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To: Nutrient Scientific Advisory Board and listserv
From: Jim Hawhee, Nonpoint Source Planning Branch, DWR
Subject: Summary of comments on the September 2017 Discussion Draft of the N.C. Nutrient Trading Framework

Overview and summary: DWR provided a discussion draft of the “North Carolina Nutrient Trading Framework” for NSAB review on September 1st, 2017. Verbal comments were offered and discussed at the September 8th NSAB meeting. Written comments were invited from NSAB members and members of the NSAB listserv by October 3rd. DWR staff intends to respond directly to written comments while also incorporating these perspectives into the next framework draft. Below, the most notable comments are summarized and DWR indicates intended changes for the next draft.

Summary of LNBA/NRCA comments: The Lower Neuse Basin Association and the Neuse River Compliance Association provided 43 comments using the comment feature of Microsoft Word. Many provide specific commentary on the framework as written, but a few themes are apparent. The definition and common meaning of “trading” and some related concepts remain to be resolved. Concerns about the draft nutrient offset rule, included in the appendix, are evident. Among those concerns is the permanency concept introduced into the draft rule and the scope of the nutrient offset rule’s application. Verbal and written concerns were expressed about the ability of this sector to meet projected demand within the next 18-25 years, even with the trading options currently established in rule.

Summary of Agricultural Nutrient Trading Workgroup comments: Comments submitted by an informal agricultural workgroup were submitted under two general topics: “Trading Concerns” and “Implementation Concerns.” The “Trading Concerns” section reflected broad-level policy concerns about trading generally. While DWR staff is aware of those concerns, it was helpful to have them explicitly framed by this workgroup. Agriculture’s “ability to meet and maintain their mandated nutrient reductions” is framed as the primary and overarching issue, with various related concerns identified within this area. This section also reflected concerns about themes in the draft framework as written, including “serious concerns about the negative connotation directed at the agricultural community and the collective compliance approach.” The “Implementation Concerns” section provides roughly two dozen operational questions. Through those questions, it seeks more detail and specific answers related to agriculture’s role in trading. It also recommends “that no practice funded with USDA or SWCC funds should ever be eligible for trading, because these funds are specifically for improving agricultural water quality.”



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- Interest was expressed in a vertically-integrated trading approach, where wastewater treatment facilities can directly install nonpoint source nutrient reduction practices and retain nutrient offset credit.
- Questions have been raised regarding whether local governments can operate a nutrient offset credit bank, as well as the need for them to do so under various compliance, trading and joint compliance scenarios.
- Address the issue of “bad” or “risky” credits substituting for “good” credits.

Recent DWR perspectives:

- Above all else, the framework must provide clear guidance regarding the rules as they presently exist. However, as concepts are discussed, guidance is developed and new ideas are evaluated, the framework development process can be a forum for identifying desirable rule improvements. If rules are updated, guidance can be revisited.
- Procedurally, the parallel advancement of both the nutrient offset rule (as part of the rules readoption process) and the trading framework (guidance) has resulted in concern and confusion. Initial work on a “wastewater overtreatment” nutrient reduction practice, which may result in tradable nutrient offset credit and become a key joint compliance feature in the trading framework, has added further complication.
- North Carolina has two distinct, active nutrient trading schemes. The rules as they exist also provide for several other trading and joint compliance options. While this multitude of options provides important regulatory flexibility, it also results in appreciable and unavoidable complexity.
- Core concepts proposed or explained by DWR on the general topic of trading have been subject to multiple interpretations. The refinement and clarification of core concepts remains necessary at this stage, and the development of a common trading-related vocabulary is critical.

The next draft: A second discussion draft of the nutrient trading framework will be provided as soon as possible. The November NSAB meeting is a potential but aggressive deadline. The NSAB will remain the primary public forum for developing and vetting this document in its early stages. Yet recognizing substantial interests in this topic from multiple sectors and organizations, DWR staff is also open to individual discussions, meetings, and presentations to receive comments and provide updates.

Significant structural and content changes will be incorporated into the next discussion draft. As noted above, the primary focus will be providing guidance regarding trading- and joint compliance-related rule provisions as they are currently written. Further specificity has been requested by multiple commenters, and updated drafts will seek to address the finer-scale operational questions that have arisen. Where applicable, references to specific rule provisions will be incorporated and any differences among basins characterized.

The development of this framework has already revealed areas where existing rule provisions might be improved, and additional constructive suggestions are expected in response to subsequent drafts. DWR intends to incorporate all perspectives regarding potential trading-related improvements into a separate section of the trading framework. These findings may eventually support the development of a consensus or (more likely) compromise trading rule package to resolve longstanding issues, refine problematic rule language, and/or provide additional regulatory flexibility.