

**REPORT OF THE**

# **Virginia Water Commission**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **HOUSE DOCUMENT NO. 80**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1990**

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**1990**  
**Report of the**  
**State Water Commission**

**TO:       The Honorable Lawrence Douglas Wilder, Governor,**  
**and**  
**the General Assembly of Virginia**

**I. INTRODUCTION**

**The State Water Commission is a legislatively mandated, 15 member panel (Va. Code § 9-145.5 et seq.) which is to perform the following functions:**

- 1. Study all aspects of water supply and allocation problems in the Commonwealth, whether these problems be of a quantitative or qualitative nature;**
- 2. Coordinate the legislative recommendations of all other state entities having responsibilities with respect to water supply and allocation issues; and**
- 3. Report annually its findings and recommendations to the Governor and the General Assembly.**

**II. COMMISSION DELIBERATIONS**

**During the course of the year, the Commission examined two issues: (i) how to finance the drinking water needs of the Commonwealth and (ii) the status of instream flow regulations being promulgated by the State Water Control Board (SWCB) in response to legislation enacted by the 1989 Session of the General Assembly. Because the Commission is operating under a January 1990 sunset provision, this report will only reflect the Commission's activities as of this date.**

## A. Financing of Drinking Water Projects: Development of a Funding Mechanism

### 1. Virginia's safe drinking water program.

The federal Safe Drinking Water Act (SDWA) was passed by Congress in 1974 to protect the public from health hazards resulting from contaminated drinking water. Under the Act, the Environmental Protection Agency (EPA) is responsible for establishing regulations defining what constitutes safe drinking water quality for public water systems and ensuring that all public water systems provide water to consumers which meets the definition of "safe." The Act contemplates that the primary responsibility for enforcement would reside with the states. To assume such enforcement responsibility (primacy), the state must adopt its own drinking water regulations which are at least as stringent as those of the federal government.

The Division of Water Supply Engineering within the Health Department is the state agency authorized to implement the SDWA program. The Division's mission is to "promote and to protect the public health and welfare by planning and directing activities to insure that adequate water quality and quantity are provided to users by public water systems located in the Commonwealth."<sup>1</sup> This is accomplished through surveillance and sanitary surveys of waterworks, technical reviews of engineering plans and specifications, monitoring of drinking water quality, training of waterworks owners and operators, and emergency assistance. The provisions of the SDWA apply only to water which is provided to consumers by public water systems (waterworks). The Virginia Code defines waterworks as "a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least fifteen connections, or (iii) an average of twenty-five individuals for at least sixty days out of the year" (§ 32.1-167). Waterworks may be owned or operated by the state, federal, or local government or private investors. There are three types of waterworks based on the characteristics of the population being served, each

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1. The Impact to the Safe Drinking Water Act Amendment of 1987 in the Commonwealth of Virginia, Division of Water Supply Engineering, Office of Water Programs, House Document No. 30, 1990, p. 25.

with its specific regulations and water sampling requirements. A "community waterworks" is one that has 15 or more service connections or one that serves 25 or more year-round residents, such as municipal water utilities, apartment complexes, mobile home parks, nursing homes, and correctional institutions. A "noncommunity waterworks" serves a transient population of at least 25 people for at least 60 days a year and includes campgrounds, motels, hotels, and restaurants. A third type of waterworks is the "nontransient noncommunity waterworks," which is one that serves a fairly consistent nonresidential population of at least 25 of the same people for at least six months a year. Examples of this type of system include factories and schools with their own water supplies.

While private investor-owned waterworks represent the largest number of waterworks, local governments provide water and fire service to the vast majority of residential users in the Commonwealth. Over four million Virginians are served by local government (community) water utilities compared to 348,000 served by investor-operated community waterworks. (For a breakdown by type of waterworks, gallons produced, and population served, see Attachment A.) The majority of Virginia's water supply systems serve a relatively small number of consumers. Of the 1,576 active community waterworks, approximately 60 percent serve a population between 25 and 200 persons; almost one-half of the nontransient, noncommunity waterworks serve fewer than 200 persons. In contrast, there are 15 systems (each serving in excess of 50,000 persons) which provide water for over 60 percent of Virginia's public water consumers. Therefore, even though very small waterworks comprise the majority of the systems, they serve a small percentage of the total consuming population.

