

**FISCAL NOTE****Rule Citation Number:** 15A NCAC 2B .0307 New River Basin**Rule Topic:** Proposed Reclassification of Portions of the South Fork New River from Class C HQW (High Quality Waters) and Class C + to Class Water Supply-IV (WS-IV) Critical Area (CA) HQW, Class WS-IV (Protected Area or PA) HQW, and WS-IV (PA)+**DENR Division:** Division of Water Quality**Staff Contact:** Elizabeth Kountis, Environmental Senior Specialist  
Division of Water Quality (DWQ)  
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elizabeth.kountis@ncdenr.gov**Impact Summary:****Authority:** G.S. 143-214.5**Necessity:** This proposed reclassification is necessary to ensure the supply of drinking water for the Town of Boone. Under North Carolina 15A NCAC 18C .0202, “any surface water which is to receive treatment...in order to be used for a public water system shall be obtained from a source which meets the water supply stream classification standards established by the EMC...”.

This rule does not:

- require a federal certification statement under NCGS 150B-21(f1)
- meet the criterion of Federal Exemption found in NCGS 150B-21.4(b1)
- meet the criteria listed in NCGS 150B-21 relating to Temporary Rules
- meet the criteria for a Technical Correction laid out in NCGS 150B-21.5
- meet any of the criteria cited in the Help file list of a series of situations which may render a rule obsolete

**I. Summary**

The Town of Boone (Town) has requested that portions of the South Fork New River and associated watershed in Ashe and Watauga Counties (New River Basin) be reclassified for public water supply use, and the WS-IV Critical Area<sup>1</sup> (CA) and WS-IV [Protected Area<sup>2</sup> (PA)] designations would be the most appropriate classifications for this use and these waters (see Appendix 1 for the proposed rule change

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<sup>1</sup> Critical Area: The lands and waters 0.5 miles linearly upstream and draining to a water intake

<sup>2</sup> Protected Area: The lands and waters 10 miles run-of-the-river upstream and draining to a water intake, not including the Critical Area.

text). The reclassification would permit the Town to place a new water intake in the river. This intake would serve as a permanent potable water supply source. If reclassified, regulations affecting new development and wastewater discharges would apply. Currently, there are no wastewater discharges or new developments impacted by this proposal. Ashe County and Watauga County are the local governments with jurisdiction in the proposed reclassification area. Each county has provided a resolution regarding this proposal indicating that each local government will implement the proposed rule within its jurisdiction once the reclassification becomes effective (see Appendix 2 for resolutions), and thus would incur costs due to the rule change. The analysis of the proposed rule does not indicate that estimated annual economic impacts will exceed \$3 million.

The state anticipates the effective date of this reclassification to be to May 1, 2012.

### **I. Purpose of Rules and Background**

The purpose of this rule change is to provide the Town with a permanent source of drinking water. The Town's water system has surpassed 80 percent of capacity, which is the Department of Environment and Natural Resources' trigger for requiring a plan for expansion. The waters to be reclassified meet water supply water standards according to DWQ studies, and a Finding of No Significant Impact (FONSI) has been issued for this project.

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

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

The Town has requested that portions of the South Fork New River and associated watershed in Ashe and Watauga Counties (New River Basin) be reclassified for public water supply use, and the WS-IV CA and WS-IV (PA) designations would be the most appropriate classifications for this use and these waters (see Appendix 1 for the proposed rule change text). For this proposal, the proposed CA would extend along the river from the proposed intake, which is to be placed approximately 0.5 miles upstream of SR 1100, to a point approximately 0.5 miles upstream of the proposed intake, which is located approximately 875 feet downstream of SR 1351. The proposed PA would extend along the river from nearly 875 feet downstream of SR 1351 to a point approximately 1.8 miles upstream of SR 1351. Both the proposed CA and PA are split between the two counties. See the Guide to Freshwater Classifications Chart (PDF) for the regulations on discharges and new developments at the following website: <http://portal.ncdenr.org/web/wq/ps/csu/classifications>.

## II. Costs

### **Regulated Parties**

#### (a) Wastewater Discharge

There are no existing wastewater discharges in the proposed water supply watershed. In addition, there are no known planned wastewater discharges into the proposed waters.

