# Regulatory Impact Analysis

**Rule Topic:** **Interbasin Surface Water Transfers**

**Rule Citation:** 15A NCAC 02E .0401 through .0409 – Regulation of Surface Water Transfers

**DEQ Division:** Division of Water Resources (DWR)

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**Impact Summary:**

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| State government: | Minimal potential benefit |
| NCDOT: | No |
| Local government: | Minimal potential benefit |
| Federal government: | No |
| Private entities: | No |
| Environment: | No |
| Substantial Impact: | No |

## 1. Necessity for Rule Change

The Division of Water Resources (DWR) reviewed the Regulation of Surface Water Transfers rules in accordance with G.S.150B-21.3A which requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The subject rules were categorized as "Necessary with substantive public interest." The proposed readoption with amendment of Rules 02E .0401 and .0402 and adoption of Rules .0403 through .0409 will satisfy G.S. 150B-21.3A. The rule changes are also, in part, a result of legal proceedings during which it was strongly suggested that DWR clarify (through rulemaking) some of the administrative procedures associated with implementing Interbasin Transfer (IBT) statute G.S. §143-215.22L. These clarifications are reflected in the proposed rules.

## 2. Background

### *Regulation of Surface Water Transfer*

North Carolina's history of regulating interbasin transfers of surface waters dates back to the 1950's. In 1991, the North Carolina General Assembly passed G.S. 143-215.22G which defined interbasin transfer as the withdrawal, diversion, or pumping of surface water from one river basin that is then discharged in a different river basin. The purpose of the IBT statute is to ensure it is good public policy to move water from one basin into another. G.S. 143-215.22G also established 18 major river basins and 38 subbasins. These major river basins and subbasins are designated on the map entitled "Major River Basins and Sub-basins in North Carolina," which was filed with the Office of the Secretary of State on April 16, 1991.

In 1993, G.S. 143-215.22I was passed as part of an "Act to Regulate Interbasin Transfers" (Session Law 1993-348). This law regulated large surface water transfers between river basins by requiring a certificate from the North Carolina Environmental Management Commission (EMC). In 2007, G.S. 143-215.22I was repealed and replaced with the more expansive G.S. 143-215.22L as part of 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 Allocations of Surface Water Resources and to Amend the Laws Governing the Transfer of Water from One River Basin to Another River Basin."

G.S. 143-215.22L outlines the process for obtaining an IBT certificate. In general, an IBT certificate is required when an interbasin transfer meets or exceeds two million gallons per day (2 MGD). Facilities that existed or were under construction prior to July 1, 1993, unless the facility exceeds the full transfer capacity of that facility, regardless of the transfer amount, are considered grandfathered and do not require an IBT Certificate.

Per the current IBT statute G.S. 143-215.22L, an IBT Certificate from the EMC is required to:

(1) initiate a transfer of 2 MGD of water or more per day, calculated as a daily average of a calendar month and not to exceed 3 MGD per day in any one day, from one river basin to another;

(2) increase the amount of an existing transfer of water from one river basin to another by 25% or more above the average daily amount transferred during the year ending July 1,1993 if the total transfer including the increase is 2 MGD or more per day; or

(3) increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1,1993.

To obtain an IBT Certificate under G.S. 143-215.22L, the applicant first submits a Notice of Intent to file a petition, then holds at least three public meetings. The applicant submits a draft environmental document based upon requirements set forth in G.S. 113A-4 or G.S. 143-215.22L, and the EMC holds at least one public hearing. After DEQ issues a determination on the environmental document, the applicant petitions the EMC for an IBT Certificate. After issuing a draft determination on the petition, the EMC holds at least two public hearings prior to issuing their final determination. Nine IBT certificates have been issued by the EMC under this process.

Currently, there are an estimated 133 public water systems across North Carolina that transfer surface water between river basins. Of these surface water transfers:

- 27 systems are transferring more than 1 MGD.
    - 11 of these systems are regulated under nine IBT certificates.
- In addition to the public water systems with IBT certificates, there are ten public water systems that have a grandfathered allowance for their surface water transfers that exceed the 2 MGD threshold requiring a certificate.
- There are approximately six water systems that are transferring between 1 and 2 MGD. The annually submitted Local Water Supply Plans are the primary means that DWR keeps track of compliance for those surface water systems who have not been issued an IBT Certificate.