## 2. Costs of protecting Virginia's water supply system.

The 1986 amendments to the SDWA, with their renewed emphasis on enforcement and mandating of standards for 83 new contaminants, will require a greater financial commitment from both state government as well as operators of public waterworks. Health Department officials informed the Commission that their agency's oversight of the SDWA program, with its new requirements, will cost an additional \$6.88 million for the FY 1990-92 biennium. The new testing requirements will also require an additional \$2.17 million biennium appropriation for the Division of Consolidated Laboratory Services.

According to testimony, these amounts will be necessary if Virginia is to continue to provide its current level of services and retain the responsibility for enforcement of the federal act. By retaining primacy, Virginia receives an annual federal allocation of \$800,000 which represents 40 percent of the costs of administering the state's program. If primacy were revoked, many of these functions would be assumed by the federal government.

Operators of public water systems also face significant costs associated with implementation of the 1986 amendments. The Commission received testimony which indicates that waterworks owners will annually face between \$51 million and \$143 million in monitoring and treatment costs in order to comply with the new amendments.<sup>2</sup> This will result in such costs being passed on to consumers in the form of increased household water bills. Depending on the size of the customer base and the type of system improvements which would have to be implemented, the annual cost to a household could range between \$5 to \$1,284. The costs of compliance will disproportionately fall on the smaller systems which typically operate treatment facilities which will have to be upgraded so as to comply with the new amendments.

These estimates for the costs of compliance are in addition to \$1.9 billion in estimated capital costs through the year 2000, documented in a 1985 Health Department survey of infrastructure needs of publicly owned drinking water systems.<sup>3</sup> This figure includes approximately \$237 million in needs for small publicly owned water systems serving 3,300 people or less. While the state and federal government have recognized the necessity to upgrade the wastewater infrastructure, as evidenced by the commitment of funds to capitalize the Virginia Water Facilities Revolving Fund (Va. Code § 62.1-224 et seq.), a similar commitment has not been made with respect to the financing of water supply projects. The federal construction grant program has allocated approximately \$40 million annually, matched by a \$10 million annual state appropriation to finance

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2. Ibid., p. 5

3. Infrastructure Needs for Publicly Owned Drinking Water Systems, Virginia Department of Health, February 1986, p. 3.

local wastewater projects. No federal funds and only \$100,000 in annual state appropriations have been available to capitalize the Virginia Water Supply Revolving Fund (Va. Code § 62.1-233 et seq.). This fund, established in 1987 by the General Assembly, currently contains \$212,500 which will be distributed in the form of loans and grants to local governments for drinking water supply projects.

### 3. Drinking Water Protection Charge.

In an effort to provide an alternative financing mechanism for water supply projects, two members of the Commission, Delegate Lewis Parker and Senator Granger Macfarlane, presented a draft proposal to establish a \$.10 per thousand gallon surcharge on all water produced (Attachment B). It is estimated that such a charge would raise approximately \$20 million annually. The charge would be imposed quarterly on the owner of a waterworks. Currently a number of states, including Rhode Island, New Jersey, and Kansas, assess a fee on the water produced for, or consumed by, customers of public water systems and use the proceeds for financing various water supply initiatives. If this charge, assessed against the waterworks owner, were to be passed on to his customers, it is estimated that the annual water bill will increase between \$5 to \$10 per household. The moneys collected would be placed into the Drinking Water Protection Fund and disbursed in the form of grants to local governments to pay the costs of projects which (i) preserve or enhance the quality of water provided to the users of public water supplies, (ii) alleviate adverse public health conditions, (iii) promote the efficient use of the public water supply, and (iv) allow orderly development and growth to occur.

The draft legislation establishes certain priorities in the distribution of the funds. Emphasis is placed on assisting communities which demonstrate a limited ability to finance water supply projects or whose water is contaminated or faces the threat of contamination. Specifically, 45 percent of the fund is earmarked for "hardship communities." Hardship communities are those having a water system which serves 3,300 individuals or less and which demonstrate a level of fiscal stress that limits their ability to generate revenue for the operation of waterworks. Fifty percent of the fund would be allocated on a competitive basis with priority in the awarding of grants given to those systems which (i) have been cited by the Health Commissioner as being an imminent danger to public health and welfare, (ii) are threatened by contamination, or (iii) require improvements to the

deteriorating physical condition of the facilities. The remaining five percent would be directed to regional water supply development. The apparent concern for small waterworks in the development of the criteria for awarding of grants is a reflection of the fact that the 392 small systems (serving 3,300 or less) are responsible for 98.4 percent of the drinking water violations, even though they produce a small percentage of the water consumed. This is an indication of the difficulty that these systems are experiencing in meeting not only current standards but any future mandates.

