

**ENVIRONMENTAL MANAGEMENT COMMISSION  
WATER ALLOCATION COMMITTEE  
MINUTES**

**November 4, 2015**

**9:00 A.M.**

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| The Water Allocation Committee (WAC) of the North Carolina Environmental Management Commission (EMC) did the following at its September meeting:                                                                                                                                                                                                                                                    |
| <ul style="list-style-type: none"> <li>• Heard one action item:           <ol style="list-style-type: none"> <li>1. Kerr Lake Interbasin Transfer</li> <li>2. Rules Review Update</li> </ol> </li> </ul>                                                                                                                                                                                            |
| <ul style="list-style-type: none"> <li>• Heard two Information Items           <ol style="list-style-type: none"> <li>1. Interbasin Transfer Update</li> <li>2. Impediments/Challenges of Permitting Water Supplies               <ol style="list-style-type: none"> <li>a) Greenville Utilities Commission</li> <li>b) Summary of All Permitting Water Supplies</li> </ol> </li> </ol> </li> </ul> |

On November 4, 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. Steve Tedder  
Mr. Manning Puette  
Mr. Charles "Boots" Elam  
Mr. E.O. Ferrell

**Others Present:**

Ms. Jennie Hauser, Attorney General's Office

**I. Preliminary Matters:**

In accordance with 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 November 4, 2015 WAC agenda and none of the members stated that there was a conflict. There were no changes to the September Minutes. A motion was made to approve the minutes and a second was made of the motion. The minutes were unanimously approved. Chairman Craven stated that at the July 8 meeting, the committee members requested that the list of names for the Science Advisory Board and Peer Review Group be included in the documentation of the September meeting but they were not included in the minutes. The names will be distributed in the information for the next meeting and will be dealt with as a house keeping item at the January meeting.

**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 highlights from last meeting's presentation from the Hearing Officer's Report for the Kerr Lake IBT. The presentation included the nine required Findings of Fact necessary to issue the Kerr Lake IBT Certificate. The Division of Water Resources requested that the WAC support the requested IBT certificate as presented to go before the full EMC on November 5, 2015 for a final determination.

### **Questions/Comments:**

Mr. Carroll asked how much of the reservoir's water is allocated to water supply. Ms. Godreau showed that 21,115 acre feet is dedicated to water supply. Mr. Carrol asked how that converts to millions of gallons (MGD) per day. Ms. Godreau did not know. Mr. Puette asked if the FONSI was based on the increase in water supply. Tom Fransen with the Division of Water Resources replied that the FONSI was based on the impact of 14.2 MGD. The U.S. Army Corps of Engineers can approve up to 50,000 acre feet of water for water supply in Kerr Lake for both Virginia and North Carolina before doing more complex studies. The water is given in acre feet because acre feet is a volume not a flow rate. Acre feet would need to be converted to a safe yield number.

Mr. Tedder said that he wanted to applaud local governments for proactive planning. He made a motion that the increase be approved. The motion was seconded and approved unanimously

## **2. Rules Review Update (Nat Wilson, Division of Water Resources)**

### **Presentation Description:**

Nat Wilson with the Division of Water Resources discussed the regulatory review of 15A NCAC 2E, Water Use Registration and Allocation. The schedule for the review was discussed. The staff recommended that all water rules be considered necessary with substantive public interest and to request approval to proceed with rules review of Rule 15A NCAC 2E in accordance with SL2013-413. A motion was made by Mr. Tedder to approve the staff recommendation. The motion was seconded and approved unanimously.

## **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 voted to go before the full EMC on November 5, 2015, 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 a determination on the adequacy of the EIS will most likely come before the EMC in their January 2016 meeting.

#### **Questions/Comments:**

Mr. Ferrell asked what the source of water for Union County was now and how much they currently use. Ms. Nimmer replied that Union County already has an existing grandfathered transfer of up to 5.0 MGD from the

Catawba. Union County also has a contract to receive up to 4.0 MGD from Anson County, but has declined to renew that contractual agreement. Given this reduction and the projected increase in population, Union County does not have sufficient supplies for the projected growth demand. Mr. Ferrell asked if they received water from the Rocky River. Ms. Nimmer responded that they do not. Mr. Tedder asked where the Rocky River drained. Ms. Nimmer stated that it was the Yadkin, but it was a different sub-basin. Mr. Puette, who was the hearing officer, stated that an EIS was done for this transfer.

## **B. Impediments/Challenges of Permitting Water Supplies**

### **Presentation Description:**

#### **a. Greenville Utilities Commission (GUC) (David Springer, Greenville)**

### **Presentation Description:**

Mr. Springer gave a summary of the presentation from the last meeting, providing an update on the history and difficulties with the water supply planning efforts for Greenville Utility Commission (GUC) service area. After 10 years of water supply planning, GUC has not really made much progress in a regulatory sense in getting a solid commitment for their water supply even after completing an expensive Tar River flow study. GUC cannot continue to wait to expand their plant and are already planning for that expansion without a clear commitment from the state. Mr. Springer asked for the WAC's help to assist the GUC in resolving this and provided several North Carolina League of Municipalities recommendations that would help.

