

**Minutes of the South Fulton Municipal Regional Water And
Sewer Authority Meeting Held on July 18, 2018,
At 2047 Union Street, Union City, GA**

BOARD MEMBERS PRESENT: J. Clark Boddie, Vince R. Williams, Elizabeth Carr Hurst, Donna M. Gayden and Sonja Fillingame

BOARD MEMBERS ABSENT: Laura Mullis and Shayla J. Nealy

Consultants Present: Dennis Davenport, Laura Benz and Andrea Gray, Gary Huffman and Cliff Osborn

Others Present: None

Call To Order: Chairman Vince R. Williams called the meeting to order at 7:00 PM.

Approval Of The Minutes: A motion was made by Donna M. Gayden to approve the minutes of the June 12th 2018 meeting, seconded by Sonja Fillingame. A vote was taken, the motion passed unanimously.

New Business: None

Old Business: None.

Reports:

Legal – Dennis Davenport reviewed the RFP for Auditing with the Board. The Board requested that the RPF be posted for auditors to apply.

Finance – Dennis Davenport in place of Dan Post reviewed with the Board:

1. The July 2018 financial statement.
2. The draw number 1 from the GEFA Loan \$9199.00

J. Clark Boddie made a motion to approve draw number 1 in the amount of \$9199.00 from the GEFA Loan seconded by Sonja Fillingame. A vote was taken, the motion passed unanimously.

3. Requested approval for draw number 180 in the amount of \$22,965.68 from the construction account.

J. Clark Boddie made a motion to approve draw number 180 in the amount of \$22,965.68 from the construction account seconded by Donna M. Gayden. A vote was taken, the motion passed unanimously.

Project Managers – Laura Benz and Andrea Gray reviewed with the Board:

See attached memorandum for details

1. Water Withdrawal Permit Application for Direct Withdrawal
 - a. Response to comments
 - b. Treatability Analysis
 - c. SWAP
2. GEFA Loan update
3. Litigation:
 - a. Supreme Court on water wars

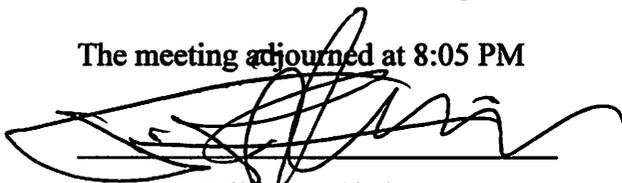
Gary Huffman and Cliff Osborn with Krebs Engineering reviewed with the Board the results from the treatability analysis for the water withdrawal from the Chattahoochee River.

Laura Benz and Andrea Gray discussed the permitting timeline with the Board

Executive Session: None

J. Clark Boddie made a motion to adjourn the meeting, seconded by Elizabeth Carr Hurst. A vote was taken, the motion passed unanimously.

The meeting adjourned at 8:05 PM



Vince R. Williams, Chairman

August 14th, 2018

Date Minutes Approved by Board

MEMORANDUM

To: S. Fulton Municipal Regional Water & Sewer Authority Member Cities Councils
(Fairburn, Palmetto and Union City)

From: Laura Benz & Andrea Gray

Date: July 18, 2018

Re: S. Fulton Authority Project Update

Water Withdrawal Application/Process: A response to the June 7, 2018 EPD comment letter was submitted to EPD for consideration on June 15, 2018. In accordance with that submission, we requested and were granted a meeting with EPD personnel on July 13, 2018. To further document the pending water withdrawal request, EPD has requested additional multiple copies of documents previously provided to EPD: Service Delivery Strategy documents, May 25, 2012 Agreement with Atlanta, Service Area mapping, and proposed distribution maps. In addition, given the June 27, 2018 ruling of the Supreme Court, EPD has requested assistance in assembling the documentation to demonstrate that the Authority's pending request is consistent with the water quantities requested by Georgia in its 2015 letter to the USACE either by showing there is unpermitted supply available within the limits of Fulton County's allocation or, alternatively, propose a reallocation of water withdrawal rights from the Chattahoochee River.

Treatability Analysis: The water quality testing of the Chattahoochee River began on January 22 and was completed on June 18th. The last result is anticipated to be received on July 23rd, however all samples have responded to traditional treatment methods. A draft treatability report was discussed with EPD on July 13th and will be submitted upon receipt of the final water quality result. At its July 18th meeting, Krebs provided an update to the Authority and addressed questions regarding the draft report.

SWAP: The ARC kickoff meeting was held on June 23, 2018. ARC will be developing a source water assessment plan (SWAP) delineating the direct withdrawal raw water source and identifying potential sources of contamination. In accordance with the Metropolitan North Georgia Water Planning District's Water Resource Management Plan (Integrated-6), a SWAP must be prepared/updated prior to January 1, 2020. To provide support, the District has secured funding from EPD & GEFA for up to 2 years to complete this task for all utilities in the District. The SWAP is required to be updated every ten years. ARC will be requesting the member cities assist in getting the data, reviewing the analysis, risk and susceptibility matrix and verifying the data and analysis over the course of the next 18 months. The Authority will be contacted beginning mid-July to provide additional data for incorporation into the SWAP.

GEFA Loan Update: The GEFA loan execution date is established as of February 19, 2018 by letter dated February 16, 2018. In accordance with the terms of the loan, the Authority must submit its draw request on the forms provided by GEFA prior to August 19, 2018 to avoid the monthly continuation fee of \$3,000. The proposal is to request a draw in the amount of CCR's last two invoices totaling \$9,198.60 for water quality sampling and testing associated with the treatability and water quality analysis. The interest-only payments on this draw would be less than \$20/mo.