The Commission, as part of its review of the water supply financing proposal offered by Delegate Parker and Senator Macfarlane, sought comments and recommendations. The responses received from regulated community and Commission members raised questions as to the appropriateness of the funding mechanism, eligibility criteria, allocation of the fund, and the need for and purpose of the fund. A summary of those comments and suggestions is provided in Attachment C.

#### **B. Status of Instream Flow Legislation**

Dr. Bernie Caton, Deputy Executive Director of Policy Analysis for the SWCB, briefed the Commission on the status of the instream flow legislation enacted by the 1989 Session of the General Assembly. Under the first bill, HB 1837, the state's water policy has been expanded to recognize instream uses as a beneficial use of state waters and to require their protection. House Bill 1838 allows the SWCB to intervene in civil actions involving surface water withdrawals although the courts will continue to make the final decision in disputes between water users. Under the provisions of HB 1840, the SWCB has been authorized to require registration of withdrawals for crop irrigation which exceed one million gallons monthly. Irrigation has been the only major category of withdrawal exempt from registration and reporting requirements that have been required of other water users since the early 1980s.

House Bills 1839 and 1841 gave the Board the authority to develop regulations to ensure the protection of beneficial instream uses. The Virginia Water Protection Permit authorized by HB 1839 will be required for activities where a Corps of Engineers "dredge and fill" permit is needed. This includes most projects where the stream bottom of a navigable waterway would be disturbed. Currently,



proposed activities are reviewed by the state for certification under Section 401 of the Federal Clean Water Act which gives primary consideration to water quality impacts. Under the provisions of HB 1839, a Water Protection Permit, or "State 401" as it has been called, would be issued only if the proposed activity will not adversely effect water quality and will protect beneficial instream uses. Water Protection Permits are not required for withdrawals that existed before July 1, 1989, or for proposed withdrawals where a 401 was issued before January 1, 1989, unless the water user proposes to increase the amount of the withdrawal.

Designation of "surface water management areas" is authorized by HB 1841. Areas can be established where substantial instream values are threatened because of low flows caused by natural conditions and withdrawals for offstream uses. The process to determine whether surface water management area designation is appropriate can be initiated by the SWCB on its own or in response to the request of one or more local governments or another state agency. A public hearing is required before formal designation. A surface water withdrawal permit will be required for water users withdrawing more than 300,000 gallons a month. A permit will not be required for nonconsumptive users (primarily hydropower facilities) and those withdrawing less than 300,000 gallons a month. Existing users may also be exempt from the permit requirement if they submit and receive the SWCB's approval of a water conservation plan that provides for use of water saving plumbing, a water loss reduction program, a water use education program, and conservation measures or use restrictions during a water shortage. Existing withdrawers can also develop voluntary agreements to limit withdrawals during crucial periods.

Dr. Caton explained that regulations must be developed and adopted for the Water Protection Permit (HB 1839), the Surface Water Management Area initiative (HB 1841), and the registration and reporting of agricultural irrigation withdrawals (HB 1840). He noted that the change in the definition of beneficial use and the explicit recognition of water quality has already had an impact on the existing 401 certificate program. Until Water Protection Permit regulations are in place, the 401 certificate required under federal law will be the primary mechanism for protecting beneficial instream uses. Additional staff members have now been hired in order to carry out the Board's expanded responsibilities for both instream flow and nontidal wetlands protection.

At its December meeting, the SWCB issued the first 401 certificates since changes to the state's water policy took effect. These certificates were for three power generation projects along the Roanoke/Staunton River and produced considerable interest among citizens, environmental and conservation organizations, industry, and other state agencies. Major beneficial uses in the areas where these withdrawals were requested are fisheries, recreational boating, and the proposed power generation projects. Although, according to Dr. Caton, "We did not please everyone," the Board established minimum flows which sought, under the new law, to balance interests. He emphasized that these flow requirements were the most protective of instream beneficial uses ever adopted by the SWCB.

Work has been underway since the early summer of 1989 to revise the SWCB's water withdrawal registration and reporting regulation to include irrigation withdrawals. An advisory group consisting of representatives of farming and agribusiness interests and the Cooperative Extension Service was established to assist in determining the best method to use for incorporating the agricultural sector into this process. A notice of intent to amend the reporting regulation was published in the State Register and the Board will be asked to authorize hearings on a proposed amendment at its March 1990 meeting. A final version is expected to be presented to the Board for its approval in June. With Board approval in June, it is anticipated that the regulation will probably take effect during the 1991 growing season. The Board has asked the Extension Service to continue the voluntary reporting effort of the last several years until the date the regulation becomes effective. This will provide a year for making the transition from voluntary to required reporting.

