

PANEL DISCUSSION: GEORGIA WATER POLICY AND NEW LEGISLATION

SESSION ORGANIZERS: Michelle Fried, Upper Chattahoochee Riverkeeper, 1900 Emory Street, Suite 450, Atlanta, GA 30318; and Kathryn J. Hatcher, Institute of Ecology, University of Georgia, Athens, Georgia 30602-2202.

REFERENCE: *Proceedings of the 2001 Georgia Water Resources Conference*, held March 26-27, 2001, at the University of Georgia. Kathryn J. Hatcher, editor, Institute of Ecology, University of Georgia, Athens, Georgia.

Abstract. This paper provides background material for the panel discussion on Georgia water policy and new legislation. The first statement is by Michelle Fried, who initiated this panel, and includes a table on the proposed "Georgia's Water Bill of Rights." The second background item consists of remarks prepared for Governor Roy Barne's presentation on February 5, 2001, along with two summary statements for his proposed Water Planning Study Committee and proposed Metropolitan North Georgia Water District. Background papers from other panelists are included separately in this proceedings; see individual papers by Joseph Dellapenna, Jim Kundell, Stephen Draper, Pat Stevens, and Kevin Green. Two additional related papers are by Susan Richardson and by Maggie Kelly.

Panelists:

- Julie Mayfield, Turner Environmental Law Clinic, Emory University
- Stephen Draper, The Draper Group, Atlanta
- Joseph Dellapenna, Villanova Law School
- Kevin Green, Metro Atlanta Chamber of Commerce
- Harold Reheis, Director, Georgia Environmental Protection Division
- Jim Kundell, Institute of Government, The University of Georgia
- Sally Bethea, Upper Chattahoochee Riverkeeper
- Pat Stevens, Chief of Environmental Planning Division, Atlanta Regional Commission
- Representative of downstream, south Georgia interests

Background Item #1: A GREEN PERSPECTIVE ON THE 2001 GENERAL ASSEMBLY

by Michelle Fried, Upper Chattahoochee Riverkeeper

The 2001 legislative session of the Georgia General Assembly was marked by numerous water-related initiatives, ranging from major changes in State water

planning and policy to an effort mounted by special-interest groups to replace environmental representatives on the Department of Natural Resources Board. These and other bills, and their status as of the time of this writing, are summarized below:

Senate Resolution 85 (House Resolution 28) The Water Bill of Rights

The Water Bill of Rights ("WBOR") is a vision statement of how Georgians expect their government officials to manage the waters of this State. It started as an initiative of the conservation community, led initially by Upper Chattahoochee Riverkeeper and Georgia Wildlife Federation, to develop a basic statement of principles to be supported by as many diverse groups as possible throughout the state and for use by decision-makers and officials at all levels to develop more specific water policies, laws and regulations. To date, more than 1.5 million Georgians have signed onto the WBOR as individuals or members of endorsing organizations or local governments. See www.GeorgiaWaterRights.net (Table 1).

Representative Dubose Porter introduced the WBOR as a resolution in the State House on January 11, 2001 with 19 co-sponsors. Senator Charles Walker introduced an identical version of the resolution in the Senate, with Senators Hooks, Johnson, Fort Harbison and Brown as co-sponsors.

The Georgia Chamber of Commerce and other business interests (primarily the pulp and paper, textile, and mining industries, utilities, and farming interests) have actively lobbied against the WBOR. These opponents dislike the WBOR for various reasons, including their belief that the WBOR encourages citizen suits and has an "anti-business" tone. In response to the opposition's concerns, the conservation community made a dozen revisions to the WBOR in an effort to accommodate their concerns and win broader support for this popular initiative.

In the end, however, the two primary sticking points for the Chamber's lawyers and lobbyists became

evident—the statement that Georgians should expect “full, timely and equitable” enforcement of clean water laws, and the statement that the waters of Georgia belong to the people with the state serving as the public’s trustee, thereby discouraging the buying and selling of water). The original version of the WBOR resolution is currently buried in a House Subcommittee. On March 6, 2001, the Senate voted to table a Committee Substitute passed unanimously by the Senate Natural Resources Committee and fully supported by the conservation community. The conservation community will continue to lobby for passage of the WBOR this year and next, if necessary.

