

Georgia Department of Natural Resources

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Noel Holcomb, Commissioner
Carol A. Couch, Ph.D., Director
Environmental Protection Division
404/656-4713

October 27, 2005

To:

Mr. Hal Haddock
Mr. John Leach III
Mr. John Bridges
Mr. Thomas C. Chatmon, Jr.
Mr. Jimmy Webb

Mr. Bubba Johnson
Mr. Lucius Adkins
Mr. Chris Hobby
Mr. Steve Singletary

Dear Gentlemen:

The purpose of this letter is to address some of the concerns raised in your letter, which I received on October 24, 2005. I take these concerns very seriously, and I believe, that together with the SAC as a whole, we can work together to address them and arrive at a productive outcome. Before addressing specific issues, let me once again share my appreciation to each of you for the time you've invested in this long process. The SAC is at a very critical stage at this moment, in that it is about to make decisions on recommendations to me that have far-reaching consequences for those whose livelihood depends on agriculture.

In the following, I am addressing your specific concerns, shown in quotes and italics, followed by my response.

1. *"At the outset, we wish to express our disappointment in receiving the draft Plan in the middle of our busiest time – harvest – with a response deadline that simply does not allow us the time required to study the document."*

EPD was unable to move more quickly on surface water modeling and evaluation of in-stream flow criteria because these were based on groundwater models unavailable to us until July 2005. In May 2005, the SAC agreed to receive draft recommendations for review on September 22 –also presumably during harvest – and respond by October 6. Because of the delays mentioned, the draft was distributed by e-mail and CD-ROM on October 3. Regardless, I fully recognize, and understand the difficulty of reading a long document during a harvest season already behind schedule because of weather delays. For this reason, I am quite willing to work with the SAC to develop a more convenient schedule. Rob McDowell has already sent you an e-mail soliciting your help to develop such a schedule. All I ask is that the SAC's final recommendations are available to me by December 16.

2. *"Our relative silence in terms of continually raising objections to the process was certainly not indicative of our willingness to accept a document prepared wholly by the EPD. It was based on the presumption that ultimately our concerns would be adequately addressed in the final document"*

The document you received is not final. To remind you, at the August 12, 2005 SAC meeting I said that "the group asked Rob McDowell to write the words of the plan for them to review, but the ideas and the plan belong to the group. It is the group's plan. Someone has to sit at the keyboard, but Rob is attempting to capture what the group wants. By this process, EPD is not asking stakeholders to rubber stamp ideas, because to do so would be ultimately disrespectful of their time, efforts and intelligence." This was consistent with comments from the March 2005 SAC meeting, in which Rob was asked by the SAC to take a "first crack" at the section on regulatory strategies.

At the beginning of each SAC meeting, Committee members were asked to review and comment on meeting summaries distributed prior to the meeting. Rarely were objections raised, including after a draft outline was distributed (and approved) by the SAC in March 2005. Indeed, a "Legal and Technical Strawman" was distributed to SAC members in May 2005, containing specific, but hypothetical, permitting and management strategies. Robust discussion occurred at that same meeting, but no objections were raised about process other than items that would need to occur after completion of a Draft report (such as outside review, public comment, submittal of report to Legislators). An expanded version of this document was distributed in June 2005, and despite repeated requests from Rob and the meeting facilitators, no review comments were submitted or voiced by the SAC. Furthermore, in spite of robust and sometimes contentious discussion at the last three SAC meetings in August and September, objections to the process were only raised towards the end of the last meeting in September, 2005. In short, SAC members were repeatedly offered opportunities to comment on all aspects of the proceedings, including draft "place-holder" documents.

Lastly, and perhaps most importantly, the Draft Recommendations are not a "final document": they are a draft. As discussed in at least two SAC meetings (e.g. October 2004 and August 2005), the final responsibility for the contents of the Plan rests with me, but I seek to act on consensus recommendations from the SAC. I ask you to work with the SAC as a whole to reach your consensus recommendations.

3. *"In addition, we have concerns about our inability to offer any meaningful response to technical presentations that dominated the bulk of our monthly meetings."*

All technical materials presented for your information have been, or are in the process of being, reviewed through credible and competent peer review processes. For example, the Ag Water Pumping Study done by UGA was reviewed by an outside, independent agency (the Council for Agricultural Science and Technology). The USGS modeling studies are currently under outside review, and could not legally be released in draft form until being subjected to, and passing, the Federal review process. The SAC indicated a desire to have the surface water flow models reviewed, and were assured that EPD is willing to have this happen by an outside, independent entity. Dr. Mark Masters, a TAC member, also indicated a willingness to have his economic models reviewed by an outside body.