The SWCB has also begun the process of promulgating regulations pertaining to the Virginia Water Protection Permit and Surface Water Management Areas. A public meeting was held January 3, 1990, in Richmond to receive public comment and to answer questions regarding both these programs. Dr. Caton concluded by noting that the adoption of the regulations for the Water Protection Permit will be the first priority. The Board is contracting with the Institute for Environmental Negotiation to convene an advisory group to assist in developing the regulations. The Institute worked with the advisory group whose recommendations to the

Commission were the basis for the package of water bills. The group that will work on the development of regulations will be drawn in part from the group which advised the Commission during its 1989 deliberations.

### III. RECOMMENDATION

In 1987, the Joint Subcommittee Studying Water Supply and Wastewater Treatment concluded "that there is a real likelihood that funding for water supply upgrading and construction will fall short of the water needs throughout many localities in the Commonwealth through the year 2000."<sup>4</sup> New federal mandates under the Safe Drinking Water Act have placed an additional financial burden on both the owners of public water supply systems and those in government who are charged with assuring consumers that their water remains safe and free of contaminants. In light of the severe constraints placed on the state budget, the Commission was presented with a financing proposal which would establish a surcharge on the amount of water withdrawn by a public water supply. The proceeds would be returned to localities for specific purposes with priority given to those systems which could demonstrate financial hardship or which face the threat of contamination. Because of the lack of time available to respond to many of the questions raised by the water supply proposal, the Commission was unable to reach a consensus on an appropriate financing mechanism. The Commission is in agreement that alternative sources of revenue will have to be considered if Virginia is to continue to ensure its citizens a safe domestic water supply. Therefore, in order to further evaluate the various financing alternatives and continue its work in addressing water supply and allocation problems in the Commonwealth, the Commission recommends:

- That the General Assembly enact legislation to continue the State Water Commission, as a legislative forum for studying and resolving problems of water supply and allocation in the Commonwealth. (Attachment D)

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4. Report of the Joint Subcommittee Studying Water Supply and Wastewater Treatment, House Document 13, 1987, p. 9.

OWNERSHIP TYPE	# OF WATERWORKS				PRODUCTION, MILLION GALLONS ANNUALLY <sup>5</sup>				POPULATION, IN THOUSANDS				JOB SUPERVISION					
													ENGINEERS			SANITARIANS		
	C <sup>2</sup>	NT <sup>3</sup>	NC <sup>4</sup>	TOTAL	C <sup>6</sup>	NT <sup>7</sup>	NC	TOTAL	C	NT	NC	TOTAL	C	NT	NC	C	NT	NC
STATE	30	22	73	125	631.18	82.51	133.90 <sup>8</sup>	847.59	9.5	14.2	54.7	78.4	30	22	73	0	0	0
FEDERAL	32	11	188	231	2997.54	407.70	148.79 <sup>8</sup>	3554.11	156.7	71.3	49.7	277.7	32	11	188	0	0	0
INVESTOR	933	306	1285	2524	13673.23	2542.75	3052.19	19268.17	347.9	91.1	305.2	744.2	933	306	0	0	0	1285
POLITICAL SUBDIVISION	512	381	103	996	190534.76	9.89	227.54	190772.19	4378.0	170.2	30.2	4578.4	512	381	0	0	0	103
OTHER	69	23	356	448	365.15	0.50	797.47	1163.12	11.0	6.0	797.5	814.5	69	23	0	0	0	356
TOTAL	1576	743	2005	4324	208201.86	3043.43	4359.89	215605.18	4903.1	352.71	1237.2	6493.1	1576	743	261	0	0	1744

- NOTES: 1. Political Subdivision - is a city, town, county, authority, or district  
2. C - community waterworks  
3. NT - nontransient noncommunity waterworks  
4. NC - noncommunity waterworks  
5. Production - 1986 gallons shown for NT and NC estimated or blank due to lack of records; especially if 10,000 gpd or less  
6. 187 community waterworks did not report production  
7. 681 nontransient noncommunity waterworks did not report production  
8. 18 state/federal did not report  
9. This information compiled by Virginia Department of Health, Office of Water Programs, Division of Water Supply Engineering, Richmond, Virginia  
DECEMBER 1989

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CHAPTER 23.1

Drinking Water Protection Fund

§ 62.1-242. Definitions. - As used in this Chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq ) of this title.

