

**MEETING OF THE NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION**

**Raleigh, North Carolina  
May 12, 2011  
Minutes**

The North Carolina Environmental Management Commission met in the Ground Floor Hearing Room of the Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina. Chairman, Stephen T. Smith presided. The following persons attended for all or part of the meeting:

**COMMISSION MEMBERS:**

Donnie Brewer	Tom Ellis	Dr. David H. Moreau	Dr. David B. Peden
Thomas F. Cecich	William L. Hall	Jeffrey V. Morse	Thomas H. Percival
John S. Curry	Dr. Ernest W. Larkin	Dr. Charles H. Peterson	J. Dickson Phillips III
Marion E. Deerhake	Kevin Martin	Mayor Darryl D. Moss	Stephen Smith
			Forrest R. Westall, Sr.

**DIVISION OF WATER QUALITY:**

Bradley Bennett	Alan Clark	Elizabeth Kountis	Jay Sauber
Janice Bownes	Nora Deamer	Matt Matthews	Coleen Sullins
Ted Bush	Bethany Georgoulas	Sandra Moore	Lois Thomas
Kevin Bowden	Deborah Gore	Diane Reid	Julie Ventaloro
Connie Brower	John Huisman	Jon Risgaard	Chuck Wakild
Amy Chapman	Steve Kaasa	Jason Robinson	

**DIVISION OF AIR QUALITY:**

Sheila Holman  
Michael Abraczinskas  
Joelle Burleson  
Angela Terry  
Michael Petratjic

**DIVISION OF WASTE MANAGEMENT:**

Ruth Strauss  
Debra Watts  
Betty Gatano

**DIVISION OF WATER RESOURCES:**

Tom Reeder  
Tom Fransen  
Steve Reid

**ATTORNEY GENERAL'S OFFICE:**

Jennie Hauser  
Jim Gulick

## **I. Preliminary Matters**

**Chairman Smith:** called the May 12, 2011 meeting to order at 9:10 a.m. He then read the Ethics General Statute § 138A-15, which mandates that the Chairman inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Commission. Commission members were asked if they knew of any conflict of interest or appearance of a conflict to please so state at this time.

Let me begin by asking if any of the members are aware of a conflict of interest or appearance of conflict of interest of any matter on our agenda for today. Please indicate and if you become aware of one as the meeting unfolds indicate it at that time.

**Forrest Westall:** I'd like to recuse myself from the matter concerning the Town of Boone's reclassification of the South Fork of the New River.

**Chairman Smith:** asked for any additions or changes to the agenda. I have one. As you know the agenda calls for Commission members' comments and chair comments at the end of the meeting. I'd like to shift my comments to the beginning of this meeting. I won't make a habit of this but if you all will bear with me there are several things that I feel compelled to say this morning.

As you probably know better than I, in recent times the environmental world in North Carolina has been subjected to a convergence of forces that at least from my experience has been unprecedented, in particular the recession, the state budget, actions of the General Assembly and the press.

We clearly are in the worst recession in most of our lifetimes. Looking around this room I would venture to say for all of our lifetimes, that for some industries, particularly construction and real estate, it's probably the second worst depression in modern times. It would be hard to overemphasize the pervasive significance of the recession in everything that we're experiencing.

Putting aside politics, we all know that this year's state budget is going to require additional significant cuts. You can pick your issue and you will find painful and in some instances sacrificial cuts in the state budget. I don't envy the General Assembly or the Governor as they try to lead us through these economic times. I pray that their decisions are sound and wise and stand the test of time. In the viewing of the present proposed budget one of the hardest hit sectors is the Department of Environmental and Natural Resources. Now that we see a proposed budget we have a clear understanding of what that budget will mean for DENR personnel and DENR programming. In that context I want to acknowledge the experience, knowledge, dedication and commitment of the employees of the Department with whom we have contact and on whom so much of our work depends. We see and benefit from your commitment and public service. On behalf of the Environmental Management Commission I commend you and thank you.

The state budget is only one of the areas in which the General Assembly is presently active. We see and hear about any number of bills, some relating to the state regulation process generally, some relating to the Administrative Procedures Act, and some relating to environmental regulations specifically. For the bills that become law we, of course, will continue to follow the statutes as they are written. But in that context I want to say to you, EMC

members, that you too are dedicated and committed public servants. Accepting a position on the EMC is not for someone who wants a prestigious political job that isn't too taxing. As you very well know, being prepared on the issues that come before us requires a lot of demanding hours and effort. We see the time, care and thoughtfulness that EMC members put into striving to preserve and protect our environment in ways that are workable and equitable for the private and public regulated community. My assessment is that as individual EMC members we cover a pretty wide spectrum politically and philosophically. As a group I see us fairly well balanced. Our record of divided votes supports that assessment as does the fact that on occasion we have the regulated community, the environmental activist community and DENR staff all upset with us on the same issue. In short what I see is EMC members working hard to strike a balance between being good stewards of God's creation and being sensitive to the economic needs of the state and the people. For that you too are to be commended.

Some of the issues we face have some particularly conflicting and overlapping demands. Some issues are evolving in developing science and technology. In that context I want to mention the recent series of articles in the News & Observer which dealt mainly with stream and wetlands mitigation and specifically with the Ecosystems Enhancement Program. If you didn't read it, that series involved four articles. In the first the reporter selected five EEP projects as examples of failure and waste. My understanding is that this information came from a DWQ report entitled, "Compensatory Stream and Wetland Mitigation in North Carolina An Evaluation of Regulatory Success". That report is available on the DWQ webpage and I encourage you to look at them. That report found overall success rates for stream mitigation in North Carolina to be 75.10% and wetlands mitigation to be 74.47%. In these hard economic times there may be some value in emphasizing the few failures and what they cost the taxpayer and in not emphasizing the 75% success rate. Whether there is or not, that was the editorial decision the News & Observer made.

The second of those articles was actually complimentary of the work of the EMC. The focus was on "a missed chance to clean Triangle water" brought about by the General Assembly disagreeing with our decision to set the price developers pay for each pound of nitrogen pollution at \$57.00, and instead we set in that price \$11.00 a pound. As we know \$11.00 a pound for nitrogen isn't enough to fund mitigation, particularly in the watersheds where most of the development takes place. That was the point the article made by looking at Falls Lake. The articles also dealt with the extent to which we can gauge the effectiveness of mitigation projects. We know that science and technology are evolving and developing. My take-away from these articles is first of all we accept the compliment from the News & Observer, left-handed though it was. We had it right in setting the price for mitigation credits and the General Assembly got it wrong. Secondly, that we follow up on our previous questions on the extent to which we can assess the effectiveness of mitigation projects. Finally as a way of sharpening the focus of what the EMC should and should not be doing, I want to read from the state statutes on the EMC's legal responsibilities.

First of all, General Statute 143-211(a): "It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources, to achieve and to maintain for the citizens of the State a total environment of superior quality., Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare. Standards of water and air purity shall be designed to protect human health, to prevent

injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources.”

143B-282: “ There is hereby created the Environmental Management Commission with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.” There follows four pages of specific powers and duties that we have.

With that we move to our agenda. I appreciate your patience with me this morning.

The first order of business is the approval of the minutes from the March 10, 2011 meeting. Are there any adjustments to those minutes?

Dr. Peterson made a motion to approve the minutes. Dr. Larkins seconded. The motion passed.

Next we have a report from Mr. Gulick with a Tennessee Valley Authority update and in particular, the North Carolina settlement.

## **I. Preliminary Matters**

### **Tennessee Valley Authority (TVA) Update - NC Settlement**

**Summary (Jim Gulick):** The agreement was announced on April 14<sup>th</sup> of this year. The parties are EPA, TVA, North Carolina and also the regulating states, Alabama, Tennessee and Kentucky. Also involved in the settlement are three environmental organizations who like North Carolina had been busy suing TVA. The format of the agreement is complicated and probably unique. There is a Federal Facilities Compliance Agreement between EPA and TVA. There’s a Federal Consent Decree which has been lodged but not yet entered but in Federal District Court, the plaintiffs being everybody -- except TVA, of course -- but not including EPA because EPA cannot sue TVA according to the U. S. Justice Department. There’s a public comment period on this agreement which EPA requires and the comment period ends May 20<sup>th</sup>. Most of the comments so far have been citizens in and around Johnsonville, Tennessee who object to the closure of that plant. If comments do not warrant change which we expect they will not, then the parties will ask the Court to enter the Decree. That will occur sometime in June. This Johnsonville plant on the map was a trial exhibit and the map also shows where North Carolina coal-fired power plants are. The four closest plants starting from the far northeast are John Sevier, Bull Run, Kingston and TVA’s Widow’s Creek plant in northeast Alabama. I will refer to these four plants later as the hundred mile plants.

In 1999 EPA alleged that TVA committed numerous violations of the Clean Air Act and ordered it to install pollution controls. TVA sued EPA in the eleventh circuit and in 2004 the U. S. Court of Appeals said no, there were procedural reasons that EPA couldn’t do that, and the Court said to EPA, you have to go to court. But that effectively barred EPA from taking any further actions because it’s a U. S. Justice Department policy that one federal agency can’t sue another.