### **Questions/Comments:**

Mr. Tedder stated that they have seen several presentations like GUC, where they have done a lot of work and spent a lot of money but are having trouble getting a final answer from a planning perspective. He then asked if there is really a way to get a process for getting water supply issues in place without a permitting process. He stated that changes to general statutes and rules need to be made to create a permitting process for planning purposes much like the NPDES permitting process. Mr. Springer then stated that competing legislation has also caused challenges for GUC. Chairman Craven stated that it appears that there are really two issues: how do we improve the process for water supply planning and the particular GUC issue of getting approval.

Ms. Sadler stated that the State met back last January to discuss the project, but Greenville did not have a seat at that table. The approval was tentative with conditions. There were several new people sitting at the table to make a decision about the study and the new people did not understand the background and issues with the study that GUC had already addressed. She stated that there is already enough information to make a decision. How does GUC move forward with the planning? They have a 2050 maximum daily withdrawal as a result of the flow study and are getting ready to start the plant expansion process. They are probably going to pick a flow capacity between now and 2050 as part of their planning process. They chose this number early in the process, because they were unsure what increment they were going to be expanding by and now GUC is at the point that they can make that determination. Are they going to need to do another study in five years when they start planning for their next plant expansion? HB 795 that essentially does away with SEPA adds another layer of complexity.

Mr. Springer said that there are special considerations because GUC has a tidally influenced water supply, the only one in the state. Because they are unique, they have run into problems in the state processes that are based on typical scenarios. GUC started the process as a preliminary study to identify the Tar Rive as their water supply alternative, but now they need to upgrade their plan. As part of the study they have gone far beyond what was needed for the initial scope and now feel that they have done enough in-depth work to prove that the Tar River is their supply alternative. GUC would like to get some kind of Memorandum of Understanding from the State that the State is in agreement with GUC but HB795 has put a kink in the process. The State needs the flexibility to make decisions that take into consideration their unique situation.

Mr. Tedder stated that Mr. Springer made a good point about enough has been done to be able to issue a permit.

Chairman Craven stated that Mr. Richardson with the Cape Fear Utility Authority was under the weather and could not be there. Ms. Hauser stated that if members had questions for Mr. Richardson that they should funnel requests to Chairman Craven and he will forward them to Mr. Richardson.

**b. Summary of All Permitting Water Supplies (Tom Fransen, Division of Water Resources)**

**Presentation Description:** Over the past three meetings, the AWWA, the City of Raleigh, the Catawba-Wateree Management Group, Cape Fear Public Utility Authority, and the Greenville Utilities Commission have come before the WAC. The City of Raleigh's processes, challenges and hurdles were covered. The Catawba-Wateree Management Group's regional planning was also discussed. The Cape Fear Utility Authority's request to remove regulatory impediments as well as the Greenville Utilities Commission impediments were also presented.

What can Water Resources do to help? Water Resources Water Supply Planning Branch provides technical support to local governments by planning, identifying water supply needs, identifying and developing water supply sources to address long-term water supply needs. HB 609 codified what the Water Supply Planning Branch does. The highlights of the role of DWR in HB609 were discussed. A summary of what the Commission can do regarding water supply planning and the corresponding positions of DEQ were presented.

**Questions/Comments:**

Mr. Ferrell asked why DEQ is not in favor of a water permitting program. Tom Fransen responded that the department does not see a need for one at this point and there seems to be an anti-regulatory feeling that may also be a part of their views. The interbasin transfer issues are one area that the Commission has control over the process since they are the permit writers. There is an uncertainty still, however, because the General Assembly has introduced legislation regarding interbasin transfers every session since 1997, though they have not always passed. It is a moving target. DWR also works with various water users through river basin planning and other efforts. DWR is open to suggestions on how to improve the process. From Mr. Fransen's perspective, a major problem is getting all the water users, including agriculture and industry, to come to the table to discuss what their real needs are. It makes it difficult to do meaningful planning when not all the water users' needs are known.

Chairman Craven stated that he felt like they were inundated with great information but did not see a way to wade through it all.

Mr. Tedder stated that he felt Mr. Fransen did a good job summarizing. Mr. Tedder also stated that we will not be able to get out of this cycle without additional legislative initiatives from outside the department.

Mr. Carroll said that GUC has been at this for 10 years. Is there an entity that could give them approval? Tom Fransen stated that DWR has given them initial approval that DWR feels comfortable with the alternative for the next expansion. The concern is that GUC wants a guarantee that their future expansions for a 50 year need for water will also be approved. Mr. Carroll stated that the IBT approval goes out 50 years. Why would not the same kind of analysis be used for situations like GUC? GUC wants a guarantee that future expansions would be approved. Mr. Fransen stated that DWR has the analysis framework to look out 50 years, but does not have the ability to approve a permit for more than the first expansion.

