

**Minutes
Board of Natural Resources
2 Martin Luther King, Jr. Drive, S. E.
Suite 1252 East Tower
Atlanta, GA 30334**

**August 10, 2020
9:00 a.m.
Via Teleconference Call**

Attendees:

Board Members

Nancy Addison, Chair
Dee Yancey, Vice Chair
Bill Jones, Secretary
Nick Ayers
William Bagwell
Dwight Davis
Denney, Patrick
Dwight Evans
Joe Hatfield
Duncan N. Johnson, Jr.
Ray Lambert
Rob Leebern
Tim Lowe
Mike Phelps
Billy New
Paul Shailendra
Jeff "Bodine" Sinyard
Miki Thomaston

Staff Members

Mark Williams, Commissioner
Walter Rabon
Kyle Pearson
Kate Iannuzzi
Josh Hildebrandt
Cathy Barnette
Artica Gaston

Richard Dunn, Director
Lauren Curry
Jac Capp
Laura Williams

Guests

Lewis Jones, King & Spalding, LLP
Kevin Jeselnik, Chattahoochee Riverkeepers

The August 10, 2020 special called conference call meeting of the Board of Natural Resources was called to order by Chair Nancy Addison.

Chair Addison welcomed Nick Ayers and Patrick Denney to the Board of Natural Resources.

Chair Addison called on Cathy Barnette to do roll call and verify a quorum is present. Those in attendance on the conference call were Nancy Addison, Chair, Dee Yancey, Vice Chair, Bill Jones, Secretary, Nick Ayers, William Bagwell, Dwight Davis, Patrick Denney, Dwight Evans, Joe Hatfield, Duncan Johnson, Ray Lambert, Rob Leebern, Tim Lowe, Billy New, Mike Phelps, Bodine Sinyard, Brother Stewart, and Miki Thomaston.

Chair Addison called on Commissioner Mark Williams for his remarks.

Commissioner Williams stated that since the June Board meeting the 2020 legislative session was reconvened and then adjourned sine die. He further stated the majority of the people's attention was on the FY 2021 budget. He stated the department sustained about a 10 percent reduction for FY 2021 but was fortunate to be approved for \$17,865,000 for DNR projects, to be funded by General Obligation bonds. He further stated these funds will have a significant impact on DNR's ability to maintain and expand our service to Georgians at our properties and our facilities. He added he would like to thank Governor Kemp and the General Assembly for their support during these difficult times.

Commissioner Williams stated that with this financing, the department can move forward with projects, including the expansion of ADA access, fish hatchery improvements, cabin renovations, building a new entrance and new parking area at Wormsloe State Historic Site, land acquisition for our new Ceylon WMA, and a handful of other plans. He further stated that these projects will help the department meet its important goals and continue to add access for all Georgians, while also protecting and caring for our treasured natural, cultural, and historical resources.

Commissioner Williams called on Mr. Kyle Pearson, Executive Counsel.

Mr. Pearson stated there are two action items for consideration under Tab A, and both are regarding the issuance of General Obligation bond funds. He further stated in the General Appropriations Act for FY2020-2021, the General Assembly included items for DNR projects with a total value of \$17,865,000, that are to be funded by General Obligation bonds. He added the General Assembly also included items for Lake Lanier Island Development Authority projects, with a total value of \$20,080,000.

Mr. Pearson stated the projects that DNR will fund with the proceeds from these bond sales are: \$900,000 for replacement of lab equipment, statewide; \$16,965,000 for renovations and improvements to cabins, campgrounds, and infrastructure, statewide; and \$20,080,000 for projects for Lake Lanier Islands Development Authority, statewide. He further stated that \$20,080,000 for projects for Lake Lanier Islands Development Authority will be issued as federally taxable bonds. He added this means they can be used for projects at state owned facilities that are privately operated.

Mr. Pearson stated the State Law Department prepared two Resolutions concerning these bonds for consideration by the Board. He stated that one Resolution deals with the bonds for the \$17, 865,000 for DNR projects. He added the other Resolution deals with the bond for the \$20,080,000 for Lake Lanier Island Development Authority projects. In the Resolutions, the Board requests the issuance of the bonds.

