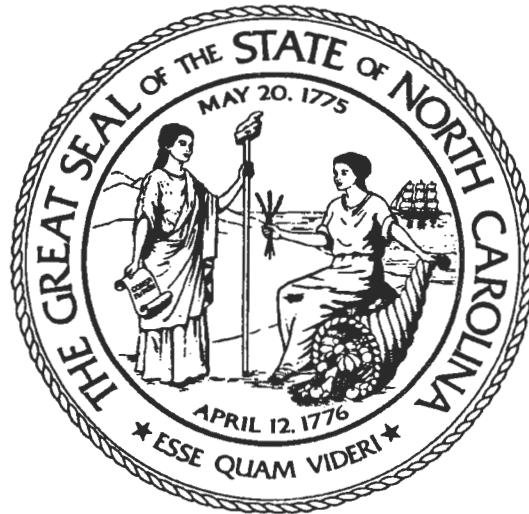


**LEGISLATIVE
RESEARCH COMMISSION**

SURFACE WATER



**REPORT TO THE
1991 GENERAL ASSEMBLY
OF NORTH CAROLINA
1991 SESSION**

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



December 14, 1990

TO THE MEMBERS OF THE 1991 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on surface water. The report was prepared by the Legislative Research Commission's Committee on Surface Water pursuant to Section 2.1(16) of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. Mavretic".

Josephus L. Mavretic
Speaker

A handwritten signature in cursive script, appearing to read "Henson P. Barnes".

Henson P. Barnes
President Pro Tempore

Cochairmen
Legislative Research Commission

1989-1990

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

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Senator Russell G. Walker

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1989 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of surface water was authorized by Section 2.1(16) of Chapter 802 of the 1989 Session Laws (1989 Session). That act states that the Commission may consider the following bills in determining the nature, scope and aspects of the study: HJR 33, HJR 37, HB 1224, HJR 1399, HB 1945, HB 1955, and SB 1182. The relevant portions of Chapter 802 and the House and Senate bills listed above are included in Appendix A. The Legislative Research Commission grouped this study in its water area under the direction of Senator Lura Tally. The Committee was chaired by Senator Franklin L. Block and Representative Harry E. Payne, Jr. The full membership of the Committee is listed in Appendix B of this report. A committee

notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

PROCEEDINGS

The Legislative Research Commission's Study Committee on Surface Water met six times prior to the 1990 Regular Session of the 1989 General Assembly. The Committee submitted an interim report to the 1989 General Assembly recommending that legislation be adopted to establish a moratorium on new water transfers until July 1, 1991. The legislation recommended by the Committee was enacted with some changes by the 1989 General Assembly during the 1990 Regular Session. A copy of the legislation as enacted is included in Appendix C of this report.

The Committee met three times after the 1990 Regular Session of the 1989 General Assembly to complete its work. The first of those meetings was held in Wilmington and the last two were held in Raleigh. The meeting on October 2, 1990, was a follow-up study on water resources development projects. In its study of water resources development projects the Committee generally focused on projects that can be categorized under one of the following headings: U.S. Army Corps of Engineers; U.S. Soil Conservation Service; and State-local. The first two categories are self-explanatory. The last category usually consists of water resources development projects that are sponsored by a local government or other local entity and for which grant applications have been submitted to the Department of Environment, Health, and Natural Resources. However, a few projects, such as the Randleman Dam project that do not fall under any of the named categories are also water resources development projects and were considered as such in the Committee's discussions on this topic.

The Committee heard from several speakers regarding the need for a Statewide water resources development plan and for budgeting procedures that would provide members of the General Assembly with a schedule of current and future funding

requirements for water resources development projects. A list of those speakers is included in Appendix D of this report.

At the meeting on November 8, 1990, the Committee reviewed three legislative proposals. Two of those legislative proposals addressed water resources development needs. The third legislative proposal provided for the regulation of water transfers. An opportunity to comment on the draft legislation was provided as part of the meeting agenda and a number of comments regarding the legislative proposal on the regulation of water transfers were directed to Committee members. Some of those suggestions were incorporated in Legislative Proposal 3 which appears on page 16 of this report. Other comments were taken under advisement by the Committee. Copies of the written comments received by the Committee are filed with the Committee notebook in the Legislative Library. The names of those speaking at the meeting are also included in Appendix D of this report.

At its last meeting on November 29, 1990, the Committee adopted this report.

FINDINGS AND RECOMMENDATIONS

The Committee made the following findings and recommendations:

Water resources development projects provide crucial Statewide benefits at a minimum cost to the State as much of the expense is shared by the federal government. These projects address a variety of State needs and the availability of federal financing and planning expertise continues to be vitally important to North Carolina. When Congress enacted the Water Resources Development Act of 1986, it increased some of the nonfederal cost sharing requirements for water resources development projects and imposed a nonfederal cost sharing requirement for feasibility studies for such projects. Despite the increases, the State's revenue sharing partnership with the federal government continues to be a bargain, underwriting many activities required to maintain water resources projects at their current level and providing additional funding needed for new projects that may stimulate the State's economic growth and improve its environmental quality. Failure to budget State funds in an amount sufficient to cover the nonfederal cost share of ongoing and future water resources development projects jeopardizes the receipt of federal funds and the projects for which those funds are designated.

The process to obtain congressional approval of a proposed water resources development project is a lengthy one and often takes years. Once authorized by congress, the funding of a water resources development project spans several additional years with State fiscal commitments required at various stages as the project progresses. State legislators need to be aware of this process and those projects scheduled to receive federal funds so that law makers can gage more accurately the State revenues needed to meet the continuing and long term fiscal commitments for water resource projects. State budgeting procedures currently fall short of this goal.

Funding schedules for water resources development projects at the federal level are projected for a five year period of time. Information on new projects under consideration for federal funding is also available at the federal level. Based on the federal figures and additional information available at the federal level, State budget planners can estimate the matching funds needed for each of the scheduled years and can anticipate those fiscal periods when revenue needs will be greatest. The preparation and annual revision of a State Water Resources Development Plan that documents the needs for an immediate fiscal period and projects the needs for future fiscal periods would be an invaluable tool for legislators faced with numerous budgetary considerations.

The Committee finds that a State water resources development plan should be prepared annually by the Department of Environment, Health, and Natural Resources for a projected period of six years. The plan should include a list of all water resources development projects proposed for the projected six year period, the fiscal and descriptive information about the listed projects, and the funding priority assigned to those projects by the Department. The plan should be submitted to the Governor for his review and modifications and upon approval by the Governor shall be known as the Water Resources Development Program. The Committee also finds that the Governor should include a line item in the State's continuing operations budget to fund the Water Resources Development Program and that funds appropriated for water resources development projects should not revert at the end of the fiscal period.

Based on these findings the Committee recommends Legislative Proposal 1 and Legislative Proposal 2.

In its interim report to the 1989 General Assembly, Regular Session 1990, the Committee noted serious economic and environmental concerns regarding water transfers. Briefly the Committee found that the future economic growth of a

community located downstream from a water transfer may be threatened by a drop in the availability of waters. A community's current economic status may also be detrimentally affected by a significant decrease in the waterflow level of a river, since the reduced level may require costly additional or improved pollution control techniques to maintain the quality of the community's water supply. The harmful effects of water transfers on the environment are documented by the experience of the western states where diversions have occurred for years. Unlimited diversions of water and changes in the levels of waterflow may detrimentally affect aquatic life and wildlife dependant on the waters.

Based on its full study of this issue the Committee makes the following findings. Current law in North Carolina regarding the regulation of water transfers is inconsistent. G.S. 153A-285 prohibits the diversion of water from one stream or river to another by a joint authority or by a city or county acting jointly with another unless the diversion is authorized by the Environmental Management Commission. There is no parallel provision regulating a city or county that acts alone to divert water. This inequity was brought to the Committee's attention by members of the general public, conservation groups, and the Department of Environment, Health, and Natural Resources.

The Committee further finds that current State law fails to address adequately the critical economic and environmental issues raised by water transfers. Information concerning the number of existing water transfers now occurring within the State was presented to Committee members. Of those transfers only a few had required authorization from the Environmental Management Commission as provided by G.S. 153A-285 because they were diversions by cities or counties acting alone rather than jointly. While some water transfers not covered under G.S. 153A-285 are subjected to environmental review because of other State environmental protection laws, there is no

comprehensive statutory scheme that specifically recognizes and addresses the types of concerns regarding water transfers that were expressed to the Committee. Testimony presented to the Committee also suggested that future water usage and the need for water will increase as the State grows. In view of this anticipated economic growth, it is better to implement a regulatory scheme now that adequately safeguards this much needed resource and averts future potential conflicts over water rights. Such a statutory scheme will also allow municipalities and counties to have planned growth and not be subjected to unanticipated costly improvements to protect water supplies at a later date.

The Committee finds that North Carolina needs a comprehensive water transfer law that ensures equitable treatment of all water users and that adequately addresses economic and environmental concerns. Based on these findings, the Committee recommends Legislative Proposal 3.

In the course of this study, new issues affecting surface water were raised. Consumptive water uses and impoundments are two topics that the Committee felt merited consideration but due to time and financial constraints were unable to address. The Committee finds that the Legislative Research Commission should continue to study surface water issues and recommends Legislative Proposal 4 to that effect.

LEGISLATIVE PROPOSALS

Legislative Proposal 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

91-LH-9

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Water projects plan.

(Public)

Sponsors: Representative Payne.
Senator Block

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND
3 NATURAL RESOURCES PREPARE A WATER RESOURCES DEVELOPMENT
4 PROJECTS PLAN AND TO PROVIDE THAT THE DIRECTOR OF THE BUDGET
5 REVIEW THE PLAN AND ADOPT A WATER RESOURCES DEVELOPMENT
6 PROGRAM.
7 The General Assembly of North Carolina enacts:
8 Section 1. Article 21 of Chapter 143 of the General
9 Statutes is amended by adding a new part to read:
10 " Part 8A. Water Resources Development Projects.
11 "§ 143-215.73A. Water Resources Development Program.
12 (a) Program adopted.- Before July 1, in each calendar year, the
13 Department of Environment, Health, and Natural Resources shall
14 prepare a Statewide plan for water resources development projects
15 for a period of six years into the future. The plan shall be
16 known as the Water Resources Development Program. The Department
17 shall submit the plan to the Director of the Budget for review.
18 If the plan differs from the program adopted for the preceding
19 calendar year, the Department shall indicate what the changes are
20 and shall state the reasons for those modifications. The Director
21 of the Budget may modify the plan, but shall adopt a Water
22 Resources Development Program by October 1 of each calendar year.
23 (b) Projects listed.- The plan shall list the following:

- 1 (1) As of May 1, those water resources development
2 projects approved by Congress.
- 3 (2) As of May 1, those water resources development
4 projects for which Congress has appropriated
5 federal funds.
- 6 (3) As of May 1, those water resources development
7 projects for which grant applications have been
8 submitted under Part 8 of Article 21 of Chapter 143
9 of the General Statutes.
- 10 (4) As of May 1, those water resources development
11 projects for which grant applications have been
12 submitted under Article 4 of Chapter 139 of the
13 General Statutes.
- 14 (5) As of May 1, those water resources development
15 projects planned as federal reservoir projects but
16 for which no federal funds are scheduled and for
17 which local governments are seeking State financial
18 assistance.

