

GEORGIA CODE AND THE MODEL WATER CODE: A COMPARISON OF RULES FOR SURFACE WATER WITHDRAWALS

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Abstract. Georgia's current water allocation policy is governed by the Georgia Water Quality Control Act (O.C.G.A. §12-5-31) and the rules set down by the Georgia Department of Natural Resources, Environmental Protection Division. Unlike many regulations regarding the use of water, such as water quality, water allocation is primarily a state responsibility with very limited federal involvement. The American Society of Civil Engineers has produced a Regulated Riparian Model Water Code (Dellapenna, 1997) to guide legislators in writing laws affecting riparian water rights.

While the two codes share many similarities, they also show a number of differences which become clearer when the two codes are held in a side-by-side comparison. By aligning the provisions of the two codes with each other, readers can better understand how the Georgia code varies from the national model.

RIPARIAN MODEL WATER CODE AS AN ANALYSIS TOOL

In 1990, the American Society of Civil Engineers (ASCE) began the Model Water Code Project. Originally, the goal of the project was "to develop proposed legislation for adoption of state governments for allocating water rights among competing interests and for resolving other quantitative conflicts over water" (Dellapenna, pg. iii). While the original plan was to create a single Model Water Code, it became obvious to the committee that it was necessary to create two codes – the Regulated Riparian Model Water Code and the Appropriative Rights Model Water Code. As with most states in the Eastern United States, Georgia's law follows the Regulated Riparian doctrine. The Final Report of the Water Laws Committee of the Water Resources Planning and Management Division of the American Society of Civil Engineers was published in 1997.

Table 1 (14 pages on CD edition of proceedings) is an attempt to compare Georgia Code 12-5-31 with The Regulated Riparian Model Water Code. Since the Model Water Code was meant to be a generic guideline to state

legislatures, it should not be assumed that differences between the Model Code and Georgia Code imply deficiencies in the Georgia legislation. No single model can serve all states without modification. Of necessity, states create legislation that reflects their local needs and concerns. Comparing the two documents is meant to identify those differences without drawing judgments on the relative benefits or failures of the two documents. Those sort of judgments are to be left to decision makers within the state government.

COMPARING THE GEORGIA AND MODEL CODES

When comparing the two documents, many sections appear in very similar form and with similar approaches to the problems of water allocation. For example, both the Model Water Code and the Georgia Code suggest that permits should be issued for applicants expecting to withdraw 100,000 gallons per day or more from a surface water source. Comparing the two Codes identifies many such areas of agreement. At the same time, it is apparent that there are differences between certain sections of the two Codes.

AREAS OF DIFFERENCES

Transboundary Waters

For example, the Model Code recognizes that state water allocation policy does not extend to transboundary shared water sources between states. The Georgia Code does not address this issue. Similarly, the Model Code deals with the issue of multiple withdrawals, while this issue is not addressed directly in the Georgia Code.

Registration for Non-permit Holders

In other areas of difference, the Model Code suggests a registration process for water withdrawals below the minimum specified for the permitting process. Registering smaller withdrawals has several advantages.

1. It is a less expensive and cumbersome process than the permitting process.

2. It allows the state a more inclusive picture of who is withdrawing surface water and how much they are withdrawing.
3. By identifying small withdrawals, it gives small stakeholders recognition and allows them to potentially be included in any allocation policy so that their rights will not be infringed upon by oversight.

Administrative Process Differences

The most significant difference between the two Codes is the detail given in the Model Code to the administrative process set forth for obtaining permits, voicing opposition to permits, and voicing opposition to permit denials. The Model Code gives applicants and opponents much more explicit procedures to follow when interacting with the State Agency (as it is referred to in the Model Code). This gives the public a stronger guarantee of their rights and places a stronger legislative responsibility on the State Agency to act in an open and explicit manner when making decisions. It also gives state officials improved guidance in how to respond to public inquiries.

While the surface water permitting process in Georgia is governed by other legislation beyond 12-5-31, the provisions in the Model Water Code are much stronger in outlining the permitting process than those set forth in the Georgia Code. It is worth noting that O.C.G.A. §12-5-31 was never meant to set down the complete set of rules of procedure. Surface water permitting procedures are also affected by the Georgia Administrative Procedures Act, the Georgia Open Records Act, the Georgia Open Meetings Act, and rules set forth by the Environmental Protection Division.

Treatment of Agricultural Claims on Water Withdrawals

Not every difference occurred where the Model Water Code was more detailed than the Georgia Code. For example, the Georgia Code provides a great deal more information on how agricultural lands should be treated when a water permit is needed. While the Model Code does give preference to agricultural needs over other industrial uses (Dellapenna, pg. 246), it does not go into the level of detail that the Georgia Code does on the specifics of water allocation for agricultural uses. The Georgia Code is also more explicit on how surface water may be affected by construction, as well as being more detailed on the time length of a permit before it needs to be renewed.

A FINAL WORD ON CONSIDERING DIFFERENCES BETWEEN THE CODES

It should be noted that this comparison between the Georgia Code and the Model Water Code is not meant to imply the endorsement of the University of Georgia or any agency or association. Comparisons by nature require using professional judgment, and while every attempt has been made to produce an objective document, judgment is itself an inherently subjective activity. Errors in the comparison are the responsibility of the author alone. Hopefully, by reviewing the two documents side-by-side, the reader will be prompted to make their own judgments in usefulness of the various provisions outlined in the Georgia and Model Codes.

LITERATURE CITED

- Dellapenna, J. (Ed.) (1997). *The Regulated Riparian Model Water Code*. New York: American Society of Civil Engineers.
- Georgia Water Quality Control Act, O.C.G.A. §12-5-31, et. seq (State of Georgia, Unannotated Code).

