

## Summary of Water Allocation Committee Meeting

July 13, 2005, 10:00 AM  
Conference Room #3, 14<sup>th</sup> Floor, Archdale Building  
Raleigh, NC

### Committee Members Present

Leo Green Jr, Chair  
David Moreau  
Kenny Waldroup

### Information Items

#### I. Goose Creek Condition of Charlotte-Mecklenburg Interbasin Transfer Certificate

**Tom Fransen** of the Division of Water Resources (DWR) gave an update on a point from the May meeting. The Water Allocation Committee (WAC) had previously asked who is responsible for enforcement of an interbasin transfer (IBT). Mr. Fransen explained that the Environmental Management Commission (EMC) is responsible for issuing certificates and the Department of Environment and Natural Resources (DENR) is responsible for enforcement.

He also stated that there have been communications from both the Southern Environmental Law Center and the US Fish and Wildlife Service (USFWS) raising questions as to whether the Charlotte-Mecklenburg Utilities (CMU) IBT certificate had been violated by new transfer water lines being placed across the Goose Creek basin lines, and whether a proposed mall in the basin might cause violations. The Division came to the conclusion that there was no violation with regard to putting new transfer lines into the Goose Creek basin.

**Mr. Fransen** stated that relative to condition #3 in the IBT certificate, DWR staff tends to conclude that best action is to reopen the certificate under condition #4 of the certificate. The reason for reopening the certificate is that originally, condition #3 was meant to be a temporary condition to be in effect while the environmental work was being done on a 3-County reclamation facility. This facility was never eventually built. There is a need to make condition #3 reflect current conditions. He said that the plan would be to create a record for the reopening and present that to the WAC in the next meeting.

**Dr. Moreau** asked about the options to be considered if the certificate is to be reopened.

Mr. Fransen replied that his idea is that only condition #3 would be considered in the reopening process and that the State Environmental Policy Act would apply, so that either an environmental assessment (EA) or an environmental impact statement (EIS) would be required. He stated that reopening the certificate would not have the intent of either trying to stop or help enhance the development of the mall, but rather to bring certainty relative to the conditions of the certificate.

**Mr. Waldroup** asked had there been discussion with the certificate holder. Mr. Fransen replied that there have been conversations, but no detailed discussion with the holder, with the idea to first get a sense from the WAC if this is a good direction.

Dr. Moreau asked about the timetable for construction of the mall that may render the reopening moot. He also asked what else is being done to protect the endangered species under the Endangered Species Act (ESA).

**Marc Bernstein** of the Attorney General's Office replied that with regard to the ESA, that though the commission could possibly be liable for violating the ESA if they sanction this type of development, whether the actions of the state under the IBT would result in the taking of an endangered species is not clear, and the State would be several steps removed from the taking of the species.

**Mr. John Morris** of DWR said that the mall would require a 404 permit from the Army Corps of Engineers and a 401 permit from DENR. The USFWS plays a part in the process for those permits, which must be obtained before the mall can built.

Dr. Moreau asked what else is DENR doing about this issue.

Mr. Morris said that the Division of Water Quality is working on a set of standards required to protect the mussel, taking into account the USFWS recommendations.

Dr. Moreau asked about the scale of the development being proposed relative to the size of the Goose Creek basin.

Mr. Morris said that originally the idea was that the impacts to the basin would have been handled under the environmental review process of the 3-County plant that was never built. Therefore, as the facts have changed drastically, DWR recommends reopening the certificate to readjust for the current facts.

Dr. Moreau expressed concern that DENR and the State act in unison and in a coordinated way relative to what is to be done to satisfy the ESA, and that the proposed actions will have a profound affect on the species.

It was decided that more information was required so that a decision could be made on whether to reopen the certificate.

### **Action Items**

- I. House Bill 1215 Water Conservation and Reuse** - Decision to take to EMC for approval to hold public hearing for draft Water Conservation Rule required by HB1215.

**Linwood Peele** of DWR said that the draft rule has been redrafted twice since October 04 based on feedback from the WAC. The most recent draft rule included a number of alternatives from which the committee could choose the preferred one. Mr. Peele asked for the committee's input on the latest draft.

**Mr. Green** said that it is necessary to state in the rule that the use of reclaimed water is not affected by the rule. It could be covered by a general statement in the preamble to cover the entire rule.

A number of minor corrections were suggested.

Mr. Morris recommended approval by the committee to request permission from the EMC to take the rule to public hearing.

It was decided that the suggested corrections would be made, and the committee agreed to proceed to request permission from the EMC in September.

### **More Discussion on the Information Item**

It was clarified that DWR staff would have to create a written record as a basis before recommending to the EMC to reopen the certificate.

Dr. Moreau asked would a public hearing be required in the reopening process.

Mr. Bernstein replied he did not think a hearing would be necessary but that he recommends consulting with EMC counsel on the question.

Mr. Frank Crawley, EMC counsel said that he feels whether a hearing is required is an initial decision for the WAC, and that changes to the certificate may require public hearings.

Dr. Moreau mentioned it is possible to bring the question of reopening the certificate to the WAC in September to be voted on whether to have the EMC consider the matter also in September.