A motion was made by Mr. Davis, seconded by Ms. Thomaston, and carried unanimously to approve the Sale of General Obligation Bonds pursuant to the FY 2020-2021 General Appropriations Act, for Department of Natural Resources projects. (Resolution attached hereto and made a part thereof)

A motion was made by Mr. Bagwell, seconded by Mr. Leebern, and carried unanimously to approve the Sale of General Obligation Bonds pursuant to the FY 2020-2021 General Appropriations Act, for Lake Lanier Islands Development Authority projects. (Resolution attached hereto and made a part thereof)

Mr. Shailendra joined the teleconference meeting.

Chair Addison called on Jac Capp, Chief of the Watershed Protection Branch, to present the Action on Petition by Columbus Water Works to Georgia Board of Natural Resources to undertake Rulemaking.

Mr. Capp stated the Georgia Administrative Procedures Act (APA) provides that an interested person may petition the Board of Natural Resources requesting promulgation of a rule. He further stated the APA mandates that such petitions be considered and either accepted or denied in writing within 30 days of receipt. He added Columbus Water Works submitted a petition on July 22, 2020.

Mr. Capp stated the petition requests that the Total Maximum Daily Load (TMDL) for fecal coliform established for the Chattahoochee River be reviewed and revised and promulgated as a rule and that all future TMDLs be promulgated as rules. He further stated the federal Clean Water

Act, Georgia Water Quality Control Act, and their implementing regulations mandate that states establish water quality standards that describe the designated uses of water bodies and the criteria necessary to protect those designated uses. He added the federal Clean Water Act mandates that for any water body not meeting water quality standards, EPD must develop TMDLs for that identified pollutant for that specific water body.

Mr. Capp stated neither the federal Clean Water Act nor the Georgia Water Quality Control Act require that TMDLs be established through rulemaking. He further stated TMDLs are the result of a highly technical analysis performed by staff at EPD that involves an evaluation of the water body's hydrology, the potential point sources and nonpoint sources of the pollutant at issue, and an assessment of how that pollutant interacts with the receiving water body at the applicable location. He added EPD established numerous TMDLs for different pollutants and different water bodies annually and presently has approximately 1,800 individual TMDLs.

Mr. Capp stated every TMDL established by EPD goes through public notice and comment. He further stated after EPD has proposed a TMDL, it must be reviewed and approved by the US EPA before it may be implemented and the US EPA may disapprove a TMDL if it believes that there has not been adequate public participation in the process of establishing that TMDL. He added after the US EPA has approved a TMDL, that decision is subject to challenge by any affected parties.

Mr. Capp stated the three main conditions that the US EPA articulated under which an established TMDL should be revised are: the water quality standards have been updated, the assumptions or data have significantly changed since the development of the TMDL or it becomes apparent that data and assumptions relied upon were flawed, and there is a need to shift or revise allocations in the TMDL. He further states the attainment of water quality standards is not a reason deemed appropriate by the US EPA to revise a TMDL.

Mr. Capp stated EPD recommends the Board deny the Petition because the TMDL for the Chattahoochee River is not ripe for revision, in accordance with US EPA guidance, applicable regulation, or EPD's technical and scientific assessment. He further stated EPD also recommends the Board deny the Petition because TMDLs are not "rules" within the meaning of the Georgia APA. He added TMDLs are not standards of general applicability, but rather site-specific, pollutant-specific, and discharge-specific plans designed to ensure that NPDES permits issued to dischargers will protect water quality standards.

Chair Addison called on Lewis Jones, partner at King and Spalding law firm representing Columbus Water Works.

Mr. Jones stated he is in favor of the Petition by Columbus Water Works. He further stated procedures used by EPD to determine TMDLs are made by staff and not reviewed by the Board. He added the TMDL cannot be used as a permit limit if not promulgated by the Rules.

Chair Addison called on Kevin Jeselnik, general counsel for the Chattahoochee Riverkeepers.

Mr. Jeselnik stated he opposed the Petition and agrees with Mr. Capp. He further stated no federal courts have endorsed the request made in the Petition to have TMDLs promulgated in rules. He added permit relying on TMDL result in cleaner water for the people of Georgia.

A motion was made by Mr. Lambert, seconded by Mr. Evans, and carried unanimously that the Board adopt the proposed Resolution to deny the Petition by Columbus Water Works to Georgia Board of Natural Resources to undertake Rulemaking. (Resolution attached hereto and made a part thereof)

There being no further business, the meeting was adjourned.

Nancy A. Addison, Chairman

ATTEST:

A. W. Jones III, Secretary