

# General Assembly of North Carolina

## Environmental Review Commission

State Legislative Building  
Raleigh, North Carolina

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8 December 2008

TO: Interested Parties – Water Allocation Study

FROM: George F. Givens, Commission Counsel  
Jeff W. Hudson, Assistant Commission Counsel

RE: **Water Allocation Study: Notice of Public Meetings; Written Comment**

### PUBLIC MEETINGS:

The Commission Counsel of the Environmental Review Commission (ERC) will hold public meetings from 2:00 p.m. to 4:00 p.m. and from 5:00 p.m. to 7:00 p.m. on Thursday 18 December in Room 1228 of the Legislative Building in Raleigh, North Carolina. The purpose of the meetings is to receive comment on the study of the allocation of water resources in the State, including the draft report received by the ERC on 25 November 2008. At the 2:00 p.m. meeting, the Commission Counsel will receive comment from invited representatives of various interested parties. At the 5:00 p.m. meeting, the Commission Counsel will receive comment from members of the public at large.

Public comment received at the meetings will be considered by the Principal Investigators in their preparation of the final version of the 2008 Report of the Water Allocation Study Team (Draft Interim Report), in any recommendations that the ERC may make to the General Assembly based on the 2008 Report, and in decisions about further study to be conducted by the Principal Investigators or other matters to be considered by the ERC in its ongoing study of water allocation issues.

Additional information about these meetings is set out in other sections of this notice.

### WRITTEN COMMENT:

In addition to comment received at the public meetings, written comment submitted to the Principal Investigators by 5:00 p.m., Friday, 9 January 2009, will be considered for the purposes set out above. Written comment should be sent to both the Principal Investigators and the Clerk of the ERC at:

**ERC (one of the following)**

Mailing Address:

Jessica K. Bennett, Commission Clerk  
334 Legislative Office Building  
300 North Salisbury Street  
Raleigh, North Carolina 27603

Email Address:

erc@ncleg.net

**Principal Investigators (one of the following)**

Mailing Address:

Richard B. Whisnant, Professor of Public Law and Government  
School of Government  
University of North Carolina at Chapel Hill  
Knapp-Sanders Building  
Campus Box 3330  
Chapel Hill, NC 27599

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Water Wiki Comment Webpage:

[http://sogweb.sog.unc.edu/Water/index.php/2008\\_WAS\\_Report\\_Comments](http://sogweb.sog.unc.edu/Water/index.php/2008_WAS_Report_Comments)

**BACKGROUND INFORMATION:**

The Environmental Review Commission (ERC) is an entity of the General Assembly of North Carolina. The ERC is established by G.S. 120.70-41 et seq. to serve as the principal legislative entity responsible for legislative oversight and study of matters related to protection of the environment and conservation of natural resources. (Note that the ERC is a separate entity from the Environmental Management Commission (EMC), which is an executive branch agency within the Department of Environment and Natural Resources (DENR) responsible for implementation of various environmental laws.)

Section 1.(a) of S.L. 2007-518 (H.B. 820), which was enacted by the 2007 Regular Session of the General Assembly directs the ERC, with the assistance of DENR, to study the allocation of water resources and their availability and maintenance in the State. The ERC entered into a contract with the Institute of Government at the University of North Carolina at Chapel Hill for significant portions of the study. In its work on the study, the Institute of Government subcontracted with the Nicholas Institute for Environmental Policy Solutions at Duke University. **Richard Whisnant**, Associate Professor of Public Law and Government at the Institute of Government, and **Bill Holman**, Visiting Senior Fellow at the Nicholas Institute, are the **Principal Investigators** for the study. Mr. Whisnant and Mr. Holman presented the draft Water Allocation Study Report to the ERC on 25 November 2008.

**The draft report is available at both:**

- <http://www.ncleg.net/documentsites/committees/ERC/Water%20Allocation%20Study/Draft%20Interim%20Report/Draft%202008%20Report%20of%20the%20Water%20Allocation%20Study.pdf>
- [http://sogweb.sog.unc.edu/Water/index.php/Main\\_Page](http://sogweb.sog.unc.edu/Water/index.php/Main_Page).

**MEETING PROCEDURES:**

All persons interested in the Water Allocation Study are invited to attend both of the public meetings. The conduct of these public meetings will be determined by the Commission Counsel based on the attendance at each meeting and other factors. Attendees who wish to be heard must make oral statements within a

specified period of time and in a specified order. Any person who desires to comment is strongly encouraged, but is not required, to submit a written statement for inclusion in the record of the public meetings. Written statements should be submitted to the Principal Investigators and the Clerk of the ERC as provided in the Written Comment Period section above. Written comments should be submitted on standard size (8½" x 11") paper with sufficient margins for binding.

**ATTACHMENTS:**

Authorizing legislation for the Water Allocation Study – Section 1.(a). of S.L. 2007-518 (H.B. 820)  
Legislation extending the Water Allocation Study – S.L. 2008-10

**ADDITIONAL INFORMATION:**

Note that the ERC is scheduled to meet from 10:00 a.m. to approximately 12:30 p.m. on Thursday, 18 December 2008 in Room 1228 of the Legislative Building in Raleigh, North Carolina.

