

DATE: December 10, 2004

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MEMORANDUM

TO: Rob McDowell, Coordinator
Flint River Regional Water Development and Conservation Plan
Environmental Protection Division

FROM: Robert S. Bomar
Deputy Attorney General

RE: Authority of EPD to Appoint a Flint River Stakeholder Advisory Committee

This responds to your memorandum dated November 23, 2004 to this author regarding the above. According to your memorandum, on October 14, 1999, Harold Reheis, then Director of the Environmental Protection Division, announced the development by EPD of the Flint River Regional Water Development and Conservation Plan ("Plan"). The announcement stated that the plan will include the appointment of an advisory committee that would include representatives from the agricultural community. Development of the Plan was necessitated as a result of the Environmental Protection Division's analysis indicating that in a severe drought year, farmland irrigation may cause significant reduction in the Flint River flow in the Bainbridge area.

Again, according to your memorandum, in June 2004, EPD began to solicit the names of individuals who might be interested in participating in a Flint River Basin Stakeholder Advisory Committee ("SAC"). Individuals selected by EPD to serve on the SAC were notified by letter in August 2004. The letter of notification, signed by Carol Couch, Director of EPD, informed selected members that they would be called upon to "... help EPD apply the results of the sound science studies in a manner that takes the interests of area stakeholders into account while maintaining the sustainability of the resource". The letter went on to state that the SAC and a Technical Advisory Committee (also appointed by EPD) would through a series of regular meetings "... address the major water use issues in the Flint River Basin and make specific recommendations to EPD regarding management of the Flint Basins Water Resources" [sic].

At the November 19, 2004 meeting of the SAC, several members expressed concern that EPD has no statutory authority to appoint an advisory committee as part of the Plan development. This concern apparently arises because of the enactment of the "Comprehensive State-wide Water Management Planning Act" in 2004, O.C.G.A. § 12-5-520 *et seq.* As Coordinator of the Plan, you have requested my assistance in this matter.

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The authority for EPD to develop a regional water development and conservation plan is found in both the “Ground-water Use Act of 1972”, O.C.G.A. § 12-5-90 *et seq.* and the “Georgia Water Quality Control Act”, O.C.G.A. § 12-5-20 *et seq.* Regarding the Ground Water Use Act, EPD is authorized to wit: “The division or a party designated by the division may develop a regional water development and conservation plan for the State’s major aquifers or any portion thereof.” O.C.G.A. § 12-5-96(e). As to the Water Quality Control Act, EPD is authorized to wit: “In the event the Director determines that a regional plan is required . . . , the division or a person or entity designated by the division may develop such plan.

Under both Acts, the Plan must be based on detailed analysis of the aquifer or water source, the projected future condition of the aquifer or resource, current demand and estimated future demands on the aquifer or resource. Based on the above, it appears clear that EPD may seek the assistance or input of those persons or entities which it considers necessary in order to develop a regional water development and conservation plan. Where rights are granted by statute, there is carried with them by necessary implication such additional rights as may be necessary to effective exercise of those granted rights. Cadle v. State, 101 Ga. App. 175 (1960).

The next question is whether the enactment of the “Comprehensive State-wide Water Management Planning Act” in 2004 in any way repeals by express language or necessary implication EPD’s authority to develop a regional water development and conservation plan. This Act as found in O.C.G.A. § 12-5-520 *et seq.*, authorizes EPD to “... develop and propose a comprehensive state-wide water management plan ...” (emphasis supplied) in accordance with the guideline and principles set forth therein. EPD must work “... in cooperation, coordination, and communications with the Water Council created by Code Section 12-5-524. O.C.G.A. § 12-5-523. EPD must submit a draft initial comprehensive state-wide water management plan to the Water Council for review no later than July 1, 2007. O.C.G.A. § 12-5-523(c). Such proposed plan must be submitted to the General Assembly for approval. O.C.G.A. § 12-5-525.

Based on the above, it appears clear that this Act does not repeal EPD’s present authority to develop regional plans. The Plan is not a state-wide plan and no such state-wide plan must be submitted before July 1, 2007. There is one caveat, however. Once a state-wide plan is approved, any regional plan developed by EPD may have to be reconciled with to the state-wide plan. O.C.G.A. § 12-5-522(c) provides that any state-wide plan “... shall guide river basin and aquifer management plans, regional water planning efforts, and local water plans.”

I hope I have been responsive to your inquiry.

RSB:jrue