COUNTY OF YORK
MEMORANDUM

DATE: September 11, 2016 (BOS Mtg. 9/20/16)

TO: York County Board of Supervisors

FROM: Neil A. Morgan, County Administrator

SUBJECT: Regional Groundwater Mitigation Program, Memorandum of Agreement

Purpose

The purpose of this agenda item is to recommend a 5-year extension of the Regional Groundwater Mitigation Program administered by the Hampton Roads Planning District Commission (HRPDC).

History

In 1994 the Hampton Roads Planning District Commission Directors of Utilities Committee recommended a well mitigation program to evaluate the impact that groundwater withdrawal by public water system wells may have on the operation of private individual wells. The program, which was adopted by all of the Hampton Roads localities, established a procedural process for citizens to file a claim against a public water purveyor whose groundwater withdrawal may have rendered their individual private well unusable due to the drawdown of the water table. The agreement establishes an administrative framework to process the citizen's claim, provide a technical analysis, calculate the financial impact, and provide a remedy. The mitigation costs for settled claims have proven to be minimal and are spread across each water purveyor's population base or customer base.

Summary

The Regional Groundwater Mitigation Program has been successful over the years and provides our citizens who still rely on a private individual well for their daily potable water use protection and financial relief should their well run dry due to the public water system groundwater withdrawals. Therefore, I recommend approval of Resolution R16-113 to authorize the County Administrator to execute a Memorandum of Agreement with the Hampton Roads Planning District for the Regional Groundwater Mitigation Program Administration.

Woodward/3241:bkw

Attachments
- Memorandum of Agreement.
- Proposed Resolution R16-113

REGIONAL GROUNDWATER MITIGATION PROGRAM ADMINISTRATION

MEMORANDUM OF AGREEMENT

WHEREAS, Section 15.2-1300 of the Code of Virginia enables local governments to enter into cooperative agreements to exercise those powers that each may be enabled to exercise, including conducting technical analyses to support such activities; and

WHEREAS, Section 15.2-4200 of the Code of Virginia enables local governments to establish Planning District Commissions; and

WHEREAS, the cities and counties that are signatories to this Agreement have acted, in accordance with Section 15.2-4200 of the Code of Virginia to establish the Hampton Roads Planning District Commission; and

WHEREAS, several Towns in the Hampton Roads region operate groundwater based water supply systems and

WHEREAS, the Hampton Roads Planning District Commission has been requested and has undertaken various studies to support local government water supply development, including groundwater resource management efforts; and

WHEREAS, on behalf of the signatory parties, the Hampton Roads Planning District Commission, has contracted with the U.S. Geological Survey to complete various technical analyses of the region's groundwater resources, including the following efforts:

- Development of a methodology for allocating responsibilities for groundwater impacts, as documented in Michael J. Focazio and Gary K. Speiran, Estimating Net Drawdown for Episodic Withdrawals at Six Well Fields in the Virginia Coastal Plain Aquifers, U.S. Geological Survey, Water Resources Investigations Report No. 93-4159, 1992;
- Refined description of the aquifer system of the Virginia Coastal Plain and a hydrogeologic framework for ground-water investigation, as documented in E. Randolph McFarland and T. Scott Bruce, The Virginia Coastal Plain Hydrogeologic Framework, U.S. Geological Survey, Professional Paper 1731, 2006; and
- Development of the Virginia Coastal Plain Groundwater Model to provide a better tool to understand the groundwater resource through simulation of groundwater withdrawals, drought, and saltwater intrusion, as documented in Charles E. Heywood and Jason P. Pope, Simulation of Groundwater Flow in the Coastal Plain Aquifer System of Virginia, U.S. Geological Survey, Scientific Investigations Report 2009–5039, 2009.

WHEREAS, the signatory parties have requested the Hampton Roads Planning District Commission to administer a Regional Groundwater Mitigation Program, on their behalf; and

WHEREAS, on August 11, 1994, the signatory parties entered into the Groundwater Mitigation Program Administration Agreement; and

WHEREAS, on May 31, 2000, July 5, 2006, and March 18, 2010, the signatory parties extended the Groundwater Mitigation Program Administration Agreement; and

WHEREAS, in accordance with the provisions of the August 11, 1994 Agreement, as extended on May 31, 2000, July 5, 2006, and March 18, 2010, the signatory parties have evaluated the Groundwater Mitigation Program and determined that the Program should be continued;

NOW THEREFORE, the signatory parties enter into the following Agreement.