19 (c) Project priorities and funding recommendations.- The
20 Department shall assign a priority to each project listed under
21 subsection (b) either by giving the project a number, with "1"
22 assigned to the highest priority, or by recommending no funding.
23 The Department shall state its reasons for recommending the
24 funding, deferral, or elimination of a project.

25 The Department shall determine the priority of a project based
26 on the following criteria: local interest in the project, the
27 cost of the project to the State, the benefit of the project to
28 the State, and the environmental impact of the project.

29 (d) Project information.- For each project listed under
30 subsection (b), the plan shall:

- 31 (1) Provide a brief description.
- 32 (2) If federal, list the estimated cost of each of the
33 following phases that has not been completed as of
34 July 1, (i) feasibility study, (ii) construction,
35 (iii) operation and maintenance, and the amount of
36 State funds required to match the federal funds
37 needed.
- 38 (3) If State or local, list the estimated cost to
39 complete the project and amount of State funds
40 required under G.S. 143-215.71 or G.S. 139-54.
- 41 (4) Indicate the total cost to date and the State share
42 of that cost.
- 43 (5) Indicate the status.
- 44 (6) Indicate the estimated completion date."

1 Sec. 2. This act shall become effective upon
2 ratification.

EXPLANATION OF LEGISLATIVE PROPOSAL 1

91-LH-9

A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES PREPARE A WATER RESOURCES DEVELOPMENT PROJECTS PLAN AND TO PROVIDE THAT THE DIRECTOR OF THE BUDGET REVIEW THE PLAN AND ADOPT A WATER RESOURCES DEVELOPMENT PROGRAM.

The proposed legislation requires the Department of Environment, Health, and Natural Resources to prepare annually for review and approval by the Governor a Statewide water resources development plan for a projected period of six years. Differences between the proposed plan and the program adopted by the Governor in the preceding year must be indicated and the reasons for those changes stated. The Governor may modify the plan submitted to him by the Department but must adopt a final plan, known as the Water Resources Development Program, by October 1, of each calendar year.

The proposed bill requires the Department to compile a list of specific types of projects and to assign a priority to each project on the list. The projects to be included in the list are those known by the Department by May 1 of the calendar year that would fall in any of the following categories: projects approved by Congress, projects actually funded by Congress, water resources development projects sponsored by units of local governments for which grant applications have been submitted to the Department of Environment, Health, and Natural Resources, small watershed projects sponsored by local entities for which grant applications have been submitted to the State Soil and Water Conservation Commission, and projects planned as federal

reservoir projects that are not scheduled to receive federal funds, but that are seeking State financial assistance.

The bill states the criteria to be considered by the Department in assigning priorities to projects and directs the Department to indicate the priority ranking of a project either numerically, with "1" being assigned to the highest priority or by a recommendation of no funding. The Department must state the rationale for its priority assignments and funding recommendations.

In addition to the above, the Department must also provide a description of each project in the plan, its estimated completion date and status, the estimated and actual cost figures for the project and the State share of those costs.

If enacted, the bill would be effective upon ratification.

LEGISLATIVE PROPOSAL 2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

91-LH-8

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Water resources dev't./budget.

(Public)

Sponsors: Representative Payne.
Senator Block

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT THE CURRENT OPERATIONS APPROPRIATIONS BILL
3 INCLUDE THE FUNDS NEEDED FOR EACH FISCAL YEAR COVERED BY THAT
4 BILL TO FUND THE WATER RESOURCES DEVELOPMENT PROGRAM.
5 The General Assembly of North Carolina enacts:
6 Section 1. Article 1 of Chapter 143 of the General
7 Statutes is amended by adding a new section to read:
8 "§ 143-12.2. Water resources development funds in Current
9 Operations Appropriations Bill; funds do not revert.
10 (a) The Director of the Budget shall include in the 'Current
11 Operations Appropriations Bill' submitted to the General Assembly
12 the sum needed to fund the Water Resources Development Program
13 adopted under G.S. 143-215.73A for each fiscal year covered by
14 the bill. The Director of the Budget shall report separately to
15 the General Assembly the water resources development projects
16 recommended for funding by the Department of Environment, Health,
17 and Natural Resources that are not included in the Water
18 Resources Development Program and shall include in the report the
19 information provided by the Department on each of those projects.
20 (b) Funds appropriated for water resources development projects
21 shall not revert at the end of the fiscal period."
22 Sec. 2. This act shall become effective July 1, 1991.

EXPLANATION OF LEGISLATIVE PROPOSAL 2

91-LH-8

A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE CURRENT OPERATIONS APPROPRIATIONS BILL INCLUDE THE FUNDS NEEDED FOR EACH FISCAL YEAR COVERED BY THAT BILL TO FUND THE WATER RESOURCES DEVELOPMENT PROGRAM.

The proposed legislation requires the Governor to include a line item for water resources development projects in the Current Operations Appropriations bill submitted to the General Assembly. The amount of the line item must be sufficient to fund the Water Resources Development Program adopted by the Governor for each fiscal year covered by the bill. The proposed legislation further provides that the Governor shall, in a separate report to the General Assembly, identify the water resources development projects recommended for funding by the Department of Environment, Health, and Natural Resources that are not included in the Water Resources Development Program adopted by the Governor and so not funded in the budget submitted by the Governor to the General Assembly. The information on those projects not included for funding in the Current Operations Appropriations bill must also be submitted to the General Assembly.

Under the proposed legislation, funds appropriated for water resources development projects would not revert at the end of the fiscal period.

July 1, 1991, is the effective date of the proposed legislation.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

91-LH-004

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Water Transfer Permits.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE REGISTRATION OF ALL WATER TRANSFERS AND TO
3 REQUIRE A PERMIT FOR THE TRANSFER OF ONE MILLION GALLONS OR
4 MORE OF WATER PER DAY FROM ONE RIVER BASIN TO ANOTHER.
5 The General Assembly of North Carolina enacts:
6 Section 1. Article 21 of Chapter 143 is amended by
7 adding a new part to read:
8 "Part 2A. Regulation of Water Transfers.
9 " § 143-215.22A. Definitions.
10 The following definitions apply to this part.
11 (1) 'Losing river basin' means a river basin which
12 sustains a decrease in water as the result of a
13 transfer of water to a different river basin and
14 there is no significant return of the water to the
15 river basin of origin.
16 (2) 'River' means any body of water bearing the
17 designation "river" on the latest edition of the
18 appropriate U.S. Geological Survey 7.5 minute
19 quadrangle map.
20 (3) 'River basin' means the area drained by a river and
21 its tributaries or through a specified point on a
22 river, as determined by the Commission.

1 (4) 'Surface water' means any water located on the land
2 surface which is not derived by pumping from
3 groundwater.

4 (5) 'Transfer' means the withdrawal, diversion, or
5 pumping of surface water from one river basin and
6 the use or discharge of all or any part of the
7 water in a basin different from the origin.

8
9 "§ 143-215.22B. Permit required for water transfers; prohibited
10 water transfers.

11 (a) Except as provided in G.S. 143-215.22G, no person may
12 transfer one million gallons or more of water a day on any day
13 from the basin of one river to another unless the person shall
14 first obtain a permit from the Commission.

15 (b) No permit may be granted for a water transfer that violates
16 State water classifications or water quality standards or that
17 adversely affects the public health and welfare.

18
19 "§ 143-215.22C. Permit application.

20 (a) An application for a water transfer permit shall be in
21 writing and shall include:

22 (1) Information regarding the existing uses of water by
23 the applicant, including the following:

24 a. A listing of each use or purchase greater than
25 one hundred thousand gallons per day, on any
26 day;

27 b. The amount or percent of consumption for each
28 use or purchase listed under (a)(1)a.;

29 c. A listing of conservation programs or
30 practices currently used for each use or
31 purchase listed under (a)(1)a.;

32 d. The peak capacity of each major component used
33 in the present transfer facility for each use
34 or purchase listed under (a)(1)a.

35 (2) Information regarding any proposed transfer of
36 water, including the following:

37 a. A listing of the projected uses or purchases
38 greater than one hundred thousand gallons per
39 day, on any day;

40 b. The estimated amount or percent of consumption
41 for each use or purchase listed under
42 (a)(2)a.;

- 1 c. A listing of conservation programs or
2 practices proposed for each use or purchase
3 listed under (a)(2)a.;
4 d. Engineering and economic justification for the
5 capacity of each major component of the
6 proposed transfer facility; and
7 e. An engineering and economic assessment of the
8 feasibility of using alternate water sources.
9 (3) The location of all collection, withdrawal, and
10 transportation facilities; and
11 (4) Any other information deemed necessary by the
12 Commission for review of the proposed water
13 transfer.

14 (b) An application for a water transfer permit shall be filed
15 with the Commission at least 180 days in advance of the date on
16 which it is desired to begin the transfer. The Commission may
17 conduct any inquiry or investigation that it considers necessary
18 before acting on an application and may require an applicant to
19 submit plans, specifications, and other information the
20 Commission considers necessary to evaluate the application.

21
22 "§ 143-215.22D. Application notice and comment.

23 (a) Within thirty working days following the submission of a
24 completed application, the Commission shall:

- 25 (1) Publish notice of the application in the North
26 Carolina Register;
27 (2) Provide notice of the application by registered or
28 certified mail, return receipt requested to each of
29 the following within the proposed losing river
30 basin:
31 a. A person holding a water transfer permit
32 issued under this Part;
33 b. A person holding a discharge permit issued
34 under G.S. 143-215.1;
35 c. A person holding a National Pollutant
36 Discharge Elimination System permit issued
37 under the Federal Water Pollution Control Act,
38 as amended;
39 d. A person who has registered a water transfer
40 as provided by this part;
41 e. The Board of County Commissioners of each
42 county that is located entirely or partially
43 within the losing river basin and the

1 governing body of any municipality that takes
2 water from the losing river basin.