#### (b) New Development

There are no known plans for new development in the area.

#### (c) Local Governments

Ashe County and Watauga County would be required to modify their water supply watershed ordinances within 270 days after the effective date of the proposed rule to reflect the changes in surface waters classifications and resulting changes in land management requirements. Each county has provided a resolution regarding the proposed reclassification indicating that each local government will implement the proposed rule within its jurisdiction once the reclassification becomes effective (see Appendix 2 for resolutions).

There are one-time costs associated with the modification of water supply watershed ordinances. These expenditures include costs for revising water supply watershed protection language in the ordinances, changing the water supply boundaries on maps, public notification, and hearing costs. A single local government, a combined regional effort between several local governments, or a paid consulting firm could perform these tasks. The estimated total cost of staff time and physical materials required for these activities to be conducted by Ashe County and Watauga County is approximately \$725 and \$5,100, respectively, according to staff with these counties.

#### (d) Department of Transportation (DOT)

This reclassification would not affect any known DOT activities in the area.

### **Implementing Agencies**

#### (a) Division of Water Quality (DWQ)

The NC DWQ Central office and Regional office staff will oversee the processing of the proposed rule as well as the implementation and enforcement of the requirements of the proposed rule. DWQ staff will handle administrative procedures and provide educational and technical assistance and rule/policy evaluations. In addition, there are DWQ staff who will specifically oversee and assist local governments with watershed planning and ordinances. The Division has staff who issue permits, as well as, conduct inspections and take enforcement actions. DWQ monitors and keep records of compliance associated with their inspections and enforcement activities which are based on discharge limits, permits, and other regulations.

The Division of Water Quality anticipates that once this rule is effective, there will be a one-time cost of \$1,200 to the state, which includes staff time and overhead costs. These costs to the state are to be incurred for notifying Ashe and Watauga Counties, and reviewing and approving changes to their local ordinances and maps, once the proposal becomes effective.

### III. Benefits

#### (a) Humans

The population of the Town will benefit from the reclassification of these river segments because it will be able to use the waters as a source of permanent potable water. Reclassifying the waters will help protect the water supply for human consumption by decreasing the risk of contamination via invocation of wastewater discharge and stormwater management requirements for new future developments and discharges.

#### (b) Environment/Ecosystem

Land use restrictions that protect water quality through stormwater management strategies and other narrative and numeric water quality standards benefit human health as well as ecosystem health, and environmental assets. The protective management criteria will help to mitigate impacts from new discharges and development, and will also benefit fish and wildlife. More specifically, portions of the area proposed to be reclassified may experience lower levels of development density as well as decreased pollution, which may increase and improve aquatic habitat and in turn propagation and survival of wildlife and fish. DWQ currently does not have adequate data and models to quantify the potential benefits associated with the increase in wildlife habitat or reduction of pollution that this rule may create.

The analysis of the proposed rule does not indicate that estimated annual economic impacts will exceed \$3 million.

## APPENDIX 1

### 15A NCAC 02B .0307 NEW RIVER BASIN

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

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
  - (A) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, North Carolina;
  - (B) Winston-Salem Regional Office  
585 Waughtown Street  
Winston-Salem, North Carolina; and
  - (C) Division of Water Quality  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering the State of Tennessee are classified "C."

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

- (1) August 10, 1980 see Paragraph (d) of this Rule;
- (2) April 1, 1983 see Paragraph (e) of this Rule;
- (3) February 1, 1986 see Paragraph (f) of this Rule;
- (4) August 1, 1989 see Paragraph (g) of this Rule;
- (5) August 1, 1990 see Paragraph (h) of this Rule;
- (6) August 3, 1992 see Paragraph (i) of this Rule;
- (7) February 1, 1993 see Paragraph (j) of this Rule;
- (8) August 1, 1998 see Paragraph (k) of this Rule;
- (9) November 1, 2007 see Paragraph (l) of this Rule;
- (10) December 1, 2010 see Paragraph (m) of this ~~Rule~~ Rule;
- (11) May 1, 2012 see Paragraph (n) of this Rule.

