

Safe Yield Meeting #3 – 4/14/2020

Platform: Microsoft Teams

Meeting Start: 9:00 AM

Begin with Alex Butler (SCDHEC) Prepared Presentation and Meeting Format Rules:

Use chat feature to ask questions so we do not get a lot of feedback.

Some people are having trouble getting into meeting, there is no call-in number available on this platform.

Thank you everybody for bearing with us – we wanted to keep the process moving along, we are operating business as usual within Bureau as much as possible. We will have another in person meeting before this is over, but we wanted to keep things moving.

I'll share my screen with the presentation. I have everyone muted, if you would like to speak either unmute yourself or you can use the chat option.

Tips to keep us going:

keep mics on mute unless speaking, use chat feature if possible to try to keep things functional.

This is the 3rd meeting of safe yield workgroup:

We have some new registrations in the Edisto

We will go over additional suggestions submitted by the workgroup

I don't think this will go to noon, but we can if we need to.

Where we're at in timeline:

Rescheduled and canceled the meeting originally scheduled for March 17TH, summary report likely pushed back due to current COVID situation.

As a reminder, the goals of these meetings are to evaluate how safe yield is currently calculated and to examine possible alternative calculations that the Department should consider. Keep in mind, any changes to the regulation will need to go through regulation change which is a separate, long process. We are trying to focus on safe yield calculation as outlined in R. 61-119 outlines permit duration, hierarchy of use, grandfathered permits, exemptions, inter-basin transfers, public participation requirements, and minimum instream flow values. We are not talking about a law change, we are talking about what we can do to improve safe yield calculation within the current framework of the law.

Alternatives will be evaluated base on if:

It is allowable under current law.

It is scalable to the Statewide Permitting Process.

The calculation is protective of the resource while still allowing for use of the resource.

If the evaluation can be done given the Departmental resources.

To give everyone an update we have had new registrations in the Edisto since the last meeting including Rast Farm, Sedso Farms, and Lois Ann Farm. We've seen a version of this map before

showing the Edisto basin, Leigh Anne shared a version of this showing allocation. We foresee more large-scale registrations like this in the future and you can see this stream is fully allocated.

Since last time we also looked at how allocations along rivers are made. The blue line is gaged flow, orange line is minimum instream flow, yellow line is current safe yield, and the dark line is the flow minus the safe yield. Using the current calculation, the safe yield is exceeding flow 62% of time in the South Fork Edisto River, 46% of the time in McTier Creek, 50% of the time in the Reedy, 58% of the time on the Pee Dee, and 35% of the time on the Tyger. DNR asked us to look at Steven's Creek – 75% of time SY is not in river according to current calculation.

Comments, questions, concerns up to this point?

Just an observation. The last new registration is roughly 1 mil gal/day.

We cannot determine reasonableness for ag facilities, if it is below the safe yield value then the facility is registered when they submit the paperwork to the Department.

Is that amount currently in use?

The intake is not yet constructed, so it is not used in that amount yet.

I need to leave in a bit, wanted to introduce Cassie Ratliff. She recently got promoted and will be working closely with water.

Welcome.

Going back to my screen, after the last meeting we did get a Safe Yield Alternative suggestion examining percent exceedance. We used this looking at the same 5 creeks. Up in the right-hand corner shows how often the flow goes to 0. The line drops closer and closer to 0 moving from median percent exceedance to 90% exceedance. This is how the graphs look for each of the stations. Under the alternative, for the 90% exceedance there would be no safe yield 33% of the time in McTier, 17% of time in the Reedy, 50% of the time in the Pee Dee, 50% of the time in the Tyger, and 100% of the time in Steven's Creek. It's hard to see the graphs clearly, we will send out the PowerPoint immediately following the meeting. I believe there is a calculation error on the first graph for the Tyger, we will correct that before we send it out.

Discussion/questions on exceedance:

Since we only have very few places in the state reaching 100% under the current calculation compared to exceedance. How will this affect current permits?

We will run the allocation exercise. Under current permits and registrations in the basin overallocation was in June. We will look at statewide.

Any other questions or comments before moving on?

What's next? We've evaluated different alternatives that have been sent to us, does anyone else have any suggestions or comments that need to be examined prior to 4th meeting. The goal of 4th meeting

is to wrap up and create maps demonstrating current state. Do we need to have more than one more meeting? Any other thoughts for what should be covered in the next meeting? Would participants like to submit written comments?

The connection got lost, will this presentation be available?

The presentation will be sent to the group and Lance will post it on the web. We will send the presentation out to group immediately following the meeting.

It is hard to grasp on graphs, were some of the options looked at actual improvements on stream segments relative to the current calculation? Were any potential improvements?

That depends on how you look at it and what you call improvement. The amount of water available for permitting and registering would decrease, but flow in rivers would increase. That could be seen as an improvement for the ecosystem but not an improvement for the withdrawers. The thing to keep in mind is will we be allowed to use the resource while being realistic about what is available.

Is the issue worse in the Edisto or is it equal in every basin? I guess it would be in the nature of proposed withdrawals.

Different parts of the basin are affected differently, there are variations even within the basin under how the current calculation works. Safe yield numbers and flow are incredibly high downstream as currently calculated but are lower in headwaters. Is there a single solution? Maybe not, it may be the case that we need to try to develop different ways to look at this.

There could be a single solution applied to all basins.