## 3. Regulatory Baseline

As part of the permanent rulemaking process, G.S. 150B-19.1 requires agencies to quantify to the "greatest extent possible" the costs and benefits to affected parties of a proposed rule. To understand what the costs and benefits of the proposed rule changes would be to regulated parties and the environment, it is necessary to establish a regulatory baseline for comparison. For the purpose of this regulatory impact analysis, the baseline is comprised of the following:

- current versions of Rules 15A NCAC 02E .0401 and .0402 (effective Sept 1, 1994); and
- G.S. 143-215.22L Regulation of surface water transfers ("IBT statute").
- G.S. 143-215.22G Definitions (under Part 2A. Registration of Water Withdrawals and Transfers; Regulation of Surface Water Transfers)

## 4. Proposed Amendments

All of the proposed rule changes are for the purpose of clarifying implementation of the IBT statute. None of the changes will result in a measurable economic or environmental impact. The following table summarizes the notable proposed rule changes.

**Subchapter 02E – Water Use Registration and Allocation**

**Section .0400 – Regulation of Surface Water Transfers**

| Rule | Action | Proposed Change | Rationale |
|---|---|---|---|
| 15A NCAC 02E .0401 Purpose | Readopt | Add statement of purpose. | Provide clarity. |
| 15A NCAC 02E .0402 Definitions | Readopt | List out the system elements that limit transfer capacity and how each element is calculated (see "Grandfathered capacity.") | IBT statute does not provide a methodology to calculate the grandfathered allowance. The proposed definitions conform to longstanding practice and are intended to provide clarity on implementing statute. |
| | | Specify that "Major river basin" is defined based on the number preceding the hyphen. | Term not defined in statute. Proposed definition clarifies common question regarding environmental document requirement. |
| | | Specify that "Primary applicant" is the entity who owns the waterline as the point of the basin boundary. | Term not defined in statute. Proposed definition clarifies common question regarding the responsible party. |
| 15A NCAC 02E .0403 Applicability | Adopt | Applicability language relocated from .0401. | Provide clarity. Proposed text does not add to existing statutory requirements. |

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| | | Specify data needed for a water balance demonstration and the temporal confines. | Statute allows for grandfathering of basin transfers. Proposed text outlines the data needed to make that determination for allowance. |
| | | Specify that the planning horizon is at least 30 years with water demand projections required at 10-year increments. | Statute describes "foreseeable future" for planning horizon but does not define. Proposed 30-year period/10-year increments were chosen for consistency with existing local water supply plan requirements so as to not add additional burden. |
| 15A NCAC 02E .0404 Notification | Adopt | Specify that public comments received after a 30-day comment period will not be considered unless the comment period is otherwise extended. | Statute requires a minimum 30-day comment period. The proposed maximum 30-day comment period will comply with statute while providing transparency and predictability to the public. |
| | | Specify that notification is required in each affected county and in only one newspaper per county. | Proposed language is intended to clarify statute and does not add any additional requirements. Lack of clarity over publication in newspaper of general circulation has been subject of previous litigation. |
| 15A NCAC 02E .0405 Environmental Documents | Adopt | Require environmental documents to include a projection of future water supply, transfers, and demands with a planning horizon of at least 30 years, with projections at 10-year increments. | Statute compels applicants to analyze potential impacts from the requested IBT. Proposed rule provides a planning period for projecting water withdrawals, which is key to estimating impacts. Proposed 30-year period/10-year increments were chosen for consistency with existing local water supply plan requirements so as to not add additional burden. |
| | | Specify that hydrologic models must be used, if available, along with other tools to evaluate beneficial and adverse impacts. Model and modeling results must be made publicly available. | Statute compels applicants to analyze potential impacts but does not specify a methodology. Proposed requirement to use approved basinwide hydrologic models is consistent with longstanding practice. Availability of the applicant's model to the public has been subject of previous litigation. It has always ultimately been provided. |