3 (b) Any notice that an application for a water transfer has
4 been received shall include a conspicuous statement in bold type
5 that the river level in the proposed losing river basin will be
6 decreased if the requested water transfer permit is granted. The
7 notice shall also include a nontechnical description of the
8 applicant's request. The notice shall further indicate the
9 procedure to be followed by anyone wishing to submit comments on
10 the proposed water transfer and shall direct local governments
11 that objections from a local government must be filed with the
12 Commission within 30 days of the receipt of the notice by the
13 local government.

14 (c) At least one public hearing for each application for a
15 water transfer permit shall be conducted by the Commission at a
16 location in the losing river basin below the point of transfer.
17 If an objection to the application for the water transfer permit
18 is filed by a local government pursuant to this section, the
19 Commission shall conduct at least two public hearings at a
20 location in the losing river basin below the point of transfer.

21 At least 30 days notice of the public hearing shall be given to
22 all persons to whom notice of the application was sent and to any
23 other person requesting notice. The Commission shall also
24 publish notice of the public hearing once a week for four
25 consecutive weeks prior to the date of the public hearing in a
26 newspaper of general circulation in each river basin area to be
27 affected and in a newspaper of general circulation that
28 originates in the losing river basin.

29
30 "§ 143-215.22E. Permit application review.

31 (a) The Commission shall insure the protection of the present
32 and permitted assimilative needs of the losing river basin. For
33 each application, the Commission shall use data from stream
34 modeling and instream sampling to determine whether the proposed
35 water transfer is prohibited under G.S. 143-215.22B(b) and shall
36 state its findings of fact and determination in writing.

37 (b) In reviewing an application, the Commission shall consider
38 information developed through studies, analyses, or inquiries
39 undertaken by the Commission and information and comments
40 submitted to the Commission by the applicant, public agencies,
41 affected persons, and the public.

42 (c) In determining whether a transfer may be permitted the
43 Commission shall specifically consider each of the following
44 items and state in writing its findings of fact with regard to

1 each item. No permit may be granted for a water transfer unless
2 the Commission concludes by a preponderance of the evidence based
3 upon the preceding findings of fact that the benefits of the
4 proposed project outweigh the potential detriments of the project
5 and that any such detriment has been mitigated as much as
6 possible. The criteria to be used by the Commission in
7 evaluating an application are as follows:

8 (1) Protect present and projected stream uses of the
9 losing river basin generally and of the losing
10 river specifically including, but not limited to,
11 present agricultural, municipal, industrial and
12 instream uses, and assimilative needs.

13 (2) Protect water quality of the losing river basin.

14 (3) Protect reasonably foreseeable future water needs
15 of the losing river basin.

16 (4) Protect the reasonably foreseeable future water
17 needs of the applicant for the water to be
18 transferred, including methods of water use,
19 conservation, and efficiency of use.

20 (5) Find a beneficial impact on the State and its local
21 subdivisions of any proposed transfer, and the
22 capability of the applicant to implement
23 effectively its responsibilities under the
24 requested permit.

25 (6) Find that the nature of the permittee's use of the
26 water is reasonable and beneficial in light of the
27 probable detriment of the proposed water transfer.

28 (7) Find that the proposed project shall promote and
29 increase the storage and conservation of water.

30 (8) Find that the feasibility of alternative sources of
31 supply and their comparative costs are less
32 preferable than the proposed water transfer.

33 (9) Consider the impact on interstate water use.

34 (10) Find that the requirements of other state or
35 federal agencies with authority relating to water
36 resources are not violated by the proposed
37 transfer.

38 (11) Protect the availability of water in the losing
39 river basin to respond to emergencies, including
40 drought.

41 (12) Consider whether the project shall have any
42 beneficial or detrimental impact on navigation,
43 hydropower generation, fish and wildlife habitat,
44 aesthetics, or recreation.

1 (13) Consider such other facts and circumstances as are
2 reasonably necessary to carry out the purposes of
3 this part.

4
5 "§ 143-215.22F. Commission's power as to permits; permit action;
6 emergency permits.

7 (a) The Commission may grant, deny, or issue with conditions a
8 water transfer permit. The Commission may attach to a permit any
9 conditions necessary to achieve the purposes of this part,
10 including the following:

11 (1) The amount of water approved for transfer may be
12 varied seasonally;

13 (2) The transfer of water shall be required to cease or
14 decrease when the instantaneous streamflow of the
15 river basin of origin is equal to or less than a
16 specified amount determined by permit application
17 review conducted pursuant to G.S. 143-215.22F;

18 (3) Special provisions may be included to promote an
19 adequate water supply for the State or to mitigate
20 any future adverse conditions resulting from the
21 transfer;

22 (4) The installation, maintenance and use of streamflow
23 monitoring equipment may be required;

24 (5) The establishment and reporting of transfer
25 activities by the permittee may be required.

26 (b) In order to protect the water uses of the losing river
27 basin, the Commission, in determining the amount of water to be
28 approved, may conduct or have conducted instream sampling and
29 stream modeling to predict the volumes of water which may be
30 transferred.

31 Transferable amounts may vary to accommodate seasonal water
32 conditions in the losing river basin. No transfer of water may
33 be permitted at any time which shall cause the remaining flow in
34 the losing river basin to be less than the statistical low flow
35 that occurs for seven consecutive days, once every ten years as
36 established prior to the water transfer.

37 (c) The permit shall specify the location of all collection,
38 withdrawal, transmission, and discharge facilities to be used or
39 constructed to effect the water transfer and shall specify the
40 amount which can be withdrawn. The permit shall require that the
41 water transfer shall cease or decrease when the actual flow of
42 the losing basin is less than a specified minimum required to
43 protect against adverse effects to the basin. The permit shall
44 further require that the permittee comply with other requirements

1 as may be advisable to promote an adequate water supply for the
2 State and to mitigate any adverse conditions or effects which the
3 Commission finds exist but are not sufficient to require denial
4 of the permit.

5 (d) Upon the issuance by the Governor of a declaration or
6 proclamation of an emergency relating to water resources, the
7 Chairman of the Commission may waive the usual permitting
8 requirements and grant a temporary emergency water transfer
9 permit. The emergency water transfer permit shall be limited to
10 meet the needs created by the emergency and shall be issued for a
11 period no longer than 140 days or the duration of the Governor's
12 declaration or proclamation, or public health emergency,
13 whichever period is shorter.

14

15 "§ 143-215.22G. Registration of all water transfers; Pre-
16 existing water transfers.

17 (a) Any water transfer from one river basin to another for
18 which a permit is not required under this part shall be
19 registered with the Commission.

20 (b) Water transfers designated in Section 2 of Chapter 954 of
21 the 1989 Session Laws may continue, even though not permitted
22 under this part subject to the following conditions:

23 (1) The transfer is registered with the Commission
24 within six months of the effective date of this
25 part.

26 (2) Any increase in water transferred over the amount
27 authorized in subdivision (1) of this section must
28 be reviewed and permitted in accordance with G.S.
29 143-215.22B.

30 (c) A person registering a water transfer under this section
31 shall provide the Commission with the following information:

32 (1) The amount of water used;

33 (2) Identification of the point of withdrawal of the
34 water to be transferred, the point where the actual
35 transfer of water occurs, and the point of
36 discharge for the water transfer;

37 (3) A description of how the water is used.

38

39 "§ 143-215.22H. Civil penalties; injunctions.

40 (a) A civil penalty of not more than ten thousand dollars
41 (\$10,000) may be assessed by the Commission against any person
42 who:

43 (1) Is required but fails to apply for or to secure a
44 permit required by G.S. 143-215.22B or who violates

1 or fails to act in accordance with the terms,
2 conditions, or requirements of such permit.

3 (2) Violates a rule of the Commission implementing this
4 Part.

5 (b) If any action or failure to act for which a penalty may be
6 assessed under this subsection is continuous, the Commission may
7 assess a penalty not to exceed ten thousand dollars (\$10,000) per
8 day for so long as the violation continues, unless otherwise
9 stipulated.

10 (c) In determining the amount of the penalty the Commission
11 shall consider the degree and extent of harm caused by the
12 violation and the cost of rectifying the damage.

13 (d) The Commission may assess the penalties provided for in
14 this section. Any person assessed shall be notified of the
15 assessment by registered or certified mail, and the notice shall
16 specify the reasons for the assessment. If the person assessed
17 fails to pay the amount of the assessment to the Department
18 within 30 days after receipt of notice, or such longer period,
19 not to exceed 180 days, as the Commission may specify, the
20 Commission may institute a civil action in the superior court of
21 the county in which the violation occurred or, in the discretion
22 of the Commission, in the superior court of the county in which
23 the person assessed resides or has his or its principal place of
24 business, to recover the amount of the assessment.

25 (e) Upon violation of any of the provisions of the part, or the
26 rules of the Commission, the Secretary may institute a civil
27 action in the superior court in the name of the State for
28 injunctive relief. Neither the institution of the actions nor
29 any of the proceedings relating to them shall relieve any party
30 to the proceedings from the penalty prescribed by the part for
31 any violation of the provisions of the part.

32

33 **"§ 143-215.22I. Criminal penalties.**

34 (a) Any person violating any provision of this part is guilty
35 of a misdemeanor and, upon conviction, must be fined not less
36 than one thousand dollars (\$1,000) nor more than ten thousand
37 dollars (\$10,000) for each violation. In addition, if any person
38 is adjudged to have committed a violation of this part willfully,
39 the court may determine that each day during which the violation
40 continued constitutes a separate offense.

41

42 **"§ 143-215.22J. Adoption of rules.**

43 (a) The Commission may adopt rules to carry out the intent of
44 this part.

1

2 "§ 143-215.22K. Actions for loss of water rights.

3 Any riparian landowner or person legally exercising rights to
4 use water, suffering material injury for the loss of water rights
5 as a consequence of a water transfer permitted under this part
6 may maintain an action for relief against the water transferor in
7 (i) the county where the land of the riparian owner lies, or (ii)
8 in the county in which the water transfer originates to recover
9 all provable damages for loss of riparian rights including
10 increases in operating costs, lost production, or other damages
11 directly caused him by the water transfer. Nothing in this part
12 changes or modifies existing common or statutory law with respect
13 to the relative rights of riparian owners or others concerning
14 the use of or disposal of water in the streams of North Carolina.
15 Failure to file an objection as provided under Chapter 150B to
16 the issuance of a permit to transfer water shall not be deemed a
17 failure to exhaust administrative remedies and shall not affect
18 the right to bring a civil action concerning riparian rights or
19 the legal right to use water. The burden of proof is on the
20 person alleging damages."

