October 1, 2009

MEMORANDUM

To: The Honorable Members of the General Assembly

Re: Roanoke River Basin Bi-State Commission 2009 Annual Report

The "Roanoke River Basin Bi-State Commission Annual Report," prepared pursuant to Chapter 5.4 of Title 62.1 of the Code of Virginia § 62.1-69.35:2 is available from the Department of Environmental Quality's (DEQ) website at: http://www.deq.virginia.gov/regulations/reports.html. A hard copy can be obtained by calling Scott Kudlas, Director, Office of Surface and Ground Water Supply Planning for the Department of Environmental Quality, at (804) 698-4456 or Tammy Stephenson, Senior Water Supply Planner, at (540) 562-6828. The report provides information about the group's activities for 2009.

I look forward to serving the people of the Roanoke River Basin during the coming year as the Roanoke River Bi-State Commission continues its work.

Sincerely,

Michael T. McEvoy

Mike McEvoy
Co-Chairman

A REPORT TO

THE HONORABLE TIMOTHY M. KAINE, GOVERNOR,

AND

THE GENERAL ASSEMBLY OF VIRGINIA

ROANOKE RIVER BASIN BI-STATE COMMISSION

2009 ANNUAL REPORT

October 1, 2009

Executive Summary

The Roanoke River Basin Bi-State Commission was established in the executive branch of state government. Duties and powers of the Bi-State Commission are pursuant to Virginia Code § 62.1-69.37.

This inaugural meeting of the Roanoke River Basin Bi-State Commission was held in March 2009 with Commission members from Virginia and North Carolina. One of the topics the Commission focused on is the request from Raleigh, NC outside the Basin for a withdrawal from the Kerr Reservoir (Buggs Island Lake) in the basin. As a result of this request, a Water Allocation Ad Hoc Committee was formed with staff from both Virginia and North Carolina agencies, Virginia Tech, University of North Carolina, and Duke University. The goal of the Ad Hoc Committee is to develop a protocol for such requests that the Commission could approve and submit for consideration of the executive branches of both states and the U. S. Army Corps of Engineers.

This report provides information regarding Roanoke River Basin Bi-State Commission's activities during the 2009 calendar year and identifies issues important to the success of Bi-State Commission and to the Roanoke River Basin.

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I. Introduction

The Roanoke River Basin Bi-State Commission was established in the executive branch of state government. Its duties and objectives are pursuant to Va. Code §§ 62.1-69.37 – 62.1-69.44. The Bi-State Commission is composed of 18 members, nine from Virginia and nine from North Carolina. Composition of the membership is as follows: the six Virginia legislative members appointed to the Virginia Roanoke River Basin Advisory Committee and three non-legislative gubernatorial appointments. The North Carolina delegation is appointed in a similar fashion.

The Roanoke River Basin Bi-State Commission was established as a bi-state commission composed of members from the Commonwealth of Virginia and the State of North Carolina. The purpose of the Commission is to:

> Provide guidance, conduct joint meetings, and make recommendations to local, state, and federal legislative and administrative bodies, and to others as it deems necessary and appropriate, regarding the use, stewardship, and enhancement of the [Roanoke River] Basin's water and other natural resources;
>
> Provide a forum for discussion of issues affecting the Basin's water quantity, water quality, and other natural resources;
>
> Promote communication, coordination, and education among stakeholders within the Basin;
>
> Identify Basin-related problems and recommend appropriate solutions; and
>
> Undertake studies and prepare, publish, and disseminate information through reports, and other communications, related to water quantity, water quality, and other natural resources of the Basin

The Bi-State Commission met for the first time as in calendar year 2009.

II. Meetings and Locations

The Roanoke River Basin Bi-State Commission meets throughout the Basin in an effort to make the meetings available to all Basin constituents in both states. This year the Commission held meetings in Clarksville, VA; Henderson, NC; and Danville, VA.

III. Organization

At the initial meeting of the Roanoke River Basin Bi-State Commission, Mike McEvoy, Chairman of the Virginia Roanoke River Basin Advisory Committee, and North Carolina Representative Lucy Allen were appointed co-chairs of the Bi-State Commission until the group became more organized by the development and adoption of By-Laws. Staff was

directed to develop By-Laws, which were presented to the Bi-State Commission for consideration at the August 2009 meeting. These By-Laws were adopted by the Commission at their August 21, 2009 meeting.

IV. Current Membership of the Roanoke River Basin Bi-State Commission

There are currently 18 members on the Commission, nine from Virginia and nine from North Carolina. A list of current members is provided below.