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| | | Clarify that when considering alternatives, economic infeasibility is temporally defined by the planning period. | Statute allows economic infeasibility to be considered but does not specify a timeframe. Proposed timeframe aligns with proposed 30-year planning period. |
| 15A NCAC 02E .0406 Petition | Adopt | Clarifying language for requirements in an IBT petition.<br><br>Specify that the purposes for which a reservoir was constructed, and any mandatory management activities must be considered in evaluating impacts to reservoir water levels. | Statute requires that the purposes and water storage allocations established at the time of construction be considered by the EMC in a final determination; as such, specifying this requirement in the Petition rule is for clarity and will not produce an additional regulatory burden. |
| 15A NCAC 02E .0407 Settlement/ Mediation | Adopt | Direct mediation officer to use guidance approved by the EMC in the settlement/mediation process. | Statute allows for a settlement process but does not specify requirements for conducting the mediation process. Statute allows EMC to adopt rules to govern the conduct of the mediation process. Proposed requirement to use EMC-approved guidance will provide consistency and predictability to the regulated parties. |
| 15A NCAC 02E .0408 Final Determination | Adopt | Specify approval process for the applicant to meet the water conservation requirement described in the IBT statute. | Statute requires the production of a water conservation plan with measures that equal or exceed the most stringent plan in the source basin but does not provide an approval process. The proposed process will provide clarity for complying with statute. |
| | | Require that any proposed ordinances, initiatives, or programs shall be approved by the unit of local government within 90 days of issuance of the IBT Certificate to document the water conservation efforts. | Statute requires "mandatory implementation" of a water conservation plan as a condition of approval but does not specify a timeframe for implementation. The timeframe is intended to provide consistent guidance to water systems on meeting the statutory mandate; the 90-day timeframe is consistent with other local water supply planning requirements and should not result in any additional burden. |

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| | | List examples of metrics for water conservation measures. | The proposed language provides examples of metrics that may be used to meet the water conservation requirement in statute. |
| | | Specify that a modification will be necessary to add a co-applicant to an existing IBT Certificate. | Statute allows reselling of water to entities in the receiving basin if they are listed as co-applicants. Intent of proposed language is to specify that a process exists for addition of a co-applicant. |
| 15A NCAC 02E .0409 Emergency Transfers | Adopt | Define conditions that may qualify for an emergency transfer. | Statute provides some examples of conditions that may qualify for a temporary emergency transfer. Proposed language provides further examples and categorizes them into anticipated and unanticipated situations. |
| | | Specify information required to request an emergency transfer. | Statute states that the Secretary has the authority to approve emergency transfers and to specify conditions of the allowance. Proposed language lists the types of information that must be provided for the Secretary's consideration. |
| | | Require a summary report detailing the transfer event within 60 days from the end of the approved transfer period. | Statute allows the Secretary to specify conditions to protect other water users when approving emergency transfers. Tracking and reporting water usage is a customary practice among large water systems; as such, the requirement to provide a report of water usage (amount of water, duration of transfer event) should not create an additional burden. The 60-day timeframe was chosen to ensure ample time for the local water system to report, although it is unlikely that a water system will need that much time. For the two emergency transfers that have been approved, the local water system provided a report within one week. |
| | | Specify the process to request an "after-the-fact" emergency transfer, and require notification within 72 hours after the transfer occurred. | Statute allows for emergency transfers but does not explicitly provide a process for an after-the-fact emergency transfer. Proposed language reflects stakeholder comments that this scenario should be recognized in the rules. |

## 5. Impact Summary

The proposed rules will allow DEQ to continue to provide a transparent and consistent IBT Certificate process for applicants in compliance with the IBT statute G.S. 143-215.22L. The IBT statute is very prescriptive as far as the required elements to request and get approval of an IBT Certificate. The sole intent of the proposed rules is to provide additional direction, transparency, and clarity on some procedural aspects of the IBT statute (e.g., data needed to calculate a transfer; examples of metrics for water conservation plan). In providing greater procedural direction, the requirements of G.S.143-215.22L will be better understood, thereby saving time for the regulated community (i.e, local water systems) as well as for DWR staff who administer the IBT program. The amount of time saved is expected to be negligible and will not provide a significant financial benefit.

