



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 10 2013

The Honorable Rick Glazier
North Carolina General Assembly
House of Representatives
1021 Legislative Building
16 West Jones Street
Raleigh, North Carolina 27601

Re: B. Everett Jordan Reservoir TMDL and the Potential Effects of Passage of
North Carolina Senate Bill 515

Dear Mr. Glazier:

Thank you for your June 17, 2013, letter in which you raise concerns regarding the above-referenced proposed legislation in North Carolina and its impact on implementation of the Total Maximum Daily Load (TMDL) for B. Everett Jordan Reservoir (Jordan Lake). The Jordan Lake TMDL has been approved by the U.S. Environmental Protection Agency and it establishes reduction targets for total nitrogen and total phosphorus from both nonpoint source and point source (National Pollutant Discharge Elimination System (NPDES) permitted dischargers. Implementation of the nutrient reductions contemplated in the TMDL will address the chlorophyll-a impairment in Jordan Lake.

As with most TMDLs, the Jordan Lake TMDL involves an allocation of necessary reductions between non-point source (un-permitted) and point source (NPDES-permitted) dischargers. States typically weigh the costs and attainability of reductions from various sources in allocating pollution reductions between these categories and often assign reductions to non-point sources if they can be feasibly achieved at lesser cost than if the same reductions were allocated to point sources. The allocation of reductions between non-point source and point source categories generally involves equitable considerations and trade-offs that are best made by state authorities with input from stakeholders. In light of the fact that a majority of Jordan Lake's nitrogen and phosphorus pollution comes from non-point source dischargers, it is understandable that the TMDL calls for significant non-point source reductions. The Jordan Lake TMDL and the Jordan Lake Rules which implement the reductions contemplated in the TMDL, appear to reflect the type of equitable allocation of responsibility for pollution reductions typically produced by the TMDL development process, and the EPA supports state efforts to proceed with pollution reduction measures so that water quality in Jordan Lake can be restored.

We understand that the proposed bill would establish a Jordan Lake Study Subcommittee which, among other tasks, would be charged with developing a technological solution based on mitigation of pollution at the lake, without the need for pollution reductions upstream. This approach is generally inconsistent with the Clean Water Act (CWA), which contemplates the implementation of pollution source reductions to address water quality impairments. For example, Section 303(d) of the CWA requires development of TMDLs which determine the amount of pollution that a water body can assimilate and still meet water quality standards. Section 301(b)(1)(C) of the CWA further requires that NPDES permits contain effluent limits as stringent as necessary to meet applicable water quality standards.

Further, 40 CFR § 122.44(d)(1)(vii)(B) requires that NPDES permits contain effluent limits that “are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA,” such as the Jordan Lake TMDL.

Any abandonment of efforts to achieve reductions from non-point source dischargers (e.g., runoff from agricultural fields or other un-channeled stormwater runoff), could make it necessary to revisit the approved TMDL and assign greater reductions to permitted point source dischargers. However, our current understanding of Senate Bill 515 is that it would not prohibit activities to implement the TMDL allocation to reduce non-point source pollution, although it removes the mandatory structure through which the non-point source reductions would occur.¹ From our perspective, the TMDL would remain in place. The non-point source pollution reductions would still have to be adequately addressed, and the pollution reductions assigned to the point source discharges would still have to be reflected in NPDES permits. Ultimately, if the non-point source reductions are not pursued, the point source dischargers may face further reductions.

We will closely monitor the progress of this proposed legislation and any impact that it has on implementation of the approved TMDL for Jordan Lake.

Should you have further questions regarding this matter, please contact Mr. James Giattina, Director of the Water Protection Division, at (404) 562-9470.

Sincerely,



A. Stanley Meiburg
Acting Regional Administrator

cc: Mr. John E. Skvarla, III
Secretary
North Carolina Department of Environment
and Natural Resources

Mr. Mitch Gillespie
Assistant Secretary for the Environment
North Carolina Department of Environment
and Natural Resources

Mr. Thomas A. Reeder, Director
Division of Water Resources
North Carolina Department of Environment
and Natural Resources

¹ It is not clear whether Section 2(c) of the Senate Bill, which prohibits enforcement of the Jordan Lake Rules, is intended to also prohibit implementation of the TMDL, which is the underlying basis of the Jordan Lake Rules.