FISCAL NOTE

Rule Citation Number: 15A NCAC 2B .0308 Catawba River Basin

Rule Topic: Proposed Reclassification of Two Segments of Maiden Creek and Two Segments of Allen Creek from Class Water Supply-II (WS-II) Critical Area (CA) High Quality Waters (HQW) and Class WS-II HQW to Class WS-V

DENR Division: Division of Water Quality

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Impact Summary:

State government:	Yes
Local government:	No
Substantial impact:	No
Federal government:	No

Authority: G.S. 143-214.5

Necessity: This proposed reclassification is required to reflect an accurate representation of the current use of these waters. The Town of Maiden no longer uses these waters as public water supplies and has no plans to use these waters as public water supplies in the future. This proposed rule change complies with Executive Order 70 and serves the public interest by keeping water classifications current.

I. Summary

The Town of Maiden (Town) has requested that two segments of Maiden Creek and two segments of Allen Creek along with these segments' associated watersheds in Catawba and Lincoln Counties (Catawba River Basin) be reclassified for use as former public water supplies. The WS-V designation would be the most appropriate classification for this use and these waters (see Appendix 1 for the proposed rule change text). This proposal would acknowledge that the Town no longer uses, and does not plan to use, these waters as public water supplies. In these watersheds there are no existing or planned industrial or domestic wastewater discharges, and no planned land application sites, landfills, or development, that would be affected by the proposal. This reclassification does not take away any existing requirements or place any additional requirements on the three local governments, Lincoln County, Catawba County, and the Town, with jurisdiction in the proposed reclassification areas. The one-time cost to DENR for this proposal is estimated at $355. The analysis of the proposed rule does not indicate that estimated annual economic impacts would meet or exceed $500,000. The state anticipates the effective reclassification date to be March 1, 2013.

I. Purpose of Rule and Background

The purpose of this rule change is to acknowledge that the Town no longer uses, and does not plan to use, these waters as public water supplies, as these waters are insufficient to meet water demands. An existing long term contract with the City of Hickory (City) allows the Town to receive treated water from the City currently and into the future. The Town has not used the subject waters as public water supplies since the contract with the City began in 2002. This proposed reclassification will result in an updated, accurate representation of the current use of these waters.

The Division of Water Quality assigns all surface waters a primary classification to designate their best uses. Class C is the most basic classification for freshwater and is intended to protect the following uses: secondary recreation, fishing, wildlife, fish and aquatic life propagation and survival, and agriculture. Secondary recreation includes wading, boating, and other uses involving human body contact with water where such activities take place in an infrequent, unorganized, or incidental manner. Other primary classifications are assigned to protect waters for such uses as shellfishing (Class SA), drinking water supply (WS-I through WS-V), and primary recreation (B). Supplemental classifications afford additional protections and include Nutrient Sensitive Waters (NSW) and High Quality Waters (HQW).

The five drinking water supply classifications, WS-I through WS-V, reflect the variability in the types of water supply watersheds across the state. The Water Supply Watershed Protection Act (North Carolina General Statute 143-214.5) requires the Environmental Management Commission to adopt rules to protect the state's surface drinking water supply watersheds.

The Town has requested that two portions of Maiden Creek and two portions of Allen Creek along with these segments' associated watersheds in Catawba and Lincoln Counties (Catawba River Basin) be reclassified for use as former public water supplies. The WS-V designation would be the most appropriate classifications for this use and these waters (see Appendix 1 for the proposed rule change text). The WS-V for one of the Maiden Creek segments would extend from the source of Maiden Creek to a point 0.7 mile upstream from the backwaters of Maiden Reservoir, and the WS-V for the other Maiden Creek segment would extend from that same point (0.7 mile upstream from the backwaters of Maiden Reservoir) to the dam at Maiden Reservoir. The WS-V for one of the Allen Creek segments would extend from the source of Allen Creek to a point 0.7 mile upstream of the Maiden water supply intake, and the WS-V for the other Allen Creek segment would extend from that point (0.7 mile upstream of the Maiden water supply intake) to the Maiden water supply intake. See the Guide to Freshwater Classifications Chart (PDF) for WS-V regulations at the following website: http://portal.ncdenr.org/web/wq/ps/csu/classifications.

