0EASTERN VIRGINIA GROUNDWATER MANAGEMENT ADVISORY COMMITTEE

WORK GROUP #2A – ALTERNATIVE MANAGEMENT STRUCTURES

MEETING NOTES – MEETING #4 - FINAL

FRIDAY, MARCH 25, 2016
DEQ PIEDMONT REGIONAL OFFICE – TRAINING ROOM

Meeting Attendees

EVGMAC – WORKGROUP #2A	
Rhea Hale - WestRock	Ram Natarajan – Aqua Virginia/Aqua America
Britt McMillan – ARCADIS – Eastern Shore Groundwater Committee	Nikki Rovner - TNC
Jamie Mitchell – Hampton Roads Sanitation District	Andrea Wortzel – Troutman Sanders/Mission H2O

EVGMAC – WORKGROUP #1 – STATE AGENCIES	
Scott Kudlas - DEQ	Sandi McNinch – VA Economic Development Partnership
Roy Soto – VDH - ODW	

NOTE: Advisory Committee Members NOT in attendance: Whitney Katchmark – Hampton Roads PDC; Janet Pawlukiewicz – Citizen; Dwayne Roadcap – VDH/OEHS; Wilmer Stoneman – VA Farm Bureau; Eric Tucker – City of Norfolk; Erika Wettergreen – Marstel-Day

INTERESTED PARTIES ATTENDING MEETING	
Phil Abraham - VECTRE	Robert Bohannan – Fairfax Water
Ken Bannister – Draper Aden	Matt Wells - WestRock

SUPPORT STAFF ATTENDING MEETING	
Sharon Baxter - DEQ	Bill Norris - DEQ
Brandon Bull - DEQ	Mark Rubin – VA Center for Consensus Building
Craig Nicol - DEQ	Jutta Schneider - DEQ

1. Welcome & Introductions - Opening Comments (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 whether the group wanted to go over a few things this afternoon or to postpone the meeting since there were so few members in attendance. The group decided that it would be best to go ahead with the meeting to try to stay on track and cover as much material as possible.

A question was raised over the materials that were distributed prior to the meeting related to The Alabama Clean Water Partnership and whether we would be going over that material. Scott Kudlas noted that as indicated on the draft agenda that had been distributed that we had hoped to have a presentation by the Partnership's Executive Director, Allison Jenkins at today's meeting. A webinar

style presentation had been planned but last minute conflicts made it impossible for Ms. Jenkins to participate. She has indicated that she would like to be rescheduled for a future meeting if possible. Scott provided some brief information about the Partnership. He noted the following:

- At this point the Partnership is only involved in water quality work that is primarily funded through 319 Grants and member contributions.
- One of the things that Scott's counterpart in Alabama has suggested since they are moving into water withdrawal permitting that a role that the Partnership might be able to expand into is their ability on a watershed basis to have neutral facilitators in the organization assigned to work with the known stakeholders in each basin so that when permits come up they can try to ensure that some kind of conversation takes place about those permits, so that they can facilitate comment on the permit. They would also then be in a position to resolve conflicts if conflicts arose during the permitting process on a potential permit. They take a holistic approach.
- The Partnership does not take a position on a permit and they don't file litigation.
- The role of the Partnership is to foster dialogue and resolution.

Discussions by the group included the following:

- It was noted that the Partnership also does a good job of building a consensus within the organization and the breath of the consensus is pretty well inclusion. They are just not focused on one type of entity. It seems to work very well for the existing program and structure in Alabama.
- It is interesting enough to have them make a presentation to the workgroup and possible even to the main advisory group at some point in the process.
- It would be interesting to look at things from a holistic perspective and to see how the Partnership addresses issues that might also be applicable in Virginia.

Mark suggested that we just plan on going through the materials and discussions that we had originally planned for today and see where that leads us. He noted that with the size of the group that the discussions might be shorter and that we might have to come back to these items when the majority of the members of the group are in attendance but it will still be a worthwhile discussion.

