues addressed by the study committee involved specific key challenges facing the state. The study committee's recommendations were not comprehensive but focused on those issues where some policy direction was necessary for the comprehensive planning process to proceed.

HB 237 was the center of heated debate in both the House

and Senate in 2003. The primary focus of the debate was on the provision to allow the voluntary transfers of water withdrawal permits, an issue that was also debated during the study committee process. Although the wording changed several times during the process, the intent was to allow a permit holder, in an area where there is no more available water to be permitted, to voluntarily give up all or a portion of his/her water use so that another person could receive a permit to withdraw that amount of water. It is assumed that the new water user would pay the current permit holder money to give up the water, although that is an agreement between the parties and not something that EPD would necessarily have an interest in—the Revenue Department might, but not EPD.

Such a change would fundamentally change the regulated riparian water management approach adopted by the state with the passage of the 1972 Ground Water Use Act and the 1977 amendments to the Water Quality Control Act, which superimposed upon the common law doctrine of reasonable use, a permit requirement for those using in excess of 100,000 gallons of water per day. The debate focused on water as a public resource and the implications of allowing it to be bought and sold. Questions were raised on whether the permit provided a "use" right or a "property" right to the permit holder. It was argued that, in an area where no more water can be withdrawn, a mechanism is needed to allow permit transfers to occur; otherwise, the economy stagnates. It was also argued that the current permit holder was given the permit by the state at virtually no cost and would make a windfall profit by selling the water. Equity concerns were raised that water would simply "flow to the money" and that those less able to pay would suffer. Additionally, the lack of information relating to the amount of water necessary to maintain a healthy environment and the lack of water use data for agricultural purposes raised questions on the implications of permit transfers.

Although it did not receive as much attention as the permit transfer provisions, the long-distance water transfer restrictions were also controversial. Much of the support for the provisions came from around the state where people felt that Atlanta would pipe water from their region to meet the increasing demands in metropolitan Atlanta. Those areas would, generally, rather see the growth come to the water rather than the water go to the growth. In addition, there are environmental reasons for keeping water in the basin of origin, such as maintaining aquatic habitat. Local governments, however, are increasingly faced with working with neighboring jurisdictions to provide water and wastewater services on a regional basis. Restricting water movement can make this difficult or impossible.

There was widespread support for developing a state comprehensive water management plan and for requiring monitoring and reporting of agricultural water uses. The

provisions in the bill relating to these topics, however, were not scrutinized and debated to the degree that the permit transfer and long-distance transfer provisions of the bill were. Interestingly, to ensure the passage of the agricultural metering requirements, early in the 2003 session, these provisions were put in a separate bill, HB 579, which was passed by the General Assembly.

House Bill 237 passed both Houses of the General Assembly, but in different form. Consequently, it was assigned to a conference committee to work out the differences between the House and Senate versions. The conference committee, composed of three members from each chamber, met numerous times toward the end of the 2003 session. In the waning minutes of the session, however, the House voted down the conference committee report. This did not kill the bill automatically, but sent it back to the conference committee for more work. Time ran out, however, before changes could be made. Bills that are not passed or voted down during the first year of the two-year legislative term remain alive for action during the second year. As a result, HB 237 remained in the conference committee during the 2003-2004 interim.

During the interim, discussions about HB 237 continued—informally—and a consensus seemed to emerge that the bill should focus specifically on developing the state comprehensive water management plan. In October 2003, by Executive Order, Governor Perdue appointed a Water Resources Coordinating Committee composed of heads of various state agencies with water-related responsibilities. He directed the committee to develop a scoping document for a state comprehensive water resources management plan and to submit the document to him and the General Assembly before the 2004 legislative session.

The committee met to discuss its charge and held public meetings to receive input. On January 6, 2004, the committee conveyed its recommendations to the Governor, which affirmed (or accepted, in that they had only limited time to fulfill their charge) the findings of the study committee and included a table of contents for the plan.<sup>1</sup>

During the 2004 legislative session, the conference committee worked on revising HB 237 to focus solely on the development of the state comprehensive water management plan. Although this would seem a fairly straight-forward effort, it became mired down in controversy over legislative oversight. Toward the end of the session, a new conference committee version was sent back to the House and Senate for a vote and passed both Houses. The bill was signed by Governor Perdue on May 13, 2004.