**Georgia Code on Surface
Water Withdrawals**

**The Regulated Riparian
Model Water Code
(Applicable Sections)**

<p>12-5-31. (a)(1) No person shall make any withdrawal, diversion, or impoundment of any of the surface waters of the state for whatever use without obtaining a permit from the director; provided, however, that no permit shall be required for:</p>	<p>§3R-1-01 WATERS SUBJECT TO ALLOCATION. Except as expressly exempted pursuant to this Chapter, all waters of the State are subject to allocation in accordance with the provisions of this Code. This section declares the basic rule that all waters are subject to allocation pursuant to the Regulated Riparian Model Water Code through the issuing, altering, terminating, or denying of permits. §6R-1-01 WITHDRAWALS UNLAWFUL WITHOUT A PERMIT. No person not specifically exempted by this Code shall make a withdrawal from the waters of the State without first having obtained a permit as provided in this Code and without fully complying with all provisions of this Code and all orders, permit terms or conditions, or regulations promulgated pursuant to this Code.</p>
<p>No comparable section in 12-5-31.</p>	<p>§3R-1-02 CERTAIN SHARED WATERS EXEMPTED FROM ALLOCATION. Water from a transboundary water source subject to allocation by the federal government or to management under an interstate compact or an international treaty is not subject to allocation under this Code except in so far as such allocation is consistent with the federal mandate, interstate compact, or international agreement ratified by the United States.</p>
<p>(A) Any such withdrawal which does not involve more than 100,000 gallons per day on a monthly average;</p>	<p>§6R-1-02 SMALL WITHDRAWALS EXEMPTED FROM THE PERMIT REQUIREMENT. §6R-1-02 (1) No permit shall be required for withdrawal of less than 100,000 gallons per day from the waters from the State.</p>
<p>(B) Any such diversion which does not reduce the flow of the surface waters at the point where the watercourse, prior to diversion, leaves the person's or persons' property or properties on which the diversion occurred, by more than 100,000 gallons per day on a monthly average;</p>	<p>§3R-1-03 (2) Exemption from allocation under this section does not preclude the application of orders or regulations adopted pursuant to this Code necessary to protect minimum flows or levels or during water emergencies. §6R-1-02 (2) Exemption from the permit requirement under this section does not preclude the application of orders or regulations adopted pursuant to this Code necessary to protect minimum flows or levels or during water emergencies.</p>
<p>No comparable section in 12-5-31.</p>	<p>§6R-1-02 (3) Persons not required to obtain a permit for a withdrawal may, at their option, apply for and obtain a permit under the same terms and conditions as for other permits obtained pursuant to this Code. Users who are exempted from permitting may still be required to register their use with the Agency, a simple and inexpensive procedure, designed to assure that the Agency has full information about the demands upon all water sources within the State. §6R-1-06 REGISTRATION OF WITHDRAWALS NOT SUBJECT TO PERMITS. (1) The State Agency may, by regulation, require some or all persons whose withdrawal is exempt from</p>

	<p>allocation or from the permit requirement to register their withdrawal of the waters of the State periodically, including such information as the State Agency determines to be necessary to carry out the State Agency's responsibilities under this Code.</p> <p>(2) Persons who are not required to register their withdrawals may, at their option, register their withdrawals by providing the same information as is required under the regulations issued pursuant to subsection (1) of this section.</p>
<p>No comparable section in 12-5-31. EPD 391-3-6-.09 includes provisions for including low flow protection in the plans to be submitted with the originating permit.</p>	<p>§3R-2-01 PROTECTED MINIMUM FLOWS OR LEVELS NOT TO BE ALLOCATED OR WITHDRAWN. §3R-2-01 (1) The State Agency shall establish by regulation minimum flow or level in any water source that is not subject to allocation under this Code except as provided in this Part.</p> <p>§3R-2-01 (2) Every person exercising a water right pursuant to this Code is required to protect the prescribed minimum flows or levels when exercising such right.</p> <p>§3R-2-02 STANDARDS FOR PROTECTED MINIMUM FLOWS OR LEVELS. The State Agency shall establish a minimum flow or level as the larger of the amounts necessary for the biological, chemical, and physical integrity of the water source, taking into account normal seasonal variations in flow and need.</p>
<p>(C) Any such diversion accomplished as part of construction for transportation purposes which does not reduce the flow of surface waters in the diverted watercourse by more than 150,000 gallons per day on a monthly average; or</p>	
<p>(D) Any such impoundment which does not reduce the flow of the surface waters immediately downstream of the impoundment by more than 100,000 gallons per day on a monthly average.</p>	
<p>(2) No permit shall be required for a reduction of flow of surface waters during the period of construction of an impoundment, including the initial filling of the impoundment, or for farm ponds or farm impoundments constructed and managed for the sole purpose of fish, wildlife, recreation, or other farm uses.</p>	
<p>(3) Notwithstanding any other provision of this Code section to the contrary, a permit for the withdrawal or diversion of surface waters for farm uses shall be issued by the director to any person when the applicant submits an application which provides reasonable proof that the applicant's farm use of surface waters occurred prior to July 1, 1988, and when any such application is submitted prior to July 1, 1991. If submitted prior to July 1, 1991, an application for a permit to be issued based upon farm uses of surface waters occurring prior to July 1, 1988, shall be granted for the withdrawal or diversion of surface waters at a rate of withdrawal or diversion equal to the greater of the operating capacity in place for withdrawal or diversion on July 1, 1988, or, when measured in gallons per day on a monthly average for a calendar year, the greatest withdrawal or diversion capacity</p>	

