

**NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION**

**WATER ALLOCATION COMMITTEE
MEETING AGENDA**

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

**Time: 9:00 a.m. – 11:00 a.m.
Wednesday, March 11, 2015**

Executive Order Number One mandates that the Chair inquire as to whether any member knows of any conflict of interest or appearance of conflict with respect to matters before the Commission. If any member knows of a conflict of interest or appearance of conflict, please so state at this time.

Tommy Craven, Chairman, Presiding

Water Allocation Committee Members: Tommy Craven (Chairman), Gerard Carroll, Dan Dawson, Steve Tedder, Clyde “Butch” Smith, Manning Puette, Charles “Boots” Elam

Others: Julie Wilsey, Dr. Albert Rubin, Lawrence W. Raymond

I. Preliminary Matters

1. Call to Order
2. Approval of minutes from the January minutes
 - The minutes from the January meeting were approved.
3. Revisions or additions to the agenda

II. Action Item

1. Final Determination of the towns of Cary, Apex, Morrisville, and Wake County (RTP South) Interbasin Transfer Certificate Modification Evan Kane
 - Jennie Hauser reminded the members that this is a permitting decision as it’s called a certificate. Because it’s a permitting decision it’s a quasi-judicial decision. Keep your conflict of interest in mind: your personal financial interest, think of your affiliations, on the board of a sort of organization. Do you have a legal bias-you have information outside of the record and you are unable to set it aside. Encourage not to have additional conversations with staff about the matter. An email has been circulated and

an opinion was expressed. In the future, send that to Lois and the Chairman-don't email one another.

- Craven: All opinions are welcome and please share ideas publicly.
- Dawson: I sent the email out yesterday. Make a motion that we table this item. There was a bill introduced in the General Assembly that would address a lot what is covered in this particular item. Also involves allocation of water resources in the Cape Fear basin. If GA wants to conduct a more comprehensive study, this item would benefit. Vote to table this item until the next meeting.
- Craven: Refer to legal counsel, but believe the motion is out of order. Already been through two public hearings and a comment period.
- Tedder: Disagree with Dawson. A study bill was introduced but doesn't say anything about delaying this item. Staff have met the letter of the law.
- Hauser: At this time, the motion would be out of order.
- Craven: After the presentation you can make any motion.
- Evan Kane starts his presentation. He was the hearing officer for the IBT decision.
- An IBT is where an entity withdraws water from one river basin and discharges some or all of it into another river basin.
- Brief overview: To move water from the source basin Haw, into the Neuse and the Cape Fear basins. The existing certificate is 24 MGD (max day). The requested IBT is for 33 MGD. The Haw and the Neuse is the predominant part of the transfer is 31 and the Haw and the Cape Fear is 2 million gallons a day (mgd). The 2013 numbers were 16. That 22 number is the calculated equivalent for the current statute: a max day to a max month.
- Timeline: July 12, 2001: Current IBT Certificate Issued; September 30, 2013: NOI submitted to EMC; August 12, 2014: Completion of Western Wake Regional WWTP; September 5, 2014: Draft Environmental Assessment submitted to DWR; December 19, 2014: EA submitted for public comment; Jan. 7 and 22, 2015: Public Hearings; January 22, 2015: Issuance of Findings of no significant Impact (FONSI); March 12, 2015: Final Determination by EMC.
- The commission makes the final determination with the findings of fact. It really details the elements the commission should use to make a determination: Necessity of transfer amount, specifications, sources, reasonable alternatives, use of impounded source, and water source allocation from source reservoir. The commission has the right to accept the modification in whole, or in part. The commission can choose to deny the request, as well as put conditions on the modification.
- Public comments: 61 comments were received; 17 were in favor and 44 were opposed. 36 different comment categories.
- The Division of Water Resources requests the Water Allocation Committee support the requested IBT modification, as presented, to go before the EMC, March 12, for a final determination.
- Carroll: The request doesn't impact the allocation to the towns, yes? Correct. Towns can increase their take by 15 mgd now? Yes, as long as they stay within the constraints of certificate. Concern has to do with the timing and quantity. Why now? The projection is at odds with the history to this point. Why not at a later date? Another round of Jordan allocations to Jordan Lake, should this request go along with that?
- Franssen: Timing is partly related to the next round of Jordan allocations. It seemed appropriate to update at same time. The fluctuations are projections: any plan will

fluctuate b/c water use goes up and down. Short term fluctuations average out over the long term.

