

**ENVIRONMENTAL MANAGEMENT COMMISSION
WATER ALLOCATION COMMITTEE
MINUTES**

**July 13, 2016
9:00 A.M.**

On July 13, 2016, the Water Allocation Committee (WAC) met in the Ground Floor Hearing Room at the Archdale Building in Raleigh, North Carolina.

WAC Members in Attendance

Chairman Butch Smith
Vice-Chair David Anderson
Mr. Tommy Craven
Mr. Bill Puette
Dr. Lawrence Raymond
Ms. Julie Wilsey
Mr. E.O. Ferrell

Others Present

Mr. Steve Tedder
Ms. Jennie Hauser, Attorney General's Office

I. Preliminary Matters

In accordance to North Carolina General Statute § 138A-15, Chairman Smith asked if any WAC member knew of any known conflict of interest or appearance of conflict with respect to any item on the July 13, 2016 WAC agenda and none of the members stated that there was a conflict. The May 11, 2016 meeting minutes needed approval. A motion was made to approve the minutes. The motion was seconded. The May minutes were unanimously approved.

II. Action Item

A. Draft Determination for an Interbasin Transfer Certificate for Union County (Kim Nimmer, NC Division of Water Resources)

Procedural Matters

The Draft Determination for the Interbasin Transfer (IBT) Certificate for Union County 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 Draft Determination Interbasin Transfer Certificate for Union County. 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 have 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

Kim Nimmer discussed the need for the Committee to issue a draft determination of the Union County interbasin transfer certification in order to comply with § 143-215.22L(i). An overview of the interbasin transfer request was given. The EMC is required to consider the nine findings of fact when making their decision. The nine findings of

fact were discussed. Based on the nine findings of fact, a draft determination of the Union County IBT certificate was requested. The Division of Water Resources is requesting that the WAC move the draft determination for an interbasin transfer certificate to the full EMC's meeting on July 14, 2016, allowing Union County to transfer up to 23 million gallons per day from the Yadkin River IBT basin to the Rocky River IBT basin.

Questions/Comments

Mr. Smith asked if a DWR model was used. Ms. Nimmer said that it was an external model. Mr. Smith asked if there was any opposition to the transfer. Ms. Nimmer stated that they had not received any. Mr. Anderson asked if the water quality received would be of lesser quality. Ms. Nimmer stated that a water quality treatment plant would be built as part of the proposed project, and that the water to be transferred from Lake Tillery is currently used as a drinking water source for the Town of Norwood. Mr. Anderson asked if there was opposition. Ms. Nimmer stated that staff were not aware of any opposition that has come forward to date. If the draft certificate is approved, opposition may come out during the required public hearings.

Mr. Puette asked if the drought scenarios used were the worst of record? Ms. Nimmer said yes. Mr. Puette also asked if Duke had any comments regarding the project? Ms. Nimmer stated that Duke had submitted technical comments on the draft Environmental Impact Statement, and that Duke will be involved with the project regarding permitting through FERC for use of water from Lake Tillery for purposes other than hydropower generation and the construction of a new intake on the lake.

Mr. Smith asked if there was a safe yield determination on Lake Tillery. Mr. Tom Fransen with DWR stated that he does not believe that there is one for the Yadkin. Mr. Smith asked if there were gauges. Mr. Fransen stated that if needed, DWR could work with the applicant's consultant to calculate a safe yield. After Mr. Smith expressed concern over the possibility of future drought lowering lake elevations so that surface water intakes are vulnerable, Mr. Fransen emphasized that the modeling had demonstrated that over the long period of record, the lake never went below the FERC required minimum lake elevations, which are significantly above the elevation for the water intake in Lake Tillery. He felt confident that they were within the safe yield.

Mr. Craven made a motion that the request be approved to move the draft IBT certificate forward to the full EMC for a draft determination. The motion was seconded and was approved unanimously.

III. Information Item

A. Update on the Rules Review of 15A NCAC 2E (in accordance with Session Law 2013-413) (Nat Wilson, Division of Water Resources)

Presentation Description

Mr. Wilson gave an overview of the rules that were under review. A summary of the public comment period on the rules was given. Only one public comment was submitted and that comment was in favor of the rules. A schedule of the approval of those rules determinations was given.

Questions/Comments

There were no questions or comments.

IV. Concluding Remarks

Chairman Smith asked if there was anything else that needed to be discussed or other comments. There were no additional comments by the members or staff. Chairman Smith adjourned the meeting.