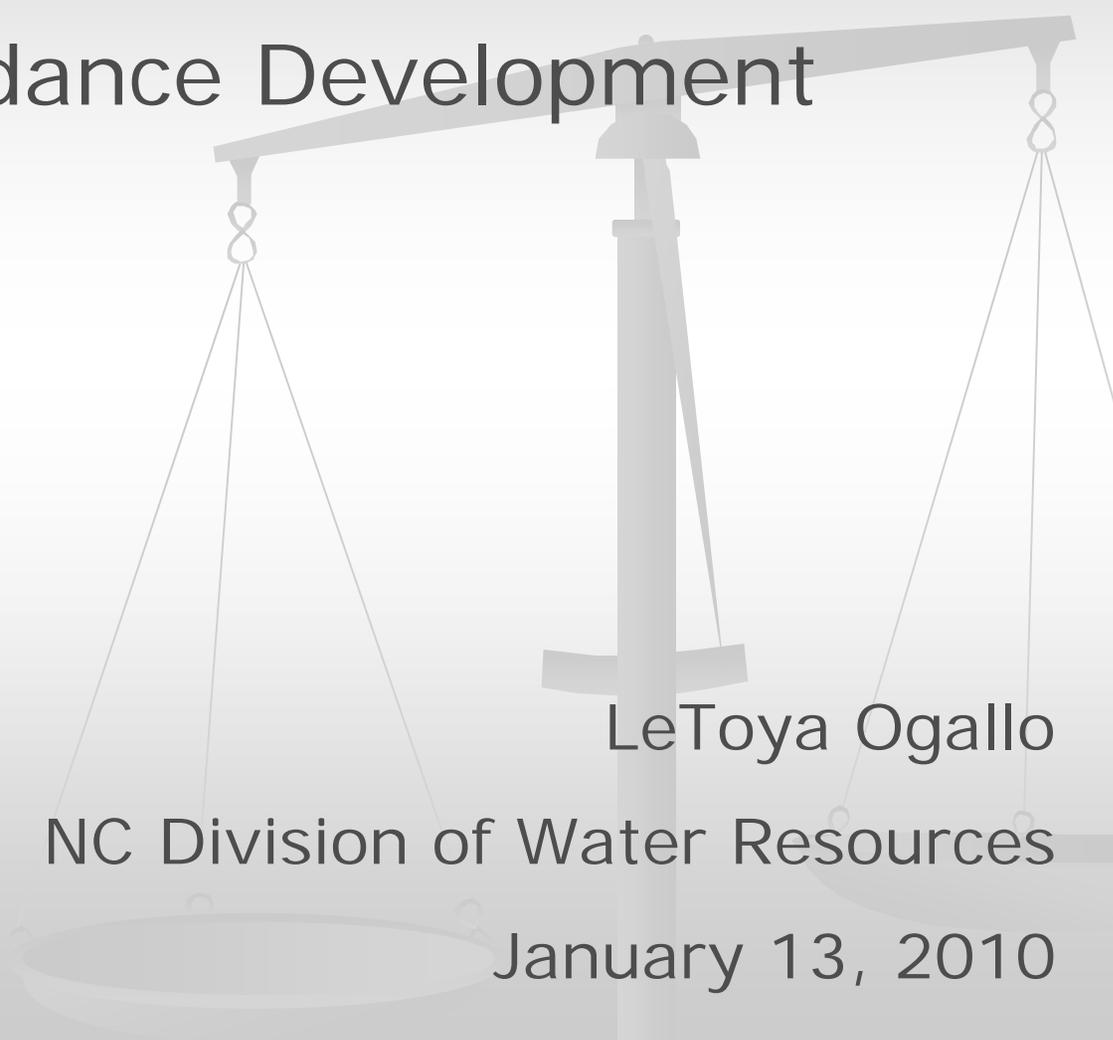
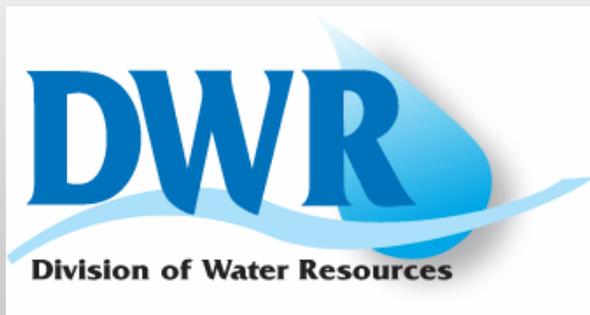


