

# **Water Use Act of 1967**

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Water Allocation Committee  
Environmental Management Commission

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# Outline

- Review the Water Use Act of 1967
- The EMC's Role
- How the Process Works
- Example – Central Coastal Plain Capacity Use Area

# Water Use Act of 1967

## § 143-215.11 - § 143-215.22

- § 143-215.11. Short title.
- § 143-215.12. Declaration of purpose.
- § 143-215.13. Declaration of capacity use areas.
- § 143-215.14. Rules within capacity use areas; scope and procedures.
- § 143-215.15. Permits for water use within capacity use areas - Procedures.
- § 143-215.16. Permits for water use within capacity use areas - Duration, transfer, reporting, measurement, present use, fees and penalties.
- § 143-215.17. Enforcement procedures.
- § 143-215.18. Map or description of boundaries of capacity use areas.
- § 143-215.19. Administrative inspection; reports.
- § 143-215.20: Repealed by Session Laws 1987, c. 827, s. 173.
- § 143-215.21. Definitions.
- § 143-215.22. Law of riparian rights not changed.

## **§ 143-215.12. Declaration of purpose.**

- It is hereby declared that the general welfare and public interest require that the water resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation in order to conserve these resources and to provide and maintain conditions which are conducive to the development and use of water resources.

## § 143-215.13. Declaration of capacity use areas.

- a) The Environmental Management Commission may declare and delineate from time to time, and may modify, capacity use areas of the State **where it finds that the use of groundwater or surface water or both require coordination and limited regulation for protection of the interests and rights of residents or property owners of such areas or of the public interest.**
- b) Within the meaning of this Part "a capacity use area" is one where the Commission finds that the aggregate uses of groundwater or surface water, or both, in or affecting said area
  - i. **have developed or threatened to develop to a degree which requires coordination and regulation, or**
  - ii. **exceed or threaten to exceed, or otherwise threaten or impair, the renewal or replenishment of such waters or any part of them.**

## § 143-215.13. Declaration of capacity use areas.

- c) The Commission may declare and delineate capacity use areas in accordance with the following procedures:
- 1) Whenever the Commission believes that a capacity use situation exists or may be emerging in any area of the State, it **may direct the Department to investigate and report to the Commission** thereon.
  - 2) In conducting its investigation the Department shall consult with all interested persons, groups and agencies; may retain consultants; and shall consider all factors relevant to the conservation and use of water in the area, including established or pending water classifications under Part 1 of this Article and the criteria for such classifications. Following its investigation the Department shall render a written report to the Commission. This report shall indicate **whether the water use problems of the area involve surface waters, ground waters or both** and shall **identify the Department's suggested boundaries** for any capacity use area that may be proposed. It shall **present such alternatives** as the Department deems appropriate, including actions by any agency or person which might preclude the need for additional regulation at that time, and **measures which might be employed limited to surface water or groundwater**.
  - 3) If the Commission finds, following its review of the departmental report (or thereafter following its evaluation of measures taken falling short of regulation) that a capacity use area should be declared, it may adopt a rule declaring said capacity use area.



## § 143-215.13 Declaration of capacity use areas.

- d) The Commission may **conduct a public hearing** ... when it has reason to believe that the withdrawal of water from or the discharge of water pollutants to the waters in such area is having an unreasonably adverse effect upon such waters. If the Commission **determines that withdrawals of water from or discharge of water pollutants to the waters within such area has resulted or probably will result in a generalized condition of water depletion or water pollution within the area to the extent that the availability or fitness for use of such water has been impaired for existing or proposed uses and that injury to the public health, safety or welfare will result if increased or additional withdrawals or discharges occur, the Commission may issue a rule:**

The determination of the Commission shall **be based upon the record of the public hearing and other information considered by the Commission in the rule-making proceeding.** The rule shall describe the geographical area of the State affected thereby with particularity and shall provide that the prohibitions set forth therein shall continue pending a determination by the Commission that the generalized condition of water depletion or water pollution within the area has ceased.

## § 143-215.14. Rules within capacity use areas; scope and procedures.

- 1) Provisions requiring water users within the area to **submit reports not more frequently than at 30-day intervals** concerning quantity of water used or withdrawn, sources of water and the nature of the use thereof.
- 2) With respect to surface waters, ground waters, or both: provisions concerning the timing of withdrawals; provisions to protect against or abate salt water encroachment; provisions to protect against or abate unreasonable adverse effects on other water users within the area, including but not limited to adverse effects on public use.
- 3) With respect to ground waters: provisions concerning well-spacing controls; and provisions establishing a range of prescribed pumping levels (elevations below which water may not be pumped) or maximum pumping rates, or both, in wells or for the aquifer or for any part thereof based on the capacities and characteristics of the aquifer.
- 4) Such other provisions not inconsistent with this Part as the Commission finds necessary to implement the purposes of this Part.

