

Water Allocation Committee Meeting Summary

512 N. Salisbury Street
Archdale Building
Raleigh, NC
Ground Floor Hearing Room

10:00 AM
Wednesday, March 8, 2006

Chairman Green calls the meeting to order with Executive Order No. One, stating no conflict of interest should be present during the Committee Meeting and anyone present aware of such a conflict of interest or the appearance of a conflict of interest state so at this time.

Chairman Green states there are a couple of additions to the meeting's agenda. First, **Tom Fransen** (NCDWR) will give some information on current drought conditions and statistics. Second, **Nat Wilson** (NCDWR) would like to give an update on the LR COG, EMC and DWR agreement. Each will be placed on the agenda as information items only.

Robin Smith (NCDENR) is announced by **Chairman Green** and gives the Committee a status report on the issue of the Goose Creek Condition of the Charlotte-Mecklenburg IBT. She reminds the Committee of the January Meeting with the Water Allocation Committee and how the Department interpreted the interbasin transfer condition which limits new water supply from the expanded IBT into the Goose Creek sub-basin because of the unresolved endangered species issue.

The Department's intention was to meet with CMU and the Town of Mint Hill to see if there have been new developments in the planning and development process for the Town of Mint Hill, and the difficulty they were facing in telling them that there would be no additional water from CMU for these particular development plans. **Robin Smith** goes on to say that the Department's interpretations of the certificate were different from the assumptions under which CMU was obviously operating under. This evoked concerns that CMU might have made commitments to some new development projects, so some of these may have continued with their development plans assuming that a water supply would be available where there might not be.

At the meeting with the Town of Mint Hill and CMU during the first week of February everyone involved reviewed the pending development projects in the Town of Mint Hill. There are nine (9) such projects, eight (8) are sub-divisions and one (1) is the proposed mall. The Department concluded that there was one subdivision in the Goose Creek water shed which had progressed to the point where the Department needed to make some provisions for them to be provided a water supply. They found out later that there were also development plans for a subdivision in the Duck Creek water shed in which it was decided they should be provided with a water supply from CMU as well. These plans were not shown at the January WAC Meeting for the representatives of Mint Hill only brought to the meeting with them information and maps of the Goose Creek water shed.

Robin Smith tells the Water Allocation Committee of an ongoing project which CMU has begun: CMU is using GIS to locate all of their customers in the different river basins and calculating how much water is being sold and how much water was being sold in one river basin compared to another, based on the sales figures and geo-location of the customers. For the time being, until there are new numbers from CMU that there is additional water available from the grandfathered amount of the IBT, or until there is a change on that certificate condition that limits service to the Goose Creek sub-basin, these two new subdivision projects are the only new projects that can go ahead with their plans with the expectation of water service from CMU.

There were other categories of water expansion that was spoken of in the meetings with CMU and the Town of Mint Hill. The IBT Certificate already allows extension of existing CMU water lines, but it is necessary to address the water quality with existing water supply wells. There is a case of a particular subdivision whose inhabitants used private wells and where there was a bacterial contamination issue in

those wells, so most of those property owners had petitioned CMU, some of which had already paid deposits to CMU for extension of a water line to serve those existing homes. This example is a condition which is allowed under the current IBT Certificate conditions. The last category is if there is an existing line and an existing home built with a private water well and simply wants to tap onto an existing line that is also permissible under the Certificate. So CMU can serve existing lines connected to existing wells, though they cannot build new water lines or serve new developments in the Goose Creek sub-basin under the current Certificate conditions.

