

REPORT OF THE

STATE WATER COMMISSION

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



REPORT DOCUMENT NO. 174

COMMONWEALTH OF VIRGINIA

RICHMOND

2019

MEMBERS

Delegate Thomas C. Wright, Jr., Chairman
Senator Frank W. Wagner, Vice-Chairman

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Senator Frank M. Ruff, Jr.
Senator William M. Stanley, Jr.
Senator Richard H. Stuart

Delegate David L. Bulova
Delegate Barry D. Knight
Delegate Daniel W. Marshall, III
Delegate Luke E. Torian
Delegate R. Lee Ware, Jr.
Delegate M. Keith Hodges
Delegate Margaret B. Ransone

Mr. Lamont W. Curtis, P.E.
Mr. Victor H. Vilchiz, Ph.D.

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STATE WATER COMMISSION EXECUTIVE SUMMARY

Background and Deliberations

The State Water Commission (the Commission) is a 15-member legislative body established by statute that is charged with (i) studying all aspects of water supply and allocation problems in the Commonwealth, (ii) coordinating the legislative recommendations of all state entities that have responsibilities with respect to water supply and allocation issues, and (iii) annually reporting its findings and recommendations to the General Assembly and the Governor. In 2018, the Commission met once and heard testimony regarding the Cranston's Mill Pond Project, an update on coal ash, and an update on uranium mining.

Meeting of June 18, 2018

The Commission held its only meeting of the interim in Richmond on June 18, 2018. The meeting began with opening remarks by Delegate Thomas C. Wright, Chairman, including the introduction of new Commission member Victor H. Vilchiz, Ph.D., of Virginia State University. The agenda included (i) a presentation on the Cranston's Mill Pond Project, (ii) an update on coal ash ponds, and (iii) a staff update on uranium mining.

The Cranston's Mill Pond Project Jeff Corbin, Restoration Systems

Mr. Corbin explained the project planned for Cranston's Mill Pond in Toano, James City County, near the Little Creek Reservoir. The project is being carried out as a private venture by Restoration Systems in partnership with the Chesapeake Bay Nutrient Land Trust.

Cranston's Mill Pond, created in the mid-19th century, encompasses about 50 acres. Restoration Systems purchased the pond in 2009 in order to use it as a nutrient bank. Now, the company is proposing to use the water that comes over the spillway as a raw supply of potable water for industrial or residential use. The company has applied to the Department of Environmental Quality for the novel permit to discharge into tidal waters, as required. Eventually, the company expects to transfer the property and the associated permit to an end user such as a locality or an industrial user.

Following the presentation, Senator Frank Wagner commented on the need to encourage the creation of more reservoirs. In response to questions from Delegate David Bulova, Mr. Corbin explained that to maintain its credit bank, the company would need the pond to be about full; if it were to sell the pond to James City County, for example, either entity could maintain the credit. Delegate Margaret Ransone asked about the cost of treating the water, and Mr. Corbin noted that the cost might be 75 cents per 1,000 gallons,

as compared to \$2 or more for water treated by reverse osmosis in a municipal system. Mr. Corbin took other questions from members.

Coal Ash Update

David Paylor, Director of the Department of Environmental Quality (DEQ)

Mr. Paylor provided an update on actions related to coal ash ponds by the U.S. Environmental Protection Agency (EPA) and the General Assembly.

Between 2010 and 2016, the EPA created and modified a new coal ash rule to deal with coal combustion residuals (CCR), a byproduct of the generation of electricity at a coal-fired power station. The new rule treated CCR as nonhazardous solid waste, and, as Mr. Paylor explained, was incorporated by Virginia into its solid waste rules in 2016 and 2017. Mr. Paylor provided other details on the requirements for the storage and possible recycling of CCR.

Although the EPA has the authority to issue permits for the storage of CCR, a state is allowed to apply to step into that authority, and Virginia has presumed all along that the coal ash ponds in Virginia would be handled under Virginia solid waste permits. During March of 2018, when the EPA proposed rollbacks from the federal rule, Virginia urged it not to roll back state authority to implement the EPA coal ash rule as the state sees necessary.

Mr. Paylor explained the two closure methods allowed by the EPA: closure by capping in place and clean closure. Each method requires the CCR storage pond to be dewatered, so each requires a Virginia Pollution Discharge Elimination System (VPDES) permit. Those permits have been issued at three of the four sites in Virginia, and their issuance has been controversial; at one site, the permit was challenged but was upheld by a judge. Mr. Paylor outlined the requirements for groundwater monitoring and other post-closure activities.

Recent legislation includes a moratorium on the issuance of permits to close a coal ash pond and a requirement that Dominion Energy provide an assessment of other closure options. That assessment was completed in December 2017. Subsequent legislation extended the moratorium until July 1, 2019, and directed Dominion to request proposals for the recycling of CCR and the clean closure of its ponds. Mr. Paylor stated that the proposals are due in November.

Mr. Paylor then provided a status update on each of the main sites containing coal ash ponds: the Bremono Power Station, the Chesterfield Power Station, the Possum Point Power Station, and the Chesapeake Energy Center.

In response to a question about the relationship between federal and state solid waste management regulations, Mr. Paylor stated that Virginia had always had the authority to regulate solid waste and that its regulations had long been more comprehensive than the federal coal ash rule. Regarding potential legislation to enhance the authority of DEQ,

Mr. Paylor pointed to the need to focus on corrective action to improve groundwater conditions at CCR sites.

Staff Update on Uranium Mining
David Barry, Division of Legislative Services

Finally, David Barry, a staff attorney with the Division of Legislative Services, provided an update on the state of uranium mining in Virginia.

The focus of the uranium discussion in Virginia is the Coles Hill deposit, located in the Roanoke River basin. The site was discovered in 1978 and is estimated to contain between 110 and 120 million pounds of ore. During the 1980s, the legislature enacted a moratorium that effectively prohibits mining statewide. Around 2007, the Coles Hill site owner, Virginia Uranium, Inc., began advocating for a change in the law.

Mr. Barry explained that in 2015, the company filed a lawsuit now in the U.S. Supreme Court, *Virginia Uranium, Inc. v. Warren*. The case involves the Atomic Energy Act, a federal law that regulates the safety of the uranium ore milling process. Federal law is silent on mining, and the chief question in the case is whether the safety provisions of the federal milling law preempt the Virginia ban on mining, which is at least partially based on health and safety concerns. A decision is expected in 2019.

Mr. Barry then provided some details on the open pit mining technique proposed for the Coles Hill site and on the tailings management facilities that would be required. He described some of the risks associated with such a project and noted that if mining is permitted in Virginia, it would mark the first time uranium mining has occurred in a state in which the rate of rainfall exceeds the rate of evaporation on an annual basis.

Members discussed the presentation. Delegate Barry Knight noted that the difference between precipitation and evaporation was only two inches out of 44 inches of rainfall, and that if mining were allowed and regulations adopted, the regulations could be as lax or onerous as the General Assembly sees fit to require. Delegate Bulova asked about the possibility of creating a new mining ban if the state loses in the Supreme Court, and Delegate Wright noted that the Rappahannock River Basin Commission opposes the project.

Conclusion and Recommendations

The Commission did not make a formal recommendation to the General Assembly.

Additional information about the State Water Commission's activities is available through its website at <http://dls.virginia.gov/commissions/swc.htm>.

Respectfully submitted,

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