<p>during the five-year period immediately preceding July 1, 1988. If submitted after July 1, 1991, or, regardless of when submitted, if it is based upon a withdrawal or diversion of surface waters for farm uses occurring or proposed to occur on or after July 1, 1988, an application shall be subject to evaluation and classification pursuant to subsections (e), (f), and (g) of this Code section, but a permit based upon such evaluation and classification shall be issued to ensure the applicant's right to a reasonable use of such surface waters. Any permit issued pursuant to this paragraph shall be conditioned upon the requirement that the permittee shall provide, on forms prescribed by the director, information relating to a general description of the lands and number of acres subject to irrigation and the permit; a description of the general type of irrigation system used; the source of withdrawal water such as river, stream, or impoundment; and pump information, including rated capacity, pump location, and power information. Permits issued under this paragraph shall have no term and may be transferred or assigned to subsequent owners of the lands which are the subject of such permit; provided, however, that the division shall receive written notice of any such transfer or assignment. Any modification in the use or capacity conditions contained in the permit or in the lands which are the subject of such permit shall require the permittee to submit an application for review and approval by the director consistent with this Code section. Nothing in this paragraph shall be construed as a repeal or modification of Code Section 12-5-46.</p>	
<p>(b) For purposes of this Code section, the term:</p>	
<p>(1) 'Director' means the director of the Environmental Protection Division of the Department of Natural Resources, or his designee.</p>	<p>§4R-1-01 BASIC RESPONSIBILITIES AND AUTHORITY. The State Agency is responsible for general supervision and control over the development, conservation, and use of the waters of the State and is vested with all powers necessary to accomplish the purposes for which the Agency is organized in so far as those powers are delegable by the legislature.</p>
<p>(3) 'Diversion' means a turning aside or altering of the natural course of surface waters.</p>	
<p>(3) 'Farm uses' means irrigation of any land used for general farming, forage, aquaculture, pasture, turf production, orchards, or tree and ornamental nurseries; provisions of water supply for farm animals, poultry farming, or any other activity conducted in the course of a farming operation. Farm uses shall also include the processing of perishable agricultural products and the irrigation of recreational turf, except in the Chattahoochee River watershed upstream from Peachtree Creek, where irrigation of recreational turf shall not be considered a farm use.</p>	
<p>(4) 'Impoundment' means the storing or retaining of surface water by whatever method or means.</p>	
<p>(5) 'Surface water(s) of the state' or 'surface water(s)' means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs producing in excess of 100,000 gallons per day, and all other bodies of</p>	<p>§3R-1-03 SMALL WATER SOURCES EXEMPTED FROM ALLOCATION (optional). §3R-1-03 (1) A surface water that originates on a person's property is not subject to allocation under this Code if the</p>

<p>surface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.</p>	<p>total water basin down to the point the water source leaves the property in question is less than 8 acres and the water is used on the tract of land on which it originates.</p>
<p>(6) 'Withdrawal' means the taking away of surface water from its natural course.</p>	
<p>(c) To obtain a permit pursuant to this Code section, the applicant must establish that the proposed withdrawal, diversion, or impoundment of surface waters is consistent with this article.</p>	
<p>(d) All permit applications filed with the director under this Code section shall contain the name and address of the applicant or, in the case of a corporation, the address of its principal business office in this state; the date of filing; the source of the water supply; the quantity of water applied for; the use to be made of the water and any limitation thereon; the place of use; the location of the withdrawal, diversion, or impoundment; for those permits which indicate an increase in water usage, except for permits solely for agricultural use, a water conservation plan approved by the director and prepared based on guidelines issued by the director; and such other information as the director may deem necessary; provided, however, that any required information already provided the director by the applicant in the context of prior dealings with the division, which information is still correct, may be incorporated into the application by adequate reference to same. The director shall collect and disseminate such technical information as the director deems appropriate to assist applicants in the preparation of water conservation plans.</p>	<p>§6R-2-01 CONTENTS OF AN APPLICATION FOR A PERMIT.</p> <p>(1) An application for a permit to withdraw water pursuant to this Code shall contain the following information:</p> <ul style="list-style-type: none"> (a) the name and address of the applicant; (b) the amount of the proposed withdrawal of water, including estimates of the projected daily, monthly, seasonal, and annual mean and peak withdrawals; (c) the place and source of the proposed withdrawals; (d) the place and nature of the proposed use of the water; (e) the place of the proposed return flow of withdrawn water; (f) estimate of the projected overall consumptive use of water; (g) the anticipated effects, if any, of the withdrawal on existing or proposed uses dependent on the same water source, along with a list of persons entitled to notice under §6R-2-02 in so far as known to the applicant; (h) the impact of the proposed withdrawal on other water sources hydrologically interconnected with the water source from which the withdrawal is to be made; (i) the current operating capacity of any existing withdrawal system and the effect of the proposed withdrawals on the existing withdrawal system; (j) any land acquisition, equipment, energy consumption, or the relocation or re-siting of any existing community, facility, right-of-way, or structure that will be required; (k) the total anticipated costs of any proposed construction; (l) a list of all federal, State, or local approvals, permits, licenses, or other authorizations required for any part of the proposal; (m) a statement of whether and how the proposed withdrawal complies with all applicable plans and strategies for the use, management, and protection of the waters of the State and related land resources; (n) the planning status and estimated timetable