This Memorandum of Agreement, entered into this 21st day of July, 2016 among and between fifteen local governments in Hampton Roads, the James City Service Authority, and the Hampton Roads Planning District Commission, establishes and extends the Regional Groundwater Mitigation Program. It outlines the roles and responsibilities of each entity in administering and funding the Regional Groundwater Mitigation Program.

BASIC PREMISES

1. Some local governments in Hampton Roads operate public water supply wells inside and/or outside of their incorporated boundaries.

2. All local governments in Hampton Roads are interested in ensuring that groundwater drawdown associated with the operation of public water supply wells does not adversely impact the private wells of their citizens.

3. In the case where operation of a public water supply well causes or contributes to groundwater drawdown that renders a well unusable, then mitigation of damages attributable to that drawdown may be sought by the well owner in accordance with local mitigation plans and agreements.

4. This Agreement establishes the administrative framework, which will be used by the signatory parties to obtain technical analysis of requests for mitigation by private well owners or other local governments in Hampton Roads. Financial issues related to these requests are governed by existing interjurisdictional agreements and state-approved Groundwater Mitigation Plans that are separate and distinct from this Agreement.

5. This Agreement will have a term of five years, extending from January 1, 2016 through December 31, 2020. To conform to local government charter and Virginia Code requirements, the funding provisions of this Agreement will be subject to annual renewal.

6. Program costs will be allocated on a pro-rata basis among the signatory parties. The annual base buy-in per city or county will be determined each year as part of the HRPDC Directors of Utilities Committee budget planning process. The balance of annual costs will be allocated according to the local share of regional population. The most current estimate of population, developed by the Weldon Cooper Center for Public Service, will be used as the population base for allocating program costs. Local contributions may be escalated annually to reflect program experience and projected HRPDC expenditures. Future private sector and non-Hampton Roads local government participation may provide financial support to the program according to a yet-to-be-determined formula, which will reflect annual program costs. The funding formula will be evaluated on a regular basis by the HRPDC Directors of Utilities Committee and may be adjusted to ensure its continued equitability.

HRPDC RESPONSIBILITIES

Under the terms of this Agreement, the Hampton Roads Planning District Commission is responsible for the following:

1. Conduct technical analyses of the impacts of groundwater withdrawals.

2. Respond equitably and in a timely fashion to requests from all signatory parties for analyses of the impacts of groundwater withdrawals. The time frame for responses will be based on experience and the complexity of individual cases.

3. Develop a technical guidance document to determine the allocation of impact mitigation responsibilities among the signatory parties. From 1994 to 2015, this determination was based on application of the superpositioning methodology developed by the U.S. Geological Survey for the Hampton Roads Planning District Commission. The methodology is described in Michael J. Focazio and Gary K. Speiran, Estimating Net Drawdown for Episodic Withdrawals at Six Well fields in the Virginia Coastal Plain Aquifers, U.S. Geological Survey, Water Resources Investigation Report No. 93-4159, 1992. Beginning in 2016 or as soon as practicable, the HRPDC staff will apply an analysis approach using the U.S. Geological Survey Virginia Coastal Plain Groundwater Model. The HRPDC technical guidance document will be updated to address the use of the model and future model updates.

4. Provide report(s) documenting the results of the HRPDC technical analysis(es) to all signatory parties.

5. In any case where an aggrieved party appeals a local government mitigation determination, provide the HRPDC analysis to the mitigation panel, established under the local government's mitigation plan. However, the HRPDC will not serve as a member of the mitigation panel.

6. Provide other technical support, as requested, to the signatory parties for other groundwater analyses, including support for development of local groundwater withdrawal permit applications and review of other proposed groundwater withdrawals which may impact on groundwater resources in the Hampton Roads region.