II. Costs

Regulated Parties

(a) New and Existing Wastewater Discharges, Landfills and Land Application Sites

There are currently no permitted wastewater discharges within the proposed areas. In addition, there are no known planned wastewater discharges into the proposed waters. There are no planned landfills and no planned land application sites in the proposed areas.

(b) New Development

According to NC DWQ Regional office staff, as well as Sam Shultz (Planning Director for the Town of Maiden), Andrew Bryant (Planner for Lincoln County), and Chris Timberlake (Planner for Catawba County), there are no known plans for new development in the proposed areas.

(c) Local Governments

The Town, Lincoln County and Catawba County would not be required to take or stop any actions as a result of this proposal. No changes to these local governments' ordinances need be made once the reclassification becomes effective.

(d) Department of Transportation (DOT)
This reclassification would not affect planned DOT activities in the area according to Matthew Lauffer (NC DOT Highway Stormwater Program Project Manager) and David Harris (NC DOT State Roadside Erosion Control and Vegetation Management Engineer).

Implementing Agencies
(a) Division of Water Quality
The NC DWQ Central office and Regional office staff will oversee the processing of the proposed rule. DWQ staff will handle administrative procedures, educational and technical assistance and rule/policy evaluations. In addition, there are DWQ staff who will specifically oversee and assist local governments with watershed planning and ordinances. The division issues permits, conducts inspections and takes enforcement actions. DWQ monitors and keep records of compliance associated with their inspections and enforcement activities.

The Division of Water Quality anticipates that if this rule becomes effective, there will be a one-time cost of $355 to the state. About $240 of this cost is to be used to notify the Town, Lincoln County and Catawba County of the classification change when it becomes effective, and the remaining $115 of this cost is to be incurred to update state databases featuring the subject waters.

The formula used to estimate the above-mentioned costs is the following:

One-time Cost to State = [[#tasks] X [hrs/task] X [staff compensation/hr]] + [25% overhead]

"Tasks" include phone calls, letters, data entry, etc. that would be performed by state staff, and "staff compensation/hr," which is based on salary information from OSBM as of July 1, 2008, includes salary, payroll taxes, retirement, and health benefits.

III. Benefits

(a) Humans
This reclassification will reflect the current use of these waters as former public water supplies. The citizens of the area will not incur a benefit from the reclassification of these river segments for this use, as no changes to local government programs are required, and there are no existing or proposed activities affected by the proposal.

(b) Environment/Ecosystem
The environment will not incur any benefits from the proposal. None of the existing or proposed activities or programs administered by the Town, Lincoln County, and Catawba County will be required to change as a result of this proposed rule.

IV. Total Costs and Benefits

DENR anticipates approximately $355 in one-time costs for this reclassification. The analysis of the proposed rule indicates that estimated annual economic impacts would be significantly less than $500,000.

APPENDIX 1

15A NCAC 02B .0308 is proposed for amendment as follow s:

15A NCAC 02B .0308 CATAWBA RIVER BASIN

(a) The Catawba River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:

(1) the Internet at http://h2o.enr.state.nc.us/csu/ http://h2o.enr.state.nc.us/csu/; and

(2) the North Carolina Department of Environment and Natural Resources:

(A) Mooresville Regional Office
610 East Center Avenue, Suite 301
Mooresville, North Carolina;

(B) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina; and

(C) Division of Water Quality
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering South Carolina are classified "C."

(c) The Catawba River Basin Schedule of Classifications and Water Quality Standards was amended effective:

(1) March 1, 1977 see Paragraph (d) of this Rule;
(2) August 12, 1979 see Paragraph (e) of this Rule;
(3) April 1, 1982 see Paragraph (f) of this Rule;
(4) January 1, 1985 see Paragraph (g) of this Rule;
(5) August 1, 1985 see Paragraph (h) of this Rule;
(6) February 1, 1986 see Paragraph (i) of this Rule;
(7) March 1, 1989 see Paragraph (j) of this Rule;
(8) May 1, 1989 see Paragraph (k) of this Rule;
(9) March 1, 1990 see Paragraph (l) of this Rule;
(10) August 1, 1990 see Paragraph (m) of this Rule;
(11) August 3, 1992 see Paragraph (n) of this Rule;
(12) April 1, 1994 see Paragraph (o) of this Rule;
(13) July 1, 1995 see Paragraph (p) of this Rule;
(14) September 1, 1996 see Paragraph (q) of this Rule;
(15) August 1, 1998 see Paragraph (r) of this Rule;
(16) April 1, 1999 see Paragraph (s) of this Rule;
(17) August 1, 2000 see Paragraph (t) of this Rule;
(18) August 1, 2004 see Paragraph (u) of this Rule;
(19) May 1, 2007 see Paragraph (v) of this Rule; ~~and~~
(20) September 1, 2010 see Paragraph (w) of this ~~Rule.~~ Rule; and
(21) March 1, 2013 see Paragraph (x) of this Rule.

(d) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1977 as follows:

(1) Torrence Branch (Index No. 11-136) from source to North Carolina-South Carolina State Line was reclassified from Class D to Class B; and

(2) Edwards Branch (Index No. 11-137-8-2-1) from source to Brier Creek was reclassified from Class D to Class C.

(e) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 12, 1979 as follows: Unnamed Tributary to Lower Little River (Robinette Creek) (Index No. 11-69-1.5) from source to Lower Little River was reclassified from Class C to Class B.

(f) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1982 as follows:

(1) Spainhour Creek (Index No. 11-39-3) from source to Lower Creek was reclassified from Class C (1) to Class C; and

(2) Allen Creek (Index No. 11-129-5-7-2-4) from source to Maiden Creek was reclassified from Class C to Class A-II.

(g) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective January 1, 1985 as follows: Catawba Creek from source to N.C. Highway 275 was reclassified from Class C(1) to Class C.

(h) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1985 as follows:

(1) Brier Creek (Index No. 11-137-8-2) from source to Little Sugar Creek was reclassified from Class C (1) to Class C;

(2) Little Hope Creek (Index No. 11-137-8-3) from source to Little Sugar Creek was reclassified from Class C (1) to Class C; and

(3) McMullen Creek (Index No. 11-137-9-5) from source to N.C. Highway 16 was reclassified from Class C (1) to Class C.

(i) The Schedule of Classification and Water Quality Standards for the Catawba River Basin was amended effective February 1, 1986 with the reclassification of all A-I & A-II streams to WS-I & WS-III in the Catawba River Basin.

(j) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1989 as follows:

Wilson Creek (Index No. 11-38-34) and all tributary waters were reclassified from Class B-trout and Class C-trout to Class B-trout ORW and Class C-trout ORW.(k) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective May 1, 1989 as follows:

(1) Henry Fork [Index Nos. 11-129-1-(1) and 11-129-1-(2)] from source to Laurel Creek, including all tributaries, were reclassified from Class WS-I, C and C trout to Class WS-I ORW, C ORW and C trout ORW, except Ivy Creek and Rock Creek which will remain Class C trout and Class C; and

(2) Jacob Fork [Index Nos. 11-129-2-(1) and 11-129-2-(4)] from source to Camp Creek, including all tributaries, were reclassified from Class WS-III trout and WS-III to WS-III trout ORW and WS-III ORW.

(l) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1990 as follows:

(1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C Trout ORW; and

(2) Steels Creek [Index No. 11-35-2-12(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.

(m) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1990 as follows:

(1) The classification for the portion of Mackey Creek [Index No. 11-15-(2)] from Marion Water Supply Intake to Laurel Fork was reclassified from Class C to Class C HQW;

(2) Laurel Fork Creek [Index No. 11-15-3] from source to Mackey Creek was reclassified from Class C Tr to Class C Tr HQW;

(3) Armstrong Creek [Index No. 11-24-14-(1)] from source to Bee Rock Creek was reclassified from Class WS-III Tr to Class WS-III Tr HQW;

(4) Linville River [Index Nos. 11-29-(16) and 11-29-(19)] were reclassified from Class B Tr and Class B to Class B Tr HQW and Class B HQW, respectively;

(5) Upper Creek [Index No. 11-35-2-(8.5)] and its named tributaries was reclassified from Class C Tr to Class C Tr HQW;