The Department and the agencies held meetings at Mint Hill the week previous on mitigation programs, an attempt to reach agreement for a mitigation plan to protect endangered species. At this meeting was Robin Smith, representatives of U.S. Fish and Wildlife Services and Wildlife Resources Commission. The Town of Mint Hill a year and a half previously proposed to adopt a low impact stormwater ordinance in an effort to protect the endangered mussel. The Wildlife Agencies were not satisfied with this ordinance earlier on and negotiations had broke off because the Town of Mint Hill was not willing to put in place the 200 foot buffers on all perennial streams, as the Wildlife Agencies were asking. The wildlife agencies were not willing to lower the 200 foot buffers requirement. When they met the week prior to the Water Allocation Committee Meeting, they wanted to try and start the meeting at that point in negotiations when no decision had been met. **Robin Smith** brought along with them to this meeting the proposed DWW Universal Storm Water Rules. The idea was: "Here's one approach to managing storm water and dealing with methods to protect different aquatic species; why don't we look at this to see how the Town of Mint Hill's Storm Water Ordinance compares." Robin states that there is a favorable comparison, although they would like to see more clarification in the Mint Hill ordinance, and though it was a very productive conversation there were no decisions reached. The Wildlife Resources Commission would like to go back and look at more information about where in the Goose Creek sub-basin there might still be a potential for broader buffer areas. The Wildlife Agencies would like to look at the facts for the Goose Creek sub-basin and also to look at the Departments assessment for of Mint Hill's low-impact Storm Water Ordinance and the level of protection it could possibly provide for threatened and endangered species. **Robin Smith** concludes that she is expecting another meeting with the same folks very soon.

Dickson Phillips asks if there are buffers specified in the Mint Hill Ordinance.

Robin Smith continues that yes, buffers are provided in the Mint Hill Ordinance. Mint Hill is in Mecklenburg County so the starting point for Mint Hill is Charlotte/Mecklenburg's existing Water Quality Buffer Program. The buffers vary depending on drainage areas, up to 100 feet for areas with FEMA designated flood plain, along with stormwater development. The low impact portion of Mint Hill's ordinance goes beyond what Charlotte/Mecklenburg has already had in place, though they are consistent with CMU.

Dickson Phillips asks if the Duck Creek sub-basin is less threatened then the Goose Creek sub-basin, since the committee hasn't heard very much about Duck Creek.

Robin Smith says that when she mentioned the grandfathered amount, it attributes namely to Goose Creek, there is much more pressure to develop in Goose Creek than in the Duck Creek water basin.

David Moreau addresses **Robin Smith** with his concerns on the negotiations on buffers. He asks what steps are needed to resolve this issue? If there is a negotiated short term plan, but Chairman Green is not positive that a short term solution would hold out. He states that there needs to be set in motion some sort of process to end negotiations. His main question to **Robin Smith** is: "Does this Commission need to take action to resolve this issue, and if so, what sort of action do they need to take?"

Robin Smith addresses the concern about the renewed negotiations stating that NCDENR has told the local agencies and Wildlife Agencies involved to go ahead with renewed negotiations, but to do it on a short time frame. The Department would like to see a mitigation program within two to three months. She states that these discussions have been going on for quite a time to reach agreement on a mitigation program, without success. With the time limit in place, NCDENR will make a decision as to whether the Town of Mint Hill and CMU have proposed an adequate mitigation program in order to have the

moratorium on the IBT certificate to be lifted. **Robin Smith** states that they have also told the Wildlife Agencies that although the department would like their support but that DENR will make the decision with or without their agreement. The Department believes there is room to reach agreement on a mitigation program over a relatively short period of time. At the end of that time, if there is an adequate proposal from the town, it could very well have the potential for the Water Allocation Committee to modify the condition on the IBT Certificate.

A committee member states, "Shouldn't we consider ourselves obliged to make sure that this endangered species habitat is not destroyed?"

Robin Smith states that a purpose of the IBT Certificate is to mitigate the second hand effects the interbasin transfer would impact. The question the Department poses is are they sufficiently managing the growth which the interbasin transfer would inevitably promote; highway projects and so forth and the future impacts that growth and development would have upon the mussel habitat. She states that the Town of Mint Hill is willing to put in place a significant storm water ordinance, and that the Town knows that it is a priority to resolve this issue.

David Moreau asks if DWQ should take a look at the area of mussel habitat and look to protection outside the immediate area of the Goose Creek sub-basin, like Union County area?

Robin Smith states that the EMC and DWQ work under a requirement, and that work is already under way with DWR and the U.S. Fish and Wildlife Agency with input towards a technical document which will become the basis for recommendation for strategy with protection of the mussel habitat and will then be given to the EMC.