"Board" means the Board of Health.

"Cost" as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor materials, machinery and equipment, the reasonable costs of financing incurred by the local government in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may

1 require and the cost of other items which the Authority determines to  
2 be reasonable and necessary.

3 "Fund" means the Drinking Water Protection Fund.

4 "Local government" means any county, city, town, municipal  
5 corporation, authority, district, commission or political subdivision  
6 created by the General Assembly or pursuant to the Constitution or  
7 laws of the Commonwealth or any combination of any two or more of the  
8 foregoing.

9 "Project" means any water supply facility which serves primarily  
10 residents of the Commonwealth or which is located or to be located in  
11 the Commonwealth by any local government. The term includes, without  
12 limitation, water supply and intake facilities; water treatment and  
13 filtration facilities; water storage facilities; water distribution  
14 facilities; related office, administrative, storage, maintenance and  
15 laboratory facilities; and interests in land related thereto.

16 "Owner" means an individual, group of individuals, partnershi  
17 firm, association, institution, corporation, governmental entity or  
18 the federal government, which supplies water to any person within this  
19 Commonwealth from or by means of any waterworks.

20 "Water production" or "water produced" means the quantity or  
21 quantity per capita of water supplied during a given time period for a  
22 variety of needs or purposes, including any wasted, lost, or otherwise  
23 unaccounted quantity.

24 "Water supply" means water taken into a waterworks from wells,  
25 streams, springs, lakes and other bodies of surface water, natural or  
26 impounded, and the tributaries thereto, and all impounded groundwater  
27 but does not include any water above the point of intake of such  
28 waterworks.

DRINKH2O

1 "Waterworks" means a system that serves piped water for drinking  
2 or domestic use to (i) the public, (ii) at least fifteen connections  
3 or (iii) an average of twenty-five individuals for at least sixty days  
4 out of the year. The term "waterworks" shall include all structures,  
5 equipment and appurtenances used in the storage, collection,  
6 purification, treatment and distribution of pure water except the  
7 pipng and fixtures inside the building where such water is delivered.

8 § 62.1-243. Water supply protection charge; records, submission  
9 of payments. - A. In order to protect the quality and safety of the  
10 public supply of water a charge shall be imposed upon the owner of a  
11 waterworks at the rate of \$.10 per 1,000 gallons of water produced,  
12 whether the water is used for drinking or other purposes.

13 B. The water supply protection charge shall be paid quarterly by  
14 the owner and submitted to the State Health Commissioner, to the  
15 credit of the Drinking Water Protection Fund, not later than thirty  
16 days following the end of each quarter. Any owner who fails to pay  
17 such charge within the required time shall be automatically assessed a  
18 penalty of five percent on the unpaid balance. Thereafter, the charge  
19 and penalty shall bear interest at the rate of one percent per month  
20 until paid.

21 C. Records shall be maintained by the owner showing the amount  
22 of water produced and the extent to which the charge has been included  
23 in the rate paid by the consumer. Such records shall be made  
24 available to the State Health Commissioner upon request.

25 D. The State Health Commissioner shall administer and enforce  
26 the provisions of this section.

27 § 62.1-244. Drinking Water Protection Fund; established;  
28 administration. - A. There is hereby established a fund to be known

1 as the "Drinking Water Protection Fund." The Fund shall be maintained  
2 as a separate special fund account within the Virginia Water Supply  
3 Revolving Fund (§ 62.1-233 et seq.). All moneys collected pursuant to  
4 the drinking water protection charge (§ 62.1-243) shall be  
5 appropriated to the Fund. Interest earned on such moneys shall remain  
6 in the Fund and be credited to it.

7 B. The Fund shall be administered and managed by the Virginia  
8 Resources Authority, subject to the right of the Board of Health or  
9 the State Water Control Board as provided in subsection B of §  
10 62.1-245, following consultation with the Authority, to direct the  
11 distribution of grants from the Fund to particular local governments.

12 § 62.1-245. Purpose of Fund: disbursement of grants. - A. The  
13 moneys in the Fund shall be used to make grants to local governments  
14 to pay the costs or a portion thereof, of projects which (i) preserve  
15 or enhance the quality of water provided to the users of public water  
16 supplies, (ii) alleviate adverse public health conditions, (iii)  
17 promote the efficient use of the public water supply, and (iv) allow  
18 orderly development and growth to occur.