21 Sec. 2. G.S. 153A-285 reads as rewritten:

22 "§ 153A-285. Prerequisites to acquisition of water, water rights,
23 etc.

24 The word 'authority' as used in G.S. 162A-7(b) through (f)
25 includes counties and cities acting jointly or through joint
26 agencies to provide water services or sewer services or both. No
27 county or city acting jointly and no joint agency may ~~divert~~
28 ~~water from one stream or river to another nor~~ institute any
29 proceeding in the nature of eminent domain to acquire water,
30 water rights, or lands having water rights attached thereto until
31 the ~~diversion or~~ acquisition is authorized by a certificate from
32 the Environmental Management Commission pursuant to G.S. 162A-7.
33 Any proceeding to secure a certificate from the Environmental
34 Management Commission shall be governed by the provisions of G.S.
35 162A-7(b) through 162A-7(f)."

36 Sec. 3. G.S. 153A-287 is repealed.

37 Sec. 4. This act shall become effective July 1, 1991.

EXPLANATION OF LEGISLATIVE PROPOSAL 3

91-LH-004

A BILL TO BE ENTITLED AN ACT TO REQUIRE REGISTRATION OF ALL WATER TRANSFERS AND TO REQUIRE A PERMIT FOR THE TRANSFER OF ONE MILLION GALLONS OR MORE OF WATER PER DAY FROM ONE RIVER BASIN TO ANOTHER.

The proposed legislation requires a permit for any transfer of water of one million gallons or more per day from one river basin to another. A transfer of water that is less than one million gallons a day must be registered with the Environmental Management Commission but is not required to be permitted.

The term "transfer" is defined as the withdrawal, diversion, or pumping of surface water from one river basin and the use or discharge of all or any part of the water in a basin different from the origin.

The requirement for a permit or registration is applicable to a water transfer made by any person. The term "person" includes individuals, firms, partnerships, associations, institutions, corporations, municipalities and other political subdivisions and governmental agencies. Water transfers that were exempted from the moratorium on water transfers enacted last session are grandfathered-in at the moratorium level under G.S. 143-215.22G. However, those transfers must be registered with the Environmental Management Commission within six months of the effective date of the proposed legislation.

The proposed bill provides that a water transfer may not be permitted if the transfer: (i) violates State water classifications or water quality standards, (ii)

affects adversely the public health and welfare, or (iii) shall, at any time, cause the remaining flow in the losing river basin to be less than the statistical low flow that occurs for seven consecutive days, once every ten years as established prior to the water transfer. (See G.S. 143-215.22B(b) and G.S. 143-215.22F(b).)

Under the proposed bill a written application for a water transfer permit must be filed with the Environmental Management Commission at least 180 days in advance of the date on which the transfer is to begin. The information to be included in the application is listed in the bill. (See G.S. 143-215.22C.)

Notice must be given by the Environmental Management Commission of a completed application within 30 working days of its submission. Two methods of notice are required: publication in the North Carolina Register and certified mail to each of the following (i) any person in the losing river basin who holds a water transfer permit, has registered a water transfer, or holds a State or federal discharge permit, (ii) any county located entirely or partially within the losing basin, and (iii) any municipality that takes water from the losing river basin. The bill also includes provisions regarding the format and substance of the notice. (See G.S. 143-215.22D(b).)

A public hearing regarding the permit application must be held in the losing river basin below the point of transfer. If an objection to the application is filed by a local government then a second hearing must be held, also in the losing river basin below the point of transfer. Notice of the public hearing is required 30 days prior to the hearing. Notice must be given to all persons who received notice of the application and must be published for four consecutive weeks in a newspaper of general circulation in each river basin

area to be affected and in a newspaper of general circulation that originates in the losing river basin.

The criteria to be used by the Environmental Management Commission in determining whether to grant a water transfer permit are listed in G.S. 143-215.22E. The Commission must consider each item and state its finding of facts regarding each item in writing. Based on these finding of fact the Commission must weigh the benefits of a proposed project against its potential detriments. A permit may be issued only if the Commission concludes by a preponderance of the evidence (i) that the benefits outweigh the potential detriments, and (ii) that any potential detriment has been mitigated as much as possible. The Commission must use data from stream modeling and instream sampling in addition to other types of information to reach its decision regarding the issuance of the permit.

The Commission may grant or deny a permit, or may issue a permit with conditions. Permits must specify the amount of water that can be withdrawn and must require that the water transfer cease or decrease when the actual flow of the losing basin is less than a specified minimum required to protect against adverse effects to the basin. Additional conditions that may be attached to a permit are listed in G.S. 143-215.22F(a).

The Commission is authorized to waive the usual permitting requirements in the event of an emergency. An emergency permit may be issued for a 140 day period or for the length of the emergency, whichever is shorter.

The proposed legislation provides civil and criminal penalties for permit violations. The bill also retains the right of a riparian owner to bring an action under statutory or common law, for damages resulting from a water transfer.

Section 2 of the bill is a conforming amendment.

Section 3 of the bill repeals the current law that prohibits the diversion of waters from a river basin whose main stream flows out of the State.

If enacted, the bill would become effective July 1, 1991.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

SENATE JOINT RESOLUTION 91-LH-12
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Sponsors: Senator Tally.

Referred to:

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY SURFACE WATER.

3 Be it resolved by the Senate, the House of Representatives
4 concurring:

5 Section 1. The Legislative Research Commission may
6 study issues relating to surface water, including the following:
7 consumptive uses of water and the effect of such uses on the
8 State's water resources, other present and projected uses of
9 water, impoundments, and water resources management. The
10 Commission may also study any other issues relevant to surface
11 water.

12 Sec. 2. The Legislative Research Commission may make
13 its recommendations and submit an interim report to the 1991
14 General Assembly, Regular Session 1992, and may make a final
15 report to the 1993 General Assembly.

16 Sec. 3. This resolution is effective upon ratification.

EXPLANATION OF LEGISLATIVE PROPOSAL 4

91-LH-12

A SENATE JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
COMMISSION TO STUDY SURFACE WATER ISSUES.

The proposed legislation authorizes the Legislative Research Commission to continue its study of surface water. The study mandate is broad, limited only to the subject of surface water. Possible topics within that subject area for consideration by the Commission are suggested.

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 802
SENATE BILL 231

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Studies Act of 1989."

...

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- ...
- (16) Surface Water Quality and Resources Issues, Including Interbasin Transfer, Albemarle-Pamlico Estuarine (H.J.R. 33 - Ethridge, B.), Coastal Water Quality -- study continued (H.J.R. 37 - Ethridge, B.), Haw in Scenic River System (H.B. 1224 - Hackney), Pesticides (H.J.R. 1399 - Holt), Water Resources Planning (H.B. 1945 - Payne), Toxaway River (H.B. 1955 - Colton), and Yadkin River Use and Protection (S.B. 1182 - Kaplan).

...

Sec. 2.2. Legislative Activity Between Legislative Sessions and Procedures to Shorten the Legislative Session. The Legislative Research Commission may study the procedures of this State's, other states' and other legislative bodies' practices and procedures regulating legislative and study activity and may make recommendations as to changes in law, procedures and rules that will lead to greater efficiency in the legislative process while safeguarding the rights of all members of the General Assembly and of the citizens in this State's legislative process.

...

Sec. 2.4. Committee Membership. For each Legislative Research Commission Committee created during the 1989-1991 biennium, the Cochairmen of the Commission each shall appoint a minimum of seven members.

Sec. 2.5. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1990 Session of the 1989 General Assembly or the 1991 General Assembly, or both.

Sec. 2.6. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.7. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

. . . .

PART XXV.-----EFFECTIVE DATE

Sec. 25.1. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE JOINT RESOLUTION 33

Sponsors: Representatives Bowman, B. Ethridge; R. Thompson, Anderson, Chapin, and Stamey.

Referred to: Rules.

January 19, 1989

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY THE PROGRESS OF THE ALBEMARLE-
3 PAMLICO ESTUARINE STUDY.

4 Be it resolved by the House of Representatives, the Senate concurring:

5 Section 1. The Legislative Research Commission may study and evaluate
6 the Albemarle-Pamlico Estuarine Study being conducted by the State. The
7 Commission may monitor the progress of the Albemarle-Pamlico Estuarine Study,
8 evaluate its recommendations, consider methods to implement the comprehensive
9 conservation management plan to be developed by the Albemarle-Pamlico Estuarine
10 Study, and consider any other items relevant to the Albemarle-Pamlico Estuarine
11 Study. The Committee may make its recommendations and submit an interim report
12 to the 1989 General Assembly, Regular Session 1990, and may make a final report to
13 the 1991 General Assembly.

14 Sec. 2. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE JOINT RESOLUTION 37

Sponsors: Representatives Bowman, B. Ethridge; R. Thompson, Chapin, Stamey, Anderson, and Warner.

Referred to: Rules.

January 19, 1989

1 A JOINT RESOLUTION REQUESTING THE LEGISLATIVE RESEARCH
2 COMMISSION TO CONTINUE THE STUDY OF COASTAL WATER
3 QUALITY.

4 Be it resolved by the House of Representatives, the Senate concurring:

5 Section 1. The Legislative Research Commission may continue the study
6 of coastal water quality begun pursuant to Section 152 of Chapter 1014 of the 1986
7 Session Laws. The Commission may review and evaluate existing and proposed rules
8 of the Environmental Management Commission, the Coastal Resources Commission,
9 the Marine Fisheries Commission, and any other State agency regarding coastal
10 water. The Legislative Research Commission may also consider any other issues
11 relevant to coastal water quality.

12 Sec. 2. The Legislative Research Commission may make an interim
13 report on the study authorized by this act to the 1989 General Assembly, Regular
14 Session 1990, and may make a final report to the 1991 General Assembly.

15 Sec. 3. This resolution is effective upon ratification.

16

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

2

HOUSE BILL 1224
Committee Substitute Favorable 5/30/89

Short Title: Haw in Scenic River System.

(Public)

Sponsors:

Referred to:

April 12, 1989

1

A BILL TO BE ENTITLED

2

AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND

3

COMMUNITY DEVELOPMENT TO STUDY THE FEASIBILITY OF

4

DESIGNATING THE HAW RIVER AS A UNIT OF THE STATE NATURAL

5

AND SCENIC RIVERS SYSTEM TO BE MANAGED AS A STATE RIVER.