It is possible that the greater clarity provided by the proposed rules will reduce the likelihood that contested cases will be brought over certain procedural aspects of the statute. Past contested cases have been brought by various interested parties seeking legal interpretation of procedures outlined in the statute. Several of the proposed rule changes seek to clarify these procedures (e.g., “a newspaper” changed to “a single newspaper”). Benefits would be mainly in the form of avoided costs from attorney fees (if retained by the regulated party) as well as time savings to the regulated party, DWR staff, and the EMC. There are too many unknown variables to determine how likely it is that such benefits will be realized or to estimate the potential magnitude of savings; as such, we have not attempted to quantify or monetize these potential benefits.

The proposed rules do not add additional requirements beyond what is already provided for and authorized in the statute. As such, the proposed rules will not impose an additional cost or time burden on the regulated community.

None of the changes will require DEQ or local governments to revise their existing procedures or to procure additional staff; as such, there is no anticipated economic cost to DEQ or local governments. The proposed changes will not affect environmental permitting of the NC Department of Transportation (NCDOT); as such, there will be no costs or benefits to NCDOT.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

## SUBCHAPTER 2E - WATER USE REGISTRATION AND ALLOCATION

## SECTION .0400 - REGULATION OF SURFACE WATER TRANSFERS

### 15A NCAC 02E .0401 ~~APPLICABILITY~~ PURPOSE

~~(a) Pursuant to G.S. 143-215.22G(3), the amount of a transfer shall be determined by the amount of water moved from the source basin to the receiving basin, less the amount of the water returned to the source basin.~~

~~(b) Pursuant to G.S. 143-215.22G(3)(a) and 143-215.22G(3)(b), and notwithstanding the definition of basin in G.S. 143-215.22G(1), the following are not transfers:~~

~~(1) The discharge point is situated upstream of the withdrawal point such that the water discharged will naturally flow past the withdrawal point.~~

~~(2) The discharge point is situated downstream of the withdrawal point such that water flowing past the withdrawal point will naturally flow past the discharge point.~~

~~(c) The withdrawal of surface water from one river basin by one person and the purchase of all or any part of this water by another party, resulting in a discharge to another river basin, shall be considered a transfer. The person owning the pipe or other conveyance that carries the water across the basin boundary shall be responsible for obtaining a certificate from the Commission. Another person involved in the transfer may assume responsibility for obtaining the certificate, subject to approval by the Division of Water Resources.~~

~~(d) Under G.S. 143-215.22I(b), a certificate is not required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993. The full capacity of a facility to transfer water shall be determined as the capacity of the combined system of withdrawal, treatment, transmission, and discharge of water, limited by the element of this system with the least capacity as existing or under construction on July 1, 1993.~~

The purpose of the Rules in this Section is to implement the provisions of G.S. 143-215.22L.

*History Note: Authority G.S. 143-215.22G; 143-215.22I; 143B-282(a)(2);*
*~~Eff. September 1, 1994.~~*

**15A NCAC 02E .0402 ~~JUDICIAL REVIEW~~ DEFINITIONS**

~~Judicial Review of the Commission's decision shall be as provided in G.S. 143-215.5.~~

The following definitions apply to this Section.

(1) "Co-applicant" means an entity other than the primary applicant identified on an Interbasin Transfer Certificate, issued after 30 June 1993, as being eligible to send or receive transferred water, often purchased from the primary applicant. A co-applicant is subject to all the terms, conditions, limitations, benefits, and entitlements applicable to the primary applicant.

(2) "Commission" means the Environmental Management Commission.

(3) "Department" means the North Carolina Department of Environmental Quality.

(4) "Division" means the Division of Water Resources.

(5) "Emergency transfer" means a temporary transfer surface water between river basins, as defined in G.S. 143-215.22G(1b), in order to satisfy water demand needs as defined in G.S. 143-215.22L(q), for anticipated or unanticipated situations in which the public health, safety, or welfare requires a transfer of water.

(6) "Grandfathered capacity" means the existing water system transfer capacity prior to 1 July 1993, as defined in G.S. 143-215.22L(b). The transfer capacity of a water system is limited by its most restrictive system element: potable water capacity, maximum transfer capacity of distribution system, or discharge capacity in receiving basin.

a. Potable water capacity is the sum of all surface water inputs to the system including, water treatment plant capacity and regular surface water contracts.

b. Maximum transfer capacity of the distribution network is the calculation of the physical ability of the distribution system to transmit water across a basin boundary, based on pipe sizing or pump systems.

c. Discharge capacity in the receiving basin is a combination of wastewater discharges and consumptive losses.

