

# 2011 Legislative Preview

*From: Gordon Rogers, Your Flint Riverkeeper*

The 2011 session of the Georgia Legislature is shaping up to be one that is quite historic for Georgia's water resources in general, and the Flint in particular. Regulatory changes and the way money is spent are always the things to watch, and 2011 is not an exception. With a brand new Governor, who has a relatively new head of EPD and DNR working for him, a House with relatively new, strong leadership, and an "old" Lieutenant Governor who has been stripped of some of his powers, this session will be quite interesting indeed.

Things to watch:

- Legislation addressing Interbasin Transfers (IBTs)
- Reservoir funding
- The relationship of these first two items to the TriState legal situation ("water wars")
- Rollbacks of protections of abundant, clean water.

## IBTs

You may recall that last year, during the 2010 session, we made quite a bit of headway toward our goal of restoring flows in the Upper Flint by reregulating interbasin transfers (aka "IBTs"), the practice of taking water from one river basin and depositing it, after use, to another. "The River Basin Protection Act of 2010" was introduced in the House and Senate, and received widespread support, particularly outside of Metro Atlanta, but also by a few key supporters inside Metro. It was vehemently opposed by the Metro Chamber of Commerce and its operatives both inside and outside the legislature. Two key opponents inside the legislature, Chairman Lynn Smith (R-Newnan) of the House Natural Resources Committee, and Chairman Ross Tolleson (R-Perry) of the Senate Natural Resources Committee, did everything in their power to keep the bills from receiving a fair hearing, never allowing such to happen in their committee. Chairman Tolleson has been recently quoted (this week) as saying that the bill did not have strong support in the legislature. This is not true: 68 Representatives and 24 Senators actually signed the bill! They included many key leaders in BOTH parties.

In Chairman Smith's committee, a dedicated bi-partisan group, mostly but not all downstreamers, fought to get the bill's language tacked onto another bill and out of committee. They were successful, but then the bill languished in the House Rules Committee, and never made it to the floor of the House. Of course, then-Governor Perdue had stated publicly that he would veto any IBT legislation that emerged from the Gold Dome, as "premature" to the state's ongoing water planning process.

This year, there is a new Chairman of House Rules, appointed by House Speaker David Ralston (R-Blue Ridge), and the playing field has changed. The bill would have required that each IBT be closely examined for economic, hydrologic, and ecological effects on both "donor" and "receiving" basins, and would have required that any renewed IBT permits be examined for the same effects. This is exactly what the Metro Chamber and their compatriots do NOT want to see happen, because almost any examination of almost any IBT will find detrimental effects to the donor basin. The Flint in particular has been heavily damaged by IBTs, even though in comparison to many other IBTs in the Metro area (such as from the Etowah/Coosa and the Chattahoochee systems) the Flint's IBTs are small. This is because the Flint itself is quite small in its upper reaches, above approximately US 80, and can be mightily affected by IBTs that are much smaller than many of those in Metro North Georgia.

Meanwhile, due to the VERY large numbers of legislators to sign the bill, and modicum of success by the rebellion in Chairman Smith's committee, the Metro Chamber of Commerce and their operatives inside and outside the legislature changed their tune. Recently, according to the Metro Chamber, we "need" IBT regulation, even though the state's water planning process remains ongoing (drafts of regional plans will be out later this year for public comment). Of course, their preferred form of regulation is not regulation at all. Rather, they backed and this week there was passed by the GADNR Board an executive-branch action, known as a "Rule" (not to be confused with the House or Senate "Rules" committees, and entirely different government function). This new Rule states that GA EPD "should" (rather than "shall") consider effects on donor and receiving basins, and applies only to NEW IBTs (!!!), offering no relief whatsoever to the current situation, and little hope of keeping things from getting worse. Chairman Tolleson testified to the DNR Board that EPD needs flexibility, and that he trusts EPD to protect Georgia's rivers. Former EPD Director, now a private consultant, Harold Reheis was quoted that the new Rule will have no effect whatsoever on a new IBT contemplated from the Chattahoochee to the Ocmulgee other than to cause to happen a little bit more analysis (read: expenditure of taxpayer dollars for no real result, other than to lose more water from the Chattahoochee, and, we can assume, place a larger fee in the consultants' bank accounts).

