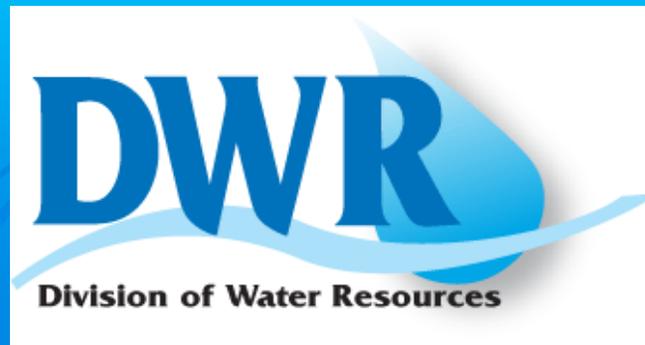


NC Water Law & Policy Conference

Interbasin Transfer of Water

Tom Fransen

North Carolina Division of Water Resources



History of Interbasin Transfer

- **Prior to 1955, riparian right to “reasonable use” of water.**
- **Starting in 1955, statutes requiring state approval in some circumstances.**
- **Starting in 1959, General Assembly began to attach anti-diversion riders.**
- **1991 the basin definitions were passed.**
- **1993 Interbasin Transfer Law.**
- **2007 Major amendment to the Interbasin Transfer Law.**

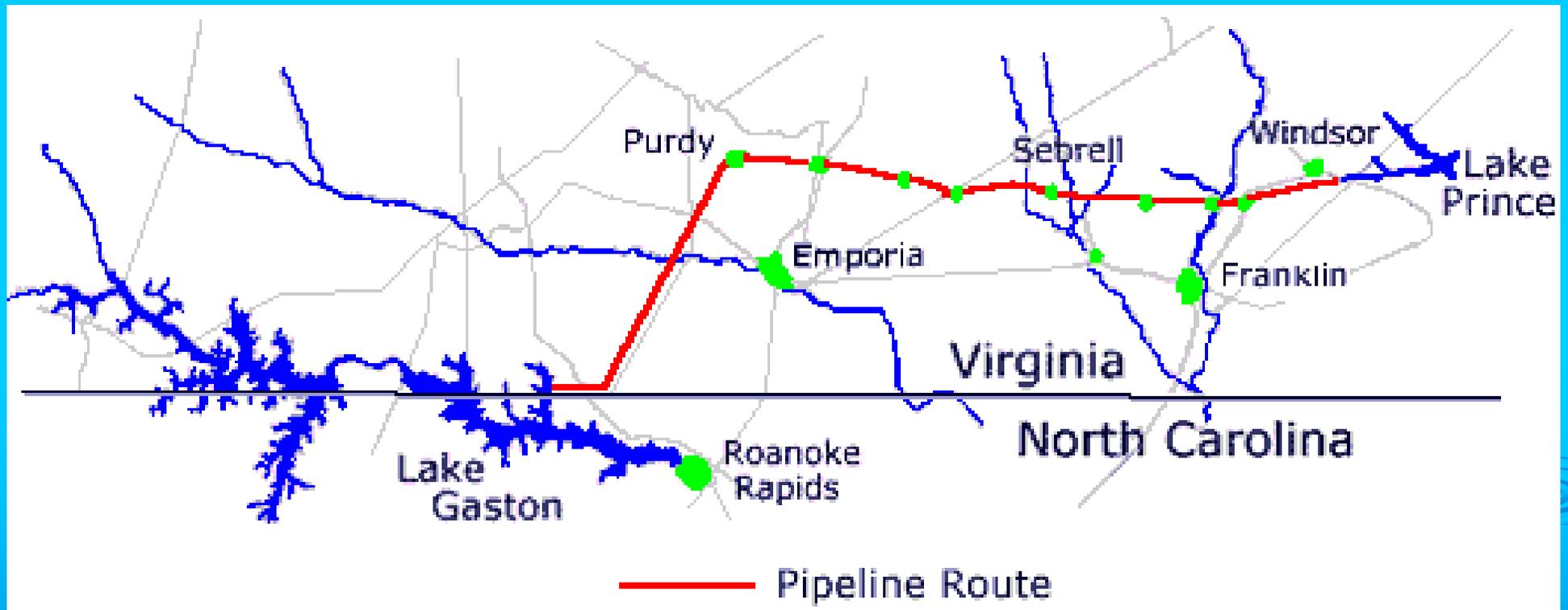
What is an Interbasin Transfer?

An interbasin transfer is the movement of 2 mgd or more of *surface water* from one river basin into another.