Virginia
Senator Roscoe Reynolds
Senator Frank M. Ruff
Delegate Kathy J. Byron
Delegate Thomas C. Wright, Jr.
Delegate Charles Poindexter
Delegate Onzlee Ware
Mike McEvoy
John H. Feild
Haywood J. Hamlet

North Carolina
Senator A. B. Swindell
Senator Ed Jones
Senator Clark Jenkins
Rep. Lucy T. Allen
Rep. James Crawford
Rep. Edith Warren
Larry Yarborough
Lindley Butler (recently resigned)
John Slaton

V. Non-legislative Delegates to the Roanoke River Basin Bi-State Commission

Mike McEvoy, John Feild and Haywood Hamlet are the Virginia non-legislative delegates to the Roanoke River Basin Bi-State Commission and were appointed by the Governor.

VI. Committees

The Roanoke River Basin Bi-State Commission has authority to establish standing committees from the following mandated groups: Agriculture and Forestry, Lake Interests, Municipal Interests and Permit Holders, River Interests, and Water. In accordance with the enabling legislation, the Bi-State Commission may also establish other standing and ad hoc committees that the Commission deems necessary and appropriate. Membership and guidelines for staff recommended committees are under development.

The Virginia Roanoke River Basin Advisory Committee has been meeting for about five years. The Committee established similar standing committees to those required by the Bi-State Commission in anticipation of the Commission being constituted. The Advisory Committees' standing committees will be structured to support the Bi-State Commission standing committees. It is expected that Virginia membership to the Bi-State Commission committees will include representatives from the Advisory Committee standing committees.

At the initial meeting of the Roanoke River Basin Bi-State Commission, the Commission determined that an ad hoc committee was needed to address a concern by members that there were potential competitors outside the basin for the available municipal and

industrial storage allocation of Kerr Reservoir. The Water Allocation Ad Hoc Committee was formed with representatives from the Virginia Department of Environmental Quality and the North Carolina Department of Natural and Environmental Resources as co-chairs. Representatives from Virginia Tech, Duke University, and University of North Carolina will also serve on the committee, with others added as appropriate.

VII. Issues and Topics of Interest:

Importance of Natural Resources to the Economic Vitality of the Basin: People reside in and come to the Basin area to pursue various interests including vacation, lifestyle, aesthetics, boating, fishing, etc. These activities and personal values help drive the economic engine of the local and regional area. Clean water and ample flow and supply are recognized as essential to existing beneficial uses and future economic growth. The importance of agriculture and forestry to the lifestyle and economy is notable. There are a number of tools available that offer economic incentives and help protect water quality and other resources, conserve open space/"greenfields", limit sprawl, and help preserve our way of life. These include Purchase of Development Rights (PDRs), Transfer of Development Rights (TDRs), forest riparian buffer tax credits, forest legacy perpetual easements, state and federal grants, loans, and cost share programs, Ag/Forestry Districts in some areas, conservation easements, and "Brownfields" redevelopment.

Inter-basin Transfer of Water (IBT): Raleigh, Durham, Cary, and Granville County, North Carolina, have made an inquiry to the United States Army Corps of Engineers (USACE) about the availability of as much as 26,000 acre-feet (AF) of water from Kerr Reservoir. An allocation from Kerr Reservoir was given in 2006 to Henderson, North Carolina and other partners which, according to news reports, resulted in the transfer of water out of the Basin, to localities as far south as Franklin County, North Carolina. This water is distributed through the Kerr Lake Regional Water System which was formed by the cities of Henderson and Oxford and serves Vance, Granville, and Warren Counties. Because a storage allocation already existed to support a 10 mgd withdrawal, Kerr Lake Regional Water System does not need additional approval from the USACE. A North Carolina inter-basin transfer certificate is required to pass 2 mgd or more of water from the Roanoke to the Tar and Neuse River Basins. This certificate has been applied for and initial public comment sought for drafting the Environmental Impact Statement (EIS). North Carolina expects this certificate review to be a multi-year process.

The Water Allocation Ad Hoc Committee, with representatives from both Virginia and North Carolina, is charged with establishing a "protocol" for consideration by the Bi-State Commission that could ultimately serve as a framework agreement for the states and the USACE in considering requests for additional water allocation. The goal is to develop a process that both Virginia and North Carolina can endorse that protects the Roanoke River Basin and assists in the careful planning of this resource. Coordination and consensus building in the entire Basin on watershed management issues is essential to sound watershed decision making and management.

Uranium Mining - Uranium mining in the Commonwealth has been prohibited since 1982 by a state moratorium, although approval for restricted uranium exploration in the state was granted in 2007. The Virginia Coal and Energy Commission has proposed that the Virginia Center for Coal and Energy Research conduct a study on the impact of uranium mining in the Commonwealth. Virginia Uranium, Inc. has indicated an interest in initiating mining and processing operations in Pittsylvania County in the Roanoke River Basin watershed, should the moratorium be lifted.

