

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

Purpose – Establish a consensus agreement for signature by the Primary Members of the Nantahala Cooperative Stakeholder Team at the joint meeting with the Tuckasegee Cooperative Stakeholder Team on May 16, 2003. Those primary members and the organizations they represent who agree in consensus will work toward conversion of the consensus agreement into a settlement agreement by September 15, 2003.

I. DPNA agrees to the following:

A. Recreation (Rec) Facilities

1. Nantahala Lake

- a. Add a toilet, trash collection, lighting and a bank fishing area to both the Big Choga and Rocky Branch Access Areas.* (Tier 1**)
- b. Pave the parking lots at both the Big Choga and Rocky Branch Access Areas. (Tier 2**)
- c. Work with the United States Forest Service (USFS) and the North Carolina Division of Parks and Recreation (NCDPR) to further evaluate camping needs on the lake. If it is determined necessary, then upon completion, pay for the initial construction of boat-accessible-only, primitive, scattered camping sites on property owned by the USFS. One-time expense of up to \$50,000. (Tier 1**)
- d. Work with the North Carolina Wildlife Resources Commission (NCWRC), the USFS and the United States Fish & Wildlife Service (USFWS) to evaluate wildlife viewing opportunities at the following locations: (1) Big Choga Access Area, (2) Rocky Branch Access Area, or (3) property owned by the USFS adjoining the lake. Provide a summary by 8/1/03 of any significant viewing opportunities and the need, practicality and cost of providing a viewing platform at one of these three locations. If such a viewing platform is needed and can cost-effectively be constructed, then it will be added to the construction plan identified in Item A.1.a above (if it will be located at one of the access areas) or DPNA will pay for its construction once construction is completed (if it will be located on USFS-owned property). (Tier 1**)

2. Nantahala River Bypass and Main Stem

- a. Expand Recreation Facilities Just Downstream of Nantahala Powerhouse
 - 1) Lease and/or convey interest in 1 to 3 acres of DPNA-owned property to the USFS to expand the parking area at their existing public access at Rowlands Creek on Wayah Road.
 - 2) Lease and/or convey interest in a portion (size TBD) of the DPNA-owned property near and including the DPNA-owned property that is presently being used as a commercial access launch site to the USFS.
 - 3) For both Items 1) and 2) above:
 - (a) Lease and/or convey only the portion of land required to house recreation facilities that will be installed within the Tier 1** project timeframe.
 - (b) Decision on lease or conveyance will be made by DPNA once the USFS' conceptual facilities plan is finalized, including review and incorporation of input from the

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

Nantahala Gorge Association (NGA) and DPNA, and will consider the level of planned capital investment by the USFS.

- (c) Any lease to the USFS will begin and end with the new license to be issued by the Federal Energy Regulatory Commission (FERC), with option but not the obligation to renew.
 - (d) Any lease to the USFS will be for \$1/yr, provided that the USFS will develop and manage the facilities within the Tier 1** project timeframe in accordance with a site development and management plan that is approved in writing by DPNA.
 - (e) If it is determined that the on-lake campsites identified in Item A.1.c above are not needed, then provide up to \$50,000 in funding to support site planning, surveying and/or facilities construction for the USFS facilities just downstream of Nantahala Powerhouse, provided construction will be completed within the Tier 1** project timeframe. (Potential additional partners – NCWRC, Southwestern Resource Conservation and Development (SWRC&D))
- b. Construct a barrier-free fishing access area on DPNA-owned property located on the Nantahala River Bypass just upstream of its confluence with the power canal. (Tier 1**)(Potential partners – USFS, NCWRC, SWRC&D)
 - c. Improve parking on USFS-owned property along the road in the upper Nantahala River section between Whiteoak Creek and the powerhouse (kayak put in/take out below the Cascades and parking for fishermen and boaters). (Tier 1** - Note that since initiating whitewater releases in the Nantahala River Bypass are contingent upon having adequate access facilities, this item will be a top priority in scheduling construction of the Tier 1 projects). (Potential partners – USFS, NCWRC, SWRC&D)
 - d. Improve parking on USFS-owned property along the road in the upper Nantahala River section at the Cascades with 5 parking places and a viewing platform. (Tier 1** - Note that since initiating whitewater releases in the Nantahala River Bypass are contingent upon having adequate access facilities, this item will be a top priority in scheduling construction of the Tier 1 projects). (Potential partners – USFS, SWRC&D)
 - e. Improve parking on USFS-owned property along Old River Road in the upper Nantahala River section at Slot Falls. (Tier 1**)(Potential partners – USFS, SWRC&D)
 - f. Improve parking on USFS-owned property along Old River Road in the upper Nantahala River section above Whiteoak Creek at Cocktail Falls. (Tier 2**)(Potential partners – USFS, SWRC&D)
 - g. Improve parking on USFS-owned property along Old River Road in the upper Nantahala River section at Whiteoak Creek. (Tier 2**)(Potential partners – USFS, SWRC&D)

