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# waterSC

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SC DEPARTMENT of  
**ENVIRONMENTAL  
SERVICES**



**SOUTH CAROLINA** DEPT. OF  
COMMERCE



**SOUTH CAROLINA**  
DEPARTMENT OF  
PARKS, RECREATION  
& TOURISM



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**Today's Focus:  
Sharing  
Information to  
the Surface  
Water Study  
Committee**

Time	Agenda
12:30 pm	Welcome & Leading the Charge for WaterSC
12:40 pm	Process Notes
12:55 pm	SC Surface Water Law Framework
1:15 pm	Solution-Focused Tabletop & Facilitated Discussions
2:00 pm	Break, followed by continued discussions
2:30 pm	Key Concepts, Considerations & Group Recommendations
3:45 pm	Reporting to the Surface Water Study Committee
4:30 pm	Next Steps & Closing Remarks
5:00 pm	Adjourn & Networking

# The Charge for WaterSC

## Executive Order No. 2024-22

Stakeholder Engagement Plan

October 31, 2024

Report to Surface Water Study Committee

January 31, 2025

Advise on updated State Water Plan

December 31, 2025

# The Charge for WaterSC

## Executive Order No. 2024-22

- Balance the State's *economic, environmental, and social needs*;
- Ensure the *reliability, resiliency, sustainability, and sufficiency* of the State's water resources *for all existing and future uses*, while simultaneously *protecting the environment*; and
- Support and facilitate additional *collaboration* with ongoing efforts and existing initiatives.



# Working Group Meetings



# Listening Session & Open House

Phillips Market Center at the State Farmers Market

1. Surface Water in SC
2. How is surface water used in SC?
3. How is surface water managed in SC?
4. How is surface water conserved in SC?
5. What do we know about surface water?
6. What have we learned from River Basin Councils?
7. How do we plan for the future of surface water in SC?
8. Opportunities for formal comments (beginning at 6 pm)

# The WaterSC Working Group

- Have a statewide resource-focused approach
- Remain committed to the process
- Serve as a voice and connection for stakeholder sectors and categories
- Provide transparency
- Be collaborative and solution-focused



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# The Case Studies:

Illustrating Three Problematic Features of the 2010 Act



Josh Eagle  
USC Rice School of Law

## Basics of Allocating Water

1. The **State of South Carolina owns** all surface and groundwater within its borders.
2. The state may grant private parties or municipalities permission to withdraw or pump water, but **the state cannot abandon its ownership interest** or its ability to control who gets to use it.
3. The state is obligated to manage and allocate water in the **public interest**.
4. This obligation includes a responsibility for **both initial allocation and the re-allocation of water**.

**There are four types of users under the 2010 Act:**

- 1. Grandfathered registrants**
- 2. Grandfathered permittees**
- 3. Post-2010 registrants**
- 4. Post-2010 permittees**

In all other states, water law prohibits **wasteful or inefficient uses**:

In Western **prior appropriation** states, the amount that a user can obtain in her permit is limited to the amount needed for “reasonable and beneficial” uses of the water: “Use is the measure of the right.”

In **riparian rights** states (and in SC prior to 2010), wasteful or inefficient use is deemed to be *per se* unreasonable, meaning that water use for those purposes must be eliminated when challenged.

## **Why do states have these rules?**

- **There is no justification for giving state authorization to wasteful use of a public resource.**
- **Less waste frees up water for other potential uses.**

## **Grandfathered registrants:**

**Amount of registration is equal to higher of “highest [previously] reported level or at the design capacity of of the intake structure.” Sec. 49-4-35(C).**

**Agency cannot consider whether any of this amount is being used inefficiently or for a wasteful purpose.**

## **Post-2010 registrants:**

**Amount of registration is limited to the “safe yield” of the waterway, that is all water above the minimum instream flow. Secs. 49-4-35(C) and 49-4-20(25).**

**“The department may modify the amount [of a registration only] if [registrant] withdraws substantially more [than registered amount] . . . *and* the withdrawals result in detrimental effects to the environment or human health.” Sec. 49-4-35(E).**



## **Grandfathered permittees**

**“An existing surface water withdrawer . . . must be issued an initial permit but the initial permit and subsequent renewals are not subject to the permitting requirements of Sec. 49-4-80 [reasonable use and safe yield] and are not subject to the Section 49-40-150 [contingency planning].” Sec. 49-4-70(B).**

## **Post-2010 registrants and permittees**

**“Surface water withdrawals made by permitted or registered surface water withdrawers shall be presumed to be reasonable. No private cause of action for damages . . . may be maintained unless the plaintiff can show a violation of a valid permit or registration.” Sec. 49-4-110(B).**

**In all other states, water law generally prohibits users from claiming water rights in excess of the amount of water they are currently using:**

In Western **prior appropriation** states, “use is the measure of the right.” All prior appropriation states have rules specifying that the right can be forfeited if a user does not exercise it for several years.

