

## **State Water Commission**

Monday, November 9, 2009, 2:00 p.m.  
House Room D, General Assembly Building  
Richmond, Virginia

### **Summary**

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Members present: Delegate Harvey B. Morgan; Senator John C. Miller; Delegate David L. Bulova; Delegate Thomas C. Wright, Jr.; Senator Frank M. Ruff, Jr.; Senator Patricia Ticer; James O. Icenhour, Jr.; and Michael T. McEvoy.

Mr. Scott Kudlas, Department of Environmental Quality (DEQ), followed up his presentation from the July 9, 2009, meeting of the State Water Commission with a discussion of the financial resources necessary to implement water resources programs. Mr. Kudlas detailed the fiscal needs of a water supply program divided into three scenarios: a basic, expanded, and optimal program. For each program, Mr. Kudlas noted the equipment and staff needed for such program. The basic program would require well-drilling equipment, three staff persons to operate the well-drilling equipment, four new staff persons to draft the backlog of groundwater permits, and one contracted station and two drilled stations per year. Additional personnel would also be needed to issue permits in the new management area. Observation wells are particularly needed in the Northern Neck and the Middle Peninsula, where existing data gaps should be closed. DEQ would contract out observation well stations in locations where water levels are lower than predicted and geophysical cores in locations where some aquifers appear to be missing. The contracting would be needed to supplement DEQ drilling. The minimal cost of a basic effort would require an upfront, initial investment of \$4 million. The expanded and optimal level programs include additional wells and gages for more extensive data management.

Members asked about the relative cost-effectiveness of private or government-owned drilling operations, which is affected by procurement laws and a dearth of interested, experienced contractors for this type of hard rock drilling. Members also expressed doubt in the ability to raise more funds in the current economic climate, though they hoped to provide adequate funds in the future. In response to a request by Delegate Bulova, Mr. Kudlas will prepare a funding strategy paper to elaborate on his presentation and provide such paper at the next scheduled meeting of the commission.

Next, staff reviewed possible legislation before the Commission. The first piece of legislation establishes a Technical Advisory Committee (TAC) to assist with the review and implementation of water supply-related issues. The group would be facilitated by DEQ and composed of water users, water providers, conservationists, state and federal officials, and university faculty. Specific issues for the TAC to examine would include: "(i) procedures for incorporating local and regional water supply plans into the state water resources plan and minimizing potential conflicts among various submitted plans; (ii) the development of methodologies for calculating actual and anticipated future water demand; (iii) the funding necessary to ensure that the needed technical data for development of a statewide planning process is available; (iv) the effectiveness of the planning process in encouraging the aggregation of users into common planning areas based on watershed or geographic boundaries; (v) the impact of consumptive use and reuse on water resources; (vi) opportunities for use of alternative water sources, including water reuse and rainwater harvesting; (vii) environmental flows necessary for the protection of instream beneficial use of water for fish and wildlife habitat; and (viii) other policies and procedures that the Director of the Department of Environmental Quality determines may enhance the effectiveness of water supply and water resources

planning in Virginia." The members inquired about the appropriate selection of members and the cost to DEQ for assisting the TAC. The Commission voted to support the proposed legislation.

The second draft addresses limited data that hinder the state's ability to manage its water resources. In effort to mitigate this issue, a law was enacted in 1989 that requires any water user who withdraws one million gallons in a single month for crop irrigation, or whose daily average during a single month exceeds 10,000 gallons per day (300,000 per month) to report on their water withdrawal. However, no sanction accompanied this requirement and compliance has been minimal. The draft gives the State Water Control Board the authority to impose a civil penalty, not to exceed \$1,000, on those failing to report their withdrawals. The moneys collected would go into a special fund to be allocated solely to fund the Department's water supply planning responsibilities. Members expressed interest in who would be affected by this change and how such person would be notified of the changes in legislation. Delegate Bulova suggested amendments that would not permit penalization for violations prior to notification that such a violation has occurred. The commission voted to support the draft proposal contingent upon changes consistent with Delegate Bulova's suggestion. Delegate Wright stated his intent to vote against the provision because of his concerns that farmers might be negatively impacted with regard to water access from farm ponds.