19 B. Grants from the Fund shall be allotted in the following  
20 manner:

21 1. Forty-five percent of the Fund shall be allocated for  
22 hardship grants to local governments (i) which operate waterworks  
23 servicing 3,300 individuals or less and (ii) which demonstrate a level  
24 of fiscal stress that significantly limits their ability to generate  
25 revenue for the operation of a waterworks. The Board shall develop  
26 criteria for determining the severity of fiscal stress which shall  
27 serve as a basis for the awarding of grants.

28 2. Fifty percent of the Fund shall be allocated on a competitive



1 basis to local governments for the purposes authorized in § 62.1-245.  
2 Priority in the awarding of grants shall be given to those local  
3 governments whose waterworks either (i) have been cited by the State  
4 Health Commissioner as being an imminent danger to the public health  
5 and welfare, (ii) are threatened by contamination, or (iii) require  
6 improvements to the deteriorating physical condition of the  
7 facilities. A local government which has received a hardship grant  
8 shall not be precluded from also receiving a grant under this  
9 subdivision.

10 3. Five percent of the Fund shall be allocated to local  
11 governments to (i) study the feasibility of establishing a regional  
12 water supply or (ii) to plan or develop regional water supplies. The  
13 Authority shall administer grants for this purpose subject to the  
14 recommendations of the State Water Control Board. The State Water  
15 Control Board shall consider the extent to which the proposal provides  
16 more efficient and effective management of water supply resources.

17 § 62.1-246. Board may adopt regulations. - The Board of Health  
18 is authorized to promulgate regulation pursuant to the Administrative  
19 Process Act (§ 2-6.14:1 et seq.) for the proper administration of this  
20 chapter.

## Attachment C

### Comments and Recommendations on the Proposed Drinking Water Protection Fund

#### I. General Comments:

- A further review of the problems in water systems should be made to ensure that any proposal will adequately address them. It is the opinion of the ARWA that the "major violators" will be ineligible for funding. The ARWA opposed the legislation. (Appomattox River Water Authority)

- The bill leaves unresolved many questions which should be answered before the bill becomes a law. The Fairfax County Water Authority asks that the bill be carried over to the 1991 Session of the General Assembly. (Fairfax County)

- The Newport News Waterworks opposes the proposed legislation, characterizing it as an unfair state tax and logically flawed. It contends that it does not adequately or appropriately address the Commonwealth's water supply issues. (Newport News)

- The "problems" addressed by the draft legislation are not completely defined and the solution is ill-conceived. A few of the factors which contribute to this opinion are:

- i) no documentation of the specifics of the alleged problems, i.e. character, magnitude, number of systems, types of facilities/improvements required and cost.
- ii) no documentation why funding should not be provided from the general resources of the Commonwealth instead of from a proposed special tax. The tax is unrelated to ability to pay and would penalize the citizens of urban and developed areas for questionable benefit of the citizens of other areas.
- iii) no explanation of what constitutes "fiscal stress" or "hardship grant."
- iv) no discussion of why a grant program is superior to a low-interest loan program, including modification of the water supply revolving fund. (Virginia Water and Sewer Authorities Association)

- Although all waterworks contribute to the fund, only local governments are eligible for grants. There are two alternatives i) allow private facilities access to the funds; or ii) restrict both contribution and grants to publicly owned facilities. The problems with the first alternative are threefold. Well-maintained private facilities have paid the price for compliance and access to the fund has no practical effect. Secondly, even if the facilities were eligible for funds, their priority would be so low so as to make an award a virtual impossibility. Thirdly, private systems not in

compliance might be rewarded for poor management. The second alternative of restricting the fund (both income and disbursements) to publicly owned facilities would eliminate the inequities of the existing proposal. (Union Camp Corporation)

- The Association of Virginia Water Companies requests that private investor owned utilities either be exempted from paying the fee or allow them to share in the funds. The Association also requests that an allocation be made to the State Health Department to allow it to retain primacy. The Association also suggests a rate analysis to insure that the rates are adequate to cover operation and replacement costs. (Association of Virginia Water Companies)

- The recommendations are to either (i) exempt private companies from paying the fee or (ii) allow all who pay the fee to be eligible for funds and (iii) use the funds to correct the cause of the problems and further (iv) require a rate analysis to ensure the rates are adequate. (Sydnor Hydrodynamics, Inc.)