7. On request, provide technical staff support, at cost, to signatory parties for data collection (field work), required by that signatory party's permit or mitigation plan, approved by the Virginia Department of Environmental Quality (State Water Control Board).

8. Take steps, in conjunction with the signatory parties, to involve private sector groundwater users in the Regional Groundwater Mitigation Program. Administrative procedures and financial arrangements for private sector and non-Hampton Roads local government participation will be developed in the future, but will reflect the actual cost of the work.

LOCAL GOVERNMENT RESPONSIBILITIES

Under the terms of this Agreement, the signatory parties are responsible for the following:

1. Serve as the initial point of contact for aggrieved parties. Request mitigation analysis(es) from HRPDC in a timely fashion following receipt of a claim.

2. Provide any locally-generated/collected data on groundwater conditions and well construction that may be useful to HRPDC technical analysis(es).

3. Provide, in a timely fashion, all technical supporting data required by Mitigation Plans, approved by the Virginia Department of Environmental Quality (State Water Control Board) as elements of Groundwater Withdrawal Permits, to the HRPDC for use in analyses of mitigation claims.

4. Provide timely technical review of the HRPDC analysis(es) and conclusions.

5. Support HRPDC efforts to expand the mitigation program to cover all groundwater uses.

6. Establish the appropriate mitigation panels, in accordance with local mitigation plans, to hear appeals of initial mitigation responsibility determinations.

PROCEDURE FOR REQUESTING MITIGATION ANALYSES

Under this Memorandum of Agreement, the following process will be followed to request HRPDC technical support to address mitigation claims.

1. Aggrieved party contacts the locality of residence.

2. The local government contacts the HRPDC and requests that an impact analysis be conducted. In addition, any signatory parties may request that an impact analysis be undertaken.

3. The HRPDC conducts the analysis, as requested, and advises all signatory parties of the results of the technical analysis(es).

4. This procedure may be modified from time to time with the concurrence of all signatory parties, as represented by the HRPDC Directors of Utilities Committee, in order to improve the efficiency of the mitigation process.

SIGNATORIES

This Memorandum of Agreement will be executed by the Chief Administrative Officer of each participating local government or service authority and by the Executive Director of the HRPDC. Individual signatory pages are included for each participating locality.

CITY OF CHESAPEAKE
CITY OF FRANKLIN
CITY OF HAMPTON
CITY OF NEWPORT NEWS
CITY OF NORFOLK
CITY OF POQUOSON
CITY OF PORTSMOUTH
CITY OF SUFFOLK
CITY OF VIRGINIA BEACH
CITY OF WILLIAMSBURG
COUNTY OF GLOUCESTER
COUNTY OF ISLE OF WIGHT
COUNTY OF SOUTHAMPTON
COUNTY OF YORK
JAMES CITY SERVICE AUTHORITY
TOWN OF SMITHFIELD
HAMPTON ROADS PLANING DISTRICT COMMISSION

IN WITNESS THEREOF, the Chief Administrative Officer of the local governments and service authority and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement**.**

COUNTY OF YORK

By: _____
NEIL MORGAN, COUNTY ADMINISTRATOR

Date: _____

Date: _____

Attest: _____

R16-113

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2016:

Present	Vote
Jeffrey D. Wassmer, Chairman	
Sheila S. Noll, Vice Chairman	
Walter C. Zaremba	
W. Chad Green	
Thomas G. Shepperd, Jr.	

On motion of _____, which carried ___, the following resolution was adopted:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH THE HAMPTON ROADS PLANNING DISTRICT COMMISSION FOR THE REGIONAL GROUNDWATER MITIGATION PROGRAM ADMINISTRATION

WHEREAS, the Memorandum of Agreement establishes an administrative framework should an individual citizen dependent on a private groundwater well that has run dry to file a damage claim; and

WHEREAS, the administrative framework additionally provides for a technical analysis, a financial impact and a conclusion for the aggrieved citizen;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this _____ day of _____, 2016, that the County Administrator be, and hereby is, authorized to execute a Memorandum of Agreement with the Hampton Roads Planning District Commission for the Regional Groundwater Mitigation Program Administration.