

Charlotte Mecklenburg Utilities' Request for Modification of
Interbasin Transfer Certificate

HEARING OFFICERS REPORT

Environmental Management Commission

North Carolina

Department of the Environment and Natural Resources

April, 2013

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HEARING OFFICERS' RECOMMENDATIONS

On March 4, 2013 the Environmental Management Commission held a public hearing to receive comments on the Charlotte Mecklenburg Utilities' (CMU) request to eliminate Condition 3 from its Interbasin Transfer (IBT) Certificate. Condition 3 excludes the Goose Creek Watershed in Mecklenburg County from the IBT service area due to potential impacts from future growth in the basin on the Carolina heelsplitter, a federally-listed endangered species. Condition 3 states:

The Goose Creek subbasin in Mecklenburg County is removed from the area to be served by the IBT. A moratorium on the installation of new interbasin transfer water lines (water lines crossing the ridgeline) into Goose Creek subbasin is in effect until the impacts of additional urban growth on the endangered species are fully evaluated. This moratorium will not impact Charlotte Mecklenburg Utility's ability to fully utilize existing water lines. The Division of Water Resources shall have the authority to grant exemptions for reasons of public health and safety for dwellings existing on or before March 14, 2002.

CMU developed an Environmental Assessment (EA) to meet the requirements of the condition, which received a Finding of No Significant Impact (FONSI) from the Division of Water Resources after being reviewed through the State Environmental Review Clearinghouse.

77 people attended the hearing, with 10 choosing to speak. After the hearing, the public comment period was left open until March 31, 2013. During that time, 24 individuals submitted written comments, some of whom had also given oral comments at the hearing.

According to G.S. 143-215.221(g), the EMC shall issue a transfer Certificate only if the benefits of the proposed transfer outweigh the detriments of the proposed transfer, and the detriments have been or will be mitigated to a reasonable degree. The EMC may grant a Petition in whole or in part, or deny it, and may require mitigation measures to minimize detrimental effects. In making this determination, the EMC is required to specifically consider:

1. The necessity, reasonableness, and beneficial effects of the amount of transfer
2. Detrimental effects on the source river basin
 - a. The cumulative effect on the source major river basin of any water transfer or consumptive water use
3. Detrimental effects on the receiving basin
4. Reasonable alternatives to the proposed transfer
5. Use of impounded storage
6. Purposes and water storage allocations in a US Army Corps of Engineers multipurpose reservoir
7. Any other facts or circumstances necessary to carry out the law.

Having reviewed and considered the comments received during the public review process, the EA/FONSI, and the requirements set forth in the North Carolina General Statutes, the Hearing Officers make the following findings of fact.

The Hearing Officers Find:

- 1) *Necessity, Reasonableness, and Beneficial Uses of the Amount of Water Proposed to be Transferred and its Proposed Uses.*

CMU holds an interbasin transfer certificate authorizing the transfer of 33 million gallons per day from the Catawba River Basin to the Rocky River Basin. The modification request would not permit an increase to

the authorized maximum-day transfer amount, nor would it allow transfer to a receiving basin not already authorized by the certificate. Rather, the modification would allow CMU to provide additional potable water service to customers in the Goose Creek watershed within the Town of Mint Hill.

CMU currently operates existing water lines within the Goose Creek Watershed. CMU is able to provide this water service due to its grandfathered capacity to transfer, however other than isolated connections for reasons of public health and safety, no additional connections have been allowed since the certificate was issued. The existing water lines have capacity above their current use and CMU is currently transferring approximately 57% of the amount authorized in its certificate. CMU has estimated that the 2030 projected water demand in the entire Goose Creek watershed could be as much as 3.9 MGD, however this demand would be met by a combination of surface and ground water providers, as well as private wells.

The elimination of Condition 3 would allow CMU to fully utilize existing infrastructure, provide future service throughout its service area, and benefit existing Goose Creek residents by providing a safe and reliable water supply to those customers needing surface water.

Based on the record, the hearing officers find that the amount of water necessary for CMU to provide service to the Goose Creek watershed is reasonable in that the existing certificate provides sufficient capacity to meet projected needs in the Goose Creek watershed. Removal of Condition 3 would also allow CMU to fully utilize existing infrastructure and provide a reliable water supply alternative to both existing and future customers within the Goose Creek watershed.