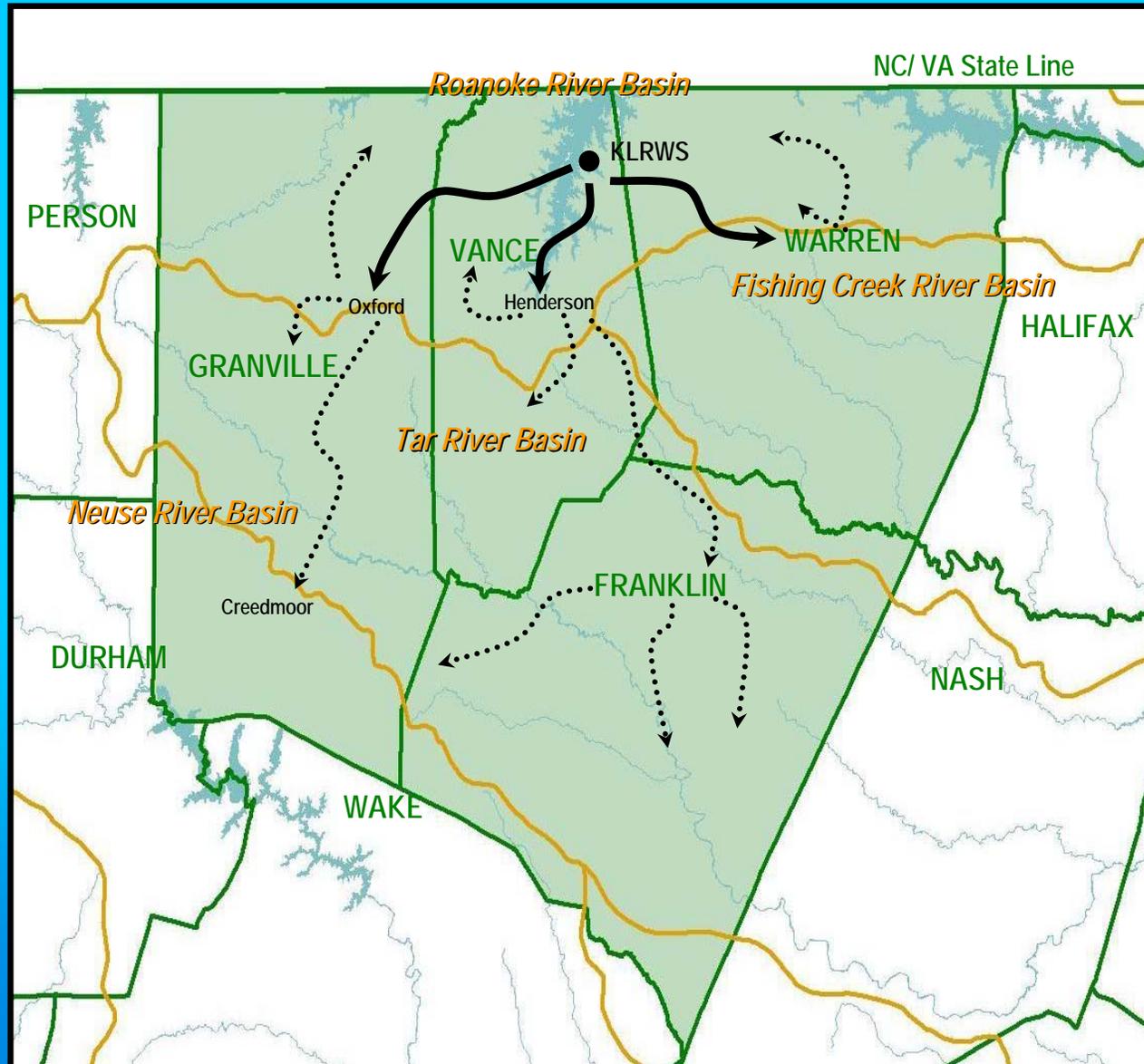
The purpose of the Interbasin Transfer Law is to take a pause to be sure it is good public policy before moving water from one river basin into another.

The Interbasin Transfer Law does **NOT** prohibit transfers.