In **riparian rights** states (and in SC prior to 2010), a landowner has the right to increase his historical use, but only if doing so is fair to other riparians. A landowner cannot obtain a court order guaranteeing an entitlement to future increases.

## Why do they have these rules?

- **Water should be made available to users who actually need it.**
- **If a user is not exercising the right, it shows that the marginal value to her is low, and that a transfer would make everyone better off.**
- **Allowing the hoarding of water rights would allow profiteering from a public resource.**

**“The department may modify, suspend, or revoke a permit . . . [if] the permit holder ceases to withdraw water for a period of at least thirty-six consecutive months [or if] a permanent change in natural conditions results in a permitted activity endangered human health or the environment.” Sec. 49-4-120.**

In all other states, water law includes **processes for allowing new users into the system**, even if it means that **current users will experience reductions**:

In Western **prior appropriation** states, it is possible though sometimes difficult to transfer an appropriative right to a different use through a “change order.” The transfer must be approved by the state and can be contested by other users.

In **riparian rights** states (and in SC prior to 2010), a riparian landowner can change the amount and use whenever he likes, subject of course to lawsuits by other riparians.

## **Why do states have those rules?**

- **Public values assigned to water change over time.**
- **Water is a state-owned resource and should be available for economic enterprises meant to improve business opportunities in the state.**
- **Why lock in today's economy in perpetuity?**

**“Surface water permits are transferable with the prior written consent of the department.” Sec. 49-4-120(B).**

**But regulations provide that transfer can only occur “if activities and uses of new permittee are consistent with original permittee.” S.C. Code Regs. 61-119(J)(2).**



**Grandfathered Users** are not required have contingency plans or maintain minimum instream flows.

Existing Permit  
for: 60 MGM  
Actual use: 40 MGM

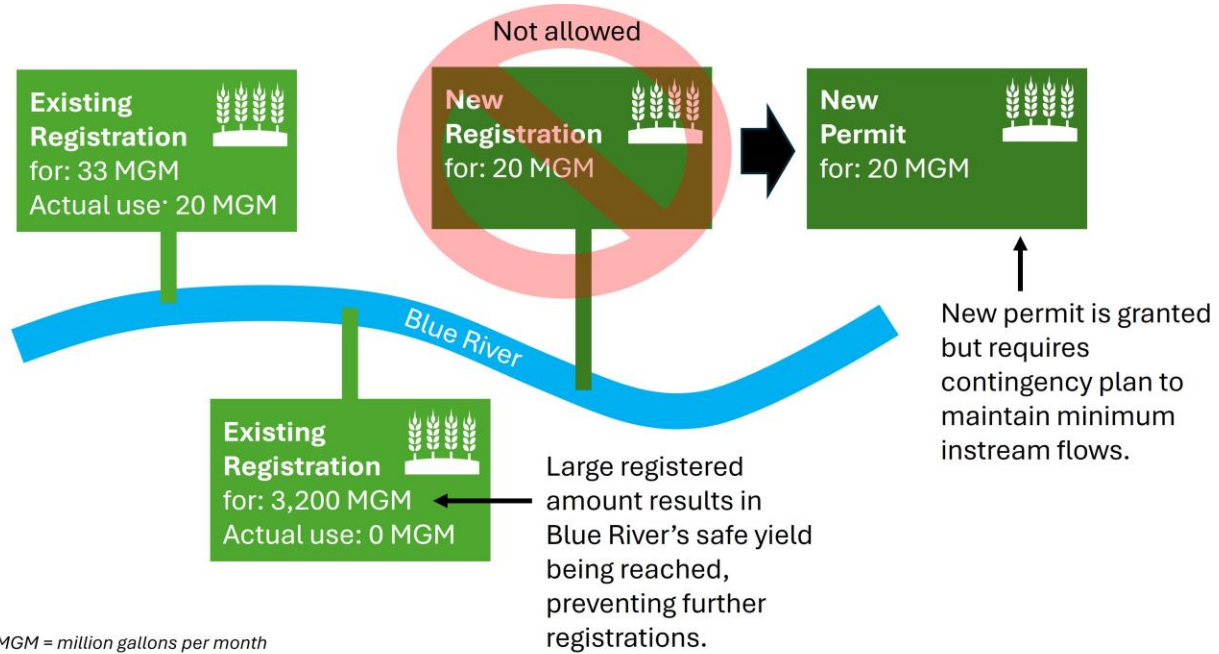
Existing Permit  
for: 30 MGM  
Actual use: 25 MGM