2) *Present and Reasonably Foreseeable Future Detrimental Effects on The Source River Basin*

The hearing officers find that removal of Condition 3 does not impact the Catawba River Basin due to the fact that the modification does not change the amount of water that CMU is authorized to transfer.

2a) *Cumulative Effect on the Source Major River Basin*

The hearing officers find that removal of Condition 3 does not impact the Catawba River Basin due to the fact that the modification does not change the amount of water that CMU is authorized to transfer.

3) *Detrimental Effect on the Receiving River Basin*

In 2008 the EMC adopted the NC Department of Environment and Natural Resources Site Specific Water Quality Management Plan for the Goose Creek Watershed 15A NCAC 2B .0600-.0609 (SSMP).

*As stated in 15A NCAC 02B .0601, "The purpose of the actions required by this site-specific management strategy is for the maintenance and recovery of the water quality conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona decorata*) species. Management of the streamside zones to stabilize streambanks and prevent sedimentation are critical measures to restore water quality to sustain and enable recovery of the federally endangered Carolina heelsplitter."*

The Town of Mint Hill addressed the action items listed in the SSMP through its 2010 Post-Construction Ordinance (PCO). Some of the mitigation and protection measures specifically required by the PCO and currently being implemented by the Town of Mint Hill include:

- I. The control of storm water for projects disturbing 1 acre or more of land
 - Requires Storm Water Management Permit for new development activities that disturb 1 acre or more and result in increased impervious area.
 - Controls and treats difference in runoff from pre- to post-development conditions for 1-year, 24-hour storm.
 - Removes 85% of total suspended solids.
 - Exceeds runoff volume requirement of EMC rule by requiring that storm water treatment systems be installed to control the volume leaving the project site at post-development for the 1-year, 24-hour storm.
 - Town of Mint Hill accepts maintenance and operational responsibility so as to preserve and continue a BMP's design functions.
- II. The control of wastewater discharges and toxicity for streams supporting the Carolina heelsplitter
 - No new NPDES wastewater discharges or expansions to existing discharges
 - No new onsite sanitary sewage systems within riparian buffers
 - No activity that would result in direct or indirect discharge is allowed if it causes toxicity to Carolina heelsplitter
 - When possible, action shall be taken to reduce ammonia to achieve 0.5 mg/L or less of total ammonia.
- III. The establishment and maintenance of riparian buffers
 - Exceeds EMC requirement by requiring buffers on all intermittent and perennial streams as well as ponds, lakes, and reservoirs based on NC DWQ's *Identification Methods for the Origins of Intermittent and Perennial Streams*.
 - Requires undisturbed riparian buffers within 200 feet of waterbodies within the 100-year floodplain and 100 feet of waterbodies not within the 100-yr floodplain.
 - Direct discharges of runoff to streams are not allowed.
- IV. Other requirements
 - Sewer lines and associated structures must be a minimum of 50 feet from jurisdictional wetlands associated with the floodplain.
 - Undisturbed Open Space is required for new development.

The Division of Water Resources determined that the analysis of the potential environmental impacts set forth in the EA and mitigative measures set forth in the PCO support a Finding of No Significant Impact. This decision was based upon the requirements of 15A NCAC 2B .0600-.0609, information in the attached EA, and review by governmental agencies.

Based on the record, the hearing officers find that the actions required by the NCDENR Site Specific Management Strategy 15A NCAC 2B .0600-.0609 will mitigate any impacts due to additional growth in the Goose Creek Watershed such that removal of condition 3 will not have a detrimental impact on the Rocky River Basin.

4) Reasonable Alternatives to The Proposed Transfer

The only alternative pertaining to this modification request is a "no action alternative". Under a "no action alternative", CMU would not provide potable water to the Goose Creek watershed and customers not already being served by CMU customers would solely rely on groundwater. Existing Goose Creek residents have expressed concerns about the reliability and safety of deteriorating groundwater quality in the area. These customers would continue to be faced with limited and expensive options. CMU would continue to request case-by-case exemptions from DWR to connect customers for reasons of public health and safety, creating a scattered and fractured customer base within in the Goose Creek watershed.

Based on the record, the hearing officers find that the removal of Condition 3 from the IBT certificate is the preferred alternative.

