EASTERN VIRGINIA GROUNDWATER MANAGEMENT ADVISORY COMMITTEE

WORK GROUP #2B – TRADING

DRAFT MEETING NOTES – MEETING #1

THURSDAY, OCTOBER 15, 2015
DEQ PIEDMONT REGIONAL OFFICE – TRAINING ROOM

Meeting Attendees

EVGMAC – WORKGROUP #2B	
Jamie Mitchell – Hampton Roads Sanitation District	Britt McMillan – ARCADIS – Eastern Shore Groundwater Committee
Terry Blankenship – Aqua Virginia	Chris Pomeroy – Western Tidewater Water Authority
Eric Gregory – King George County	Kurt Stephenson – Virginia Tech
Ron Harris – City of Newport News	Wilmer Stoneman – Virginia Farm Bureau
Lewie Lawrence – Middle Peninsula PDC	Shannon Varner – Troutman Sanders/Mission H2O

EVGMAC – WORKGROUP #2B – STATE AGENCIES	
Susan Douglas – VDH - ODW	Sandi McNinch – VA Economic Development Partnership
Scott Kudlas – DEQ – Central Office	Lance Gregory – VDH – OEHS – Alternate for Dwayne Roadcap

NOTE: Advisory Committee Members NOT in attendance: Jeff Gregson – VA Well Drillers Association & Dwayne Roadcap – VDH - OEHS

INTERESTED PARTIES ATTENDING MEETING	
Clifton Bell – Brown and Caldwell	Jim Hopper – Virginia Association of Realtors
Robert Crocket – Advantus – City of Chesapeake	Gina Shaw – City of Norfolk
Kristin Davis – Southern Environmental Law Center	Richard Street – State Water Commission
Katie Frazer – VA Agribusiness Council	Chris Tabor - Hazen and Sawyer
Barrett Hardiman – Luck Companies	

SUPPORT STAFF ATTENDING MEETING	
Elizabeth Andrews - DEQ	Craig Nicole - DEQ
Sharon Baxter - DEQ	Bill Norris - DEQ
Brandon Bull - DEQ	Mark Rubin – VA Center for Consensus Building
Scott Kudlas - DEQ	

MEETING HANDOUTS:

A. **Draft Meeting Agenda;**
B. **EVGMAC Draft Ground Rules – August 18, 2015;**
C. **List of EVGMAC Members and Work Groups #1; #2A; & #2B Members;**
D. **Balance of Meeting Schedule**

1. **Earthquake Drill – Great American Shake-Out:**

The meeting started with the group's participation in the Earthquake Drill being conducted as part of the Great American Shake-Out being conducted by the state.

2. **Review of Agenda; General Sense of the Process and Introductory Comments (Mark Rubin):**

Mark Rubin reviewed the agenda for the meeting and the plan for conducting the meeting and then went through some general meeting and location logistics. Mark discussed the process and the ground rules. He noted the following:

- The members of the interested public are invited to participate in the process during the course of the meeting by either working through a member of the Work Group or by coming to an "Open Chair" temporarily and being recognized to share their comments or recommendations.
- The Virginia Center for Consensus Building is about a year old. The reason that the Virginia Center for Consensus Building was formed was that the legislative process and regulatory process is not often the best way to solve complex problems. The issue that causes the most problem in the process is "time and resources". The resources that legislators have to solve these types of problems are pretty limited. The other piece is "time". Nobody can be an expert on everything that is coming through the legislative process.
- When you bring the stakeholders together and create a space where they can talk to each other and listen to each other productively that those produce the best agreements. The best solutions to problems.
- The problems that we are looking at in this process, require a lot more time and a lot more expertise then are available in the normal process.
- The process that we are following is the process that DEQ has been using. The object is to get the stakeholders together, tap into your expertise because you are closest to the problem and hopefully to come up with the resolution and then give it to the legislators. Typically they take it. Then they have the duty to look at the solution that has been presented and determine if the solution is in the public interest. It is easier for them to work with a consensus solution that solves the problem rather than through a piece of legislation that gets drafted and thrown into the process outside of a consensus process.
- The Legislature created the Advisory Committee, the Eastern Virginia Groundwater Management Advisory Committee (EVGMAC). That committee is advisory and they are going to develop a report that will go to Dave Paylor, Director of DEQ. Under the statute, he is supposed to write a report based on the report from the Committee and to present that to the Governor, the Chairmen of the relevant committees and to the Water Commission.