Senate Bill 286 - Public Right to Know

Senator Charles Walker introduced Senate bill 286 in an effort to bring more information about the state of Georgia’s waters to the public. This bill would require the State to develop guidelines for the acceptance of quality-assured/quality-controlled stream monitoring data taken by citizens and others and disclosure of other important water data such as salinity levels in coastal waters. Last year, conservation groups lobbied for the passage of a similar bill, S.B. 473, that also included a provision to require point source discharges to label their pipes with emergency contact numbers. Because of strong opposition from industry lobbyists (fearing more citizen lawsuits, bad press, costs and the “unattractiveness” of signs), this pipe labeling provision was removed from the bill this year to give the bill’s other important provisions a better chance of being passed.

Unfortunately, the Senate Natural Resources Committee did not pass S.B. 286 out of committee in time to make it through both houses this year as its own bill, although its provisions may appear attached to another bill.

Senate Bill 130 - The Metropolitan North Georgia Water Planning District

S.B. 130, Governor Barnes’ water bill, creates the Metropolitan North Georgia Water Planning District. The bill is based largely on the recommendations of the Clean Water Initiative (“CWI”), a group of business, local government and a few environmental leaders that met throughout last summer and fall to develop solutions to metro Atlanta’s water crisis. The CWI and SB 130 were born out of the current water quality and water supply crisis faced by metro Atlanta. Unfortunately, SB 130 will not solve our problems, but instead creates yet another layer of confusing government with no funding, a narrowly

focused and biased governance structure and little authority to implement the plans it is directed to develop.

Basically, the District would be charged with developing plans to govern the District areas’ management of wastewater, storm water and water supply. The District area, as it is defined in the bill, would initially include only 18 of the metro Atlanta counties (the counties currently governed by the Atlanta Regional Commission (“ARC”) plus eight additional counties) and unwisely leaves out the counties in the headwaters of Lake Lanier and Lake Allatoona. To add insult to injury, SB 130 creates a governing board for the District made up largely, if not entirely, of local government officials. Legislators representing areas outside of the ARC counties are skeptical about H.B. 130, concerned that their constituents will lose out in the rush to help Atlanta.

S.B. 130 sailed through the Senate with little opposition. At this point, several groups in the conservation coalition are lobbying house members to amend the Governor’s bill to support our key concepts, including watershed-based plans developed by stakeholders from throughout the watershed, a diverse District Board—not one whose majority is appointed by the ARC Board, and a mechanism for stakeholders throughout the affected river basins to have a real voice in the process.

A related piece of legislation, Senate Resolution 142, creates a committee to study statewide water policy and planning issues. The original version of the resolution has been amended at the urgings of the environmental community to include more diverse representation on the committee. The committee must present its recommendations by September 2002.

House Bill 33 - Department of Natural Resources Board (“DNR Board”) Qualifications

Introduced by the House Leadership (Coleman, Walker, Hanner), H.B. 33 would require the Governor to fill two of the existing four at-large seats on the DNR Board with representatives from the agricultural community. (There are currently no qualifications for other Board seats other than geographical.) Interestingly, the first position under attack would be that of former Lt. Gov. Pierre Howard, whose term is currently up in 2002 and could not be re-appointed under the proposed conditions. Although this bill has been amended, ostensibly in an effort to protect Mr. Howard, it still represents bad state policy and we hope that the Governor will veto it.

Table 1. Georgia's Water Bill of Rights

The quantity, quality, and reliability of Georgia waters shall be preserved so that the human use of water does not compromise the long-term sustainability of aquatic and associated ecosystems. All Georgians are responsible for the integrity of state waters, and the costs of providing and protecting these resources must be fairly allocated among users.