Interbasin Transfer

Settlement Guidance Development *(continued)*

A large, faint, light gray graphic of a balance scale is centered in the background of the slide. The scale is tilted slightly to the right, with the right pan being lower than the left pan. The scale has a central vertical column and two pans hanging from a horizontal beam.

LeToya Ogallo
NC Division of Water Resources
January 13, 2010

Settlement Guidance Development

The purpose of the document is to provide additional guidance to the applicant, the public, and the EMC on the settlement discussions.

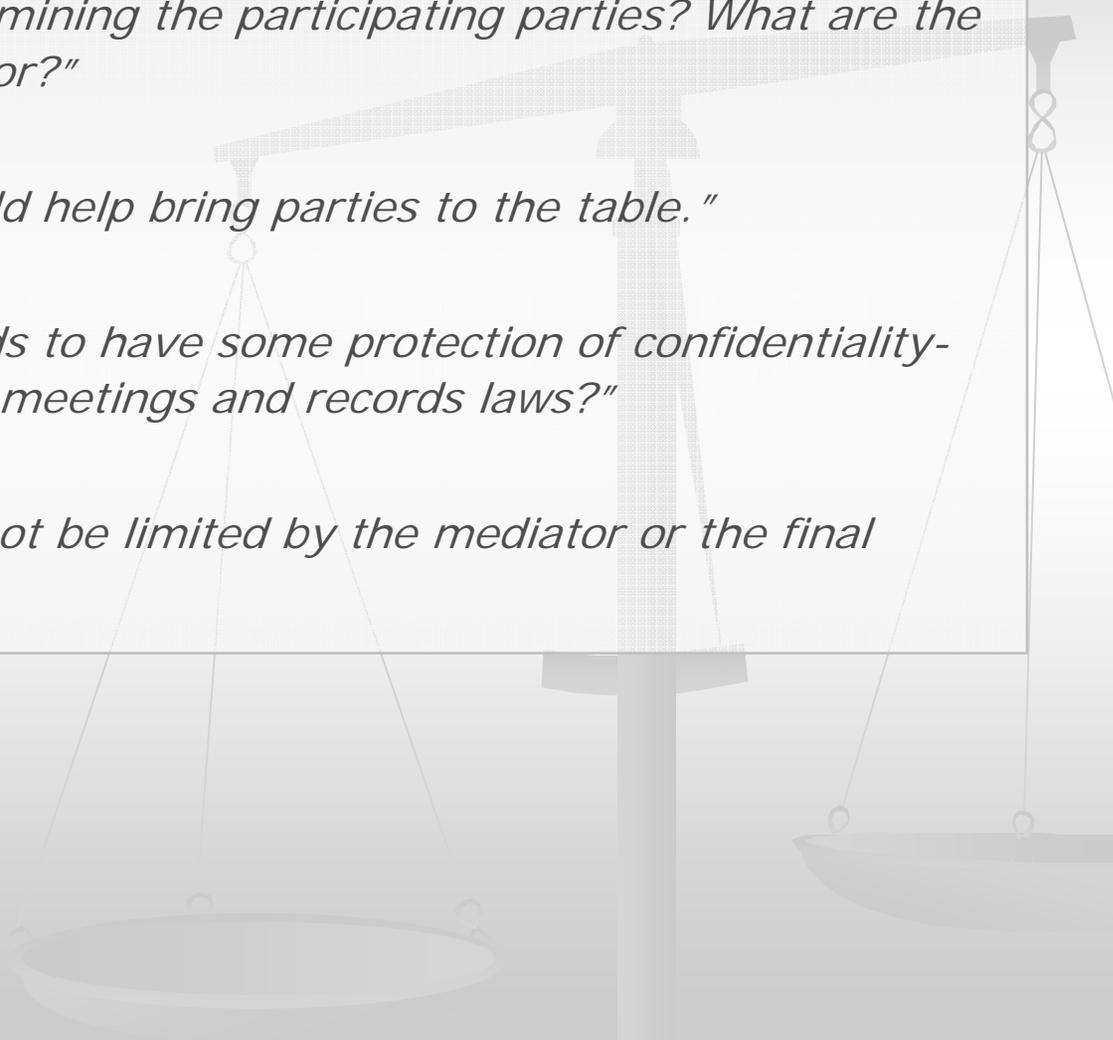
- ✧ Early discussion of the settlement process may help prevent confusion and delays later.
- ✧ The development of a guidance document will not hinder the EMC's ability to use their full discretion in making decisions during the IBT process.