- The idea is to be able to spend a lot of time up front in a very productive way to come to result that will be legislation that will be brought to the General Assembly.
- The Legislature identified the categories of stakeholders that needed to be represented on the Advisory Committee. The idea was for the members of the Advisory Committee to be the decision-makers in their respective organizations. The decision was then made that it would be a really good idea to have work groups to support the Advisory Committee. These work groups are to be made up of stakeholders who are even closer to the problem, who have the expertise to be able to work through specific issues and to be able to make recommendations or at the very least be able to present a set of options to the EVGMAC who will be the final decision makers.
- This is your opportunity to come to a consensus so that we have a large group of influential people that support a recommended solution that can be taken to the General Assembly for action and implementation. The work groups have to hardest job in this process – that of figuring out "what to do".
- Currently there are plans for 5, maybe 6 workgroups to assist the EVGMAC in their work. It is likely that for the balance of 2015 that there will be 3 active workgroups. These include this work group – Work Group #2B – Trading; Work Group #1 – Alternative Sources of Supply; and Work Group #2A – Alternative Management Structures.
- In most facilitated processes and in most mediations the thing that is most important is the notion of control. The notion that this group has an opportunity to be able to come up with a solution that hopefully then will go through the rest of the process that will result in legislation. What we are going through here is a supplement to the legislative process.
- Mark is a paid by DEQ to be an impartial Facilitator – a neutral facilitator - for this process.
- DEQ's role in this process is to serve as one of the parties at the table – one of the stakeholders. Scott Kudlas is here as a member of this Work Group. Dave Paylor is the member of the EVGMAC. DEQ has interests as the regulator just as you have interests in this process – so they are one of the affected stakeholders in this process. DEQ is also providing staff support for the group.

3. Welcome & Introductions (Mark Rubin – Meeting Facilitator)

Mark Rubin, Executive Director of the Virginia Center for Consensus Building at VCU, opened the meeting and welcomed everyone to the meeting.

He asked for introductions of those in attendance and asked for the organizations that they represented

4. Description of Interest Based Problem Solving Process and Discussion of Ground Rules (Mark Rubin):

Mark discussed the process and the ground rules. He noted the following:

- This is an Interest Based – Consensus Process.
- We are talking about water – we are talking about a resource and the fact that the resource is diminishing at this point. So there is no question that not everyone has exactly the same position with regard to water. In fact there may be some fairly significant conflicts with how we deal with water. We are here to try to work through those conflicts.
- There is a difference between "positions" and "interests". Everyone walks into a negotiation with a position – "I want the water." The question really is "why". What is important to you about the water? If we can identify what the interests are, the idea here is not so much to resolve the conflicts but to get folks to get as many of their interests met as possible through this process.
- The story in the book "Getting to Yes" – is that mommy walks into the kitchen and her two daughters are fighting over the last orange in the refrigerator. Taking the "King Solomon" approach – she cuts the orange in half and tells them both to go off and be happy. If she had asked them why they wanted the orange – what was important about each of them having the orange, she would have found out that one wants the inside of the orange to eat and the other wants the outside to grate up and put into some cookies. "I want the orange" is the position. "I want the water" is the position. What is important to you about it is the "interest".
- We are going to spend some time today talking about "what is important to you in terms of alternative sources of supply"- so we can get a sense of where everyone is sitting in terms of "interests".
- You are all here as members of this work group because you all have specific interests – you are all stakeholders. You are also here because the notion is that you are capable of doing two things at once – looking out for your interests and looking out for the interests of the Commonwealth as well.
- It is a problem. There is a problem to be solved here and it is a problem that clearly affects your region but also affects the Commonwealth as a whole.
- In this process we are looking for a "wise agreement". A "wise agreement" meets the legitimate interests of each party to the extent possible; resolves conflicting interests fairly; it is a durable agreement (we are looking at a long time horizon); and it takes into account community interests. It is efficient; understandable and predictable. In conversations with folks on the EVGMAC, it was clear that the notions of predictability and efficiency are really important. The decisions that are being made are going to govern decisions that are going to be making over a number of decades, so it needs to be predictable.
- Last but not least, a "wise agreement" should improve or at least not harm the relationship between the stakeholders.
- One of the goals of good negotiator is to leave the table with as good a relationship as they started with – but hopefully with a better one.