(6) Upper Creek (Clear Water Beach Lake) [Index No. 11-35-2-(10)] from Holly Spring Branch to Dam Clear Water Beach Lake was reclassified from Class B Tr to Class B Tr HQW;

(7) Holly Spring Branch [Index No. 11-35-2-11] from source to Upper Creek was reclassified from Class C Tr to Class Tr HQW;

(8) Steels Creek [Index No. 11-35-2-12-(5)] from Little Fork to a point 1.7 miles upstream from N.C. Highway 181 Bridge was reclassified from Class B Tr to Class B Tr HQW and Steels Creek [Index No. 11-35-2-12-(7)] from a point 1.7 miles upstream from N.C. Highway 181 bridge to Clear Water Beach Lake, Upper Creek was reclassified from Class B to Class B HQW;

(9) Upper Creek [Index No. 11-35-2-(13)] from Dam at Clear Water Beach Lake to Warrior Fork was reclassified from Class WS-III Tr to Class WS-III Tr HQW;

(10) The portion of Johns River [Index No. 11-38-(28)] from Wilson Creek to Rhodhiss Lake, CatawbRiver was reclassified from Class C to Class C HQW;

(11) Mulberry Creek [Index No. 11-38-32-(1)] from source to Boone Fork and its tributaries Left Fork Mulberry Creek [Index No. 11-38-32-2], Right Fork Mulberry Creek [Index No. 11-38-32-3], Roaring Creek [Index No. 11-38-32-8] and Clark Branch [Index No. 11-38-32-10] were reclassified from Class C Tr to Class C Tr HQW;

(12) Amos Creek [Index No. 11-38-32-4] and Mills Creek [Index No. 11-38-32-5] and their named tributaries were reclassified from Class C to Class C HQW;

(13) Cane Branch [Index No. 11-38-32-6], Rush Branch [11-38-32-7] and Frankum Creek [11-38-32-9] and its named tributaries were reclassified from Class C to Class C HQW;

(14) Mulberry Creek [Index No. 11-38-32-(11)] from Boone Branch to Dam at Mulberry Beach was reclassified from Class B to Class B HQW;

(15) Boone Branch (Fork) [Index No. 11-38-32-12] and its named tributaries from source to Mulberry Creek was reclassified from Class B to Class B HQW;

(16) Brown Branch [Index No. 11-38-32-13] and Moore Branch [Index No. 11-38-32-14] were reclassified from Class B to Class B HQW; and

(17) Anderson Creek [Index No. 11-38-32-16] was reclassified from Class C to Class C HQW.

(n) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(o) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1994 as follows:

(1) Friday Lake (Index No. 11-125.5) from its source to Little Paw Creek was reclassified from Class C to Class B; and

(2) The Linville River [Index No. 12-29-(1)] from Grandmother Creek to Linville Falls was reclassified from Class C Tr to Class B Tr.

(p) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective July 1, 1995 with the reclassification of Clark Creek from a point 0.6 mile downstream of Catawba County SR 2014 to 0.4 mile upstream of Larkard Creek [Index No. 11-129-5-(4.5)], and Howards Creek from its source to 0.7 mile upstream of Lincoln County State Road 1200 [Index No. 11-129-4], including associated tributaries from Class WS-IV to Classes C and WS-IV.

(q) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective September 1, 1996 as follows:

(1) North Fork Catawba River [Index No. 11-24-(1)] from Laurel Branch to Armstrong Creek from Class C Tr to Class B Tr; and

(2) Catawba River (Lake Hickory) from Rhodhiss dam to highway 321 [Index No. 11-(51)] from Class WS-IV CA to Class WS-IV&B CA.

(r) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1998 as follows:

(1) The primary classification for portions of South Fork Catawba River [Index No. 11-129-(0.5)] and Hoyle Creek [Index No. 11-129-15-(1)] was reclassified from Class WS-IV to Class WS-V;

(2) Mill Creek [Index No. 11-7] from its source to Swannanoa Creek, including all tributaries, from Class C Tr to Class Tr HQW;

(3) Toms Creek [Index Nos. 11-21-(1) and 11-21-(2)] from its source to Harris Creek, including all tributaries were reclassified from Class C Tr to Class Tr HQW; and

(4) Harris Creek to McDowell County SR 1434, including all tributaries were reclassified from Class C to Class HQW.