4. *"Other than a description of EPD's "regulatory limits" in section 9.6, we do not find a definitive description of how the EPD proposes to manage water in the absence of recommended regulatory and statutory reform. Recommendations for permitting processes given in section 9.8 appear to be inconsistent with existing law. Absent legislative changes required to implement the recommendations in sections 9.8 and 9.9, the report provides no guidance -- recommendations -- that we can find that would describe precisely how water is to be managed under existing regulations and statutes. It is this "open-endedness" that is the source of our major concern."*

Without being offered any specific examples of legal inconsistency from Section 9.8, it is difficult to address this concern. However, it is EPD's position that every recommendation in Section 9.8 is based upon, and consistent with, existing Statutes and Rules, and in fact are actions EPD could currently take. These are the means by which EPD would manage the resource in the absence of recommended regulatory and statutory reform.

5. *"We recognize the dire need to clarify existing law governing the permitting of agricultural water withdrawals and believe with the appropriate statutory reforms we can assist the EPD in crafting a Plan that we can support."*

On two occasions, Deputy Attorney General Robert Bomar addressed the SAC (at your request) to discuss and clarify existing law governing agricultural water withdrawals. For both appearances, Mr. Bomar directly answered questions either submitted by SAC members or posed by you at previous meetings. Subsequent discussions at the last three SAC meetings in August and September gave the SAC opportunity to discuss permitting strategies under existing law. No further objections were raised, and the SAC discussions took place in the context of establishing permitting procedures under existing law, a point repeatedly made by SAC members. These discussions were separate from those dealing with regulatory reform. This gave the impression that the SAC needed no additional clarification of existing statutes.

6. *"We are sincerely disappointed that we cannot support the current plan as drafted. Agricultural industry must know exactly how access to water resources will be affected in times of scarcity and this Plan falls short of accomplishing that goal. To that end we recommend that the current planning process be suspended and the efforts be re-directed to consultation with members of the General Assembly in order to examine potential reforms to agricultural water permitting. Hopefully, this will allow the planning process to conclude with a plan we can support."*

At the August 2005 SAC meeting in Camilla, I personally addressed the concerns of the SAC regarding short-term versus long-term goals of the Plan process. The most immediate concern is to craft a Plan that would allow me to lift the moratorium and allow for responsible management during drought years. It has been recognized and openly discussed that there may be the need for statutory and regulatory reform in order to better manage the resource. However, I explained that "this groups' current charge is to develop a conservation and use plan in the context of current law." Other concerns, such as those that would require major legislative changes, would best be addressed in the context of statewide water planning.

7. *"There are a myriad of issues (articulated in July 20th letter) that we hope can also be addressed as the process moves forward and we stand willing to assist in every way."*

Of the eight issues raised in the July 20 letter, five have been directly addressed in the Draft Recommendations or by me at the August 2005 SAC meeting: independent review of technical data, other categories of water users, economic status of the Basin, "ratcheting back" of grandfathered irrigation permits, and future use of the Flint River Drought Protection Act. One issue has been resolved: incomplete data and modeling efforts, and one issue is outside existing statute: local decision-making or self-regulation.

The final issue, involvement and consideration of the Upper Flint River Basin, has been discussed at length at several SAC meetings. To address this issue, a representative of the Metro North Georgia Water Planning District was invited to the January 2005 SAC meeting, at which he presented the organization and role of the District to the SAC. Following his presentation, there were no comments or questions from SAC members. The issue of involving the Upper Basin has also been discussed by Rob McDowell, who reminded the group that agriculture is the biggest water user in the basin, and that the permit moratorium only affects agricultural water users. The moratorium has been the original cause and focus of this process, and it has been the basis of all the sound science studies performed in the Basin. Focusing on municipal and industrial water use would not resolve the issues that led to the moratorium.

Thank you for raising your concerns directly to me at this critical time. I am confident that many of your concerns can be addressed by the SAC in the remaining time. To that end, we can adjust the time frame for receiving your recommendations, as long as they are received by December 16, 2005.

I am very grateful for the work of the SAC. At its first meeting the SAC determined to reach decisions by consensus. I would encourage you to work with the SAC as a whole to develop consensus-based recommendations.

Sincerely,



Carol A. Couch, Ph.D.
Director

cc:

Mr. James Lee Adams
Mr. Dan Bollinger
Mr. Chop Evans
Mr. Vince Falcione
Mr. Tommy Greggors

Ms. Janet Sheldon
Mr. Mike Newberry
Mr. Kim Rentz
Mr. Marcus Waters
Mr. Joe Williams

Dr. James Hook
Mr. Kerry Harrison
Dr. Mark Masters
Dr. Steve Golladay
Mr. Woody Hicks

Mr. Rob Weller
Mr. Mike Harris
Mr. Jason Wisniewski