

Virginia Water Policy: The Imprecise Mandate

William R. Walker

William E. Cox

Repository Citation

William R. Walker and William E. Cox, *Virginia Water Policy: The Imprecise Mandate*, 14 Wm. & Mary L. Rev. 312 (1972), <https://scholarship.law.wm.edu/wmlr/vol14/iss2/4>

VIRGINIA WATER POLICY THE IMPRECISE MANDATE

WILLIAM R. WALKER* AND WILLIAM E. COX**

For several obvious reasons, it is clear that an integrated state water policy is fundamental to any program of effective water resources management. Policy reflects a basic philosophy of water use and establishes a general framework within which rational decision-making can take place. It focuses on objectives and establishes priorities, thus encouraging consistency of action and providing guidance for the development of particular water resource plans. A statement of water policy, implemented by a comprehensive water resources plan, constitutes the primary assurance that water resources development will proceed in the manner most likely to enhance the total welfare of the citizens of a state.

Since water resource problems are not confined to the jurisdiction of state governments, policy is important in relations of the state with other government units. A state policy which is coordinated with federal policies and programs is valuable when dealing with federal agencies, since the federal government cannot be expected to view water resource matters from the unique perspective of each state. Similarly, it is crucial for a state to represent its interest vis-à-vis other states in regard to water resource problems that transcend state boundaries. Policy also is important in a state's relations with its political subdivisions. Water policy must be flexible enough to meet local conditions and requirements while carrying forward the statewide program.

In Virginia, policy has been determined by various institutions. The courts, through application of the riparian doctrine of water rights, settle most private disputes. The General Assembly has enacted many statutes concerning water policy¹. The legislature also has delegated authority to certain state agencies. A very general statement of policy is included in the recent revision of the Virginia Constitution. Since policy statements are located in each of these diverse sources, it is necessary to examine each in order to determine whether a viable, coordinated water policy exists for the Commonwealth of Virginia.

* B.S.C.E., University of Nebraska; M.S.S.E., University of North Carolina; J.D., University of Nebraska. Director, Virginia Water Resources Research Center.

** B.S.C.E., M.C.E., Virginia Polytechnic Institute and State University Research Associate, Virginia Water Resources Research Center.

1. Although most of the legislative activity occurred recently, water policy has concerned legislators since the early 1900's. See, e.g., Va. Acts of Assembly, ch. 312, pt. 1 (1910).

THE SOURCES OF POLICY STATEMENTS

Constitutional Policy

The primary statement of policy is the Virginia Constitution; a basic provision discusses the area of conservation, development, utilization, and protection of water and other natural resources. The Constitution provides that:

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

In the furtherance of such policy, the General Assembly may undertake the conservation, development, or utilization of lands or natural resources of the Commonwealth, the acquisition and protection of historical sites and buildings, and the protection of its atmosphere, lands, and waters from pollution, impairment, or destruction, by agencies of the Commonwealth or by the creation of public authorities, or by leases or other contracts with agencies of the United States, with other states, with units of government in the Commonwealth, or with private persons or corporations.²

Since the provision became effective in 1971 and is written in very general terms, it has not had appreciable influence on the water resource activities of the Commonwealth.

Legislative Policy Statements

There are many Virginia statutes concerning water policy. Some of the enactments are phrased in general terms so as to suggest the existence of a coordinated policy, and others are drawn more narrowly in response to particular water problems. In order to assess whether this legislation *in toto* forms an integrated statement of water policy, both types of statutes must be examined. An example of the first type of statute is found in legislation establishing a Council on the Environment in the Office of the Governor. One provision states that: "In furtherance of Article XI of the Constitution of Virginia and in recognition of the vital

2. VA. CONST. art. XI, §§ 1-2.

need of citizens of the Commonwealth to live in a healthful and pleasant environment, it is hereby declared to be the policy of the Commonwealth to promote the wise use of its air, water, land and other natural resources and to protect them from pollution, impairment or destruction so as to improve the quality of its environment."³ It may be noted that this is similar to the constitutional mandate previously discussed. Another statutory enactment, appearing in the Code of Virginia under the chapter title "State Policy as to Water," is devoted exclusively to water. It provides that:

(a) Such waters⁴ are a natural resource which should be regulated by the State.

(b) The regulation, control, development and use of waters for all purposes beneficial⁵ to the public are within the jurisdiction of the State which in the exercise of its police powers may establish measures to effectuate the proper and comprehensive utilization and protection of such waters.