John Morris reminds the committee of DWQ's being mandated to develop a site specific Water Quality plan targeted at protecting the Carolina Heelsplitter, which includes areas of Mecklenburg County and Union County, the Goose Creek and Duck Creek sub-basins.

David Moreau states that there is a two year process for rule making and that this issue needs to be resolved now, that there is not the option to wait on this; with the development interests on one hand wanting answers and the Carolina Heelsplitter on the other hand wanting to be protected.

Charles Wakild applauds the Departments for its efforts in demanding the short time frame for resolution of this matter and stepping up to make these decisions. He states that he believes that DENR are on the right track.

Robin Smith concludes that with all of these agencies working together to resolve this issues it should provide a broader strategy to put in place.

Linwood Peele (DWR) gives the Committee a summary of the status of the House Bill 1215 Water Conservation Rules. He begins by stating how the EMC had developed a rule for water supply emergencies, House Bill 1215. The goal of this rule is to minimize harmful impacts on public health and safety and environmental quality by establishing minimum standards and practices in dealing with water shortages. **Mr. Peele** tells the Water Allocation Committee that there have been three public hearings held about the House Bill 1215 Water Conservation Rule, in Lexington, Goldsboro and Asheville. One hundred and eighty seven (187) people attended these public hearings with fifty three (53) commenting on the rule. He states that DWR is currently dictating six (6) hours of hearing. An additional forty two (42) public comments have been adding through people calling the Division and also submitted via email. The Division of Water Resources is currently coming up with possible rule changes due to the average of one hundred (100) public comments provided. Of some of these comments provided were:

- * Problems and issues with annual and electronic reporting
- * Water Shortage Response Plans in general
 - default plans of WSRP's

- rules should be stricter when a drought is prevalent
- state should stay out of WSRP's, they should be governed locally

among many more comments.

Linwood Peele tells the committee that they are busy compiling all of the public comments in order to come up with a draft report to be reviewed by the Water Allocation Committee and to the EMC, then the draft report should go on to the Rules and Reviews Commission and finally onto Legislation.

Dr. Moraeu states that with **Linwood's** timeline, there are thirty days that are not needed, that the hearing officer will report directly to the EMC and not to the committees.

Phil Fragapane (DWR) gives the Committee and update on the Concord Kannapolis IBT. **Mr. Fragapane** states that since the last Water Allocation Committee meeting, the Division of Water Resources staff have worked with EIS consultants and hearing officers to revise the EIS. The Environmental Impact Statement is under revision as of this meeting, with the Catawba and Yadkin modeling completed. The Catawba modeling work, which was being worked on since the last Water Allocation Committee Meeting is now incorporated into the final Environmental Impact Statement. The Yadkin Model, which belongs to Alcoa, has certain confidentiality issues which are being reviewed and should be incorporated into the final EIS shortly. This issue has been discussed with the hearing officers and the review of the Final EIS is near. The Hearing Officers will be next in line for the review, and then the EIS will be available for the Water Allocation Committee's review, which it should be in the members of the Water Allocation Committee's hands thirty (30) days before the next Water Allocation Committee Meeting, due in May, 2006. If the Water Allocation Committee agrees to the EIS being ready, there will be a public review notification, which shall be more stringent than last time as some agencies had complained of not being notified of public hearings pertaining to the Concord Kannapolis IBT. The minimum required period for public review is 30 days. However, the committee has mentioned a 60-day public review period previously and that is the plan. Once there is the public review, then the matter will go to the EMC.

Dr. Moreau poses a procedural question. The EIS includes an estimate of the effect of the IBT, but is there anything in the EIS which would include conditions that might be attached to the permit? The Water Allocation Committee has not seen any part of the analysis, so they do not know what conditions might be attached. Would they be subject to more public hearings?

Phil Fragapane states that as part of the grand review, if there *are* conditions, that those can be included and distributed to the public as suggestive conditions.

David Moreau says that a hearing officer will probably have to come back to the Committee with any recommendations about conditions. The Committee hasn't had a chance to discuss conditions and Dr. Moreau is concerned with how the Committee will deal with such conditions upon arrival.