Persons who have questions about the public meetings, the Water Allocation Study, or other matters related to the ERC, may contact the Commission Counsel or other Commission staff at (919) 733-2578 or by email at [erc@ncleg.net](mailto:erc@ncleg.net).

AN ACT TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATED TO THE TRANSFER OF WATER FROM ONE RIVER BASIN TO ANOTHER RIVER BASIN AND THE ALLOCATION OF SURFACE WATER RESOURCES AND TO AMEND THE LAWS GOVERNING THE TRANSFER OF WATER FROM ONE RIVER BASIN TO ANOTHER RIVER BASIN.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study the allocation of surface water resources and their availability and maintenance in the State, including issues related to the transfer of water from one river basin to another, the withdrawal of water for consumptive use, and the accuracy and tolerance of equipment used to measure the flow of water transferred from one river basin to another river basin. The Commission shall evaluate the benefits of establishing formal and informal procedures for negotiating transfers of water from one river basin to another. The Commission shall also study and recommend measures to: (i) ensure that the purposes of the Regional Water Supply Planning Act of 1971, as set out in G.S. 162A-21, are fulfilled; (ii) provide for a comprehensive system for regulating surface water withdrawals for consumptive and nonconsumptive uses; (iii) provide for the establishment of a statewide plan for water resources development projects; (iv) provide for adequate resources for the Department so that it may develop and implement a comprehensive approach to water resources management; (v) ensure that all State laws regulating water resources are consistent with and fully integrated into the comprehensive system for regulating surface water withdrawals and the statewide plan for water resources development projects; and (vi) ensure that potential interstate conflicts related to water resources are avoided or minimized. In the conduct of this study, the Environmental Review Commission may employ independent consultants as provided in G.S. 120-32.02 and G.S. 120-70.44. The Environmental Review Commission may submit an interim report to the 2008 Regular Session of the General Assembly and shall submit a final report of its findings and recommendations, including any legislative proposals, to the 2009 General Assembly.

...

**SECTION 7.(a)** Except as provided in subsection (b) of this section, this act becomes effective when it becomes law and applies to any petition for a certificate for a transfer of surface water from one river basin to another river basin first made on or after that date.

...

In the General Assembly read three times and ratified this the 2<sup>nd</sup> day of August, 2007.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 11:17 a.m. this 31<sup>st</sup> day of August, 2007

AN ACT TO EXTEND THE STUDY OF THE ALLOCATION OF WATER RESOURCES AND THEIR AVAILABILITY AND MAINTENANCE IN THE STATE, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Whereas, the Environmental Review Commission and the University of North Carolina at Chapel Hill School of Government acknowledge that an extension of time is necessary in order to complete the work of the Water Allocation Study contemplated in the contract between the two parties and the work identified in Section 1(a) of S.L. 2007-518; and

Whereas, the University of North Carolina School of Government acknowledges in its Interim Report to the Environmental Review Commission that further work will be required beyond 2008 given the scope and importance of the study; Now, therefore,

The General Assembly of North Carolina enacts:

**SECTION 1.** Section 1(a) of S.L. 2007-518 reads as rewritten:

**"SECTION 1.(a)** The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study the allocation of surface water resources and their availability and maintenance in the State, including issues related to the transfer of water from one river basin to another, the withdrawal of water for consumptive use, and the accuracy and tolerance of equipment used to measure the flow of water transferred from one river basin to another river basin. The Commission shall evaluate the benefits of establishing formal and informal procedures for negotiating transfers of water from one river basin to another. The Commission shall also study and recommend measures to: (i) ensure that the purposes of the Regional Water Supply Planning Act of 1971, as set out in G.S. 162A-21, are fulfilled; (ii) provide for a comprehensive system for regulating surface water withdrawals for consumptive and nonconsumptive uses; (iii) provide for the establishment of a statewide plan for water resources development projects; (iv) provide for adequate resources for the Department so that it may develop and implement a comprehensive approach to water resources management; (v) ensure that all State laws regulating water resources are consistent with and fully integrated into the comprehensive system for regulating surface water withdrawals and the statewide plan for water resources development projects; and (vi) ensure that potential interstate conflicts related to water resources are avoided or minimized. In the conduct of this study, the Environmental Review Commission may employ independent consultants as provided in G.S. 120-32.02 and G.S. 120-70.44. The Environmental Review Commission may submit an interim report-reports to the 2008 and 2009-Regular Session regular sessions of the General Assembly and shall submit a final report of its findings and recommendations, including any legislative proposals, to the 2009-General Assembly on or before 1 October 2010."

**SECTION 2.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16<sup>th</sup> day of June, 2008.

s/ Beverly E. Perdue  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 2:00 p.m. this 25<sup>th</sup> day of June, 2008