(c) The changing wants and needs of the people of the State may require the water resources of the State to be put to uses beneficial to the public to the extent of which they are reasonably capable; the waste or unreasonable use or unreasonable method of use of water should be prevented; and the conservation of such water is to be exercised with a view to the welfare of the people of the State and their interest in the reasonable and beneficial use thereof.

(d) The public welfare and interest of the people of the State require the proper development, wise use, conservation and protection of water resources together with protection of land resources, as affected thereby

(e) The right to the use of water or to the flow of water in or from any natural stream, lake or other watercourse in this State is and shall be limited to such water as may reasonably be required for the beneficial use of the public to be served; such right shall not extend to the waste or unreasonable use or unreasonable method of use of such water.⁶

3. VA. CODE ANN. § 10-178 (Interim Supp. 1972).

4. "'Water' includes all water, on the surface and under the ground, wholly or partially within or bordering the state or within its jurisdiction and which affect the public welfare." VA. CODE ANN. § 62.1-10(a) (Repl. Vol. 1968).

5. "'Beneficial-use' means domestic, agricultural, recreational and commercial and industrial uses." *Id.* § 62.1-10(b).

6. *Id.* § 62.1-11.

However, these provisions appear to be of limited applicability, due to a subsequent provision which states that: "Nothing in this chapter shall operate to affect any existing valid use of such waters or interfere with such uses hereafter acquired, nor shall it be construed as applying to the determination of rights in any proceeding now pending or hereafter instituted."⁷

It is difficult to ascertain the impact, if any, that a state water policy might have if it shall not operate to interfere with existing uses or apply in any proceeding instituted to determine water rights. It is readily apparent that such statutes do not enunciate a state water policy which is sufficient to guide decision makers—the provisions are drafted in terms that are either too general to be useful with respect to particular problems of water resources management, or they are so specific that the limits on their applicability render them meaningless in any large scheme of regulation.

An even more troublesome problem exists with respect to pieces of legislation that purport to cure specific problems and also contain broad statements of water policy. Such provisions regrettably do not coalesce to form a comprehensive policy statement; on the contrary, these *ad hoc* enactments have, in several instances, yielded inconsistent statements concerning the proper direction of the Commonwealth in fulfilling its regulatory function.

One example of legislative inconsistency is found in statutes concerning the drainage of swamp and marshlands. A statement enacted in 1910 expresses a positive attitude toward drainage: "It is hereby declared that the drainage of the surface water from wet agricultural lands is essential for the successful cultivation of such lands and the prosperity of the community, and the reclamation of overflowed swamps and tidal marshes shall be considered a public benefit and conducive to the public health, convenience, utility and welfare."⁸ This position appears to be qualified by language enacted in 1966: "In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife . . ."⁹ Wetlands legislation passed in 1972 indicates that the General Assembly has further modified its position with respect to the reclamation of marshes.

7. *Id.* § 62.1-12.

8. *Id.* § 21-293 (Repl. Vol. 1960).

9. *Id.* § 62.1-44.36(4) (Cum. Supp. 1972).

Therefore, in order to protect the public interest, promote the public health, safety and the economic and general welfare of the Commonwealth, and to protect public and private property, wild-life, marine fisheries and the natural environment, it is declared to be the public policy of this Commonwealth to preserve the wetlands and to prevent their despoliation and destruction and to accommodate necessary economic development in a manner consistent with wetlands preservation.¹⁰

However, the 1910 provision declaring the reclamation of tidal marshes to be a public benefit remains in effect; the legislature's inconsistent treatment of the drainage problem emerges clearly

Legislative inconsistency with respect to specific environmental problems poses a serious obstacle to effective realization of desired goals.¹¹ Unfortunately, such inconsistency also exists on a larger scale; indeed, it will be seen that inconsistency pervades the entire statutory scheme—that is to say, the overall state water policy as enunciated by legislative enactments is inconsistent.

An example is provided by the legislature's overall policy of encouraging the development of water power. A statute expresses this desire as follows:

In order to conserve and utilize the otherwise wasted energy from the water powers in the state, it is hereby declared to be the policy of the state to encourage the utilization of water resources in the state to the greatest practical extent and to control the waters of the state, as herein defined, and also the construction or reconstruction of a dam in any rivers or streams within the state for the generation of hydroelectric energy for use or sale in public service, all as hereinafter provided.¹²

10. *Id.* § 62.1-13.1.

