

Roanoke River Basin Bi-State Commission (RRBBC)
Innovation Center, Raleigh, NC
Video Conference

Summary of Minutes from June 29, 2017 Meeting

North Carolina (NC) delegation of the
RRBBC members present:

Sen. Angela Bryant (chair),
Rep. Susan Martin,
Rep. Larry Yarborough,
Sen. Joyce Krawiec,
Sen. Shirley Randleman,
Rep. Bert Jones, and
Rep. Kyle Hall

Virginia (VA) delegation of the RRBBC
members present:

Sen. Frank Ruff,
Del. Tommy Wright,
Del. Sam Rasoul,
Billy Martin,
Gerald Lovelace
Al Zimmerman

North Carolina Department of Environmental Quality (NCDEQ) staff: Harold Brady, Tom Fransen, Ian McMillan, Bill Crowell, Stacey Feken, Debra Watts, and Marla Sink

Virginia Department of Environmental Quality (VADEQ) staff: Curt Thomas, Brian McGurk

Other attendees: Greg Goddard, Read Charlton (VRRBAC), Randolph Stowe (VRRBAC), Christopher Blakeman (VRRBAC)

This meeting was conducted through video conference technology (WebEx), thereby, enabling the membership from both states to have discussions while maintaining their other obligations as State Senators and Representatives. This was particularly important for the North Carolina delegation as the NC General Assembly was still in session on Thursday, June 29. The handouts for each informational item discussed in the meeting are included as an appendix at the end of the meeting summary.

The meeting was called to order at approximately ten minutes after 2:00 PM by Sen. Angela Bryant (chair). She welcomed the group to the meeting and asked that we begin as quickly as possible due to technical issues delaying the start of the meeting and the uncertainty of timing for when the NC General Assembly would be called back into session. The NC delegation was able to attend due in large part to a short recess called by both chambers; therefore, most of the NC delegation joined the video conference from within the North Carolina General Assembly building.

The first item on the agenda was general commission business, primary consisting of detailing the current leadership appointments. Following the by-laws of the RRBBC, Virginia delegate Mr. Haywood Hamlet was announced as the new chair of the

Commission. Rep. Larry Yarborough volunteered and subsequently confirmed as the new 1st vice chair (e.g., NC delegation chair), and Mr. Al Zimmerman was selected as the 2nd vice chair. Mr. Frank Ruff made the motion to approve the new commission leadership and Sen. Joyce Krawiec offered the subsequent 2nd. The selection of leadership was then voted on and passed unanimously.

The Commission then discussed the time frame for scheduling the next meeting, to be hosted by Virginia. Mr. Curt Thomas, VADEQ RRBBC liaison, mentioned that they were planning to have a VA delegation meeting in the October/November timeframe and that it could potentially be expanded to a full RRBBC meeting. Several members spoke up in favor of an in-person meeting, but conceded that if needed a web conference would be a good option to get more of the membership involved.

Following the commission business, the first informational agenda item was an update to the coal ash litigation summary (Handout No. 1) originally prepared by the NCDEQ General Counsel for the July 2016 NC delegation meeting. Ms. Debra Watts, NCDEQ Animal Feeding Operations and Groundwater Protection Branch Supervisor, spoke to the six NC Duke Energy facilities with ongoing litigation, reiterating the description from the summary handout at the bottom of page 1 and top of page 2.

Ms. Watts then provided detailed information related to coal ash technical issues both for groundwater and surface water conditions. She went through each of the bullets in the handout (Handout No. 2) including surface water conditions on the Dan River, status of the Coal Ash Management Act Reporting Requirements, and Excavation and Closure Status. Ms. Watts' presentation generated considerable questions primarily related to timing of various activities and goals. Sen. Bryant asked why there seemed to be such a hold up with the groundwater data sampling. Ms. Watts responded that groundwater sampling activities occur quarterly and since a minimum of 10 samples are needed to meet EPA guidelines, it requires approximately 2.5 years to complete. In addition, the sampling events need to be spaced several months apart to detect changes and multiple samples need to be taken to develop an accurate assessment of the background conditions.