(7) "Interbasin Transfer Certificate" or "IBT Certificate" means an authorization issued by the Commission to transfer up to a specified amount of water between two river basins as defined in G.S. 143-215.22G(1b).

(8) "Large community water system" means a community water system, as defined in G.S. 130A-313(10), that regularly serves 1,000 or more service connections or 3,000 or more

individuals.

(9) "Major river basin" means the combination of the river basins, as defined in 143-215.22G(1b) sharing the numerical digits preceding the hyphen.

(10) "Primary applicant" means the entity who owns an existing or planned water line used to transmit raw or finished water from one river basin to another, as defined in G.S. 143-215.22G(1b). For water systems that involve crossing multiple river basin boundaries, the primary applicant represents the transfer pipe owner where the first river basin boundary crossing occurs.

~~*History Note: Authority G.S 143-215.5; 143B-282(a)(2);*~~
~~*Eff. September 1, 1994*~~

*History Note: Authority G.S 143-215.22L; 143B-282(a)(2)*

**15A NCAC 02E .0403 APPLICABILITY**

(a) The amount of a transfer shall be calculated as a net total, determined by the amount of surface water moved from the source river basin to the receiving basin, minus any water returned to the source river basin.

(b) Notwithstanding the definition of "river basin" in G.S. 143- 215.22G, the following are not transfers:

(1) The discharge point is situated upstream of the withdrawal point such that the water discharged will naturally flow past the withdrawal point.

(2) The discharge point is situated downstream of the withdrawal point such that water flowing past the withdrawal point will naturally flow past the discharge point.

(3) The withdrawal and discharge points are located in the same water impoundment.

(c) The withdrawal of surface water from one river basin by one entity and the transmission of all or any part of this water by one or more entities, resulting in a discharge to another river basin, shall be considered a transfer. The entity owning the pipe or other conveyance that carries the surface water across the basin boundary shall be responsible for obtaining an

IBT Certificate from the Commission. Another entity involved in the transfer may assume responsibility for obtaining the IBT Certificate, with approval by the Department.

(d) The full capacity of a facility to transfer water shall be determined as the capacity of the system's potable water capacity, maximum transfer capacity of distribution system, or discharge capacity in the receiving basin, limited by the element of this system with the least capacity as existing or under construction on 1 July 1993. Existing conveyances and infrastructure for basin transfers in place before 1 July 1993 are deemed grandfathered, per G.S. 143-215.22L(b).

(e) To calculate a grandfathered transfer, the applicant shall provide data regarding the movement of water within and outside of the water system distribution system. The applicant shall provide to the Department a current and projected water balance that includes:

(1) the total withdrawal from the surface water source;

(2) the treatment capacities;

(3) the consumptive losses, meaning water withdrawn from a stream, reservoir, river, or other surface water source for any use which is not directly returned to a waterbody, for both the source and receiving river basins;

(4) the treated wastewater discharges in both the source and receiving river basins;

(5) the total return to the source river basin; and

(6) the total surface water transfer.

The applicant shall provide this information for the current or baseline year and projected data for a minimum of 30-years into the future in no more than 10-year intervals. Water balances are to be conducted on an annual average day basis and a maximum-month average day basis. The applicant may use the Grandfathered Transfer Capacity Worksheet as a guide to complete the required information to help calculate and document a system's transfer capacity. A copy of the Grandfathered Transfer Capacity Worksheet can be obtained free of charge from the Water Supply Planning Branch, located in the Archdale Building at 512 N. Salisbury Street, Raleigh, NC 27604.

*History Note: Authority G.S. 143-215.22G; 143-215.22L; 143B-282(a)(2)*

**15A NCAC 02E .0404 NOTIFICATION**

(a) As used in G.S. 143-215.22L(c)(3)(c), notification of the "governing body of any public water system" refers to public water systems that use surface water as their source rather than groundwater. The governing body may be located in a state adjoining North Carolina that is located in whole or in part of the surface drainage basin area of the source river basin.

(b) Notice shall be provided to all persons who hold a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit for 100,000 gallons per day or more for a discharge located within the area denoted by one of the eight-digit cataloging units listed in G.S. 143-215.22L(c)(2)(b) in which the withdrawal or discharge will occur.

