



North Carolina Department of Environment and Natural Resources
Division of Water Resources

Michael F. Easley, Governor

William G. Ross Jr., Secretary
John N. Morris, Director

January 31, 2007

Cities of Concord and Kannapolis Interbasin Transfer Certificate

This is to notify you that in its meeting on January 10, 2007, the North Carolina Environmental Management Commission (EMC) approved an interbasin transfer by the Cities of Concord and Kannapolis from the Catawba River and Yadkin River basins to the Rocky River basin. The certificate limits the transfer to a maximum of 10 million gallons per day (mgd) from the Catawba River basin and a maximum of 10 mgd from the Yadkin River basin. The certificate also places seven conditions on the transfer.

Following is an excerpt from the certificate stating the EMC's decision.

Decision

Based on the record and the recommendation of the Hearing Officers, the Commission, on January 10, 2007 by duly made motions, concludes by a preponderance of the evidence based upon the Findings of Fact stated above that (1) the benefits of the proposed transfer outweigh the detriments of the transfer, and (2) the detriments of the proposed transfer will be mitigated to a reasonable degree under the conditions of this Certificate. Therefore, and by duly made motions, the Commission grants in part the petition of the cities of Concord and Kannapolis ("Cities") to transfer water from the Catawba and Yadkin River basins to the Rocky River basin. The permitted transfer amount shall not exceed a maximum of 10 million gallons on any calendar day from the Catawba River basin to the Rocky River basin and shall not exceed a maximum of 10 million gallons on any calendar day from the Yadkin River basin to the Rocky River basin. These transfer amounts are nonexclusive of each other. This certificate is effective immediately.

The certificate is subject to the conditions below, which are imposed under the authority of G.S. § 143-215.22I. The Cities shall comply with any plan that is approved pursuant to this Certificate and any approved amendments to such plan. A violation of any plan approved pursuant to this Certificate will be considered a violation of the terms and conditions of this Certificate.

1. If at any time any legal requirement that (a) governs the operation of the hydroelectric facilities in the Catawba River basin currently licensed as Federal Energy Regulatory Commission ("FERC") Project No. P-2232 or in the Yadkin-Pee Dee River basin currently licensed as FERC Project Nos. P-2206 and P-2197 and (b) governs or affects water use and/or quality, substantially differs from the actual or anticipated FERC license conditions or other legal requirements upon which the analysis underlying this Certificate is based, such as changes to minimum flow requirements or drought mitigation measures, the Commission may reopen and modify this Certificate to ensure continued compliance with G.S. ch. 143, art. 21, part 2A.
2. The Cities shall implement drought management measures that become more stringent as drought conditions increase in severity. The Cities shall implement measures corresponding to the most severe level of drought existing in either the Catawba or Yadkin River basins. Prior to transferring any water under this Certificate, the Cities shall submit a plan to the Division of Water Resources

(“Division”), for the Division’s approval, for implementing this condition. The plan shall include a demonstration that each of the Cities has legal authority and adequate resources to implement the drought management measures specified in this condition. The Cities shall not transfer any water to any other jurisdiction (regardless of the origin of that water) unless that jurisdiction agrees to be bound by this condition in full. The drought management measures shall be at least as stringent as the measures in Attachment A to this Certificate, which is incorporated herein.

3. If the Division determines that the Cities are no longer cooperating with each other for the implementation of this Certificate, the Division may, in consultation with the Cities and considering the proportionate 2035 projected needs of each of the Cities, allocate the certified transfer amount between the Cities. Within three months of any such allocation, each of the Cities shall submit a plan to the Division, for the Division’s approval, which shall assure that the Certificate amounts will not be exceeded.
4. Within four months of the effective date of this Certificate, the Cities shall develop and submit to the Division for the Division’s approval a compliance and monitoring plan for reporting at least annually: (a) maximum daily transfer amounts based on data derived from water meters, (b) a demonstration of compliance with certificate conditions, and (c) drought management activities.
5. If the Commission determines that the record on which this Certificate is based, including the revised Final Environmental Impact Statement (“FEIS”) or the analysis on which the FEIS is based, is substantially in error or if new information becomes available, that clearly demonstrates that any Finding of Fact (including those regarding environmental, hydrologic, or water use impacts) pursuant to G.S. § 143-215.22I(f) was not or is no longer supported or is materially incomplete, the Commission may reopen and modify this Certificate to ensure continued compliance with G.S. ch. 143, art. 21, part 2A.
6. No later than twenty years from the date of this Certificate, and then at twenty year intervals, the Cities shall, with direction from the Division and after solicitation of input from and consultation with interested stakeholders (notice to stakeholders shall be distributed in accordance with G.S. § 143-215.22I(d)(2)-(3)), submit a written report to the Commission (a) summarizing transfers for the previous twenty years; (b) discussing any new or revised facts that suggest that the record was substantially in error or that the environmental impacts associated with activities pursuant to this Certificate are substantially different from those projected impacts that formed the basis for the findings of fact and this Certificate; (c) summarizing all actions taken to address actual or potential drought conditions; (d) recommending any changes to this Certificate (including under Condition 5) or any plans pursuant to this Certificate that may be necessary to assure compliance with G.S. ch. 143, art. 21, part 2A; (e) detailing consultation with interested stakeholders; and (f) certifying compliance with this Certificate. The report shall be signed by an officer of each city that is responsible for compliance with this Certificate. The Cities shall make the report available to all interested stakeholders.
7. This Certificate does not exempt the Cities or any other entity from compliance with any other requirements of law. For example, if a Capacity Use Area is designated under the provisions of the Water Use Act of 1967, G.S. § 143-215.11 et seq. in the Catawba, Yadkin or Rocky river basins the Cities and other entities shall comply with any implementing rules and the Commission may reopen and modify this Certificate to ensure compliance.