In 2002 the General Assembly enacted the Clean Smokestacks Act which required Duke and Progress to have all 14 of the coal-fired power plants in North Carolina reduce their emissions by 2009 for nitrous oxides of nitrogen and by 2013 for sulfur dioxide. Those are very substantial reductions and those two companies are well on their way to complete compliance with that Act. Section 10 of the Act directed the state to use all available resources to get similar reductions from out of state coal-fired power plants that impact air quality in North Carolina, including specifically the Tennessee Valley Authority. That we took as our direction for what followed. In carrying out those duties we have used Section 126 of the Clean Air Act in a petition to EPA. We challenged EPA's Clean Air Interstate Rule because it had defects and was used as an excuse by EPA at that time to deny our 126 Petition. As a result of that successful effort in challenging the bad parts of the Clean Air Interstate Rule, EPA is poised this summer to issue its replacement, the Clean Air Transport Rule which, so far at least, looks vastly superior.

I want to pause now, Mr. Chairman, to recognize Marc Bernstein. Marc is a Special Deputy Attorney General in our division and he did brilliant work on the 126 petition and in the challenge for the Clean Air Interstate Rule. I want to recognize him for that. He also did a magnificent job during the trial of our nuisance case in cross-examining TVA experts and their chairman.

After the CAIR was issued we decided to file a public nuisance action against TVA in Asheville. That case was filed in January 2006 and tried over a period of three weeks in 2008. In January 2009, the U. S. District Court found that TVA's four 100-mile plants, that I identified earlier and which are the closest to North Carolina, were creating a nuisance in North Carolina because of their impact on public health and on the environment including both acid deposition and visibility. The court ordered the installation of pollution controls on all of those plants.

TVA appealed. While that appeal was pending, in fact shortly after Judge Thornburg denied TVA's motion for stay, negotiations began between the four states, EPA and TVA to try to reach a global settlement of all issues. It began and really got going in December 2009 and continued all the way up until about a month ago. Meanwhile, the fourth circuit court reversed Judge Thornburg's judgment on grounds we thought were fallacious and we have filed a petition for certiorari. Meanwhile all negotiations are continuing.

I pointed out that there is both a Federal Facilities Agreement and a Consent Decree. Their substantive terms are virtually identical. I will summarize the main points. The agreement will resolve all claims against TVA by all parties, including North Carolina's public nuisance action and all NSR claims of North Carolina, EPA, the regulating states and the environmental groups who are involved.

Similar to Clean Smokestacks, the agreement caps emissions SO<sub>2</sub> and NO<sub>x</sub> from all the eleven TVA facilities in the aggregate. There will be an annual decline as controls come on until 2019. This slide gives you an idea of where it gets us to. There are limits of 110,000 tons of sulfur dioxide and 52,000 tons of oxides of nitrogen by 2019, which are actually lower within the limits in Duke and Progress of North Carolina even though the TVA system is somewhat larger. So this is a pretty successful reduction strategy. Those caps have to be met each year. It is a violation of the agreement not to meet them. All of TVA's coal-fired units except some at Shawnee in Southwest Kentucky have to be controlled with scrubbers and SCRs which must be operating continuously. Some units can be repowered to biomass, and the controls for those will have to be established at a later time.

Or units can be retired and there are a lot of retirements of units required under this agreement. The 100-mile plants, which were the focus of our nuisance judgment, under the

agreement, I'm happy to say, are among the first to be controlled. Kingston and Bull Run both had their scrubbers completed following the trial of the nuisance suit and both of them are now operational. The agreement requires the scrubbers to be operating continuously while in the [plants are in operation. As for John Sevier, controls for it by the end of 2012 were announced by TVA during the course of the trial. We'd never heard of such a thing from them before. It was part of their defense strategy. Judge Thornburg decided to hold them to it. Under the agreement, all four John Sevier units would be idled as of the end of 2012. Two of them will be retired permanently and would not come back on line. The other two cannot come back on line until they install SCRs unless they're repowered or retire themselves. TVA following the judgment decided to construct a natural gas plant there which will replace the lost power generation.

Widows Creek in northeast Alabama will be shut down. More precisely, the six uncontrolled units will be shut down. The two larger units have been controlled, and upgraded already in accordance with the judgment. The nuisance judgment required all six of the uncontrolled units to be controlled by the end of 2013 so there's a slightly extended, staggered schedule there.

Among the other TVA plants after the 100 mile plants, Johnsonville is the plant whose emissions impact NC the most. It will be shut down entirely on a staggered schedule beginning in 2015 and ending in 2017.

Like the Clean Smokestacks Act this is system-wide cap but the cap is lower as I pointed out and TVA is required to control or shut down many units. In comparison to the nuisance judgment, the nuisance judgment only affected the four closest TVA facilities. This agreement covers them all. The caps are even lower than those North Carolina requested at trial and we've calculated that by no later than 2015 the emissions will be lower than they would have been under the judgment.

TVA is required to spend \$290 million, that's with \$350 million total, \$290 million for EPA on environmental mitigation projects. Most of those will be an energy reduction and efficiency and renewable energy projects. TVA must also pay the other \$60 million to the four states and North Carolina's share of that is \$11.2 million to be paid over five years for a broad category of the energy efficiency and renewable energy projects. The focus of the installation of these projects would be in western North Carolina in the mountains where impact of TVA's pollution has been the greatest.

As in Clean Smokestacks, TVA is required by the agreement to give up its emission allowances so they won't be sold under the Acid Rain program to other facilities in other states which could then avoid making reductions that otherwise they would have to make.

Everyone gives up claims for past violations against TVA and the states and environmental groups give up certain types of claims that post date the agreement, but only if they are based on specific actions that are required by the decree. We're giving up our nuisance suits, that is, continuing our petition for certiorari to the U.S. Supreme Court because we believe this agreement gives North Carolina everything that it needs to get from TVA in the way of pollution control.

We did not estimate the benefits of the agreement's control regime specifically but we have a pretty good idea of what the benefits would be like, because during our nuisance trial we did a meticulous modeling of an entire year's worth of emissions from TVA and the emissions benefits of controlling them was estimated very carefully by a variety of experts. First the area of quantifying health benefits -- and at this moment I would like to recognize Dr. Peden who testified about health benefits. He did testify and indeed his testimony was relied on by Judge Thornburg to establish the mechanism by which breathing fine particulates and ozone developed

from the emissions from TVA have caused all of these types of health harms to people in North Carolina that are listed on this slide. These are quantified benefits by our public health experts which gives you an idea. This modeling was for the control strategy which was proposed at trial which actually is less severe than the settlement strategy TVA is now agreeing to. That gives you a good idea of the magnitude of the benefits in the health arena that would be achieved.

In the area of visibility improvements we will get a lot of visibility improvement from these controls. We also, using the same type of emissions modeling, modeled visibility improvements that would occur primarily from the reduction of sulfate during the summertime. You can see in the darkest shaded area on the map ([Map with Area – 40 Days](#)). This shows our expert's calculations of where in North Carolina we would at least have 40 days perceptible improvement in visibility. Sometimes there would be very marked improvement particularly at Shining Rock Wilderness and the Great Smoky Mountains National Park.

One of the biggest and certainly the most long lasting harm from all these emissions is acid deposition. Testimony was provided from both the U.S. Forest Service and our experts about the harm it has done to the soils and waters in the mountains of North Carolina. There will be marked improvements from the reductions, if you will, in the level of acid deposition. Our estimates at trial at Mt. Mitchell were there would be a reduction of 8.4% in the acid deposition of Mt. Mitchell. At the Great Smoky Mountains National Park there would be almost a 12% reduction of acid deposition.

One of the nice benefits of this agreement is that TVA is required to give \$1 million each to National Park Service and Forest Service to improve, rehabilitate forest and park lands that have been injured. The agreement specifically mentions the Great Smoky Mountains National Park, Linville Gorge, Shining Rock and the Joyce Kilmer Forest of North Carolina that have been seriously harmed by the acid deposition.

We get significant economic benefits out of this agreement, in health care costs avoided, and direct payments to the states for environmental projects which I described. Our tourism director believes -- and several of the large tourism businesses in the west believe -- this is significant improvement in the environment and will substantially affect tourism in the mountains. So we believe that it's an excellent settlement and we're proud to be able to tell you about it.

**John Curry:** I don't have a question. I just want to make an observation and that is first as an attorney I know that litigation doesn't always have a favorable outcome, probably from one of the parties that does but not for the general public. In this instance, this litigation has had an unbelievable, measurable and favorable outcome and it's the person who lives in the mountains. I know it affects me and my family directly, and the general public needs to understand the extremely favorable outcome that this litigation has created for their part of the state. I think not only you and your staff deserve tremendous credit for creative lawyering, effective lawyering but the Attorney General deserves considerable credit for understanding the importance of this litigation, and being willing to take on the TVA after it became clear that EPA did not have the authority to do so. I will express a hope. I noticed that TVA's paid \$60 million to our research and so on in renewable energy. I would hope that a portion of those funds goes to study how we can properly and in an environmentally sound way dispose of the waste from the coal plants. We have in the past removed pollutants from the burning of coal and that we will continue to remove them more effectively. So we have gotten those vast chemicals out of the air but they're now solid waste and being disposed on the ground, and that's clearly another issue that needs to be addressed. Hopefully some of those resources can be devoted for that purpose.

**Forrest Westall:** Yesterday we had a presentation on the French Broad River and there was some comment about low ph in high mountain regions of western North Carolina. So on behalf of the people that use those mountains and fish the streams in those high mountain areas thank you for the work you've done and I hope to see improvement of ph in the streams during the coming years. Thank you.

**Marion Deerhake:** I too say thanks to the Attorney General's Office. This is a tremendous accomplishment. I do also want to say that this is a wonderful opportunity for the research community and for the state to monitor and measure the benefits that are achieved by this action. I think it can inform many other states and in North Carolina as well on how much can be accomplished ecologically, in human health and economics by implementing the results of this settlement. So thank you.