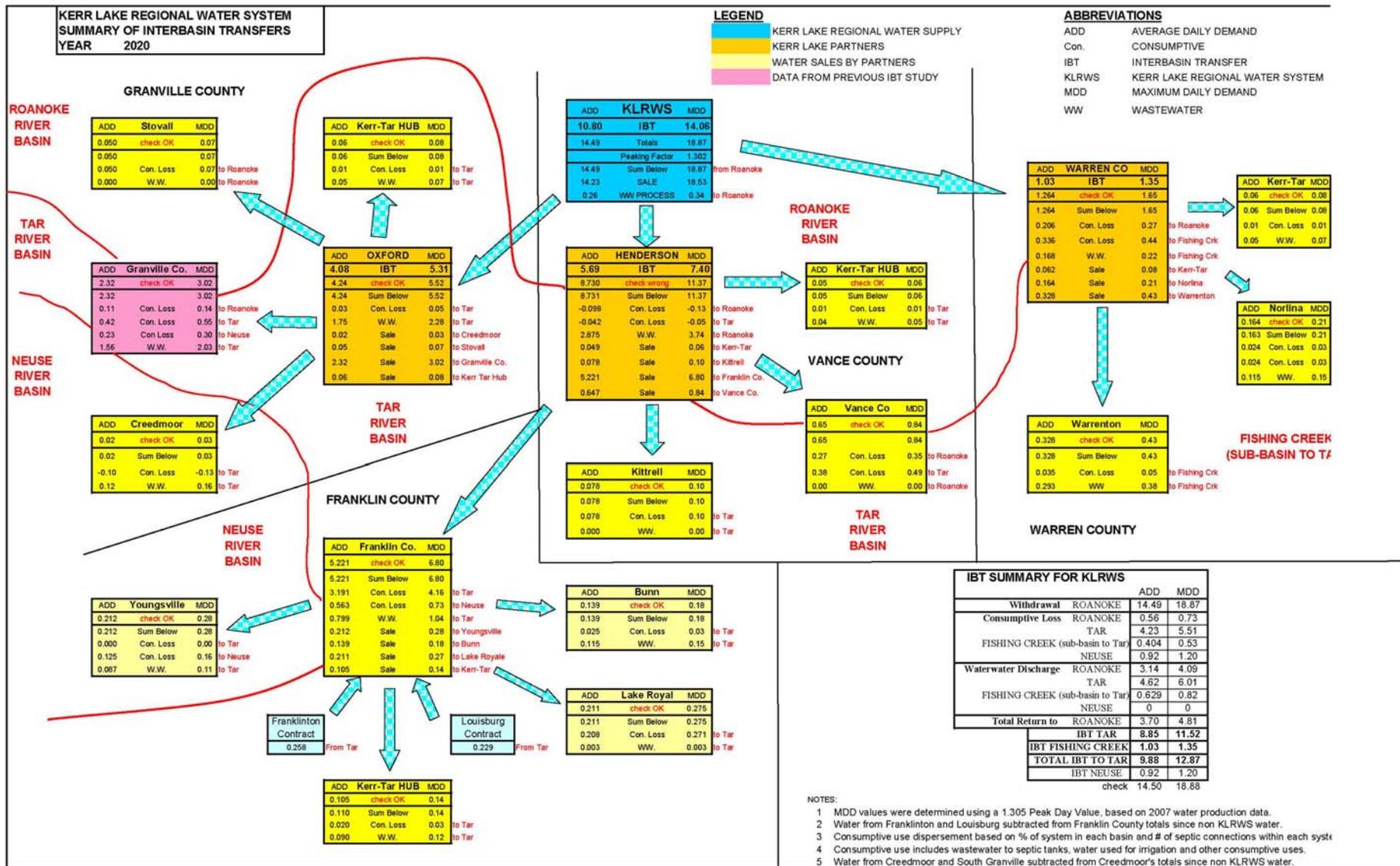
The image most people have when they think about interbasin transfer.



Kerr Lake Regional Water System Service Area



The NC reality.