11. Courts have been able to reconcile conflicts between inconsistent statutes, and at least one court has suggested factors that are significant in making such a determination:

[I]f a later statute does not by its terms or by necessary implication repeal entirely a former one in *pari materia*, yet if it clearly appears that the later statute was intended to furnish the only rule to govern a particular case, it repeals the former to that extent. And in deciding that question "the occasion and the reason of the enactment, the letter of the act, the context, the spirit of the act, the subject matter and the provisions of the act, have all to be considered."

American Cyanamid Co. v. Commonwealth, 187 Va. 831, 841, 48 S.E.2d 279, 285 (1948), quoting from *Fox's Adm'rs. v. Commonwealth*, 57 Va. (16 Gratt.) 1, 10 (1860). However, it should be noted that these guidelines are not a satisfactory substitute for a clear statement by the legislature.

12. VA. CODE ANN. § 62.1-80 (Repl. Vol. 1968).

The consequences of erosion and sedimentation on water and land resources have also been the subjects of policy declarations. One provision, originally enacted in 1938, concerns erosion and sedimentation generally, and a 1972 enactment is directed specifically to shore erosion control.

That whereas, there is a pressing need for the conservation of soil and water resources in all areas of the State, whether urban, suburban, or rural, and that the benefits of soil and water conservation practices, programs, and projects, as carried out by the Virginia Soil and Water Conservation Commission and the soil and water conservation districts, should be available to all such areas; therefore, it is hereby declared to be the policy of the legislature to provide for the conservation of the soil and water resources of this State, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering agricultural and non-agricultural phases of the conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this State.¹³

The shores of the Commonwealth of Virginia are a most valuable resource that should be protected from erosion which reduces the tax base, decreases recreational opportunities, decreases the amount of open space and agricultural lands, damages or destroys roads and produces sediment that damages marine resources, fills navigational channels, degrades water quality and, in general, adversely affects the environmental quality; therefore, the General Assembly hereby recognizes shore erosion as a problem which directly or indirectly affects all of the citizens of this State and declares it the policy of the State to bring to bear the State's resources in effectuating effective practical solutions thereto.¹⁴

The following excerpt from the State Water Control Law, enacted in 1946, declares policy with respect to water quality:

It is the policy of the Commonwealth of Virginia and the purpose of this law to: (1) protect existing high quality State waters

13. *Id.* § 21.2 (Cum. Supp. 1972).

14. *Id.* § 21-11.16.

and restore all other State waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them, (2) safeguard the clean waters of the State from pollution, (3) prevent any increase in pollution, and (4) reduce existing pollution, in order to provide for the health, safety, and welfare of the citizens of the Commonwealth.¹⁵

The State Water Control Law also indicates that certain activities are against "public policy", the law's effect is to establish policy in a negative sense:

It is hereby declared to be against public policy for any owner who does not have a certificate issued by the Board to (1) discharge into State waters inadequately treated sewage, industrial wastes, other wastes, or any noxious or deleterious substances, or (2) otherwise alter the physical, chemical, or biological properties of such State waters and make them detrimental to the public health, or to animals or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.¹⁶

The Scenic Rivers Act, passed in 1970, makes a declaration of policy with respect to certain aesthetic attributes of the state's water resources. It provides: "It is hereby declared to be the policy of the Commonwealth of Virginia that rivers, streams, runs and waterways, including their shores and immediate environs which possess great natural and pastoral beauty constitute the natural resources, the conservation of which constitutes a beneficial public purpose. It is further declared that preservation of certain rivers or sections of rivers for their scenic value is a beneficial purpose of water resource policy"¹⁷

Unquestionably, the above policy statements are grounded upon a legitimate concern for the welfare of the state's natural resources. It appears, however, that various policy considerations have been enacted with little thought given to their integration or coordination. A decision consistent with a policy statement in one section may be counter to a policy statement in another. For example, the policy set forth in the Scenic Rivers Act of preserving areas of the stream for their natural

15. *Id.* § 62.1-44.2 (Cum. Supp. 1972).

16. *Id.* § 62.1-44.5.