6

The General Assembly of North Carolina enacts:

7

Section 1. The Division of Parks and Recreation of the Department of

8

Natural Resources and Community Development shall conduct a study and

9

preliminary planning to determine the feasibility and costs of designating the Haw

10

River below Swepsonville as a unit of the Natural and Scenic Rivers System to be

11

managed as a State river. The study and planning, at a minimum, shall:

12

(1) Determine the eligibility and feasibility of including the river

13

according to requirements of the State Parks Act, Article 2C of

14

Chapter 113 of the General Statutes, and the Natural and Scenic

15

Rivers Act, Article 3 of Chapter 113A of the General Statutes;

16

(2) Include public participation to obtain views and information on

17

public needs and desires to protect and to use the area;

- 1 (3) Make recommendations for the natural resource protection of the
- 2 area;
- 3 (4) Make recommendations for the recreational use of the area;
- 4 (5) Consider the presence and jurisdiction of other natural resource
- 5 agencies in the area;
- 6 (6) Describe the resources of the area and their current uses, identify
- 7 conflicts created by those uses, and propose solutions to them.

8 Sec. 2. The Division of Parks and Recreation of the Department of
9 Natural Resources and Community Development shall report the results of this study
10 to the General Assembly by January 31, 1991. The Division shall deliver copies to
11 the President of the Senate, Speaker of the House of Representatives, President Pro
12 Tempore of the Senate, and the Speaker Pro Tempore of the House of
13 Representatives. In addition, the Division shall deliver copies to the Governor and
14 the Cochairmen of the Study Commission on State Parks and Recreation Areas, if
15 that Study Commission is in existence at that time.

16 Sec. 3. There is appropriated from the General Fund to the Department
17 of Natural Resources and Community Development, the sum of \$75,000 for the
18 1989-90 fiscal year to conduct the feasibility study and preliminary planning.

19 Sec. 4. This act shall become effective July 1, 1989.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1989

H

1

HOUSE JOINT RESOLUTION 1399

Sponsors: Representative Holt.

Referred to: Rules.

April 27, 1989

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY PESTICIDES AND RELATED ISSUES.

3 Be it resolved by the House of Representatives, the Senate concurring:

4 Section 1. The Legislative Research Commission may study pesticides
5 and any related issues.

6 Sec. 2. The Legislative Research Commission may make an interim
7 report, including recommendations, to the 1989 General Assembly, Regular Session
8 1990, and a final report to the 1991 General Assembly.

9 Sec. 3. This resolution is effective upon ratification.

1 Section 1. The Water Resources Development Planning and Financing
2 Study Commission is created. The Commission shall consist of 12 members: four
3 Senators appointed by the President Pro Tempore of the Senate, four Representatives
4 appointed by the Speaker of the House of Representatives, and four nonlegislative
5 members appointed by the Governor. All initial appointments shall be made by
6 August 1, 1989. Vacancies on the Commission shall be filled in the same manner as
7 initial appointments.

8 Sec. 2. The President Pro Tempore of the Senate shall designate one
9 Senator as cochairman and the Speaker of the House of Representatives shall
10 designate one Representative as cochairman.

11 Sec. 3. The Commission shall study the following:

- 12 (1) The need for water resources development projects in North
13 Carolina;
- 14 (2) The federal planning and budgeting process for water resources
15 development projects;
- 16 (3) State procedures for participating in planning and financing water
17 resources development projects; and
- 18 (4) Local government participation in planning and financing projects.

19 The Commission shall make recommendations on improvements in State
20 and local government planning, administrative, and financing procedures to allow
21 North Carolina to take full advantage of federal water resources development projects
22 and to provide better coordination among the local, State, and federal participants in
23 water projects.

24 Sec. 4. The Commission shall submit a final report of its findings and
25 recommendations to the General Assembly on or before the first day of the 1991
26 Session of the General Assembly by filing the report with the President Pro Tempore
27 of the Senate and the Speaker of the House of Representatives. The Commission may
28 report to the 1990 Session of the 1989 General Assembly. Upon filing its final report,
29 the Commission shall terminate.

30 Sec. 5. The Commission, while in the discharge of official duties, may
31 exercise all the powers provided for under the provisions of G.S. 120-19, and G.S.
32 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the
33 joint call of the cochairmen. The Commission may meet in the Legislative Building
34 or the Legislative Office Building.

1 Sec. 6. Members of the Commission shall receive subsistence and travel
2 expenses as follows:

3 (1) Commission members who are members of the General Assembly,
4 at the rates set forth in G.S. 120-3.1.

5 (2) Commission members who are also officials or employees of the
6 State, at the rates set forth in G.S. 138-6.

7 (3) All other Commission members, at the rates set forth in G.S. 138-5.

8 Sec. 7. The Commission may contract for professional, clerical, or
9 consultant services as provided by G.S. 120-32.02. The Legislative Services
10 Commission, through the Legislative Administrative Officer, shall assign professional
11 staff to assist in the work of the Commission. The House of Representatives' and the
12 Senate's Supervisor of Clerks shall assign clerical staff to the Commission, upon the
13 direction of the Legislative Services Commission. The expenses relating to clerical
14 employees shall be borne by the Commission.

15 Sec. 8. The Commission may request staff support from the Department
16 of Natural Resources and Community Development and from the Office of State
17 Budget and Management in carrying out the Commission's responsibilities.

18 Sec. 9. All State departments and agencies and local governments and
19 their subdivisions shall furnish the Commission with any information in their
20 possession or available to them.

21 Sec. 10. There is appropriated from the General Fund to the General
22 Assembly \$25,000 for the 1989-90 fiscal year and \$25,000 for the 1990-91 fiscal year
23 to be used for the expenses of the Commission.

24 Sec. 11. This act shall become effective July 1, 1989.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 1955

Short Title: Toxaway River Study.

(Public)

Sponsors: Representatives Colton; N. Crawford, Nesbitt, and Greenwood.

Referred to: Rules.

May 10, 1989

A BILL TO BE ENTITLED

1
2 AN ACT TO REQUIRE THE DEPARTMENT OF NATURAL RESOURCES AND
3 COMMUNITY DEVELOPMENT, DIVISION OF PARKS AND RECREATION,
4 TO STUDY THE FEASIBILITY OF INCLUDING THE THOMPSON,
5 TOXAWAY, AND WHITEWATER RIVERS AREA WITHIN THE STATE
6 PARKS AND THE SCENIC RIVERS SYSTEMS.

7 The General Assembly of North Carolina enacts:

8 Section 1. The Department of Natural Resources and Community
9 Development, Division of Parks and Recreation, shall conduct a study and engage in
10 preliminary planning to determine the feasibility and costs of designating the
11 Thompson, Toxaway, and Whitewater rivers area of North Carolina as part of the
12 State Parks System. In conducting the study and preliminary planning, the Division
13 shall, at a minimum:

14 (1) Determine the eligibility and feasibility of including the Thompson,
15 Toxaway, and Whitewater rivers area under the State Parks Act,
16 Article 2C, Chapter 113 of the General Statutes, and under the
17 Natural and Scenic Rivers Act of 1979, Article 3, Chapter 113A of
18 the General Statutes;

- 1 (2) Provide for public participation in the study to obtain views and
2 information on public needs and desires regarding protection and
3 use of the area;
- 4 (3) Make recommendations for the protection of natural resources of
5 the area;
- 6 (4) Make recommendations for recreational use of the area;
- 7 (5) Consider the presence and jurisdiction of other natural resource
8 agencies in the area;
- 9 (6) Describe the resources of the area and their current uses, identify
10 conflicts created by those uses, and propose solutions to the
11 conflicts; and
- 12 (7) Consider the adjacent Horsepasture River area which is currently
13 designated a State natural river.

14 Sec. 2. The Department of Natural Resources and Community
15 Development, Division of Parks and Recreation, shall report the results of its study
16 and preliminary planning to the 1989 General Assembly by January 31, 1991. The
17 Division shall deliver copies of the report to the President of the Senate, the Speaker
18 of the House of Representatives, the President Pro Tempore of the Senate, and the
19 Speaker Pro Tempore of the House of Representatives. The Division shall also
20 deliver copies of its report to the Governor, and to the cochairmen of the Study
21 Commission on State Parks and Recreation Areas if that Study Commission is in
22 existence at that time.

23 Sec. 3. There is appropriated from the General Fund to the Department
24 of Natural Resources and Community Development, Division of Parks and
25 Recreation, \$75,000 for the 1989-90 fiscal year to be used to conduct the study and
26 preliminary planning required by Sections 1 and 2 of this act.

27 Sec. 4. This act shall become effective July 1, 1989.

APPENDIX B

MEMBERSHIP OF LRC COMMITTEE ON SURFACE WATER

LRC Member in Charge:

Sen. Lura S. Tally
3100 Tallywood Drive
Fayetteville, NC 28303
(919)484-4868

Members

President Pro Tem's Appointments

Sen. Franklin L. 'Frank' Block
Co-Chairman
520 Princess Street
Wilmington, NC 28401
(919)763-3463

Sen. Betsy L. Cochrane
Box 517
Advance, NC 27006
(919)998-8893

Mr. Charles 'Charlie' Holt
Holt Oil Company, Inc.
2709 Clinton Road
Fayetteville, NC 28301
(919)483-5137

Sen. Joseph E. 'Joe' Johnson
P.O. Box 31507
Raleigh, NC 27622
(919)787-5200

Dr. David Moreau
City and Regional
Planning Department
UNC - Chapel Hill
Chapel Hill, NC 27514
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APPENDIX C

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 954
SENATE BILL 1378

AN ACT TO ESTABLISH A MORATORIUM ON THE TRANSFER OF
WATERS.

The General Assembly of North Carolina enacts:

Section 1. Except as provided in Section 2 of this act and notwithstanding the provisions of G.S. 153A-285, G.S. 153A-287, or any other provision of law, no entity whether public or private, or whether acting separately or jointly may divert any of the waters of this State, as defined in G.S. 143-212(6), from the basin of any named river to another nor institute any proceeding in the nature of eminent domain to acquire water, water rights, or lands having water rights attached thereto for a use that will result in waters of this State being diverted from the basin of one named river to another.