* (1) Pump-and-haul toilets will be made available only if there is sufficient property for installation and the required permits can be obtained, (2) Lighting will be provided if there is no charge for running the primary line to the site, (3) Cost-effective lighting will be designed with input from the USFWS and the NCWRC to minimize any negative impacts on fish and wildlife resources (potential examples include use of low pressure sodium bulbs with appropriate

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

shielding), (4) Trash collection will be provided to support recreational use at this location only, but may be discontinued if the site is used to dispose of household or other waste from off-site locations and (5) The bank fishing area will be land based with trail (if the site is suitable).

** For Tier 1 projects, construction will be completed within 5 years following issuance of the new FERC license for the Nantahala Project and closure of all legal challenge periods. Also, any construction of this type within the FERC project boundary must first be approved by the FERC and permits from other regulatory agencies may also be required.

** For Tier 2 projects, construction will be completed from 6 to 15 years following issuance of the new FERC license for the Nantahala Project and closure of all legal challenge periods. Also, any construction of this type within the FERC project boundary must first be approved by the FERC and permits from other regulatory agencies may also be required.

B. Public Info

1. Reservoir information

- a. Add the following to the DPNA website - actual lake level readings, the Normal Operating Range, recent lake level histories and near-term lake level projections for Nantahala Lake and special messages.
- b. Actual lake levels for Nantahala Lake and special messages will be provided by the DPNA telephone information line.
- c. Special messages concerning modifications to the lake level operating band will be communicated per the Low Inflow and Hydro Project Maintenance and Emergency Protocols.
- d. The above lake level information will be provided beginning in 2004.

2. Recreational flow information

- a. Generation and bypass release flow schedules for the Nantahala Project will be maintained on the DPNA telephone information line and website.
- b. Special messages concerning modifications to the generation and bypass release schedules will be communicated per the Low Inflow and Hydro Project Maintenance and Emergency Protocols.
- c. Establish a hotlink on the DPNA website to access the real-time surface water gages on the United States Geologic Survey (USGS) website that takes the user directly to the real-time data for USGS Gage # 03505500 in the Nantahala Gorge.
- d. The above recreational flow information will be provided beginning in 2004.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

3. Gage reactivation

- a. Upon completion by the USGS, pay for reactivation and ongoing maintenance of USGS Gage # 03505500 in the Nantahala Gorge. (Potential additional partners – North Carolina Division of Water Resources (NCDWR), USFWS)
- b. Gage fully operational by 2004, provided USGS can complete reactivation by then.

4. Communications Technology Improvements

- a. DPNA will follow improvements in communication technology and infrastructure that may occur over the life of the next hydro project license and will make cost-effective enhancements to the delivery of reservoir and recreational flow information.

5. Other Recreation Information Improvements

- a. Establish a Communications Working Group from interested members of the NCST to evaluate the audiences and needs for additional recreation information relative to the Nantahala Project and to prepare the necessary communications tools. Potential examples include but are not limited to:
 - 1) Signage at points of public access (e.g. show USFS and DPNA property boundaries, provide web addresses and telephone numbers, provide appropriate warnings, wildlife interpretive information, etc.)
 - 2) A recreation brochure
 - 3) A staff gage at the confluence of Whiteoak Creek with the Nantahala River to provide boaters, fishermen and DPNA operators with field indications of flowrates in the Nantahala River Bypass.
 - 4) A wildlife checklist or poster.
- b. Focus effort primarily on improving existing communications tools and better public access to information that already exists.
- c. Working Group will conduct the evaluation and propose a schedule and cost-sharing plan by August 15, 2003.