He asked for introductions of those in attendance.

2. Discussion – Status of Other EVGMAC Workgroups (Mark Rubin/Scott Kudlas)

Mark Rubin and Scott Kudlas provided a brief overview of the status of the other EVGMAC Workgroups.

- Mark noted that the Alternative Sources of Supply Workgroup (EVGMAC WG #1) met approximately 2 weeks ago and started to take another approach to addressing the discussion regarding alternative sources of supply. The members of the workgroup were broken up into regions within the management area which included: the Fall-Line; Central; and Eastern. The

questions that were posed to those break-out groups were: “What alternative supplies that had been identified would apply specifically or were more suited for use in a given region of the management area?”; “Which would be more appropriate in each of the regions?”; “Which of these options would your locality choose if you were using your own funding?” & “Which of these options would your locality choose if there were alternative or State funding available?” The workgroup is still working through the evaluation of those options given these scenarios.

- Scott gave an overview of the zonation concept used by WG#1. The zonation used for these discussions was a way to try to break up the geology of the management area into zones or regions that would allow common players within an area to talk about trade-offs and different options that were available to them - particularly that those in zones that had comparable aquifer impacts. That is why an East to West approach was proposed. Those along the “Fall-Line” have a particular set of issues with the aquifer being very thin and having access to surface water supplies. The group in the middle, the “Central” region, has the primary cone of depression, so aquifer access is the most limited, but they also have challenges in terms of surface water supplies because of the incremental cost because they are dealing with “tidal-fresh” water – where they are treating surface water that has a distribution of some salt water content over the course of a year – sometimes it is saltier than others; and then the folks along the Coast Line, the “Eastern” region, probably have the most existing available supply in terms of groundwater and also have access to a lot of surface water, but it is surface water that has higher levels of salt content and therefore higher levels of investment costs to develop and treat a system that has that level of salt content. He noted that this break-out approach created a lot of conversation within the workgroup and provided the start to some worthwhile discussions. The group is having and active and meaningful discussion about viable local options in each of these regions of the management area.

Mark raised the question of whether we need to have a different, a specific management structure for specific sources or should we be looking at something that is just area wide? For example, if you are looking at the Fall-Line and the potential sources that they might rely on, is that going to require a different management structure than what is being contemplated in the other areas?

Discussions included the following:

- Based on our previous discussions, there are a lot of positive attributes to having a more encompassing management structure for all of the water supply sources but from a technical standpoint the groundwater resource behaves quite a bit differently than the surface water resource. The stressors on each of those resources are very different. Technically, they are very different sources, but as far as a management structure, we were in agreement that there was a lot of positive attributes to encompassing them all under one umbrella.
- There is probably a need to have region specific management structures.
- A holistic approach needs to be taken that includes sensitivity to the different regions and different sources.