Settlement Guidance Development

Topics covered:

- ✧ Initiation of the settlement discussions
- ✧ Appointment of the mediation officer
- ✧ Conduct of negotiations
- ✧ Termination of the settlement discussions

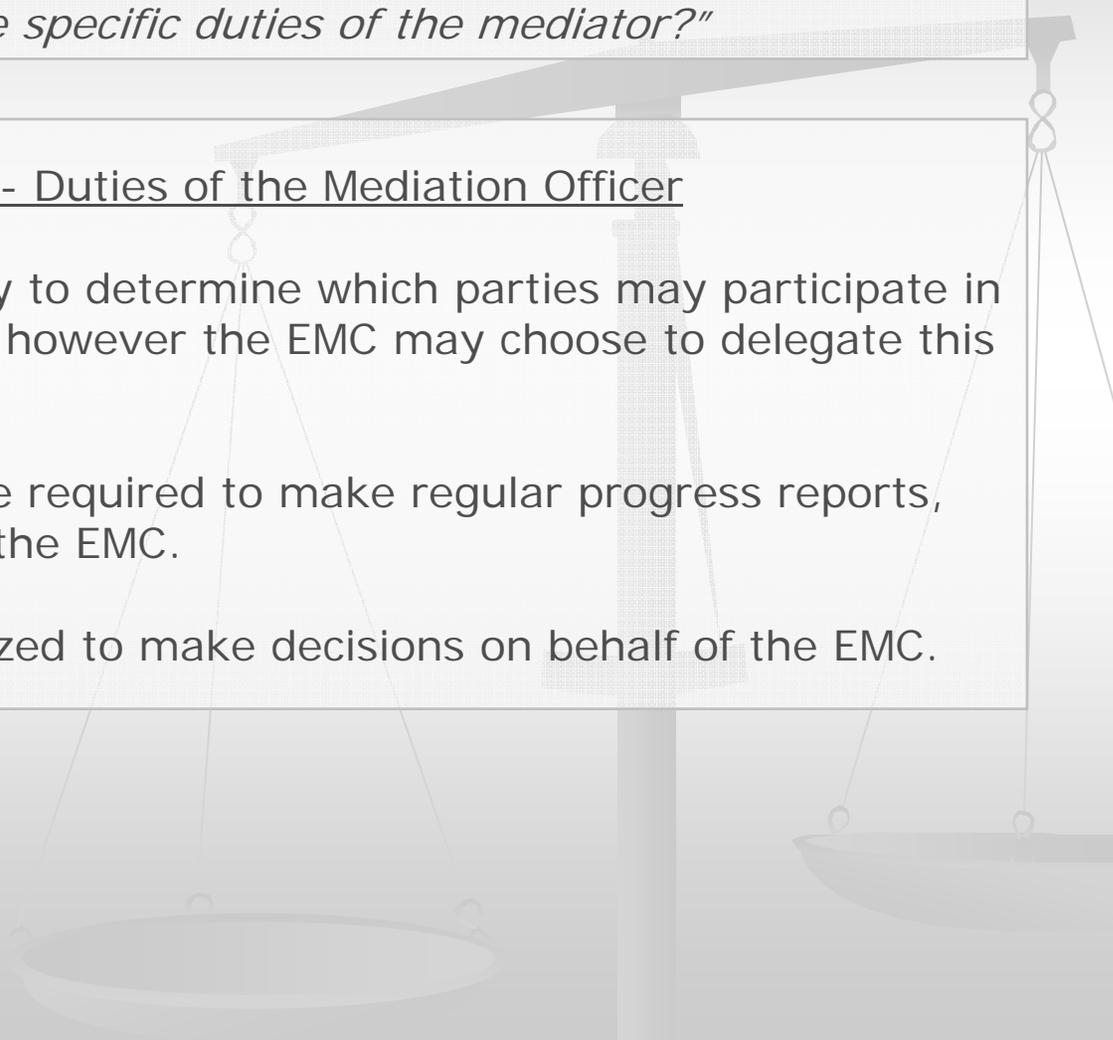
Settlement Guidance Development



Issues discussed at November WAC Meeting

- 1. "Who's responsible for determining the participating parties? What are the specific duties of the mediator?"*
- 2. "A time-limited process would help bring parties to the table."*
- 3. "An effective mediation needs to have some protection of confidentiality-how does this fit with public meetings and records laws?"*
- 4. "The EMC's authority must not be limited by the mediator or the final settlement agreement."*

Settlement Guidance Development



Issues discussed at November WAC Meeting

*"Who is responsible for determining the participating parties?"
"What are the specific duties of the mediator?"*

Changes to Guidance Document- Duties of the Mediation Officer

- ✧ It is the EMC's responsibility to determine which parties may participate in the settlement discussions, however the EMC may choose to delegate this task to the mediator.
- ✧ The mediation officer will be required to make regular progress reports, either written or verbal, to the EMC.
- ✧ The mediator is not authorized to make decisions on behalf of the EMC.