There have been several presentations to the Roanoke River Basin Bi-State Commission on this topic, and interested citizens have addressed the Commission under public comment at the meetings.

Basin-wide Dialogue: A goal of the Roanoke River Basin Bi-State Commission is to open channels of communication. It is important that dialogue take place which is representative of all areas of the Basin. Speakers representing different geographic areas and interests have addressed the Commission.

VIII. 2009 Presentations to the Roanoke River Basin Bi-State Commission

- Status of proposed Dan River Intake in Milton, NC - Jon Barlow, City Manager, Roxboro, NC
- Kerr Lake Regional Water System - Current IBT Certification Process - Tom Fransen, NC Department of Environment and Natural Resources
- Kerr Lake Water Allocation Status - Tony Young, P. E., Water Control Manager, U.S. Army Corps of Engineers

Appendix A

Chapter 5.5 of Title 62.1 of the Code of Virginia

Chapter 5.5

§ 62.1-69.36. Definitions.
As used in this chapter, unless the context requires a different meaning:
"Basin" means the Roanoke River Basin.
"Roanoke River Basin" means that land area designated as the Roanoke River Basin by the Virginia State Water Control Board, pursuant to § 62.1-44.38, and the North Carolina Department of Environment and Natural Resources.

§ 62.1-69.37. Roanoke River Basin Bi-State Commission established; purpose.
The Roanoke River Basin Bi-State Commission is hereby established as a bi-state commission composed of members from the Commonwealth of Virginia and the State of North Carolina and hereinafter referred to as the Commission. The Commission shall:
1. Provide guidance, conduct joint meetings, and make recommendations to local, state and federal legislative and administrative bodies, and to others as it deems necessary and appropriate, regarding the use, stewardship, and enhancement of the Basin's water and other natural resources;
2. Provide a forum for discussion of issues affecting the Basin's water quantity, water quality, and other natural resources;
3. Promote communication, coordination and education among stakeholders within the Basin;
4. Identify Basin-related problems and recommend appropriate solutions; and
5. Undertake studies and prepare, publish, and disseminate information through reports, and other communications, related to water quantity, water quality and other natural resources of the Basin.

§ 62.1-69.38. Membership; terms.
A. The Commission shall be composed of 18 voting members that include nine members representing the Commonwealth of Virginia and nine members representing the State of North Carolina. The Virginia delegation shall consist of the six legislative members appointed to the Virginia Roanoke River Basin Advisory Committee, and three nonlegislative citizen members appointed to the Virginia Roanoke River Basin Advisory Committee, who represent different geographical areas of the Virginia portion of the Roanoke River Basin, to be appointed by the Governor of Virginia. The North Carolina delegation to the Commission shall be appointed as determined by the State of North Carolina. All members appointed to the Commission by the Commonwealth of Virginia and the State of North Carolina shall reside within the Basin's watershed. Members of the Virginia House of Delegates and the Senate of Virginia, the North Carolina House of Representatives and Senate, and federal legislators, who have not been appointed to the Commission and whose districts include any portion of the Basin, shall serve as nonvoting ex officio members of the Commission.

B. Legislative members of the Virginia delegation, federal legislators, and local government officials, whether appointed or ex officio, shall serve terms coincident with their terms of office. Nonlegislative citizen members shall be appointed to serve two-year terms, unless the member is reappointed by the appointing authorities of each state. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointment.
C. Each state's delegation to the Commission may meet separately to discuss Basin-related issues affecting their state, and may report their findings independently of the Commission. A majority of the voting members shall constitute a quorum.

§ 62.1-69.39. Roanoke River Basin Bi-State Commission powers and duties.
A. The Commission shall have no regulatory authority.
B. To perform its duties and objectives, the Commission shall have the power to:
1. Develop rules and procedures for the conduct of its business or as may be necessary to perform its duties and carry out its objectives, including, but not limited to, selecting a chairman and vice-chairman, rotating chairmanships, calling meetings and establishing voting procedures. Rules and procedures developed pursuant to this subdivision shall be effective upon an affirmative vote by a majority of the Commission members;
2. Establish standing and ad hoc advisory committees, which shall be constituted in a manner to ensure a balance between recognized interests. The purpose of each advisory committee shall be determined by the Commission;
3. Seek, apply for, accept and expend gifts, grants and donations, services and other aid from public or private sources. With the exception of funds provided by the planning district commissions and funds appropriated by the General Assemblies of Virginia and North Carolina, the Commission may accept funds only after an affirmative vote by a majority of the members of the Commission or by following such other procedures as may be established by the Commission for the conduct of its business;
4. Establish a nonprofit corporation to assist in the details of administering its affairs and in raising funds;
5. Enter into contracts and execute all instruments necessary or appropriate; and
6. Perform any lawful acts necessary or appropriate for the furtherance of its work.