- Carroll: How reasonable are the assumptions?
- Fransen: Applicants were part of the Jordan Lake partnership. Projections were peer reviewed pretty heavily. One of our requirements is to use local data.
- Carroll: Bias on part of the petitioners to make a case.
- Fransen: We felt that what they were doing was reasonable and prudent for long-range planning.
- Dawson: Capacity of WTP? 40 mgd.
- Increase won't impact construction schedule? Under construction.
- Dawson: Requiring them to submit a water conservation plan. Why wasn't that done ahead of time?
- Fransen: Already have something on file; just want them to update the existing plan. Allocation is looked at as a percent of storage.
- Hauser: The statute requires the commission to approve the environmental document. Has that been delegated to the department? Where is the specific environmental document?
- Fransen: Difference between a modification and a regular certificate. The department interprets it to mean the Commission makes the decision if a SEPA document is adequate in a regular certificate. For a modification, it's reviewed by the department. The EA is part of what was provided to the commission.
- Carroll: Would that mean that the commission makes a motion that it deems the EA to be complete and adequate? Could be wrapped into the final motion.
- Dr. Rubin: A little troubled there's not more discussion of reuse. No discussion about protecting source water quality. Does the federal rule for the Jordan Lake have any discussion of IBT? Troubled by no selling of transferred water. SB 163: No discussion of direct potable use or reuse.
- Fransen: SB 163 was a pilot project for Raleigh and wouldn't apply in this case. A lot of reuse would be on the Neuse side. More reuse, larger IBT. Provision on resale is built into the statute. GA wanted this to be a policy decision, not a way to make money.
- Craven: That statute does still allow the emergency transfer in drought situations? It does provide a way but is not automatic.
- Dr. Rubin: Federal requirements related to IBT?
- Fransen: Water rights are considered a state issue.
- Carroll: Any consideration to not having such a large increase?
- Fransen: Historically there have only been six IBT's on a 30 year time scale. This is not an inexpensive process. The commission can always open an IBT back up should conditions change.
- Carroll: Has anyone gone back to review the projections versus real conditions? Haven't studied it because none of them are that old.
- Craven: On page 142 on hearing officer's report a letter from Cary town manager. Flow of Cape Fear River is far greater than anyone could possibly need.
- Kane: The model compares against low flow scenarios.
- Fransen: Averages are well above any need. You have to look at the low flow scenarios. Have made the model available for anyone's use.
- Dawson: When were the IBT rules and policies last updated?
- Fransen: General statute has been modified the rules every few years.
- Dawson: How much have they included groundwater and comprehensive impacts?