Mr. Jerry Lovelace asked when the action plans, mentioned during Ms. Watts' discussion of the excavation and closure status, are expected to be approved and released. Ms. Watts responded that these action plans should be expected within a couple months with implementation likely in 2018. Mr. Lovelace then asked if recent flooding had resulted in contamination of or problematic for sampling efforts. Ms. Watts confirmed that no contamination had occurred to her knowledge from the recent flooding and that these events have not delayed to the on-going sampling activities. To avoid any potential surface or groundwater contamination at the Duke Energy Dan River Steam Station facility, it has been classified as "high risk" and the coal ash storage ponds have largely been excavated and

transported to an approved landfill in Jetersville, VA. Mr. Read Charlton asked what the total tonnage was removed from the Duke Energy Dan River facility. Ms. Watts reiterated the information from the handout that outlines the 1.2 million tons of coal ash removed. Mr. Lovelace then expressed that more cooperation between North Carolina and Virginia needs to be done, so that the most recent information from both parties can be shared regularly.

Following the lengthy discussion on the coal ash issue, Mr. Ian McMillan, DWR Basin Planning Branch Chief, provided a brief update on the ongoing Kerr Lake Reallocation Study. Mr. Mcmillan read the statute related to the study requirements to provide the outlined goals of the study and provided some preliminary results (Handout No.3). The primary “take-away” from the presentation was that the water supply demands of the basin are expected to be met through at least 2060. The study report is currently expected to be finalized in late 2017. Rep. Tommy Wright asked about the legislative process and if Virginia had been involved in the crafting. Mr. McMillan responded that the initial legislation was issued in 2013 and only involved North Carolina officials to his knowledge. Mr. Tom Fransen, NCDEQ Water Planning Section Chief, then stated that the Virginia DEQ will be provided the draft document for review and comment once it has gone through internal NCDEQ review. Rep. Wright then asked how long Virginia DEQ will have to review the document because they will need sufficient time to distribute and allow others to adequately review the document. Mr. Fransen stated that coordination will occur between NCDEQ and Virginia DEQ to allow for sufficient review time, but that they should expect to see the draft in mid- to late-August. Mr. Fransen reiterated that cooperation and coordination between the two states will be critical. Mr. Larry Yarborough and others spoke up that they are also very interested in reading the report.

Following the discussion on the Kerr Lake Reallocation Study, Mr. Bill Crowell, Director of Albemarle Pamlico National Estuary Partnership (APNEP) provided a brief background on the program (Handout No. 4) that involves stakeholders from both North Carolina and Virginia. The program is hosted by NCDEQ, supported by EPA grants, and is celebrating its 30th anniversary this year. APNEP is planning to hold meetings with the respective Virginia and North Carolina DEQ Directors to discuss opportunities for beneficial collaboration on waterways of mutual interest. Mr. Charlton asked if the Alligator and Scuppernong Rivers are included within the program and Mr. Crowell confirmed that they are.

Since the APNEP discussion was the last informational item on the agenda, Sen. Angela Bryant moved the discussion onto other business. She opened the other business portion of the meeting with stating that she wanted to ensure that a representative from the United States Army Corps of Engineers related to water planning in the Roanoke River basin would be invited to speak at the next meeting of the RRBBC. This should be included as an agenda item to update the RRBBC on management and operation activities with the

Roanoke River basin. Furthermore, the DEQ RRBBC staff liaisons should work together with assisting with the APNEP meeting involving the DEQ Secretaries, mentioned earlier.

Following these two points, Sen. Bryant asked if anyone had anything else to offer before adjourning the meeting. Rep. Sam Rasoul spoke up that he represents Madison County, Virginia where a proposed natural gas pipeline is planned to transect. This proposed pipeline is separate from the larger Atlantic Coast Pipeline, which he felt has had significantly more review and impact assessment than this smaller pipeline further south in the Virginia. Nonetheless, the public in his district, Madison County, are concerned about impacts of the proposed pipeline and lack of detailed review. Sen. Bryant instructed both liaisons for the RRBBC to ensure that this be included as an agenda item at the next meeting of the RRBBC.

With no further business to discuss, Sen. Bryant thanked the attendees and adjourned the meeting at approximately 10 minutes after 3:00PM.