# § 143-215.15. Permits for water use within capacity use areas – Procedures.

- Regulation of withdraws for any purpose in excess of 100,000 per day.
- (h) In determining whether to issue, modify, revoke, or deny a permit under this section, the Commission shall consider:
  - (1) The number of persons using an aquifer or stream and the object, extent and necessity of their respective withdrawals or uses;
  - (2) The nature and size of the stream or aquifer;
  - (3) The physical and chemical nature of any impairment of the aquifer or stream, adversely affecting its availability or fitness for other water uses (including public use);
  - (4) The probable severity and duration of such impairment under foreseeable conditions;
  - (5) The injury to public health, safety or welfare which would result if such impairment were not prevented or abated;
  - (6) The kinds of businesses or activities to which the various uses are related;
  - (7) The importance and necessity of the uses claimed by permit applicants (under this section), or of the water uses of the area (under G.S. 143-215.14) and the extent of any injury or detriment caused or expected to be caused to other water uses (including public use);
  - (8) Diversion from or reduction of flows in other watercourses or aquifers; and
  - (9) Any other relevant factors.



## § 143-215.16. Permits for water use within capacity use areas - Duration, transfer, reporting, measurement, present use, fees and penalties

- a) No permit shall be issued for a longer period than the longest of the following:
  - i. **10 years**, or
  - ii. the duration of the existence of a capacity use area, or
  - iii. the period found by the Commission to be necessary for **reasonable amortization** of the applicant's water-withdrawal and water-using facilities. Permits may be renewed following their expiration upon compliance with the provisions of G.S. 143-215.15.
- b) **Permits shall not be transferred except with the approval** of the Commission.
- c) Every person in a capacity use area who is required by this Part to secure a permit shall file with the Commission in the manner prescribed by the Commission a certified statement of quantities of water used and withdrawn, sources of water, and the nature of the use thereof not more frequently than 30-day intervals.
- d) If any person who is required to secure a permit under this Part is unable to furnish accurate information concerning amounts of water being withdrawn or used, or if there is evidence that his certified statement is false or inaccurate or that he is withdrawing or using a larger quantity of water or under different conditions than has been authorized by the Commission, the **Commission shall have the authority to require such person to install water meters**, or some other more economical means for measuring water use acceptable to the Commission.
- e) In any case where a permit applicant can prove to the Commission's satisfaction that the applicant was withdrawing or using water prior to the date of declaration of a capacity use area, the Commission shall take into consideration the extent to which such prior use or withdrawal was reasonably necessary in the judgment of the Commission to meet its needs, and shall grant a permit which shall meet those reasonable needs.
- f) The Commission shall also take into consideration in the granting of any permit the prior investments of any person in lands, and plans for the usage of water in connection with such lands which plans have been submitted to the Commission within a reasonable time after June 27, 1967.

## **§ 143-215.17. Enforcement procedures.**

- a) Criminal Penalties. - Class 3 misdemeanor not less than \$100.00 nor more than \$1,000 for each violation.
- b) Civil Penalties. – The Secretary may assess a civil penalty of not less than \$100.00 nor more than \$1,000 per day.
- c) Injunctive Relief.

# § 143-215.18 & § 143-215.19

- § 143-215.18. - Map or description of boundaries of capacity use areas.
- § 143-215.19. - Administrative inspection; reports.
  - a) When necessary for enforcement of this Part, and when authorized by rules of the Commission, employees of the Commission may inspect any property, public or private, to investigate:
    - 1) The condition, withdrawal or use of any waters;
    - 2) Water sources; or
    - 3) The installation or operation of any well or surface water withdrawal or use facility.
  - b) The Commission's rules must state appropriate standards for determining when property may be inspected.