Regulation of Surface Water Transfers

**North Carolina Statute G.S. 143-215.22G & 215.22L
North Carolina Administrative Code Section T15A:02G.0400**

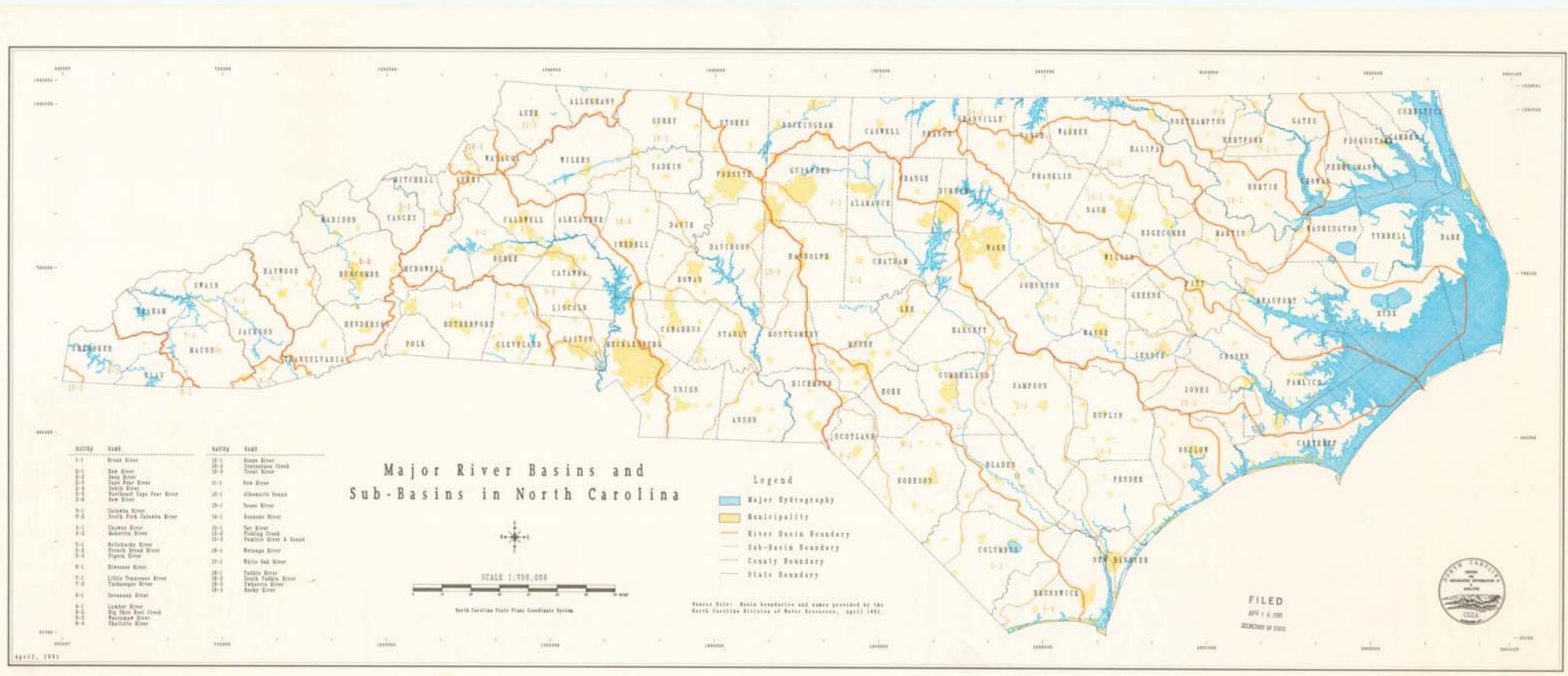
The Environmental Management Commission makes the final determinations, not DENR.