- Fransen: IBT strictly regulates surface water. Impacts to the source basin take into account groundwater.
- Dawson: When the documents tell us that the population growth and the overall demands for water, you've included groundwater?
- Fransen: To the extent that it was covered in the LWSPs, it was built into the analysis the division used.
- Dawson: Alternatives: groundwater within the basin was one option. Users' basin? Yes. LWSP are not part of this document. Right? Concerned about how old these plans are. How complete is the overall picture?
- Fransen: We use 2010 LWSPs.
- Peele: Plans are updated annually.
- Dawson: IBT is really focused on surface water. Why did the slides change?
- Kane: Tried to be consistent with the statute language.
- Dawson: Admire and appreciate capability, but wonder why changes at last minute. With IBT we are committing a 50 year plan. Don't want to do anything hastily. How would we reopen an IBT?
- Fransen: That's uncharted territory. Would need to talk to counsel. If we actually has a study as part of an EA or EIS and showed that projections were wrong, we would bring that to the commission.
- Dawson: The SEPA process, the department made those decisions. Yes?
- Fransen: DWR has not done a separate SEPA process for Jordan Lake allocations. Did do an EIS for the earlier IBT in 2001. Did an EA for modifications.
- Dawson: Why the EIS not updated?
- Hauser: The statute says that an EIS is not required for a modification.
- Dawson: This time around it was viewed as only needing a FONSI. Did not go through a comprehensive EIS.
- Fransen: It's part of the ever changing environment of IBT.
- Carroll: Projections by the downstream users were their own data and projections. Switching from groundwater to surface water, do they include those? Yes.
- Wilsey: Back to the timing and amount. DWR is working on a Cape Fear water supply plan. Would that replace the local plan?
- Fransen: Would not replace local plans, but taking the plans and putting them into context.
- Wilsey: We will see that information this summer? Yes.
- Tedder: Looking at the record for the Brunswick IBT, there were no objections. Find it ironic. Wants to make a motion.
- Motion: The members of the Commission have reviewed and considered the complete record, which included: the Hearing Officer's Report; the applicants' notice of intent to modify their existing Interbasin Transfer Certificate; the Environmental Assessment (EA), including public comments; and the Finding of No Significant Impact (FONSI).
- Based on the record, and as required by G.S. 143-215.22L, I move that the Commission approve the EA/FONSI, and approve and adopt the Findings of Fact as presented in the Hearing Officer's Report and, based on these Findings of Fact, the Commission find and conclude that: The benefits of the proposed increase in the transfer outweigh the detriments; The detriments have been mitigated to the maximum degree possible; The amount of the transfer does not exceed the amount of the projected shortfall under the applicants' water supply plan; and there are no reasonable alternatives to the proposed transfer.

- Based on the record, the Findings of Fact in the Hearing Officer's Report, and the findings and conclusions of the Commission, I move that the Commission grant the request of the Towns of Cary and Apex to increase their transfer of water from the Haw River basin to the Neuse River basin and the Cape Fear River basin.
- The permitted transfer amount shall not exceed a maximum of 31 million gallons per day from the Haw River Basin to the Neuse River Basin and 2 million gallons per day from the Haw River Basin to the Cape Fear River Basin, calculated as a daily average of a calendar month basis. The certificate is subject to the revised conditions as presented in the Hearing Officer's Report.
- Second by Commissioner Smith.
- Dawson: Doesn't recall seeing the information on the Brunswick IBT. That IBT transfer reference from November is not in here.
- Craven: We have a motion and second, any further discussion?
- Dawson: Those types of transfers in the coastal plain are very important.
- Hauser: Tedder mentioned all necessary references in the statutes for the motion.
- Craven: All in favor? All except Dawson.

III. Information Items

2. Interbasin Transfer Update: Kerr Lake Regional Water System and Union County

Harold Brady

- Three requests in process: Cary, Kerr Lake modification of grandfathered transfer, and Union County.
- Kerr Lake: The current grandfathered allowance is 10 mgd and they want to increase it to 14.2 mgd to meet the 2045 demands. The source basin is the Roanoke and receiving basins are: Tar, Fishing creek and Neuse.
- Timeline for Kerr Lake: January 2009: NOI submitted by KLRWS; March/April 2009: Series of public meetings; September 2014: Revision of Roanoke river basin model; October 2014: Draft EA submitted to DWR; January 2015: EA submitted to State Clearinghouse for public comment; March 2015: Petition submitted for public comment; March, 31 2015: Public hearing for petition; July 2015: Determination by EMC.
- Public comment period: March 31- April 30. All documents on webpage at: <http://www.ncwater.org/?page=294>.
- Union County: Total requested amount is 28 mgd from the Yadkin to the Rocky. The EIS document is currently going through division review.
- Craven: When will the hearing officer's report be posted?
- Brady: Three weeks prior to the July meeting.

