

**North Carolina Environmental Management Commission -  
Water Allocation Committee  
Meeting Summary**

512 N. Salisbury Street  
14<sup>th</sup> Floor, Conference Room No. 3, Archdale Building  
Raleigh, NC

09:00 A.M. – 10:00 A.M  
Wednesday, November 18, 2009

**Water Allocation Committee (WAC):**

Commissioner Mayor Darryl D. Moss, Chair  
Commissioner Stephen Smith, EMC Chair  
Commissioner Frank Crawley, EMC Counsel  
Commissioner Donnie Brewer  
Commissioner William L. Hall, Jr.  
Commissioner David H. Moreau  
Commissioner Jeffrey Morse  
Commissioner Dickson Phillips, III  
Commissioner Forrest R. Westall, Sr.

**Item I. Preliminary Matter**

**1. Introduction of Commissioners**

**Commissioner Stephen Smith**, Chair EMC, introduced the newly appointed Commissioners; **Mr. William Hall**, **Mr. Jeff Morse** and the new WAC Chair, **Mayor Darryl Moss**.

**2.** Committee Chairman, **Commissioner Mayor Darryl D. Moss**, called the meeting to order. Pursuant to Executive Order Number One, the committee chairman called upon committee members to evaluate the matters to come before the committee and to identify any known conflict of interest or the appearance of a conflict of interest.

**3. Minutes and Agenda**

Upon motion and second, the Committee approved the minutes of the January meeting as a true and accurate summary of the proceedings. The Committee approved the printed agenda without change.

**Item II. Action Item**

**Approval of IBT Settlement Process Guidance Document, Toya Ogallo, DWR.**

**Ms. Ogallo** said that DWR consulted with staff attorneys and a decision was reached to prepare a one page guidance document that would provide clarification to Inter-Basin Transfer (IBT) applicants and the public without being too rigid. This one page guidance settlement document is not enforcement. After consultations it was determined that the rule making process was not necessary because it would restrict EMC during the process and take away their flexibility.

**Ms. Ogallo** said that the statutes allow the EMC to initiate settlement discussions during the IBT certificate process. The 4 major topics of the IBT Settlement Guidance Document are; (1) upon

request, the EMC may appoint a mediation officer to guide the settlement, (2) the officer will make a reasonable effort to initiate discussions, (3) evidence or statements made during the discussions are not subject to discovery, and (4) the EMC may adopt rules to govern the process.

**Ms. Ogallo** said that the document recommend the following; initiation of the settlement discussion can be requested by any interested parties, EMC to have full discretion on how to handle any settlement, mediation should not be mandatory, and interested parties request mediation after the draft EIS is completed.

The intent was to allow settlement discussions on either the Environmental Document or the Petition. The Mediation Officer will provide public notice of the settlement discussion inviting interested parties to participate.

The settlement discussion may end by consensus and settlement agreement, or no consensus or withdrawal of any of the parties. At this point the Mediation Officer will produce a settlement summary and recommendations to EMC to make the final decision. EMC and DENR will not be a signatory to the settlement agreement. Cost will be shared among the interested parties.

**Discussion:** Both **Dr David Moreau** and **Mr. Stephen Smith** suggested the need to have a time clock for negotiations to avoid delay tactics. But **Dr Moreau** pointed out that a member of EMC should not be a Mediation Officer, while on the contrary, **Mr. Smith** thought a possibility of member of EMC being The Mediation Officer should be left open.

**Mr. Dickson Phillips** suggested The Settlement Document be presented to the EMC to add more credibility. He also suggested The Mediation Officer should have a power of confidentiality, such as keeping public out of meetings, and EMC authority should not be limited by The Mediation Officer.

**Mr. Forrest Westall** would like the document to clarify who between EMC and The Mediation Officer will be responsible of identifying the parties. Otherwise it is subject to be contested. He wondered if the responsibility to terminate the process would be left to The Mediation Officer, and if the cost involved would not make it difficult to hire The Mediation Officer.

**Mr. Smith** said there is a need to seek legal advice on the confidentiality question bearing in mind that EMC should not be limited by the document or the process.

**The WAC Members** supported the settlement document and suggested timeline for settlement discussion should be set to 120 days with an option of extension. They recommended more work on the document and present it back in January 2010 to WAC and full EMC.

### **Update on Interbasin Transfers, Toya Ogallo, DWR.**

**Ms. Ogallo** presented an update on the 3 pending IBT; Greenville Utilities Commission (GUC), Kerr Lake Regional Water System (KLRWS), and Brunswick County Public Utilities.

**GUC** has requested 8.3 MGD from Tar to Contentrea and 4.0 MGD from Tar to the Neuse. GUC has also requested an emergency condition that allows an additional 1 MGD from Tar River to Contentnea and 0.2 MGD from the tar to the Neuse during an emergency situation.

The petition was received in April, presented to WAC in May and held public hearing in November. The public hearing in November was attended by 37 representatives with 10 speakers.

Points that were raised during public hearing included; regionalization of water supply, allowance for emergency conditions, EA should include growth and core principles of 207 law, such as water conservation.

Public comment period is expected to close on December 4, 2009 and then the hearing officers will develop recommendations followed by a draft certificate to be presented to EMC for approval.

**KLRWS** is proposing to increase their existing interbasin transfer to cater for future growth. **KLRWS** grandfathered 10 MGD, and is currently transferring 5 MGD from Roanoke to Tar and Fishing, and 0.3 MGD from Roanoke to Neuse.

**KLRWS** is requesting an IBT of 24 MGD from Roanoke to Tar and Fishing, and 2.1 MGD from Roanoke to Neuse.

Notice of Intent was submitted on February 18, 5 public scoping meetings held between April 1-8, quarterly status report was submitted in November,09 and draft EIS is expected in early 2010.

**Brunswick County** provides water for over 30,000 retail customers and 11 wholesale customers.

**Brunswick County** grandfathered 10.44 MGD to Shallotte and Waccamaw.

**Brunswick County** is requesting 18.35 MGD to Shallotte and 0.94 MGD to the Waccamaw.

Notice of Intent was submitted on February 17 and public meetings were held April 16-28. An EIS study plan was done in November, 09 and the draft EIS is expected in early 2010.

**Discussion: Dr. David Moreau** asked about the updates on SC/NC IBT lawsuit. Both staff Attorneys (**Mr. Frank Crawley and Mr. Marc Bernstein**), who were present advised the WAC members not to discuss the law suit as they are the NC, a litigant in the law suit. For more info about the legal issues **Mr. Bernstein** said an email will be sent to all commissioners with the url link where they can do their own reference.

**Additional information:**

For more info on WAC agendas, meeting summaries, and presentations visit DWR homepage website; <http://www.ncwater.org>; click on [http://www.ncwater.org/Other Water Related Sites](http://www.ncwater.org/Other_Water_Related_Sites), and then [http://www.ncwater.org/Other Water Related Sites/wac.php](http://www.ncwater.org/Other_Water_Related_Sites/wac.php)

**Adjournment**

There being no further business, **Chairman Mayor Darryl D. Moss**, dismissed the assembly at 09:50 A.M.

(Adjournment)