



State of North Carolina

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ROY COOPER
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September 30, 2008

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Re: Expert Report in 07 EHR 0476 and 07 EHR 0480

Dear Charles, Matt, Chandra, and Julie:

Please find enclosed a copy of the report prepared by Tom Reeder, current Director of the North Carolina Division of Water Resources and former Manager of the Wetlands and Stormwater Branch of the North Carolina Division of Water Quality.

Sincerely,

A handwritten signature in black ink that reads "Jennie Wilhelm Hauser". The signature is fluid and cursive, with the first name "Jennie" being particularly prominent.

Jennie Wilhelm Hauser
Special Deputy Attorney General

cc: Keith H. Johnson, Esq.
H. Glenn T. Dunn, Esq.
Chad W. Essick, Esq.

From: Tom Reeder

Subj: Comments on Wright Water Engineers, Inc. Engineering Evaluation

The purpose of this document is to provide comments on the Wright Water Engineers' Engineering Evaluation of Specific Aspects of Proposed Interbasin Transfer of 20 mgd by Concord and Kannapolis from the Catawba and Yadkin River Basins to the Rocky River Basin (henceforth this will be referred to as the "WWE Evaluation"). Specifically my comments will be directed to that portion of the WWE Evaluation that deals with the secondary and cumulative impacts to aquatic resources in the Rocky River Basin associated with the proposed Interbasin Transfer (IBT). The WWE Evaluation asserts that the proposed IBT will facilitate and spawn future development and that this continued development of the Rocky River Basin area (specifically, Cabarrus County) will have a greater than "minimal" impact to the environment and aquatic resources in Cabarrus County due to the lack of effective water quality programs. More specifically, the WWE Evaluation claims that there is an absence of comprehensive programs to effectively regulate this future development in a manner that will minimize the secondary and cumulative impacts to the waters in Cabarrus County.

On the contrary, the State of North Carolina implements and administers a wide range of comprehensive environmental protection programs specifically designed to minimize to a reasonable degree the secondary and cumulative impacts from growth and development that is referenced in the WWE Evaluation. The specific programs that North Carolina maintains in this regard are detailed below:

National Pollutant Discharge Elimination System (NPDES) Phase 2 Stormwater Program: This program encompasses a comprehensive set of rules and regulations that apply in the entirety of Cabarrus County. These rules apply to all new development activities (including NC Department of Transportation activities) that will disturb more than 1 acre of land. Under the auspices of this program these regulated activities must comply with a strict set of requirements to ensure that this development will not negatively impact the existing uses of the aquatic environment both during the construction phase and after the construction has been completed. The Phase 2 Stormwater regulations that are in effect in Cabarrus County are considered to be some of the more stringent stormwater rules in North Carolina. In addition, on page 11 of their evaluation, WWE specifically notes that the Cabarrus County Unified Development Ordinance exceeds the standard NPDES Phase 2 requirements.

401 Certification Program: This program requires most activities that require a federal license or permit, which includes a US Army Corps of Engineers 404 Permit, and will impact the surface waters or wetlands of North Carolina to receive a 401 Water Quality Certification before proceeding with that activity. North Carolina possesses a nationally-recognized 401 Certification Program and the detailed permit review for the issuance of this Certification includes a thorough evaluation to ensure that all activities permitted

under this program will not cause or contribute to detrimental secondary and cumulative impacts, which are the exact impacts cited in the WWE Evaluation as a reason for the denial of the IBT Certificate.

Sedimentation and Erosion Control Program: This program is effective in the entirety of Cabarrus County and applies to any development activity that will disturb more than one acre of land. This program is specifically designed to ensure that regulated activities do not harm the natural environment by causing excessive sedimentation or erosion during their construction phase.

National Pollutant Discharge Elimination System (NPDES) Wastewater Treatment Plant (WWTP) Permitting Program: The NPDES WWTP Permitting Program requires all new or existing wastewater treatment plants to obtain and comply with a comprehensive permit that regulates all aspects of that plant's wastewater discharge. These permits are designed to ensure the protection of the State's surface waters from any deleterious effects that may be associated with the discharge from existing or future WWTPs.

Sanitary Sewer Overflow (SSO) Spill Control Program: This comprehensive program is specifically designed to protect the natural environment from the detrimental impacts of sanitary sewer overflows.

It needs to be noted that these regulatory programs, both individually and when viewed as a comprehensive set of requirements, are specifically designed and intended to minimize the secondary and cumulative impacts associated with increased urbanization that are cited in the WWE Evaluation on page 7. In specific terms, these programs have been designed to ensure the protection of the existing uses of the surface waters of North Carolina. In particular these programs have been designed to comply with the federal Clean Water Act and protect the natural environment from the harmful impacts of activities, such as construction and extension of water and sewer lines, filling and impacts to waters and wetlands, spills, sediment loadings from construction activities, loss of vegetated buffer zones, increases in municipal wastewater discharges, and changes in water quality.

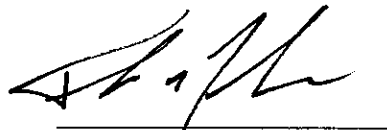
All of the programs noted above are subject to review, audit, and approval by the US Environmental Protection Agency (EPA). The EPA performs a detailed review of the parameters of these programs and periodically audits their implementation. More specifically, these programs will only gain EPA approval if that agency has determined that they will comply with federal "antidegradation requirements," and prevent the degradation of existing uses of the surface waters of North Carolina. Hence, by providing their approval, the EPA is certifying that these programs will protect the existing uses of North Carolina's waters and will comply with all aspects of the federal Clean Water Act. It is worth noting that these programs would not gain federal approval if they were deemed to be ineffective in minimizing secondary and cumulative impacts to the natural environment.