Supreme Court Update: In a 5-4 ruling on June 27, 2018 the Supreme Court held that additional information was necessary prior to a final ruling on Florida's request for equitable apportionment. The Court remanded the case back to the Special Master for additional findings. Please see the attached memo for further discussion.

Updated on Supreme Court Ruling in Florida v. Georgia

Court Ruling: On June 27, 2018, the Supreme Court ruled that the Florida v Georgia matter be remanded back to the Special Master for factual findings on the validity of Florida's claims prior to applying the balance of harms test for equitable apportionment.

Background: In its complaint, Florida ("FL") requested that the Court make an equitable apportionment finding between FL and Georgia ("GA"). FL alleges that GA's upstream water storage and consumption would continue to increase causing more frequent and severe low flow events, resulting in diminished likelihood that key species would survive, precluding recovery over the long-term. To remedy this, FL sought a cap on GA's water consumption from the Flint River. The USACE did not waive its sovereign immunity to be a party in the suit. Earlier in the litigation, FL and GA agreed that the Special Master's recommendation turned on whether FL had shown that a cap of GA's water consumption would address its injury if the decree didn't bind the USACE. The USACE manages the ACF basin as a unit, and therefore if additional water is released through the Flint, the USACE may retain other water from the Chattahoochee system or vice versa. On February 14, 2017, the Special Master recommended to the Supreme Court that FL's claim be dismissed for failure to present clear and convincing evidence that placing a cap on GA's water consumption would remedy FL's alleged injury given the inability of the court to bind the USACE. The June 27, 2018 Supreme Court ruling takes into account the Special Master's recommendation in addition to briefs and oral arguments made in the case.

Implications: We don't anticipate the Court's holding to have any impact on the South Fulton Municipal Regional Water & Sewer Authority's pending water withdrawal permit because the remand back to the Special Master was to find more facts, essentially resulting in a status quo for the time being.

Case synopsis: The Supreme Court decision was a 5-4 decision, with Justice Kennedy in the majority. On June 27th Justice Kennedy, often the swing vote, announced his retirement to be effective July 31st. This means that the next time this matter comes before the Court, the remaining Justices are 4-4 and the newly appointed Justice will tip the balance. For this reason, we explain both the majority and the dissenting opinions below.

Majority:

The majority held that the Special Master applied too strict of a standard in concluding that FL failed to meet its initial burden of demonstrating that the Court can determine an effective equitable decree. Rather than a "clear and convincing" standard, FL need only show that applying the principles of "flexibility" and "approximation" it is likely to prove possible to fashion an equitable decree. The majority believes that FL met this initial burden and the Special Master needed to determine the likely harms and amelioration before implementing the clear and convincing evidence about the workability of a decree.

The majority requested that the following factual findings be determined: (1) to what extent does GA take too much water from the Flint River? (2) to what extent would a cap on GA's water

consumption increase the amount of water that flows from the Flint River into Lake Seminole; (3) to what extent (under the USACE' revised Master Manual or under what reasonable modifications that could be made to that Manual) would additional water resulting from a cap on GA's water consumption result in additional stream flow to the Apalachicola River? (4) to what extent would that additional streamflow into the Apalachicola River address FL's injuries? Once the additional factual findings are complete, the Court will determine whether FL would be entitled to a decree of apportionment based on whether it shows the benefit of the apportionment substantially outweighs the harm that results.

The Court reserves judgment as to the ultimate disposition of the case, and only provides a narrow holding requiring additional findings of fact by the Special Master as to whether FL has shown that its injuries can effectively be redressed by limiting GA's consumptive use of water from the Basin without decree binding the Corps. The majority believes that, if necessary, the U.S. along with the parties may be able to provide a remedy and therefore the additional facts need to be addressed. It is important to note that the majority did state that the judgment of the Special Master may prove correct, however additional facts must be determined prior to making that determination

Dissent:

The dissenting opinion states the Special Master appropriately applied the clear and convincing standard and that FL failed to demonstrate that a cap would benefit FL more than it harmed GA.

The dissent referenced the procedural elements of the case including the fact that FL stipulated that it was not asking the USACE to control the dams or modify flow in any way. Based on that the Special Master denied GA's claim to dismiss FL's complaint since the USACE was not a party. FL cannot ask the Court to require the USACE to change its existing operations and therefore it must prove by clear and convincing evidence that the USACE would voluntarily make the necessary changes, which the minority feels unlikely given the litigious past. Similarly, the narrow exceptions for deviating from the Manual are only to serve congressionally authorized purposes or in emergency circumstances – under neither of which criteria does FL fall.

In providing evidence on the balancing of harms, FL only provided evidence of drought circumstances during which the USACE only releases 5,000 cfs into the Apalachicola River until its reservoirs are completely replenished. There was no evidence provided for water levels during non-drought conditions, therefore the Special Master found that FL had not proved that its requested cap would benefit it given that the USACE operates the basin as a system. The US briefs submitted to the Court also stated that the USACE expects that Apalachicola River flows would be similar with or without a consumption cap during drought conditions. The dissent further states that even if the Special Master did apply the wrong standard, that it would not justify a remand because his findings are plainly correct and establish that GA should prevail under the balance of harms test. "Imposing enormously high cost on one state so that another state can achieve a hollow victory is not the high equity that moves the conscience of the court in giving judgment between the states." For these reasons, the dissent would have concurred with the Special Master and dismissed FL's request.

*Update to South Fulton Authority
Re Supreme Court Ruling in FL v GA
July 10, 2018*

We look forward to addressing any additional questions you may have at the meeting next week.