As passed, HB 237 calls for the development of a comprehensive state-wide water management plan in accordance with the policy statement: Georgia manages water resources in a sustainable manner to support the state's economy, to protect public health and natural

systems, and to enhance the quality of life for all citizens. It also states that EPD, in developing the plan, shall be guided by the following nine planning principles.<sup>2</sup>

1. Water is to be managed to protect public health, safety and welfare;
2. Water is to be managed in a sustainable manner;
3. Citizens have a stewardship responsibility toward water;
4. The economy and environment are interconnected;
5. Integrated water planning is necessary;
6. Decisions are based on a comprehensive database;
7. Local/regional innovation are encouraged;
8. Meaningful public participation is necessary; and
9. Periodic revisions of the plan reflecting new knowledge and insights is required.

The bill creates a Water Council to replace the Water Resources Coordinating Committee created by the Governor's Executive Order. Membership on the council differs somewhat from that of the committee, primarily in having four legislative members and two other members appointed by the Speaker of the House and the President pro Tempore of the Senate. The council is to provide input to EPD and ensure coordination, cooperation, and communication among state agencies in the development of the plan. The Water Council also has the authority to approve the final draft plan, which is to be provided to them by July 1, 2007, and to recommend the plan to the General Assembly for its approval during the 2008 legislative session. In case the General Assembly does not approve the plan, language is included providing mechanisms for an alternative plan to be adopted. Once adopted, the plan will guide permitting and other decisions by the state.

As previously noted, regional water planning is necessary. The Sound Science Initiatives for the coastal region and the lower Flint River basin will be completed by the end of 2005. These studies will provide important information for regional water planning. As funds become available, it is anticipated that regional planning will begin, either in regions with identified problems or statewide, based on some form of regional configuration that will reflect river basins and aquifers.

## LAND/WATER INTERFACE

Since the passage of the Clean Water Act in 1972, most of the focus on improving water quality has been on reducing point discharges from municipalities and industries. These point discharges were the major sources of water contamination and, over time, our efforts have been effective

in reducing them. That does not mean, however, that point sources are still not a significant source of contaminants. Concurrent with the reduction of point discharges, our understanding of the contribution of nonpoint sources to the pollution load increased. As early as 1975, erosion and sedimentation were recognized as problematic in Georgia and resulted in the passage of the Erosion and Sedimentation Control Act. At the national level, the 1987 amendments to the Clean Water Act placed greater emphasis on controlling stormwater. These two laws have overlapping but not identical goals and requirements, which can lead to confusion, duplication of efforts, and increased costs. Consequently, there was interest evident during the 2003-2004 legislative term in making the requirements as consistent as possible.

House Bill 285, enacted in 2003, provides for permit fees, not to exceed \$80.00 per acre of land-disturbing activity, to fund the nonpoint control efforts from construction sites. In local jurisdictions with approved programs, half the fee goes to the jurisdiction and the other half to the Environmental Protection Division (EPD). Where the local government does not have a program, EPD receives the entire fee. As previously noted, however, these funds have been used to help balance the budget.

Other changes addressed by HB 285 include the removal of an individual land-disturbing permit requirement at the state level in favor of a general permit, only requiring notification of EPD by those involved in the land-disturbing activities. Increased emphasis was placed on the use of stop work orders rather than fines as an enforcement tool. Additionally, a series of educational and training requirements were built into the law to help ensure that those involved in land-disturbing activities are aware of their responsibilities.

Although considerable support was evident for the changes included in HB 285, nonpoint pollution became a controversial issue during the 2004 legislative session. Senate Bill 460 would have enabled those involved in land disturbing activities to encroach upon riparian buffers if they met certain criteria. As passed, SB 460 requires the Board of Natural Resources to adopt rules which contain specific criteria for the grant or denial by the EPD director of requests for variances to the buffer requirements. It also requires the director to consider granting a variance when certain conditions apply, rather than allowing the person to simply alter the buffers if those conditions apply. The provisions again became controversial when the Board of Natural Resources made changes during the rule making process, removing certain state waters from buffer requirements.