17. *Id.* § 10-167(b) (Cum. Supp. 1971).

beauty may be inconsistent with the policy of encouraging water power development. Since many valid water demands are not completely compatible, separate policy statements should not focus on one issue to the exclusion of other legitimate concerns.¹⁸

Agency Policy

The confusion created by inconsistent statutes has been compounded by a legislative delegation of policy-making authority to various agencies. In 1966, for example, as a result of a study by a legislative advisory committee,¹⁹ the General Assembly recognized the need to establish a comprehensive state water policy. Accordingly, the Board of Conservation and Economic Development was authorized to "formulate a coordinated policy for the use and control of all of the water resources of the State."²⁰ Guidance was provided for this activity in the form of seven legislative "principles and policies" to be considered by the Board. Four years later, the General Assembly delegated limited policy-making authority to another agency. The State Water Control Board was empowered "to establish policies and programs for the effective area-wide or basin-wide water quality control and management."²¹ But no provision was made to insure consistency with the general policy-making and planning authority of the Board of Conservation and Economic Development. Consequently, these competing grants of authority to formulate policy suffered from the same lack of coordination which characterized the inconsistent statutes discussed above.

As a result of this confusion, an interagency conflict surfaced during the State Water Control Board's review of river basin plans prepared by the Division of Water Resources of the Board of Conservation and Economic Development. Planning reports of the Division presented an economic argument that the use of flow augmentation in combination with some degree of at-source treatment may be the least costly method to maintain satisfactory water quality.²² The Water Control Board, on the other hand, advanced a philosophy which required the treatment of

18. Cf. Mirt, *Some Problems of Water Resource Management in Virginia: A Preliminary Examination*, 13 WM. & MARY L. REV. 388, 407 (1971).

19. VA. ADVISORY LEGISLATIVE COUNCIL, REPORT OF THE GOVERNOR'S SPECIAL COMMITTEE ON WATER RESOURCES, S.DOC. No. 18 (1966).

20. Va. Acts of Assembly, ch. 561 (1966).

21. *Id.* ch. 638 (1970); VA. CODE ANN. § 62.1-44.15(13) (Cum. Supp. 1972).

22. DIVISION OF WATER RESOURCES, Potomac-Shenandoah River Basin Comprehensive Water Resources Plan, Vol. VI, Planning Bulletin 212.

waste waters to such a degree that additional dilution through flow augmentation would be unnecessary, even in some cases where complete treatment at the source would be more expensive.²³ In order to eliminate conflicts of this nature, the legislature recently transferred all policy-making authority to the State Water Control Board. Unfortunately, the transfer did not occur until after conflicting policy decisions already had been made.²⁴

When the Water Control Board was given expanded authority to establish policy, it was required to consider all prior decisions of the Division of Water Resources, an internal advisory staff of the Board of Conservation and Economic Development. A review of the Division's activities prior to its loss of policy-making authority will demonstrate the potential impact its old decisions could have on the Water Control Board's formulation of policy

During the six years of the Division's ascendancy, it did not enunciate a general statement of water policy. Instead, it chose to combine policy-making with planning activities. The Division emphasized the preparation of plans for various river basins. Only the New River Basin Plan²⁵ was completed and approved by the parent organization, the Board of Conservation and Economic Development. Another basin study, the Potomac-Shenandoah Basin Plan, was completed in preliminary form, but approval by the Board of Conservation and Economic Development was withheld because the State Water Control Board voiced objections concerning water quality control aspects of the plan. However, the agencies reconciled their differences and reexamined the problem according to specified principles prior to the 1972 transfer of planning and

23. See Minutes of meeting between State Water Control Board and Department of Conservation of Economic Development, June 17, 1971.

24. Although the elimination of overlapping authority is a positive accomplishment of the 1972 legislation, some question remains as to whether water policy should be established by a state agency or by the General Assembly itself. Since some legislative provisions establish elements of such a policy and others delegate policymaking responsibility to agencies, it appears that a firm decision has not been reached on this point. It should be noted that no state agency has comprehensive authority with respect to all aspects of water resource use and development. Each agency was originally established with limited responsibilities, and its current organizational structure, operating procedure, and philosophy will continue to reflect the influence of its origins and affect the formulation of its policy. Consequently, it might not be wise to delegate comprehensive policy-making authority to any of these agencies. Since a coordinated policy is needed in order to provide guidance to administrators, it would appear that the General Assembly should formulate such a policy.

25. Division of Water Resources, New River Basin Comprehensive Water Resources Plan, Planning Bulletins 201-206.

policy responsibilities to the Water Control Board. While studies of the James, Rappahannock, York, Tennessee, Big Sandy, Roanoke, and Chowan rivers were in various stages of completion, the transfer was implemented. Several volumes of these studies have been released for review, and only in the case of small coastal river basins does considerable work remain to be completed.