How many alternatives have been evaluated? It's hard for ag to spend time on this right now so we should look at finalizing the process after the current crisis has been resolved.

We are not looking to rush through this, everyone is dealing with different situations due to the current crisis. We are still in the data collection and evaluation phase if you have other suggestions to be discussed prior to last meetings. We want everyone's opinions because we have many different viewpoints involved in this workgroup.

A suggestion for the next meeting is to take one watershed that you think is relatively typical and compare overallocation for each of the different scenarios that have been proposed. I find curb fitting appealing, but it doesn't have to be right on the curb. Second question, are you providing monthly max for withdrawers?

To this point scenarios have been evaluated on monthly time steps using minimum instream flow as defined in regulation.

Back to the slides, for the 4th meeting we will try to schedule out to have a more in person meeting as we would like to not have the last meeting of this process be remote, will play by ear. If we need to meet remotely, we will try to have call-in line and use same Teams platform. If participants want to send written comments about the process so far and any alternatives for safe yield calculation, if

you feel you want to add something for stakeholder involvement, please submit in written format as we try to start reporting this out.

I would like to have the option to submit written comments.

We will send a follow-up email and include the timeline for comments. We'll make sure it is appropriate given the current situation.

We'll take comments from the meeting and any written comments while remembering that Department cannot change the regulation, it would need to go through regulatory change process.

Any closing comments, thoughts...

I'm curious about your take on safe yield calculation. It comes to a point where permits are for water that isn't always there. How do you see that playing out for areas that are 100% allocated? These are relatively new areas but how does it play out when you have 5 farms that need to draw water at the same time that isn't there?

The permitting process isn't a guarantee of water. That may be something the withdrawers need to figure out among themselves. We may issue registrations and permits in excess of what is actually there, the person downstream may have just drawn the short straw. Issuing new permits and registrations is a little different.

I'm a little familiar with some of these creeks. There is a lot of water, but it is on flood plains or braided systems. Permits must be set up on some reservoir or pond.

New big registrations are not yet constructed, I don't even know if they could build an intake for the amount they want to withdraw.

Is existence of the safe yield workgroup causing a run on registrations?

I don't know, what we are seeing now, I personally had anticipated this would happen at some point, but I am not sure if we are cause or if timing just happened to line up

I thought at the beginning of the first meeting you said we have to work under existing framework. Are we now examining regulatory changes?

We are not pursuing change to law, that is outside of the agency's scope. We are to implement the law through the regulation. We are looking to see if there is a way to change the regulation under the law. Not a lot of room to interpret law in a lot of areas, but the exception is safe yield because the actual calculation is not defined within the law.

So we can pursue changes to regulation?

Correct, we may come out of this process that the department decides to pursue changes in the regulation, but that is not an overnight thing either.

The Edisto basin is about to kick off basin planning – suggestions for next meeting would be to see if additional ideas can be studied in basin specific recommendations. I assume Edisto planning will be able to explore other ideas in more detail that would come out of recommendation and would carry a lot of weight with it.

We are in the middle of water planning and the department recognizes that recommendations would come out of it. We do not know the timeline on water planning yet, changes that people feel are needed to the law I encourage you to talk to Scott and DNR. We are aware that things are likely to come out of planning groups that would cause us to update regulations if needed.

DNR's position for the last 3+ years for water planning has been to look at safe yield, the planning process should be a form to cover topics like this and to continue the discussion.

DHEC understands that and we look forward to seeing what the recommendations coming out of it will be, but as you saw we have had registrations since the last meeting that have over allocated streams. We are looking for short term fix, but we appreciate the planning effort and look forward to seeing the results and what comes out of it.

So much of what we are talking about is concerned with drought – I'm aware that this isn't within the scope of this workgroup, but I am troubled that there aren't any improvements to the drought management framework, and we are trying to put band-aids on it. So many major industries are located on main stems, if the current regime works well on those, it was probably developed with those big users in mind and I get the concern with smaller bodies of water. If we were to develop differential regulatory regime changes, I'm curious as to what it would look like. We want the regulation to reflect reality and the better we can do that the better everyone will be. The current calculation seems to work pretty well on big bodies of water.

The calculation works well on big bodies because there is so much water compared to actual use. How you get to safe yield numbers on those bodies doesn't change much due to the high volume of water. Existing large industries would not be affected, would be more for new users. Any other comments, questions, concerns?

We will adjourn the meeting, thank you again for bearing with us, I know this isn't the most ideal way to meet.

Am I to conclude that you (DHEC) have now concluded that a regulatory change is necessary? Any future meeting should be in person before any additional "report" or conclusions are reached.

No DHEC has not concluded anything at this point. I agree that in person meeting would be ideal. I think everyone recognizes that COVID is taking priority, but we do want to keep the process moving along.

We may be 12-18 months out to normality, need to keep moving along.

We had originally scheduled 4 meetings, but we can adjust if needed. We have not received a lot of comments from group about suggestions. If you have those please send them in.

Are you at the point where you would be ready to suggest a proposal?

I'm not sure if that will come out in next meeting, I know we need to have some internal meetings first. Still trying to gather possible ideas to examine. We are still in the data collection phase of this process.

Will you share the suggestions that have been submitted and share if you think they work or don't work?

Ideas that were submitted from the group have been shown, the one we went over today was from the group. We have only received one or two suggestions from the workgroup.

Any other comments?

With that, I appreciate everyone for taking the time to meet. Stay safe!