Prior to the 2004 legislative session, Governor Perdue, by executive order, created the Governor's Advisory Council for the Georgia Land Conservation Partnership. Central to

the advisory council's work was the realization that you protect land, not for its own sake, but for the values you receive from that land. These values might be cultural and/or environmental and include: outdoor recreation and education, cultural identity, clean air, biodiversity, and clean and abundant water. The advisory council's report, *Georgia Land Conservation Partnership Plan*, makes a number of important recommendations which will likely be the focus of legislation during the 2005 legislative session.<sup>3</sup>

Based on the charge given to the advisory council by Governor Perdue, their focus was to build on the community greenspace program but to make it applicable statewide, rather than to only the most densely populated and fastest growing counties, and to provide more tools to conserve land, particularly through public-private partnerships.

The advisory council realized that significant funding would be required to make the land conservation program a success. Since the community greenspace funds, which had been approximately \$30 million per year, had been used to help balance the budget, the advisory council was interested in creating a dedicated funding source that could only be used for land conservation purposes. This presented a problem. Under the Georgia Constitution, the people of the state have to support the creation of a dedicated fund in a general election. Once created, the funds can only be used for the specified purposes. A constitutional amendment would not be able to go before the voters until the 2006 general election. Although the advisory council called for such a dedicated source of funding, they realized that Governor Perdue could not wait until then to start the program. Based on funding for land conservation efforts in other states, the advisory council felt that a significant amount of money, approximately \$100 million, would be necessary to jumpstart to program. If Governor Perdue can identify funding sources for this purpose, it could have significant impact on protecting both land and water resources.

## OTHER LEGISLATION

There was interest during the 2003-2004 legislative term in on-site waste treatment control. The focus of HB 992, which did not pass, was on alternative technologies for onsite wastewater treatment, which generally require a higher degree of maintenance than standard septic systems to ensure that they work properly.

In addition, legislation designed to conserve water resources was passed, including HB 1277 which requires rain sensor shut-off switches on irrigation systems within the Metropolitan North Georgia Water Planning District and SB 436 which creates the Agricultural Water Conservation Incentive Program.

## WHERE ARE WE HEADED?

The 2003-2004 legislative term saw water emerge as a major and highly charged issue area. Although water issues were contentious, particularly HB 237, it was likely necessary to have the open debate on the water rights issues in order for the water plan to be developed. The Comprehensive State-wide Water Management Plan is to be completed by July 1, 2007, and considered by the General Assembly during the 2008 legislative session. Some legislation dealing with non-critical water issues might be held until the plan is completed to better ensure that water-related decisions are consistent with the plan.

Most comprehensive plans include both a state policy component and regional water management plans. As the state component is developed, focus will shift to regional water planning. The sound science initiatives for the lower Flint River basin and the 24-county coastal area will be completed by the end of 2005. These two regions have significant water challenges. When and how regional water management plans will be developed in these two areas, and other regions of the state, depend largely on funding. In any event, the nature of the problems confronting us will require that regional planning occur within the state water policy framework and be aligned in some way with river basins and aquifers.

The interrelationship between the state plan and regional plans has not been determined. The legislation creating the Metropolitan North Georgia Water Planning District in 2001 identified the roles of EPD and local governments in implementing the plans. Although the planning process has been completed, operationalizing the plans, is not easy and problems have to be worked out. The efforts in the metro Atlanta area can help determine what state and local government roles should be in developing and implementing other regional water management plans.

Land use restrictions designed to protect water resources will likely remain contentious as growth places greater pressure on both land and water resources. It is likely that vegetative buffer requirements will remain an issue. In addition, it is likely that the debate over the definition of "state waters" will continue and intensify. If certain water resources are not defined as "state waters," then the state has little authority over how they are treated.

In addition, consideration will be given to restoring funds to the hazardous and solid waste trust funds and to using the fees for land disturbing activities to fund erosion and sedimentation control efforts. If an effort will be made to have constitutional amendment(s) to dedicate some or all of these funds for their stated purposes is not known at this time.

## REFERENCES

Letter and attachments from the Georgia Water Resources Council to Governor Sonny Perdue, dated January 2, 2004.

*Final Report of the Joint Comprehensive Water Plan Study Committee*, 2002. Carl Vinson Institute of Government in Cooperation with the Office of the Governor and the Georgia General Assembly, Atlanta, GA.

*Georgia Land Conservation Partnership Plan: A Report to Governor Sonny Perdue*, 2004. Georgia Department of Natural Resources in cooperation with the Carl Vinson Institute of Government, Atlanta, GA.