Post meeting follow-up: NCDEQ and VADEQ representatives and liaisons of the RRBBC held a conference call on July 10 to discuss ways to improve communication and preparedness for future meetings. It was agreed that North Carolina DEQ would look into establishing a new listserv for distribution of announcements and information that representatives from both states can use. Furthermore, there was a significant discussion on the possibility of posting information on the internet prior to the meeting on a single website that both states can use. It was noted that state statutes may restrict these efforts, but that the NCDEQ staff would study possible solutions that meet the requirements for both state statutes.

ROANOKE RIVER BASIN BI-STATE COMMISSION

Meeting Agenda

Thursday, June 29, 2017, 2:00 pm – 3:00 pm

*Innovation Center
217 W Jones St., Raleigh, NC
Video Conference Information:*

Link: [join the meeting](#)

Meeting Number (access code): 625 679 217

Meeting password: 8pTCts6k

I. Call to Order, Welcome - Sen. Angela Bryant, chair 2:00

II. Commission Business - Sen. Angela Bryant, chair 2:10

Election of new commission chair

Commission by-laws discussion

Future meetings: calendar considerations, agenda items, location

Presentations

a. Update on Coal Ash Legal Issues – Updated handout provided by NCDEQ General Counsel 2:25

b. Update on Coal Ash Technical Issues – Debra Watts, Supervisor, Animal Feeding Operations and Groundwater Protection Branch 2:30

c. Status of NCDEQ Roanoke River Basin Water Supply Plan - Ian McMillan, Chief, NCDEQ Basin Planning 2:40

d. Background on Albemarle Pamlico National Estuary Partnership (APNEP) Program – Bill Crowell, Director, APNEP 2:45

IV. Other Business 2:50

V. Adjournment 3:00

SUMMARY OF COAL ASH LITIGATION

THE FEDERAL CRIMINAL CASE

Federal Criminal Case Regarding the Dan River Spill:

- On May 14th, 2015, Duke pled guilty to federal criminal violations of the Clean Water Act and was ordered to pay a \$102 million fine.

CLOSED NC DEQ CASES

Sutton Penalty Case (Office of Administrative Hearings):

- In 2015, NC DEQ fined Duke \$25 million for continuous violations of NC groundwater standards at Duke's Sutton plant.
- On September 29, 2015, the case settled for \$7 million in fines and penalties for groundwater violations and an estimated \$10-\$15 million in accelerated groundwater remediation costs at Sutton, Asheville, Belews Creek, and Lee.

Dan River Civil Penalty Appeal (Office of Administrative Hearings)

- After termination of the Joint Enforcement Agreement with EPA, NC DEQ issued a \$6.6 million penalty to Duke in February of 2016 for various violations associated with the Dan River spill.
- In September of 2016, the case settled for \$6 million.

ONGOING NC DEQ CASES

The "Duke Injunction Cases" (Superior Court)

- NC DEQ filed lawsuits, seeking injunctive relief, against Duke regarding unpermitted discharges and groundwater contamination at all fourteen Duke Energy facilities.
- Various environmental groups, represented by SELC, are Plaintiff-Intervenors.
- The "Three Plant Order," issued on April 4, 2016, requires excavation at the Lee, Cape Fear, and Weatherspoon facilities.
- The "Four Plant Order," issued on June 1, 2016, requires excavation at the Riverbend, Dan River, Sutton, and Asheville facilities.
- In a settlement, Duke agreed to excavate and recycle the ash at the Buck facility.
- For the remaining 6 facilities in North Carolina (Cliffside, Allen, Belews, Roxboro, Mayo, and Marshall) this litigation is ongoing.
 - On August, 18, 2016, SELC filed a motion for partial summary judgment.
 - On October 20, 2016, Duke filed a motion for partial summary judgment.
 - On February 13, 2017, both motions were denied.

- On March 15, 2017, Duke filed an interlocutory appeal of the Superior Court's denial of Duke's motion for partial summary judgment.

Marshall NPDES Permit Challenge (Office of Administrative Hearings):

- SELC filed a Petition for a Contested Case on October 7, 2016. Litigation is ongoing.