Tom Fransen states that this is not a rule making process so if it does come back to the Committee. After conditions have been discussed and included into the analysis and any mitigation plans due to be incorporated into the analysis will be put to review to the hearing officers. Any additional conditions will be part of the Hearing Officers report.

Dr. Moreau wonders if after the conditions are added into the analysis by the Hearing Officers and are in their reports, if they come back to the Water Allocation Committee for review and approval; before they are sent out to the public for public review.

Kenny Waldroup states that if there are additional conditions up for review they will be reviewed by the Committee and they can then decide if additional public hearings are necessary.

John Morris states that this is indeed a complicated issue. He states that neither the Committee Members nor the Hearing Officers have heard the results of the EIS which is why the Water Allocation Committee had asked for the thirty (30) day review period before they start notice of the sixty (60) day period after. **Mr. Morris** suggests that during those thirty days the WAC meet with the Hearing Officers to discuss the impacts of the proposed project and see if they can reach a consensus of proposed conditions for

the Certificate. This way those proposed conditions can go out to public hearing along with the EIS. He states they all know there will be intense public scrutiny on the final EIS and that is why they are working to make certain that the final EIS is exceedingly accurate, thorough and understandable. The public wants to know and deserves to know what direction the Committee is headed in so that they can take that into account on their public comments. At the end of the sixty days for public review, they will have public comments which will show flaws in that analysis and what might have been left out in the final EIS, and will also show more proposed conditions, which will allow the Commission to make a decision on the matter.

Tom Fransen states that March 28th is the next Drought Management Council Meeting. **Mr. Fransen** starts by stating how odd it is for them to bring up drought issues to the Water Allocation Committee this time of the year. He brings in a map of the National Drought Monitor and a map of the GIS drought monitoring. So far, most of the eastern part of N.C. is below the fifth percentile, though there is not enough impact to go into a more severe definition of drought beyond 'moderate' at this time. There have been additional statistics, which show that 20% of North Carolina's population is enforced with some sort of water restrictions, Raleigh has been under mandatory water restrictions since November. The U.S. Army Corps of Engineers say that Falls Lake's water levels are 60% of normal for this time of year. There have also been quite a higher number of wildfires, over 500 for the month of March. March is way below normal, and as Tom states, the saying goes, dry spring, dry summer. Tom Fransen tells the Committee that the N.C. Drought Management Council will be meeting the end of this month, March the 28th, in order to get some experts together to come up with another 'dry advisory'. Tom Fransen goes on to say that since Fall, there have been many conversations with officials about what's happening with their lakes and there's a broad spectrum of what people are concerned with over the drought's impact upon these lakes in N.C. such as water quality issues and lake management issues. The N.C. Drought Management Council provides updated informational feedback to the National Drought Monitor, keeping their records correct and up to date.

Chairman Green states that this drought is an important enough matter that the Committee appreciates the information and looks forward to being kept up to date on the matter, and invites **Mr. Fransen** to give the same report in the next day's EMC meetings.

Nat Wilson (DWR) gives an update on the LR COG, EMC and DWR agreement. **Mr. Wilson** would like to start out by giving the Water Allocation Committee some information which had been recently received. There exists a cooperative agreement between the EMC, DWR and the Lumber River Council governments, which was signed October 14, 2004. One of the items specified in that agreement is the requirement that Smithfield provide a plan for sustainable water sources. DWR has received Smithfield's Plan for achieving sustainable water sources for their Tar Heel area 'and surrounding areas' February 28, 2006. They have teamed up with The Lower Cape Fear Water and Sewer authority to bring about plans for a surface water treatment plant on the Cape Fear River. DWR plans to do a complete review of the plan as does DWQ, Division of Environmental Health, DENR General Council and probably others as this item progresses. **Mr. Wilson** continues that DWR will report back to the Water Allocation Committee on the matter in the May meeting.

Charles Wakild asks if with this Surface Water Treatment Plant, are they planning to serve anyone else?

Nat Wilson says that with the document he just received, which he has only read once, that the document is of such language that is hard to immediately understand what they are planning on in reference to servicing other, though it appears that they are trying to leave the doors open for the potential of new users.

This concludes the March 8, 2006 Water Allocation Committee Meeting.