

## Summary of Water Allocation Committee Meeting

Oct. 12, 2005, 10:00 AM  
Conference Room #3, 14<sup>th</sup> Floor, Archdale Building  
Raleigh, NC

### Committee Members Present

Leo Green Jr, Chair  
John Gessaman  
David Moreau  
Dickson Phillips, III  
Charles Wakild  
Kenny Waldroup  
Steven D. Weber  
Forrest R. Westall, Sr

**Chairman Green** welcomed new members to the committee and gave a brief overview of the types of issues that have come before the committee for decisions. He said that DWR staff will give a more detailed summary of Water Allocation Committee (WAC) issues in the next meeting.

Two items were added to the agenda; one point on HB 1215 and another on the Concord Kannapolis Interbasin Transfer.

**Frank Crawley** of the Attorney General's office stated that the manner in which members of the Commission should interact with members of staff is affected by an item on the agenda of the Thursday meeting of the Environmental Management Commission related to the request by the Southern Environmental Law Center for a declaratory ruling on the Charlotte Mecklenburg (CMU) Interbasin Transfer (IBT) Certificate. He said the merits of the request should not be discussed, but that facts related to the CMU IBT may be discussed.

### Information Item

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

**David Moreau** recused himself from participating in the discussion on this agenda point.

**Tom Fransen** reviewed the history of Condition #3 of the certificate. He said that in the July meeting, the committee had asked staff to investigate the options for reopening the certificate, and the committee had expressed concern that whatever action is taken, it be in line with other ongoing initiatives with the intent to protect the Carolina Heelsplitter mussel. The goal is to provide the certificate holders with an understanding of how they can provide water services to the areas that lie in Goose Creek while at the same time, providing protection for the Heelsplitter mussel.

Meetings have taken place between the certificate holders and state agencies. These meetings have been led by Robin Smith of the Department of Environment and Natural Resources (DENR). The group has set a deadline of the date of the January WAC meeting to bring a final recommendation on reopening the certificate.

If the certificate is to be reopened and significantly changed, the process would have to follow the State Environmental Policy Act (SEPA), requiring either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) to be prepared in the process.

A number of maps have been generated which present pertinent data related to the Goose Creek watershed. Some of these maps were presented to the committee. **Mr. Fransen** pointed out that the IBT certificate only applies to Mecklenburg County, whereas the actual mussel habitat lies almost entirely in Union County.

**Chairman Green** informed that the declaratory ruling request that was to be heard by the EMC in October had just been removed from the agenda. He asked Mr. Crawley to advise the committee regarding what type of information it can request from staff in the interim period before the declaratory ruling request is heard by the EMC. Mr. Crawley responded that the declaratory ruling request would possibly be on the November EMC agenda, and so is still an active item. He informed that the committee could still ask for factual information related to the matter, but should not participate in discussion on the merits of the request.

## **Action Item**

### **I. HB 1215 Draft Water Conservation Rule**

**Linwood Peele** of the Division of Water Resources requested that a change to the wording of the draft rule. He passed out a handout which was a request for minor changes to the rule before it goes to public hearing. This minor change only changes the wording, and it doesn't change the meaning or intent of the rule.

**Mr. Peele** gave an overview of the House Bill 1215. As one of the responses of the past drought leading to 2002, the NC General Assembly passed House Bill 1215 Session Law 2002-167 during the 2002 legislative session. Section 3 of the HB 1215 requires the Environmental Management Commission to develop and implement rules governing water conservation and water reuse during drought and other water emergencies. The rule shall establish minimum standards and practices for water conservation and water reuse for the following classes of water use: publicly and privately owned water supply systems, state agencies, units of local governments and business and industrial users, agricultural and horticultural users. The purpose of this rule is to minimize harmful impacts of drought and water supply emergencies on public health and safety, environmental quality and the economy by establishing minimum standards and practices for water shortage response planning, water use reporting, water conservation, water reuse during droughts and all other types of water supply emergencies. The EMC is required to consult with representative of water users and environmental protections and natural resources advocacy groups. An advisory committee was created representing all types of water users. Stakeholders of all the types of water users began developing the rule. In the process of developing the administrative rule, DWR also developed a website to receive input on the rule. The draft rule can be obtained at [www.ncwater.org](http://www.ncwater.org) and it is located at the very top right corner of the website. The website also has background information on HB 1215 and has a message board that you can read the input from the public commenters. Now we are asking permission to take the draft rule to public hearing. The handout was brought to our attention that some of the wording could be construed or misinterpreted so changes are being requested before it goes to public hearing so those potential misinterpretations will not happen. At the bottom of the letter,

the proposed change is to change “water systems that withdraw water from” to “water systems that depends on the storage of”.

