

REGULATORY ADVISORY PANEL: HB542

November 4, 2021

**Bank of America Building, 3rd Floor Conference Room,
1111 East Main Street, Richmond, VA**

MEETING SUMMARY

Panel Members Present:

Pamela Baughman, VA Rural Water Association, Louisa County Water Authority
Jon Brindle (replacing Chris Edwards), Stafford County
James Maupin, Virginia Water Well Association (Maupin Drilling)
Chad Neese, Southside PDC
Eldon James, Virginia Chapter American Planning Association, Rappahannock River Basin
Commission
Whitney Katchmark, Hampton Roads Planning District Commission (HRPDC)
Pam Kenel, Loudoun Water
Eric Lawrence, Frederick Water
Ben Rowe (alternate) VA Farm Bureau
Randy Owen, Virginia Marine Resources Commission
Ross Phillips, City of Richmond
Kelly Evko (alternate), RiverLink
Erin Reilly, James River Association
Dwayne Roadcap, Virginia Department of Health Office of Drinking Water
Greg Prelewicz*, Fairfax Water
Scott Morris*, Virginia Municipal Drinking Water Association, Chesterfield County
Department of Utilities

* appointed to the regulatory advisory panel on October 21, 2021

Panel Members Absent:

Jessica Phillips, Virginia Regional Tribal Operations Committee/Chickahominy Indians
Eastern Division
Amy Martin, Virginia Department of Wildlife Resources
Kevin Byrd, New River Valley Regional Commission
Robert Cornett, Washington County Service Authority
Jay Ford, Chesapeake Bay Foundation
Anne Doyle, A-NPDC
Kyle Shreve, VA Agribusiness Council
Brett Vassey, Virginia Manufacturer's Association
Michael Ward, Henry County
Jonathon Weakley, Madison County, Virginia Environmental Justice Collaborative

DEQ Staff:

Brandon Bull, Water Policy Manager

Jutta Schneider, Water Planning Division Director
Scott Kudlas, Office of Water Supply Director
Ryan Green, Water Supply Planning and Analysis Team Lead
Hannah Somers, Water Supply Planner
Gouri Mahadwar, Water Supply Planner

Members of the Public:

Normand Goulet
Chris Pomeroy

Proceedings:

- 1) Welcome
 - a) The meeting began at 10:10am and was called to order by Scott Kudlas. A quorum was present.
- 2) Goals
 - a) Meet the regulatory deadline for the RAP process
 - b) Discuss statutory changes regarding participants in the planning process and regional water supply risks, in order to draft regulation language.
- 3) Review and Approve Meeting Summary from RAP Meeting #1
 - a) The panel suggested edits to the meeting summary.
 - i) For Section 5A, consideration of “municipal comprehensive planning zones” was removed as those boundaries are reflected by boundaries already captured in the summary through localities and PDCs.
 - ii) For Section 5E, discussion of Louisa County and Northern Virginia localities were clarified to be case studies.
 - iii) Section 6 was added to reflect discussion of core functions of the water supply planning process.
- 4) Determining Participants in the Planning Process
 - a) Scott Kudlas reviewed the existing regulatory language and HB 542’s changes to the statute in section § 62.1-44.38:1.B (linked [here](#)). The existing regulation specifies that community water systems are required participants in the planning process, while HB 542 changes the statute to expand the stakeholders that shall or may participate in the planning process.
 - b) Scott Kudlas noted that regulation terminology would change throughout as necessary to accommodate more significant changes to the regulation. Examples include instances of changing ‘local’ to ‘regional’.
 - c) Two alternatives for regulatory language incorporating other participants into the planning process were presented by Scott Kudlas. The first alternative proposes all stakeholder groups mentioned in the statute (local governments, industrial and agricultural water users, public water suppliers, developers and economic development organizations, and conservation and environmental organization) for required participation. Community water systems and self-supplied users utilizing >300,000 gal/month would also be required to participate with local governments in the

development of plans. Additionally, stakeholders not named in the regulation would still have the option to participate.

