

Statutory Authority for Regulating Interbasin Transfers

Part 2A. Registration of Water Withdrawals and Transfers; Regulation of Surface Water Transfers.

§ 143-215.22G. Definitions.

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part.

(1) "River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub- basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.

- a. 1-1 Broad River.
- b. 2-1 Haw River.
- c. 2-2 Deep River.
- d. 2-3 Cape Fear River.
- e. 2-4 South River.
- f. 2-5 Northeast Cape Fear River.
- g. 2-6 New River.
- h. 3-1 Catawba River.
- i. 3-2 South Fork Catawba River.
- j. 4-1 Chowan River.
- k. 4-2 Meherrin River.
- l. 5-1 Nolichucky River.
- m. 5-2 French Broad River.
- n. 5-3 Pigeon River.
- o. 6-1 Hiwassee River.
- p. 7-1 Little Tennessee River.
- q. 7-2 Tuskasegee (Tuckasegee) River.
- r. 8-1 Savannah River.
- s. 9-1 Lumber River.
- t. 9-2 Big Shoe Heel Creek.
- u. 9-3 Waccamaw River.
- v. 9-4 Shallotte River.
- w. 10-1 Neuse River.
- x. 10-2 Contentnea Creek.
- y. 10-3 Trent River.
- z. 11-1 New River.
- aa. 12-1 Albemarle Sound.
- bb. 13-1 Ocoee River.
- cc. 14-1 Roanoke River.
- dd. 15-1 Tar River.
- ee. 15-2 Fishing Creek.
- ff. 15-3 Pamlico River and Sound.

- gg. 16-1 Watauga River.
- hh. 17-1 White Oak River.
- ii. 18-1 Yadkin (Yadkin-Pee Dee) River.
- jj. 18-2 South Yadkin River.
- kk. 18-3 Uwharrie River.
- ll. 18-4 Rocky River.

(2) "Surface water" means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.

(3) "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1), the following are not transfers under this Part:

- a. The discharge of water upstream from the point where it is withdrawn.
- b. The discharge of water downstream from the point where it is withdrawn. (1991, c. 712, s. 1; 1993, c. 348, s. 1; 1997-443, s. 15.48(b).)

§ 143-215.22H. (V2)(Effective March 1, 2000) Registration of water withdrawals and transfers required.

(a) Any person who withdraws 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

- (1) The maximum daily amount of the water withdrawal or transfer expressed in thousands of gallons per day.
 - (1a) The monthly average withdrawal or transfer expressed in thousands of gallons per day.
 - (2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.
 - (3) The monthly average discharge expressed in thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products.

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at five-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the late registration fee established under this section in the event that updated information is not submitted

as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143- 215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars (\$5.00) per day for each day the registration is late up to a maximum of five hundred dollars (\$500.00). A person who is required to update a registration under this section and fails to do so shall pay a fee of five dollars (\$5.00) per day for each day the updated information is late up to a maximum of five hundred dollars (\$500.00). A late registration fee shall not be charged to a farmer who submits a registration that pertains to farming operations. (1991, c. 712, s. 1; 1993, c. 344, s. 1; c. 553, s. 81; 1998-168, s. 3.)

§ 143-215.22I. Regulation of surface water transfers.

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

(1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.

(2) A description of the proposed uses of the water to be transferred.

(3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.

(4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.

(3) By giving notice by first-class mail to each of the following:

a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.

b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.

c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.

d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.

e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

(1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation. Local water supply plans that affect the source major river basin shall be used to evaluate the projected future municipal water needs in the source major river basin.

(2a) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the application for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan that has been submitted to the Department in accordance with G.S. 143-355(1).

(3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.

(4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.

(5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(f1) An environmental assessment as defined by G.S. 113A- 9(1) shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes.

(g) A certificate shall be granted for a water transfer if the applicant establishes and the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that: (i) the benefits of the proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are

necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall include a drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment and Natural Resources shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment and Natural Resources approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment and Natural Resources based on demonstrated need as set forth in this subsection.

