Agenda Item: 10-04 Request for Approval of the Interbasin Transfer Settlement Guidance Document

Explanation: NC General Statute §143-215.22L(h) allows the Environmental Management Commission (EMC) to initiate settlement discussions during the interbasin transfer certification process.

(h) Settlement Discussions. – Upon the request of the applicant, any interested party, or the Department, or upon its own motion, the Commission may appoint a mediation officer. The mediation officer may be a member of the Commission, an employee of the Department, or a neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section. The mediation officer shall make a reasonable effort to initiate settlement discussions between the applicant and all other interested parties. Evidence of statements made and conduct that occurs in a settlement discussion conducted under this subsection, whether attributable to a party, a mediation officer, or other person shall not be subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a certificate. The Commission may adopt rules to govern the conduct of the mediation process.

The purpose of the document is to provide additional guidance to the applicant, the public, and the EMC on the settlement process. The document covers the initiation of settlement discussions, the appointment of a mediation officer, the conduct of negotiations, and the termination of the settlement discussions.

Recommendation: DWR staff brought the proposed guidance document before the Water Allocation Committee (WAC) at their November, 2009 meeting. The WAC made several revisions and approved the guidance at their January meeting. DWR staff is now asking that the EMC adopt this as a guidance document for the IBT settlement process.