NOTICE: The holders of this certificate are jointly and severally responsible for compliance with the terms, conditions and requirements stated herein, and are therefore jointly and severally liable for all penalties assessed to enforce such terms, conditions and requirements as provided in G.S. §143-215.6A.

Attachment A – Minimum Criteria for Drought Management Plan

General Statute § 143-215.22I(h) states “The certificate shall include a drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought

conditions.” At a minimum, the following conditions shall be included in the drought management plan submitted to the Division.

Implementation of the Cities’ drought management plan shall, at a minimum, be linked to declarations of levels of drought severity pursuant to (a) the protocol established in the Low Inflow Protocol (“LIP”) that is included in any FERC license (including via a certificate under 33 U.S.C. § 1341) for Project Nos. 2232, 2206, or 2197 or (b) the drought classifications applied by the North Carolina Drought Management Advisory Council (NC DMAC), whichever is more stringent.

The Cities’ drought management measures shall be at least as stringent as the following measures:

Stage 1 Actions - (NC DMAC Moderate Drought) The goal is to reduce water usage by 3-5% (or more) from the amount that would otherwise be expected. The Cities (and other jurisdictions) shall complete at a minimum the following activities within 14 days after the Stage 1or Moderate Drought declaration:

- a. Notify their water customers and employees of the low inflow condition through public outreach and communication efforts.
- b. Request that their water customers and employees implement voluntary water use restrictions, in accordance with their drought response plans.
- c. Provide a status update to the appropriate drought management advisory group and the Division of Water Resources on actual water withdrawal trends and plans for moving to mandatory restrictions, if required.

Stage 2 Actions - (NC DMAC Severe Drought) The goal is to reduce water usage by 5-10% (or more) from the amount that would otherwise be expected. The Cities (and other jurisdictions) shall complete at a minimum the following activities within 14 days after the Stage 2 or Severe Drought declaration:

- a. Notify their water customers and employees of the continued low inflow condition and movement to mandatory water use restrictions through public outreach and communication efforts.
- b. Require that their water customers and employees implement mandatory water use restrictions, in accordance with their drought response plans.
- c. Enforce mandatory water use restrictions through the assessment of penalties.
- d. Provide a status update to the appropriate drought management advisory group and the Division of Water Resources on actual water withdrawal trends and plans for moving to increased water restrictions, if required.

Stage 3 Actions - (NC DMAC Extreme Drought) The goal is to reduce water usage by 10-20% (or more) from the amount that would otherwise be expected. The Cities (and other jurisdictions) shall complete at a minimum the following activities within 14 days after the Stage 3 or Extreme Drought declaration:

- a. Notify their water customers and employees of the continued low inflow condition and movement to mandatory water use restrictions through public outreach and communication efforts.
- b. Require that their water customers and employees implement increased mandatory water use restrictions, in accordance with their drought response plans.
- c. Enforce mandatory water use restrictions through the assessment of penalties.
- d. Encourage industrial/manufacturing process changes that reduce water consumption.
- e. Provide a status update to the appropriate drought management advisory group and the Division of Water Resources on actual water withdrawal trends and plans for moving to increased water restrictions, if required.

Stage 4 Actions - (NC DMAC Exceptional Drought) The goal is to reduce water usage by 10-20% (or more) from the amount that would otherwise be expected. The Cities (and other jurisdictions) shall complete at a minimum the following activities within 14 days after the Stage 4 or Exceptional Drought declaration:

- a. Notify their water customers and employees of the continued low inflow condition and movement to emergency water use restrictions through public outreach and communication efforts.

- b. Require that their water customers and employees implement emergency water use restrictions, in accordance with their drought response plans.
- c. Enforce emergency water use restrictions through the assessment of penalties.
- d. Restrict all outdoor water use.
- e. Prioritize and meet with their commercial and industrial large water customers to discuss strategies for water reduction measures, including development of an activity schedule and contingency plans.
- f. Provide a status update to the appropriate drought management advisory group and the Division of Water Resources on actual water withdrawal trends and prepare to implement emergency plans to respond to water outages, if required.

For the full IBT certificate, which includes the findings of fact that formed the basis for the decision, and for other relevant material, visit the Division of Water Resources website at:

http://www.ncwater.org/Permits_and_Registration/Interbasin_Transfer/Status/Concord/

If you do not have internet access and need a printed copy of the certificate, you may contact Phil Fragapane at the Division of Water Resources at 919-715-0389, or email: Phil.Fragapane@ncmail.net

PROCEDURE FOR FILING A CONTESTED CASE PETITION

If you wish to contest this agency action, you must file a petition for contested case hearing as required by General Statute § 150B-23. You may obtain a petition form from the Office of Administrative Hearings (OAH), but you are not required to use this form. You must file the petition with OAH within sixty (60) days of receipt of this notice. A petition is considered filed when it is received by OAH during normal business hours. OAH accepts filings Monday through Friday between the hours of 8:00 am and 5:00 pm, except for State holidays. The original and one (1) copy of the petition must be *filed* with OAH. The petition may be faxed, provided the original and one copy of the petition are received at OAH within five (5) business days following the faxed transmission. The mailing address for OAH is as follows:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone: (919) 733-2698
Facsimile: (919) 733-3478

A copy of the petition must also be *served* on the Environmental Management Commission at the following address:

Mary P. Thompson
North Carolina Department of Environment and Natural Resources
1601 Mail Service Center
Raleigh, NC 27699-1601