**Dr. Peterson:** I wanted to thank **Dr. Peden** for his role in that with what appeared to me to be some cutting edge computations that will apply in large measure and in similar ways to the entire issue of the potential for alternative power sources that don't involve combustion. Therefore as we currently pursue their externalized costs on human health and longevity, and hope that perhaps some of that might enter into the debate with some realistic numbers on what benefits such things as solar wind and hydro kinetic energy power generation have in the way of improving human health in our state.

**Dr. Moreau:** Would it be appropriate for us to adopt a resolution of appreciation to the Attorney General's Office? That's a motion. **Mr. Westall** seconded.

**Chairman Smith:** Is there any discussion? I hear none so the motion passes. That's an excellent suggestion **Dr. Moreau**.

Mr. Gulick I want to echo my congratulations to you, Mr. Bernstein and the Attorney General's Office. It truly was an outstanding job. Not only was it in the result but in the quality of the work you did over a six year period so thank you very much.

## **II. Action Items**

### **11-16 Request Approval of Recommendation to Reappoint Two Members to the Water Pollution Control System Operators Certification Commission (WPCSOCC)**

**Summary (Dr. Peterson):** I would like to make the motion that we approve this reappointment as presented and suggested by the Department. Mr. Morse seconded.

**Chairman Smith:** Is there discussion? No discussion and the motion passed.

## **11-17 Request to Proceed to Public Hearing on Proposed Revision of Injection Well Rules (15A NCAC 02C .0200)**

**Summary (Thomas Slusser):** I'm pleased to present to you all today our petition for permission to proceed to the public comment period of the proposed injection well rules pending approval of the fiscal note by the Office of State Budget and Management. The details of the proposed rule revisions and the fiscal note were presented in previous EMC meetings so I will just briefly touch on the highlights of those two prior presentations. Additionally I will discuss the recent session law that amended parts of the Administrative Procedures Act and how that may affect the rulemaking process and wrap things up with anticipated rulemaking schedule.

In November 2010 we presented the details of the proposed injection well rule revisions and why we are proposing those changes. The types of changes include a reorganization and restructuring of the rule content to make it easier to use. We're incorporating some current standards of practice and addressing some changes in technology that have occurred since the injection well rules were last amended in 1997. Also we are recommending to expand the use of permitting by rule for certain injection wells that pose little to no environmental risks. There are certain changes that are needed to maintain compliance with the minimum federal requirements. Even if we had not taken the initiative to do all of this on our own the Executive Order 70 would have required us to make these types of changes. Some of the types of rules changes that we expect to have some costs are related to grouting and locating the system components of certain geothermal injection wells, and also for some changes to mechanical integrity testing for wells, which basically make sure that they are operating in a safe and sound manner. Rule changes that we anticipate to have savings are related to permitting by rule, reduced reporting frequency, and changes to requirements for demonstrating financial responsibility. The proposed rule revisions are estimated to have total annual costs of about a quarter million dollars and anticipated savings of about \$1.3 million annually, which results in a net savings of approximately \$1 million per year. It is worth noting that OSBM reckons fiscal impacts for the whole rule package as the combined savings plus costs, and in our case that gives us an estimated \$1.6 million total fiscal impacts annually. At the end of March of this year Senate Bill 22 was signed into law and this session law affects parts of the Administrative Procedures Act that basically limits rules having significant economic impacts. A few weeks ago we met with the OSBM and RRC staff to figure out how this may or may not affect the proposed injection well rules. The determination was that none of the proposed injection well rules have significant economic impacts and we were encouraged to continue the rulemaking process. Both of those organizations had very positive comments about the proposed rule changes and strongly encouraged us to continue with the process. We presented the fiscal note to OSBM in March of this year, they gave back some comments, and we anticipate having a revised fiscal note sent back to them later this month. We anticipate that OSBM will approve the fiscal note later in the summer which will put our public comment period and EMC review in the fall of this year, and the rules could possibly become affective as early as the winter of this year or in early 2012.

Again just to summarize: the rules were presented in detail in November, the fiscal note details were presented in March. We believe that the rules comply with all the regulatory principles of Executive Order 70 and we request your permission to present these proposed rules once the fiscal note has been approved.

**John Curry:** I just have a quick one and that is to what extent, if at all, do these rules specifically address the possibility that the fracking process, which has received lots of publicity lately, will be controlled? In the event that disposal of fracking fluids envisions using these types of wells, to what extent do these rules address that type of process?

**Thomas Slusser:** The proposed rules do not address that because the issues that you mentioned are prohibited by current statutory requirements. If the General Assembly did choose to modify the statute to allow these practices then we would be obligated to revisit the rulemaking process anyway. That is really not appropriate at this point and time.

**John Curry:** Thank you.

**Jeff Morse:** What kind of feedback are you getting from the regulated community that addresses the bulk of this issue so far?

**Thomas Slusser:** We had an excellent stakeholder process conducted about a year ago and it was a pretty broad spectrum of representatives from the regulated community. They all were very supportive of the proposed changes and some of them helped write some of the language. They did a good job of identifying their interests and concerns and also in some cases presented some technical information that enabled us to actually proceed further with permitting by rule types of activity. It's a great process. We talked about it with other people and they've gotten nothing but positive feedback so far, so a pretty encouraging response.

**Kevin Martin:** The Groundwater Committee heard this matter and got educated prior to hearing it from Mr. Slusser. So if anyone has questions on this that's the guy to ask because we've not been able to stump him yet. With that being said, I would like to move that we move these rules as proposed forward to public hearing. **Mr. Hall** seconded.

**Chairman Smith:** Is there discussion? Mr. Slusser, I do have one question but you'd be happy to know this time around I only have one question. Under the definition section which is .0204 No. 25 deals with hydraulic or pneumatic fracturing. Read down to the second sentence of that and the second clause says, "shall not result in the fracturing of any confining units." Is "any confining units" something that should be defined, or is that term understood in the industry?

**Thomas Slusser:** That's a term that is commonly understood in the industry. That clause also echoes some other rule language and so it basically kind of clarifies that. So it can't cause migration of contamination in any sort of way.

**Chairman Smith:** Are there any other questions? There were no other questions and the motion passed.

## **11-18 Request to Proceed to Public Hearing with the Proposed Reclassification of the South Fork New River in Ashe and Watauga Counties (New River Basin) to include Class WS-IV (PA) and WS-IV CA**

**Summary (Elizabeth Kountis):** The request received from the Town of Boone is for a stretch of the South Fork New River, in Ashe and Watauga Counties. This stretch currently carries a surface water classification of Class C, that is proposed to be changed to Water Supply-IV Critical Area and Water Supply-IV Protected Area. The main stem of the river flows from Watauga County and then flows to the county line. A portion of the river to be reclassified currently is included in a High Quality Waters classified area. In addition, a special management strategy with only High Quality Waters wastewater discharge provisions is applicable to the entire proposed watershed outside of the High Quality Waters area. Neither the High Quality waters designation nor the special management strategy will be affected as a result of the proposed reclassification. The High Quality Waters area includes lands and waters located 1 mile and draining to the classified High Quality Waters. The request will allow construction of a new water supply intake in the river, and thus, serve the public interest per Executive Order #70. In addition, the request was made because the Town's water system has surpassed 80 percent of capacity, and that percent triggers DENR's requirement for an expansion plan. The project's intake would be the first of its kind in our state, due to its location nearly five feet below the streambed elevation; it will sit in a bed of gravel on top of an impermeable liner and be covered by about four feet of stone and rip-rap.

According to 2010 sampling of the subject waters by DWQ, these waters meet the water supply standards. Staff with the Division of Water Resources and Division of Environmental Health does not object to the proposed reclassification. A Finding of No Significant Impact or FONSI has already been granted for this proposal. Given current state and local government regulations, and if the reclassification becomes effective, the following would be true:

1. The Water Supply-IV density and development regulations will apply to all new Watauga County development projects, and to new Ashe County development projects which disturb more than 1 acre of land.
2. For all of the proposed Critical Area and the portion of the proposed Protected Area in the existing High Quality Waters area, the net new requirements of the Water Supply-IV regulations would affect only high density projects, and those regulations would consist of maximum built upon area caps of 50% in the Critical Area, and 70% in the part of the affected Protected Area along with a 100' setback.
3. For the remaining portion of the Protected Area not covered in the High Quality Waters area, the above-high density requirements would apply, and Water Supply-IV low density project requirements of 24% built upon area or 1 dwelling unit per ½ acre and a 30' setback would also apply.

In Water Supply-IV watersheds, there are additional water supply water quality standards that apply to wastewater discharges in the proposed area, too. These are standards for different parameters than the High Quality Water wastewater discharge standards already in place for this entire proposed area. Furthermore, in the Critical Area only, additional treatment for new industrial process wastewater discharges would apply and no new landfills are allowed.

There are no existing permitted land application sites, animal operations, or wastewater discharges in the proposed area. There are not any known planned wastewater discharges or developments in the subject area that would be impacted by the proposal. The proposed area is

low density, rural in nature, with primarily forested lands, agricultural lands, and residences.

There is no regulatory requirement for local governments to submit resolutions for reclassifications of non-water supply classified waters to water supply classified waters. Nevertheless, the EMC's policy has been to have the requestor submit resolutions to DWQ for any water supply classification resulting in increased regulatory restrictions. The purpose of a resolution is to indicate whether a potentially impacted local government with jurisdiction in a proposed water supply watershed will implement the water supply rules once a reclassification becomes effective. The involved local governments have 270 days after the reclassification effective date to create or modify water supply watershed protection ordinances in order to implement the water supply rules.