Litigation Associated With The Colon (Lee County) and Brickhaven (Chatham County) Sites:

- This litigation consists of two separate cases:
 - *Petitioners challenge of structural fill and mining permits:* The Administrative Law Judge dismissed the case and environmental groups appealed that decision to Chatham County Superior Court. In March of 2017, the Chatham County Superior Court reversed the ALJ's decision as to areas at the site not already mined or otherwise excavated. As a result, the Chatham County Superior Court partially revoked the mine reclamation permits associated with the Colon and Brickhaven sites. NC DEQ and Intervenor (Charah) filed separate appeals of the Superior Court's decision with the NC Court of Appeals. Intervenor moved to stay the Superior Court Order and that motion was denied. Intervenor filed with the NC Court of Appeals a motion to stay the case and that motion is pending.
 - *Petitioners challenge of the 401 certification:* The hearing on dispositive motions was held June 1, 2016. NC DEQ is awaiting a decision on dispositive motions.

Allen Steam Station Air Permit Challenge (Office of Administrative Hearings):

- SELC filed a Petition for a Contested Case on May 25, 2017.

**CLOSED CITIZEN SUIT CASES IN FEDERAL COURT
(NC DEQ NOT A PARTY)**

- Citizen Suit (under the Clean Water Act) Regarding Sutton (Eastern District of NC):
 - *Settled* 11/23/16, requiring Duke to contribute \$1 million to protect water quality in the lower Cape Fear River Basin and to match dollar for dollar money raised by NGOs up to \$250,000.
- Citizen Suit (under the Clean Water Act) Regarding Buck (Middle District of NC):
 - *Settled* 10/7/16—Requires excavation.
- Citizen Suit (under the Clean Water Act) Regarding Cape Fear (Middle District of NC):
 - *Voluntary Dismissal* 9/30/15

**ONGOING CITIZEN SUIT CASES IN FEDERAL COURT
(NC DEQ NOT A PARTY)**

- Citizen Suit (under the Clean Water Act) Regarding Mayo (Middle District of NC):

- Complaint filed in June 2016. On April 26, 2017 the judge issued an order dismissing four out of six claims. Litigation continues regarding the remaining two claims.
- Duke Lawsuit against the Roanoke River Basin Association Regarding the Roxboro Plant, Seeking Declaratory Rulings on Clean Water Act Issues (Western District of VA):
 - Complaint filed May 11, 2017
- Citizen Suit (under the Clean Water Act) Regarding the Roxboro Plant (Middle District of NC)
 - Complaint filed May 16, 2017. Litigation ongoing.

60 DAY NOTICES OF INTENT TO SUE DUKE UNDER FEDERAL LAW

- 60-Day Notice of Intent to Sue (under the Resource Conservation and Recovery Act and the Federal CCR Rule) Regarding the Mayo Plant
 - Notice sent by SELC in April of 2017.
- 60-Day Notice of Intent to Sue (under the Resource Conservation and Recovery Act and the Federal CCR Rule) Regarding the Roxboro Plant
 - Notice sent by SELC on May 31, 2017

Groundwater Update for Dan River Steam Station

Current Conditions of the Dan River

- Current water quality monitoring of the Dan River indicates levels of constituents related to coal ash similar to conditions measured upstream, or what is considered to be background conditions.
 - Parameters being sampled are TDS, TSS, Aluminum, Arsenic, Cadmium, Copper, Iron, Nickel and Zinc
 - Elevated aluminum and iron are still being detected. Downstream and upstream concentrations are similar and fluctuate with TSS concentrations

Status of Coal Ash Management Act (CAMA) Reporting Requirements

- Recent site assessment activity includes the installation of 13 additional monitoring wells that address data needs for cleanup design identified after submittal of the initial Comprehensive Site Assessment (CSA) Report.
- Background determination for soil and groundwater values is in progress that will provide site-specific cleanup goals.
- An Interim Monitoring Plan will be conducted to assess groundwater conditions until corrective action for the facility is implemented.
- Corrective Action Plan (CAP) for the facility will be revised based on refined site assessment information.
- A Site Analysis and Removal Plan was submitted in December 2016 to support proposed closure of the coal ash basins at the facility. The Plan was not approved because a formal Closure Plan is needed with revised CSA and CAP information.