We, the people, believe...

that water is a public resource,

The surface and ground waters of the State of Georgia are public resources - vital areas held by the State as a trustee charged with the duty to manage these waters in the best interests of the public.

that water resource use must be sustainable,

Each Georgian has the right to expect that the waters of the State on and below the surface of the earth will be conserved and maintained as a perpetual blessing to the State's people and ecological systems.

that we all live downstream,

Management of the State's water resources must ensure the integrity of these resources by acknowledging the natural flow of waters through the watersheds and aquifers, from the mountains to the sea.

that economic prosperity depends on clean water,

Clean surface water and pure groundwater are essential to Georgia's health, welfare, and prosperity; Georgians no longer accept the assertion that polluted water is a necessary price for economic progress.

that water policy decisions must be just and equitable,

No person or community should bear a disproportionate share of any burden resulting from the water use of others.

in property rights that ensure environmental protection for all,

The citizens of Georgia have a right to use the surface and ground water resources on their properties, but the use must be reasonable, in a manner and to the extent that the water supply is not depleted or degraded to the detriment of the health of people and wildlife.

in water resource protection through law enforcement,

Georgians have the right to the full, timely, and equitable enforcement of local, state and federal environmental laws, which rightfully require protection of water quality and all life dependent on that quality.

in the public's right to know,

All decisions by government officials, the public trustees of Georgia waters, shall be made in open forums, after full disclosure through public discussion and deliberation of all scientific, political and economic facts and associated impacts. Citizens shall have readily available and unrestricted access to such information.

in accountability.

Our government shall be held accountable for the proper management of Georgia's waters.

Background Item #2:
REMARKS PREPARED FOR DELIVERY,
GOVERNOR ROY BARNES -
FEB. 5, 2001

Back when I was growing up, an Atlanta singer named William Bell had a song that took its refrain from the old saying, "You don't miss your water till your well runs dry."

What that means, of course, is that we often take something for granted until we don't have it anymore. And by then, it's too late to get it back. For decades, as our region grew at an explosive rate, we took it for granted that we would have an unlimited supply of clean water. We saw the crystal clear Chattahoochee River tumbling down from the mountains and figured there would always be plenty of water where that came from.

But today I'm here to tell you we can no longer take our water supply for granted. And I am determined that our well will not run dry.

Water is the economic lifeblood of our state. There is nothing more essential to our future than protecting our water. We can build roads, create new parks and improve our schools. But without water, our economic prosperity will surely wither, and our quality of life will suffer. So, we have to take some bold steps before it's too late.

I want to thank all of those who worked with the Clean Water Initiative. The Initiative identified three major challenges for our region. The first is sewage capacity. We are reaching the limit of how much treated wastewater the Chattahoochee and other rivers in the region can accept. Our current treatment capacity is 535 million gallons per day. By the year 2020, it's estimated we'll need to treat 700 million to 1 billion gallons a day.

Second, we need to address the pollution caused by storm water runoff, which is responsible for about 80 percent of water quality violations in the metro-Atlanta region. It also causes erosion and excessive siltation, which can be harmful to fish and plant life.

Finally, we must deal with the fact that many rivers and streams already fail to meet current water quality standards. There are now about 1,000 miles of rivers and streams threatened by pollution in the Atlanta region. A federal judge has given us until the year 2003 to come up with a plan for controlling pollution in these waterways, which in many cases flow right past our homes and the parks where our children play.

These are serious problems, but we can manage them if we act now. That's why I am introducing legislation to create a Metropolitan North Georgia Water

Planning District, which would initially include 18 counties in the metro Atlanta region.

The Water Planning District will be governed by a Board of 25 members: fifteen representatives of local governments within the district appointed by the Atlanta Regional Commission, six appointed by the governor, two by the lieutenant governor, and two more by the Speaker of the House.

Local governments will have the strongest voice in guiding the Water Planning District. The focus of the Water Planning District will be to develop plans to manage the three problems I just mentioned: stormwater runoff; wastewater treatment; and water quality and conservation. The plans will cover the region as a whole, and also look specifically at the watersheds of the five river basins in the district. The Environmental Protection Division of the Department of Natural Resources will make sure these plans meet and hopefully exceed the minimum criteria for the water-quality goals we need to reach.