Staff with Ashe and Watauga Counties and the Town of Boone was invited to this meeting. Nearly one-third of the proposed watershed is located within Ashe County, and about two-thirds of the proposed watershed is located within Watauga County. Both Ashe County and Watauga County have passed resolutions regarding this proposed reclassification. Because the Watauga County resolution for this proposal was received only a few days ago, the cost information presented in documents on-line prior to Tuesday of this week has changed, and the latest cost information is as follows:

If the reclassification becomes effective, there are one-time costs to both counties associated with the modification of their water supply watershed ordinances. The estimated total cost of staff time and physical materials required for these activities to Ashe County and Watauga County is approximately \$700 and \$5,100, respectively, according to staff with these counties. Furthermore, additional costs to the state for notifying both Counties, and reviewing and approving changes to their local ordinance and maps, once the proposal becomes effective, are about \$1,200. Thus, the total cost to the state and the two counties due to the proposal is approximately \$7,000, and therefore, this proposal meets the requirements of SL 2011-13.

Finally, the Town has until September 2012 to submit final plans and specs to the state per conditions associated with USDA-Rural Development and municipal funding secured for this project. The Town would like the reclassification to be effective before that date. At this time, based on the above factors, we are requesting that the EMC approve sending the proposed reclassification out to public hearing. The proposed reclassification's effective date is estimated to be May 1, 2012. I would be happy to answer any questions you may have.

**Dr. Moreau:** You have addressed the land use questions. I want to ask about the stream flow conditions that might be appropriate, are they a part of this? Are they separate? I take from the way this is set up this is a run of the river supply. The question is what kind of in stream protection is there?

**Elizabeth Kountis:** Four MGD is the intake's proposed permitted capacity and there was not an in stream study done by the Division of Water Resources because that proposed capacity is less than 20% of 7Q10.

**Dr. Moreau:** Under what provisions does that occur? I'm trying to understand under what authority that rests? I am looking for a specific reference whether that's administrative policy or whether it's regulatory rules or what.

**Elizabeth Kountis:** I am not sure if that's policy or rules but I can get back with you on that.

**Fred Tarver:** That 20% of that 7Q10 value is a rule of thumb that we use internally.

**Dr. Moreau:** You're giving away 20% of the 7Q10 in that process.

**Fred Tarver:** That's correct.

**Dr. Moreau:** What percentage of the 7Q10 is the 4 MGD?

**Fred Tarver:** It's less than 20. I think it's between 15-18%. I would add that 20% of the 7Q10 value is codified within the number criteria for the SEPA review. But this is not a SEPA review.

**Dr. Moreau:** Would this come under a 404?

**Fred Tarver:** Yes. 404 and 401.

**Dr. Peterson:** I would like to make the motion that we as staff requested move this to public hearing. I act on behalf of the Water Quality Committee who heard this item yesterday and approved unanimously that action. **Mr. Morse** seconded.

**Mr. Cecich:** I have a question. I thought I heard you say the proposed reclassification effective date was May 1?

**Elizabeth Kountis:** Yes

**Mr. Cecich:** In our materials this is March 1. You said some information had been received this week. Has that changed the target date?

**Elizabeth Kountis:** I expect to come back in January hopefully, so that would make it a March 1<sup>st</sup> date. I'm sorry for the confusion with the date. We will attempt probably for March 1<sup>st</sup>.

**Chairman Smith:** Comments or questions? Hearing none the motion passed. I think that we have a contingent from the Town of Boone here. I just wanted to acknowledge the fact that you all were here today and yesterday. So you are certainly welcome.

**11-19 Request to Proceed to Public Hearing with the Proposed Reclassification of the Haw River in Alamance, Caswell, Guilford, and Rockingham Counties (Cape Fear River Basin) from Class WS-V to Class WS-IV (PA) and WS-IV CA**

**Summary (Elizabeth Kountis):** The request received is for a water supply reclassification of a stretch of the Haw River, which was proposed as a result of immediate use due to drought. The request will recognize an existing emergency intake.

In 2002, the City of Greensboro received permission from the Division of Environmental Health and funding from the Division of Water Resources to construct and use the intake, which is a permanent structure. The intake was utilized from October 2007 through April 2008. One

condition of the Division of Environmental Health's permission for the intake was that a water supply reclassification be pursued. Thus, continued use of the intake requires surface waters draining to the intake to be reclassified, and therefore, this proposal serves the public interest per Executive Order #70.

The proposed Critical Area would be located entirely within Guilford County, and approximately 316 acres of land would be included in the Critical Area. Approximately 18,501 acres of land would be included in the Protected Area. The Protected Area would be located primarily within Rockingham and Guilford Counties but also include areas within Alamance and Caswell Counties. The subject waters are classified as Water Supply - V due to the passage of the Jordan Rules. Current regulations state that a water supply must be classified as a Water Supply-I, II, III or IV in order for it to be used as a public water supply, and thus, the present Water Supply-V classification of these waters is not adequate for this water supply.

Based on the existing development and dischargers in the watershed draining to the intake, the adjacent Water Supply-III and Water Supply-II classified watersheds, and the Water Supply-III classification of Lake Townsend, which receives the intake's water, a Water Supply-III reclassification was considered for the intake. However, given that the Phase 2 Stormwater Program applies to approximately 40% of the proposed watershed and the Jordan Lake rules apply to the entirety of the proposed watershed, the Water Supply-IV designation has been proposed for the subject waters. Given the existing regulations applicable in this area, and if the reclassification becomes effective, local governments not already implementing the Jordan buffer requirements in the newly reclassified area within their jurisdictions would need to do so; Alamance County is the only local government within the proposed watershed that currently is not implementing these buffer requirements. Secondly, for new individual development projects, once a land disturbance of 1 acre is reached, the Water Supply-IV density and development regulations will apply. The net new requirements of the Water Supply-IV regulations for Alamance and Guilford Counties, which are Phase 2 counties, would affect only high density projects, and thus, maximum built upon area caps of 50% in the Critical Area, and 70% in the Protected Area, would apply. The non-Phase 2 counties, which are Caswell and Rockingham Counties, are only in the Protected Area. The net new requirements of the Water Supply-IV regulations in Caswell and Rockingham Counties would affect all density projects; thus, the above-mentioned high density 70% cap would apply along with a 24% low density maximum built upon area cap and a low density 2 acre/1 dwelling unit restriction. In addition, other requirements would apply only in the Critical Area, and consist of additional treatment for new industrial process wastewater discharges and no new landfills.

There are three NPDES wastewater discharges and two permitted animal operations in the proposed Water Supply-IV watershed. None of these operations would be impacted by regulations associated with this reclassification. There are no existing land application sites in the proposed Critical Area. There are no known planned dischargers and developments in the proposed reclassification area that would be impacted by the proposal, and no known plans for existing dischargers to become process industrial dischargers in the area. The proposed area is low density and rural in character, with forested, residential, and agricultural lands.

According to 15A NCAC 02B .0104, part (c) and I quote: "A more protective water supply classification may be applied to existing water supply watersheds after receipt of a resolution from all local governments having land use jurisdiction within the designated water supply watershed requesting a more protective water supply classification." As mentioned in the

previous agenda item, the purpose of a resolution is to indicate whether a potentially impacted local government with jurisdiction in a proposed water supply watershed will implement the water supply rules once a reclassification becomes effective.

Staff with the four involved counties as well as the City of Greensboro was invited to today's meeting. A resolution has been received from Alamance County, Guilford County, and Caswell County. In addition, Rockingham County provided minutes from one of their Commission's meetings that stated the Commissioners voted to adopt a resolution for the reclassification. If the proposal becomes effective, there are one-time costs to the four counties associated with modification of their water supply watershed ordinances. The total cost of staff time and physical materials for these activities to Alamance, Caswell, Guilford, and Rockingham County is approximately \$2,500, \$2,650, \$4,600, and \$2,500, respectively, according to estimates provided by staff with these counties. Furthermore, once the proposal becomes effective, costs to the state for notifying these four counties, and reviewing and approving changes to their local ordinances and maps, is about \$2,900. Thus, the total cost to the state and the counties due to the proposal is approximately \$15,200, and therefore, the proposal meets the requirements of SL 2011-13.

At this time, we are requesting that the EMC approve sending the proposed reclassification out to public hearing. The proposed effective date of this reclassification is estimated to be March 1, 2012. Based on this effective date, local governments would have until December 1, 2012 to get their ordinances in compliance with the resulting Water Supply regulations, which, for informational purposes only, would be several months after the buffer and new development regulations associated with the Jordan Lake rules are to be implemented.

**Dr. Peterson:** I make a motion that on behalf of the Water Quality Committee that we move this to taking out to public comment as requested by staff. Dr. Larkin seconded.

**Marion Deerhake:** I just needed a bit more information since I didn't follow this closely. Is this for continued use of the intake only for emergency purposes or will it be used for a meeting daily demand?

**Elizabeth Kountis:** It's only under emergency instances.

**Chairman Smith:** Any questions or other comments? There were none and the motion passed. Is there anybody here from any of the affected counties or other local governments?

### **11-20 Petition for Rulemaking to Amend the Underground Storage Tanks Secondary Containment Rules**

The Chairman agreed to allow presentations by Petitioner, Wayne Geyer of The Steel Tank Institute (STI), which was represented by Benne C. Hutson, Esquire, of McGuire Woods LLP, and by Ruth Strauss, Division of Waste Management (DWM), UST Section. Prior to the presentations, the AG representative explained that having received a complete petition for rulemaking the EMC would act in its quasi-legislative capacity, that members should determine whether they had any conflict of interest or potential conflict of interest with regard to the request to amend these rules, and that the EMC would apply its rules for reviewing a petition for

rulemaking and would exercise its discretion in determining whether to grant or deny the petition.