(s) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1999 as follows:

(1) Portion of the Catawba River [Index Nos. 11-(27.5) and 11-(31)] from Class WS-IV & B and WS-IV to Class WS-V & B and WS-V;

(2) Armstrong Creek [Index Nos. 11-24-14-(1), 11-24-14-(13.5) and 11-24-14-(14)], and all tributaries from Classes WS-II Tr, WS-II, WS-II CA and C Tr to Classes C Tr HQW and C HQW;

(3) Lookout Shoals Lake from Oxford Dam to Island Creek [Index No. 11-(67)] from Class WS-V to Class WS-IV CA, from Island Creek to Elk Shoal Creek [Index No. 11-(70.5)] from Class WS-IV to Class WS-IV CA and from Elk Shoal Creek to a point one half mile upstream of Lookout Shoals Dam [Index No. 11-(72)] from Class WS-IV&B to Class WS-IV&B CA;

(4) The classifications of tributary streams that are within five miles and draining to the normal pool elevation of Lookout Shoals Lake (Protected Area) have been revised to Class WS-IV; and

(5) The classifications of tributary streams that are within one half mile and draining to the normal pool elevation of Lookout Shoals Lake (Critical Area) have been revised to Class WS-IV CA.

(t) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2000 with the reclassification of Little Grassy Creek (Index No. 11-29-2), including all tributaries, from its source to the Linville River from Class C Tr to Class C Tr ORW.

(u) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2004 with the reclassification of a segment of three surface waters, more specifically Henry Fork [11-129-1-(1)], Jerry Branch [11-129-1-3-(1)], and He Creek [11-129-1-4-(1)], from source to a formerly used City of Morganton Water Intake from Class WS-I ORW to Class WS-V ORW.

(v) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended May 1, 2007 with the reclassification of the Catawba River [Index No. 11-(31.5)] from a point 0.6 mile upstream of Muddy Creek to a point 1.2 miles upstream of Canoe Creek from WS-IV to WS-IV Tr and Catawba River [Index No. 11-(32.3)] from a point 1.2 miles upstream of Canoe Creek to a point 0.7 mile upstream of Canoe Creek (Morganton water supply intake) from WS-IV CA to WS-IV Tr CA. Named and unnamed tributaries to this portion of the Catawba River are not classified as Trout. Between the last day of May and the first day of November the water quality standard for dissolved oxygen shall not be less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l.

(w) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended September 1, 2010 with the reclassification of the portion of the Catawba River [Index No. 11-(1)], from its source to the Left Prong Catawba River confluence, and its named tributaries, Chestnut Branch (Fork) [Index No. 11-2], Clover Patch Branch [Index No. 11-3], Youngs Fork Creek [Index No. 11-4], Spring Branch [Index No. 11-5], and Left Prong Catawba River [Index No. 11-6] from Class C Tr to Class C Tr HQW.

(x) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended March 1, 2013 as follows:

(1) the portion of Maiden Creek [Index No. 11-129-5-7-2-(1)] from source to a point 0.7 mile upstream from backwaters of Maiden Reservoir, and its named tributary, Bee Branch [Index No. 11-129-5-7-2-2], from Class WS-II HQW to WS-V;

(2) the portion of Maiden Creek [Index No. 11-129-5-7-2-(2.5)] from a point 0.7 mile upstream from backwaters of Maiden Reservoir to dam at Maiden Reservoir from Class WS-II HQW CA to WS-V;

(3) the portion of Allen Creek [Index No. 11-129-5-7-2-4-(1)] from source to a point 0.7 mile upstream of Maiden water supply intake from Class WS-II HQW to WS-V; and

(4) the portion of Allen Creek [Index No. 11-129-5-7-2-4-(2)] from a point 0.7 mile upstream of Maiden water supply intake to Maiden water supply intake from Class WS-II HQW CA to WS-V.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. March 1, 2013; December 1, 2010; September 1, 2010; May 1, 2007; August 1, 2004; August 1, 2000; April 1, 1999; August 1, 1998; September 1, 1996; July 1, 1995; April 1, 1994; August 3, 1992; August 1, 1990.