

GEORGIA WATER RESOURCES: A COMPREHENSIVE LOOK

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Abstract. Action on the water front was relatively calm during the 2005-2006 Term of the Georgia General Assembly. Compared to the previous term in which permit trading, interbasin transfers and water planning were among the most visible issues debated, there was less emphasis on water-related legislation during this term. The creation of the Georgia Water Council and the effort to develop the state's first iteration of a comprehensive water management plan likely contributed to this relative calmness.

The water-related issue area that saw the most action during the term was the land/water interface. Ironically, legislation was passed that would protect land in order to protect water, as well as provide other benefits, while legislation nearly passed that would limit buffer provisions along streams and reservoirs. Legislation was also introduced to speed up the environmental regulatory process. Of significant concern during the term was the loss of funds intended for use in solid and hazardous waste management. These funds were used to help balance the budget but most were reinstated during the 2006 session. Water-related legislation also focused on NPDES permit fees, litter prevention, dams and "deadhead" logging. Study committees were created to enable legislators to better understand a number of issues including the coastal sound science initiative, desalination and septage disposal.

The important relationship of land use and water resources will likely remain an issue area as the state moves to meet the Total Maximum Daily Load requirements, particularly in areas where the lack of assimilative capacity in streams could curtail economic growth. The debate over buffers along streams, reservoirs and the coastal marshes will continue until some resolution is reached. So too, disposing of septage in an environmentally acceptable manner is needed.

The 2008 session of the General Assembly will be a critical session in which the Georgia Water Council presents the Comprehensive Water Management Plan to the General Assembly for its consideration. It will also be necessary to determine the form of regional water planning and how such planning will be funded.

INTRODUCTION

The 2005-2006 Term of the Georgia General Assembly may be viewed as a continuation of the transition period that began during the previous term. The change in political party dominance was completed when the Republicans became the majority party in the House in 2005, resulting in Republican control of the governor's office and both houses of the Georgia General Assembly. Unlike the previous term, particularly the 2003 legislative session when water issues were among the most controversial issues debated, the 2005-2006 Term was relatively quiet. The creation of the Georgia Water Council and the effort to develop the state's first iteration of a comprehensive water management plan likely contributed to this calmness. The initiation of the planning process has resulted in two actions that decreased the focus on water within the legislature. First, the comprehensive water planning effort is addressing several issues that might be legislative issues if the plan was not being developed. Second, because the state is involved in developing the comprehensive plan, the General Assembly is less inclined to take up water issues until the plan is completed. Even so, the first iteration of the plan will not address all the water issues facing the state nor can all water issues wait for the plan to be completed to be resolved. Thus water legislation was considered during this term.

LAND/WATER INTERFACE

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In October 2003, Governor Perdue announced that he would create an advisory body to develop Georgia's first comprehensive land conservation plan. Later that year, by executive order, he created the Advisory Council for the Georgia Land Conservation Partnership. The council analyzed the need for land protection measures in the state

and options for meeting that need. Throughout the council's tenure, the importance of protecting land in order to protect water was emphasized. In August 2004, the council presented its recommendations to Governor Perdue.¹

House Bill 98, the Georgia Land Conservation Act, was passed during the 2005 legislative session to implement most of the recommendations made by the council. This legislation creates the Georgia Land Conservation Council to oversee the program and the Georgia Land Conservation Trust Fund to provide funding for land acquisition. Governor Perdue announced in January 2005 that he was earmarking \$100 million for land acquisition purposes.² Management of the funds under this program is through the Georgia Environmental Facilities Authority (GEFA). In order for GEFA to carry out these responsibilities, HB 1319, was passed. This legislation expands GEFA's authority relating to loans, lease agreements, and other measures that might be used for land protection purposes but not for the traditional environmental loans made by GEFA. The Georgia Land Conservation Act was a very popular piece of legislation which passed the Senate unanimously and only received two negative votes in the House.

While the governor's land conservation initiative was popular, debate focused on land use restrictions relating to private property rights. Legislation was passed in 2006 to restrict the taking of private property through the use of eminent domain (HB 1313). A more volatile debate centered on required vegetative buffers along streams. Under the Georgia Erosion and Sedimentation Act, maintenance of vegetative buffers is required along state waters. Although instituted in 1989 to protect water quality, some feel that this restriction is a taking of private property rights. Originally, 100 foot buffers were required along trout streams and 25 foot buffers along other waterways in the state.³ For small water supply watersheds (i.e., less than 100 square miles), 150 foot buffers are required.