The third draft requires that a memorandum of agreement be signed that provides for the timely transmission of private and community well construction records between the Department of Health and DEQ. The records are invaluable for tracking groundwater resources across the state and necessary to avoid subsidence—which is the nonreversible collapse of an aquifer from excessive water extraction—and incidents of saltwater intrusions. The Department of Health and DEQ are now involved in developing procedures for the sharing of well construction permit information. The Commission postponed action on this measure.

The fourth draft aims to increase the funds available for water supply planning. The proposal would increase the cost of a groundwater withdrawal permit fee from \$6,000 to \$12,000 for a 10-year permit. Staff explained further that the fees for surface water withdrawal permits through a Virginia Water Protection Permit is \$25,000-35,000. According to figures provided by DEQ, staffing costs for the current groundwater program are nearly \$1.2 million. Groundwater withdrawal permit fees generate only \$148,000 in revenue, or 12.3% of the program's costs. It is hoped that the additional revenue would reduce permit application review time and reinvigorate water modeling and monitoring efforts, which have not been updated since 1990. The members were very interested in who would be affected by the increase in fees and how those costs might be allocated. DEQ noted that it did not take a position on the legislation. The Commission voted to support this measure. Delegate Wright, Senator Ruff, and Michael T. McEvoy voted against the measure. Staff offered to follow up on the financial impact to permittees at a final meeting of the Commission.

The final draft requires that, when issuing a Virginia Water Protection Permit (VWWP), the State Water Control Board (the Board) shall determine whether the permit is consistent with the state water resources plan. Currently, the Board must ensure the proposed activity is consistent with the provisions of the Clean Water Act, the State Water Control Law, and will protect instream beneficial use. The members asked about the Board's current authority to look at issues outside the four corners of the permit. After suggestions from members, staff offered to provide amendments that would allow the Board to consider, but not mandate, review of the state water resources plan as part of its determination of whether to issue a VWWP. The public was encouraged to contact staff with suggestions.

Russell W. Baxter, Deputy Director of the Department of Conservation and Recreation, spoke to the Commission on the amendments to the Virginia Stormwater Management Program Regulations. The current standards have resulted in continuing declines in stream health, significant flooding, and channel erosion. The Environmental Protection Agency ("EPA") will review the new regulations in light of its responsibility under the Clean Water Act to create new accountability measures for states for not meeting Chesapeake Bay pollution reduction milestones. Mr. Baxter described the development of the regulations as a four-year process that involved over 50 public meetings, two technical advisory committees, a series of design charrettes with over 400 attendees, a BMP clearinghouse with Virginia Water Resources Center at Virginia Tech, and collaboration with the Center for Watershed Protection and the Chesapeake Stormwater Network to develop Runoff Reduction Methodology. The Soil and Water Conservation Board (the Board) adopted the revised regulations at a meeting on October 5. The new programs would be administered by localities to address both water quality and water quantity issues. The fees assessed will be established at a level sufficient to support administration of local programs. The Board addressed numerous issues of significant concern to the public in its adoption of the revised regulations, such as: (i) separate standards for the Chesapeake Bay watershed and the Southern Rivers watershed; (ii) different standards for small sites and redevelopment sites; (iii) additional offsite compliance options; (iv) increased flexibilities in urban development areas; (v) acknowledgement of vested rights for projects; (vi) reduced inspection requirements; and (vii) adoption of a good pasture standard rather than the forest standard. Mr. Baxter noted that the EPA has been interested and involved throughout the process. Members were interested in the approvals needed by local programs and grandfathering processes. Chairman Morgan raised the question about possible actions by the EPA that might be taken. Mr. Baxter characterized the EPA's position as "serious." He indicated that the agency is examining a range possible sanctions if Virginia did not implement effective Bay clean-up measures, including the withdrawal of grant moneys or even possible revocation of program delegation.