Mr. Geyer presented the request to amend 15A NCAC 02N .0903(a) to reinstate the use of cathodic protected underground steel storage tanks in North Carolina. He stated that for some applications, cathodic protection may be the only form of corrosion protection that could be used. He pointed out that the federal regulations and the regulations of certain other states allow cathodic protection as a method of approved corrosion control for underground tanks, and he gave examples of use of cathodic protected steel storage tanks.

Mr. Hutson explained to the Commission that, contrary to what had been raised in the Groundwater Committee meeting, he did not think a “variance” procedure was available under the current rule to allow the use of cathodic protected steel tanks. He also addressed the 2007 rulemaking of this section of the rules, saying it was not clear from the published notice that this technology was being banned.

Mr. Geyer concluded by saying that removal of cathodic protection from the regulation could have a negative effect on the marketplace and that having more choices available to tank owners was more advantageous. For each of these reasons, cathode protected steel tanks should be added back to the regulation.

Ms. Strauss stated the position of DWM that cathodic protection did not provide effective corrosion protection and the current rule does not have, and will not have, a significant impact on the steel tank manufacturers for the corrosion protection industry. She also stated that the existing rule provides a procedure that allows DWM to consider alternative technologies if the need arises. The current rules do not affect any previous cathodic protective tanks that were installed before November 1, 2007. So as long as corrosion protection is maintained properly on those tanks they can remain in use into the future. The primary reason DWM did not allow new cathodic protective steel tanks after November 2007 is because inspections conducted over a 10-year period showed the cathodic protection systems were not providing effective corrosion protection because the owners and operators were not properly operating and maintaining these corrosion protection systems. She stated that DWM statistics showed that, by an overwhelming margin, tank owners were choosing to install new fiberglass tanks or jacketed steel tanks rather than tanks with cathodic protection for a number of years prior to the rule change in 2007. That deleted cathodic protection as an approved method of corrosion protection. For each of the foregoing reasons, she stated it would be a burden on agency resources to allow this method of corrosion protection to be returned to the rule. She also pointed out that STI had been involved in the rulemaking that began in 2005 and in a related rulemaking in 2009 and that any STI comments submitted were considered in those rulemakings.

**Mr. Martin**, Chairman of the Groundwater Committee, reported that the Committee previously had heard presentations by all the parties, and the Committee had voted to recommend to the EMC that it not move forward with rulemaking in response to this Petition. Other members of the Groundwater Committee also explained to the EMC their varying positions on the issue.

**Chairman Smith** asked the AG Representative if the EMC was allowed to determine that it would deny the Petition, even though such decision would amount to a determination on the merits of the request. Counsel stated that the EMC was authorized to deny the Petitioner and that under the APA the STI could petition for judicial review of the EMC decision by a superior court judge.

After continued deliberation, **Dr. Moreau** made a motion to deny the Petition on the grounds that (1) the market data showed no significant effect on the market and (2) that the protection offered by the current rule is at least as good as cathodic protection. The motion was seconded by **Mayor Moss**.

**Mr. Phillips** asked whether **Dr. Moreau** and **Mayor Moss** would accept as an amendment to their motion an additional basis, to wit (3) that DENR has a process in place for an applicant to seek approval of a cathodic protective system where they contend that such system is the only feasible alternative.

Both **Dr. Moreau** and **Mayor Moss** agreed to the amended statement of the motion. **Dr. Petersen** asked whether **Dr. Moreau** and **Mayor Moss** would accept as an amendment to their motion the additional basis that the rate of noncompliance with this technology is unacceptably high. Both **Dr. Moreau** and **Mayor Moss** accepted as an additional basis to their motion that the technology had an unacceptable compliance rate.

After a restatement of the motion, the Chairman called for a vote; the motion to deny the Petition for rulemaking on the four stated bases carried with four members voting against. The rulemaking Petition by STI was thereby denied.

(This information is on file in the Division of Water Quality)

**11-21 Presentation of Administrative Law Judge's Recommended Decision, David McMillan, McMillan Contracting, Inc. v. DENR, DAQ, 10 EHR 4059, Robeson County**

Petitioner was notified of the Commission meeting but was not in attendance; there was no presentation by the petitioner, David McMillan.

Assistant Attorney General Amy Bircher appeared for the Department and explained that the Department supported the decision to uphold the civil penalty for violation of the open burning regulation, but that an exception was taken to the language added to the decision by the Administrative Law Judge.

A motion was made to affirm the civil penalty and adopt the ALJ's decision as the final agency decision, but to strike the "recommend" language for lack of a legal basis and as being contrary to the statutory procedures. It received a second. Chairman Smith called for discussion or questions from Commission members. There being no further discussion, he called for a vote on the motion. The motion carried.

The Final Agency Decision concludes that the Respondent Department acted appropriately and in accordance with the General Statutes and rules in assessing a civil penalty and investigation costs against David McMillan for one violation of the "open burning" rule and that the total penalty assessment of \$5,551.00 (\$5,250.00 civil penalty and \$301.00 investigation costs) should be upheld. Accordingly, the Administrative Law Judge's findings of fact and the conclusions of law and decision to uphold the Director's decision to assess the civil penalty and costs are adopted in this Final Agency Decision and incorporated herein by reference.

(This information is on file in the Division of Water Quality)

### III. Information Items

#### 11-03 High Rock Lake Nutrient Management Update

**Summary (Kathy Stecker):** Some of you might remember that back in September Pam Behm in the Modeling Unit gave a presentation to the Water Quality Committee on High Rock Lake work and very recently, I believe you all received an inquiry about the need for supplemental classification to Nutrient Sensitive Waters. So in this presentation I mainly am going to be giving an update of where we are in the work. I have a couple of slides at the end on nutrient management options and possible next steps. So we will start with maps. This is the High Rock Lake Watershed which covers the upper half of the Yadkin River Basin. The watershed is almost 4,000 sq. miles compared to about 770 for the Falls watershed. It isn't quite as big as the Neuse and the Tar Pam. There's a small portion that extends up into Virginia. The surface area of the lake is about 16,000 acres. High Rock Lake has been an impoundment on the Yadkin River since 1929. There are 13 counties and 41 municipalities in the watershed including Winston Salem, High Point, Thomasville, Salisbury and Statesville. The population from the 2000 census was about 850,000. So that's an outline of what I am going to cover quickly here.

First a little history of the impairment but as we talk about the history I ask you to keep in mind that currently the entire lake is on the 303d list for chlorophyll-a standards violations. It's also on the 303d list for violations of the ph standard, high ph and for turbidity. This is not going to be an exhaustive history but it's just hitting some of the highlights of the past few decades. The first documentation that we find of the nutrient-enriched conditions were in the mid 1970s. Then in 1990 as part of a statewide lake assessment DWQ reported that High Rock was one of the most eutrophic or nutrient enriched lakes in the state. Algal blooms occurred throughout the lake and blue-green algae dominated the algae community. I'll say a few things about blue-green algae now. They occur in warm slow moving waters with plentiful nutrients and the dominance by blue-green algae over other algae species can be an indicator, that the biology is out of balance and supports the idea that aquatic life uses are impaired in High Rock Lake, as does very high densities in which they've been found. Blue-green algae are less preferred as a food source for other aquatic life, can cause taste and odor problems and can release toxins. The 1992 report recommended that management strategies be adopted for High Rock but no specifics were mentioned. In the 2003 basin plan we said that we would work with other agencies to assist with reducing nonpoint source pollution. I believe that resulted in the effort that began in 2005 that I will update you on today. Then when the EMC reported to the ERC in 2006 under Session Law 2005-190 the current work had already begun with the scoping study in 2005 in which algae blooms dominated by blue-green algae were again documented. Just to say a little of that session law, "the Environmental Management Commission shall study the water quality and the drinking water supply reservoirs in the state to determine whether the reservoirs meet current water quality standards." Most recently in collaboration with the Yadkin Pee-Dee River Basin Association through a 319 grant DWQ conducted an intensive 2-year study of the lake. There were 45 sampling events during that time. Results from the special study are being used in support of the modeling that's underway. Exceedances were observed almost year round from March through November each year. The highest value observed during the study was 95 micrograms per liter at Midlake in August 2008. The percent shown is based on year round sampling not just the growing season. Blue-green algae were again dominant in the summer and extreme blooms were documented. The 5-year datasets that we used for the 303d list also

yielded similar results. As I mentioned earlier the lake is also on the 303d list for exceeding ph and turbidity standards. The high ph is associated with the algae and it can cause direct damage to aquatic organisms. High turbidity can result from suspended sediment as well as high algae densities. High turbidity can prevent fish from foraging effectively and can cause stress or direct mortality to other aquatic organisms.

In 2005 DWQ initiated a Technical Advisory Committee process to help develop the tools to support nutrient management in the High Rock Lake watershed. To date the TAC has met 18 times. Participation in the TAC was initially opened to all stakeholders on a voluntary basis. The TAC is composed of representatives from several state and local organizations. They represent major stakeholders in the High Rock Lake watershed. I want to note that Winston Salem and Salisbury are also members of the Yadkin Pee-Dee River Basin Association. So far the TAC has provided input on the monitoring plan design, model selection criteria and development, and provided data to assist with model development. In consultation with the TAC we are developing both a watershed model and a nutrient response model for the lake. The models will provide information on attaining compliance with the chlorophyll-a standard. TetraTech, a consulting firm with a lot of experience in model development is under an EPA contract to develop both models with DWQ regularly providing oversight and guidance and input. DWQ, EPA and the TAC will all review the models and as with Falls Lake some members of the TAC are bringing a third party to do an additional review. We believe that will give us a more robust analysis of the models and we welcome the input. To summarize what we expect to get from the modeling: from the watershed model we'll get information on contributions from significant nutrients sources in the watershed. The Lake Model or Nutrient Response Model will provide information on how the lake responds to nutrient loading. We'll be able to estimate what reductions are needed to meet standards in all the different parts of the lake.