Website - http://www.ncwater.org/Permits_and_Registration/Interbasin_Transfer/

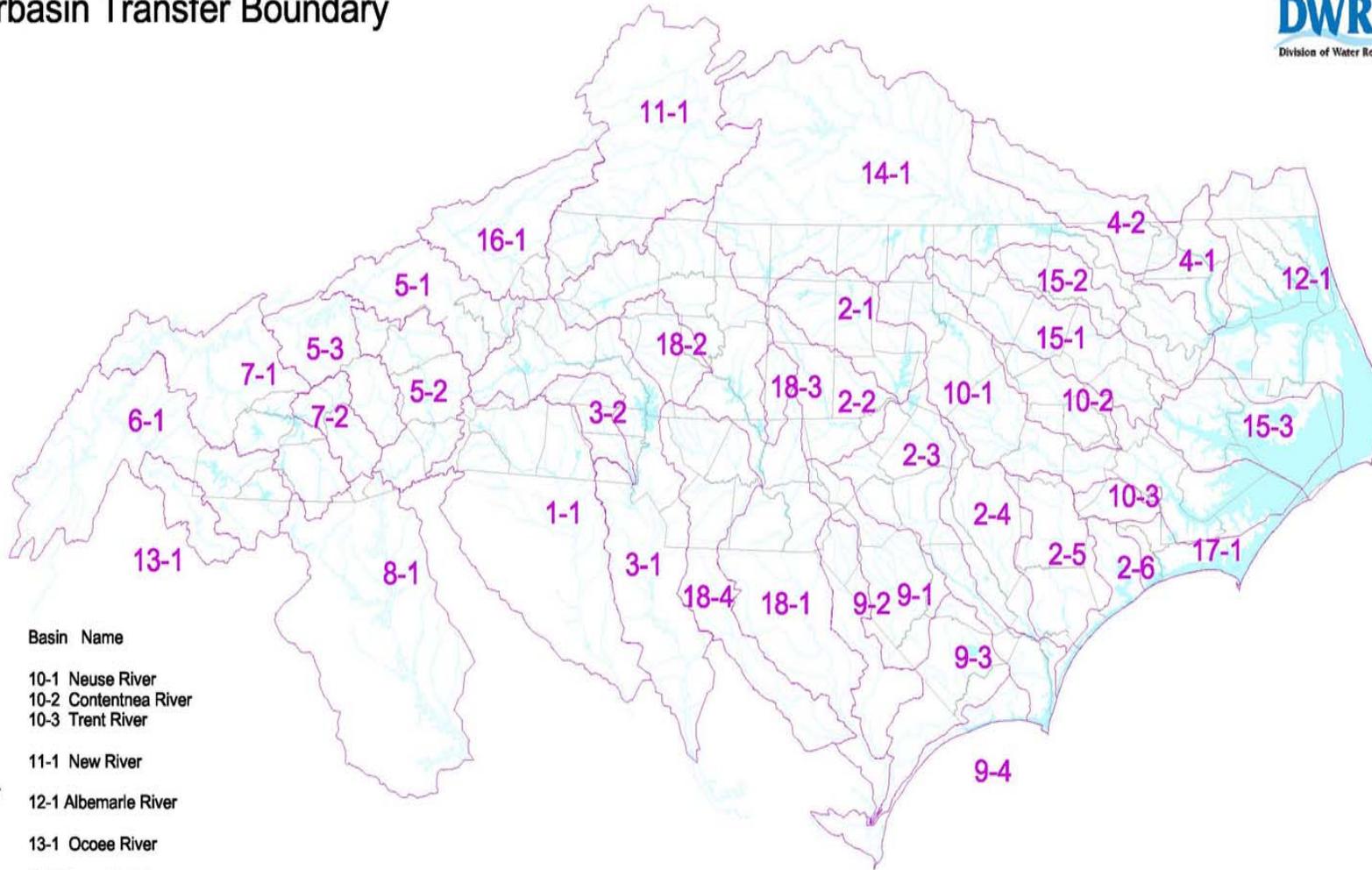
§ 143-215.22L(t) - Statement of Policy

It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. **It is the public policy of this State that the reasonably foreseeable future water needs of a public water system with its service area located primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin.** Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto.

§ 143-215.22(G) - River Basins Defined



Extended Interbasin Transfer Boundary



Basin Name

- 1-1 Broad River
- 2-1 HawRiver
- 2-2 Deep River
- 2-3 Cape Fear River
- 2-4 South River
- 2-5 NE Cape Fear
- 2-6 New River
- 3-1 Catawba River
- 3-2 South Fork Catawba River
- 4-1 Chowan River
- 4-2 Meherrin River
- 5-1 Nolichucky River
- 5-2 French Borad River
- 5-3 Pigeon River
- 6-1 Hiwassee River
- 7-1 Little Tennessee River
- 7-2 Tuskasegee River
- 8-1 Savannah River
- 9-1 Lumber River
- 9-2 Big Shoe Heel Creek
- 9-3 Waccamaw River
- 9-4 Shallotte River

Basin Name

- 10-1 Neuse River
- 10-2 Contentnea River
- 10-3 Trent River
- 11-1 New River
- 12-1 Albemarle River
- 13-1 Ocoee River
- 14-1 Roanoke River
- 15-1 Tar River
- 15-2 Fishing Creek
- 15-3 Pamlico River & Sound
- 16-1 Watauga River
- 17-1 White Oak River
- 18-1 Yadkin River
- 18-2 South Yadkin River
- 18-3 Uwharrie River
- 18-4 Rocky River

- IBT Boundary
- Counties
- Rivers
- Coast



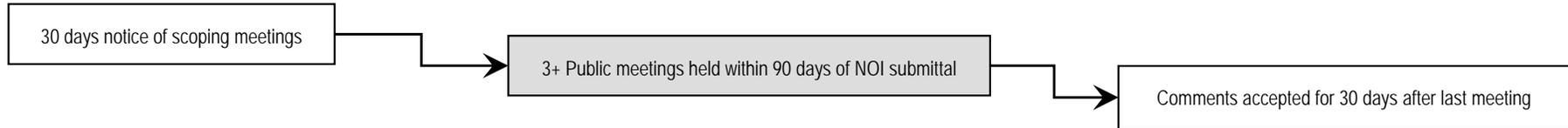
§ 143-215.22L(a) - Certificate Required

Water users that meet the following criteria are required to apply for an Interbasin Transfer (IBT) Certificate:

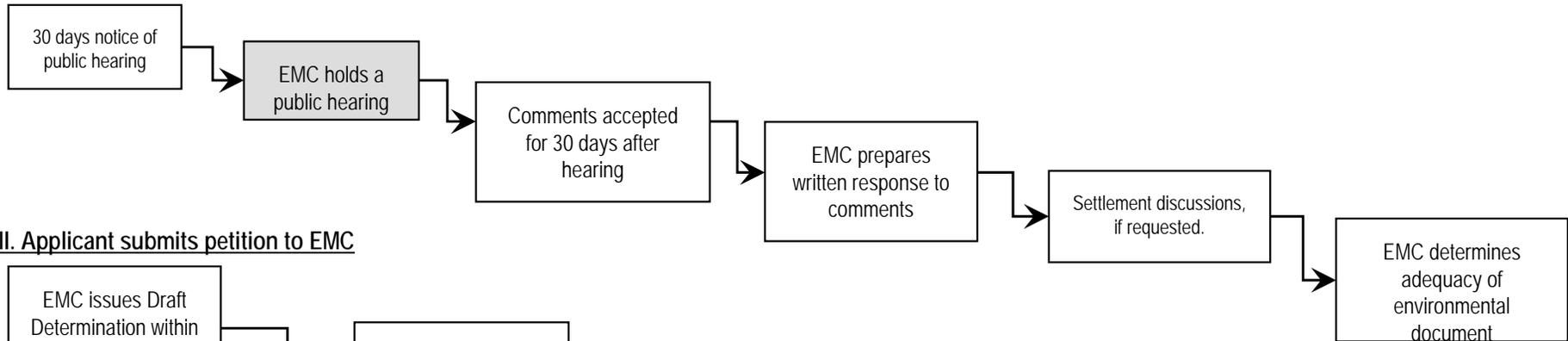
- (1) Initiate a new transfer of at least 2 million gallons per day (MGD) of surface water from one river basin to another;**
- (2) Increase an existing transfer by 25% or more above the average daily flow (ADF) transferred from June 30, 1992- 1 July 1993 (if the total transfer including the increase is more than 2 MGD);**
- (3) Increase an existing transfer above the amount approved by the Commission in a certificate issued prior to 1 July 1993.**

Certification Process

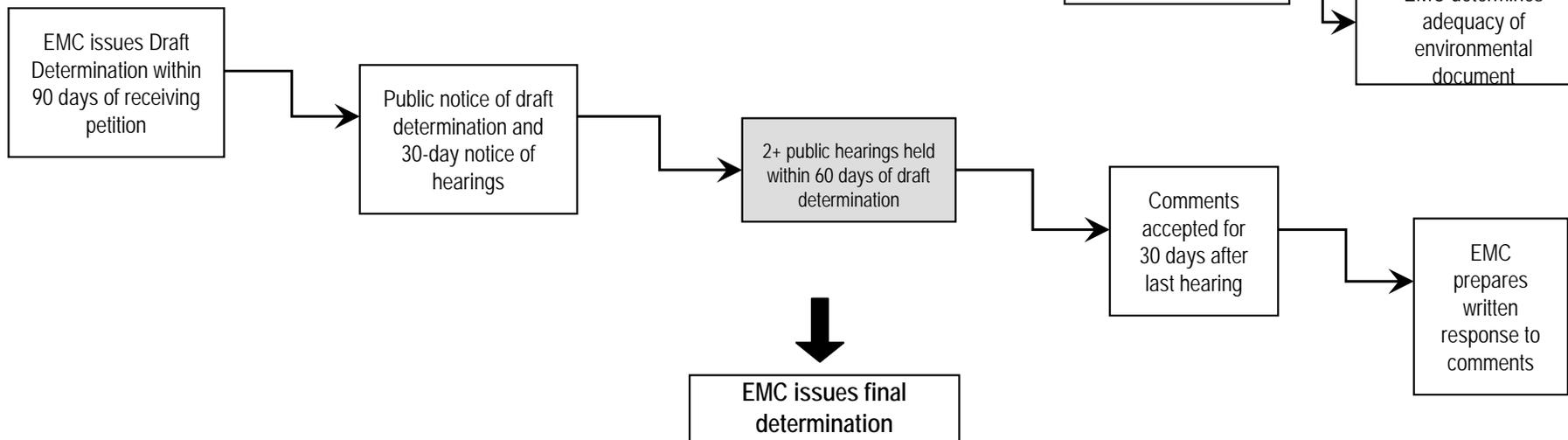
I. Applicant submits Notice of Intent to file a petition.