§ 62.1-69.40. Standing and ad hoc committees.
To facilitate communication among stakeholders in the Roanoke River Basin, and to maximize participation by all interested parties, the Commission shall establish both standing and ad hoc committees. The Commission shall appoint the members of the standing and ad hoc committees, in accordance with guidelines adopted by the Commission. The standing committees shall include, but not be limited to, the following:
1. Permit holders. The Commission shall identify those entities that hold permits issued by a federal, state or local regulatory agency pertaining to the water of the Basin. Such entities may recommend a representative to be appointed to the committee by the Commission;
2. Roanoke River Basin interest groups. The Commission shall identify interest groups that may recommend a representative to be appointed to the committee by the Commission;

3. Public officials and government entities. The committee shall be composed of representatives of each county, city and town located completely or partially within the Basin, and any other governmental entities that the Commission deems appropriate may recommend one member to be appointed to the committee by the Commission. The committee may also include the U.S. Senators from Virginia and North Carolina or their designees, and any member of the U.S. House of Representatives or his designee, whose district includes any portion of the Basin, if such members elect to serve on the committee; and

4. Agriculture, forestry and soil and water conservation districts. The Commission shall identify persons who represent agricultural and forestry interests throughout the Basin and representatives from the soil and water conservation districts within the Basin and shall appoint representatives from these groups to the committee.

§ 62.1-69.41. Staffing and support.

The Virginia Department of Environmental Quality and the North Carolina Department of Environment and Natural Resources shall provide staff support to the Commission. Additional staff may be hired or contracted by the Commission through funds raised by or provided to it. The duties and compensation of such additional staff shall be determined and fixed by the Commission, within available resources. All agencies of the Commonwealth of Virginia and the State of North Carolina shall cooperate with the Commission and, upon request, shall assist the Commission in fulfilling its responsibilities. The Virginia Secretary of Natural Resources and the North Carolina Secretary of the Department of Environment and Natural Resources or their designees shall each serve as the liaison between their respective state agencies and the Commission.

§ 62.1-69.42. Funding.

A. The Commission shall annually adopt a budget, which shall include the Commission's estimated expenses. Funding for the Commission shall be shared and apportioned between the Commonwealth of Virginia and the State of North Carolina. The appropriation of public funds to the Commission shall be provided through each state's regular process for appropriating public funds. The Virginia planning district commissions within the Basin shall bear a proportion of Virginia's share of the expenses, which may be in the form of in-kind contributions.

B. The Commission shall designate a fiscal agent.

C. The accounts and records of the Commission showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Virginia Auditor of Public Accounts and the North Carolina State Auditor prescribe, provided that such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by similar enterprises. The accounts and records of the Commission shall be subject to an annual audit by the Virginia Auditor of Public Accounts and the North Carolina State Auditor or their legal representatives, and the costs of such audit services shall be borne by the Commission. The results of the audits shall be delivered to the appropriate legislative oversight committees in each state.

§ 62.1-69.43. Compensation and expenses.

A. Legislative members of the Virginia delegation to the Commission shall receive such compensation as provided in § 30-19.12, and non-legislative members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All voting members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in § § 2.2-2813 and 2.2-2825. However, all such expenses shall be paid from existing appropriations and funds provided to the Commission or, if unfunded, shall be approved by the Joint Rules Committee.
Members of the Virginia House of Delegates and the Senate of Virginia, and members of the Virginia Congressional delegation, who have not been appointed to the Commission, whose districts include any portion of the Basin, and who serve as nonvoting ex officio members of the Commission shall serve without compensation and expenses.
Nonlegislative citizen members appointed to any standing committees or ad hoc committees shall serve without compensation and expenses.
B. The North Carolina members of the Commission shall receive per diem, subsistence, and travel expenses as follows:
1. Ex officio legislative members who are members of the General Assembly at the rate established in North Carolina G.S. 138-6;
2. Commission members who are officials or employees of the State or of local government agencies at the rate established in North Carolina G.S. 138-6; and
3. All other members at the rate established in North Carolina G.S. 138-5.

§ 62.1-69.44. Annual report required.
The Commission shall submit an annual report, including any recommendations, to the Governor and General Assembly of Virginia and the Governor and General Assembly of North Carolina.