(d) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective August 10, 1980 as follows:

- (1) South Fork New River [Index No. 10-1-(1)] from the confluence of the Middle Fork South Fork New River and the East Fork South Fork New River to Winkler Creek was reclassified from Class C to Class A-II;
- (2) Middle Fork South Fork New River [Index Nos. 10-1-2-(6) and 10-1-2-(14)] from Brown Branch to the South Fork New River was reclassified from Class C and C Trout to Class A-II and A-II Trout;
- (3) East Fork South Fork New River [Index Nos. 10-1-3-(1) and 10-1-3-(7)] was reclassified from Class C and C Trout to Class A-II and A-II Trout; and
- (4) Winkler Creek [Index No. 10-1-4-(2)] from Boone water supply intake dam to Watauga County SR 1549 and Flannery Fork [Index No. 10-1-4-3-(2)] from the dam at Camp Sky Ranch Bathing Lake to Winkler Creek were reclassified from Class C Trout to Class A-II Trout.

(e) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective April 1, 1983 as follows: Naked Creek [Index No. 10-1-32] was reclassified from Class C Trout to Class C.

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

(g) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective July 1, 1989 as follows: South Fork New River [Index No. 10-1-(30)] from Dog Creek to New River and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and B.

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

- (1) New River [Index No. 10] from the confluence of the North and South Forks New River to the last point at which the New River crosses the North Carolina/Virginia State line was reclassified from Class C to Class C HQW;

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- (2) South Fork New River [Index Nos. 10-1-(14.5), 10-1-(26), 10-1-(30), and 10-1-(33.5)] from Elk Creek to the confluence of the New River and North Fork New River was reclassified from Class C, B and WS-III to Class C HQW, B HQW and WS-III HQW;
  - (3) Howard Creek [Index Nos. 10-1-9-(1) and 10-1-9-(6)] from source to the South Fork New River was reclassified from Class WS-III Trout and C Trout to Class WS-III Trout HQW and C Trout HQW;
  - (4) Big Horse Creek [Index No. 10-2-21-(5.5)] from North Carolina/Virginia State line to lower Ashe County SR 1361 bridge was reclassified from Class C Trout to Class C Trout HQW; and
  - (5) Little River [Index No. 10-9-(11.5)] from N.C. Hwy. 18 bridge to the North Carolina/Virginia State line was reclassified from Class C to Class C HQW.
- (i) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.
- (j) The Schedule of Classifications and Water Quality Standards for the New River Basin has been amended effective February 1, 1993 as follows:
- (1) the South Fork New River (Index No. 10-1-33.5) from Dog Creek to the New River was reclassified from Class B HQW to Class B ORW;
  - (2) the New River (Index No. 10) from the confluence of the North And South Fork New Rivers to the last point at which it crosses the North Carolina/Virginia State line was reclassified from Class C HQW to Class C ORW; and
  - (3) Old Field Creek (Index No. 10-1-22) from Call Creek to the South Fork New River, and Call Creek (Index No. 10-1-22-1) from its source to Old Field Creek were reclassified from Class WS-IV Trout to Class WS-IV Trout ORW.
- (k) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective August 1, 1998 with the revision to the primary classification for a portion of the South Fork New River [Index No. 10-1 (20.5)] from Class WS-IV to Class WS-V.
- (l) The Schedule of Classifications and Water Quality Standards for the New River Basin was amended effective November 1, 2007 with the reclassification of Bluff Mountain Fen near Buffalo Creek [Index No. 10-2-20] to Class WL UWL as defined in 15A NCAC 02B .0101. The North Carolina Division of Water Quality maintains a Geographic Information Systems data layer of the UWL.
- (m) The Schedule of Classifications and Water Quality Standards for the New River Basin is amended effective December 1, 2010 with the reclassification of the North Fork New River [Index Nos. 10-2-(1), 10-2-(12)] and its tributaries from C+, C+ Trout and C Trout HQW to C ORW and C Trout ORW with the exception of the following:
- (1) Index Nos. 10-2-21-9, 10-2-21-(8), 10-2-(11) and 10-2-20 were reclassified from C+ and C Trout + to C HQW and C Trout HQW; and
  - (2) Little Buffalo Creek and Claybank Creek (Index Nos. 10-2-20-1 and 10-2-20-1-1) did not qualify for the ORW or HQW designation; however, these waters shall be managed in the same way as the downstream designated HQW areas.
- (n) The Schedule of Classifications and Water Quality Standards for the New River Basin is amended effective May 1, 2012 as follows:
- (1) a portion of the South Fork New River [Index No. 10-1-(14.5)] from the Town of Boone's intake, located nearly 0.5 miles upstream of SR 1100, to approximately 875 feet downstream of SR 1351 from C HQW to WS-V CA HQW.
  - (2) a portion of the South Fork New River [Index No. 10-1-(14.5)] from about 875 feet downstream of SR 1351 to Elk Creek from C HQW to WS-IV HQW.
  - (3) a portion of the South Fork New River [Index No. 10-1-(3.5)] from Elk Creek to approximately 1.75 miles upstream of SR 1351 from C+ to WS-IV +.