During the 1990s trout stream buffers were the focus of a legislative advisory committee and legislation (HB 1426) was enacted in 2000 that reduced buffer requirements along trout streams from 100 feet to 50 feet. To determine the impact of this and other changes made by the amendments, a three year study was funded by the General Assembly. The results of the study show that reducing buffers to 50 feet results in a decrease in the biomass of "young trout by over 80 percent due to associated stream warming and increased amounts of fine sediments."⁴ Removing buffers results in higher water temperatures. Since trout are a cold water fish, streams with water temperatures on average above 71^o F for seven days,

are unlikely to support trout populations. This information was presented to the Board of Natural Resources in January 2006 but, as of this writing, no action has been taken relating to these findings.

During the 2004 session debate again focused on stream buffers. Senate Bill 460 would reduce restrictions on land disturbing activities in the 25 foot buffer where a land owner receives a variance from EPD. The variance is to be based on a plan that shows that, even with the proposed land disturbing activity within the buffer, the completed project will result in maintained or improved water quality downstream of the project. Although this legislation passed the Senate, it was not approved by the House.

During the 2005-2006 Legislative Term, SB 510 was introduced, the intent of which was twofold. First, some local governments have adopted buffer requirements greater than those required by the state. This legislation would allowed building of a single-family dwelling, including the usual appurtenances thereto, within the portion of a buffer area, if any, that is in addition to the minimum buffer area required by state law. Second, the bill focused on the 150 foot buffer requirement around small water supply watersheds. The bill called for buffer reduction where local governments have adopted a stormwater management ordinance that would provide equal or greater protection for water quality. This legislation did not pass.

Related to the stream buffer issue is the proposed requirement for a 25 foot buffer along the coastal marshes of the state. An advisory committee appointed by the Department of Natural Resources has grappled with this issue but, as of this writing, it has not come before the General Assembly.

It is apparent that growth pressures in the state are pitting private property rights advocates against those interested in maintaining buffers along the waterways of the state, and this is occurring from the mountains to the coast. The argument is that water resources can be protected by using best management practices (BMPs) rather than requiring buffers in all situations. Although BMPs can be designed to prevent erosion and sedimentation, they must be constructed and maintained appropriately. Unlike vegetative buffers, BMPs do not provide temperature control and food supply for aquatic organisms.

TIMELY ISSUANCE OF PERMITS, PERMIT AMENDMENTS AND VARIANCES

Two bills were passed during the 2005-2006 Legislative Term relating to the timeliness of decisions relating to permits, permit amendments and variances. Senate Bill

190 was enacted to place time requirements for holding State Administrative Hearings relating to decisions made by the director of the Environmental Protection Division (EPD). A companion bill, SB 191, places time requirements on the issuance of permits and variances by EPD. It allows for permit review to be conducted by certified professionals and paid for by the applicant. When an application is certified as complete by a qualified professional, EPD is to act expeditiously on the application. In addition, SB 191 addresses water withdrawal permits for farm uses in the Flint River basin. It requires a nonrefundable \$250.00 permit application fee, allows for revocation of permits if water use has not commenced within two years of issuance of the permit, and sets a 25 year term on the permit.

SOLID WASTE AND LITTER CONTROL

Two trust funds have been created by the General Assembly to be used for waste management purposes. The Hazardous Waste Trust Fund receives money from generators of hazardous waste and from a fee on solid waste disposal. The money is to be used to evaluate and clean up hazardous waste sites. The Solid Waste Trust Fund receives money from a \$1.00 fee on each new tire purchased in the state. This money is to be used to clean up discarded tire piles, support local illegal dumping efforts, and for other related purposes. Neither of these funds is a "trust fund" in the true sense of the term. A trust fund in Georgia is adopted by the voters of the state in a general election and the funds can only be used for the stated purpose(s). These funds were created by the General Assembly but not put before the voters. Consequently, the funds can be used as deemed appropriate by the legislature. With the budget shortfall that began in 2003, the moneys earmarked for these trust funds were used to help balance the state budget but rather for the purposes for which they were created. With economic recovery occurring in the state, most of the money was restored to the funds in 2006.