Mr. Carroll asked if it was a department policy or it was the law. Mr. Fransen responded that it was the way the regulations are set up. Mr. Carroll then asked if the regulations are for the EMC or for DEQ. Mr. Carroll then stated that this is a terrible bureaucratic snarl and no one can make a decision. He added that it sounds like someone just needs to make a decision rather than rehashing the same information.

Mr. Tedder said that he believes that they do not have the mechanism to make those decisions.

Mr. Carroll said that it seems to be DEQ's own rules that are creating this impediment because they only look out 5 years, but the city wants a longer time frame. Mr. Fransen stated that DEQ does not have a mechanism to do that. Mr. Carroll asked what that mechanism would look like. Would DEQ simply write a regulation that said they could now plan out 30 years?

Linwood Peele with the Local Water Supply Planning Branch of the Division of Water Resources stated that the Local Water Supply Planning Program processes plan out for 50 years. DWR gave the approval for the plant expansion, but cannot give GUC a long-term guarantee. If the State had a water withdrawal permitting system, then DWR would be able to provide a permit and give them that long-term planning guarantee. Mr. Carroll asked if the permitting process would require legislation or if DEQ could develop it on its own. Mr. Peele stated that it would have to be done through legislation because it would require all water users to participate.

Mr. Fransen stated that the commission could use the capacity use rules to start public hearings and the rule making processes. The Committee could hold statewide public hearings to see if there is the political will to do something like a water withdrawal permitting system.

Mr. Tedder stated that many had only ever heard of capacity use areas used for groundwater although the statute clearly allows it for surface waters. He asked if capacity use areas are used for surface waters, would permits still be required. Mr. Fransen stated that the Commission could use capacity use as a mechanism to gather input to inform the General Assembly or to go through the rule making process to institute that permitting system if the Commission feels that is something that they want to do.

Mr. Tedder stated that those in the room might want to collectively go to the General Assembly to provide clarifying legislation regarding the permitting rules necessary for long-term planning. Mr. Fransen responded that the General Assembly will need more than a few people telling them what they need. Mr. Tedder stated that he did not say a few but that many should do it.

Chairman Craven asked in the short term, if there is some way that a Memorandum of Understanding (MOU) between DEQ and GUC could be drawn up that would give GUC some assurance that what they have done to date could still be used at a later date. The MOU could include what parts would need to be updated later and what parts would still be relevant so they would not have to revisit those items in the next five or ten years.

Mr. Tedder responded that a lot can happen in the course of planning over 10 to 20 years. Even if the department and GUC had a MOA, over the course of the 10 to 20 years, there would be mostly new staff, a new administration, and few who understand what the MOA entails. It would almost be like starting over anyway. If GUC is looking for some kind of guarantee, it needs to be a through a permitting processes. Otherwise, there is really no way to guarantee anything.

Chairman Craven stated that the MOA would be a Band-Aid, but it might be a way to put a patch on GUC's problem while they work on a more permanent solution.

Mr. Fransen stated that the two mechanisms that could have been used to give more assurance to GUC have been taken away. The first was the State Environmental Policy Act which outlined when the department does an environmental assessment or an environmental impact statement and it is now very limited. The agency has decided that if an entity is not required to do one, the department is not going to entertain those who want to do one voluntarily. It puts the department in potential legal jeopardy to issue a FONSI for something that has not been done. Part of what DWR was trying to do was to preserve some of GUC's technical work by including GUC's specialty modeling for the estuary into the standard surface modeling to be included as part of the Commission's model approval. The Commission asked DWR to go back to the General Assembly to get ecological flow issues straightened out before the Commission saw the model for approval again, taking away that mechanism as well. DWR is struggling to find a mechanism to be able to have the authority to do

something like what the Commission is suggesting. He stated that Mr. Tedder is right about the MOU being insufficient.

Mr. Puette stated that Mr. Fransen had mentioned the Capacity Use Act of 1967 and asked if there was a priority list of capacity use areas? Mr. Fransen stated that DWR does not have a priority list of surface or groundwater areas that are currently threatened or are projected to exceed their capacities. DWR does not have a list because they have not identified a need to use it.

Chairman Craven stated that the whole topic needs a little more work in committee before they are ready to go to the full EMC. As it stands now, they could give the EMC a great education on the problems, but do not have a plan of what they need the EMC to do to help eliminate the problems. Space should be saved on the January agenda to discuss these issues again and to see if there are any new ideas to discuss between now and then.

### **III. Closing Comments: Chairman Craven**

Mr. Tedder thanked all the presenters for traveling so far and providing great information. He then stated that how the information is utilized has yet to be determined. He does not believe that the Commission will be the one to make the difference here. He believes that it would have to come from other sources that eventually come to the Commission for support.

There were no additional comments by the members or staff. There was a motion to adjourn the meeting. The motion was seconded and approved unanimously. Chairman Craven adjourned the meeting.