

**ENVIRONMENTAL MANAGEMENT COMMISSION
WATER ALLOCATION COMMITTEE
MINUTES**

September 9, 2015

9:00 A.M.

The Water Allocation Committee (WAC) of the North Carolina Environmental Management Commission (EMC) did the following at its September meeting:
• Heard one action item:
1. Kerr Lake Interbasin Transfer
• Heard two Information Items
1. Interbasin Transfer Update
2. Impediments/Challenges of Permitting Water Supplies
a) Cape Fear Public Utilities Authority
b) Greenville Utilities Commission

On September 9, 2015, the WAC met in the Ground Floor Hearing Room at the Archdale Building in Raleigh, North Carolina.

WAC Members in Attendance:

Chairman Tommy Craven
Mr. Gerard Carroll
Mr. Dan Dawson
Mr. Steve Tedder
Mr. Manning Puette
Mr. Charles “Boots” Elam

Others Present:

Ms. Jennie Hauser, Attorney General’s Office

I. Preliminary Matters:

In accordance to North Carolina General Statute § 138A-15, Chairman Craven asked if any WAC member knew of any known conflict of interest or appearance of conflict with respect to any item on the September 9, 2015 WAC agenda and none of the members stated that there was a conflict. Chairman Craven made a correction to the minutes from the July meeting. On the next to last paragraph, Questions and Comments, the minutes state that Mr. Carroll asked if there were any closing comments. It was Chairman Craven. A motion was made to approve the minutes with the change and a second was made of the motion. The minutes were unanimously approved.

II. Action Item

- 1. Kerr Lake Interbasin Transfer (Jessica Godreau, Hearing Officer, NC Division of Water Resources)**

Procedural Matters

The Kerr Lake Interbasin Transfer (IBT) decision is a part of the Committee’s quasi-judicial capacity. The members received counsel from Ms. Hauser about the legal requirements for the criteria that members must meet/use when making their decision on the Kerr Lake Interbasin Transfer certificate. The first point of inquiry, identification of conflicts of interest, was addressed at the opening of the meeting. In addition, due process requires an unbiased and impartial decision maker and each Commission Member must determine if they are able to maintain a mind open to persuasion. Members must put aside prior knowledge and preconceptions about the matter and be limited by the written records before them and the presentation they hear. They should not decide how they will vote until after discussions and deliberations among Committee Members has occurred. If in the future, it is proven that the tribunal was not fair and impartial, individual members could be subjected to monetary damages.

When presenting their recommendations to the Full EMC, members must state on the record the reasons for the recommendation they are making

Presentation Description:

Ms. Godreau, Public Water Supply Section Chief for the Division of Water Resources and the hearing officer for the proposed Kerr Lake Interbasin Transfer for the Kerr Lake Regional Water System, discussed the Hearing Officer's Report for the Kerr Lake IBT including the nine required Findings of Facts necessary to issue the Kerr Lake IBT Certificate. The public input and involvement process in the environmental assessment was also discussed. The Division of Water Resources requested that the Water Allocation Committee support the requested IBT certificate as presented to go before the full EMC September 10, 2015 for a final determination.

Questions/Comments:

Mr. Dawson asked if any of the nine alternatives in the report that were considered were suggested by DWR staff or if they were all suggested by the applicant. Ms. Godreau replied that all the alternatives were proposed by the applicant.

Mr. Dawson asked if the conservation measures included in the petition would be different from what the applicant must submit within 90 days of IBT approval. Ms. Godreau stated that the existing conservation plan was not strong enough to conserve the resource to the maximum extent practicable and so needed to be revised. As a result, the applicant will be required to revise their conservation plan and submit additional conservation measures within 90 days of approval. Those measures will also apply to the other bulk sale customers. Those changes will be a part of the findings and will be mandated as a condition of approval. Mr. Tedder asked what happens if conditions are not met. Ms. Godreau replied that if the conditions were not met, the issue would be brought before the EMC as a noncompliance issue and then the EMC would have the opportunity to amend, revoke, or change the certificate to ensure the spirit and intent were met.