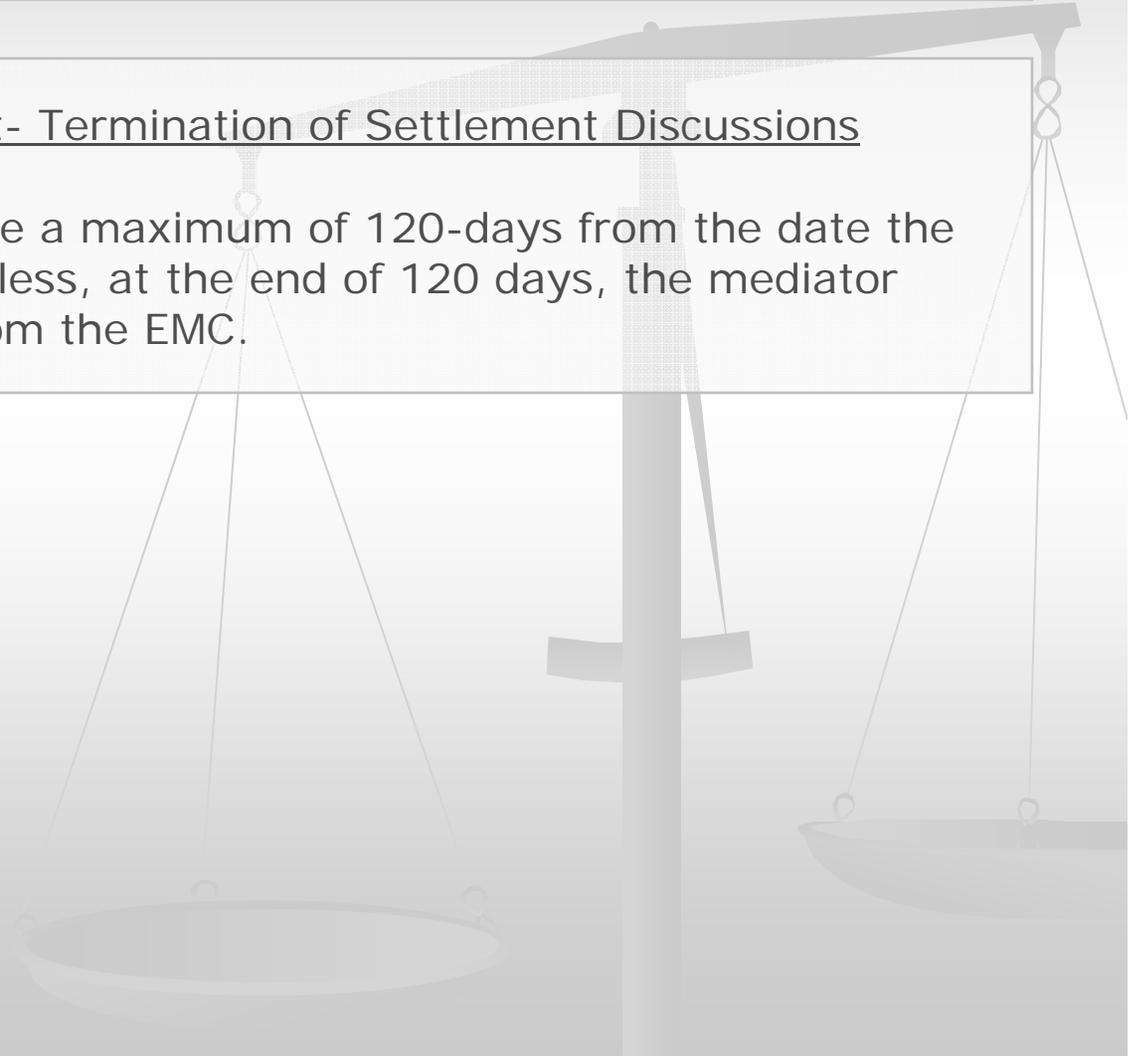
Settlement Guidance Development

Issues discussed at November WAC Meeting

"The settlement process needs a time limit."

Changes to Guidance Document- Termination of Settlement Discussions