Lobbyists for the Association of the County Commissioners of Georgia have been quoted this week saying that the new IBT Rule is a good one in that it will not get in the way of badly needed reservoirs. Thus, we can see that those who would impound water, move it around at will, and otherwise rob downstreamers of the economic and other benefits of that flow are quite happy at the moment.

Lest you be tempted to cry out in support of an IBT "ban" (which could surface in the midst of all of this), consider this: if all new IBTs were banned, and all existing IBTs were grandfathered in place, the Upper Flint would continue to suffer during low-flow periods, with, again, no relief in sight. For the Flint, we MUST have a regulatory system that guarantees, in law, defensible in court, not only prohibiting MORE withdrawals from the Flint that are not returned, but also HEALING, RESTORING, RETURNING EXISTING withdrawals. The Upper Flint is too delicate, in it's present state, to allow anything else to occur.

So, I think you can immediately see that, we will now be working in the legislature to properly regulate IBTs, to fix a supposed "regulation" promulgated by the executive branch. This story will unfold rapidly. Please watch your inbox.

### **Funding for Reservoirs**

Flint Riverkeeper Board Vice Chair Robin Singletary of Mitchell County is a landowner on the Flint. While we were chatting about IBTs one day last year, he said to me, "You know Gordon, I've been thinking: reservoirs and IBTs pretty much go hand in hand, don't they." Robin is right. While there are a handful of each (IBTs and water-supply reservoirs) that stand alone in Georgia, there are very few, particularly in Metro. And, more importantly, there are very few contemplated water-supply schemes that do not involve both. Ample evidence of how the reservoir builders see the world can be seen in this week's news quotes from the lobbyists. An IBT is most useful if you can store the water, either on the donor or receiving end, or both. So, when you hear or read that your Governor has proposed in his budget to spend several hundred million on "reservoirs", your mind should begin to turn in a logical way to "where will the reservoir be, where will the water be used, and what are all of the proposed uses of this reservoir".

Reservoirs do NOT make more water. They form "impoundments" that "store" water for some use, or suite of uses. That use could be an IBT, it could be used and returned to the system, it could be that the reservoir is used as a heat sink for a power

plant, generation of hydropower, flood control, recreation, residential and commercial development, and a combination of several of those. Quite a few of those uses have no beneficial use for downstreamers, and in fact deprive downstreamers of flow. Among those uses are, of course, IBTs, but also non-IBT withdrawals that lead to consumption (no return).

And, two "hidden" uses of the water should come to the forefront of your mind. One is that constituencies nearly always build up over time around "lake levels", another way of saying "during a drought, the level of the water in front of our property is more important than the base flows in your part of the river". In the management vernacular, the "release prescription" of a reservoir is a critical issue for downstreamers to consider as they evaluate any new reservoir proposal. The more reservoirs there are, the more and more complex release prescriptions downstreamers need to pay attention to. The second "hidden" use of the water in a reservoir is the absolutely massive amount of evaporation that occurs from each and every square foot of an impoundment, each and every minute of each and every day. In the American South, during a drought, and particularly during a droughty summer, these losses are massive. Reservoirs do not make more water. They capture it, and absolutely insure, without doubt, that there will be less total water in the system over time.

So, when our Governor proposes several hundred million dollars for "new reservoirs" (which, by the way, will not build any, nowhere near-so; it only gets the ball rolling), your ears should perk up. Reservoirs are an exceedingly expensive way to provide "more" water for anywhere, including Metro Atlanta. The most cost-effective way to truly provide more water is conservation... using less, leaving more... which still has a long way to go in Georgia, including Metro. Coupled with conservation should be the efficient use of existing infrastructure, including reauthorization of Lake Lanier, and increases in pool levels at several area facilities, including Lanier.