C. Lake Levels

- 1. Conventions and Definitions** - All elevations listed below are relative to the top of the dam (including the flood gates, fuse plugs and flashboards where applicable), with 100.0 ft = Full Pond. Normal Minimum, Normal Maximum and Normal Target Elevations change on a daily basis. The elevations shown are for the 1st day of the given month. Elevations for other days of the month are determined by linear interpolation. The Normal Target Elevation = the lake level that DPNA will endeavor in good faith to achieve, unless operating in the Low Inflow or Hydro Project Maintenance & Emergency Protocol. Since inflows vary significantly and outflow demands also vary, DPNA will not always be able to maintain actual lake levels at the Normal Target Elevations. As long as actual lake levels are within the Normal Operating Range and DPNA is not operating under the Low Inflow or Hydro Project Maintenance and Emergency Protocols, DPNA will be in compliance with any future settlement agreement, 401 Water Quality Certification and license requirements with regard to lake levels.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

2. Nantahala Lake – Maintain the following Normal Operating Range:

Month	Normal Minimum Elevation (ft)	Normal Target Elevation (ft)	Normal Maximum Elevation (ft)
Jan	73	78	83
Feb	76	83	88
Mar	78	88	93
Apr	85	93	98
May	93	97	99.5
Jun	93	97	99.5
Jul	93	97	99.5
Aug	91	96	99.5
Sep	88	93	98
Oct	83	88	93
Nov	78	83	88
Dec	73	78	83

3. Whiteoak, Dicks and Diamond Valley Ponds – No lake level limitations.

4. Any changes from current operation to begin in 2004.

D. Minimum Flows in Bypass Reaches

1. Nantahala River Bypass

- a. Minimum Flow Valve #1 - Maintain the existing minimum flow valve capable of releasing up to 8 cfs from the Whiteoak Penstock into Dicks Creek to support flows in the Nantahala River Bypass.
- b. Minimum Flow Valve #2 - Install an additional minimum flow valve capable of releasing up to 8 cfs from the Whiteoak Penstock into Dicks Creek to support flows in the Nantahala River Bypass.
- c. From the 2 minimum flow valves located on the Whiteoak Penstock, provide a total of the following releases into Dicks Creek to support flows in the Nantahala River Bypass:
 - 1) From November 1 through May 31, 8 cfs.
 - 2) From June 1 through October 31, 16 cfs.

2. Whiteoak Creek Bypass

- a. Whiteoak Diversion Dam - Provide 8 cfs or inflow to Whiteoak Pond, whichever is less, from the Whiteoak Diversion Dam into the Whiteoak Creek Bypass from January 1 through December 31.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

- 3. Implement additional minimum flows in the bypasses in 2006, or within 1 year following receipt of FERC approval to modify project facilities, whichever comes last.**