# § 143-215.21 & § 143-215.22

- § 143-215.21. Definitions.
  - Consumptive Use – Any use other than “nonconsumptive”.
  - Nonconsumptive Use - (i) the use of water withdrawn from a stream in such a manner that it is returned to the stream **without substantial diminution** in quantity at or near the point from which it was taken; or, if the user owns both sides of the stream at the point of withdrawal, the water is returned to the stream upstream of the next property below the point of diversion on either side of the stream; (ii) the use of water withdrawn from a groundwater system or aquifer in such a manner that it is returned to the groundwater system or aquifer from which it was withdrawn without substantial diminution in quantity or substantial impairment in quality at or near the point from which it was withdrawn; (iii) provided, however, that (in determining whether a use of groundwater is nonconsumptive) the Commission may take into consideration whether any material injury or detriment to other water users of the area by reason of reduction of water pressure in the aquifer or system has not been adequately compensated by the permit applicant who caused or substantially contributed to such injury or detriment.
- § 143-215.22. Law of riparian rights not changed.

# Outline

- Review the Water Use Act of 1967
- **The EMC's Role**
- How the Process Works
- Example – Central Coastal Plain Capacity Use Area

# EMC's Role

- Declare and Delineate Capacity Use Areas
  - For areas either are exceeding or threatened to exceed the areas capacity.
- Direct DENR to investigate and report to the EMC on water use problems.
- Conduct public hearings.
- Rule making.

# How the Process Works

- The process can be initiated by the EMC, DENR, or request by a 3<sup>rd</sup> party.
- DWR works initially with the Water Allocation Committee.
- EMC requests DENR to do a capacity use investigation and report.
- EMC proceeds with the rule making process.
- DWR works the EMC on rule making.
- DWR manages the capacity use when the rules become effective.

# Capacity Use Areas

- Capacity Use Area Number 1 – 1968 to 8/1/2002
- Central Coastal Plain Capacity Use Area – Started 8/1/2002
- Voluntary Capacity Use Areas
  - Eno River Management – Started in 1988
  - Southern Coastal Plain – Started 10/14/2004

# Central Coastal Plain Capacity Use Area (CCPCUA)

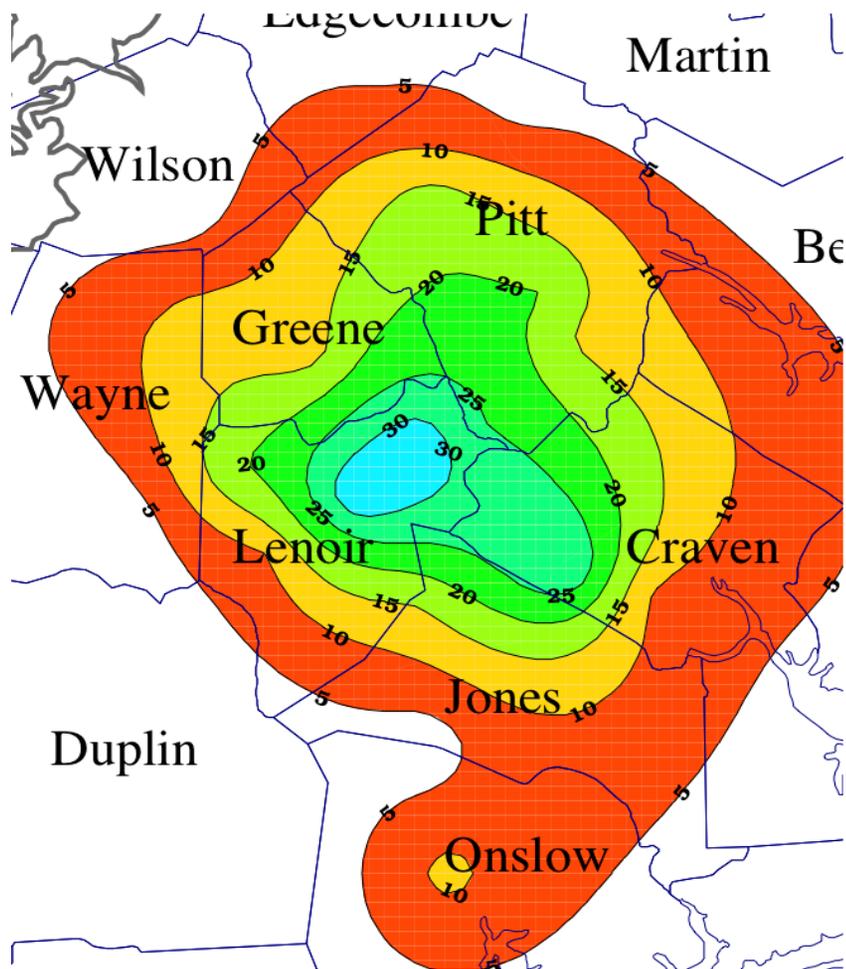


- 15 county region in the coastal plain
- Permitting of ground water withdrawals required above 100,000 gallons per day
- Registration of all withdrawals above 10,000 gallons per day (surface or ground water)
- Reductions in withdrawals required for certain aquifers