Coal Ash Excavation Status

- CAMA classifies the Dan River Combined Cycle Station as High Risk and requires the ash basins to be closed by August 1, 2019.
- Closure of Dan River Steam Station ash management facilities include:
 - Primary Ash Basin,

- Secondary Ash Basin,
- Coal ash storage area Ash Fill 1 (Ash Stack 1) and
- Coal ash storage area Ash Fill 2 (Ash Stack 2)
- Closure entails excavation of the coal combustion residuals (CCR) and placed in on and off-site permitted landfills.
- Coal ash excavation commenced November 10, 2015:
 - Approximately 1.2 million tons of coal ash from Ash Fill 1 has been removed from the Dan River facility and transported by rail to the Waste Management Maplewood (Amelia Co) MSW Landfill located in Jetersville, Virginia.
 - Duke Energy is in the process of constructing an on-site landfill in the footprint of Ash Fill 1 to accommodate the rest of the Coal Ash Residuals (CCRs).
 - The on-site landfill consists of 3 cells: cell 1 is operational, cell 2 is under construction, and cell 3 is being excavated. All landfill construction is currently scheduled to be completed by January-March 2018.
 - The remainder of the coal ash (less than 2 million tons) on this site is planned to be disposed of in the on-site industrial landfill.
 - DEQ's Division of Waste Management held a pre-operations meeting for the on-site landfill at the Dan River May 30, 2017 and issued an approval letter to Duke Energy for operation of the landfill the same day.
 - The first load of coal ash removed from Ash Storage 1 and temporarily staged in the Primary Ash Basin was disposed of in the landfill May 31, 2017.

ROY COOPER

Governor

MICHAEL S. REGAN

Secretary

S. JAY ZIMMERMAN

Director

PART II. STUDY REALLOCATION OF WATER SUPPLY IN KERR LAKE

SECTION 2. (a) The Department of Environmental Quality (formerly The Department of Environment and Natural Resources) shall study the advisability and feasibility of reallocating water supply in John H. Kerr Reservoir from hydropower storage to water supply storage. The study shall identify the projected future water supply needs that could be met by reallocation of the water supply and identify any potential impacts of a water supply reallocation.

In conducting this study, the Department shall do the following:

- (1) In consultation with the Virginia Department of Environmental Quality, develop a Roanoke River Basin Water Supply Plan that identifies future water supply needs in both the North Carolina and Virginia portions of the river basin. The water supply plan may provide the basis for determining water supply needs that could be met by reallocation of the water supply in John H. Kerr Reservoir.
- (2) Include a recommendation for an agreement between the State of North Carolina, the Commonwealth of Virginia, and the United States Army Corps of Engineers that will provide guidance for allocations and reallocations of water supply in John H. Kerr Reservoir to enhance the public health, safety, and welfare by fostering efficient and sustainable use of the water that meets economic, environmental, and other goals.
- (3) Identify and review any other issues the Department considers relevant to the topic.

SECTION 2. (b) In conducting this study, the Department shall consult with the Virginia Department of Environmental Quality, the United States Army Corps of Engineers, and any local government or other entity that receives an allocation from the John H. Kerr Reservoir for water supply or for other purposes as of the effective date of this section. The Department shall report its findings and recommendations to the Environmental Review Commission on or before June 1, 2014.

Objectives and findings:

1. Advisability and feasibility of reallocating water supply in John H. Kerr Reservoir from hydropower storage to water supply storage. – *Looking out to 2060, the only projected future water supply need identified within the entire Roanoke River basin (NC and VA) by this study was Dominion-Mecklenburg Cogeneration, in Clarksville, Virginia, who has indicated that they are interested in an increase in its current 600 AF allocation to support their operations. Their usage has not increased; instead, more severe droughts since they initially obtained their allocation has resulted in their need for an increased allocation to avoid depleting their storage. Therefore, this report, as tasked by the bill, does not include a recommendation as requested per item (2) in the bill. According to the USACE, reallocation is feasible.*
2. The study shall identify the projected future water supply needs that could be met by reallocation of the water supply and identify any potential impacts of a water supply reallocation. – *As stated previously, no shortages identified. Impacts would be discerned upon pursuit of reallocation.*
3. Include a recommendation for an agreement between the State of North Carolina, the Commonwealth of Virginia, and the United States Army Corps of Engineers that will provide guidance for allocations and reallocations of water supply in John H. Kerr Reservoir to enhance the public health, safety, and welfare by fostering efficient and sustainable use of the water that meets economic, environmental, and other goals. – *Not applicable, since no shortages were identified.*
4. Identify and review any other issues the Department considers relevant to the topic. - *No additional issues, beyond continued productive cooperation between Virginia and North Carolina, were identified.*