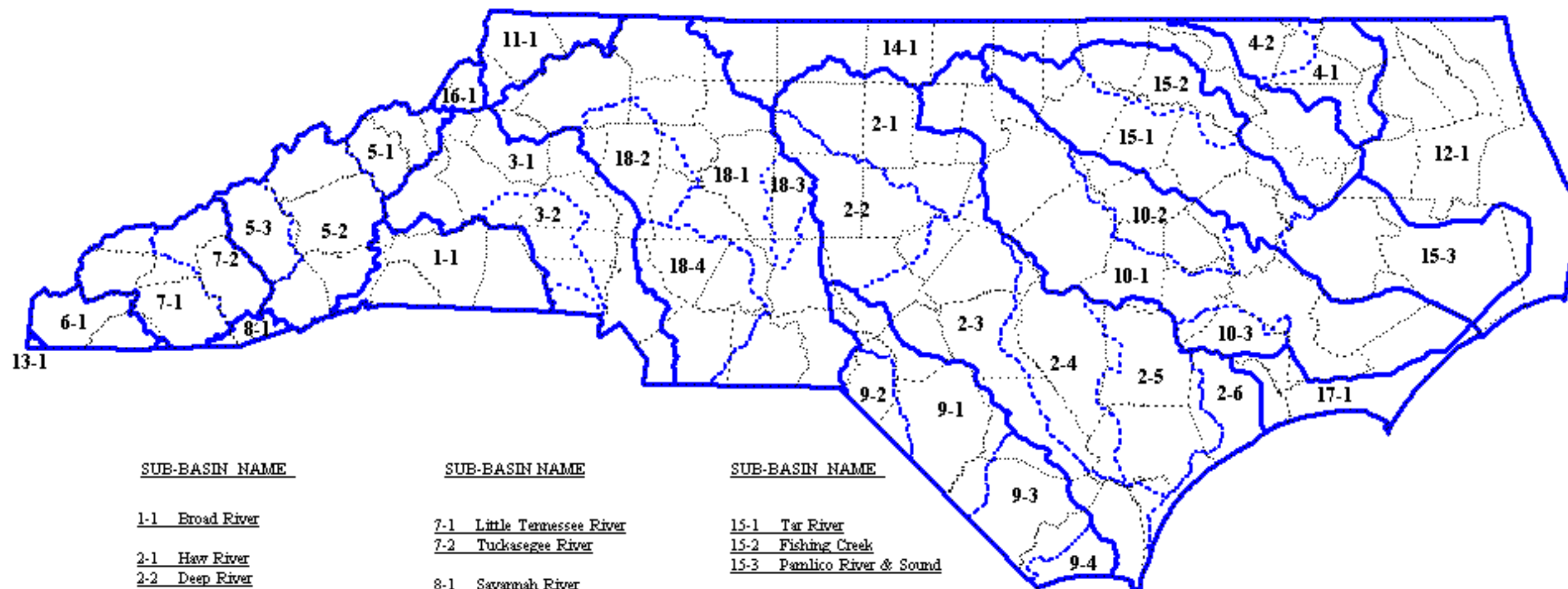
(k) The substantive restrictions and conditions upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government.

(l) When any transfer for which a certificate was issued under this section equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S. 143-355(l). When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(m) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto. (1993, c. 348, s. 1; 1997-443, ss. 11A.119(a), 15.48(c); 1997-524, s. 1; 1998-168, s. 4.)

Major River Basins & Sub-Basins in North Carolina

As defined in G.S. 143-215.22G



SUB-BASIN NAME

- 1-1 Broad River
- 2-1 Haw River
- 2-2 Deep River
- 2-3 Cape Fear River
- 2-4 South River
- 2-5 Northeast Cape Fear River
- 2-6 New River
- 3-1 Catawba River
- 3-2 South Fork Catawba River
- 4-1 Chowan River
- 4-2 Meherrin River
- 5-1 Nolichucky River
- 5-2 French Broad River
- 5-3 Pigeon River
- 6-1 Hivasssee River

SUB-BASIN NAME

- 7-1 Little Tennessee River
- 7-2 Tuckasegee River
- 8-1 Savannah River
- 9-1 Lumber River
- 9-2 Big Shoe Heel Creek
- 9-3 Waccamaw River
- 9-4 Shallotte River
- 10-1 Neuse River
- 10-2 Contentnea Creek
- 10-3 Trent River
- 11-1 New River
- 12-1 Albemarle Sound
- 13-1 Ocoee River
- 14-1 Roanoke River

SUB-BASIN NAME

- 15-1 Tar River
- 15-2 Fishing Creek
- 15-3 Pamlico River & Sound
- 16-1 Watauga River
- 17-1 White Oak River
- 18-1 Yadkin River
- 18-2 South Yadkin River
- 18-3 Uwharrie River
- 18-4 Rocky River

Legend

- Major River Basin Boundary
- Sub-Basin Boundary
- County Boundary

North Carolina Department of
Environment and Natural Resources
DIVISION OF WATER RESOURCES
919-733-4064