These studies were undertaken for the purpose of preparing development plans for the basins. In the foreword to the New River Basin Study this introductory statement is made: "[T]he Board [of Conservation and Economic Development] has directed the Division of Water Resources to prepare a comprehensive plan for water resources development within the entire State of Virginia."²⁶ Although the announced purpose was the creation of development plans, the Division took the position that the preparation of plans and the formulation of policy are synonymous activities. Furthermore, the Division considered approved river basin plans as interim statements of policy with respect to the basin under consideration. An introductory portion of Volume VI of the New River Basin Study states:

[This volume] contains an interim statement of water resources policy of the State and pertains to the Virginia portions of the New River Basin.

This statement of water resources policy and subsequent revisions thereof will be furnished to appropriate State and Federal agencies and to governing bodies of affected political subdivisions of the Commonwealth.²⁷

Since plans for other basins in the state have not been completed and approved, the New River Basin is the only area of the state for which a formal statement of water policy exists.

The question arises as to whether the merger of planning and policy-making responsibilities comports with the intent of the legislature. Since the 1966 enactment discussed these responsibilities in different provisions, the legislature apparently intended them to be separate.²⁸ Also, generally accepted definitions of the terms "plan" and "policy" are distinct. A plan is a specific course of action whose preparation should be guided by a previously established set of general principles or policies.

26. *Id.* Planning Bulletin 201, at 2.

27. Letter from Carlisle H. Humelsine, Chairman of the Board of Conservation and Economic Development, to Hon. Mills E. Godwin, Jr., Governor of Virginia, April 23, 1968. *Id.* Planning Bulletin 206.

28. Va. Acts of Assembly ch. 561, §§ 10-17.1 to 10-17.3 (1966).

Thus, the plan should be a manifestation and implementation of policy. The prior existence of a statement of policy should provide guidelines for evaluating the options developed by water resources studies, thereby promoting consistent planning. In order to be effective, planning *requires* some guidance from previously accepted concepts. It would have been desirable for these concepts to have been adopted as preliminary elements of a general water policy. Although unwritten policy concepts might have been sufficient to guide planning activities within the Division, early adoption of these concepts as a formal policy statement would have provided guidance in water resource decisions made outside the Division and would have helped prevent inconsistent actions. This preliminary statement then could have been modified and further developed as the need arose.

The manner in which the State Water Control Board will exercise its new policy-making authority is presently a matter of conjecture. However, analysis of the legislative provisions and of past policy-making activities prompt certain observations. It is significant that the legislative sections delegating policy-making authority are essentially unchanged except as to the agency given the responsibility of acting thereunder. Even the personnel of the Division of Water Resources are to be transferred to the State Water Control Board, suggesting that future activities will not differ drastically from past actions. However, the legislation will be interpreted by a new governing board which may take another approach to policy formulation. All the present Board members were appointed at a time when the agency's responsibilities were limited to the area of water quality control. Although policy regarding water quality is an important aspect of a comprehensive policy, the Board's task is now greatly broadened.

Some reconciliation may be necessary between certain elements of existing Board policy and the 1972 legislative guidelines made applicable to policy formulation. For example, the Board's water quality control policy scarcely recognizes flow augmentation as an acceptable method of quality control which may be used separately or in combination with other alternatives. This position may have planning consequences that are inconsistent with the legislative mandate to take into consideration the principle that "[t]he maintenance of stream flows sufficient to support aquatic life and to minimize pollution shall be fostered and encouraged." ²⁹ Although this provision may not require a major alteration

29. VA. CODE ANN. § 62.1-44.36(5), (Cum. Supp. 1972).

of Board policy, its direct applicability to policy formulation by the Board might necessitate some reevaluation of previously accepted concepts.

It is difficult to ascertain whether the Water Control Board will continue to combine policy-making with planning activities, as was the case with the Division of Water Resources. The fact that future procedures are likely to be influenced by past policies would suggest that the combined approach probably will continue. Also, the Water Control Board's present involvement with water quality planning suggests continued emphasis on planning which could perpetuate the combined activity.³⁰

Common Law Water Policy

Any discussion of state water policy would be incomplete without consideration of the common law principles of water rights known as the riparian doctrine.³¹ The state government traditionally has left the determination of individual water rights to the courts where this doctrine has been interpreted and applied. Statutory enactments have imposed additional restraints on certain uses of water and special types of development projects, for example, in the use of assimilative capacity and dam construction. However, the state has not played an active role in the determination of rights relative to consumption and a variety of other water uses. Thus, the "administration" of water rights has in large part been accomplished by the courts of the state and not by administrative agencies created by the legislature.