- ✧ The mediation will terminate a maximum of 120-days from the date the EMC selects a mediator, unless, at the end of 120 days, the mediator requests additional time from the EMC.



Settlement Guidance Development

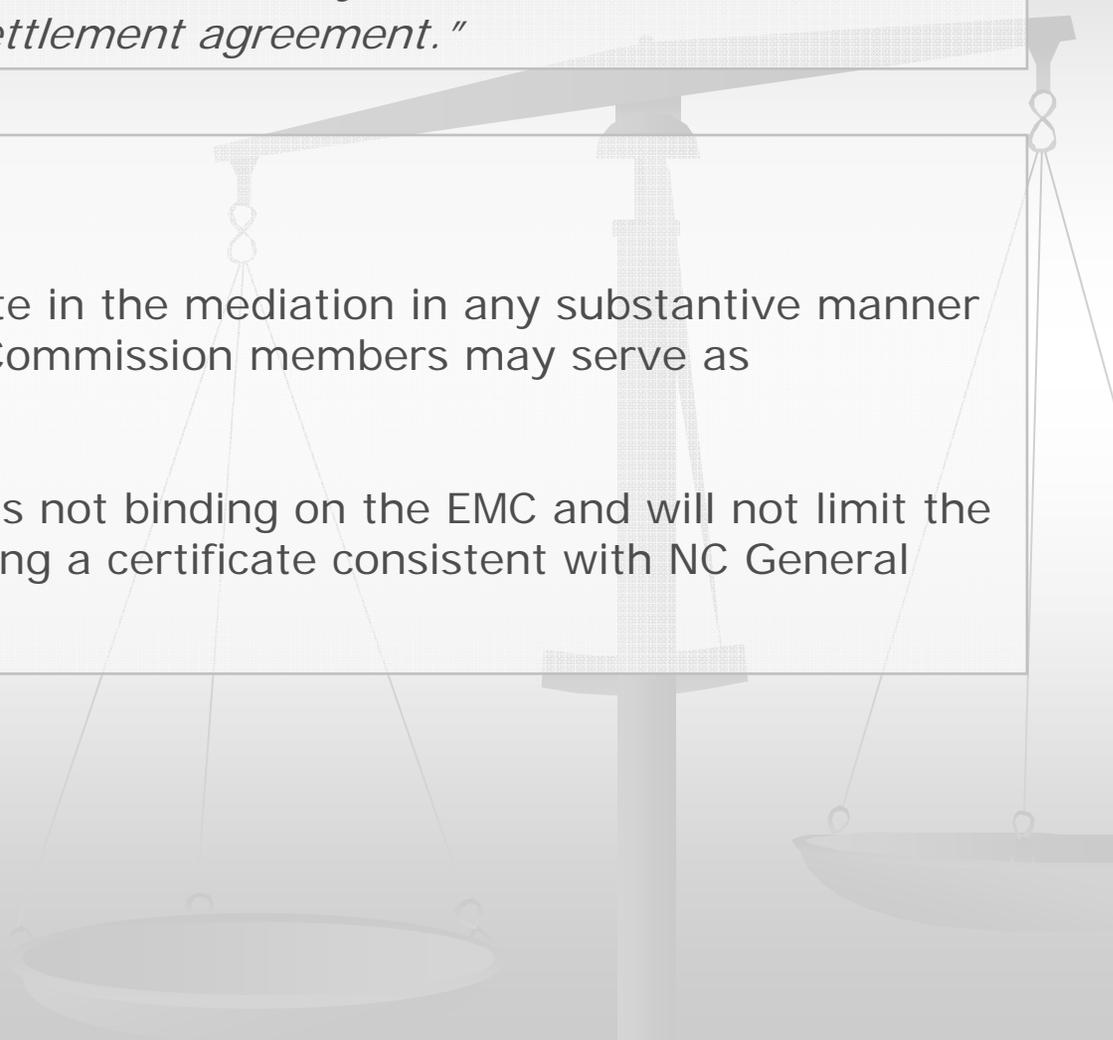
Issues discussed at November WAC Meeting