	<p>for the completion of the proposed project;</p> <ul style="list-style-type: none"> (o) a description of alternative means for satisfying the applicant's need for water if the requested permit is denied or modified; (p) a description of any plan for conservation the applicant proposes to follow; and (q) any other information reasonably required by the State Agency by regulation. <p>(2) In any dispute regarding any fact in issue between the agency and an applicant for a permit, the burden of proof shall be on the applicant.</p>
No comparable section in 12-5-31.	<p>§6R-3-03 AGGREGATION OF MULTIPLE WITHDRAWALS.</p> <p>In calculating the total amount of an existing or proposed withdrawal pursuant to a permit issued under this Code, or as qualifying for an exemption from the permit requirement of this Code, the State Agency shall include all separate withdrawals by a single person for a single use or for related uses.</p>
(e) Subject to subsection (g) of this Code section, the Board of Natural Resources shall by rule or regulation establish a reasonable system of classification for application in situations involving competing uses, existing or proposed, for a supply of available surface waters. Such classifications shall be based upon but not necessarily limited to the following factors:	<p>§6R-3-01 STANDARDS FOR A PERMIT.</p> <p>The State Agency shall approve an application and issue a permit only upon determining that:</p> <p>(a) the proposed use is reasonable;</p>
(1) The number of persons using the particular water source and the object, extent, and necessity of their respective withdrawals, diversions, or impoundments;	<p>§6R-3-01 c) the proposed withdrawal and use are consistent with any applicable comprehensive water allocation plan and drought management strategies;</p> <p>§6R-3-02 DETERMINING WHETHER A USE IS REASONABLE.</p> <p>In determining whether a use is reasonable, the State Agency shall consider: (a) the number of persons using a water source and the object, extent, and necessity of the proposed withdrawal and use and of other existing or planned withdrawals and uses of water;</p>
(2) The nature and size of the water source;	<p>§6R-3-02 (b) the supply potential of the water source in question, considering quantity, quality, and reliability, including the safe yields of all hydrologically interconnected water sources;</p>
(3) The physical and chemical nature of any impairment of the water source adversely affecting its availability or fitness for other water uses;	<p>§6R-3-01 (b) the proposed withdrawal, in combination with other relevant withdrawals, will not exceed the safe yield of the water source;</p>
(4) The probable severity and duration of such impairment under foreseeable conditions;	<p>§6R-3-02 (d) the probably severity and duration of any injury caused or expected to be caused to other lawful consumptive and nonconsumptive uses of water by the proposed withdrawal and use under foreseeable conditions;</p>
(5) The injury to public health, safety, or welfare which would result if such impairment were not prevented or abated;	<p>§6R-3-02 the probable effects of the proposed withdrawal and use on the public interest in the waters of the State, including, but not limited to</p> <ul style="list-style-type: none"> (1) general environmental, ecological, and aesthetic effects; (2) sustainable developments; (3) domestic and municipal uses; (4) recharge areas for underground water;

	<p>(5) waste assimilation capacity;</p> <p>(6) other aspects of water quality; and</p> <p>(7) wetlands and flood plains;</p>
(6) The kinds of businesses or activities to which the various uses are related and the economic consequences;	§6R-3-02 c) the economic and social importance of the proposed water use and other existing or planned water uses sharing the water source;
(7) The importance and necessity of the uses, including farm uses, claimed by permit applicants and the extent of any injury or detriment caused or expected to be caused to other water uses;	
(8) Diversion from or reduction of flows in other watercourses;	
(9) The prior investments of any person in lands, and plans for the usage of water in connection with such lands which plans have been submitted to the director within a reasonable time after July 1, 1977, or, if for farm uses, after July 1, 1988; provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including potential as well as present use; and	<p>§6R-3-01 (d) both the applicant's existing water withdrawals and use, if any, and the proposed withdrawal and use incorporate a reasonable plan for conservation;</p> <p>§6R-3-05 PRIOR INVESTMENT IN PROPOSED WATER WITHDRAWAL OR USE FACILITIES.</p> <p>(1) The fact that an applicant has acquired, through the power of eminent domain or otherwise, any land for the specific purpose of serving as the site for proposed facilities to withdraw or use water or has undertaken construction on such facilities, prior to the obtaining of a permit from the State Agency, is not admissible in any administrative or judicial proceeding relating to the application or permit and shall have no bearing on decisions relating to the application or permit.</p> <p>(2) Prior acquisition of land or prior commencement of construction is a voluntary risk assumed by the applicant and no compensation is due for any loss in the value of the land or of the investment in facilities should a permit be denied or issued subject to terms and conditions less favorable than those sought in the application.</p>
(10) The varying circumstances of each case.	§6R-3-02 (i) any other relevant factors
No comparable section in 12-5-31.	<p>§6R-3-02 (f) whether the proposed use is planned in a fashion that will avoid or minimize the waste of water;</p> <p>(g) any impacts on interstate or interbasin water uses;</p> <p>(h) the scheduled date the proposed withdrawal and use of water is to begin and whether the projected time between the issuing of the permit and the expected initiation of the withdrawal will unreasonably preclude other possible uses of the water;</p>
(f) In the event two or more competing applicants or users qualify equally under subsection (e) of this Code section, the director is authorized to grant permits to applicants or modify the existing permits of users for use of specified quantities of surface waters on a prorated or other reasonable basis in those situations where such action is feasible; provided, however, the director shall give preference to an existing use over an initial application.	<p>§6R-3-04 PREFERENCES AMONG WATER RIGHTS.</p> <p>(1) When the waters available from a particular water source are insufficient to satisfy all lawful demands upon that water source, water is to be allocated by permits up to the safe yield or other applicable limit of allocation of the resource according to the following preferences:</p> <p>(a) direct human consumption or sanitation in so far as necessary for human survival and health;</p> <p>(b) uses necessary for the survival or health of livestock and to preserve crops or physical plant and equipment from physical damage or loss in so far as it is reasonable to continue such activities in relation to particular water sources; and</p> <p>c) other uses in such a manner as to maximize employment and economic benefits within the overall goal of sustainable development as set forth in the comprehensive water plan.</p>