*History Note:* Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);  
Eff. February 1, 1976;

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*Amended Eff. May 1, 2012; December 1, 2010; November 1, 2007; August 1, 1998; February 1, 1993; August 3, 1992; August 1, 1990; August 1, 1989.*

APPENDIX 2

RESOLUTION REGARDING THE RECLASSIFICATION  
OF A PORTION OF THE SOUTH FORK OF THE NEW RIVER  
ASHE COUNTY, NORTH CAROLINA

WHEREAS, the Town of Boone has submitted to the State of North Carolina a request for reclassification of a segment of the South Fork of the New River in Watauga County from Class C to Water Supply – IV (WS-IV) classification; and

WHEREAS, the North Carolina Department of Environment and Natural Resources (NCDENR) Division of Water Quality requires the reclassification of all watersheds that serve as water supplies to protect the quality of those waters; and

WHEREAS, the Ashe County Board of Commissioners do hereby recognize the importance of protecting and sustaining the water quality of the South Fork of the New River; and

WHEREAS, the County of Ashe presently requires that development within Ashe County meet the present Water Supply – IV (WS-IV) classification.

NOW, THEREFORE BE IT RESOLVED that while the Ashe County Board of Commissioners do hereby neither support nor oppose the proposed Town of Boone Water Supply Program, the Ashe County Board of Commissioners do see the benefit for the reclassification of that portion of the watershed along the South Fork of the New River to (WS-IV) watershed as prescribed by the North Carolina Department of Environment and Natural Resources for said purposes. And the Ashe County Board of Commissioners will adopt and implement the necessary ordinance(s) to meet the state’s minimum requirements for the proposed (WS-IV) watershed within 270 days after the effective date of the reclassification for said catchment area.

Adopted this the 4<sup>th</sup> day of April 2011.

  
Judy Porter Poe, Chairman  
Ashe County Board of Commissioners

ATTEST:

  
Ann J. Clark, CMC, NCCCC  
County Clerk



STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

**RESOLUTION IN SUPPORT OF THE RECLASSIFICATION OF  
A PORTION OF THE SOUTH FORK OF THE NEW RIVER  
WATAUGA COUNTY, NORTH CAROLINA**

WHEREAS, the Town of Boone has submitted to the State of North Carolina a request for reclassification of a segment of the South Fork of the New River in Watauga and Ashe County from Class C (C) to Water Supply - IV (WS-IV) Classification;

WHEREAS, the State's Department of Environment and Natural Resources' Division of Water Quality requires the reclassification of all watersheds that serve as water supplies to protect the quality of those waters;

WHEREAS, the County Commissioners of Watauga County are hereby recognizing the importance of protecting and sustaining the water quality of the South Fork of the New River;

NOW THEREFORE BE IT RESOLVED, that the Watauga County Board of Commissioners will adopt and implement the necessary ordinance(s) to meet the state's minimum requirements for the proposed WS-IV watershed within 270 days after the reclassification's effective date.

ADOPTED this the 3<sup>rd</sup> day of May, 2011.

  
Nathan A. Miller, Chairman  
Watauga County Board of Commissioners

ATTEST:

  
Anita J. Fugle, Clerk to the Board