- The following comments are not intended to be the VMA's final position on the proposed legislation. The VMA opposes the fees because they tend to (i) conceal the true costs of providing governmental programs and services; (ii) create disincentives to industrial expansion and development; (iii) create inequities; and (iv) encourage the proliferation of permits, licenses and renewals in order to enhance program revenue. The charge will be imposed on users who will not benefit from the fund. Such a fee will put Virginia at a distinct disadvantage in attracting new industry. (Z. Dameron)

- Approximately two-thirds of the water the City produces is used for industrial purposes. The application of a charge based on total water consumed is unfair, considering the purpose of the fund is protection of drinking water. (City of Martinsville)

- "Troubled" water systems should be identified and specific solutions be developed to address those particular problems. (Virginia-American Water Company)

- The following are general comments from the Health Department:

- 1) Application of the charge to a limited number of waterworks (community waterworks) may make the charge more collectable with little impact on the total proceeds.
- 2) distribution of the funds should include both loans and grants and should be given to only "community waterworks".
- 3) The fund should be available to investor owned community waterworks.

More specifically, 1576 community waterworks produce approximately 208 billion gallons per year. Within the community waterworks, the approximately 150 very large, large and medium waterworks produce approximately 193 billion gallons per year. This 93% of the total water produced by community waterworks. (Health Department)

- The recommended changes to the proposed legislation are summarized below:

<u>Issue</u>	<u>VA Section Position</u>
Primacy (primary enforcement authority)	YES; fund by a 2¢ to 3¢ /1,000 gallons charge against water consumption for all waterworks.
Grants	NO; grants should <u>not</u> be allowed.
Loans	YES; fund by state's general fund; do not use a water tax.
"0%" or "Low" Interest Loan	YES; a sliding scale based on financial hardship; fund by state general fund.
Small Investor/Private Utilities	Provide access to loans; address the fundamental question of ensuring the viability of small private/investor owned systems. (Virginia Section-American Water Works Association)

- The Newport News Department of Public Utilities makes the following suggestions as an alternative to the proposed legislation:

- i) develop comprehensive master plans for orderly use and future development of the waters of the Commonwealth. The master plans would assist in avoiding disputes among jurisdictions regarding issues such as interjurisdictional transfers of water.
- ii) maintain enforcement to preclude marginal development of public or private utilities with inadequate design life;
- iii) finance drinking water utilities through charges to customers;
- iv) strengthen the Virginia Resources Authority by state general fund revenues to be used for loans;
- v) continue state primacy either by state general fund or a water utility sales tax on all water customers not to exceed 2.5 cents per 1,000 gallons; (City of Newport News)

- The legislation as proposed could be a severe deterrent to economic development and a burden on many communities. A grant program should be funded by the general fund similar to the approach taken by the Housing Study Commission. (Senator Russell)

## II. Specific Comments

### A. Protection Charge: Fee Source and Amount

- If the owner of the waterworks does not have authority to collect the charge from all users, the users who are subject to the fee will be required to pay the difference. A better method might be to impose the charge on retail customers. That way, if any retail customers are exempt, other water users will not be penalized. (A. Watts)

- The fee of \$0.10 per 1,000 gallons is discriminatory to customers of Chesterfield County and other efficiently operated utilities. It would impose a hardship on customers living on a fixed income. (Chesterfield County)

- Apply a one-time surcharge to all well owners at permit issuance. In the case of homeowners on well and septic, drain field design capacity could be used to determine fees. (Prince William Health District)

- The proposed fee of \$0.10 per 1,000 gallons of water will be a noticeable sales tax on Newport News Waterworks customers, amounting to a 5.5% increase for homeowners in the first block of current commodity rates and up to a 6.2% increase for larger users paying second-block commodity rates. "This is essentially another regressive tax." (City of Newport News)

- The proposed \$0.10 per 1,000 gallon fee would result in an approximate 16% increase in Richmond Department of Public Utilities wholesale rate. The city's population base has 25% of its households with incomes of less than \$10,000. The impact is a regressive tax. (City of Richmond)

### B. Allocation of the Fund

- The fund should not be used for grants, but for low interest loans. (A. Watts)

- Grants provide little or no incentive for local governments to improve operating efficiency, but rather afford an endless source of revenue. A grant program is opposed but a loan program may be supported depending on the program structure. (Chesterfield County)

- A fund should be established to assist certain small water companies through low interest loans. (Virginia-American Water Company)

- A grant program violates fairness and logic. The proposed grant system could reward management deficiencies such as the lack of adequate maintenance or neglected capital improvement planning. Special loans programs are also currently available and can provide special loans at reduced rates (City of Newport News)