	<p>(2) In processing applications for withdrawals from water sources within the scope of subsection (1) of this section, the State Agency may determine whether applications are competing by aggregating the applications by periods of time, not to exceed one year, the periods to be set by regulation.</p> <p>(3) Within each preference category, uses are to be preferred that maximize the reasonable use of water.</p> <p>(4) Applications to renew a permit issued under this Code shall be evaluated by the same criteria applicable to an original application, except that renewals shall be favored over competing applications for new withdrawals if the public interest is served equally by the competing water uses after giving consideration to the prior investment pursuant to a valid water right in related facilities as a factor in determining the public interest.</p>
<p>(g) The division shall take into consideration the extent to which any withdrawals, diversions, or impoundments are reasonably necessary, in the judgment of the director, to meet the applicant's needs and shall grant a permit which shall meet those reasonable needs; provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including but not limited to public use, farm use, and potential as well as present use; and provided, further, that the director shall grant a permit to any permit applicant who on July 1, 1977, has outstanding indebtedness in the form of revenue certificates or general obligation bonds which are being amortized through the sale of surface water, the permitted quantity of which shall be at least in an amount consistent with that quantity for which the revenue certificates or general obligation bonds were issued.</p>	<p>§3R-2-04 BURDEN OF PROOF.</p> <p>§3R-2-04 (1) In any proceeding under this Code, the person proposing to withdraw water from a water source shall have the burden of showing by a preponderance of evidence that the proposed withdrawal will not impair the protected minimum flows or levels as determined under this section.</p> <p>§3R-2-04 (2) Nothing in this Code authorizes any person to withdraw water from a source that would impair its established protected minimum flow or level without first securing authorization to do so from the State Agency or a court reviewing a decision by the State Agency.</p>
<p>No comparable section in 12-5-31. See GA. Code Ann. § 12-5-96(f) for comparable statute.</p>	<p>§6R-2-02 NOTICE AND OPPORTUNITY TO BE HEARD.</p> <p>(1) Before deciding whether to approve or deny a permit, the State Agency shall, beginning within 14 days after the filing of an application for a permit, publish a notice of the permit application once each week for four consecutive weeks in a newspaper of general circulation in each water basin to be affected by the proposed withdrawal and in the State Register, and provide individual written notice to:</p> <ul style="list-style-type: none"> (a) every unit of state or local government with regulatory authority or other responsibility for the proposed withdrawal; (b) each owner of land contiguous to the location of the proposed withdrawal; and c) each person holding a permit under this Code or under the National Pollution Discharge Elimination System for the water source from which the proposed withdrawal is to be made if such a permit holder is likely to be affected by the proposed withdrawal or use. <p>(2) Individual written notice shall be by any form of mail with return receipt requested.</p> <p>§6-2-04 CONTESTING AN APPLICATION.</p> <p>Any person who might be adversely affected by the granting of a proposed permit may, within 30 days of actual notice of the receipt of the application by the State Agency or, if no actual notice is required or has proven impossible, within 30</p>

	<p>days of constructive notice by publication of the final notice required in section 6R-2-02(1), submit a statement to the State Agency briefly outlining the reasons for believing that an adverse effect is likely to result.</p> <p>(2) Any person submitting a statement contesting an application for a permit under subsection (1) of this section is to be provided with a copy of the permit application upon paying the costs of duplicating the application; a request for a copy of the application must be made within 10 business days of the filing of the statement contesting the application.</p> <p>(3) Any person submitting a statement contesting an application for a permit under subsection (1) must file any further comments on the application within 21 days of receipt of the copy of the application.</p> <p>(4) Any person submitting a statement is entitled to a hearing under section 5R-1-01 upon requesting the hearing on non-frivolous grounds not later than the last day for the submission of the further comments under subsection (3).</p> <p>(5) No person who has not contested an application for a permit under this section shall be entitled to seek judicial review of the decision to grant the permit in question.</p> <p>§6R-2-05 PUBLIC RIGHT OF COMMENT. Any person may submit written comments on any application within 45 days of the publication of the final notice required in section 6R-2-02(1).</p>
<p>(h) Except for applications filed pursuant to paragraph (3) of subsection (a) of this Code section, permits may be granted for any period of time not less than ten years, unless the applicant requests a shorter period of time, nor more than 50 years. The director may base the duration of such permits on any reasonable system of classification based upon but not necessarily limited to such factors as source of supply and type of use. In evaluating any application for a permit for the use of water for a period of 25 years or more, the director shall evaluate the condition of the water supply to assure that the supply is adequate to meet the multiple needs of the citizens of the state as can reasonably be projected for the term of the permit and ensure that the issuance of such permit is based upon a water development and conservation plan for the applicant or for the region. Such water development and conservation plan for the applicant or for the region shall promote the conservation and reuse of water within the state, guard against a shortage of water within the state, promote the efficient use of the water resource, and be consistent with the public welfare of the state. The board shall promulgate regulations for implementation of this subsection, including provisions for review of such permits periodically or upon a substantial reduction in average annual volume of the water resource which adversely affects water supplies to determine that the permittee continues in compliance with the conditions of the permit and that the plan continues to meet the overall supply requirements for the term of the permit. In the event the director determines that a regional plan is required in connection with any application for a permit for the use of water for a period of 25 years or more, the division or a person or entity designated by the division may develop such a plan.</p>	<p>§6R-2-06 OBLIGATION OF THE STATE AGENCY TO ACT.</p> <p>(1) The State Agency shall rule upon all applications within 6 months of the initial filing of the application, unless the State Agency shall, by order, extend time for not more than an additional 6 months.</p> <p>(2) Failure of a State Agency to rule upon an application within the time applicable under this section shall be deemed to be an approval of the application and the issuance of the permit on the basis of such terms and conditions as are inferable from the application.</p> <p>(3) An applicant may bring an action in any court of competent jurisdiction to declare the terms and conditions of the permit as provided in subsection (2) of this section.</p> <p>6R-2-07 NOTICE OF ACTION ON APPLICATION.</p> <p>(1) If the State Agency determines that an application for a permit meets the requirements for a permit, the permit shall be issued accompanied by a written statement of such terms and conditions as the Agency determines to be appropriate under this Code or regulations made under this Code.</p> <p>(2) The State Agency shall provide a written explanation of its grounds for including any particular term or condition in a permit whenever the person to whom the permit is issued requests such explanation in writing.</p> <p>(3) If the State Agency determines that an application for a permit fails to meet the standards for a permit, the application shall be denied and the application shall be returned to the applicant accompanied by a written statement of Agency's findings regarding the application and reason for its denial.</p>