Mr. Carroll asked about the necessity of approving this action at this time. While population is expected to rise by 20 percent, water use is expected to rise by 126 percent. The per capita use of water is projected to double according to the report yet water supplies are projected to become more limited in the future. Is it appropriate to make this allocation now or to wait for a certain amount of time like five years to see if these demand projections come to pass? Kim Nimmer with DWR stated that the projected increase will be the result of bringing people from groundwater sources to more reliable surface water sources rather than simple population growth projections.

Mr. Carroll then asked what would happen if they postponed this decision for five years. Mr. Bill Kreutzberger with CH2M Hill, a consultant for the partners, stated that there were a couple of issues with waiting. There would be a delay with bringing people over from groundwater and there would be a delay in expanding the service area of the water system. There is an issue with the partners' allocations of water from Kerr Lake. Several are nearing the capacity of their allocation and they are getting ready to expand the plant. They need additional water from that expanded plant capacity. Some water quality improvements would also be included in the plant expansion as well.

Chairman Craven stated that Conditions 4 and 5 of the approval provide the Commission with the ability to come back and adjust the amount allocated if the projections are not met. The utilities expansion would allow positive economic development. Without adequate utilities, there will not be increased industrial and economic growth.

Mr. Tedder agreed that the conditions are sufficient if the transfer conditions need to be changed in the future. He applauded the proactive planning these communities are taking. He did not support waiting to make a decision.

Chairman Craven stated that paragraph one of the certificate outlines the municipalities and water systems that are involved in the distribution of water and Condition 6 puts substantial restrictions on the reselling of the water.

Chairman Craven wanted reassurance that there were no conflicts between the partners involved and Condition 6. Godreau stated that it is her understanding that if a system or municipality is listed on the certificate, then they could take advantage of the water.

Mr. Dawson wanted more information on NC General Statute § 143-215.22L(w), the ability to not conduct the Environmental Impact Statement. What are the water bodies that are exempt from the statute? Mr. Tom Fransen with the Division of Water Resources stated that the statute was written for Kerr Lake for an allocation that was already in existence. It only applied to this one system for this one time. It came from the General Assembly.

Mr. Dawson then commented on the lack of complete information until right before the meeting. When he prepared for the meeting over the weekend, the website did not have the correct slide show relating to Kerr Lake and was not corrected until yesterday. He felt like he did not have time to give all of the information due diligence. In addition, the word modification that was stricken from the report that they received that morning changes things. It was his understanding up until that morning that because it was a modification it allowed this Kerr Lake IBT to be exempt from needing an Environmental Impact Statement (EIS). Now it is a new certificate. Is that correct? Ms. Godreau stated that it is a new interbasin transfer certificate and what made it exempt from needing an EIS is because it is an Army Corps reservoir meeting the requirements stated in N.C.G.S § 143-215.22L(w).

Mr. Dawson then stated that looking at the hearing officer's report, the changes to the water levels appear to be minor but he is as much concerned with future requests and what they allow to be done at the last minute. He thinks one more meeting where nothing changed between one meeting and the next would be prudent.

Chairman Craven stated that he pulled what he thought was the complete information from the agenda on the website and felt like he got everything there.

Mr. Dawson responded that the Committee Agenda items were correct. The full EMC agenda item slide show was a repeat of the buffer rules until yesterday.

Chairman Craven asked if there were any additional questions or comments from the Committee. There were none. He then asked if anyone had a motion.

Mr. Dawson made a motion that the Committee postpone making a decision about the Kerr Lake Interbasin Transfer Certificate because all information was not available to everyone for a final review before they walked into the meeting. Chairman Craven commented that he did not find that the modifications made that morning changed the context of the request and that he did not support Mr. Dawson's motion. He then asked if there was a second. The motion received a second. Mr. Dawson then spoke to the motion. He said that although he had complete confidence in the staff, he felt it was important to have all of the information beforehand to be able to make a decision. One more 60 day period was needed to digest everything. He also felt that not providing the Committee with everything that they need in advance sets a bad precedent for how these kinds of proceedings should be conducted.

Chairman Craven then asked if there was any discussion. Mr. Tedder thought the minor changes did not change the scope of what was being decided. The issue of having all the information up on the website two weeks prior to the meeting is something that they have struggled with for some time. There were background items that would be helpful for the Committee and the general public that should be readily available on the website. Although these items were on the website, they were hard to find. They also were not added to the agenda until after the two week period. He was for the motion to ensure that everyone on the Commission has adequate time to review all the information to make a decision and to send a clear message that protocol for providing information on agenda items be followed in the future or not to put it on the agenda at all until it can be done.