- Out of this process – the idea is to memorialize the work of the group in legislation – in statute – you all are going to be involved in the implementation part of the process. The hope is that we all will be able to work together – have good relationships with each other when we leave that we will be able to use in the implementation of whatever strategy results from this process.

5. **Ground Rules (Mark Rubin):**

Mark reviewed the "Draft Ground Rules" document that had been approved by the EVGMAC at their meeting on August 18, 2015. The general hope of the EVGMAC is that the Work Groups will be governed by essentially the same ground rules.

The following components of the "Ground Rules" were discussed:

MISSION STATEMENT

The Eastern Virginia Groundwater Management Advisory Committee (Committee) will develop a consensus strategy, including legislation for the implementation of the strategy, for the management of groundwater and other alternative sources in the Eastern Virginia Groundwater Management Area (EVGMA). The goal is to create a clear, consistent and understandable framework for the management of the water resource so that local and state regulators, those whose activities are regulated by the law, and consumers, both human and industrial, can guide their actions in accordance with a strategy to sustain the water resource. The intent is to manage the resource so that it is productive and available to meet the human, industrial and environmental needs of the EVGMA.

Every effort will be made to develop a consensus draft strategy and legislation by August 1, 2017, which will be reported to the State Water Commission and the Director of the Department of the Department of Environmental Quality as required by Code of Virginia Section 62.1-256.1.

PARTICIPATION

The Committee is comprised of members with the authority to recommend actions within their respective organizations. The membership is representative of industrial and municipal water users, public and private water providers, developers and the economic development community, agricultural, environmental and conservation organizations, state and federal agencies and university faculty. Individuals with experience with groundwater management issues have been selected to participate on the Committee and others will be drawn upon through a work group structure.

PARTICIPATION

If a Committee member becomes unavailable or otherwise unable to serve, the Director of the Department of Environmental Quality (DEQ) shall determine whether that member should be replaced. If the decision is to seek a replacement, the Director shall appoint a replacement.

- This statement applies to the EVGMAC but not to the Work Groups. If you are unable to attend a meeting, you are encouraged to send an alternate or proxy to represent your organization or locality so that all stakeholders are involved throughout the process. It is always better to have

continuity in the process but it is also important that all positions and interests are represented at all the meetings.

PARTICIPATION

Committee meetings are subject to the requirements of the Virginia Freedom of Information Act will be open to the public and public notice will be provided on the Virginia Regulatory Town Hall website of the date, time and location of Commission meetings. During Committee meetings, one chair will be left open at the negotiating table where a member of the public can sit temporarily to present information or comment on any given topic. Members of the public will be encouraged to communicate their concerns through a member of the Committee who represents their interests but the open chair is available if the member of the public feels it necessary to address the Committee directly to add information that has not been considered. Members of the Committee will not ask members of the public to sit at the table with them during discussions, in order to ensure that representation remains balanced in the Committee.

- This portion of the "Ground Rules" addresses the requirements under the Freedom of Information Act (FOIA). This committee is subject to the Freedom of Information Act. One of the challenges of doing a negotiation under FOIA is that you have to do it in public.