The Governor is proposing to spend your tax dollars and, with bonds, that of your children and grandchildren, on projects that are not needed, and that have a 100% probability of degrading downstream uses and economies. Depending upon where these proposed reservoirs are sited, there is also a high probability that someone's private property will be condemned via eminent domain, that fish, fishing, and wildlife will be destroyed, that existing economic engines such as outfitters and riverside parks will be eliminated or damaged, and that constituencies pushing for unreasonable release prescriptions will become established.

Therefore, Flint Riverkeeper will be closely monitoring what the Governor, and your legislature, actually propose to do with the "reservoir money". There are already

quite a number of reservoirs in the Flint River system, particularly in and around Metro. And, flows in the Upper Flint have suffered mightily because of them. "More" is not a "good thing" for the Flint.

### **Connections to the Tri-State Situation**

Every regulatory and political action in our beloved state that is related to water must be looked at, at least in part, through the Tri-State legal battle lens. This week, the Governor has expressed doubts that the Tri-State situation will be solved in court. We agree, and are actively involved, each and every week, in pushing forward those solutions for the Apalachicola-Chattahoochee-Flint (ACF) river system. Other voices in Metro have stated that the new IBT Rules just promulgated by the GA DNR Board, somehow, magically, improve Georgia's negotiating position with Florida and Alabama. I guess you can tell by the last sentence that we disagree. A Rule saying that regulators "should" do something is, well, not a Rule. It is a suggestion. As a friend of mine said this week, General MacArthur did not say that he "should" return to the Philippine Islands when he was forced to evacuate from Corregidor, and you do not tell your kids that they "should" clean up their room (unless that word is accompanied by an explicit price for not doing so!).

Meanwhile, proposals for money spent and projects initiated establishing new impoundments abound. I personally doubt that our downstream neighboring states, or downstream Georgians, see the new IBT Rules as anywhere near protective enough to camouflage the intent of Metro. Keep a clear eye, ladies and gentlemen, because obfuscation is the order of the day by those who would take your right to reasonable use of your waters.

### **Rollbacks of Protections**

In nearly every legislative session there are one to several bills introduced that would decrease the protections, few as they are, of Georgia's precious water resources. Such things happen in the executive branch, too, through permitting policies, enforcement policies, and DNR Board rulemaking. Last year, Senator Tolleson and two of his colleagues introduced a bill that met stiff opposition from the water protection community, and was defeated. The bill would have required a judge to defer to GA EPD testimony in any trial challenging a permit, in essence stripping those appealing the legality of the permit of their rights to a fair trial. This was done in the name of "government efficiency" and other trendy buzz phrases. Certainly government can be more efficient, but stripping our legal protections from poorly written permits

is, well, bad news.

It is always interesting to see what those who would use our swamps, creeks, streams and rivers as waste-treatment plants, or assets to be, no pun intended, liquidated come up with to lessen the protections afforded to God's garden spot that we call Georgia. We pledge to keep you informed.

### How You Can Help

- Call or email us for more details, in case there is a deeper understanding your wish to achieve ( [gordon@flinriverkeeper.org](mailto:gordon@flinriverkeeper.org) ).
- Sign the "No Water Grabs" petition that we are cosponsoring with our other partners in the Georgia Water Coalition ( [www.nowatergrabs.org](http://www.nowatergrabs.org) ).
- Assemble your advocacy tools. Make sure you know who your House Representative and Senator are by going to ( <http://www.legis.ga.gov/en-US/default.aspx> ) and exploring their website. Write down their email addresses and telephone numbers. Be prepared to contact them directly to help move important legislation, and be prepared to do it on very short notice. This is a fact, stated to me on many occasions by Representatives and Senators in both parties: "if I get 5 to 7 phone calls on an issue, I know it is hot, that it matters to my constituents";
- Watch your email inbox.

I know this was a long email, but the construction of legislation that become "laws" and "rules" in Georgia is not simple, nor is it simple to monitor, nor should it be. Please know this: an email or a phone call from you, personally, to your elected official, at just the right moment, can move mountains. Never think otherwise. Speak in your own voice, at your own time. And, let us at Flint Riverkeeper know how we can help you help the river. Democracy in this great Republic, in this great State of Georgia, is a participation sport, not a spectator sport. Thank you.

For the Flint,  
Gordon