5) *Applicant's Use of impoundment Storage Capacity*

This criterion is not applicable.

6) *Water Storage Allocations*

This criterion is not applicable.

7) *Other Facts or Circumstances Necessary*

Condition 3 of CMU's IBT Certificate states that the moratorium on new interbasin transfer water lines is in effect until the impacts of additional urban growth on the endangered species are fully evaluated. At the time the certificate was issued, it was assumed that this evaluation would be addressed in an environmental study developed for a new wastewater plant under consideration by Union, Cabarrus, and Mecklenburg Counties. However the wastewater treatment plant effort was abandoned. Since then, however, the effects of urban growth and watershed protection needs within Goose Creek have been studied and addressed through both local and state level initiatives, most specifically NC Department of Environment and Natural Resources Site Specific Water Quality Management Plan for the Goose Creek Watershed 15A NCAC 2B .0600-.0609 and the Town of Mint Hill's 2010 Post-Construction Ordinance (PCO).

Based on the record, the hearing officers find that Charlotte Mecklenburg Utilities has met the Certificate requirement to evaluate the impact of urban growth on the Carolina heelsplitter.

Recommendation:

Based upon the Findings of Fact stated above, the hearing officers determine that (1) the benefits of the proposed modification outweigh the detriments of the proposed modification, and (2) the detriments of the proposed modification will be mitigated to a reasonable degree. The hearing officers also find that CMU has met the IBT certificate requirement to evaluate the impact of urban growth on the Carolina heelsplitter. Therefore, the hearing officers recommend that the Commission grant the Charlotte Mecklenburg Utilities request to remove Condition 3 from the IBT certificate.

Yvonne C. Bailey, Hearing Officer
Environmental Management Commission

Darryl Moss, Hearing Officer
Environmental Management Commission

Clyde E. Smith, Jr., Hearing Officer
Environmental Management Commission

ENVIRONMENTAL MANAGEMENT COMMISSION

**Modification of Certificate Authorizing the Charlotte Mecklenburg Utilities to Transfer Water
From the Catawba River Basin to the Rocky River Basin Under The Provisions of G.S. 143-
215.221**

Based on the hearing record and the recommendation of the hearing officers, the Commission, on May 9, 2013 by duly made motions concludes that by a preponderance of the evidence based upon the Findings of Fact stated in the hearing officers report that (1) the benefits of the modification outweigh the detriments of the modification, and (2) the detriments of the modification will be mitigated to a reasonable degree. Therefore, and by duly made motions, the Commission grants the Charlotte Mecklenburg Utilities request to remove Condition 3 from its March 2002 Interbasin Transfer Certificate. This modification does not affect the permitted transfer amount of 33 million gallons per day (MGD) on a maximum day basis, from the Catawba River Basin to the Rocky River Basin. The remaining conditions of the original certificate remain unchanged and are as follows:

- 1) Mecklenburg County is required to summarize progress in the implementation of watershed management approaches of the Surface Water Improvement and Management Program (SWIM) on an annual basis. The Division of Water Resources shall have the authority to approve modifications and need for continued reporting as necessary.
- 2) Mecklenburg County and the City of Charlotte are required to continue the stakeholder process to investigate water quantity control from single-family development and water quality control for all development until completed. To accomplish this end, the stakeholder group should consider evaluating the feasibility of single-family detention and recommending ordinance revisions based on technical, political, long-term maintenance, cost, and benefits relating to the proposed ordinance changes.
- 3) If the EA is found at a later date to be incorrect or new information becomes available such that the environmental impacts associated with this transfer are substantially different from those projected impacts that formed the basis for the Finding of Fact and this certificate, the Commission may reopen the certificate to adjust the existing conditions or require new conditions to ensure that the detriments continue to be mitigated to a reasonable degree.
- 4) The certificate holder is required to develop a compliance and monitoring plan for reporting maximum daily transfer amounts, compliance with certificate conditions, progress on mitigation measures, and drought management activities. The Division of Water Resources shall have the authority to approve modifications to the compliance and monitoring plan and drought management plan as necessary.

This certificate is effective immediately. This is the _____ day of _____, 2013.