In contrast to all of the information presented above, the WWE Evaluation deems that this comprehensive set of federally-approved, regulatory programs will be ineffective in minimizing the impacts to the natural environment of the Rocky River basin from secondary and cumulative impacts. The WWE Evaluation bases this assertion on their opinion that the North Carolina programs have elements that are “common” to other regulatory programs throughout the United States and, in WWE’s opinion, these other programs have been ineffective in minimizing environmental impacts. However, the WWE Evaluation fails to provide any specific information regarding what elements of the North Carolina programs that it considers to be “common,” or comparable, with other programs throughout the US, and provides no empirical or quantifiable data with which to document these failures of minimization. In short, the WWE Evaluation dismisses all of this State’s federally-approved regulatory programs simply based on their qualitative assessment that these programs are similar to other programs located in other states that, in WWE’s opinion, have failed to minimize secondary and cumulative impacts. However, WWE dismisses the effectiveness of North Carolina’s programs without providing any detailed information or insight into what elements of North Carolina’s programs are similar to the ineffective (in WWE’s opinion) programs in other states, or providing any quantifiable data that can be used to document the failure of North Carolina’s program, or any other program, to minimize impacts to the natural environment. Based solely on this casual and superficial evaluation, WWE expects the Court to disregard the federal EPA’s comprehensive evaluation and review of North Carolina’s environmental programs, which has deemed these programs to be fully protective of the existing uses of North Carolina’s waters and in compliance with the Clean Water Act, and accept WWE’s assertion that these programs will be ineffective based on WWE’s purported, but completely undocumented, argument of commonality with allegedly ineffective programs throughout the United States.

In addition, WWE presents some cursory documentation regarding two days of field inspections made by a WWE staff member in Cabarrus County. From the documentation provided with the WWE Evaluation it is difficult to determine the level of compliance of these sites with the appropriate regulatory requirements and to determine the magnitude of the impacts to the environment that may have been caused by these sites allegedly failing to fully comply with the applicable environmental rules. However, it should be noted that the Department of Environment and Natural Resources is already cognizant of the fact that not all permitted activities fully comply with all the specific requirements of their permits and that is why the Department maintains a comprehensive compliance and enforcement initiative. I am aware of no water-related environmental program in the United States that can boast of continuous 100% compliance with all of its rules from all of its permitted entities. Some level of non-compliance is expected and anticipated when implementing regulatory programs of this nature. That is why all programs, such as North Carolina’s, maintain a proactive compliance and enforcement program. I find it hard to believe that WWE seriously expects the Court to dismiss North Carolina’s federally-approved regulatory programs as ineffective simply because their field investigator was able to find permitted several sites that were allegedly in some level of non-compliance with their permit requirements out of the many permitted sites in Cabarrus County and the thousands of sites permitted all throughout North Carolina. As

previously noted, WWE fails to provide any quantifiable or empirical data that documents any negative impact to the environment from the sites that they allege are in non-compliance with North Carolina's rules. Furthermore, it is very difficult to discern from the pictures included in the report as to the level of possible non-compliance of the sites in question, or the overall nature of the alleged violations.

In summary, and as previously noted, North Carolina maintains a robust and comprehensive suite of federally-approved water quality protection programs that have been specifically designed to minimize to a reasonable degree the environmental impacts generated by the secondary and cumulative impacts of urbanization to the extent that these programs prevent the removal of the existing uses of the State's waters. These programs fully comply with the requirements of the federal Clean Water Act and are subject to review, audit, and approval of the US EPA, which is the federal agency tasked to protect all waters of the United States. WWE provides no specific, empirical, or quantifiable evidence documenting that these programs will not be adequate to minimize the environment impacts from future urbanization in Cabarrus County. Their dismissal of these regulatory programs is based solely on qualitative statements, vague comparisons, and a cursory field visit of sites. In the absence of any measurable data to the contrary, it is very difficult to understand why the plaintiffs would expect the Court to summarily dismiss the effectiveness of State-level regulatory programs that have been subject to the public rulemaking process of the North Carolina Administrative Procedures Act (APA) and withstood the previous scrutiny of the EPA.



Thomas A. Reeder
Director, NC Division of Water Resources
September 30, 2008

Documents Reviewed for the Formulation of My Opinion Dated September 30, 2008

- Wright Water Engineers' (WWE) Evaluation signed by Jonathan E. Jones, PE, dated May 9, 2008, and addressed to Chandra Taylor, Michelle Nowlin, and Julie Youngman of the Southern Environmental Law Center.
- Exhibits to WWE Evaluation cited above.
- Review of Concord-Kannapolis Interbasin Transfer (IBT) Certificate and Supporting Revised Final Environmental Impact Statement prepared by ENSR Corporation and dated May 2008.
- Chapter 15A NCAC 2B .0200 of the North Carolina Administrative Code, Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of N.C.
- North Carolina Session Law 2006-246, Stormwater Management 2006, an Act to provide for the implementation of federal Phase II stormwater management requirements and to protect water quality, as recommended by the Environmental Review Commission.
- Chapter 15A NCAC 2H .0500 of the North Carolina Administrative Code, Water Quality Certification Rules.