"An effective mediation needs to have some protection of confidentiality- how does this fit with public meetings and records laws?"

Changes to Guidance Document- Issues of Confidentiality

- ✧ The mediator (whether an EMC member, DWR staff person, or private mediator) may hold private conferences with the parties individually or as a group.
- ✧ The parties may agree not to discuss what occurred or was said during the mediation.
- ✧ However, any documents (including electronic mail and other computer files) possessed by State employees may be subject to disclosure under the Public Records Law.

Settlement Guidance Development



Issues discussed at November WAC Meeting

"The EMC's authority must not be limited by the mediator or the final settlement agreement."

Changes to Guidance Document

- ✧ The EMC shall not participate in the mediation in any substantive manner (except to the extent that Commission members may serve as mediators).
- ✧ The settlement agreement is not binding on the EMC and will not limit the EMC's full discretion in issuing a certificate consistent with NC General Statutes.

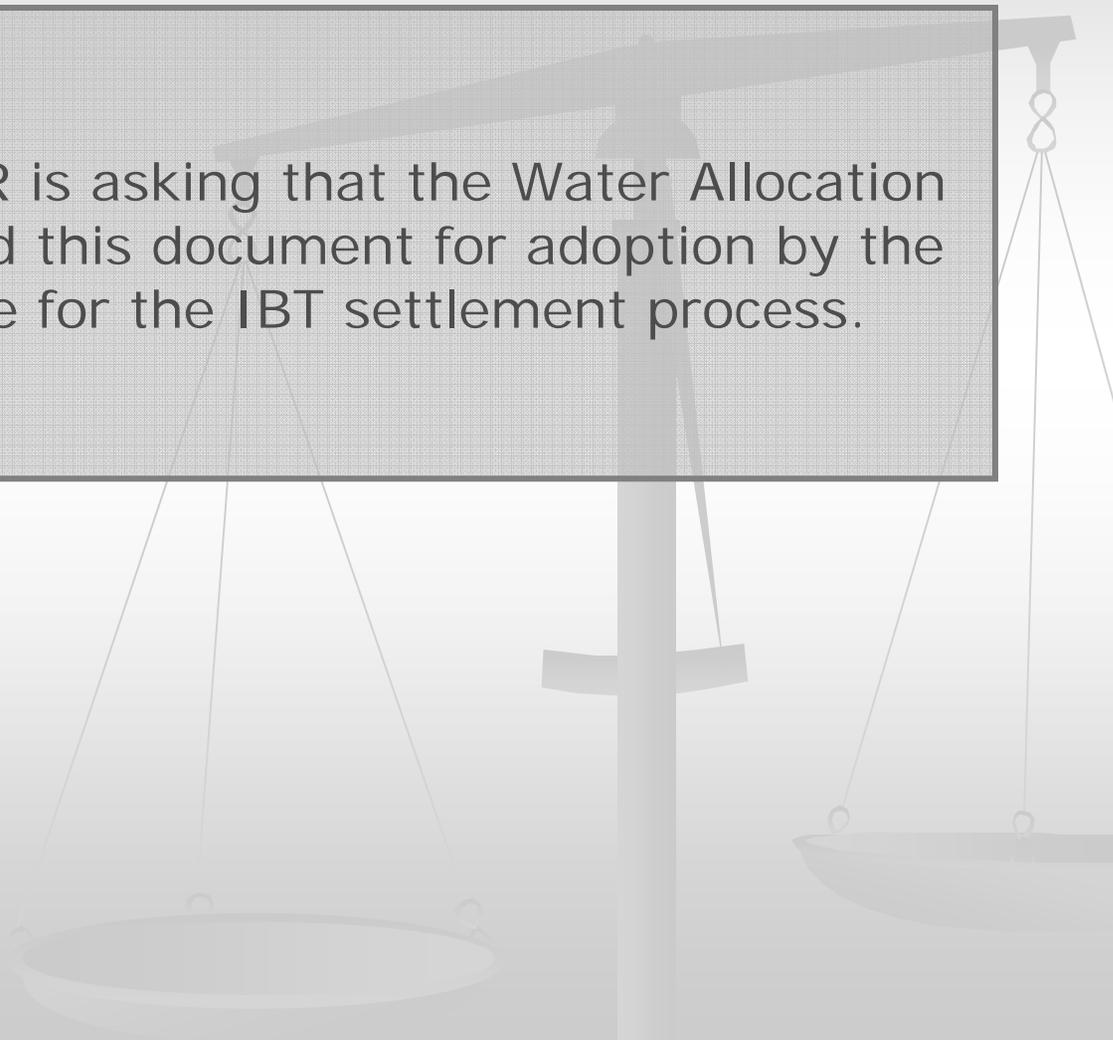
Settlement Guidance Development

Additional revisions

Changes to Guidance Document

- ✧ The Commission shall base its decision to initiate or forego mediation based on a review, after presentation by the Department, of the major issues in controversy and an assessment as to whether mediation may aid in resolving factual or legal questions related to those issues.
- ✧ In its selection of the mediator, the Commission will consider input from the applicant and any interested party the Commission considers appropriate. The Commission will attempt to appoint a mediation officer to whom the applicant and other appropriate interested parties are agreeable.
- ✧ The mediator should not initiate any meetings without first securing a written cost-sharing agreement from all participants in advance.
- ✧ Federal and State resource management agencies responsible for reviewing environmental documents are not to be considered 'participating parties' for the purposes of allocating costs.