E. Recreation Flows

- 1. Normal Generation Schedule to Support Recreation - Establish recreational releases on the main stem of the Nantahala River in accordance with the following schedule:**
 - a. 2nd Monday in March through March 31 – 10:00 am to 3:00 pm, seven days per week
 - b. April – 10:00 am to 4:00 pm, seven days per week
 - c. May through Labor Day – 9:00 am to 5:00 pm, seven days per week, plus provide one additional hour to the schedule (i.e. 9:00 am to 6:00 pm) on both the Saturday and Sunday before Memorial Day and Labor Day
 - d. September after Labor Day – 10:00 am to 4:00 pm Sunday through Friday, 9:00 am to 5:00 pm Saturday
 - e. October – 10:00 am to 3:00 pm Sunday through Friday and 9:00 am to 5:00 pm Saturday.
- 2. Whitewater Races - Establish recreational releases on the main stem of the Nantahala River to support National, Southeastern Regional or State Level Whitewater Races. Provide scheduled generation releases for recreation purposes on the Nantahala River for up to 70 hrs per year in addition to the above Normal Generation Schedule to Support Recreation for major whitewater races, including training/practice and the event. To the maximum practical extent, releases will be integrated with the Normal Generation Schedule to Support Recreation as noted in Item 1 above so that additional release hours beyond the normal release schedule are not needed. Race events may be sponsored by the Nantahala Racing Club (NRC), the Carolina Canoe Club (CCC), the Georgia Canoe Association (GCA), the American Canoe Association (ACA) or other paddlesport organizations. The sponsoring organization will consult with the NGA President to coordinate their activities as much as possible prior to making a request to DPNA for releases for a whitewater race. The sponsoring organization is also required to consult with the USFS and obtain any necessary permits before conducting the race.**
- 3. Other Special Events – Other non-race requests for special generation releases that require additional generation hours above the total number of hours in any given month in the Normal Generation Schedule to Support Recreation as noted in Item 1 above will be handled on a case-by-case basis. To the maximum practical extent, releases will be integrated with the normal release schedule so that additional release hours beyond the normal release schedule are not needed. The sponsoring organization is required to consult with the NGA President to coordinate their activities as much as possible prior to making a special request to DPNA. The sponsoring organization is also required to consult with the USFS and obtain any necessary permits before conducting the event.**
- 4. Alterations to the Normal Generation Schedule to Support Recreation - DPNA will consider requests on a case-by-case basis to temporarily alter the Normal Generation Schedule to Support**

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

Recreation as noted in Item 1 above. Such alteration requests may shift the hours around or reduce the total hours of releases to conserve the available water supply, but will not add additional hours to the normal total number of hours scheduled for the given month. The requesting organization is required to consult with the NGA President to coordinate their activities as much as possible prior to making a request to DPNA.

- 5. All main stem recreational releases are at or above the best efficiency flow for the Nantahala Hydro Unit.**
- 6. Establish recreation flows in the Nantahala River Bypass using a Tainter Gate at Nantahala Dam according to the following schedule:**
 - a. Spring Weekend - Release water for six hours per day for one weekend (Saturday and Sunday) per year, scheduled for the last weekend in April. Target flowrates will be approximately 250 cfs on Saturday and approximately 350 cfs on Sunday. Releases will be timed to reach the confluence of Whiteoak Creek with the Nantahala River (i.e. approximately 5.8 river miles downstream of Nantahala Dam) at approximately 10:00 am.
 - b. Summer Afternoons - Provide four total afternoon releases per year for 3 hrs each at a target flowrate of approximately 250 cfs, scheduled between June 15 and August 31. Releases will be timed to reach the confluence of Whiteoak Creek with the Nantahala River (i.e. approximately 5.8 river miles downstream of Nantahala Dam) at approximately 4:00 pm.
 - c. Fall Weekend - Release water for seven hours per day for one weekend per year, scheduled between September 15 and September 30. Releases will be for seven hours at a target flowrate of approximately 300 cfs on Saturday; and five hours at a target flowrate of approximately 425 cfs followed by two hours at a target flowrate of approximately 250 cfs on Sunday. Initial releases each day will be timed to reach the confluence of Whiteoak Creek with the Nantahala River (i.e. approximately 5.8 river miles downstream of Nantahala Dam) at approximately 10:00 am.
 - d. Target Flowrates - The target flowrates stated above are for flowrates immediately below the confluence of Whiteoak Creek with the Nantahala River (i.e. approximately 5.8 river miles downstream of Nantahala Dam). Actual release amounts from the Tainter gates need to be large enough that when combined with other tributary and accretion flows, the total is as close as possible to the target flowrates.
 - e. Initial Fishery Monitoring - During the first two years of these bypass releases, the USFS, NCWRC, NCDWR and USFWS will monitor the existing fishery in the bypass, identify any significant fisheries issues that may be caused by these bypass releases and will cooperatively discuss any needed schedule changes with DPNA, the American Whitewater Affiliation, the NGA President and Trout Unlimited. DPNA will convene meetings among these parties each October following the first and second full seasons of these bypass releases. Permanent schedule changes will only be made if all parties agree that changes are necessary. The total number of hours at the approximate target flowrates will not change as a result of this monitoring and these cooperative scheduling discussions.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