- One of the things that this workgroup has struggled with is that we currently have a very comprehensive regulatory program in place that regulates withdrawals and how new projects get permitted from an environmental impact perspective. What is missing is that once you get to a position where the resource is limited or is over allocated we do not have a mechanism in place for what we can do collectively to optimize that resource or to look at projects going forward to address the over allocation issue.
- Each individual program has their own specific check lists for looking at available options in the permitting process for available sources of water. You end up in a circular-do-loop of "are other sources of water available?"
- Each application is looked at individually rather than being looked at on a broader or more comprehensive basis.
- We have this permitting program and these regulatory programs that are working when we have periods of plenty of water. The question then is "what is the trigger for going to something different?" And then, "Once you hit that trigger – what needs to change in terms of permitting and looking at alternative sources?" One of the questions of the workgroups is how far afield do you look when you are evaluating a project with respect to the impacts on other users?
- We can rely on science and technology as tools to move forward.
- Need to look at things from a holistic perspective with a focus on sensitivity to different geologic regions and different sources but no necessarily with different management structures.
- The current/existing structure is not equipped to address the "over-allocation" issue.
- The current structure does address and correct the "over-allocation" issue but there is no "equitability" in how it addresses "over-allocation".
- This sounds more like a policy question/issue – as a matter of policy how do we move forward?
- The assumption then is that we have already hit the "trigger".
- On the surface water permitting side, there is the VWP surface water permitting program and a provision for State Water Control Board action is there is determined to be an over allocation issue where they can designate a surface water management area (which has not been done) but there is nothing comparable on the groundwater side to address "over-allocation". The challenge is that for surface water there are defined boundaries where for groundwater there are no defined boundaries. The Surface Water Management Act provides for input from the state to the user group so that there is a designated state role in the process. There is a lot of autonomy for the envisioned "user group" under this scenario for the user to help formulate a solution that works best.
- The Surface Water Management Area Act was modeled after the Groundwater Management Area Act – in effect they were created to address similar/comparable needs. The Surface Water Management Act contains a mechanism for "voluntary agreements" which is currently missing from the Groundwater Management Act. On the surface water side, there was already a permitting program in place – so you can move from a permitting to a voluntary agreement scenario. Whereas on the groundwater side, you don't have permits until you get designated – that there is not the next step of moving to voluntary agreements. The Surface Water

Management Act provisions are currently in State Code and that is automatically the way it would work, whereas with the groundwater program, we don't have that provision and we actually had to go to get legislation enacted to allow this committee to be formed and this discussion to take place and it only has a 2-year window. So this is a temporary process.

- The Surface Water Management piece specifically contemplates voluntary agreements being reached and then the State blessing those agreements. It provides for a framework for voluntary stakeholder discussions and decisions about how to optimism the resource and then for the State to sign off on it. Whereas with this committee we really don't have that mandate, we are essentially tasked with just exploring the issue but there is no real charge to come up with a solution.
- Currently, no one has done a "voluntary agreement" under the Surface Water Management Act. There are no Surface Water Management Areas in Virginia. When the designation of the Surface Water Management Area is made, there are performance standards set based on what the nature of the problem is in that particular watershed or reach being designated, then what is given over in the voluntary agreement is the ability of the user to figure out how to adjust their withdrawals during those critical windows to achieve those performance standards.
- It is really not an allocation, but is more of a "how do we operate in such a way that we maintain these flows during a particular period or window" question.
- How would the voluntary agreement be reflected in the permit? The understanding is that the state would then be responsible for issuing permits that would carry out the voluntary agreement. That is how the state would then become a party to the agreement – through the establishment of a mechanism to implement the agreement. It establishes a mechanism to start talking about how to optimize the use of the resource.
- If you have to reduce groundwater withdrawals due to supply issues, how do you marry the two programs – surface water and groundwater – so that you are not overburdening one of the system while optimizing the other? That is yet to be determined – but it could be done. One possibility would be to identify any benefits to have a surface water management area designated over an existing groundwater management area.
- Any approach would need to be evaluated to ensure that there were no unintended consequences to individuals and localities that might not be a party to any "allocation/operation agreements". There needs to be a formalized structure, identified in Code, to govern these activities. There needs to be a formalized approach as opposed to an ad hoc group approach.
- This is a mechanism in state code that has not been used – there are no mechanism exactly like that are known to be used in other states.
- The concept of the James River Allocation Agreement was discussed briefly.
- When DEQ issues surface water withdrawal permits there are more and more there are instream flow requirements/triggers that require certain actions. There is a more integrated look at these types of permits as we have moved forward – but there is nothing formal and there is nothing done with the stakeholders working together. A suggestion was made that what we are contemplating is more similar to what is done in the Potomac under the Potomac River Basin

Commission. The mechanism that provides the interaction similar to what we are discussing is not part of the Code but is a component of a side agreement among the parties to the Commission and the allocation agreement.