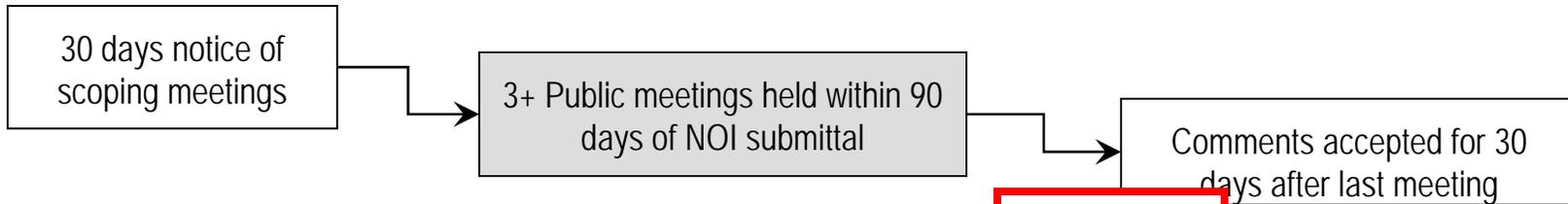
Settlement Guidance Development



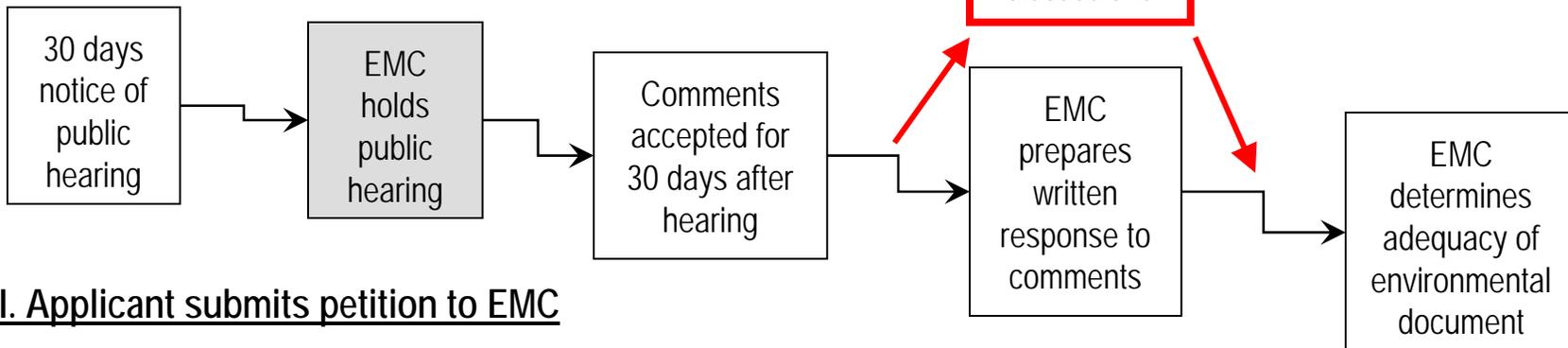
Action requested: DWR is asking that the Water Allocation Committee recommend this document for adoption by the full EMC as guidance for the IBT settlement process.

IBT Process Flowchart

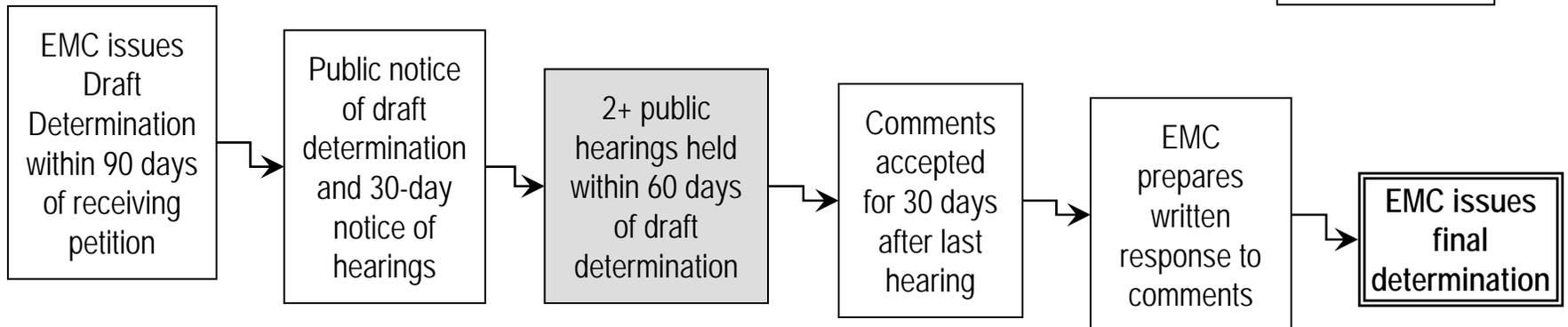
I. Applicant submits Notice of Intent to file a petition



II. Applicant submits draft environmental document



III. Applicant submits petition to EMC



Settlement Guidance Development

Additional comments (not included in guidance)

- ✧ The mediator shall be certified in North Carolina unless the EMC concludes that the mediator possesses special knowledge, background and skills that would otherwise make the mediator appropriate for the particular case
- ✧ The mediator shall not be a member of the Commission unless the Commission concludes that no other suitable mediator can be secured.

