

September 14, 2007

Rich Gannon  
DEHR – Division of Water Quality, Planning Section  
1617 Mail Service Center  
Raleigh, NC 27699-1617

Re: Proposed Jordan Reservoir Water Supply Reduction Strategy

Dear Mr. Gannon,

I am writing to you today in opposition to the rules numbered: 15A NCAC 02B .0262, 15A NCAC 02B .0263, 15A NCAC 02B .0264, 15A NCAC 02B .0265, 15A NCAC 02B .0266, 15A NCAC 02B .0267, 15A NCAC 02B .0268, 15A NCAC 02B .0269, 15A NCAC 02B .0270, 15A NCAC 02B .0271, 15A NCAC 02B .0272, 15A NCAC 02B .0311 for the following reasons:

- **15A NCAC 02B .0262:**
  - It is unprecedented assigning the term “Critical Water Supply Watershed” to the entire basin. Under the current rule in the Neuse and the Tar-Pamlico, the designation for the rivers entering a body of water are designated Nutrient Sensitive Waters. The designation of NSW is the correct term to use if the Haw River is actually impaired. Also, giving CWSW designation gives the Director full authority to change the rules if he/she feels they are not aggressive enough without a public hearing process.
  - In this section of the rule, the Lower New hope Arm shows baseline target reductions of 6,836 #/yr. of N and 498 #/yr. of P. According to the Fiscal Note, on page X of the executive summary, Table 4, the reduction from the baseline for the Lower New Hope Arm is 0% for N&P from the baseline. Why the difference? The Lower New Hope Arm is certainly impaired and its basin boundaries are in close proximity to the Jordan Lake. This area of the lake is also can be characterized as shallow with retention times of longer than a year when not in drought conditions. Should we not treat this problem? While the Haw is the largest area with little to no problem and it is being subject to restrictions which are unsubstantiated.
  - While it was brought to the public’s attention during the DWQ’s presentation at the public hearings with regards to the fair and equitable balance of these rules, I must disagree. The burden of equity will be placed on the Triad to fix the problem with Jordan Lake. If we were to

take the time to examine, the Upper and Lower New Hope Arms of Jordan Lake are very close to build-out or built out. Based on this information, the limits could be set on anything the Department wants but it will have little to no affect on the lake condition in the New Hope Arms. Not to mention the retention time difference between the different areas of the lake. Without severe impact to the New Hope Arms, the Department is sure, in the future, to raise the limits on the Haw River to achieve their targets. This is neither fair nor equitable. And, quit frankly, the limits on the Haw River could be set at 100% removal of N&P and this would have little to not affect on Jordan Lake. Treat the problem! The Haw Arm is not the problem.

- **15A NCAC 02B .0264**

- Under the fair and equitable statement which was said many times during the public hearing, I found under this rule, it was not true. On the subject of compliance with the requirements of this rule, the Agricultural community has up to 8 years to come into full compliance with the reduction limits. Under the New Development Rule, 30 months is the compliance timeline.
- Agriculture also will be eligible for cost sharing from the NC Agriculture Cost Share Program. According to the Fiscal Note, the impact to Agriculture is \$2.5 million over a 5 year period. The Fiscal Note also states that this is “overestimating” the cost of implementation. While this is a burden on the Agriculture community and on the consumers, the cost needs to be fair and balanced. The over all pollutant generated by the Agriculture industry for non-point discharge is 36% N and 51% P. Far above any other impact at a fraction of the cost.
- Finally this rule states, “Persons who have implemented standard BMP’s meeting the requirements of Item (7) if this rule on lands under their control within five years of the effective date of this Rule shall not be subject to any additional requirements that may be placed on persons under Item (4) of this Rule.” So essentially, do it one time and than get a by whether it is affective or not.

- **15A NCAC 02B .0265**

- The cost noted registered in the Fiscal Note is severely understated for the impact for new development, Commercial and Residential. The Fiscal Note explains that the cost to new development is \$1.1 million for the first five years. Assuming year 2013 is full implementation, the annual cost for residential at today’s dollars is \$4.7 million beyond NPDES Phase II. If you add in Commercial Development, that would add an additional \$17.8 million beyond NPDES Phase II. These numbers are based on 2006 actual information and just take into account Alamance County, Burlington, Graham, Greensboro, and Guilford County. All other areas have been

eliminated from this analysis. This rule also addresses plant expansion which is not calculated in the above impact number. This will further hinder economic development in the Triad area.