3. Jordan Lake Allocation: How it works

Tom Fransen

- Wanted to share the results of the water supply plan, but got a surprise application from the city of Raleigh.
- We will be back during the next meeting with the draft.

4. Impediments and Challenges of Permitting Water Supplies

Linwood Peele

- Many federal and state requirements that have to be met before water supplies are permitted: NEPA or SEPA processes, Clean Water Act (federal), Safe Drinking Water Act (federal), Endangered Species Act (federal), Water Treatment plant construction approval (federal/state), Water supply water quality reclassification (federal/state), Local governments ordinance adoption (local), Dam Safety Act (state), and Interbasin transfer certificate (state).
- National Environmental Policy Act (NEPA): Requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.
- To meet NEPA requirements federal agencies prepare a detailed statement known as an Environmental Impact Statement (EIS), Environmental Assessment (EA) or Categorical Exclusions (CE).
- State Environmental Policy Act (SEPA): Requires State agencies to review and report the environmental effects of all activities that involve an action by a State agency; An expenditure of public monies or private use of public land, (or waters); and Has a potential negative environmental effect on natural resources, public health and safety, natural beauty, or historical or cultural elements, of the State.
- Similar to NEPA, an environmental report is prepared that allows for agency and public comment/input.
- The Clean Water Act (CWA) is the primary federal law in the United States governing water pollution. The objective of the law is to restore and maintain the chemical, physical, and biological integrity of the nation's waters: By preventing point and nonpoint sources of pollution and by providing assistance to publicly owned treatment works for the improvement of wastewater treatment, and maintaining the integrity of wetlands.
- The Safe Drinking Water Act (SDWA) is the principal federal law in the United States intended to ensure safe drinking water for the public. EPA sets standards for drinking water quality, and oversees the states, localities, and water suppliers who implement those standards. It requires many actions to protect drinking water and its sources: rivers, lakes, reservoirs, springs, and ground water wells.
- The Endangered Species Act (ESA) was designed to protect critically imperiled species from extinction as a "consequence of economic growth and development untempered by adequate concern and conservation. The U.S. Supreme Court found that "the plain intent of Congress in enacting" the ESA "was to halt and reverse the trend toward species extinction, whatever the cost." It's important to know that, at a minimum, federal requirements always supersede state requirements.
- The Water Supply Planning Branch Mission: Provide technical assistance to local governments by planning, identifying water supply needs, identifying and developing water supply sources to address their long-term water supply needs. This process of division staff working with local water systems was formalized with the passage of HB 609 (Session Law 2011-374) in 2011.
- HB609 (Session Law 2011-374): To promote the development of water supply resources and to improve the efficiency of use of NC's water resources. Cooperate in the identification of water supply needs and appropriate water supply sources and water storage projects. Assist in the assessment of alternatives. Apply for State and federal permits. Be the principal State agency to cooperate with other State and federal agencies in the planning and development of water supply and water storage projects.
- Potential Approvals and Permits Required: Clean Water Act, section 404 (Federal Permit), Clean Water Act, section 401 (State Certification), Approval to construct

treatment plant/use for public water supply (Federal/State Permit), Water Supply Water Quality Reclassification (State), Local Government(s) ordinances, NC Dam Safety permit (State Permit), Interbasin Transfer Certificate (State Certification).

- Craven: Would like to carry this over at the last meeting. Would like the city of Raleigh to give a brief presentation about the trials and tribulations of Raleigh's water system.
- Tedder: How long did Randleman take?
- Peele: Started in 1937 and in 2001 they issued a 404 certification.

IV. Concluding Remarks

- The Chairman adjourned the meeting the 11:02 a.m.