(c) Comments submitted pursuant to G.S. 143-215.22L(c), (e), and (j) that are received after the 30-calendar day comment period shall not be considered in making determinations unless the Department extends the comment period.

(d) Notification is to be printed in a single newspaper of general circulation, as defined in G.S. 1-597, for each county in which notification is required as defined in 143-215.22L(c)(2)(b).

*History Note: Authority G.S. 143-215.22L; 143B-282(a)(2)*

**15A NCAC 02E .0405 ENVIRONMENTAL DOCUMENTS**

(a) An evaluation of beneficial and adverse impacts pursuant to 143-215.22L(d)(1) (3) shall include, but not be limited to, the results of an approved basinwide hydrologic model specified in G.S. 143-355(o), if available. The Applicant is responsible for any necessary model modifications, scenario development, and analysis of results. All model modifications and scenarios must be approved by the Department. All basinwide models used shall be publicly available. The corresponding modeling results shall be made publicly available.

(b) For purposes of this Rule, an alternative is considered economically infeasible if the demonstrated financial costs exceed the applicants' ability to cover the cost of the action, even when considered on at least a 30-year projection.

(c) The required environmental document shall include projections of future water supply, transfers, and demands with a planning horizon of at least 30 years. The current or baseline year shall be determined by the Division based on available data and estimated timing of

environmental document submittal. Projections shall be conducted on 10-year increments, at a maximum.

*History Note: Authority G.S. 143-215.22L; 143B-282(a)(2)*

**15A NCAC 02E .0406 PETITION**

(a) The evaluation of impacts to reservoir water levels shall take into consideration the purposes for which the reservoir was constructed, and any mandatory management activities required to maintain the reservoir per any binding agreements between two or more parties related to such purposes.

(b) Reasonably foreseeable future water supply needs shall mean the projected water transfers necessary to meet demands for not less than 30- years from the year in which the Notice of Intent is filed in compliance with G.S. 143-215.22L(c).

(c) Unless already approved by the Division, an updated local water supply plan meeting the requirements set forth in G.S. 143-355(l) for the previous full calendar year shall be submitted to the Division for review and approval. Once approved, the plan shall be adopted by the local government, large community water system governing board, or other appropriate governing board.

*History Note: Authority G.S. 143-215.22L; 143B-282(a)(2)*

**15A NCAC 02E .0407 SETTLEMENT/MEDIATION**

The Commission may appoint a mediation officer to initiate settlement discussions. The mediation officer shall follow the most recent guidance or mediation and settlement procedures approved by the Commission.

*History Note: Authority G.S. 143-215.22L; 143B-282(a)(2)*

**15A NCAC 02E .0408 FINAL DETERMINATION**

(a) The water conservation plan shall meet all the requirements of G.S. 143-215.22L(n)(1). Any

proposed ordinances, initiatives, or programs shall be approved by the unit of local government within 90 calendar days of issuance of the IBT Certificate to document the water conservation efforts.

(1) An applicant shall review the existing water conservation measures for all public water systems who utilize surface water in the source basin. Based upon this review, the applicant shall demonstrate, in the water conservation plan, that their existing or proposed water conservation measures equal or exceed the most stringent water conservation plan by any public water system in the source basin. The water conservation plan is subject to approval by the Department.

(b) Examples of metrics for supply-side water conservation measures may include:

(1) regularly conducted water system water audits, where the schedule and methodology used are outlined;

(2) a flushing optimization plan and accounting of use by fire department;

(3) a leak detection program where the repair program abilities are described;

(4) storage tank level and pressure management;

(5) water meter replacement;

(6) metering testing schedule;

(7) a plan to identify failing meters; and

(8) details of any existing water reuse programs.

(c) Examples of metrics for demand-side water conservation measures may include:

(1) a rate pricing structure that incentivizes customers to use less water than they typically do while discouraging the wasting of water;

(2) public outreach and education programs;

(3) encouraging all households to conduct simple water audits to improve individual water conservation and efficiency measures;

(4) the use of irrigation controls, including schedule restrictions, a ban on watering impervious surfaces, a separate conservation rate pricing structure, encourage the use of mulch, and the use of drought tolerant plants and grass species;

(5) the use of water conservation irrigation devices including rain or soil moisture sensors, rain barrels or cisterns to collect rainwater for outdoor irrigation;

(6) registration of, and accounting for, pre-arranged (bulk) potable water usage sales;

(7) separate meters for outdoor irrigation; and

(8) encouraging the replacement of older, inefficient water fixtures with more water-efficient fixtures and devices.