The General Assembly addressed some other concerns relating to solid waste and litter control during the 2005-2005 Legislative Term. Senate Bill 122 is a clean-up bill that updates language in the Comprehensive Solid Waste Management Act. In preparation for an anti-litter campaign, HB 1320 was enacted in 2006. This bill makes wide ranging changes in litter and illegal dumping control requirements. It defines terms, increases penalties, provides for public notice regarding the offender and the offence (at his/her expense), and allows for impounding vehicles used during violations of this law. The

bill requires an annual report on progress in controlling litter by those agencies involved in the effort.

OTHER LEGISLATION

Considerable interest has emerged in the General Assembly and elsewhere on the impact of septic tanks in urbanizing areas. The water planning process is considering septic tanks both from a water quality and a water quantity standpoint^{5,6} and the Comprehensive Water Management Plan may contain recommendations relating to septic tanks. House Bill 54 addresses the proper disposal of septic tank waste. The concern is that those who pump waste from septic tanks may not dispose of it properly. This bill directs the Department of Natural Resources to provide by rule or regulation, with the concurrence of the local governing authorities, for sites to dispose of septic tank waste. This legislation did not, however, address all the issues related to septage disposal. Consequently, SR 818 was passed to create a study committee to further consider septage issues.

Senate Bill 283 authorizes "deadhead logging operations." Deadhead logs are defined as logs that were commercially harvested from forests in the state during the nineteenth and twentieth century and that sank or were sunken in a river either while in the process of being floated to mill or market or intentionally for storage. The bill directs the department to establish a program for the granting, renewal and revocation of exclusive permits for investigation, survey, or recovery of deadhead logs from particular two mile segments of rivers. The concern with deadhead logging is that it can have a significant impact on the biota and water quality of the river segment and downstream from the operation.

House Bill 496 requires EPD to provide the clerk of the superior court of each county with information relating to each category I and category II dam in the county. The clerk is to maintain the information in an easily accessible location near the county's land records for information purposes only.

Energy is emerging as a concern under the gold dome. In August 2006, the governor appointed the Governor's Energy Policy Council to work with GEFA in developing a state energy plan. The *State Energy Strategy for Georgia*⁷ has recently been completed. The strategy makes recommendations for addressing energy concerns, including water-related energy concerns facing Georgia. Legislation was passed during the 2005-2006 term providing incentives for producing biodiesel fuel (SB 636) and requesting the United States Congress to pass legislation allowing hybrid or alternative fuel passenger vehicles to use high

occupancy vehicle (HOV) lanes (HR 14).

In 1997, a study committee and technical advisory committee were created to determine the need for undertaking a study of the overdraft of the Upper Floridan Aquifer. The study was completed in 2005 and another study committee was created to consider the findings of the study. During the 2005-2006 Interim, a study committee considered the potential for desalination of sea or brackish water to help address water supply needs in the state.

WHERE ARE WE HEADED?

The 2005-2006 Legislative Term saw relatively little water-related legislation passed. Although some contentious issues were debated, they were generally not enacted by the General Assembly. One reason for this might be that 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. Consequently, the 2008 session will focus heavily on water policy and management in Georgia.

Most comprehensive plans include both a state policy component and regional water management plans. As the state component is developed, focus will shift more to regional water planning. Regional water planning has already been underway in some regions of the state. The sound science initiatives for the lower Flint River basin and the 24-county coastal area were completed in 2005. The Metropolitan North Georgia Water District is also moving forward on implementing its plans. Some other regions, such as northwest Georgia, are also involved in water planning activities. The nature of the water challenges 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.

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.

As North Georgia continues to grow, increased pressure will be placed on the region's water resources to meet the expanding needs. Similar pressures will be increasing in other southeastern states that share the Appalachian Mountain, Piedmont and Coastal Plain provinces. To avoid more "water wars" among states, some form of multi-state regional consideration of water resources and demands will be likely.

In the longer run, global warming could have significant impacts on Georgia's water resources and what is

necessary to address the water needs across the state. Although it is too early to tell with any precision what will happen in the state, the models suggest increased variability in weather conditions. Since much of our effort in water management is in providing a reliable supply of good quality water, variability will likely make water management more difficult.

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