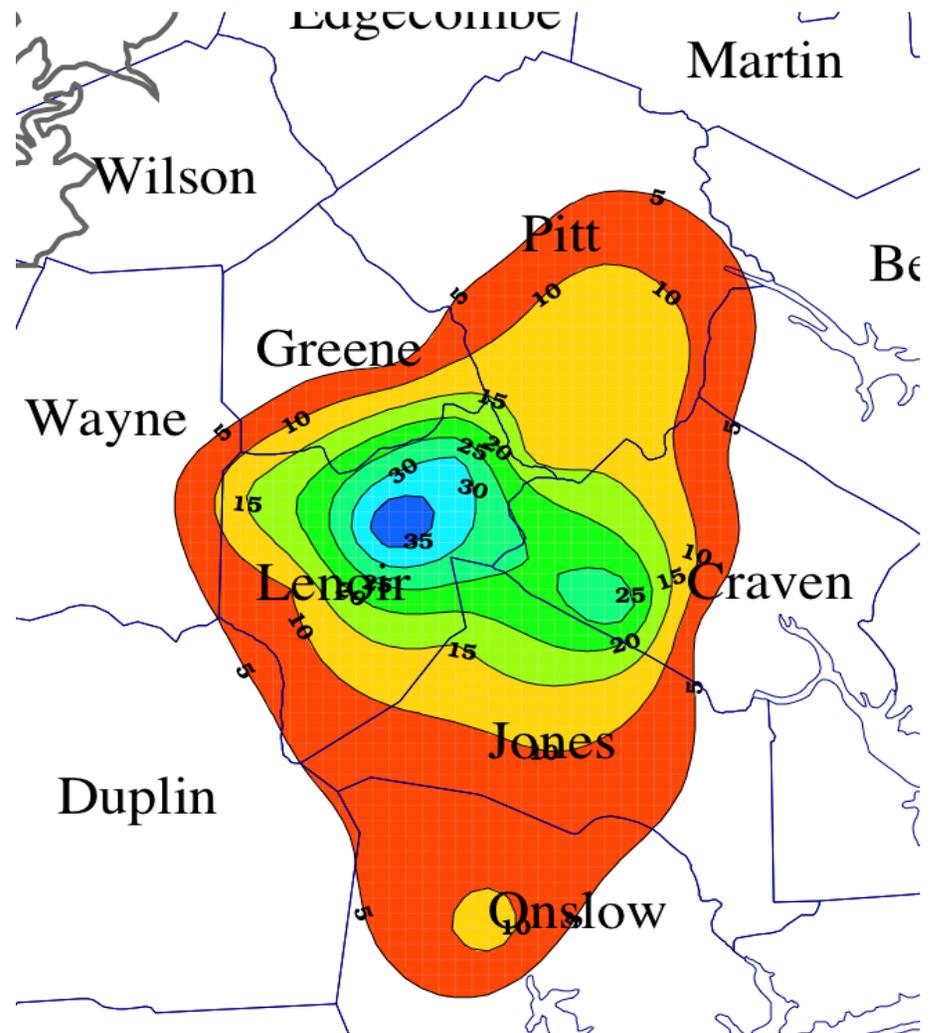
# Central Coastal Plain Capacity Use Area

- 1992 – DWR is working with large users to find alternatives.
- DWR conducted workshops in the summer of 1998.
- 11/1998 – DWR completes Central Coastal Plain Capacity Use Investigation.
- 12/1998 – DWR presents report to the Ground Water Committee.
- 3/1999 – EMC approves proceeding with rule making.
- 11/2000 – Hearing Officers' Report Completed.
- 5/2001 – EMC and RRC approve final rules.
- 8/1/2002 – Rules become effective.

# Upper Cape Fear Aquifer Recovery



# Black Creek Aquifer Recovery



# Questions?

## Contact Information

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**Division's Website - <http://www.ncwater.org/>**

**Capacity Use - [http://www.ncwater.org/Permits\\_and\\_Registration/Capacity\\_Use/](http://www.ncwater.org/Permits_and_Registration/Capacity_Use/)**