Stephen T. Smith, Chairman

APPENDIX A
SUMMARY OF AGENCY COMMENTS RECEIVED BY DWR ON THE EA/FONSI

On January 18, 2013, DENR provided comments on CMU's draft Environmental Assessment during the internal agency review. The National Heritage Program (NHP), NC Wildlife Resources Commission (WRC), Division of Water Quality (DWQ), and US Fish and Wildlife Service provided comments expressing concern that the DENR Site Specific Water Quality Management Plan (SSMP) for the Goose Creek Watershed (15A NCAC 2B .0600-.0609), and therefore the Town of Mint Hill's Post Construction Ordinance (PCO) which implements the requirements of the SSMP, does not go far enough to protect the Carolina heelsplitter. Specifically, the agencies recommend the following additional controls:

- Increase riparian buffers to protect 200 feet on all perennial streams and 100 feet on intermittent streams (NHP, WRC, USFWS).
- Minimize variances allowed from the buffer protection regulations, especially those allowing utility lines within the buffer and utility crossings over streams (NHP, WRC, USFWS).
- Widen the undisturbed buffer width from forestry activities and ensure that developers cannot use forestry exemption to clear riparian vegetation before establishing development sites (NHP, WRC, USFWS).
- Increase storm water requirements to apply to developments exceeding a 6% built upon area (NHP, WRC).
- No new fill or development within the 100-year floodplain (WRC).
- The requirements for the PCO should apply to any new clearing/ ground disturbance activity regardless of the size or type of disturbance (USFWS).

These additional mitigation measures were also provided to DENR and the EMC in 2008 during the comment period on the SSMP. The stated purpose of the SSMP is for the maintenance and recovery of the water quality conditions required to sustain and recover the Carolina heelsplitter. Based on the facts that 1) the EMC considered the proposed additional measures during the development of its SSMP and 2) the Town of Mint Hill is currently implementing measures at least as stringent as required by the SSMP, the Division of Water Resources determined that the analysis of environmental impacts set forth in the EA and mitigative measures set forth in the PCO support a Finding of No Significant Impact for the action of removing Condition 3 from the interbasin transfer certificate.

The Draft Environmental Assessment and FONSI were sent to the State Environmental Review Clearinghouse for public comment from March 3-April 4, 2013. No comments were received.

APPENDIX B
SUMMARY OF MARCH 4, 2013 PUBLIC HEARING

On March 4, 2013 the Environmental Management Commission held a public hearing to receive comments on the Charlotte Mecklenburg Utilities Department's (CMU) draft Environmental Assessment (EA).

77 people attended the hearing, with 10 choosing to speak. Nearly all of the attendees (and all of the speakers) were residents of a subdivision called Ashe Plantation that is currently receiving ground water from Aqua North Carolina, Inc. (Aqua). After the hearing, the public comment period was left open until March 31st. During that time, 24 individuals submitted written comments, some of whom had also given oral comments at the hearing. All of the comments received during the comment period (both orally at the hearing and in writing through March 31) were in favor of CMU's request to have Condition 3 removed from the IBT certificate.

A common concern expressed during the hearing was that the quality of water being produced from area ground water wells is declining. Some residents who have been using ground water for 25 years or more gave statements indicating that water quality for their homes is deteriorating. Many have had to replace wells that have run dry. The ground water system providing water to Ashe Plantation has been operated by several different companies over the years. Residents believe that each of those companies has made efforts to address the water quality problems but the wells are no longer usable. Currently, water quality has degraded to the point that residents are routinely asked to flush muddy water from the system. Nearly all of the commenters stated that they do not drink or cook with tap-water.

Commenters also stated that water costs are extremely expensive. Water bills range from \$100-\$250 per month and many residents also purchase bottled water for drinking and cooking. Water-related appliances such as dishwashers, refrigerators, washing machines and hot water heaters must be frequently replaced, adding to the financial burden.

Residents acknowledge the importance of environmental protection, but feel that adequate mitigation measures have been implemented and Mint Hill has demonstrated its commitment to protecting the heelsplitter.

The following oral comments were provided during the hearing.

1. Peter Larsen, Goose Creek resident (also provided written comments)
 - In favor of lifting moratorium
 - Believes that the moratorium has caused lowering of water tables due to the fact that more wells have been constructed for golf courses and residences. Residents who constructed wells 25 + years ago did not drill very deeply so homes that were constructed prior to that time will soon be faced with the burden of drilling deeper wells when the existing wells run dry. Mr. Larsen had a well that dried up.