**Mr. Green** mentioned that the change could be made after public hearing if need be. He had a concern that the wording classifies the systems that depend on the storage of a private or public impoundment. This does not address systems that have run-of-river intakes.

**Mr. Peele** replied that the wording change came about because of a system whose intake is upstream of an impoundment, but during wet periods, the impoundment “backs up” to the intake giving the appearance that the intake is from the impoundment.

The city in question is the City of Salisbury has an intake upstream of Alcoa. Their concern is that they would have to coordinate with the owner of the reservoir during drought even though they are not part of the reservoir.

**Mr. Westall** added that the proposed wording would also apply to systems that have contracts for water supply storage from a reservoir but do not currently use the source. **Mr. Peele** added that it would also apply to systems downstream of impoundments that depend on releases from the impoundment for their water supply.

**Mr. Phillips** added that the word “depend” might be overly limiting and that another word might better be chosen.

**Mr. Green** stated that there will be ample opportunity to rework the wording in the review process.

The motion was made to accept the proposed language, and that the matter should proceed to the EMC for a decision the next day. The motion passed.

## **Information Item**

### **II. Concord/Kannapolis Interbasin Transfer**

**Phil Fragapane** of NCDWR summarized the standing request for an interbasin transfer by the cities of Concord and Kannapolis. The environmental impact statement (EIS) and the petition for the transfer were reviewed by agencies of the Department of Environment and Natural Resources. After the EIS was revised, the EMC gave approval for public hearings to be held to receive public comment on the EIS and petition. The hearings were held on June 22-23, 2005 at UNC-Charlotte and the Town of Albemarle. The public comment period ended on August 11, 2005.

**Mr. Fragapane** summarized the public comments that were received. About 60 issues were raised that must be addressed. There were three recurring comments received:

- 1) The IBT request should be considered only AFTER completion of the ongoing studies taking place due to the Federal Energy Regulatory Commission relicensing of hydropower projects in both the Catawba and Yadkin River Basins.
- 2) 2002 drought information was not included in the impact analysis presented in the EIS, and

- 3) Impacts on impoundments were not adequately addressed in the EIS, specifically in the Catawba River Basin. Impacts on Lake James were mentioned a number of times in the public comments.

The next steps are that staff must work with the applicant's consultant to address all comments, and to finalize the EIS. The finalized EIS and petition would then be publicly reviewed again which requires a 30-day review period. Subsequently, the hearing officer's report would be prepared. When all of those materials are available, the EMC would then be able to consider the matter for a decision. The timeline for these events is not yet clear as it is not known how long it will take to address the public comments received.

The original idea was that the EMC would see the matter in January 2006, but it is not yet clear if that will be possible.

**Mr. Green** said that he had been asked about the notification for the hearing, specifically if they were adequately notified.

**Mr. Fragapane** said that the public was notified of the hearing according to the Interbasin Transfer Statute. The statute requires that the following be notified:

- 1) North Carolina Register
- 2) A newspaper of general circulation in the area of the river basin downstream of the withdrawal point
- 3) By first-class mail to:
  - a. Anyone who holds a registered withdrawal or transfer from the source basin
  - b. Anyone who holds a current IBT certificate from the source basin
  - c. Anyone who has a National Pollutant Discharge Elimination System (NPDES) permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the transfer,
  - d. The board county Commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer, and
  - e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

**Mr. Fragapane** said that the hearings were noticed in the North Carolina Register on May 16, 2005, in the Charlotte Observer on May 23, 2005. Also, 276 parties in the Catawba and Yadkin were notified by mail, not only those downstream of the withdrawal points, but rather all parties in either basin. Notice was also placed on the Division's website on May 10, and in the Water Allocation Committee on May 11.

**Mr. Green** asked that the list of 276 names be provided to him and **Kenny Waldroup**, the hearing officers.

**Dr. Moreau** suggested that a list of relevant non-governmental organizations be prepared and notified for future notifications.

**Dr. Moreau** asked is the matter still open for comment.

**Mr. Fragapane** replied that there will be another public comment period for the finalized EIS. It will be a State Clearinghouse review, which includes the public.