

Hot Topics for Tennessee cities and towns

August 4, 2000

No. 57

October Deadline on New Inter-basin Water Transfers Act

By Steve Wyatt
MTAS Utility Specialist

The Tennessee Legislature, at the request of the Tennessee Department of Environment and Conservation (TDEC), has created a new state law entitled the "Inter-basin Water Transfer Act." It amends Tennessee Code Annotated, Title 69, Chapter 8 and Title 65, Chapter 27.

The act is designed to regulate water volumes withdrawn from one basin and transferred to another basin for consumption and disposal. It only affects new transfers or increases in existing transfers. The new rule becomes effective Oct. 1, 2000.

Water resource rights have always been an issue in the Western United States. The Southeast is now beginning to experience similar problems. As a result, some Southeastern states currently have state regulations pertaining to water resource management. Prior to this act, Tennessee did not have a means of controlling water resources within the state in regards to inter-basin transfers. Tennessee's common law addresses some of these issues, but only after the fact during the litigation process.

The bill uses the term inter-basin, which sounds similar to intra-basin. A clear understanding of the difference between these two terms is important. An intra-basin withdrawal of water is when water is withdrawn from a source and provided to a consumer. Then a portion of that water is returned to the same source. The portion returned is approximately 70 to 80 percent of the total amount withdrawn. Thus, the total volume of the stream is not drastically reduced.

Inter-basin transfer means that water is withdrawn from one basin and transferred to a second basin for use. The water is then released into the second basin. The original basin then experiences a reduced flow, due to the permanent loss of the water to the second basin. If a source has a large reduction of flow, then stream quality and quantity may be drastically affected.

Details of the act:

- It defines 10 basins or watersheds within Tennessee. (TDEC currently has a website under construction. Once completed, the site [www.tdec.net/epo/basin] will include an interactive map. It will allow the user to click on a basin boundary and details of where the basins are delineated will be displayed.)
- It defines which persons or entities are affected by the bill. Those which have been granted powers by the State of Tennessee to acquire water, water rights, and associated property by eminent domain or condemnation or which acquire or supply water for the use

or benefit of public water supply systems as defined in Title 68, Chapter 221, Section 703; when proposing a new or increased withdrawal of surface water or ground water for the purpose of transferring or diverting all or some of it out of the river basin either directly or through an intermediary.”

- It lists the powers of the Commissioner of Environment and Conservation or his designee. “The power to issue and deny inter-basin transfer permits. To issue civil penalty assessments. To conduct inspections and investigations. To bring suit in the name of the department for any violation of this act. To require the submission of plans, technical reports, and other information he deems necessary to carry out the provision of the act. To delegate any of his duties to the director of the appropriate division and to be the primary administrative agent in carrying out this act.”
- The bill limits a permit to five years.
- TDEC must submit a report to the House Conservation and Environment Committee and the State Environment, Conservation and Tourism Committee no later than Jan. 15, 2003. This report shall include an impact statement relative to the Water Quality Act and the Tennessee Safe Drinking Water Act.
- It allows the commissioner to set fees and penalties up to \$10,000 per day per violation.
- It sets the method to determine current baseline inter-basin transfers. “The average daily amount calculated for the highest continuous 90-day period between Jan. 1, 1997 and Dec. 31, 1999.”
- It allows the Department of Environment and Conservation to redesignate existing personnel to implement the provisions of the act.
- The rule will be mandated by Oct. 1, 2000.
- It assigns various powers and duties to the Water Quality Board.

The Water Quality Board (WQB) shall:

- define necessary terms;
- set criteria for permit issuance and denial;
- set permit conditions;
- establish procedures for permit issuance, including fees for permits;
- hear appeals from assessments of civil penalties;
- hear appeals from permit applicants over conditions imposed or permits denied; and
- may designate basins or portions of basins as “protected areas if the demand for water supply made by water users has developed or has the potential to develop into a water shortage situation.”
After the shortage has ended, the WQB shall terminate the protected status of the area.

Because the Legislature requires action by Oct. 1, 2000, this bill will be enacted in two phases. An emergency rule based on public necessity will be formed prior to the deadline. This emergency rule will only last 180 days. The final rule with public hearings will occur after the October 1 deadline. The emergency version and the final version of the rule may or may not be similar.

Tennesseans should expect future legislation regarding water resource management.

For questions or further information, contact Dodd Galbreath at TDEC at (615) 532-8545, or email at dgalbreath@mail.state.tn.us.

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Knoxville (Headquarters)
Conference Center Building, Suite 120
The University of Tennessee
Knoxville 37996-4105
(865) 974-0411
Fax (865) 974-0423

*

Johnson City
3119 Bristol Highway, Suite 302
Johnson City 37601
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Fax (423) 854-9223

*

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Fax (615) 532-4963

*

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Jackson 38301
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*

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Fax (901) 587-7059

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 Authorization No. E14-1050-00-002-01
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