Sec. 2. The prohibition in Section 1 of this act does not affect:

- (1) The diversion of waters from the basin of one named river to another where the actual diversion of waters lawfully began before the effective date of this act.
- (2) The diversion of waters from the basin of one named river to another if the diversion is authorized under a certificate or permit issued before the effective date of this act by the Environmental Management Commission as provided by G.S. 153A-285 and G.S. 162A-7, provided the diversion does not exceed the level authorized by the certificate or permit as issued before the effective date.
- (3) The diversion of waters from the basin of one named river to another if the diversion was included in the plans for a federal reservoir project that received congressional approval before the effective date of this act but was not constructed before the effective date of this act.
- (4) The diversion of waters from the basin of one named river to another if the diversion was included in plans for a water treatment facility and funds to construct the water treatment facility were approved in a bond referendum held prior to the effective date of this act.
- (5) The diversion of waters from the basin of one named river to another where the diversion is in response to a substantial risk of water supply failure caused by low lake levels or streamflows, or in response to a water contamination or equipment failure emergency, provided that such diversions are limited to a maximum period of 140 days.

- (6) The discharge of waters from the basin of one named river to another if the discharge is authorized under a permit issued before the effective date of this act by the Environmental Management Commission as provided by G.S. 143-215.1.
- (7) The diversion of waters from the basin of one named river to another by a county that is situated on a ridge between two river basins for which the feeder streams flow into free flowing rivers rather than a reservoir if the diversion is included in plans to construct a water treatment plant that is part of a joint project with a water and sewer authority located in another state and a permit for an interbasin transfer has been issued by the state in which the water and sewer authority is located.

Sec. 3. The prohibition in Section 1 of this act does not affect the diversion of waters from the basin of one named river, the mainstream of which downstream from the point of the diversion is not located entirely in North Carolina, to the basin of another named river where the actual diversion of waters began before the effective date of this act.

Sec. 4. This act may not be construed to reflect legislative approval or disapproval of any transfer exempted herein.

Sec. 5. For purposes of this act the term "named river" shall mean any body of water bearing the designation "river" on the latest edition of the appropriate U.S. Geological Survey 7.5 minute quadrangle map.

Sec. 6. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act.

Sec. 7. This act is effective upon ratification and shall expire 1 July 1991. In the General Assembly read three times and ratified this the 18th day of July, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

APPENDIX D
List of Speakers

October 2, 1990

Colonel Paul Dennison
N.C. Water Resources Congress

John Morris
Division of Water Resources
Department of Environment, Health, and Natural Resources

Larry Saunders
U.S. Army Corps of Engineers

James J. Scott
North Carolina State Ports Authority

November 8, 1990

John Hartwell
Water Resources Committee
Triangle J council of Governments

Horace Johnson
Mayor of the City of Hillsborough

Beth Jones
Yadkin-Pee Dee River Basin Committee

APPENDIX E

PART 8. Grants for Water Resources Development Projects.

§ 143-215.70. Secretary of Environment, Health, and Natural Resources authorized to accept applications.

The Secretary is authorized to accept applications for grants for nonfederal costs relating to water resources development projects from units of local government sponsoring such projects, except that this shall not include small watershed projects reviewed by the State Soil and Water Conservation Commission pursuant to G.S. 139-55. (1979, c. 1046, s. 1; 1987, c. 827, s. 154; 1989, c. 727, s. 218(109).)

§ 143-215.71. Purposes for which grants may be requested.

Applications for grants may be made for the nonfederal share of water resources development projects for the following purposes in amounts not to exceed the percentage of the nonfederal costs indicated:

- (1) General navigation projects that are sponsored by local governments -- eighty percent (80%);
- (2) Recreational navigation projects -- twenty-five percent (25%);
- (3) Construction costs for water management (flood control and drainage) purposes, including utility and road relocations not funded by the State Department of Transportation -- sixty-six and two-thirds percent (66 2/3%), but only of that portion of the project specifically allocated for such flood control or drainage purposes;
- (4) Stream restoration -- sixty-six and two-thirds percent (66 2/3%);
- (5) Protection of privately owned beaches where public access is allowed and provided for -- seventy-five percent (75%);
- (6) Land acquisition and facility development for water-based recreation sites operated by local governments -- fifty percent (50%);
- (7) Aquatic weed control projects sponsored by local governments -- fifty percent (50%). (1979, c. 1046, s. 1; 1983, c. 450; 1987, c. 781, s. 1.)

§143-215.72. Review of applications.

(a) The Secretary shall receive and review applications for the grants specified in this Part and approve, approve in part, or disapprove such applications.

(b) In reviewing each application, the Secretary shall consider:

- (1) The economic, social, and environmental benefits to be provided by the projects;
- (2) Regional benefits of projects to an area greater than the area under the jurisdiction of the local sponsoring entity;
- (3) The financial resources of the local sponsoring entity;
- (4) The environmental impact of the project;

- (5) Any direct benefit to State-owned lands and properties. (1979, c. 1046, s. 1.)

§ 143-215.73. Recommendation and disbursal of grants.

After review of grant applications, project funds shall be disbursed and monitored by the Department. After review, but before transfer of funds from the Department's reserve fund into accounts for specific projects, the Secretary may forward the applications to the Advisory Budget Commission for its review of the recommendations. (1979, c. 1046, s. 1; 1983, c. 717, s. 70; 1985 (Reg. Sess., 1986), c. 955, s. 93; 1987, c. 827, s. 154.)

ARTICLE 4.
Grants for Small Watershed Projects.

§139-53. State Soil and Water Conservation Commission authorized to accept applications.

The State Soil and Water Conservation Commission is authorized to accept applications for grants for nonfederal costs relating to small watershed projects authorized under Public Law 566 (83rd Congress as amended) from local sponsors of such projects properly organized under the provisions of either Chapter 156 of the General Statutes of North Carolina or Chapter 139 of the General Statutes of North Carolina, or from county service districts authorized by G.S. 153A-301, or from municipal service districts authorized by G.S. 160A-536. Applications shall be made on forms prescribed by the Commission. (1977, 2nd Sess., c. 1206; 1981, c. 326, s. 9.)

§139-54. Purposes for which grants may be requested.

Applications for grants may be made for the nonfederal share of small watershed projects for the following purposes in amounts not to exceed the percentage of the nonfederal costs indicated:

- (1) Land rights acquisition for impounding or retarding water--fifty percent (50%);
- (2) Engineering fees -- fifty percent (50%);
- (3) Anticipated future and present water supply needs in conjunction with watershed improvement works or projects as described in G.S. 139-37.1 -- fifty percent (50%);
- (4) Installation of recreational facilities and services (to include land acquisition) as described in G.S. 139-46 -- fifty percent (50%);
- (5) Construction costs for water management (drainage or irrigation) purposes, including utility and road relocations not funded by the State Department of Transportation -- sixty- six and two-thirds percent (66 2/3%);
- (6) Conservation and replacement of fish and wildlife habitat as described in G.S. 139-46 -- seventy-five percent (75%). (1977, 2nd Sess., c. 1206; 1979, c. 1046, s. 2.)

§139-55. Review of applications.

(a) The State Soil and Water Conservation Commission shall receive and review applications for grants for small watershed projects authorized under Public Law 566 (83rd Congress, as amended) and approve, approve in part, or disapprove all such applications.

(b) In reviewing each application, the State Soil and Water Conservation Commission shall consider:

- (1) The financial resources of the local sponsoring organization;
- (2) Nonstructural measures such as sediment control ordinances and flood plain zoning ordinances enacted and enforced by local governments to alleviate flooding;
- (3) Regional benefits of projects to an area greater than the area under jurisdiction of the local sponsoring organization;
- (4) Any direct benefit to State-owned lands and properties. (1977, 2nd Sess., c. 1206.)

§139-56. Recommendation of priorities and disbursal of grant funds.

Whenever two or more applications for grants are approved in whole or in part, the State Soil and Water Conservation Commission shall establish priorities among the several applications for disbursal of grant funds. To the extent that funds are available, the State Soil and Water Conservation Commission may authorize the disbursal of grant funds to the applicants consistent with the established priorities. The State Soil and Water Conservation Commission shall promulgate regulations to provide for an audit of grant funds to assure that they are spent for the purposes delineated in the application. Established priorities may be reviewed from time to time and revised if circumstances warrant such revision. (1977, 2nd Sess., c. 1206.)

§139-57. Availability of funds.

All grants shall be contingent upon the availability of funds for disbursement to applicants. At the end of each fiscal year the State Soil and Water Conservation Commission shall notify all applicants whose applications have been approved and to whom grant funds have not been disbursed of the status of their application. At the time of notification the State Soil and Water Conservation Commission shall notify the applicants of the availability of funds for grants in the upcoming fiscal year and at the same time shall notify the applicants of their position on any priority list that may have been established for the disbursal of grant funds for small watershed projects. (1977, 2nd Sess., c. 1206.)

APPENDIX F

November 6, 1990

Department of Environment, Health, and Natural Resources
 Division of Water Resources

Public Water Supply Systems with Existing
 Water Transfers Between River Basins

<u>County</u>	<u>Water Supply System</u>
Alexander	Taylorsville
Brunswick	Holden Beach Long Beach Ocean Isle Shalotte Sunset Beach
Buncombe	Asheville
Burke	Morganton
Catawba	Hickory
Cherokee	Murphy
Cleveland	Kings Mountain
Davidson	Denton
Davie	Mocksville
Durham	Durham
Gaston	Gastonia Belmont Bessemer City
Granville	Oxford
Guilford	High Point
Henderson	Hendersonville
Iredell	Mooresville
Johnston	Benson
Lee	Sanford

Public Water Supply Systems with Existing
Water Transfer Between River Basins

<u>County</u>	<u>Water Supply System</u>
Lincoln	Lincoln County
Mecklenburg	Charlotte
Montgomery	Montgomery County
Moore	Carthage
New Hanover	Wilmington
Orange	Hillsborough Orange-Alamance OWASA
Polk	Columbus
Randolph/Guilford	Archdale
Randolph	Asheboro
Rockingham	Eden Reidsville
Stanly	Albemarle Norwood
Stokes/Forsyth	King
Wake	Zebulon Fuquay-Varina Holly Springs
Wayne	Goldsboro
Wilkes	N. Wilkesboro

Note: The preceding list includes known water transfers from the Drainage basin of one river to that of another river. A river basin is defined as the drainage area of a body of water designated as a "river" on a U.S. Geological Survey map. The list was prepared for consideration by the Legislative Study Committee on Surface Waters to identify public water systems that would need a permit to increase water use under the provisions of a draft bill on Water Transfer Permits. This list may not be complete.

November 6, 1990

Department of Environment, Health, and Natural Resources
Division of Water Resources

NORTH CAROLINA RIVERS

The following list includes all bodies of water in North Carolina bearing the name "river". The list was compiled from U.S. Geological survey maps and lists of geographic names. The purpose of the list is to indicate the scope of regulation of water use that would be instituted by a draft bill on Water Transfer Permits under consideration by the Legislative Study Committee on Surface Waters. Rivers that are tributary to another river are listed and indented under it.

