

1 (c) An applicant for a certificate shall petition the Commission for the certificate.
2 The petition shall be in writing and shall include the following:

- 3 (1) A description of the facilities to be used to transfer the water, including
4 the location and capacity of water intakes, pumps, pipelines, and other
5 facilities.
- 6 (2) A description of the proposed uses of the water to be transferred.
- 7 (3) ~~The~~To assure the efficient use of the water and the avoidance of
8 waste, the water conservation measures to be used by the applicant at
9 the time of application and any additional water conservation measures
10 that will be implemented by the applicant if the certificate is granted.
11 ~~to assure efficient use of the water and avoidance of waste.~~
- 12 (4) The applicant's water supply plan and 25-year population projections,
13 as appropriate.
- 14 (5) An itemized report detailing the source, volume, and maximum
15 permitted capacity of all existing water withdrawals and interbasin
16 transfers from the source river basin.
- 17 (6) A determination of whether the proposed interbasin transfer and
18 existing, permitted, and other proposed withdrawals are within the safe
19 yield of the source water body.
- 20 (7) A letter of support from each downstream public water supplier,
21 including each water supplier in downstream states, that make
22 withdrawals from the source water body stating that the proposed
23 interbasin transfer will not negatively affect existing water users and is
24 consistent with local water supply plans.
- 25 (8) The most recent information available from the Division of Water
26 Quality of the Department concerning the water quality of the source
27 river basin and the receiving river basin.
- 28 (9) The most recent information available from the Wildlife Resources
29 Commission concerning aquatic habitat for rare, threatened, and
30 endangered species in the source river basin and the receiving river
31 basin.
- 32 (4)(10) Any other information deemed necessary by the Commission for
33 review of the proposed water transfer.

34 (d) Upon receipt of the petition, the Commission shall hold a public hearing on
35 the proposed transfer after giving at least 30 days' written notice of the hearing as
36 follows:

- 37 (1) By publishing notice in the North Carolina Register.
- 38 (2) By publishing notice in a newspaper of general circulation in the ~~area~~
39 areas of the river basin that withdraw water from the source water
40 body downstream from the point of the proposed withdrawal.
- 41 (3) By giving notice by first-class mail to each of the following:
- 42 a. A person who has registered under this Part a water withdrawal
43 or transfer from the same river basin where the water for the
44 proposed transfer would be withdrawn.

- 1 b. A person who secured a certificate under this Part for a water
2 transfer from the same river basin where the water for the
3 proposed transfer would be withdrawn.
- 4 c. A person holding a National Pollutant Discharge Elimination
5 System (NPDES) wastewater discharge permit exceeding
6 100,000 gallons per day for a discharge located downstream
7 from the proposed withdrawal point of the proposed transfer.
- 8 d. The board of county commissioners of each county that is
9 located entirely or partially within the river basin that is the
10 source of the proposed transfer.
- 11 e. The governing body of any public water supply system that
12 withdraws water downstream from the withdrawal point of the
13 proposed transfer.

14 (e) The notice of the public hearing shall include a nontechnical description of
15 the applicant's request and a conspicuous statement in bold type as to the effects of the
16 water transfer on the source and receiving river basins. The notice shall further indicate
17 the procedure to be followed by anyone wishing to submit comments on the proposed
18 water transfer.

19 (f) In determining whether a certificate may be issued for the transfer, the
20 Commission shall specifically consider each of the following items and state in writing
21 its findings of fact with regard to each item:

- 22 (1) The necessity, reasonableness, and beneficial effects of the amount of
23 surface water proposed to be transferred and its proposed uses.
- 24 (2) The present and reasonably foreseeable future detrimental effects on
25 the source river basin, including present and future effects on public,
26 industrial, and agricultural water supply needs, wastewater
27 assimilation, water quality, fish and wildlife habitat, hydroelectric
28 power generation, navigation, and recreation. Local water supply plans
29 that affect the source major river basin shall be used to evaluate the
30 projected future municipal water needs in the source major river
31 ~~basin~~ basin and to determine whether the proposed interbasin transfer
32 will have a detrimental impact on the future water supplies of local
33 governments that make withdrawals from the source water body.
- 34 (2a) The cumulative effect on the source major river basin of any water
35 transfer or consumptive water use that, at the time the Commission
36 considers the application for a certificate is occurring, is authorized
37 under this section, or is projected in any local water supply plan that
38 has been submitted to the Department in accordance with
39 G.S. 143-355(1).
- 40 (3) The detrimental effects on the receiving river basin, including effects
41 on water quality, wastewater assimilation, fish and wildlife habitat,
42 including wetlands, navigation, recreation, and flooding.
- 43 (4) Reasonable alternatives to the proposed transfer, including their
44 probable costs, and environmental impacts.

1 (5) If applicable to the proposed project, the applicant's present and
2 proposed use of impoundment storage capacity to store water during
3 high-flow periods for use during low-flow periods and the applicant's
4 right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

5 (6) If the water to be withdrawn or transferred is stored in a multipurpose
6 reservoir constructed by the United States Army Corps of Engineers,
7 the purposes and water storage allocations established for the reservoir
8 at the time the reservoir was authorized by the Congress of the United
9 States.

10 (7) Any other facts and circumstances that are reasonably necessary to
11 carry out the purposes of this Part.