The legislation also creates a separate advisory council to help shape specific plans for each of the five watersheds. These will not only include members who live in the watershed, but people downstream and upstream who will be affected by the plans. Once the plans are developed and approved by the Water Planning District, it will be up to local governments to carry them out. For example, the stormwater runoff plan might include a model local ordinance that cities and counties will be encouraged to adopt.

The state EPD will provide oversight and assistance to local governments, and will make sure permits issued are consistent with the plan for that particular watershed. If a city or county wants state money to help pay for a sewage treatment plant or a water treatment facility, that facility must be consistent with the appropriate plan.

The initial support staff for the Water Planning District will be the Environmental Planning Division of the Atlanta Regional Commission.

This proposal recognizes the fact that water flows across political boundaries, so planning must be done on a regional and watershed basis. But local governments retain the primary responsibility for providing water and sewer services to their residents.

Now, I want to be clear about one thing. Neither this new Water Planning District nor any other agency of government, whether state or local, can solve our water problems alone. That will require the continued involvement of the business community, and of every citizen in the region.

Georgia Power set a good example for other

businesses when the company announced last year that it would spend about \$125 million to cool the water it releases into the Chattahoochee at two electric plants. By making this investment, Georgia Power could create enough new wastewater capacity to serve 1.5 million new residents.

Of course, not every company can make an impact like that, but there are a lot of smaller things we can all do, both at work and at home. Just as the government has an obligation to protect our supply of clean water, each one of us must do his part to conserve it.

Conservation is the fastest and cheapest way to increase our wastewater capacity and our water supply. For example, Los Angeles added one million people from 1970 to 2000, but its water consumption remained steady because of conservation measures, such as replacing old plumbing fixtures with new, low-flow models.

Finally, I want to emphasize that this plan is vital not only to the future of north Georgia, but of our whole state. In "*Song of the Chattahoochee*," the poet Sidney Lanier reminds us how much the people of Georgia depend on that beautiful river:

*Downward the voices of Duty call
Downward, to toil and be mixed with the main
The dry fields burn, and the mills are to turn
And a myriad flowers mortally yearn...*

This plan is good for farmers and good for industry. It's good for every kid who likes to fish a stream or swim in a lake. It's good for our economy and our environment.

WATER PLANNING STUDY COMMITTEE SUMMARY AND FACT SHEET

In 1986 the Environmental Protection Division of the Department of Natural Resources prepared its Water Resources Summary Document, aimed at planning to meet Georgia's water needs through the year 2000. That year has come and gone, a milestone for the unprecedented growth in population and water usage that has paralleled our state's phenomenal economic boom. The time has come to develop a comprehensive plan for the next twenty years of water management in Georgia, and therefore the Governor is proposing the initiation of a two-year process under the supervision of a Joint Comprehensive Water Plan Study Committee of the General Assembly.

23 Members:

- 2 Co-Chairs Chairpersons of Senate and House Natural Resources Committees
- 4 Senators appointed by Lt. Governor
- 4 Representatives appointed by Speaker
- 5 Members appointed by Governor
- 2 Members appointed by Lt. Governor - County Government & Agricultural Interests
- 2 Members appointed by Speaker - City Government & Wildlife Interests
- Commissioner of Agriculture
- Commissioner of Natural Resources
- Director, Environmental Protection Division
- Executive Director, Water and Soil Conservation Commission

The resolution also provides for creation of a Water Plan Advisory Committee composed of experts from the scientific, environmental, agricultural, academic, and business communities. This body will serve in an advisory capacity for the next two years to the members of the study committee in determining principles, process, and a schedule for the development of a comprehensive state water plan tailored to the unique circumstances of the many regions and watersheds of the state.