The riparian doctrine formulates a system of water rights based on the ownership of land bordering on a natural stream or "watercourse", a term generally thought to include all natural channels in which water regularly, although not necessarily continuously, flows.³² The following general statement of the doctrine has been accepted in Virginia:

The well settled general rule on this point is that each riparian proprietor has *ex jure naturae* an equal right to the reasonable use of the water running in a natural course through or by his land for every useful purpose to which it can be applied, whether domestic, agricultural, or manufacturing, providing it continues to run, after

30. Pursuant to VA. CODE ANN. § 62.1-44.15(13) (Cumm. Supp. 1972).

31. For an expanded discussion of this topic see Note, *Public Regulation of Water Quality in Virginia*, 13 WM. & MARY L. REV. 427 (1971); Note, *Private Remedies to Abate Water Pollution in Virginia and New Theories in Environmental Law*, 13 WM. & MARY L. REV. 477 (1971).

32. See *Heninger v. McGinnis*, 131 Va. 70, 76, 108 S.E. 671, 673 (1921).

such use, as it is wont to do, without material diminution or alteration and without pollution; but he cannot diminish its quantity materially or exhaust it (except perhaps for domestic purposes and in the watering of cattle) to the prejudice of the lower proprietors, unless he has acquired a right to do so by grant, prescription or license.³³

The courts generally have upheld the right of the riparian landowner to make any "reasonable" use of water as it flows past his land. "Reasonableness" is a relative rather than an absolute concept, as is illustrated in the following statement: "The reasonableness of the use depends upon the nature and size of the stream, the business or purpose to which it is made subservient, and on the ever-varying circumstances of each particular case. Each case must, therefore, stand upon its own facts, and can be a guide in other cases only as it may illustrate the application of general principles."³⁴ Thus, a water right can be "established" only in the sense that no other riparian owner can maintain a successful legal action against the use. The issue of damages is an important factor in any action at law, as is potential harm in a suit for an injunction. In general, a water use must cause or threaten damages before it will be held to be "unreasonable" and therefore unlawful.³⁵ Since reasonableness is relative to other water uses, it is conceivable that a use considered reasonable at a particular time may become unreasonable at another time due to changes that might occur in other water use.

CONCLUSION

An analysis of the principal sources of Virginia water policy indicates that each contains elements of a comprehensive policy statement but that no single source is adequate. The constitutional policy declaration is a very general philosophical statement that offers little assistance to decision-making at the operational level. Although legislative declarations define desirable goals in water use, they do not provide a complete basis for resolving claims of conflicting uses. Policy-making authority delegated to agencies generally has not been exercised formally. The common law concepts of the riparian doctrine provide general guidelines for adjusting the water rights of individuals, but it contains no pre-

33. *Hite v. Town of Luray*, 175 Va. 218, 225, 8 S.E.2d 369, 372 (1940)

34. *Davis v. Town of Harrisonburg*, 116 Va. 864, 869, 83 S.E. 401, 403 (1914).

35. *See Town of Gordonsville v. Zinn*, 129 Va. 542, 106 S.E. 508 (1921); *Virginia Hot Springs Co. v. Hoover*, 143 Va. 460, 130 S.E. 408 (1925)

edent on which to base decisions involving large-scale water resource developments or the emerging concepts of water conservation based upon aesthetic values.

The logical form for a comprehensive water policy appears to be a statutory enactment. The requirement for detail eliminates the constitution as an effective choice, and the slowly evolving nature of the riparian doctrine disqualifies it as a viable source of future policy. Although water resource agencies and specialists possessing technical expertise should provide the data base for policy formation, it seems especially appropriate that a matter of such vital concern to the citizens of the Commonwealth should be determined by its elected representatives.

The statement of water policy must be made in recognition of the relationships between the various aspects of water conservation and development, and it must manifest this recognition through coordination of existing policy elements. Although adoption of a comprehensive water policy and its implementation by responsible management surely will not eliminate all water resource problems, it will facilitate sound planning and direct attention beyond short term remedies for immediate problems in order to provide long range solutions to the most serious ones.