- Elizabeth Andrews reviewed the Freedom of Information Act (FOIA) requirements with the group and noted the following: There have been recent court cases addressing the use of emails among and between 3 or more members of a public body and the potential appearance of "meetings of a public body via email". In order to avoid that appearance members of the Advisory Committee as well as members of the Workgroups should not "email the group" but should instead send any communications pertaining to the work of the advisory committee or the workgroups direction to Bill Norris for distribution to the entire group. Bill serves as the point of contact for all communications related to this process.

- Notices of the meetings of this work group will be posted on the Town Hall site. Meeting materials; agendas, meeting notes, work group member list and copies of presentations, etc. will be posted on the DEQ webpage that has been established for the EVGMAC. Notices of meetings and meeting materials will also be distributed by Bill Norris via an email distribution so it is important for everyone to make sure that they sign in at each meeting and provide a legible email address for follow-up correspondence.

DECISION MAKING

The Committee will make every effort to reach unanimity on all issues related to the proposed strategy, meaning that there is no dissent by any member. However, if the facilitator determines that additional discussions are not likely to lead to unanimous consent, the Committee will consider consensus to have been reached when there is no dissent by more than two members.

- The work group is not authorized to make decisions for the EVGMAC. They are to provide support and recommendations related to the special topic area that they have been assigned, which in the case of Work Group #2B is "Trading".
- We will use the same notion of consensus as approved by the EVGMAC – if we have no more than 2 members who dissent than we will consider it a consensus recommendation of the work group. If we don't have a consensus then we are still going to present the work that we have done it may just not have that designation as a consensus recommendation.

DECISION MAKING

During the course of the facilitation, the facilitator may propose a test for consensus on any given issue or on the entire proposal utilizing a 4 level scale to determine gradients of agreement. The scale to be used is as follows:

1. I fully agree and support the proposal.
2. I can live with the decision. It is okay and I can support it.
3. I have reservations but will not oppose the proposal.
4. I think there are major problems with the proposal and am unable to live with it or support it. More work is needed
5. If consensus is not present, the Group's discussion continues to determine if the interests of those who could not support the proposal can be met.

- Sometimes in these processes there are a lot of discussions going on and sometimes there is a feeling that everyone is probably okay with a thought or a concept but there may be a need to take an advisory vote to get a sense of the group and where the discussions are at a given point in the process. The questions that would be posed to determine the pulse of the group are included as items 1 through 5 in this section of the document.

AGREEMENT

If the Committee develops a consensus strategy and draft legislation, the Committee members agree to support the strategy and legislation as it was presented to the Governor and other persons and entities set forth in Code of Virginia Section 62.1-256.1.

In the event that amendments are offered to such legislation during the executive branch review or the legislative process, Committee members agree to reconvene as quickly as possible to review the proposed amendments and submit comments to DEQ and the patron of the legislation for consideration. Committee members may speak as individuals to any such amendments.

If a Committee member dissents from the final consensus strategy and legislation, such Committee member may express the dissent during any future consideration of the strategy and

- If the EVGMAC develops a consensus strategy and draft legislation then they have will agreed to support it in any other places that it would go. This work group will not be making those decisions so this probably doesn't apply to the work groups.

GROUP MEETINGS

The facilitator will prepare an agenda for each meeting and distribute it to the Committee prior to each meeting along with any documents that may be proposed for discussion.

OBLIGATIONS OF COMMITTEE MEMBERS

Committee members will communicate their interests and concerns to each other and be accountable for points of disagreement. They will present proposals and counterproposals which will be designed to address points of disagreement. Members will not block consensus unless they have serious reservations with the approach or solution proposed for consensus.

OBLIGATIONS OF COMMITTEE MEMBERS

Members shall act in good faith and in a respectful manner in all aspects of these discussions whether during meetings or during communications with others, including the media outside of meetings. They shall also keep the long term interests of the Commonwealth in mind as they participate in the process. If an article appears in the media that misquotes or inaccurately represents an individual's position, that individual should inform the Committee members of it.

Members will maintain contact with constituencies throughout the process to obtain feedback on proposals and to provide information about tentative agreements reached.

Any member may withdraw from the process at any time by notifying the facilitator in writing.