A few options for using the models to support nutrient management in the High Rock watershed are listed. Option 1 is part of our regular permitting process. We can use the models to assign permit limits. Option 2 if we go through the TMDL process we will be able to include nutrient reduction requirements in NPDES stormwater permits in addition to the wastewater requirements. Option 3 are the nutrient rules - will ensure that all significant nutrient sources in the watershed are addressed. The fourth option includes the nutrient sensitive waters supplemental classification prior to adopting the nutrient management strategy.

We're getting close to seeing the results of this work that begin in 2005. The TAC will review both models during the summer and fall later this year. We, DWQ, will finalize the models toward the end of the year. Finalization means that we will make sure the calibration and the documentation meet our requirements. This does not mean we will make any regulatory decisions at that time. Then early next year there's the nutrient forum that you all asked us to put together and around the same time we expect to be coming to you for approval of the nutrient response model. We also expect to begin our stakeholder process to help determine the most appropriate path forward. The models can help us and the stakeholders look at different options for managing nutrients in this watershed. Thank you.

**Chairman Smith:** Comments?

**Jeff Morse:** I understand that the update we just heard is not an action item but I have several comments I'd like to make and some suggestions. My question would be would it be

appropriate at the end, would I be allowed to consider a motion at the end even though this is not an action item?

**Chairman Smith:** I don't think so. I think we have to notice it. It has to go out to public notice as an item on which action is being taken.

**Jeff Morse:** Then I will just eliminate that concern at this point. From the presentation that we've just received I recognize that and I'm going to read some notes. The statewide standard for chlorophyll-a has been violated from High Rock Lake and because of the excessive levels of chlorophyll-a measured in the lake DWQ staff has begun the process of developing a TMDL. At the same time the DWQ staff intends to route a nutrient management strategy for this lake. However, staff is not asking for a nutrient sensitive waters in its designation for this lake, despite the fact that the EMC has made such designations with most previous nutrient management strategies in the state such as Chowan, Neuse, the Jordan Lake and Falls Lake. Now my concerns are as follows. There are significant concerns in the regulated community in the High Rock Lake watershed as to the regulatory path being perceived by DWQ and how this Commission is involved in the staff's efforts. First and foremost the lake is attaining its designated uses. It is cited as one of the best fishing spots in the southeast and aquatic life clearly thrives in this lake. There are no drinking water intakes on the lake. There are no recorded fish kills on this lake and there are no reported taste and odor problems on this lake. Second I have also heard from stakeholders that there are still unresolved questions regarding the data upon which this action is being taken. The Yadkin Pee-Dee River Basin is the state's second largest. Given the location of High Rock Lake there are a large number of stakeholders upstream of this lake and many more in the previous nutrient management rules. These stakeholders include local governments, private landowners, farmers and industrial dischargers. Before imposing costs of these nutrient management strategies on these stakeholders we owe to them to have a public review of the data and models used to support the assertion that this lake is so impaired that it needs further controls. My suggestion would be as follows. For all these reasons I would urge us and direct the staff to prepare the appropriate documentation for a reclassification of High Rock Lake to NSW which we can then consider before staff continues making a TMDL and a nutrient management strategy for this lake. We have authority for this action on regulations. Specifically our regulations allow us to make this classification when we determine that excessive growth of microscopic vegetation impairs the use of a waterbody for its best usage. As in the past we should take this up to make an evaluation ourselves before proceeding with a nutrient management strategy. There is one last point I'd like to make and it's one that you put out on your presentation. By including a NSW classification we address all point sources and nonpoint sources in a strategy to address the entire lake rather than if we just developed a TMDL that only affects the regulated community or the point source community. So it would be my hope that the EMC would direct the staff to elect before we go further and classify this as an NSW and goes through the formal regulatory process, so that all stakeholders have a say and then all stakeholders have a play in the resolution to the problems that this lake is having.

**Coleen Sullins:** I would like to briefly address Mr. Morse's comments because I think there is a perception that I need to correct if possible. That perception is that the staff is proceeding for this nutrient management strategy without coming and consulting with the Commission as to the

direction the Commission would like for us to take in this particular situation. The staff is not currently proceeding with the development of a TMDL with the intent to submit a TMDL to EPA. At the moment the staff is proceeding with the development of the modeling tools that will enable the decisions to be made from those tools. We also are proceeding as the Commission requested with the development of a nutrient forum and trying to figure out how to fund such a forum, with the intent that the forum will be held after the first of the year. We actually have contract documents drawn up and are about to go out for request for proposal, so that's the status on the nutrient forum. We believe the outcome of the modeling results will be able to be viewed and the Commission have an opportunity to direct the staff as to what they believe are the next appropriate steps following the nutrient forum. So we hope to have input from that forum process to enable both the Commission and the Division to make decisions on moving forward. So I wanted to correct the perception that there is a planned outcome at this point on the part of the staff. We're just in the tool development stage that would enable both the Division to make recommendations to the Commission and the Commission to make decisions about how best next to proceed.

**Mayor Moss:** Thanks Coleen. You just answered both of my questions. I would just like to echo something Jeff said. If you look back at one of the earlier slides 13 counties and 41 municipalities. I just wanted to get this out there for the record that there's a significant amount of municipal, and county government in this process.

**Kevin Martin:** I was glad to see that DEH has been added since 2009. After our experience in the Falls and some of the data on the model, they can provide a lot of information and work with you guys. To me there was a mistake that they weren't involved earlier in Falls but we learned from that mistake and I'm glad you are involving them or they have involved themselves now.

**Les Hall:** I just have a question about the model. Are you including all sources of nutrients in the model? It appears from the presentation you may be just considering point sources.

**Kathy Stecker:** Yes sir. All sources, forest, agriculture, development, septic systems.

**Les Hall:** Good. Thank you.

**Kevin Martin:** I may have overlooked it. Ms. Stecker is there an ag representative on the stakeholders list? It may have been there and I just missed it, forestry as well.

**Kathy Stecker:** Soil and Water Conservation, forestry no.

**Marion Deerhake:** This is the first time I think I recall hearing anything about a nutrient forum. What is that? Is it to be statewide?

**Chairman Smith:** It came out of the chlorophyll-a proposed rules. One of the concerns raised in that discussion was whether or not chlorophyll-a was an appropriate standard to be looking at and we asked that be considered along with four other points made. If I remember right there was a total of five things that we requested. From that at least the Division if not the Department went away and considered our discussion and out of that came back to us and recommended it

best to move forward. Inviting various participants to come in and make a presentation by specifically selected participants and opening that up so in the public hearing it would be open to the public.

**Marion Deerhake:** It's a statewide discussion on nutrients.

**Chairman Smith:** Exactly. The earliest it can be done is the early part of 2012 and thus far the decision has been made to have that led by an outside individual so that it is a guided discussion, guided in the sense that it's led by an independent party.

**Marion Deerhake:** That's happening a lot around town right now. The other comment I had was that there doesn't appear to be anyone from Davidson County on the Technical Advisory Committee, being probably the primary or at least 50% host of the main body of the lake.

**Kathy Stecker:** I believe they are represented by the COG on the TAC.

Discussion followed between Ms. Deerhake and a representative from the audience.

**Marion Deerhake:** My only observation and we clarified this last time, the Town of Denton is not in that watershed proper. However that town receives a lot of economic benefits due to the lake and the quality of the lake. I really wish there was some way it could have a voice in this.

**Jeff Morse:** I appreciate Coleen clarifying some of those points. I'd like to get a specific question answered that I still had. There is not a TMDL being currently worked on, developed for High Rock Lake and there's no current team there being undertaken in High Rock Lake at this time? Is that correct?

**Kathy Stecker:** The tools that we're developing, the models can be used for many purposes. We convene the TAC to get the technical advice on developing the tools for any nutrient management activity that we would undertake from just permitting through a full blown nutrient management strategy. It's the same tools that would be used so from this we can develop a TMDL if that's the decision that's made. We can develop a nutrient management strategy.

**Jeff Morse:** I understand that. I just want to make sure that specifically that there's not a TMDL being developed for High Rock Lake. Now I know you're developing models for permits and everything else I know there's a lot of development that you are going to have. I want to make sure that we are not currently developing a "TMDL" for High Rock Lake at this particular time. The reason that I emphasize that is if there is a specific staff function going in that direction. That is why I would be concerned and that's why I would want the EMC to say to the staff before you start a specific modeling program for a TMDL for High Rock Lake I would hope that the EMC would say before we even do that modeling for a TMDL that we would look at the NSW process, get that established, declare an NSW and then as a part of the process in the regulatory process we then start working on TMDLs. That is what I am specifically addressing at this time. I need to make sure that I hear that we're not developing a TMDL that can put as part of later as part of the basinwide plan doesn't involve indirectly by the EMC we adopt a basinwide plan.

**Kathy Stecker:** I think so. I guess I need to clarify why I was answering the way that I was. We could not develop a TMDL until we have these tools. There's no activity now toward developing a TMDL and the TAC had expressed a preference among these choices here, we did not discuss NSW, but that the TMDL be developed after a nutrient management strategy so that it would be considered consistent with any nutrient management strategy.

**Jeff Morse:** If you develop a nutrient management strategy do we have to first declare High Rock Lake nutrient sensitive?