(d) Pursuant to G.S 143-215.22L(n)(7), the certificate shall include all current and anticipated applicants and co-applicants. To be eligible to receive transferred water under a certificate, any public water system not listed as the primary applicant on a certificate but is anticipated to receive transferred water made available through a certificate at any time, present or future, shall be identified as a co-applicant on the certificate. All water systems beyond the applicant, that serve customers or sell transferred water in the receiving basin, shall be listed as co-applicants in the petition document. This shall include any projected water sales that are anticipated to occur during the planning period identified in the Petition. A modification to the certificate shall be necessary for sales to entities not listed on the certificate.

(e) Water use in receiving basins by water systems or wholesale customers not listed as co-applicants, or are not listed in a modification, shall be considered a violation of the terms of the certificate and could result in the Commission rescinding the certificate. Allowable emergency transfers as outlined in Rule .0409 of this Section are not subject to this Paragraph.

(f) As used in 143-215.22L(m), detriment means harmful or damaging conditions not caused by a natural condition where an entity with a Department approved water use cannot carry out the beneficial uses for which the water use was granted.

(g) As used in 143-215.22L(k), 143-215.22L(m), and 143-215.22L(n), detrimental effects means harmful or damaging effects to the water quality, water quantity, fish and wildlife habitat, wastewater assimilation, navigation, electric power generation, public water supplies, and other industrial, economic, recreational, or agricultural water supply needs within either the source or receiving river basins due to the proposed water transfer.

*History Note: Authority G.S. 143-215.22L; 143B-282(a)(2)*

**15A NCAC 02E .0409 EMERGENCY TRANSFERS**

(a) An emergency or temporary transfer of water may be requested in situations resulting from unexpected events such as drought, water quality event, damage to waterlines, water

treatment plant failure, casualty, or other unanticipated situation. An emergency or temporary transfer of water may also be requested in short-term anticipated and necessary situations such as pipeline testing for capability or capacity to avoid unexpected line failures, hydrostatic testing, testing the emergency connections of interconnected systems, or making necessary repair to service lines to avoid disruption of service. Emergency transfers shall not take the place of, or be issued in lieu of, a permanent or modified transfer certificate.

(b) To request an emergency or temporary transfer, the applicant shall submit, either in writing, or electronically, to the Department:

(1) the nature of the event that is prompting the transfer request;

(2) the affected river basins between which the requested emergency or temporary transfer would occur;

(3) the estimated quantity of water to be transferred; and

(4) the anticipated duration of the requested emergency or temporary transfer.

(c) It shall be demonstrated in the request that practices and policies are in effect with the purpose of reducing water usage for the duration of the approved emergency or temporary transfer.

(d) Within 60 calendar days from the end of the approved transfer period, the transfer recipient shall submit to the Department a summary report detailing the transfer event. The report shall include updated information as they pertain to all of the items required in the initial request.

(e) In cases of an emergency where a transfer cannot be requested beforehand due to extenuating circumstances, the transfer recipient shall notify the Division that the transfer has occurred within 72 hours. Within 60 calendar days after the transfer is completed, the applicant shall submit to the Department a summary report detailing the transfer event. the report shall be submitted either in writing or electronically to the Department and shall include:

(1) the nature of the event initiating the transfer;

(2) the affected river basins between which the transfer occurred;

(3) the estimated quantity of water transferred; and

(4) the duration of the transfer.

(f) Public water systems with existing conveyances or infrastructure to conduct a transfer, but do not have an IBT Certificate or grandfathered allowance, may request an emergency or temporary transfer, whereby the transfer can be initiated without immediate notice should an

emergency or temporary event arise. These plans must be resubmitted to the Department for renewal every six months. The transfer may occur all at once, at a regular recurring interval, or on an irregular basis. Summary reports will be required for all emergency or temporary transfers within 60 days following any event.

*History Note: Authority G.S. 143-215.22L; 143B-282(a)(2)*