<p>Such regional plan shall include water development, conservation, and sustainable use and shall be based upon detailed scientific analysis of the water source, the projected future condition of the resource, current demand, and estimated future demands on the resource.</p>	<p>(4) The State Agency shall provide individual written notice of its disposition of each application to any other person who participated in the application proceedings pursuant to this Chapter, along with grounds for any decision as communicated to the applicant.</p>
<p>No comparable section in 12-5-31.</p>	<p>§6R-2-08 OPPORTUNITY TO REMEDY DEFECTS IN AN APPLICATION. (1) The State Agency shall provide each applicant whose application has been denied a reasonable opportunity to remedy the defects in the application that caused the denial. (2) The State Agency shall give individual written notice of any resubmission to persons entitled to notice of the action on an earlier application, and shall provide such persons a reasonable opportunity to comment or to contest the resubmitted application. (3) The State Agency shall establish by regulation the period of time allowed for resubmission of an application, or for commenting on or contesting the resubmission.</p>
<p>(i) A permittee may seek modification of any of the terms of an issued permit. The director may approve the proposed modification if the permittee establishes that a change in conditions has resulted in a need by the permittee of more water than is allowed under the existing permit, or that the proposed modification would result in a more efficient utilization of water than is possible under the existing permit, or that a proposed change in conditions would result in a need by the permittee of more water than is allowed under the existing permit. Any such modification shall be consistent with the health and safety of the citizens of this state and with this article. In any administrative review proceeding resulting from an action of the director under this subsection, the burden of proof in establishing that the requisite criteria have been met shall be upon the person seeking such modification.</p>	
<p>(j) A permittee may seek renewal of a permit issued pursuant to this Code section from the director at any time within six months prior to the date of expiration of the permit. Except as otherwise specified in this Code section, all permit renewal applications shall be treated in the same manner as the initial permit application.</p>	
<p>(k) The director may revoke, suspend, or modify a permit issued pursuant to this Code section as follows:</p>	<p>§5R-5-02 REVOCATION OF PERMITS. The State Agency is authorized to revoke any permit:</p>
<p>(1) For any material false statement in an application for a permit to initiate, modify, or continue a use of surface waters, or for any material false statement in any report or statement of fact required of the permittee pursuant to this Code section or pursuant to the conditions contained in a permit granted under this Code section, the director may revoke the user's permit, in whole or in part, permanently or temporarily;</p>	<p>§5R-5-02 (a) for any act that is criminal under this Code;</p>
<p>(2) For any willful violation of the conditions of a permit granted pursuant to this Code section, the director may revoke the user's permit, in whole or in part, permanently or temporarily;</p>	<p>§5R-5-02 (b) for willful violation of this Code or of any term or condition of any permit or regulation issued under this Code; or</p>
<p>(2) For violation of any provision of this Code section, the director may revoke the permit, in whole or in part, for a period not to exceed one year;</p>	

<p>(4) For nonuse of the water supply (or a significant portion thereof) allowed by the permit for a period of two consecutive years or more, the director may revoke the permit permanently, in whole or in part, unless the permittee can reasonably demonstrate that his nonuse was due to extreme hardship caused by factors beyond his control, except that this paragraph shall not apply to farm use permits issued pursuant to paragraph (3) of subsection (a) of this Code section after initial use has commenced;</p>	
<p>(5) The director may revoke a permit permanently, in whole or in part, with the written consent of the permittee;</p>	
<p>(6) The director may suspend or modify a permit, except farm use permits, if he should determine through inspection, investigation, or otherwise that the quantity of water allowed under the permit is greater than that needed by the permittee for the particular use upon which the application for permit was based or would prevent other applicants from reasonable use of surface waters, including farm uses;</p>	<p>§5R-5-02 c) when necessary to prevent an unreasonable injury to a holder of another water right pursuant to an arbitration hearing under §5R-2-03.</p>
<p>(7) The director may suspend or modify a farm use permit if he should determine through inspection, investigation, or otherwise that the quantity of water allowed under the permit would prevent other applicants from reasonable use of surface waters for farm use; and</p>	
<p>(8) Consistent with the considerations set forth in subsection (g) of this Code section, the director may revoke, suspend, or modify a permit for any other good cause consistent with the health and safety of the citizens of this state and with this article. In the event of modification, suspension, or revocation of a permit, the director shall serve written notice of such action on the permit holder and shall set forth in such notice the reason for such action.</p>	<p>§7R-3-01 AUTHORITY TO RESTRICT PERMIT EXERCISE. (1) The State Agency may restrict any term or condition of any permit issued under this Code for the duration of a water shortage or a water emergency declared by the Agency. (2) The State Agency is to impose restrictions according to previously developed drought management strategies unless the Agency determines that the relevant drought management strategies are inappropriate to the actual situation. (3) In implementing restrictions under this section, the State Agency shall comply with the preferences provided in section 6R-3-04.</p>
<p>No comparable section in 12-5-31</p>	<p>§3R-2-05 CONTRACTUAL PROTECTION OF ADDITIONAL FLOWS OR LEVELS. The State Agency may contract with any person holding a permit to provide additional protected flows or levels of water in any water source, paying for any contract out of the State Water Fund.</p>
<p>(l) Emergency period of water shortage:</p>	<p>§3R-2-03 EFFECTS OF WATER SHORTAGES OR WATER EMERGENCIES.</p>
<p>(1) Whenever it clearly appears to the director from specific facts shown by affidavits of residents of the affected area of this state that an emergency period of water shortage exists within such area, so as to place in jeopardy the health or safety of the citizens of such area or to threaten serious harm to the water resources of the area, he may by emergency order impose such restrictions on one or more permits previously issued pursuant to this Code section as may be necessary to protect adequately such citizens or water resources; provided, however, such order shall not be issued until an effort has been made to give written notice of the proposed action by certified mail or statutory overnight delivery to the permittee or</p>	<p>§3R-2-03 (1) Threats to impair the minimum flows or levels established by this section justify the State Agency to declare a water shortage or water emergency as appropriate. §3R-2-03 (2) During periods of water emergency, the State Agency may allocate waters normally within the protected minimum flows or levels when necessary to prevent serious injuries to water uses established before the beginning of the water emergency, but only in so far as such allocation does not permanently impair the biological, chemical, or physical integrity of the water source.</p>