Chairman Craven asked if there were any other comments. Chairman Craven then stated that it was their responsibility as a Committee to move these decisions forward. He thought the information was available when most of the Committee members began to do their research and that he still opposed the motion. He then brought the motion to defer the decision to the next meeting up for a vote. The motion passed five in favor to one opposed.

III. Information Items

A. Interbasin Transfer Update (Kim Nimmer, Division of Water Resources)

Presentation Description:

Ms. Nimmer stated that there are currently two interbasin transfer requests in process, the Kerr Lake Regional Water System and the Union County requests. Because the Kerr Lake transfer was addressed earlier in the meeting by Ms. Godreau, Ms. Nimmer's presentation only covered the Union County request for a new interbasin transfer certificate to transfer 23 MGD from the Yadkin River Basin to Rocky River Basin to meet their projected demands through 2050. The presentation provided an update on where the request was in the IBT process and projected that it will most likely come before the EMC in their January 2016 meeting.

Questions/Comments:

There were no questions from the Committee.

B. Impediments/Challenges of Permitting Water Supplies

a. Cape Fear Public Utilities Authority (Mike Richardson, Cape Fear Public Utilities Authority)

Presentation Description:

Mr. Richardson provided an overview of the challenges of meeting future water demands for the projected 66% population growth over the next 30 years in the region.

Questions/Comments

Mr. Dawson commented that the pictures were very helpful to understand the lock and dam and water supply intakes. He then asked Mr. Richardson to explain what it looks like when there is a drought. Mr. Richardson replied that during earlier droughts, the water may only come up a couple of inches over dam. After speaking with the Army Corps of Engineers though, the flows during the 2007-2008 droughts was generally a foot spilling over the dam.

Mr. Puette stated that Mr. Richardson said that conservation was a wild card. To what extent does the price to the consumer drive the consumer? Mr. Richardson replied that they have gone away from inclining rate structure and have gone to a uniform rate. There is fixed rate on the front end as well as a volumetric charge. Raising rates does have a quick effect but does not last long term.

Chairman Craven asked what federal and state agencies are involved in regulating aquifer storage. Mr. Richardson replied that Division of Water Resources Public Water Supply and Groundwater Injection were all a part of the initial construction. Public Water Supply now regulates it as a well.

Mr. Dawson stated that aquifer storage and recovery is storage. Mr. Dawson suggested that Mr. Richardson explain how injection wells and storage and recovery works for those Committee Members who were unfamiliar with the process. Mr. Richardson explained the process involved and how CFPU uses that water throughout the year.

b. Greenville Utilities Commission (GUC) (Mary Sadler with Hazen and David Springer, Greenville)

Presentation Description:

Ms. Sadler stated that the timetable of decades for securing new water supplies is unacceptable for protecting health and public safety. She then outlined the regulatory and policy issues associated with securing new water supplies and what steps should be taken to improve the process in order to help find a conclusion for GUC water supply planning. She then provided an overview of the GUC history for trying to secure future water supply and utility expansion since 1997.

Mr. Springer with GUC then spoke, providing an update on the history and difficulties with their water supply planning efforts for Greenville Utility Commission service area. He then gave the next steps GUC is planning to help them meet their future water supply needs.

Questions/Comments:

Chairman Craven stated that unfortunately the time for the meeting was up. He stated that he would like for Mr. Richardson to come back to the next WAC for further discussion.

Mr. Tedder commented that the impediments were the legislature, the bureaucracy, and the Commission and he wanted to apologize for that. He suggested that it might be good to have the staff pull all of the presentations that addressed impediments together and extract the commonalities into a small document. Then the staff could offer up future directions or solutions on how to overcome those impediments.

Chairman Craven agreed with his suggestion to continue the impediments discussion with GUC at the next meeting.

Mr. Springer said that he would be willing to come back and discuss the matter further at the next meeting.

Chairman Craven asked that it be added to the next meeting's agenda.

III. Closing Comments: Chairman Craven

There were no additional comments by the members or staff, Chairman Craven adjourned the meeting.