12 (f1) An environmental assessment as defined by G.S. 113A-9(1) shall be prepared
13 for any petition for a certificate under this section. The determination of whether an
14 environmental impact statement shall also be required shall be made in accordance with
15 the provisions of Article 1 of Chapter 113A of the General Statutes. The applicant who
16 petitions the Commission for a certificate under this section shall pay the cost of special
17 studies necessary to comply with Article 1 of Chapter 113A of the General Statutes. The
18 environmental assessment or environmental impact statement shall include an
19 evaluation of the applicant's ability to meet the applicant's water supply needs from
20 sources that do not require an interbasin transfer and through the use of water
21 conservation measures. The environmental assessment or environmental impact
22 statement shall include an evaluation of measures to mitigate any damage that may arise
23 from the proposed interbasin transfer. The environmental assessment or environmental
24 impact statement shall be completed and made available to the public at least 30 days
25 before the public hearing required by subsection (d) of this section.

26 (g) A certificate shall be granted for a water transfer if the proposed interbasin
27 transfer will not supply more than five percent (5%) of the water used by the applicant,
28 and the applicant establishes and the Commission concludes by a preponderance of the
29 evidence based upon the findings of fact made under subsection (f) of this section that:
30 (i) the benefits of the proposed transfer outweigh the detriments of the proposed
31 transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree.
32 The conditions necessary to ensure that the detriments are and continue to be mitigated
33 to a reasonable degree shall be attached to the certificate in accordance with subsection
34 (h) of this section.

35 (h) The Commission may grant the certificate in whole or in part, or deny the
36 certificate. The Commission may also grant a certificate with any conditions attached
37 that the Commission believes are necessary to achieve the purposes of this Part. The
38 conditions may include mitigation measures proposed to minimize any detrimental
39 effects of the proposed transfer and measures to protect the availability of water in the
40 source river basin during a drought or other emergency. The certificate shall include a
41 drought management plan that specifies how the transfer shall be managed to protect the
42 source river basin during drought conditions. The certificate shall indicate the maximum
43 amount of water that may be transferred. No person shall transfer an amount of water
44 that exceeds the amount in the certificate.

1 (i) In cases where an applicant requests approval to increase a transfer that
2 existed on July 1, 1993, the Commission shall have authority to approve or disapprove
3 only the amount of the increase. If the Commission approves the increase, however, the
4 certificate shall be issued for the amount of the existing transfer plus the requested
5 increase. Certificates for transfers approved by the Commission under G.S. 162A-7
6 shall remain in effect as approved by the Commission and shall have the same effect as
7 a certificate issued under this Part.

8 (j) In the case of water supply problems caused by drought, a pollution incident,
9 temporary failure of a water plant, or any other temporary condition in which the public
10 health requires a transfer of water, the Secretary of Environment and Natural Resources
11 may grant approval for a temporary transfer. Prior to approving a temporary transfer,
12 the Secretary shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are
13 likely to be affected by the proposed transfer. However, the Secretary shall not be
14 required to satisfy the public notice requirements of this section or make written
15 findings of fact and conclusions in approving a temporary transfer under this subsection.
16 If the Secretary approves a temporary transfer under this subsection, the Secretary shall
17 specify binding conditions to protect other water users. A temporary transfer shall not
18 exceed six months in duration, but the approval may be renewed for a period of six
19 months by the Secretary based on demonstrated need as set forth in this subsection. A
20 temporary transfer may be renewed no more than two times after the initial approval.

21 (k) The substantive restrictions and conditions upon surface water transfers
22 authorized in this section may be imposed pursuant to any federal law that permits the
23 State to certify, restrict, or condition any new or continuing transfers or related activities
24 licensed, relicensed, or otherwise authorized by the federal government.

25 (l) When any transfer for which a certificate was issued under this section equals
26 eighty percent (80%) of the maximum amount authorized in the certificate, the applicant
27 shall submit to the Department a detailed plan that specifies how the applicant intends to
28 address future foreseeable water needs. If the applicant is required to have a local water
29 supply plan, then this plan shall be an amendment to the local water supply plan
30 required by G.S.143-355(l). When the transfer equals ninety percent (90%) of the
31 maximum amount authorized in the certificate, the applicant shall begin implementation
32 of the plan submitted to the Department.

33 (m) It is the public policy of the State to maintain, protect, and enhance water
34 quality within North Carolina. To that end, there is a presumption that a certificate for
35 an interbasin transfer shall not be granted unless the interbasin transfer is necessary to
36 protect and promote public health and welfare. Further, it is the public policy of the
37 State that the cumulative impact of transfers from a source river basin shall not result in
38 a violation of the antidegradation policy set out in 40 Code of Federal Regulations §
39 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant
40 thereto.

41 (n) The Commission may modify any certificate granted for an interbasin transfer
42 if the Commission determines that:

- 1 (1) The cumulative impact of existing, permitted, and proposed
2 withdrawals has exceeded or will exceed the safe yield of the source
3 water body;
4 (2) The cumulative impact of existing, permitted, and proposed
5 withdrawals has caused or contributed to or will cause or contribute to
6 the deterioration of water quality in either the source river basin or the
7 receiving river basin; or
8 (3) The projections of population growth, water supply, or water demand
9 upon which the certificate for the interbasin transfer was granted were
10 inaccurate."

11 **SECTION 3.** This act is effective when it becomes law and applies to any
12 petition for a certificate or for the modification of a certificate for an interbasin transfer
13 that is submitted to the Environmental Management Commission on or after that date.