II. Applicant submits draft environmental document (EIS or EA)



III. Applicant submits petition to EMC



§ 143-215.22L(c) – Notice of Intent

Within 90 days after the NOI is filed, the applicant is required to hold at least three public meetings:

- **at least one in the source river basin, upstream from the proposed point of withdrawal;**
- **at least one in source river basin, downstream from the proposed point of withdrawal;**
- **and at least one in each receiving river basin.**

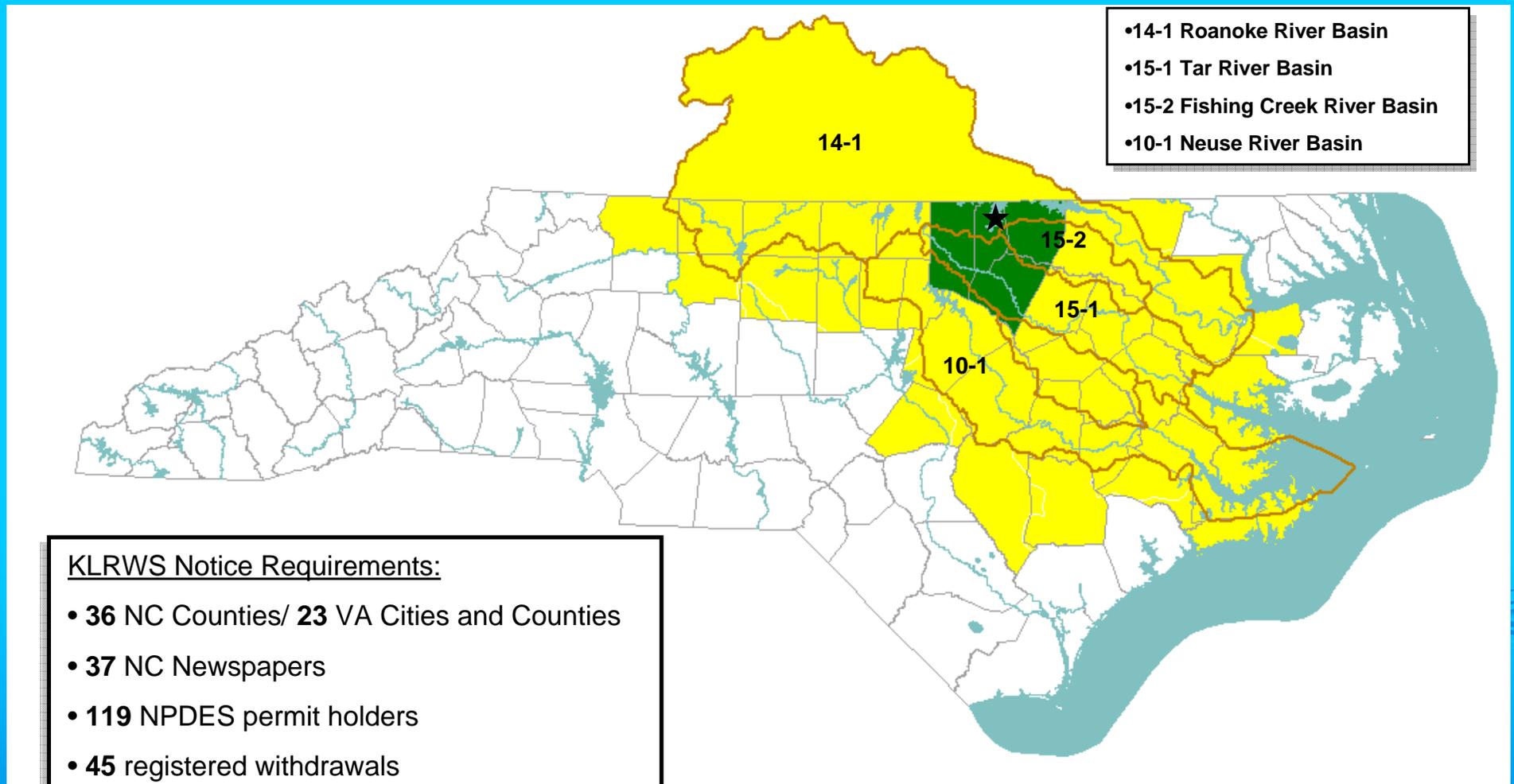
The purpose of these meetings is to 1) to receive comments on the scope of the environmental documents that the applicant will prepare and 2) provide information regarding the nature and extent of the proposed transfer.