- Below is an example of how the rules will affect the affordable housing market:

**Based upon a home today for \$150,000 sales price in GSO with a 5% down payment and a 95% LTV 30 Year Fixed Conventional loan:**

Principal & Interest	\$938.26
Taxes	161.25
HOI	30.00
PMI	92.83
HOA Dues	<u>30.00</u>
Total Monthly	\$1238.14

Based upon a \$0.35 per thousand tax increases and a 25% HOA increase:

Principal & Interest	\$954.26
Taxes	<b>215.00</b>
HOI	30.00
PMI	92.83
HOA Dues	<u><b>40.00</b></u>
Total Monthly	\$1332.89

**This is a \$93.95 per month increase (\$645.00 annually) or 8.0%. This does not include as much as a 15% increase in water and sewer rates.**

With our current debt to income ratios already at a level above 40%, this increase could have eliminated as much as 10% of the buyers that have purchased from Centex Homes in the past two years.

- This rule suggests that an alternate to rule 15A NCAC 02B .0266 to require new development to increase the treatment to off-set for existing development. This is not fair or equitable. To even suggest this is unfounded and deserves no more discussion on this topic.
- Most important, the rule itself states that this estimate contains no costs for lost opportunity (i.e. lost use of land), only direct cost of the land required for the additional BMPs. However, other sections of the rule do allow for lost opportunity recovery: loss of agricultural crops and loss of timber harvest for riparian zones (both are minimal). However, if an additional BMP covers one acre, that could represent four ¼ acre lots for homes that will not be built in the development, perhaps worth \$250,000 each. At least some portion of this loss should be factored into the economic impact.
- The NCDNR estimate of capital expenditures only allowed \$1314 dollars for each of the 646 additional BMPs built during the first five years (\$848,000 total capital expenditures divided by 646, these figures can both

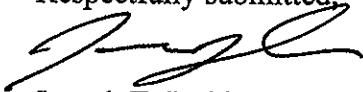
be found in Table 4.3 of the Fiscal Report). However, the States own Fiscal Report shows that the average per BMP capital cost based on a proportional estimate of the BMPs likely to be used (pages 42-43, Table 4.9 of the Fiscal report) is \$44,913 per BMP. Total direct capital costs here would appear to be 646 times this value, or over \$29,000,000 for the first five years. Possibly, the State capital cost estimate for the BMPs has been amortized over 30 years (this is unclear from the Fiscal Report), but even then, a \$1314 per BMP allotment over each five year period will not come close to recovering the principle outlay of \$44,913 per BMP within 30 years, let alone interest payments. Also, while amortization of capital costs postpones payment, it does not reduce the total costs incurred. Amortization would cause costs to increase drastically for each five year period over the next 30 years, as continuing payments for old BMPs cumulatively accrue on top of new BMP construction. The State needs to explain why the cost per BMP allotted for this rule is so far below the standard estimates in Table 4.9 of the Fiscal Report.

- **15A NCAC 02B .0266**
  - Prior to approving such a costly rule, the Department needs to understand more of Atmospheric Sources and true fiscal impacts. I find it alarming that this is not addressed in rules 15A NCAC 02B .0265 or 15A NCAC 02B .0266 as a limitation. This must be an over-sight?
  - This rule is unprecedented in North Carolina! This rule is also impractical and has proven to be a fiscal burden on the tax paying citizens.
  - This rule should be eliminated from the Jordan Lake plan as it has no basis on science or cost. It is clear that this is just pork!
  
- **15A NCAC 02B .0267**
  - The buffer program in the Neuse and the Tar-Pamlico are implemented by the State not the local government. The Local governments are not equipped to handle this unfunded mandate. Based on the public hearing comments in Elon, Mr. Gannon stated that the only reason the state is not managing this is they can not fund it themselves. This rule needs to follow the prior rules.
  - NPDES Phase II rules have not been implemented across the Haw basin to date. It would be advantageous to allow those rules to come into affect prior to implementing these rules.
  - The rule calls for diffused flow from any man-made conveyances prior to entering zone two. it calls for dispersing concentrated flows and reestablishing vegetation. This is another way of asking for a level spreader which is technically a buffer prior to a buffer. This is additional cost which is not necessary and should be removed.

- Why BMP's should be allowed in zone 1 without mitigation. Adding constructed wetlands or bio-retention should be allowed with-out mitigation as the cost of these BMP's is significant enough.

Let me conclude with, we at Centex Homes strive to protect the environment and exceed any local or state rule which is on the books today. Unfortunately I find it difficult to support rules which have very little if any solid science supporting them, have no certainty that the hypothetical problem will improve, and have no realistic idea of the true cost to the economic development of the Triad. Our homebuyers, citizens, and industry will be on the losing end of this un-found endeavor. I implore you to turn the page back and as a stakeholder group, come to consensus and back up the ideas with good quality science which we all can live by. Not just a hit and hope and find that we have done little to nothing to repair the problem five years from now so we can throw another "knee-jerk reaction" out there.

Respectfully submitted,



Joseph T. Jenkins  
Division President  
Centex Homes - Triad