<p>permittees to be affected. Such written notice shall allow such permittee or permittees five days from the date of mailing of the notice to appear before the director in opposition to the proposed action. The director may impose such restrictions based upon any reasonable system of classification established by the Board of Natural Resources through rule or regulation. Such system of classification shall be based upon but not necessarily limited to those factors set forth in subsection (e) of this Code section;</p>	<p>§3R-2-03 (3) To facilitate planning for water emergencies, the State Agency shall establish emergency minimum flows or levels which are not subject to allocation except to prevent grave threats to human life or health under circumstances where water is not available from other sources for coping with these needs.</p>
<p>(2) The director shall specify in such order any change in the conditions of the permit, any suspension of the permit, or any other restriction on withdrawal, diversion, or impoundment of surface waters for the duration of the emergency water shortage and shall serve same on the person by hand delivery or certified mail or statutory overnight delivery. Except as to farm uses, any such change, suspension, or other restriction shall be effective immediately upon receipt of such order by the permittee, his agent for service of process, or any agent or employee of the permittee who receives the notification at the permittee’s principal place of business in the state. Any permittee, other than a farm use permittee, to whom such order is directed shall comply therewith immediately. Upon application to a hearing officer appointed by the Board of Natural Resources of this state, a permittee, including a farm use permittee, shall be afforded a hearing within 20 days of receipt of such notice by the hearing examiner in accordance with subsection (c) of Code Section 12-2-2. Farm use permittees may continue to make use of water to their permitted capacity during the appeal process, but failure to timely request a hearing in accordance with subsection (c) of Code Section 12-2-2 shall waive such right;</p>	<p>§7R-3-03 DECLARATION OF A WATER EMERGENCY. (1) The State Agency shall declare a water emergency whenever it finds the conditions defined in section 2R-2-29 to exist. (2) In addition its powers under a declaration of water shortage, the Agency may, upon declaring a water emergency and without prior hearing, order a person who holds a permit under this Code immediately to cease or otherwise change the withdrawal or use of water as necessary to alleviate the emergency. (3) An emergency order issued under this section shall specify the precise date and time on which the withdrawal or use must stop or change and the date, if any has been determined at the time of the order is issued, on which the withdrawal or use might be resumed. (4) Any restriction under this section shall not take effect against any person affected by the restriction until the State Agency serves the emergency order on that person. (5) Any person affected by a restriction under this section may obtain a hearing to challenge the restriction to begin not more than 10 days after the State Agency receives the request for a hearing, and to be concluded as soon as reasonably possible after the hearing begins. (6) In any hearing or litigation relating to this section, the burden of proof shall be on the party requesting the hearing. (7) An emergency order remains in effect pending the result of any hearing or litigation relating to this section.</p>
<p>(3) During emergency periods of water shortage, the director shall give first priority to providing water for human consumption and second priority to farm use;</p>	
<p>(4) The importance and necessity of water for industrial purposes are in no way modified or diminished by this Code section; and</p>	
<p>(5) Upon expiration of the emergency period of water shortage, as determined by the director, the director shall immediately notify each affected permittee, in writing, of such expiration, and the permittees shall thereafter be authorized to operate under the permit as issued prior to the emergency period of water shortage.</p>	<p>§7R-3-07 AMENDMENT OR TERMINATION OF A DECLARATION OF WATER SHORTAGE OR WATER EMERGENCY. The State Agency is authorized to amend or terminate a declaration of water shortage or of water emergency upon a finding that conditions justifying the declaration no longer exist as to part or all of the area included in the prior order.</p>
<p>(m) For all permits, including without limitation farm use permits, issued under this Code section, whenever required to carry out the objectives of this Code section, including but not limited to determining whether or not any person is in violation of any provision of this Code section or any rule or regulation promulgated pursuant to this Code section; encouraging or ensuring compliance with any</p>	

<p>provision of this Code section or any rule or regulation promulgated pursuant to this Code section; determining whether or not any person is in violation of any permit condition; or establishing a data bank on the usage of surface waters in a particular area or areas of this state, the director may by order, permit, or otherwise, in writing, require any person holding a permit under this Code section, or any other person who the director reasonably believes is withdrawing, diverting, or impounding surface waters in violation of the permitting requirements of this Code section, to:</p>	
<p>(1) Establish and maintain records;</p>	
<p>(2) Make reports;</p>	
<p>(3) Install, use, and maintain monitoring equipment or methods; and</p>	
<p>Provide such other information as the director may reasonably require.</p>	
<p>Notwithstanding the foregoing provisions of this subsection, any demand for such information by the director, which information has already been provided to the director by such person in the context of prior dealings with the division, and which is still correct, may be satisfied by adequate reference to same.</p>	
<p>(m.1)(1) The State Soil and Water Conservation Commission shall have the duty of implementing a program of measuring farm uses of water in order to obtain clear and accurate information on the patterns and amounts of such use, which information is essential to proper management of water resources by the state and useful to farmers for improving the efficiency and effectiveness of their use of water, meeting the requirements of subsection (m) of this Code section, and improving water conservation. Accordingly, the State Soil and Water Conservation Commission shall on behalf of the state purchase, install, operate, and maintain water-measuring devices for farm uses that are required by this Code section to have permits. As used in this paragraph, the term 'operate' shall include reading the water-measuring device, compiling data, and reporting findings.</p>	
<p>(2) For purposes of this subsection, the State Soil and Water Conservation Commission:</p>	
<p>(A) May conduct its duties with commission staff and may contract with other persons to conduct any of its duties;</p>	
<p>(B) May receive and use state appropriations, gifts, grants, or other sources of funding to carry out its duties;</p>	
<p>(C) In consultation with the director, shall develop a priority system for installation of water-measuring devices for farm uses that have permits as of July 1, 2003. The commission shall, provided that adequate funding is received, install and commence operation and maintenance of water-measuring devices for all such farm uses by July 1, 2009; provided, however, that the commission shall not install a water-measuring device on any irrigation system for such a farm use if such irrigation system is equipped with a meter as of July 1, 2003, and such meter is determined by the commission to be properly installed and operable, but any subsequent replacement or maintenance</p>	

