

November 19, 2004

To: Statewide Water Plan Committee

From: Jan Bowers, Critical Water Planning Area Subcommittee

RE: CWPA Subcommittee Report and Recommendations – Process and Criteria for Designation of Critical Water Planning Areas During Development of State Water Plan

The following presents a summary of the progress to date by the CWPA Subcommittee as well as recommendations for consideration by the Statewide Committee. Please note this exercise is to establish criteria and process for designating CWPA's DURING development of the Statewide Plan. The CWPA Subcommittee is providing to Statewide Committee the following DRAFT documents for review and comment:

- "Process for Nomination of Critical Water Planning Areas During Development of State Water Plan" (Draft November 4, 2004)
- "Critical Water Planning Area Designation Criteria" (Draft November 4, 2004)

These draft documents are a "work in progress", and are necessarily incomplete, and are being provided in this form to engage others involved with the State Water Plan process in the dialog to support their development. Releasing these "work in progress" drafts for review and input by the Regional and Statewide Committees may also assist in increasing the awareness and understanding of the intent and purpose of the CWPA concept.

It is essential that the CWPA designation Process and Criteria be reviewed together to fully understand the statutory intent, planning opportunities, issues and implications of both.

CWPA Designation Process

Considerations and Limitations:

1. The Draft document is being developed to address the intent yet remain consistent with the mandates and limitations established by Act 220.
 - a. Some components of the process are specified in Act 220; details are not
 - b. Some key points are not specified or are confusing
 - i. Who has final rejection/approval authority and in what sequence?
 - ii. Applicant/nominee can be anyone, but who must "affirm/support" the nomination is not addressed (e.g., what if the nomination is opposed by a local entity?).
 - iii. Requires review/approval by regional and statewide committees who may not have the technical resources needed to evaluate the package versus the criteria/standards in a consistent manner, statewide; so will need to rely upon PADEP support for evaluation of nominations.
2. CARP process still needs to be established.

Key Issues Regarding CWPA Nomination Process:

1. What local/regional approvals/affirmations of the nomination should be required?
2. Should funding requirements be a consideration during the nomination evaluation process?
3. How should areas of need that cannot meet the CWPA standards be addressed in the statewide plan? Should there be additional planning/priority categories (as the Act allows), say for “areas of potential concern” and “areas in need of study”? And, if so, where do we draw the line between CWPAs, APCs, and ANS?
4. Are Stage 3 DEP Secretary and Statewide Committee reviews conducted sequentially or simultaneously?

CWPA Designation Criteria

Considerations and Limitations:

1. The Draft documents are being developed to address the intent yet remain consistent with the mandates and limitations established by Act 220.
 - a. Requires that CWPAs be identified as areas where existing and projected demands (including withdrawal and non-withdrawal uses) exceed safe yield.
 - b. To determine this, requires highly rigorous and technical analyses, involving aspects of science that have not yet been widely applied to waters throughout Pennsylvania.
 - c. CWPAs are presumed to be areas of most severe problems, and the degree of restriction represented by selected criteria and corresponding standards could result in none to very few (i.e., less than 6) to many CWPAs.
 - d. Many areas of potential concern or areas in need of analysis exist that may not have the information available or the degree of need necessary to be designated as a CWPA.
 - e. CWPA’s address only the concept of insufficient supply, as expressed by “demand exceeding safe yield”; issues such as flooding and stormwater are not addressed in by the CWPA concept as defined in Act 220.
2. CWPA Subcommittee has accepted the principle that only 1 set of criteria/standards should be applied to all processes for CWPA designation.
 - a. The only exception – time frame (5 years for nominees during plan development; 15 years for nominees identified as result of plan development)
3. To determine “safe yield” requires calculation of cumulative unmitigated withdrawals, discharges, instream flows, etc., that are often characterized by different hydrologic statistical terms making it difficult to develop a single “equation” for calculation of demand vs. safe yield.
 - a. CWPA Subcommittee is relying on existing regulatory criteria where appropriate; but these criteria vary by agency/jurisdiction.
 - b. Statewide instream flow standards do not exist.
 - c. Very few people in the state FULLY understand the concepts and implications of each of the components used to calculate demand and safe yield.

- d. Very difficult to set “criteria/standards” for water quality impairments in the context of “quantity”.
 - e. USGS water budget tool is a “screening tool” and cannot take all necessary aspects into account.
4. While this exercise is developing “planning criteria/standards”, the likelihood exists that they could affect regulatory decisions via permit application/review/appeal process.
 5. The Draft Criteria Document reflects a recommended 2-step approach that includes:
 - a. Numeric standards be established for “screening criteria” to evaluate whether or not the submittal qualifies for nomination
 - b. Textual statutory standards - as stated in Act 220 - to evaluate the nominations to determine whether or not they qualify for designation
 - c. Numeric standards for “screening criteria” are not included in this draft. They are still under discussion and deliberation by the CWPA Subcommittee and are hoped to be provided to the Statewide Committee in January 2005.
 - d. Please note: the term “criteria” refers to a “category”, and “standard” refers to the quantitative threshold for that category. For each “criteria”, there is a “standard” of measure.

Key Issues Regarding CWPA Criteria:

1. Are the criteria appropriate?
2. Should other categories of planning need be established (e.g., areas of potential concern, areas in need of study, etc.); if so what criteria and process should be applied to them?
3. How restrictive should the CWPA standards be? Is it appropriate to rely upon existing regulatory standards for the CWPA screening criteria?
4. How to address other critical needs such as flooding, that are not addressed within the statutory CWPA concept?

CWPA Subcommittee Recommendations

1. CWPA Subcommittee recommends that both attached draft documents be reviewed by the Statewide Committee and comments provided to the CWPA Subcommittee by February 1, 2005. (comments submitted by February 28, 2005)
2. CWPA Subcommittee recommends that the Statewide Committee consider distributing both attached draft documents for review and comment by the Regional Committees. (comments submitted by February 28, 2005)
3. CWPA Subcommittee recommends that the Statewide Committee address Act 220, Section 3111,B., and Section 3112, item 5, i.e., setting priorities and “levels of detail” for areas of concern but that are short of CWPAs, and for identification of potential problems or conflicts.
4. CWPA Subcommittee recommends that the CWPA Process document be assigned to the Policy and Integration Subcommittee for resolution of policy issues; the CWPA Subcommittee will continue to provide any necessary support and assistance on the technical issues and implications.