

**Abstract for Symposium: Designating Attainable Uses for the Nation's Waters
June 3-4, 2002**

Title: Georgia's Failure to Protect Existing and Designated Uses – A Case Study

By: David W. Sligh, American Rivers Southeast Representative

This case study shows a State's failures to properly protect stream uses. Georgia's regulatory agency was required to ensure compliance with the State's Water Quality Standards before issuing a 401 certification for a proposed dam and reservoir. Georgia officials blatantly ignored state and federal legal requirements. These failures are symptomatic of ones observed and documented in many other states and must be addressed through: 1) strengthened EPA oversight of individual state regulatory programs, Standards development, and implementation; 2) EPA guidance which specifically addresses these instances where States abdicate their responsibilities; and, 3) possibly, proposed changes to federal regulations to close "loopholes" used to avoid complete and faithful implementation of the Clean Water Act's intent.

Georgia's Failures

Designated Uses – Though acknowledging that destruction of over 17 miles of stream habitat, elimination of many native species, disruption of materials and species movements through the watershed, and elimination of human uses protected under the designated use category would occur, Georgia asserted that the designated uses of affected water bodies would not be impaired. The designated use for these streams is "fishing," which is defined in Georgia regulations as "Propagation of Fish, Shellfish, Game and Other Aquatic Life; secondary contact recreation in and on the water; or for other use requiring water of a lower quality." Georgia ruled that this designated use was met as long as fishing would be possible in the reservoir that would drown the existing streams. They asserted that the presence of any fish in the altered system was sufficient to uphold this designated use and argued that protection and maintenance of native species and of the ecosystem's overall biological integrity were irrelevant to implementation of their designated use category.

Existing Uses – Far from protecting existing uses in the streams to be altered in this case, Georgia regulators, in fact, failed to even acknowledge the true definition of an "existing use," under their Water Quality Standards or under federal regulations. As in 40 CFR 131.3(e), Georgia's definition of "existing uses" includes those uses "actually attained in the waterbody on or after November 28, 1975." In this Georgia case, officials repeatedly asserted that the use-designations defined in their standards for the streams studied were synonymous with the "existing uses." Not one of the Georgia regulators involved in this case, at any time, cited or appeared familiar with the explicit definition for "existing instream water uses" contained in their own Standards and none of these officials would acknowledge that the definition in 40 CFR is much broader than their designated uses, even though the federal regulation explicitly states that uses actually attained are "existing, . . . whether or not they are included in the water quality standards."

Because of their fatally flawed interpretation of the term “existing uses,” Georgia officials refused to investigate to see what uses actually had been attained in the streams. Even worse, they dismissed sworn affidavits, testimony, photographs, and other documentary evidence of existing uses provided by a range of citizens and scientists with long and unquestioned familiarity with these streams.