- d) The second alternative differs from the first alternative by having some stakeholder groups mentioned in the statute (developers, economic development organizations, and conservation and environmental organizations) listed as optional participants. Required participants would be community water systems and self-supplied users withdrawing more than 300,000 gal/month.
 - e) The panel discussed whether local governments should be required to consult and coordinate with the required participants. Scott Kudlas noted that without a regional authority in place the responsibility continues to be on local governments. The panel raised concerns that local governments may not have the capacity to engage required participants, but if engagement is not required then certain groups may be left out of the process. If local governments are not required to engage participants, then an outreach requirement in the regulation could address the need to include participants, while accommodating stakeholders that are unwilling to participate. Coordination implies effort on governments and participants.
 - f) A recurring theme in the discussion was that the regulation should define ‘reasonable outreach effort’ for localities, especially for compliance purposes if an outreach requirement is added. To address this in this regulation, there could be definition of participant groups to be identified, sufficient outreach to those groups, and participation.
 - g) The panel discussed whether representatives of each stakeholder group, or all stakeholders, should be required to participate. Stakeholder groups represent many individuals, and it may not be practical to consult every individual while forming a plan. Regulatory language could clarify that having at least a representative of each group is sufficient. Although the panel noted that having a representative may not capture everyone’s interests. Specifying users >300,000gal/month for required participation (as in alternative #2) reduces the total number of required participants.
 - h) The panel discussed which stakeholder groups should be required to participate. Water withdrawers, such as permitted withdrawals, should be required to participate. Providing the option for other groups (developers, economic development organizations, and conservation and environmental organizations) to participate includes additional stakeholders, without incurring a compliance issue even if localities perform outreach in good faith. Regulation language for these participants could include that additional groups are “invited and encouraged” to participate, or “may choose to participate”. Agricultural and industrial users that withdraw less than 300,000gal/month could be optional participants as well, so the regulation should allow for that. A common theme was recognition that the risk with inviting participation instead of requiring it is that the interests of the optional participants could be left out. Another theme was the importance of flexibility for regions (regional planning units) to identify the stakeholders that are present in their area.
- 5) Identifying Water Supply Risks
- a) The water resources management definition of water risk was shared - water scarcity plus water stress.
 - b) The change made by HB 542 to § 62.1-44.38:1.C.2 (linked [here](#)) was reviewed.

- c) DEQ presented a list of risks that it considered in the State Water Resources Plan and other known water supply risks based on feedback received on the State Plan and other work that DEQ has done.
 - d) The panel discussed additional risks that could be considered. Categories included:
 - i) Non-traditional risks such those seen during Covid-19
 - ii) Affordability. A panel member provided to DEQ by email a recommendation to review the EPA 2021 Financial Capability Assessment Guidance – which can be found [here](#).
 - iii) Water quality during acute events (ex. spills), and waste assimilation in mixing zones
 - (1) One member also expressed concern about including water quality metrics that are larger than the local and/or regional level is equipped to handle
 - iv) Reductions in supply by increases in unregulated withdrawals (up to intake capacity) and consumptive use.
 - v) Ecological demand (water stress)
 - vi) Financial components such as funding for pipelines, the ability to afford infrastructure improvements, and accessibility
 - (1) Other metrics that exist for measuring a locality’s ability to pay for improvements were mentioned, and a panel member provided such metrics to DEQ by email.
 - (2) It was noted that collecting information needed for [BRIC](#) applications could help applications to fund and/or incentivize new regional projects
 - vii) Process risks, such as the variable time that it takes for permit issuance, and accounting for planned upstream projects
 - e) Regional risks vary, so regional programs could identify area applicable risks, and the list provided in regulation does not have to include all risks that could be considered. However, some risks may warrant consideration by all regions and may need to be identified explicitly in the regulation.
 - f) It was noted that looking at evaluating challenges or risks for specific proposed new water sources may fit into the alternatives section of the regulation.
- 6) Strategies to address those risks
- a) Panel discussion continued around addressing the identified risks.
 - i) Community water systems are not set up to focus on water quality issues
 - ii) The plan should identify risks, and localities may not be able to mitigate them
 - (1) Unmitigated risks listed in a public plan could be seen as a liability issue
 - iii) Discussion of process
 - (1) Regulation implementation is through Guidance (ex. ranking urgency of risks)
 - (2) DEQ expectations for regional submissions can also be provided as needed
- 7) Public Comment
- a) There were no public comments provided.
- 8) Wrap up & Next Steps
- a) RAP Meeting #3 will be December 6, 2021.
 - b) A room for Meeting #4 on January 6, 2021 has been reserved if needed.

- c) DEQ will provide a draft of proposed revisions to the Local and Regional Water Supply Planning regulation in advance of the next meeting. RAP members are expected to come prepared to discuss and provide comment on those drafts.
- d) Relevant records on drought region development were requested, if such records still exist. DEQ is working to locate any such records and will provide them to the RAP as available.

The meeting adjourned at 2:25 pm.