- Ultimately we are dealing with a scarce resource.
- We need to have a framework that allows for voluntary agreements that provides a mechanism for state involvement. Potentially with state approval that would provide for a holistic view of whether a project is in the public interest. Basically we would be providing a mechanism to "enable" agreements and putting a structure together that had a "hammer" to it.
- Would it make sense to have the surface water and groundwater management areas overlaid with each other on a scientific basis? We are still missing who is doing the overall planning piece of the puzzle. What is the optimal use of the available water resources and who makes that determination?
- Need to look at adding a planning component to the voluntary agreement concept so that we are not just responding to acute crises.
- Could it fit within the overall State Water Supply Plan development efforts? The hope by the state is that the Water Supply Planning effort would evolve into an overall planning effort to look at the resource from a holistic perspective. There is a component in the plan for regionalization.
- Going from the Water Supply Plans that we currently have to the point of having these user groups coming together and figuring out how to solve the issue - would it be better to have some structure or organization to help guide or facilitate those discussions/conversations? Currently there is no mechanism in place to do this. The foundation is in place to leverage the information in the water supply plans and the resource information to help inform that process but that the staff resources are ultimately not currently there to carry out a meaningful process beyond what we are currently doing.
- A question was raised over the viability of "private entities" being used.
- The first two choices are do you want the big umbrella made up of stakeholders that includes DEQ or do you want a group under DEQ with stakeholders providing input? It is not known which approach would be best. If you go with the more stakeholder driven approach with the state being just another stakeholder how do you do it in such a way as to get the most value out of the state processes that are in place that should be helping it? There has to be somebody looking at all aspect of the issue.
- FLIP CHART NOTES: Umbrella – 1) Stakeholders as Individuals/Independents; 2) Stakeholders under DEQ – Interests – Take advantage of DEQ information and knowledge.
- In looking at the current State Water Supply Plan and the "individual regional plans" that have been submitted as part of that effort, those plans can be very disconnected from adjacent "regional plans". There is nothing tying all of the plans together in a comprehensive manner. The plans are all done on an individual/self-interest fashion with no effort to address the entire resource. There is nothing pulling them all effectively into a comprehensive planning effort other than they are all part of the State Water Supply Planning effort. It was suggested that it

might be useful to review and revise the current WSP process and guidelines to try to get a more comprehensive picture of the state's water resources. Under current law on water supply planning there is no authority or mechanism for DEQ to question the assumptions submitted by localities as part of their water supply plans.

- The Water Supply Plans are becoming a major portion of the justification of need section of the Groundwater Withdrawal Permit and in the Surface Water Permitting process. That wasn't the original intent but that is where is has been migrating towards.
- Structurally, there is currently no mechanism to provide for interaction and communication among users and no mechanism for oversight over the entire resource or the entire breath of water and water supply challenges that need to be addressed in a holistic fashion on a state-wide basis. There is a need to be able to look at both water quality and water quantity issues through this process.
- One of the advantages of the process that we have been discussing politically is the opportunity for allowing folks to figure it out for themselves.
- FLIP CHART NOTES: Scope of Umbrella Organization: 1) All water resources; 2) Water Quality and Water Quantity; 3) Planning; 4) Facilitating optimization of the resource; 5) Mediation of Disputes – Time Limited; 6) Education; 7) Research and Technology; 8) Hammer – in case there is no voluntary agreement/decision; 9) Community Outreach; 10) Advocacy; 11) Public/Private Partnership - Leverage
- The interest is to look at a project more broadly regarding impacts.
- Do we need two organizations or just one? Do we look to the creation of a 501 (c) 3? What kind of management structure do we need? Do we need a stakeholder driven organization rather than a state driven organization?
- The group discussed the need for better criteria for evaluating alternative source projects – that might look at what are the impacts on the water balance? – What are the impacts on other proposed or existing projects under more than one regulatory program?
- The larger issue is how to have conversations among user interests early enough in the process so that those agreements/decisions can be implemented through the regulatory structure. That is the one thing that this group has not talked about is as good as all of this sounds what does it do to the timing of the issuance of permits.
- Some of the issues that we are dealing with impact other water resource issues that are outside the purview of the groundwater management area and this workgroup.
- The items that we listed as components of the Umbrella Organization(s) could be either under a Management Structure (Government) (MS) or an independent 501 (c) 3 (501).
- FLIP CHART NOTES: Scope of Umbrella Organization: 1) All water resources (MS); 2) Water Quality and Water Quantity (MS); 3) Planning (MS); 4) Facilitating optimization of the resource (MS); 5) Mediation of Disputes – Time Limited (MS); 6) Education (501); 7) Research and Technology (MS & 501); 8) Hammer – in case there is no voluntary agreement/decision (MS); 9) Community Outreach (501); 10) Advocacy (MS & 501); 11) Public/Private Partnership - Leverage