- There has never been a heelsplitter mussel found in Mecklenburg County. There have been some found in Union County and South Carolina.
 - Believes that there have been other water lines crossing the ridgeline (CMUD placed in 2005).
 - Heelsplitter is susceptible to chemicals, pollution and sediment. Feels Duke Power has a larger impact with their various activities.
2. Brian Welch, Mint Hill Town Manager (also provided written comments)
 - PCO was developed in collaboration with town of Mint Hill, Mecklenburg County Storm water Services, and NCDENR.
 - Buffers affect over 900 acres of land within the Goose Creek subbasin and are the largest buffers in the State.
 - Town's adoption of PCO clearly demonstrates its willingness to protect the heelsplitter.
 - Requests that the EMC recognize their sincere efforts to meet condition 3 and remove the moratorium.
 3. Elsa Simaan, Ashe Plantation Resident
 - Been suffering financial hardship due to poor water service.
 - Although Aqua has tried to mitigate sediments in the water, their efforts have been to no avail.
 - Believes that she would not have purchased home in 2008 if she had known they would not have clean water for use to drink, brush teeth, or cook with.
 - Pays \$105/month water bill plus \$45/month for bottled drinking and cooking water.
 - Water stains appliances and bath tubs and she wonders whether or not there is a health impact
 - Feels the citizens are entitled to clean water.
 4. Larry Shaheen, represents Representative Bill Brawley and Senator Jeff Tarte
 - Representatives Brawley and Tarte urge the EMC to grant the change to the IBT certificate.
 - Realizes that Aqua has worked hard to rectify the water quality issues, however the two wells in use are insufficient to provide appropriate water quality for the needs of the community.
 - This is an important issue to the Town of Mint Hill. Representative Brawley and Senator Tarte have stressed the importance of this issue with DENR.
 5. Charlie Burdick, Mint Hill resident.
 - Spent 2 years on Goose Creek Watershed plan
 - Asks EMC to eliminate condition 3

6. Kenny Draffen, resident of Mint Hill
 - Believes that his subdivision was originally permitted to receive CMUD water in 2001, however that was changed when the moratorium was issued.
 - Other developments around his area have been able to receive CMUD water.
 - Mint Hill has the most stringent stormwater ordinances of anywhere in the State and it is unclear what effect limiting potable water has on the heelsplitter.

7. Laurie Comazzi, resident of Ashe Plantation
 - Did not realize that water cost and quality would be what they are.
 - Developments located a few hundred feet from Ashe plantation have been able to receive CMUD water and it is unclear why they have not also been able to receive water from the utility.
 - No fire hydrants in Ashe Plantation
 - Is concerned about water quality and spends a lot of money purchasing filters, water softeners, and bottled water.
 - Does not drink water or feed water to her dogs because she is concerned about health impacts.
 - Water is extremely expensive
 - Replaced numerous appliances, water heaters, HVAC humidifiers, coffee pots, refrigerator filters (blown within a month versus 6 months).
 - Aqua's wells are aging so there is nothing that can be done to fix them. One well is polluted and another is not working correctly.

8. Peter Smith, resident of Ashe Plantation
 - Resident of Ashe plantation for 14 years. Water quality has not always been this bad- it is deteriorating.
 - The quality of water is scary.
 - Community members worry about effects on their health and that of their children. Even though the price of the water is extremely high, the main concern of residents is for their health.

9. Lisa Wilson, resident of Ashe Plantation
 - Water is murky, brown, and tan with sediments. Submitted pictures from her bath tub taken one week before hearing.
 - Family buys filters and bottled water for cooking and drinking.
 - Water bill is over \$100 per month. This is too expensive considering the poor water quality.
 - Water is frequently turned off in Ashe Plantation and when it is turned back on it is extremely dark, so much that you can't see through it.
 - \$25-\$50 for bottled water and filters

- Feels we should be good stewards of our natural resources however she believes that receiving CMUD water and protecting the heelsplitter are not mutually exclusive.
- Is concerned about effect on economy of the area

10. Mildonna Britt

- Echoes concerns of the other speakers
- Feels like this issue has been studied and it is time to move on.