- The funds should be allocated in the following percentages: 20% to be allocated to the Health Department to retain primacy, 40% to be allocated for grants, and 40% to be allocated for revolving loans. (Delegate Abbitt)

• Funds would be distributed through grants and loans to community waterworks. Allocated categories should be as follows:

<u>Category</u>	<u>\$0.10 per 1,000 gallons</u>	<u>\$20 million revenue</u>
1. Hardship set aside	\$0.025	\$5 million
2. Competitive	\$0.05	\$10 million
3. Primacy and Administration	\$0.025	\$5 million

The third category would receive up to the maximum indicated. Any amounts not used in a fiscal year would be added to the amounts for hardship set aside. (Health Department)

Instead of \$0.10 per 1,000 gallons, impose a charge of \$0.05 per 1,000 gallons. Use half of the amount collected to provide funds for the Health Department to retain primacy and half of the funds for low interest loans. (A. Watts)

#### C. Purpose of the Fund

Sufficient monies must be available to allow the Department of Health to retain primacy. (A. Watts)

If costs associated with maintaining primacy cannot be supported through existing state revenue, then the cost should be funded by all water customers. A fee similar to the one proposed but in a lesser amount is suggested to produce the revenue necessary to ensure primacy will be maintained. (City of Newport News)

#### D. Eligibility

Investor owned utilities are ineligible for funds, yet must pay the fee. (A. Watts) (City of Richmond)

The majority of violators are investor owned systems. In the program, as proposed, those investor owned systems would have to participate but would not qualify for financial assistance. (Chesterfield County)

The customers of Virginia-American Water Company will be required to contribute \$1.5 million to the fund annually and will receive no benefit. (Virginia-American Water Company)

If a small private waterworks is unable to satisfactorily operate a waterworks and is an imminent danger to public health and welfare it should receive consideration for funds. (Prince William Health District)

The proposed legislation levies a charge on private investor owned water utilities, but only public facilities are eligible for benefits. Many of the systems with difficulties are private systems. (Newport News)

Private investor owned system should be exempt from the tax since they are not eligible for funding. (Sydnor Hydrodynamics, Inc.)

The grant legislation may be a reward for poor management of the systems. (Sydnor Hydrodynamics, Inc.)

## Attachment D

### HOUSE BILL NO. 534

Offered January 22, 1990

*A BILL to amend the Code of Virginia by adding in Title 9 a chapter numbered 22.3, consisting of sections numbered 9-145.8 through 9-145.10, relating to establishing the State Water Commission.*

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Patrons—Parker, Abbitt, Councill, Dillard, McClanan, Robinson, Thomas and Woodrum;  
Senators: Anderson, Macfarlane, Walker and Russell

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Referred to the Committee on Conservation and Natural Resources

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Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 9 a chapter numbered 22.3, consisting of sections numbered 9-145.8 through 9-145.10, as follows:

#### CHAPTER 22.3.

#### STATE WATER COMMISSION.

*§ 9-145.8. Commission established; functions.—The State Water Commission, referred to in this chapter as “Commission,” is established as a permanent agency of the Commonwealth. It shall perform the following functions:*

- 1. Study all aspects of water supply and allocation problems in the Commonwealth, whether these problems are of a quantitative or qualitative nature;*
- 2. Coordinate the legislative recommendations of all other state entities having responsibilities with respect to water supply and allocation issues; and*
- 3. Report annually its findings and recommendations to the Governor and the General Assembly.*

*§ 9-145.9. Membership; compensation; chairman and vice chairman.—A. The Commission shall consist of fifteen members as follows: the Chairmen of the House Committee on Conservation and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources; seven additional members of the House of Delegates at large appointed by the Speaker; four additional members of the Senate at large appointed by the Committee on Privileges and Elections; and two members from the Commonwealth at large appointed by the Governor. The legislative members' terms of office shall coincide with their service in the General Assembly. Gubernatorial appointees shall serve for terms of four years and may succeed themselves, but vacancies during their terms shall be filled only for the unexpired portion of the term.*

*B. Commission members shall be compensated as specified in § 14.1-18 of the Code, and shall be reimbursed for expenses incurred in the performance of their duties.*

*C. The members of the Commission shall elect a chairman and a vice chairman.*

*§ 9-145.10. Staff.—The Division of Legislative Services shall serve as staff to the Commission. All agencies of the Commonwealth shall assist the Commission upon request.*

2. That the persons who were serving on the State Water Commission as of December 31, 1989, shall continue to serve as members of the Commission for the duration of the term for which they were appointed.