**Coleen Sullins:** I would like to address that question. Thank you. We actually had this conversation as a result of the threshold rules. We had conversations with the attorneys about whether we had to have an NSW classification and the response to that was no. I believe the Water Quality Committee asked us to go back and specifically ask for that so we had consulted with Counsel and the department as well as Frank who is not here today. The advice was that no, we did not have to have an NSW classification before proceeding with a nutrient management strategy. I do want to address the team, the other question. Obviously to determine what needs to be done for High Rock Lake we need to develop a tool to make that evaluation. What I had said in here today and what my commitment is to the Commission is that we will not develop a TMDL until we have brought those models back to the Commission and present that information to the Commission as to the results of those models, and that will likely be after the nutrient forum and it will also be after the Commission will have at that time the opportunity certainly to present to us direction that they believe we should take associated with High Rock Lake.

**Jeff Morse:** I appreciate it. Thank you Coleen for clarifying that. But I do have one last statement. I hear what the attorneys said that to develop a nutrient management strategy does not require an NSW designation. That is something I'd hope this Commission will consider in the future that we do require, when a nutrient management strategy is produced that it be accompanied first with a designation of NSW for the water body before we develop a nutrient management strategy. The reason I say that is critical to the point source that by requiring an NSW status it does include all the stakeholders in developing a total wide strategy. Because if you don't if you can develop a nutrient management strategy sometimes those who are contributing don't necessarily have to be included as part of the strategy. But when you do an NSW you do a total wide plan, as an NSW with rulemaking everybody's included. That's why I think it is important that the Commission set the direction that before a nutrient management strategy is produced a water body is going to have one and be looked at first and meets the conditions of an NSW.

**Marion Deerhake:** What model is being used and how does that compare to the models used in Falls Lake and Jordan? Is it the same model?

**Kathy Stecker:** No. For the watershed it's HSPF and for the lake it's WASP.

**Marion Deerhake:** I remember for the Falls Lake we had discussed and the comments were received about designated use. Designated use analysis? Is that something we should consider? What's the proper analysis?

**Dr. Moreau:** Use attainability.

**Marion Deerhake:** That's right.

**Dr. Moreau:** I think the real question here is whether or not a 40 micrograms per liter standard is a proper representation of the use to which the lake is being put. Whether or not you can have use attained while not satisfying a 40 micrograms per liter chlorophyll-a standard. That's the issue you're going to face on the Falls. Is the 40 micrograms per liter appropriate?

**Marion Deerhake:** I'm hoping that the nutrient forum will help lead to that decision.

**Dr. Moreau:** One issue that is clearly going to be addressed in the forum.

**Chairman Smith:** I'm looking back at the agenda for approval for EMC meetings trying to find the meeting in which we had a report after we had made our decision on the threshold rules, chlorophyll-a rules. Either the next meeting or two meetings thereafter there was a report to us on what the department was considering?

**Coleen Sullins:** I don't remember which meeting that was but I have a brief summary of what the nutrient forum plans are to cover without having the correct document in hand if that would be helpful.

**Chairman Smith:** That would be helpful. I also will do this on my own and email all of you. I will look back and see which meeting it was that we had the presentation and then you can refer to that agenda and that agenda item to refresh your recollection about what we did with the threshold rules and the five reasons that we rejected those rules. What we plan to do, the EMC in conjunction with the Department is develop additional information and seek to answer the questions that were raised by the EMC in responding to the threshold rules. I think once you look back and see what was previously presented to us and discussed by us about what is now being referred to as the nutrient forum.

**Dr. Peterson:** My comment rather follows by accident Marion's. I'm a little curious just for personal perspective but also as to any actions we take, how the ph affects the fish health, production, ecology, etc. I have that just because I have interest in that generically and aquatic systems. I'm curious to see what sorts of science there is that looks at that. The turbidity is also another interesting thing. Of course that is pretty straightforward if you've got visual feeders that can't see what they're trying to catch as well. But inclusion of that in a model goes beyond nutrient so that my concern here was that this is painted as a nutrient forum when if we're going toward whether it meets its uses, fish become a bigger player. So I'm curious about how that component, it's more ecosystems model than a water quality by nutrient model if we're truly going that way.

**Dr. Moreau:** The important thing, of course is what's going on in Florida with EPA's promulgation of nutrient standards for Florida which are not fish based. They have a numeric standard and there's no argument that the chlorophyll standard is not a numeric nutrient standard. The state disagrees with that. It is not currently limited to fish.

**Coleen Sullins:** I would argue we have a narrative and numeric standard.

**Dr. Moreau:** I mean the narrative standard could be interpreted to be more than just a fish.

**Coleen Sullins:** Yes that is correct.

**Chairman Smith:** Ms. Sullins would you tell us about the nutrient forum?

**Coleen Sullins:** I appreciate Dr. Moreau's intro for me into that by mentioning Florida. What we were proposing to start the forum with is to have people come and present information on what's happening at the national level and what's happening in different states on the status of the nutrient controls. What the variety of approaches are out there and how they've been implementing them. There's a series of states out there that have implemented a variety of different approaches to this. At the national level there's now what is called the Stoner memo that provides directions to the states on implementing nutrient controls. Not sure how exactly to phrase that. But it envisions in the long run going towards instream nitrogen and phosphorus standards, and that's the issue that we've been disagreeing with on the staff level as being appropriate. We also have a planned part of the session to be talking about the science, the status of nutrient research, the response variables, the N&P, the use impairments and looking at things like ph. Obviously that is a standard that we have in violation in High Rock Lake; it's not just High Rock because we see it elsewhere. Turbidity is another issue and we also have as part of that forum discussions about the economic and development in policy decisions, proactive v. reactive issues, and what has worked in other arenas. We have a much more detailed and probably much more elegant way of stating all this. I just don't have access to it on computer at the moment but we would certainly be happy to provide you further information, because I don't feel that I have done justice to what is planned. But we are planning to have a very significant discussion of nutrients in the way of providing a resource to the Commission and the state, the Division of Water Quality is how we might proceed forward in the State of North Carolina specifically to address these very difficult yet very important issues of the state.

**Jeff Morse:** In creating the agenda and putting together the participants have the stakeholders been given an opportunity to also provide feedback or presenters that might be contrary to say the direction the state has been moving? Has the stakeholders been given that opportunity if there's corresponding positions of data that might not go in the same direction that the state staff has been pursuing? Has there been an opportunity for that kind of presentation?

**Coleen Sullins:** At this point we really have not developed the speaker invitation list. We are trying to get the contractor on board to assist us with setting up the forum. It is our full intent to broadcast a request to get input as to who the speakers should be to be able to get a full well-rounded discussion of the various options that are out there that the Commission might consider in attempting to move forward.

**Jeff Morse:** I really appreciate that. Thank you.

**Dickson Phillips:** My understanding is that this process is proceeding as directed by Session Law 981 which is referenced in the presentation. It requires us, the Commission, to move forward with looking at nutrient issues and the reservoirs in developing nutrient management strategy.

**Chairman Smith:** Are there other comments? I'll add to that maybe that the nutrient forum is in direct response to what we directed. We rejected the threshold rules. Other comments? I think there are several people here representing local government or local government agencies from the affected area and if that's correct if you would let us know who you are.

Jeff Jones from Salisbury  
Ron Hargrove from Winston-Salem  
Cy Stober from PTCOG

Thank you. I received a fair amount of correspondence from various people and I responded to that by letting folks know that one of the things that has been requested is that we have a report made to us with an update and a review. I wanted to make sure that if the new record had been scheduled and glad to see that you responded to that. Any other comments on this matter? Hearing none we will move into the status reports by the committee chairs.

**John Curry:** I would like to go back to the record of the Steel Tank issues. I did vote against the decision that was made. It did occur to me though that we did discuss marketing aspects as we addressed the issue and it would seem to me that it might be a desirable policy before Division Waste Management in the case of tanks, and perhaps other divisions in instances where maintenance comes into play which clearly in our discussion that was a very big issue that the manufacturers, distributors and salespersons of those tanks be invited to provide more follow up post sale, especially in the case of steel tanks. It seems had they done more follow up and realized that their purchases were often out of compliance if they had made arrangements to contact the people giving them training, trying to make sure that their purchasers were more frequently in compliance. That probably applies to many of the other things that Kevin and others mentioned sewage treatment plants and so on. As the state runs short of money that would be one way to get better training and perhaps get a better result ultimately if the manufacturers and sales folks realized that it was in their interest just to do more follow up.

#### **IV. Status Reports by EMC Committee Chairmen**

We have three committees that met yesterday, water quality, groundwater and air quality.

##### **A. Water Quality Committee Dr. Charles H. Peterson, Chairman**

The Water Quality Committee had four items on yesterday. We reviewed the final draft, the fifth one actually that we've done for the French Broad River Basin plan and that will come before the full Commission at the next meeting I presume. We had two water quality reclassification issues, both of which have come before us today and we've acted on them. Then we had a

request for permission to come to the full EMC with proposed technical revisions to the Jordan nutrient rules. These were judged through staff interactions with the RRC and others to simply be technical revisions, which means that they have a faster track through the APA as it stands. That's fortunate so that it doesn't reopen the whole process.