I. Broad River Basin

Broad

Green

South Prong Green

Hungry

Little Hungry

Second Broad

First Broad

Little First Broad

North Fork First Broad

Boween

North Pacolet

II. Cape Fear River Basin

Haw

New Hope

NORTH CAROLINA RIVERS

Deep

East Fork Deep

West Fork Deep

Rocky

Cape Fear

Upper Little

Little

Black South

Black

Northeast Cape Fear

Brunswick

Elizabeth

III. Catawba River Basin

Catawba

Left Prong Catawba

Little Toe

North Fork Catawba

Linville

West Fork Linville

Old Catawba

Johns

Upper Little

Middle Little

NORTH CAROLINA RIVERS

Lower Little

East Prong Lower Little

South Fork Catawba

Little

IV. Chowan River Basin

Chowan

Meherrin

Nottoway

Wiccacon

V. French Broad River Basin

Pigeon

West Fork Pigeon

Right Hand Prong West Fork Pigeon

Middle Prong West Fork Pigeon

Little East Fork Pigeon

East Fork Pigeon

French Broad

West Fork French Broad

North Fork French Broad

Middle Fork French Broad

East Fork French Broad

NORTH CAROLINA RIVERS

Davidson

Right Fork Davidson

Little

South Prong Little

Mills

North Fork Mills

South Fork Mills

South Fork Mills

Swannanoa

North Fork Swannanoa

Left Fork Swannanoa

Right Fork Swannanoa

Blood

Nolichucky

North Toe

South Toe

Left Prong South Toe

Right Prong South Toe

Cane

VI. Hiwassee River Basin

Hiwassee

Valley

Nottely

NORTH CAROLINA RIVERS

VII. Little Tennessee River Basin

Little Tennessee

Cullasaja

Nantahala

Tuckasegee

West Fork Tuckasegee

Oconaluftee

Cheoah

Tellico

Chattooga

East Fork Chattooga

Tullulah

Coleman

Toxaway

Horsepasture

Whitewater

Thompson

VIII. Lumber River Basin

Lumber

Waccamaw

Lockwoods Folly

Middle

Shalotte

NORTH CAROLINA RIVERS

IX. Neuse River Basin

Neuse

Eno

West Fork Eno

East Fork Eno

Little

South Fork Little

North Fork Little

Flat

North Flat

South Flat

Little

Tar

Trent

South

West Fork South

East Fork South

Bay

North Prong Bay

South Prong Bay

NORTH CAROLINA RIVERS

X. New River Basin

New

South Fork New

Middle Fork South Fork New

East Fork South Fork New

North Fork New

South Branch North Fork New River

Little

XI. Pasquotank River Basin

North

North Landing

Northwest

Pasquotank

Little

Perquimans

Yeopim

Scuppernong

Alligator

Northwest Fork Alligator

Southwest Fork Alligator

Little Alligator

NORTH CAROLINA RIVERS

XII. Roanoke River Basin

Dan

Little Dan

Mayo

South Mayo

North Mayo

Smith

Hyco

Roanoke

Eastmost

Cashie

Little River

Little River

Middle River

XIII. Tar-Pamlico River Basin

Tar

North Fork Tar

Pamlico

Pungo

Long Shoal

Middle Prong Pamlico

NORTH CAROLINA RIVERS

XIV. Watauga River Basin

Watauga

Elk

XV. White Oak River Basin

New

White Oak

North Prong White Oak

South Prong White Oak

Newport

Northwest Prong Newport

Southwest Prong Newport

North

XVI. Yadkin-Pee Dee River Basin

Yadkin

Reddies

Middle Fork Reddies

South Fork Reddies

North Fork Reddies

Roaring

West Prong Roaring

Middle Prong Roaring

NORTH CAROLINA RIVERS

East Prong Roaring

Mitchell

South Fork Mitchell

North Prong South Fork Mitchell

Fisher

Little Fisher

Ararat

Little Yadkin

West Prong Little Yadkin

East Prong Little Yadkin

South Yadkin

Pee Dee

Uwharrie

Little Uwharrie

Rocky

West Branch Rocky

South Prong West Branch Rocky

Little

South Prong Little

West Fork Little

Lynches

APPENDIX H

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S/H

D

91-LH-11

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Water Diversion Info. & Plan.

(Public)

Sponsors: Senator Royall

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE LOCAL GOVERNMENTS TO IDENTIFY EXISTING AND
3 POTENTIAL DIVERSIONS OF WATER IN LOCAL WATER SUPPLY PLANS AND
4 TO REQUIRE THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL
5 RESOURCES TO DEVELOP A PLAN TO INDICATE CURRENT AND PROJECTED
6 WATER DIVERSIONS.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 143-355 reads as rewritten:
9 "§ 143-355. Powers and duties of the Department.
10 (a) Repealed by Session Laws 1989, c. 603, s. 1.
11 (b) Functions to Be Performed. -- The Department shall:
12 (1) Request the North Carolina Congressional Delegation
13 to apply to the Congress of the United States
14 whenever deemed necessary for appropriations for
15 protecting and improving any harbor or waterway in
16 the State and for accomplishing needed flood
17 control, shore-erosion prevention, and
18 water-resources development for water supply, water
19 quality control, and other purposes.
20 (2) Initiate, plan, and execute a long-range program
21 for the preservation, development and improvement
22 of rivers, harbors, and inland ports, and to
23 promote the public interest therein.
24 (3) Prepare and recommend to the Governor and the
25 General Assembly any legislation which may be

- 1 deemed proper for the preservation and improvement
2 of rivers, harbors, dredging of small inlets,
3 provision for safe harbor facilities, and public
4 tidewaters of the State.
- 5 (4) Make engineering studies, hydraulic computations,
6 hydrographic surveys, and reports regarding
7 shore-erosion projects, dams, reservoirs, and
8 river-channel improvements; to develop, for budget
9 and planning purposes, estimates of the costs of
10 proposed new projects; to prepare bidding
11 documents, plans, and specifications for harbor,
12 coastal, and river projects, and to inspect
13 materials, workmanship, and practices of
14 contractors to assure compliance with plans and
15 specifications.
- 16 (5) Cooperate with the United States Army Corps of
17 Engineers in causing to be removed any wrecked,
18 sunken or abandoned vessel or unauthorized
19 obstructions and encroachments in public harbors,
20 channels, waterways, and tidewaters of the State.
- 21 (6) Cooperate with the United States Coast Guard in
22 marking out and establishing harbor lines and in
23 placing buoys and structures for marking navigable
24 channels.
- 25 (7) Cooperate with federal and interstate agencies in
26 planning and developing water-resource projects for
27 navigation, flood control, hurricane protection,
28 shore-erosion prevention, and other purposes.
- 29 (8) Provide professional advice to public and private
30 agencies, and to citizens of the State, on matters
31 relating to tidewater development, river works, and
32 watershed development.
- 33 (9) Discuss with federal, State, and municipal
34 officials and other interested persons a program of
35 development of rivers, harbors, and related
36 resources.
- 37 (10) Make investigations and render reports requested by
38 the Governor and the General Assembly.
- 39 (11) Participate in activity of the National Rivers and
40 Harbors Congress, the American Shore and Beach
41 Preservation Association, the American Watershed
42 Council, the American Water Works Association, the
43 American Society of Civil Engineers, the Council of
44 State Governments, the Conservation Foundation, and

- 1 other national agencies concerned with conservation
2 and development of water resources.
- 3 (12) Prepare and maintain climatological and
4 water-resources records and files as a source of
5 information easily accessible to the citizens of
6 the State and to the public generally.
- 7 (13) Formulate and administer a program of dune
8 rebuilding, hurricane protection, and shore-erosion
9 prevention.
- 10 (14) Include in the biennial budget the cost of
11 performing the additional functions indicated
12 above.
- 13 (15) Initiate plan, study, and execute a long-range
14 floodplain management program for the promotion of
15 health, safety, and welfare of the public. In
16 carrying out the purposes of this subsection, the
17 primary responsibility of floodplain management
18 rests with the local levels of government and it
19 is, therefore, the policy of this State and of this
20 Department to provide guidance, coordination, and
21 other means of assistance, along with the other
22 agencies of this State and with the local levels of
23 government, to effectuate adequate floodplain
24 management programs.
- 25 (b1) The Department is directed to pursue an active
26 educational program of floodplain management measures, to include
27 in each biennial report a statement of flood damages, location
28 where floodplain management is desirable, and suggested
29 legislation, if deemed desirable, and within its capacities to
30 provide advice and assistance to State agencies and local levels
31 of government.
- 32 (c) Repealed by Session Laws 1961, c. 315.
- 33 (d) Investigation of Coasts, Ports and Waterways of State. --
34 The Department is designated as the official State agency to
35 investigate and cause investigations to be made of the coasts,
36 ports and waterways of North Carolina and to cooperate with
37 agencies of the federal and State government and other political
38 subdivisions in making such investigations. The provisions of
39 this section shall not be construed as in any way interfering
40 with the powers and duties of the Utilities Commission, relating
41 to the acquiring of rights-of-way for the Intra-Coastal Waterway;
42 or to authorize the Department to represent the State in
43 connection with such duties.

1 (e) Registration with Department Required; Registration
2 Periods. -- Every person, firm or corporation engaged in the
3 business of drilling, boring, coring or constructing wells in any
4 manner with the use of power machinery in this State, shall
5 register annually with the Department on forms to be furnished by
6 the said Department. The registration required hereby shall be
7 made during the period from January 1 to January 31 of each year.

8 (f) Samples of Cuttings to Be Furnished the Department When
9 Requested. -- Every person, firm or corporation engaged in the
10 business of drilling, boring, coring or constructing wells in any
11 manner by the use of power machinery shall furnish the Department
12 samples of cuttings from such depths as the Department may
13 require from all wells constructed by such person, firm or
14 corporation, when such samples are requested by the Department.
15 The Department shall bear the expense of delivering such samples.
16 The Department shall, after an analysis of the samples submitted,
17 furnish a copy of such analysis to the owner of the property on
18 which the well was constructed; the Department shall not report
19 the results of any such analysis to any other person whatsoever
20 until the person legally authorized to do so authorizes in
21 writing the release of the results of the analysis.