of such an irrigation system that necessitates replacement of such meter shall necessitate installation of a water-measuring device by the commission;	
(D) May charge any permittee the commission's reasonable costs for purchase and installation of a water-measuring device for any farm use permit issued by the director after July 1, 2003; however, for permit applications submitted to the division prior to December 31, 2002, no charge shall be made for such costs; and	
(E) Shall issue an annual progress report on the status of water-measuring device installation.	
(3) Any person who desires to commence a farm use for which a permit is issued after July 1, 2003, shall not commence such use prior to the installation of a water-measuring device by the commission.	
(4) Subject to the provisions of subparagraph (C) of paragraph (2) of this subsection, after July 1, 2009, no one shall use water for a farm use required to have a permit under this Code section without having a water-measuring device in operation that has been installed by the commission.	
(5) Employees or agents of the commission are authorized to enter upon private property at reasonable times to conduct the duties of the commission under this subsection.	
(6) Any reports of amounts of use for recreational purposes under this Code section shall be compiled separately from amounts reported for all other farm uses.	
(n) In the consideration of applications for permits which if granted would authorize the withdrawal and transfer of surface waters across natural basins, the director shall be bound by the following requirements:	<p>§6R-3-06 SPECIAL STANDARD FOR INTERBASIN TRANSFERS.</p> <p>(1) In determining whether the issue a permit for an interbasin transfer of water, the State Agency shall give particular weight to any foreseeable adverse impacts that would impair the sustainable development of the water basin of origin.</p>
(1) The director shall give due consideration to competing existing uses and applications for permits which would not involve interbasin transfers of surface water and, subject to subsection (e) of this Code section, shall endeavor to allocate a reasonable supply of surface waters to such users and applicants;	<p>(2) In addition to the factors set forth in sections 6R-3-01 to 6R-3-05 of this Code, in determining whether an interbasin transfer is reasonable the State Agency shall consider:</p> <p>(a) the supply of water available to users in the basin of origin and available to the applicant within the basin in which the water is proposed to be used;</p> <p>(b) the overall water demand in this basin of origin and in the basin in which the water is proposed to be used; and</p> <p>c) the probable impact of the proposed transportation and use of water out of the basin of origin on existing or foreseeable shortages in the basin of origin and in the basin in which the water is proposed to be used.</p>
No comparable section in 12-5-31. EPD Rule 3913-6-14 does discuss interbasin water permits and sets out guidelines for handling permit applications for interbasin transfers.	<p>(3) When authorizing an interbasin transfer notwithstanding probable impairment to the existing or future uses of water in the basin of origin, the State Agency shall assess a compensation fee to be paid into the Interbasin Compensation Fund by the person granted a permit for the interbasin transfer in so far as is necessary to compensate the basin or origin for generalized losses not attributable to injuries to particular holders of water rights in the basin or origin.</p>
(2) The director shall provide a press release regarding the proposed issuance of all permits authorizing such interbasin transfer of surface waters to newspapers of	

<p>general circulation in all areas of the state which would be affected by such issuance. The press release shall be provided at least seven days before the issuance of these permits. If the director should determine that sufficient public interest warrants a public hearing on the issuance of these permits, he shall cause such a hearing to be held somewhere in the area affected prior to the issuance of these permits.</p>	
<p>(o)(1) Except as otherwise provided in subsection (1) of this Code section for emergency orders, any person who is aggrieved or adversely affected by any order or action of the director pursuant to this Code section shall, upon petition within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge appointed by the Board of Natural Resources. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and the rules and regulations adopted by the board pursuant thereto. Any administrative law judge so appointed by the board shall fully meet and qualify as to all applicable conflict of interest requirements provided for in Section 304(h)(2)(D) of the Federal Water Pollution Control Act of 1972, as amended, and the rules, regulations, and guidelines promulgated thereunder. The decision of the administrative law judge shall constitute the final decision of the board. Any party to the hearing, including the director, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, including the right to seek judicial review in the superior court of the county of the applicant's or permittee's residence.</p>	<p>§5R-1-01 RIGHT TO A HEARING.</p> <p>(1) Any person aggrieved by an order or decision of the State Agency, or by whose interests in fact are likely to be affected adversely by a regulation proposed or adopted by the State Agency, must submit a written request for a hearing within 30 days of that person's receipt of notice of the order or decision or within 60 days of the publication of the proposed or adopted regulation.</p> <p>(2) The State Agency shall provide a hearing within 30 days of the receipt of a written request for a hearing pursuant to subsection (1) unless the requesting person has been heard previously on the same matter.</p> <p>(3) The person requesting a hearing must indicate in the written request the reasons why that person believes the order or decision in question should be changed.</p>
<p>(2) Persons are 'aggrieved or adversely affected' where the challenged action has caused or will cause them injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by the statutes that the director is empowered to administer and enforce. In the event the director asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner.</p>	