§ 143-215.22L(c) - Notice Requirements

- **NC Register**
- **Newspapers**
- **First class mail or email to the following:**
 - **Registered water withdrawals, transfers or IBT certificates**
 - **County commissioners**
 - **NPDES permit holders**
 - **Public Water Supply Systems**

Kerr Lake Regional Water System

Public Notice Requirements



§ 143-215.22L(d) – Environmental Documents

- The applicant must prepare an EA, with EIS being additionally required for any transfer between the 18 major river basins.
- An EIS should address the requirements, that are also set forth in G.S. §113A-4 and §143-215.22L(d)
- The Commission is required to hold a public hearing on the draft environmental document.
- The Commission may not act on any petition until they have determined that the environmental document is adequate.

§ 143-215.22L(h) – Settlement Discussions

The applicant, any interested party, the Department, or the Commission may request a settlement discussion. In this event, the Commission will appoint a mediator who may be a member of the Commission, an employee of the Department, or a neutral third party. The mediator may not be someone who has served or will serve as a hearing officer.

The mediation officer will make all reasonable efforts to initiate settlement discussions between the applicant and all other interested parties. Nothing occurring during the settlement discussions may be subject to discovery. All statements or conduct by a party, the mediation officer, or other persons are inadmissible in any subsequent proceedings on the petition.

§ 143-215.22L(g) – Petition

- (1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.
- (2) A description of all the proposed consumptive and nonconsumptive uses of the water to be transferred.
- (3) A description of the water quality of the source river and receiving river(s).
- (4) A description of the water conservation measures.
- (5) A description of all sources of water within the receiving river basin that are a practicable alternative to the proposed transfer.
- (6) A description of water transfers and withdrawals registered under G.S. 143-215.22H.
- (7) A demonstration that the proposed transfer, if added to all other transfers and withdrawals would not reduce the amount of water available for use in the source river basin to a degree that would impair existing uses.
- (8) The applicant's future water supply needs and the present and reasonably foreseeable future water supply needs for public water systems with service area located within the source river basin. The analysis of future water supply needs shall include agricultural, recreational, and industrial uses, and electric power generation.
- (9) If the applicant's water supply plan is more than two years old at the time of the petition, then the applicant shall include with the petition an updated water supply plan.
- (10) Any other information deemed necessary by the Commission for review of the proposed water transfer.

§ 143-215.22L(i) – Draft Determination

Within 90 days after applicant submits its petition, the Commission will issue a draft determination on whether or not to grant the certificate.

The draft determination must include the same conditions and limitations, findings of fact, and conclusions of law that would be required in a final determination.

Within 60 days of the issuance of the draft determination, the Commission will hold several public hearings

§ 143-215.22L(k) – Finding of Fact

- **Necessity and Reasonableness**
- **Detrimental effects on the source & receiving basins.**
- **Cumulative effect on the source basin.**
- **Availability of reasonable alternatives.**
- **Right to withdrawal stored water**
- **Use of Army Corps of Engineers reservoir**
- **Is the service area in both the source and receiving basins.**
- **Any other facts necessary to make a decision.**

§ 143-215.22L(m) - Final Determination

The Commission will to grant a certificate if it finds that the applicant has established, by a preponderance of evidence, all of the following:

- **The benefits of the proposed transfer outweigh its detriments (decision guided by the approved environmental document).**
- **Any detriments have been (or will be) mitigated to the maximum degree practicable.**
- **The amount of the transfer does not exceed the amount of the projected shortfall under the applicant's water supply plan. This determination should take into account all other sources of water that are available to the applicant.**
- **There are no reasonable alternatives to the proposed transfer.**

§ 143-215.22L(n) - Certificate Conditions

- **7 required conditions**
- **Water Conservation Plan – equal or exceed most stringent in the source basin**
- **Drought Management Plan – equal or exceed most stringent in the source basin**
- **Quarterly reporting within 30 days of the end of the quarter**

Regulatory Issues

NC AWWA-WEA 2006 White Page

- *IBT regulations based on river sub-basins limit access to water supply sources for some municipalities and communities.*
- *There does not seem to be a common, clear understanding of water uses that constitute IBT.*
- *Accurate determination of daily IBT amounts is very difficult and can result in erroneous reporting of IBT amounts and related impacts.*
- *Determination of grandfathered IBT amounts is difficult and imprecise which in turn makes it difficult to determine when an IBT Certificate is required.*
- *The process for obtaining an IBT Certificate from the EMC is complex, doesn't provide for public input at appropriate times, and may benefit from streamlining.*
- *Potential revocation of IBT Certificates can undermine sound planning, financing, and development of water systems.*
- *Current IBT regulations discourage regional or basin-wide water supply plans in NC.*
- *Water resource planning should consider water losses from a river basin from all uses, not just from IBT's.*

Questions

Contact Information

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www.ncwater.org

Website - http://www.ncwater.org/Permits_and_Registration/Interbasin_Transfer/