METROPOLITAN NORTH GEORGIA WATER DISTRICT - SUMMARY AND FACT SHEET

An increasing population in North Georgia is on a collision course with our most critical and limited resource: water. The metropolitan region's population has soared from 2 million in 1980 to some 4 million today, yet our supply of rainfall and groundwater is no greater today than it was twenty years ago. Conscientious management of this resource is essential if we are to maintain growth and prosperity for the coming decades. Statewide water planning is essential as well, and as a companion piece to this legislation the Governor is proposing a two-year legislative study committee devoted to developing a framework for statewide water management. However, the unique problems created by population pressures in North Georgia demand that we "get off the dime" in this region by providing local governments with appropriate tools for resolving long term storm-water, waste-water, and water supply infrastructure issues on a regional watershed basis. The Clean Water Initiative of the Metro Atlanta Chamber of Commerce ("CWI"), recognizing the importance of this issue, spent many months studying potential mechanisms for implementing watershed-based

planning which emphasizes the multi-jurisdictional nature of the resource. The governmental, community, and business leaders involved in that effort made a number of recommendations that have become the foundation for the Metropolitan North Georgia Water Planning District, embodied in this legislation. The District will be a vehicle for bring together decision makers from county and city government in the central counties of the Chattahoochee, Flint, Etowah, Oconee, and Ocmulgee watersheds in North Georgia to tackle long-range planning for the management and conservation of water resources.

CWI's report called for a planning district to include sixteen north Georgia counties: Bartow, Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Forsyth, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, and Walton. For constitutional reasons, these counties cannot simply be named in the bill, but the District is defined as all counties in the state having a population of 500,000 or more, and all counties that border them. Bordering counties of less than 100,000 population could withdraw from the district area by vote of their county commission and approval by the Director of the Environmental Protection Division of the Department of Natural Resources, and other counties may join voluntarily. Cities of more than 15,000 population are also allowed to be represented as members of the District.

The District is governed by a 25-member Board of Directors chosen as follows:

- Ten county commission chairpersons or chief executives from the district area, chosen by the Atlanta Regional Commission.
- Five mayors from the district area, chosen by the Atlanta Regional Commission.
- Six members chosen by the Governor.
- Two members chosen by the Lieutenant Governor.
- Two members chosen by the Speaker of the House.

Counties and cities in the District of more than 200,000 population will be represented at all times on the District board. Appointments for other seats are prioritized to insure that each smaller city and county has equal opportunity for board membership.

The District is charged with the responsibility for the development within two years of three basic sets of regional and watershed-specific plans for the region: storm-water runoff management, waste-water

management, and water supply and conservation. In addition, the District is charged with the development of model ordinances consistent with the plans, coordination of water-quality monitoring and database development, and educational efforts.

It is well recognized that the solutions to storm-water, waste-water, and water supply issues come with a price tag. The District is charged with preparing, by December 1, 2001, recommendations to the Governor and key committee chairs in the General Assembly on funding mechanisms for water-related infrastructure improvements. Those recommendations can be expected to be tailored to the content of the regional plans that the District will develop, and accordingly, provision is made for updating those financing recommendations as the plans are completed. Funding for the operation of the District itself will be provided initially by the state, but ultimately by the local members that control it.

The role of the Environmental Protection Division is critical to the success of this endeavor. The Division is charged with establishing baseline minimum standards that the District plans must meet. The Director must certify that each plan meets those minimum criteria before adoption by the District. However, the Director is not empowered to be the judge of the design or the overall merit of the plan. Those decisions are the prerogative of the local members. Once the District promulgates a plan, the Director is empowered to condition water-related permits in the district area to consistency with the plan, as well as to modify existing permits.

The District is designed as a cooperative locally-governed initiative. Cities and counties, even if members of the District, are not required by law to follow its plans or participate in their formulation. However, state grants and loans will not be available for water-related projects inconsistent with the District's plans, and the Environmental Protection Division will continue to rigorously enforce clean water laws and regulations. The District is expected to encourage the formation of economical and efficient watershed-based multi-jurisdictional water utilities which minimize the cost of water supply and treatment to member jurisdictions while insuring the highest and most consistent water quality both in the metro area and, ultimately, downstream.