

NC Delegation of the Roanoke River Basin Bi State Commission (RRBBC)
North Carolina Legislative Office Building, Raleigh, NC

Summary of Minutes from June 29, 2016 Meeting

NC delegation of the RRBBC members present:

Sen. Angela Bryant (chair),
Rep. Susan Martin,
Rep. Larry Yarborough,
Sen. Joyce Krawiec,
Sen. Shirley Randleman, and
Mr. Chuck Peoples

Complete attendee list is included following the summary.

Sen. Bryant (chair) called the meeting to order. She welcomed the group to the meeting and called for introductions around the room.

Mr. Drew Hargrove, North Carolina Department of Environmental Quality (NCDEQ) Assistant General Counsel, led a discussion on the current status of the various legal suits related to coal ash issues both in the Roanoke River basin and statewide. He divided the discussion into seven sections, the first being the federal criminal case for the Dan River spill of which Duke plead guilty to. The second was the Sutton Penalty Case, which is being heard by the Office of Administrative Hearings (OAH). This is related to the \$7 million in fines and penalties for violations to State groundwater standards at the Sutton Plant. The third point of discussion involved various “Duke Injunction Cases” that are being heard in Superior Court for unpermitted discharges and groundwater contamination at all fourteen Duke Energy facilities. There were two summary judgments related to these cases; the “Three Plant Order” and the “Four Plant Order”. The “Four Plant Order” involves the most high-risk facilities of the seven plants; however, litigation is ongoing for another seven facilities. The fourth section was for the appeal of the Dan River Civil Penalty with the OAH, which is ongoing. The fifth point of discussion involved litigation also with the OAH and included both the Lee and Chatham County sites in two separate suits. The sixth section was another case being heard by the OAH involving the appeal of a National Pollutant Discharge Elimination System (NPDES) permit issued by the NCDEQ for the Riverbend facility. The final section of the coal ash legal discussion provided information regarding various third party suits. These are primarily on behalf of environmental advocacy organizations and are currently in federal court. These cases do not involve NCDEQ, and therefore, Mr. Hargrove had limited knowledge of them. Mr. Hargrove then responded to a few specific questions regarding the current coal ash related legal suits, including a request that the two summary judgements be provided to the membership.

Following the presentation by Mr. Hargrove, Mr. Steve Lanter, NCDEQ hydrogeologist, provided updated information on the current status of the Dan River coal ash incident and cleanup. He reported that monthly sampling of the Dan River continues and all water quality parameters being tested appear to be normal. Coal ash excavation from the onsite pits started in November 2015. Approximately 12% of the stored coal ash at the facility has been removed and is being trucked to a lined landfill site in Jetersville, VA. Plans are on-going for a possible on-site landfill of the remaining coal ash, but that until that is finalized, coal ash will continue to be excavated and trucked to the Jetersburg landfill. Currently, NCDEQ is working with Duke Energy to fill data gaps and refine the water quality models. Following the update, Mr. Lanter responded to a few questions by the membership.

Following Mr. Lanter's discussion, Mr. Tony Young, United States Army Corps of Engineers (USACE) Water Management Chief, Wilmington District, provided updated information on the Quasi Run-of-River (QRR) water management strategy for Kerr Lake on the Roanoke River. The QRR water management strategy allows for releases to match estimated inflows during times when water levels in Kerr Lake exceed the guide curve; up to 35,000 cfs. The higher flows would likely result in more regular increased river levels, but lasting for significantly shorter durations. An Environmental Assessment (EA) was conducted for this proposed management change. The public review and comment period for the draft EA began in December 2015 and continued through January 2016. Comments received during this period were reviewed and the final document revised where appropriate. A FONSI was issued for the EA document in mid-2016 and revisions were made to the Water Control Plan for Kerr Lake in June 2016. These revisions fully integrate the QRR water management strategy with the existing operation protocols at Kerr Lake. Mr. Young noted that even though, QRR has been implemented there has not yet been a rainfall event that has resulted in increased inflows to the point of initiating the revised management strategy. Mr. Young indicated that significant cooperation has been conducted with Dominion Power, who manages the releases at Lake Gaston and the Roanoke Rapids dam, to help anticipate and resolve potential management issues related to increased releases from Kerr Lake. Following the presentation, Mr. Young responded to several questions. Mr. Mike Pucci, Roanoke River Basin Association (RRBA) President, stated that their organization had worked for years to help get this revisited management strategy implemented and are pleased with outcome. Mr. Harold Brady, NCDEQ water supply planner, offered to distribute an electronic link to the Final EA document and revised Kerr Lake Water Control Plan to the delegation membership. Following the QRR discussion, Mr. Young provided some recent lake level information and management responses.

Following Mr. Young's discussion, Mr. Ian McMillan, Basin Planning Branch Supervisor, provided updated information regarding the current status of the *Kerr Lake Water Supply Plan and Assessment of Reallocation of Hydropower Supply*. The NCDEQ was directed to

research and produce this document from a 2012 legislative action. Currently, the draft document is being reviewed internally and it is anticipated that the final document will be ready for release prior to the next full Bi-State Commission meeting.

Following Mr. McMillan's presentation, Sen. Bryant asked if there were any additional discussions prior to discussing delegation business. Mr. Brady then spoke to the delegation regarding the granting of the Kerr Lake Regional Water System (KLRWS) Interbasin Transfer (IBT) Certificate by the Environmental Management Commission (EMC) in November 2015. Mr. Brady emphasized that this approval will allow the KLRWS and their wholesale water system customers to continue with regional planning efforts. The support and efforts to educate the regional leadership by members of the delegation was acknowledged.

Sen. Bryant then led the discussion on the next full Bi-State Commission meeting. Leading off with identifying a potential location for the meeting at the Halifax County Community College campus. This location would meet the needs of the request given at the last Commission meeting, to have the next meeting in the lower portion of the Roanoke River basin. This location proposal appeared to be agreeable to the membership present. After some discussion on potential dates, it was decided that an electronic poll should be distributed to the membership in both states to identify the best day to hold this meeting. The dates selected were all between the week of the November election and the week of Thanksgiving. A robust discussion of potential agenda items ensued and included, an update of water resource legislative changes from both states affecting the Roanoke River basin, update on coal ash issues both legal and technical, update on the implementation of QRR, discussion of the results from the NCDEQ Roanoke River basin water supply plan, and an update on the potential Uranium mine in Virginia.

With no further business to discuss, Sen. Bryant thanked the attendees and adjourned the meeting.

Post meeting follow-up: The two summary judgements as well as the electronic link to the Final EA and Revised Kerr Lake Water Control Plan were emailed to the membership on June 29, 2016. An electronic poll to determine the date of the next full Bi-State Commission meeting was initiated and emailed to the membership of the full Bi-State Commission on June 30, 2016.

JUNE
29,
2016

NC DELEGATION OF THE ROANOKE RIVER
BASIN BI-STATE COMMISSION

8:00 AM

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