22 (g) Reports of Each Well Required. -- Every person, firm or
23 corporation engaged in the business of drilling, boring, coring,
24 or constructing wells with power machinery within the State of
25 North Carolina shall, within 30 days of the completion of each
26 well, report to the Department on forms furnished by the
27 Department the location, size, depth, number of feet of casing
28 used, method of finishing, and formation log information of each
29 such well. In addition such person, firm or corporation shall
30 report any tests made of each such well including the method of
31 testing, length of test, draw-down in feet and yield in gallons
32 per minute. The person, firm or corporation making such report
33 to the Department shall at the time such report is made also
34 furnish a copy thereof to the owner of the property on which the
35 well was constructed.

36 (h) Drilling for Petroleum and Minerals Excepted. -- The
37 provisions of this Article shall not apply to drillings for
38 petroleum and minerals.

39 (i) Penalty for Violation. -- Any person violating the
40 provisions of subsections (e), (f) and (g) of G.S. 143-355 shall
41 be guilty of a misdemeanor and, upon conviction, shall be
42 punished by a fine of fifty dollars (\$50.00). Each violation
43 shall constitute a separate offense.

1 (j) Miscellaneous Duties. -- The Department shall make
2 investigations of water supplies and water powers, prepare and
3 maintain a general inventory of the water resources of the State
4 and take such measures as it may consider necessary to promote
5 their development; and to supervise, guide, and control the
6 performance of the duties set forth in subsection (b) of this
7 section and to hold hearings with regard thereto. In connection
8 with administration of the well-drilling law the Department may
9 prepare analyses of well cuttings for mineral and petroleum
10 content.

11 (k) Water Use Information. -- Any person using, withdrawing,
12 diverting or obtaining water from surface streams, lakes and
13 underground water sources shall, upon the request of the
14 Department, file a monthly report with the Department showing the
15 amount of water used, withdrawn, diverted or obtained from such
16 sources. Such report shall be on a form supplied by the
17 Department and shall show the identification of the water well or
18 other withdrawal facility, location, withdrawal rate (measured in
19 gallons per minute), and total gallons withdrawn during the
20 month. Reports required to be filed under this subsection shall
21 be filed on or before the fifteenth day of the month succeeding
22 the month during which the using, withdrawing, diverting or
23 obtaining water required to be reported occurred. This
24 subsection does not apply to withdrawals or uses by individuals
25 or families for household, livestock, or gardens. All reports
26 required under this subsection are provided solely for the
27 purpose of the Department. Within the meaning of this subsection
28 the term 'person' means any and all persons, including
29 individuals, firms, partnerships, associations, public or private
30 institutions, municipalities or political subdivisions,
31 governmental agencies, and private or public corporations
32 organized or existing under the laws of this State or any other
33 state or country.

34 (l) Each unit of local government that provides public water
35 services or that plans to provide such service shall, either
36 individually or together with other such units of local
37 government, prepare a local water supply plan. The Department
38 shall provide technical assistance with the preparation of such
39 plans to units of local government upon request and to the extent
40 that the Department has resources available to provide such
41 assistance. At a minimum, local units of government shall
42 include in local water supply plans such information as is
43 readily available to them. However this subsection shall be
44 construed to require the preparation of local water supply plans

1 only to the extent that technical assistance is available to
2 units of local government from the Department. Such plans shall
3 include present and projected population and water use within the
4 service area, present and future water supplies, present and
5 future diversions of water required for water supplies, an
6 estimate of such technical assistance as may be needed at the
7 local level to address projected water needs, and such other
8 related information as the Department may require in the
9 preparation of a State water supply plan. Local plans shall be
10 revised to reflect changes in relevant data and projections at
11 least once each five years unless the Department requests more
12 frequent revisions. Local plans and revised plans shall be
13 submitted to the Department once they have been approved by the
14 unit(s) of local government.

15 (m) In order to assure the availability of adequate supplies
16 of good quality water to protect the public health and to support
17 desirable economic growth, the Department shall develop a State
18 water supply plan. The State water supply plan shall include the
19 information and projections required to be included in local
20 plans, a summary of the technical assistance needs indicated by
21 local plans, and shall indicate the extent to which the various
22 local plans are compatible. The State plan shall identify
23 potential conflicts among the various local plans and ways in
24 which local water supply programs could be better coordinated."

25 Sec. 2. The Department of Environment, Health, and
26 Natural Resources shall develop a plan that indicates current and
27 projected diversions of water from one stream or river to another
28 based on the information obtained by the Department under G.S.
29 143-355. The Department shall report semi-annually beginning
30 October 1, 1991, to the Joint Legislative Commission on
31 Governmental Operations and the Environmental Review Commission
32 on its progress in developing the plan.

33 Sec. 3. This act is effective upon ratification.

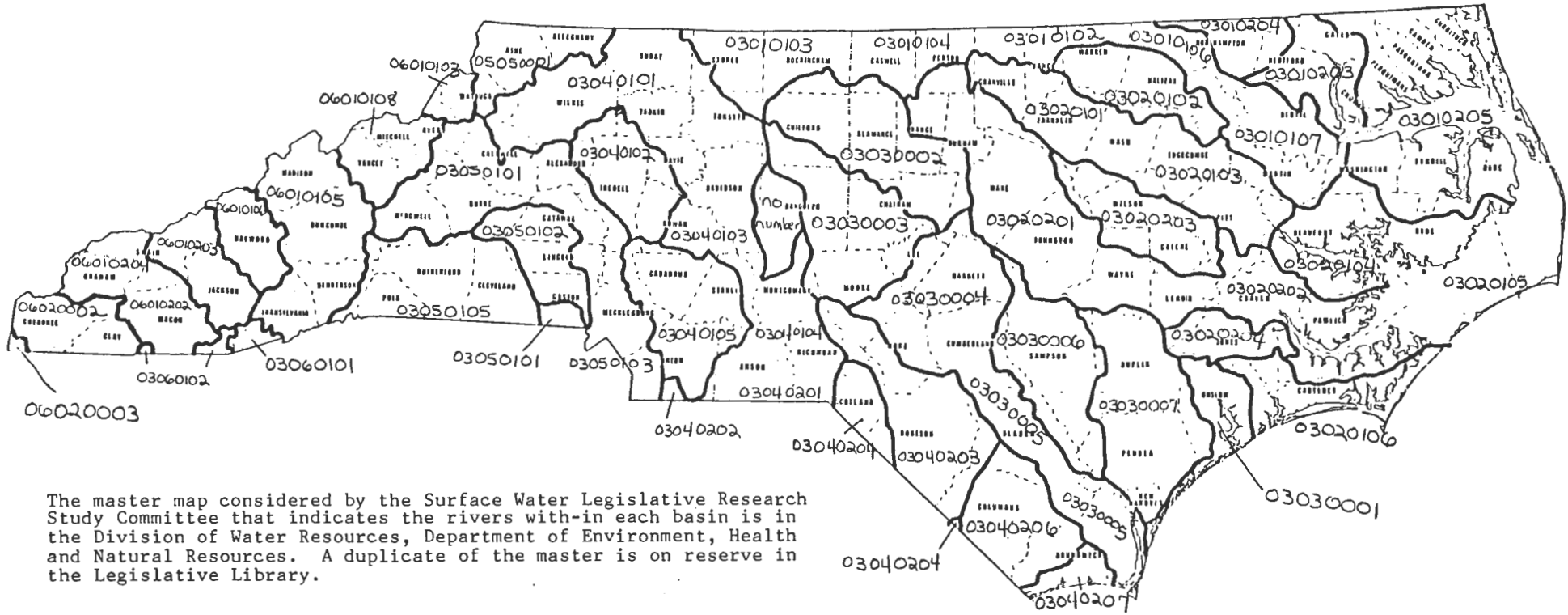
MINORITY RECOMMENDATIONS

1. The General Assembly should encourage the completion of the local and State water supply plans mandated by House Bill 157. The water supply plans will document the extent of present and proposed interbasin transfers and the extent to which they would cause problems of conflicts over water or depletion of water resources.

2. The General Assembly should create a study commission on water law to examine North Carolina's water management needs and write new legislation on water use permitting, instream flow protection, and interbasin transfer. This new legislation should be considered in the context of the Water Use Act of 1967, the Right of Withdrawal of Impounded Waters Act, and other existing statutes. Existing statutes should be modified or deleted as needed with the adoption of new legislation to give North Carolina a consistent body of water law.

3. During the time when new state water laws are being developed, those communities who object to proposed interbasin transfers should use the wide array of existing legislation to protect their interests. Existing law that may be applicable to interbasin transfers includes the Water Use Act of 1967, the North Carolina Environmental Policy Act, GS 162A-7, GS 153A-285, the Administrative Procedures Act, and the common law of riparian rights.

ALTERNATE RIVER BASIN MAP



The master map considered by the Surface Water Legislative Research Study Committee that indicates the rivers with-in each basin is in the Division of Water Resources, Department of Environment, Health and Natural Resources. A duplicate of the master is on reserve in the Legislative Library.

H-9

November 15, 1990

Boundary Designation for Interbasin Transfer Regulations

	Hydrologic Unit Code
Albermarle Sound	03010205
Chowan River Basin	
Chowan River	03010201
	03010202
	03010203
	03010204
Meherrin River	
Roanoke River Basin	
Roanoke River	03010107
	03010106
	03010102
	03010104
	03010103
Tar-Pamlico Basin	
Pamlico River & Sound	03020105
	03020104
Tar River	03020103
	03020101
Fishing Creek	03020102
Neuse River Basin	
Neuse River	03020202
	03020201
Contentnea Creek	03020203
Trent River	03020204
White Oak River Basin	
White Oak River	03020106
Cape Fear River Basin	
New River	03030001
Northeast Cape Fear River	03030007
Cape Fear River	03030005
	03030004
South River	03030006
Deep River	03030003
Haw River	03030002
Lumber River Basin	
Shalotte River	03040207
Waccamaw River	03040206
Lumber River	03040203
Big Shoe Heel Creek	03040204
Yadkin-Pee Dee River Basin	
Pee Dee River	03040201
	03040104
	03040202
	03040103
	03040101
Uwharrie River (No distinctive HUC, it is included with the Pee Dee River.)	
Rocky River	03040105
South Yadkin River	03040102

	Hydrologic Unit Code
New River Basin	
New River	05050001
Catawba River Basin	
Catawba River	03050103
	03050101
South Fork Catawba River	03050102
Watauga River Basin	
Watauga River	06010103
Broad River Basin	
Broad River	03050105
French Broad River Basin	
French Broad River	06010105
Toe River	06010108
Pigeon River	06010106
Little Tennessee River Basin	
Little Tennessee River	06010202
	06010204
Tuckasegee River	06010203
Hiwassee River Basin	
Hiwassee River	06020002
	06020003
Savannah River Basin	
	03060101
	03060102