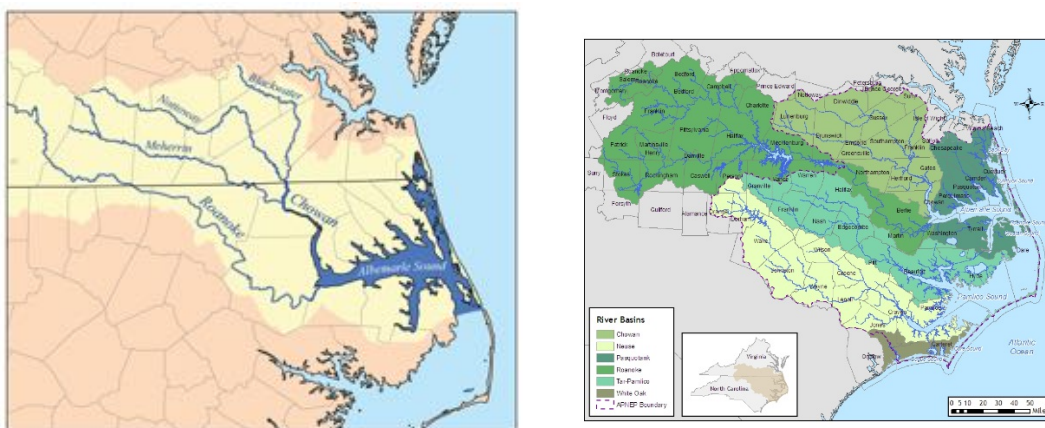
Next steps will be sharing the draft final report with Virginia, the USACE and any entity that receives an allocation from Kerr Lake, and then submittal of the final report to the Environmental Review Commission.

Albemarle-Pamlico National Estuary Partnership

The Albemarle-Pamlico National Estuary Partnership (APNEP) was among the first of 28 National Estuary Programs (NEP) established under Section 320 of the 1987 Clean Water Act (CWA) Amendments. APNEP is a cooperative effort currently hosted by the N.C. Department of Environmental Quality with financial support provided by a grant from the U.S. Environmental Protection Agency. The Partnership also works closely with the Commonwealth of Virginia in implementing the CCMP.

APNEP is celebrating its 30th anniversary of working collaboratively with partners to identify, restore, and protect the significant resources of our “estuary of national significance.” With more than 3,000 square miles of estuarine waters and a drainage basin of 28,000 square miles, the Albemarle Pamlico is among the nation’s largest and most significant estuarine ecosystems.

APNEP is active throughout the Albemarle-Pamlico watershed, with management efforts directed from river headwaters to the sea. For this reason, APNEP works with diverse partners in both North Carolina and Virginia, as water from both states ultimately drains into the sounds. The Roanoke river basin is one of 6 major watersheds that drain into the Albemarle-Pamlico estuary, three of which originate in Virginia. However, APNEP's program area in this watershed is currently limited to North Carolina's lower Roanoke region, downstream of the Roanoke Rapids dam.



APNEP released a new [Comprehensive Conservation and Management Plan](#) (CCMP) in 2012, which identifies actions and initiatives such as protection and restoration efforts to improve water quality and habitats, identification of gaps in knowledge of the system, and engagement of the public to make connections between the natural environment and services provided by the system. APNEP has placed an emphasis on assessment and monitoring to gain further knowledge of the system and facilitate adaptive management.

Dr. Kirk Havens of the Virginia Institute of Marine Science and APNEP Policy Board chair has expressed interest in strengthening ties and re-engaging with Virginia partners. He has initiated discussions regarding setting up a meeting between Secretary Ward of the Virginia Department of Natural Resources and Secretary Michael Regan of North Carolina Department of Environmental Quality to discuss opportunities for collaboration in the shared waterways between our two states to improve the health of our sounds.

For more information visit <http://portal.ncdenr.org/web/apnep/home>