3. **BREAK**

4. **Where Do We Go From Here (Mark Rubin)**

Mark asked the group their ideas for where the group needs to go from here. The discussions included the following:

- We will reschedule the presentation regarding the Alabama Clean Water Partnership for a future meeting.
- Would it be helpful for the workgroup to have a "strawman document" to work from for future meetings in order to better formulate a recommendation to the main advisory group? The group thought that at least a bullet point summary of the items discussed related to alternative management structures would be of use for further discussions. It was suggested that a matrix of some sort identifying the stakeholders and the various tasks that need to be addressed might also be helpful.
- The group discussed the requirements of the APA and FOIA process and the need for all communication regarding the group to go through a central point. Bill Norris serves that role for that committee. It was requested that any ideas or concepts be sent by the members to Bill for distribution to the group.

5. **Dispute Resolution Mechanism (Mark Rubin):**

The group briefly discussed the use of a dispute resolution mechanism and the identification of the kinds of issues or problems that might have to be addressed through the use of such a mechanism. The two types of issues/problems referenced by the group included: 1) Allocation – how to resolve over-allocation & 2) Competing Water Supply Plans/Competing Needs.

Mark noted that there are different ways to address problems. They include:

- Avoidance
- Direct Negotiation
- Some type of Mediation (3rd Party)
- Early Neutral Evaluation (Expert)
- Arbitration (Judge to Decide/Trial)
- Litigation
- Self-Help (Do what you want)

Discussions included the following:

- What we are talking about in this process is "Problem Solving thru a Stakeholder process".
- Facilitation is just an agreement.

- It was suggested that any disputes or issues would likely be between a user/permittee and DEQ, not each other.
- What we need to do is be able to get together to determine how we are going to optimize the resource.
- It is really not "dispute resolution" it is a "problem solving" mechanism.

6. **Status of Other Workgroups (Mark Rubin):**

Mark noted that there were two new workgroups that were being put together. The two new workgroups are Workgroup #3 – Options for Future Permitting Criteria and Workgroup #4 – Options for Funding. Requests for volunteers/nominees for these two workgroups have been requested. Once their members have been selected through this process, potential dates for first meetings will be identified.

He noted that the Trading Workgroup (WG #2B) met earlier this morning and agreed to narrow their focus to look at trading in the context of incentivizing banking. What we are trying to do with HRSD and Chesapeake is how do we get more water in the aquifer and how do we incentivize putting more water in the aquifer. The focus is on "putting more water into the system". The questions are how do you create credits for doing this and then what do you do with the credit?

7. **Next Steps – Next Meeting (Mark Rubin):**

Mark noted that for the next meeting that staff will work on a "strawman" for consideration by the workgroup and see if they can arrange a presentation by the Alabama Clean Water Partnership.

ACTION ITEM: Bill Norris will identify available dates and will send out a Doodle Poll to select a preferred date for the meeting.

8. **Public Comment: No public comment was offered.**

9. **Meeting Adjournment:**

Mark Rubin thanked everyone for their attendance and participation in today's meeting.

The meeting was adjourned at approximately 3:10 P.M.