**B. Groundwater Committee Kevin Martin, Chairman**

The Groundwater Committee met and we had one action item and one information item. The action item was the petition for rulemaking which we should all be familiar with that process by now. We will be seeing this at next meeting in July that was from Rhodia, Inc and it was related to their request that we raise the groundwater standard for 1, 1- dioethylene from 7 to 350 micrograms per liter. The issue here that's interesting and I want to ask all you guys. Not that you don't look at everything closely any way. I believe there's going to be a lot of discussion on this one as well. I believe the committee, staff and all agencies involved believe that the appropriate standard is 350 mg per liter. We're just in a peculiar situation on the way our rules are structured and our process for variances as to how we can accommodate that standard and not be in conflict with our rules. We did recommend their request for rulemaking in the committee and the recommendation was to move it forward exactly as proposed. However, there's a reasonably good chance there may be some other alternatives proposed at the EMC. So be prepared for a very thorough discussion in July. The information item was another slew of IMACs that the Director has approved and just to remind you guys these are items that don't currently have a standard. Anyone can petition the Director to enact a standard in the interim and that's why they are called interim maximum allowable concentrations until the next Triennial Review when we will take these out to public hearing and formally adopt those standards.

**C. Air Quality Committee Marion Deerhake, Chairman**

You may have seen there was a concept dealing with previous meetings issue with U.S. Fish and Wildlife Service dealing with current background v. natural background. That has been postponed to another meeting until the outcome of not only deciding as a final decision, but whether or not U.S. Fish and Wildlife chooses to appeal. We had three information items on our agenda. One was the new sulfur dioxide national ambient quality standard and it does appear that New Hanover County will be in nonattainment. So we heard options for how to draw the boundaries around that nonattainment area and the procedures that the state will follow in submitting recommendations to EPA and then EPA's response. We also had a presentation on the final USEPA federal boiler maximum achievable control technology standards and it has been a torturous path. There's still a lot going on with that rule. EPA had a court order to get that rule out pretty fast so there's a good chance that they will be changing some more. Then we also had a presentation on greenhouse gases preventing, an update of that from Dr. Van der Vaart. The information he walked away from that is that there is a three year hold on the effective date of permitting biomass combustion units. All of these are available in pdf presentations on the website if you'd like to look at them.

**V. Concluding Remarks**

**Jeff Morse:** I just wanted to thank you for the remarks that you gave at the opening of today's meeting. We really did appreciate it. Thank you.

**Stan Crowe:** From Mr. Curry in a discussion we had today and Mr. Martin in the discussion that we had yesterday I'd like to know when rules instead of science dictate things to a regulated public, it seems that we can in all efforts for evaluation. I would like for us to keep that in mind. We need to somehow find ways that good science dictates rules.

**Ms. Deerhake:** I just had a suggestion because we had multiple discussions about the rules for operations of the Commission that we could put those up on our website so that we can access them easily each meeting. It's just another item on our menu.

**Chairman Smith:** I am pretty sure they are there but I will follow up on that because that is a good suggestion if they are not.

**Tom Cecich:** Some of us are up for reappointment which obviously politics have changed since all those appointments occurred. I just wanted to thank everyone for the opportunity to work with you.

**Sheila Holman:** Thank you Mr. Chairman and members of the Commission. I wanted to take just a moment to update you on a couple of items happening in the Division of Air Quality. As you will recall in the Clean Smokestack Act there is an interim compliance report that is due on June 1<sup>st</sup>. It is submitted by both DENR and the Utilities Commission. I just wanted to report today on the reductions that have taken place and what we will be sharing in that report when it's final on June 1. First, Duke Energy has completed installation of all of the required nitrogen oxides and sulfur dioxides controls for its system. The company is in compliance with both the NO<sub>x</sub> CAPs and the 2013 SO<sub>2</sub> CAPS. Progress Energy is nearly complete with all of their installation and the remaining work is planned to be completed by the end of this calendar year. They are in compliance with the 2009 NO<sub>x</sub> CAPs and also in compliance with the 2009 SO<sub>2</sub> CAPS and they are well on the way to meeting their 2013 SO<sub>2</sub> CAPS. So that is good news both for the companies being in compliance and also for the environment. Our fine particle levels in North Carolina have continued to decline. We are seeing values at some of the monitoring sites that are half of what they were back in 1999, before the legislation was passed.

I want to take also a moment to congratulate Jim Gulick, Marc Bernstein and the Attorney General on the settlement agreement with TVA that certainly represents further reductions in our neighboring state of Tennessee and also in the whole TVA system. It's going to mean better air quality across that region and in North Carolina and I think that is certainly a win for the environment.

I want to also talk about the ozone situation in Charlotte. We've reported it to you that with the 2010 ozone data the Charlotte area is in compliance with the 1997 ozone standard. Staff has been working on a redesignation request for that area and we will be taking that out to public hearing in the next few weeks. From there, comments will be addressed and it will be submitted to the EPA. We do expect a new ozone standard to be finalized around the end of July by EPA so we'll be reporting back to you at the September meeting as to the implications for the impact on North Carolina and how many nonattainment areas we will be expecting under that new standard.

I wanted to also update you on the wildfire that is burning in Dare and Hyde Counties. You have probably heard the various air quality alerts. One of our monitors in Martin County, the Jamesville monitor, was having significant impacts from the fire yesterday. We had 5 hours where the values were greater than 200 micrograms per cubic meter. We had two hours that were over

300 micrograms per cubic meter. The 24-hour average ended up being over 110 micrograms per cubic meter and that means we had a code-red day at that monitor for PM<sub>2.5</sub> yesterday. The 24-hour standard is 35 micrograms per cubic meter. Our meteorologists continue to use modeling tools and work with both the National Weather Service and the incident command to try to provide the best information of where the air quality is going to be impacted from the wildfires. We have two portable continuous particulate matter monitors that we are deploying today to that region to actually collect more data to help the forecast center and provide more information to the public.

**Coleen Sullins:** I won't repeat the one that we already discussed. The nutrient forum is moving forward. On the good news side of things because we always need some good news and there's not much of that around these days, we successfully broadcasted the meeting today and did a trial run with staff to make sure that across the state it would function, so we're going to take it out completely live next time and provide an announcement so people can actually dial in, instead of it being a secret announcement that they can access to. We wanted to make sure the systems are supported. We did make a couple of repairs to this room in an effort to accomplish all this. I appreciate all the staff work. It is unbelievable how much work goes into small things sometimes, so we are very appreciative and wanted to let you know that. I also wanted to thank the chair for his remarks earlier today. The Division of Water Quality is being very seriously impacted. We certainly recognize that these are difficult economic times and there are significant impacts to all from the recession. Just to give you a little inside to what it looks like for the Division of Water Quality we may be cutting as many as 38 people. That is not positions but 38 people. This is very difficult and very painful for us. These people are dedicated public servants, people who have chosen to serve North Carolina citizens and in some cases for many years. These are people who believe strongly in the importance of protection of water quality and I would note that they are also citizens of the State of North Carolina. We are going to be making decisions about what program elements will cease or those that will be drastically curtailed. I want to recognize those staff publicly. I think it is very important to do so and I want to appreciate the remarks of the chairman earlier because this is going to be very difficult for all of us. Our impacts are going to be increases in time to complete decisions and that includes a wide variety from permits to basin plans to classifications to responsiveness to the EMC's requests. There are going to be impacts to our ability to monitor water quality and impacts on our ability to complete inspections that are required by state law as well as settle grant commitments. There are going to be reductions on our capacity to respond to citizen complaints on water quality issues, and that includes response to public information requests and there will be impacts there. It is very serious. We have lost in the last two years possibly 30 positions which is actually 29.5, but I don't want to get into how you lose a half a person. With these impacts it looks like we are going to be down at least 70 positions in the Division of Water Quality in a relatively short period. I just wanted to provide you all with that information. I also wanted to say thank you very much for everyone's service on the Commission. I certainly hope to see you all in July. It's been a pleasure to work with you.

**Chairman Smith:** Ms. Hauser is there anything you have to say to us?

**Jennie Hauser:** Thank you very much for allowing me to be with you today and I know Frank is looking forward to returning.

**Chairman Smith:** I have these housekeeping matters or information items. First of all Ms. Deerhake I do find the EMC By-laws on the webpage on General Information. Secondly you heard from Mr. Martin about the petition for rulemaking that will come before us in July. That is a very thorny set of issues not from the staff side but from the how do we proceed side. So I encourage you to do your homework and take a look at all of the various conflicting pieces of that. Be prepared for us to try to plot the proper course. Third and this is not happy news to provide to you. We have a contested case that will be before us in July but there's a behemoth in size. It has 5 or 6 boxes of the exhibits and a transcript in excess of 3,000 pages. Mr. Crawley and I are working hard to try and take steps to ease that burden. After telling you that you may not want to be reappointed. But we are taking steps to try and ease that burden. One thing we asked is when the transcript comes to us in searchable form. We have asked that the parties put together a concise summary of each witness's testimony with the witness's name and title or position. A third is that the testimony be identified, pages of the testimony be with the transcript and to put together a list of all the exhibits and the page numbers that they refer to in the transcript. If you can think of any other ways to ease the burden of doing this, pass them to me. To the extent that we can, we are trying to persuade the parties to help us in accessing the record. We can't force the parties to do those things but we're making those requests. The meeting is going to have at least those two difficult matters before for action.

I want to echo Mr. Cecich's comments. For those of us who are not reappointed either by the Speaker Pro Tem or by the Governor I have enjoyed working with all of you. I wish Ms. Bailey was here and Mr. Ellis was here. Ms. Bailey's Board of Directors was meeting and Mr. Ellis is fishing in Africa. So I just want to repeat what Mr. Cecich said thank you very much for your service.

Hearing no further comments the meeting adjourned at 3:30 p.m.

NOTE: Attachments are on file in the Division of Water Quality with the Official Minutes.

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Lois C. Thomas, Recording Clerk

By Commission Members  
By Directors  
By Counsel  
By Chairman

Adjournment AG05-12-11