- While you as a member of this committee have your own interests, the hope is that at the same time you are going to be looking out for the long term interests of the Commonwealth. You essentially sit with two hats on throughout this process.
- It is very important that you maintain contact with your constituencies throughout the process to obtain feedback on proposals and to provide information about any tentative agreements reached. The notion is that folks will keep their organizations and constituencies advised and informed throughout the process.
- We don't want you to get too far ahead of your constituencies during the process. It is very important to keep who you are representing informed of the process and efforts of the work group on a regular basis.

6. Presentation – Trading Examples and Considerations (Kurt Stephenson – Virginia Tech):

Kurt Stephenson gave a quick overview of the concept of "trading systems". He noted that we are looking at ways to manage a scarce resource; you are trying to define a limited amount of authority or rights to use that resource (you are looking for ways to cap the total amount withdrawals from that resource); you are going to be assigning a limited number of rights to use that resource; you are going

to close the use of that resources from other users or uses; you allow discretion on how people can use the resource and then allow the rights to use that resource to be traded between themselves – subject to constraints on 3rd party use – for example: the use causes disruption of use of a neighboring well – impacts a neighboring use.

Kurt provided an overview and a presentation on "Trading Examples and Considerations".

He noted the following: When you are doing groundwater management, you have a scarce resource and there are two basic societal questions that have to be addresses in regard to that scarce resource – two resource allocation questions that you have to ask. What is the groundwater objective that we are trying to achieve? How much groundwater can we pump to achieve that objective? The roles of answering that first question is clearly the state's responsibility. This is a precursor to a trading program. What is your goal and how much water can you pump? It is the state's responsibility to answer those questions. The second question of who gets what and when – this is a question that we are going to ask if we are talking about trading. You can imagine a resource allocation system in which the state/government also answers that question. DEQ or some other state agency would say that they have all of these requests to use a state resource, they will decide who gets the resource; when you get to pump and how much you get to pump and they will allocate that water and they would be responsible for allocation. But in a trading program, what we are ultimately trying to do is to ask how much of that question will be devolved to private parties. Private parties will get to answer who gets what and how much and when. We are not necessarily devolving all of that authority, but this is what trading is about. Giving responsibility to the private parties to answer that question. There is a delineation of responsibility between the state and the users. What kind of groundwater allocation system do we want? How would it function? A good groundwater management and allocation system would:

- Achieve resource management goals
- Generate cost effective investments
- Create incentives for water efficiency & reliability
- Maximize value of the resource
- Minimize 3rd party impacts
- Be equitable
- Accommodate economic growth without harming the previous objectives

On water quantity trading, what we are trading is not the water but the rights to use the water. Those transfers can be permanent or temporary. They can be in an area within a single users or can be in areas across different users. You are moving the rights to use the water around on the landscape and between users. There is something called "banking" that is basically creating rights to use water across time.

Kurt provided details on the components necessary to have a good foundation for a water quantity trading program and provided examples of different types of trading programs.

ACTION ITEM: A copy of the presentation will be distributed to the group as well as being posted on the DEQ Webpage devoted to the Eastern Virginia Groundwater Management Advisory Committee. The link to the webpage will be sent to the workgroup members and interested parties.

7. **Break**

8. **Identification of Problems that need to be solved to meet interests – Audience Participation (Mark Rubin – Members of the Work Group – Stakeholders):**

Mark asked for members of the Work Group and Stakeholders to identify the range of problems that need to be addressed by this group and that need to be solved to meet the interests of the stakeholders represented. What is important to you about "a trading system"? What criteria need to be meet? What is important? The group discussed the various concepts and thoughts raised by Kurt's presentation to refine a list of options and issues that were considered as important considerations for a "trading system". The following items were identified by the group:

- Predictability for permit holders;
- Flexibility;
- Need an appropriate trading metric (gallons per day versus water level) that fits the VA system – needs to be implementable – a locational metric might also be appropriate;
- Sensitivity to geographic factors and effect (Ex: salt water intrusion more a problem in some areas than others). Problems may be different in different areas (ex: dewatering);
- Water quantity;
- Consider "green" or rural communities – create "credits" to be sold to "urban" users;
- Minimize 3rd party affects and impacts;
- Timing issues – early availability;
- Timing – phase in time – what is tolerable;
- Timing – how long can you count on it – predictability;
- Who can trade with whom? Eligibility – overall impact on aquifer;
- Banking – trading must work with banking – trading as an incentive to banking;
- Taking surface water and pumping it back in the ground – rural – consider the aquifer as an underground reservoir;
- Drought cycle impacts – every 10 year cycle (in regulations now – may need to expand);
- Scale of trading area – fostering cost-effective regional concepts/solutions;
- Who oversees? Who determines quantity cap?
- Maintain a long-term sustainable supply – flexibility to adopt to differences between model and reality – flexibility and adaptability when the system doesn't respond the way we anticipate – adaptability;
- Define sustainable supply – allow with continual use without damaging resource – keep water level at a certain level – above a minimum level – we are managing a declining system but there is some level theoretically where equilibrium could/will be reached – we just don't know where that level is – so what we do is we look at water levels; we look at simulations; we make our best guess of does it appear that equilibrium is being reached/achieved or not - we are trying to manage a dynamic system – can't come up with a total gallons per day cap;
- The focus needs to be on adaptability;
- Accounting and tracking – trading will need a tracking system;

- Enforceability of standards;
- VDH and DEQ permitting systems need to Sync up early in the process – impacts to drinking water permitting systems;
- Creation of economic value – financial benefit to citizens;
- Regulatory flexibility and cost savings;
- Is a moratorium necessary? A precursor to a trading program? (Yes);
- Use of the identification of local and/or regional caps on withdrawals? – Regional caps might work better – may have water level issues before we reach a local cap level;
- Unregulated users – factor to be considered – trade with regulated users? – Trade with unregulated/unpermitted users?
- Need to properly quantify a user's "use" – their water rights – need an accounting system

Mark noted that the idea of the negotiation process is to try to structure things so that folks make decisions that benefit the society as a whole. This fits to the idea of the creation of "incentives" to encourage trading/banking.

9. Items to be addressed by EVGMAC Workgroup #2A – Alternative Management Structures:

During the discussions of the group the following concepts/issues were identified as being better addressed by the Workgroup addressing "alternative management structures" – EVGMAC Workgroup #2A:

- The loophole created by unpermitted residential wells needs to be addressed to account for that quantity of water being withdrawn from the system but not being managed, and
- Banking – for a system that has nearly reached its tipping level or cap – banking solves the problem by getting more water in strategic locations back into the ground – banking has the highest potential as a solution – should be considered by the Alternative Management Structures Work Group.

10. What do we want to do at our next meeting? (Members and Mark Rubin):

The group discussed options for what we need to cover at our next meeting. Are there subjects that we need more information on? The discussions included the following:

- Look at geographic factors – effects by region – input of different amounts in different areas;
- Outline key elements – Identify options to meet elements;
- Need to provide a visualization of the locations of the major pumping wells in Virginia on a regional basis to get a better idea of impact areas – to visualize "locational" impacts - maybe through use of cross-sections?

- Kurt Stephenson and Shannon Varner will work together to put together information for the next meeting on different trading systems/options – key elements of trading systems/options that might work for Virginia.

11. Scheduling and Next Steps (Mark Rubin):

Mark Rubin reviewed the remaining meeting schedule for this Work Group and outlined the "next steps" in the process.

- **EVGMAC – 2nd Meeting of Work Group #2B – Thursday, November 5, 2015 – DEQ PRO Training Room – 1:00 – 4:30.**

Meeting materials will be provided to the work group and will be posted to the web page – an agenda will be distributed prior to the next meeting.

Scott will get the materials on Trading Programs that has been provided by Mission H20 posted on the webpage as information to the group for the next meeting.

12. Public Comment: No public comment was offered.

13. Meeting Adjournment: Mark Rubin thanked everyone for their attendance and participation in today's meeting. The meeting was adjourned at **12:25 P.M.**