New Industry  
for: 20 MGM

**New User must get a permit** which requires a contingency plan to maintain minimum instream flows.

Blue River

MGM = million gallons per month



# Revisiting Case Studies

Grandfathered Permit  
for: 40 MGM  
Actual use: 10 MGM

Grandfathered Permit  
for: 20 MGM  
Actual use: 5 MGM

**Blue Lake**  
Physically Available Water:  
650 MGM

MGM = million gallons per month

Grandfathered Permit  
for: 450 MGM

New Request: 100 MGM

Grandfathered Permit  
for: 200 MGM  
Actual use: 20 MGM



# Your Tabletop Discussions

- Share ideas and concepts from your stakeholder sector at your table which would be beneficial environmentally and economically for sustainable surface water use
- This is not consensus
- Consider regulatory and non-regulatory Concepts
- Consider the benefits of each

Concepts & Solutions	Non-Regulatory Ideas	Regulations	Statutes & Regulations	Other Notes	Benefits			
					Flexibility	Certainty	Reasonable Use	Preservation/Conservation

Questions?

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# What are the Concepts?

- Permits and Registration having efficiency and justification requirements
- 5-10 year cumulative withdrawal load reviews to assess environmental pressure
  - Reduce MIF from 20% to something that better reflects what is happening currently (i.e. 5-10%?)
  - Drought Response Act may kick in before the above would be in effect
- **Reasonable Use Criteria for all Permits and Registrations**
  - Need a mechanism to release allocated water that has already been registered
  - Need more conversation, define terms, explore the data to create a definition, enforcement process, etc.
  - Registrant to prove that they have the use/need by actual use or investment – demonstrate the need
  - All users should comply with standards (i.e. MIFs)

# What are the Concepts?

- Conservation Education and Incentivizing
  - Incentivize conservation, exploration of graduated pricing for greater volume of use
  - Incentivizing recycle/reuse
- Conservation solutions must be deployed in conjunction with usage solutions
- Review registration application data requested
  - Enforce and review of what is implemented based on requirements on application form
  - Get opinion from AG office as to whether DES has ability to make the determination

# What are the Concepts?

- Handling Grandfathered permittees/registrants
  - Benchmark surrounding states and how they deal with grandfathered permittees/registrants
  - Bringing requirements of grandfathered vs. New closer together (reduce the gap)
  - All users should comply with standards (i.e. MIFs)
- Non-consumptive use – how do we measure the water that is returned to the source as "available" (note – discharges are included in the SWAM modeling)
- How do we look at data needs, improve data/modeling
  - SWAM model does not currently account for tidally influenced users
  - Does not account for future climate or land-use, based on historical
  - Conducting ongoing assessment of water basins to make decisions about future needs
- Incentivize new users to incorporate non-consumptive use

# What are the Concepts?

- Bring withdrawers together to collaborate on how they might free up some water for new users
- Consider conjunctive use/inter-relationship between surface and ground water (physically and on paper)

# Checking In on the Concepts

*Support This Concept  
Because*

*Could live with this  
concept but have  
questions or need  
further discussion  
on*

*Cannot Support This  
Concept Because*

# Draft Surface Water Document Outline

- I. Overview and Executive Summary
- II. State of Surface Water in SC
- III. Stakeholder Engagement on Surface Water
- IV. WaterSC Recommendations on Sustainable Surface Water Withdrawal Practices and Procedures
  - I. Consensus-based recommendations
  - II. Other areas of discussion
- V. WaterSC Next Steps
- VI. References



# **What information should be shared with the Surface Water Study Committee? How?**

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