7. **Annual Recreation Planning Meeting** - each October beginning in 2004, DPNA will convene a meeting of the following parties to discuss recreation flow planning for the next calendar year: NCWRC, NCDWR, USFWS, USFS, American Whitewater Affiliation (AW), NGA, NRC, CCC, GCA, ACA, Trout Unlimited (TU) and any other known entities desiring special releases from the Nantahala Project during the coming year, a representative from a Nantahala Lake homeowners' association and the Bartram Trail Association.
8. **Ongoing DPNA Contact for Recreation Flow Issues** – DPNA will continue to provide an employee, preferably with an office located in the DPNA service area, to serve as a primary point of contact for day-to-day, recreation flow-related issues. The employee will have additional duties, but one of the employee's priorities will be ensuring continued effective communications with businesses and the general public that use the river sections that have flows affected by DPNA hydro stations.
9. **Evaluation of First 5 Years** – in October immediately following the first 5 full recreation seasons of operation under the requirements of the new FERC license, DPNA will convene a meeting of the following parties to discuss any lessons-learned from the previous 5 years of operation and to identify any potential improvements that all the parties can agree upon: NCWRC, NCDWR, USFWS, USFS, AW, NGA, NRC, CCC, TU and any other known entities desiring special releases from the Nantahala Project, plus a representative from a lake homeowners' association if an association desires.
10. **Implement the new recreation flow schedule on the main stem of the Nantahala River in 2006, with DPNA continuing recreation flow releases in accordance with the existing license and settlement agreement until then.**
11. **Implement the recreation flow releases in the Nantahala River Bypass in 2006, or upon completion of the following, whichever comes last:**
 - a. A traffic management plan is developed by the USFS with input from other local authorities.
 - b. Construction of the improved parking areas immediately above and below the Cascades section is complete (i.e. the facilities identified in Items A.2.c and A.2.d above).

F. Resource Enhancement Initiatives

Note – these initiatives also encompass other DPNA hydro projects beyond just the areas covered by this stakeholder team.

1. **Dillsboro STEPS (Small Town Enhancement Planning Strategy) Initiative**
 - a. Continue working with the Town of Dillsboro to complete the conceptual plan for their STEPS Initiative by 5/30/03.
 - b. Continue to provide labor support, up to a maximum of 200 total man-hours from June 2003 through December 2004, from DPNA's selected staff members to the Town of Dillsboro to help with implementation of the STEPS Initiative. Support time will typically be provided on a monthly basis.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

- c. Work with the Town of Dillsboro and other partners to develop a brief written history of hydropower in western NC (particularly on the Tuckasegee and Nantahala Rivers). A written summary will be provided to the town by 12/31/04.
- d. Provide funding to the Town of Dillsboro, up to a maximum DPNA contribution of \$50,000, to support implementation of DPNA-selected elements of the town's STEPS Initiative. Funding will be provided to the town when needed to support the DPNA-selected elements and could come as early as 2004.

2. Dillsboro Dam Removal & Powerhouse Disposition

- a. File a Dillsboro Project license application with the FERC and the supporting 401 Water Quality Certification application with the North Carolina Division of Water Quality (NCDWQ) by 7/31/03. Advise both the FERC and the NCDWQ of the potential to surrender the license and request that the NCDWQ not issue a 401 Water Quality Certification and the FERC not issue an order on the license application for the Dillsboro Project until the potential license surrender is resolved.
- b. Work with the USFWS, NCDWR, NCDWQ and the NCWRC to complete the necessary environmental and engineering assessments. In addition to evaluating potential effects on aquatic species, the assessments will consider options for removing the powerhouse, converting the powerhouse to another use (e.g. museum), or simply leaving the powerhouse in as-is condition. DPNA will then use the results of these assessments to make a preliminary determination by 9/1/03 if it believes Dillsboro Dam removal can be done in a safe, environmentally beneficial and cost-effective manner and to determine the disposition of the powerhouse.
- c. Assuming the review outlined in Item F.2.b above indicates the dam can be removed safely, cost-effectively and in an environmentally beneficial manner, file a revised 401 Water Quality Certification application with the NCDWQ and file an application with the FERC to surrender the Dillsboro Project license, decommission Dillsboro Powerhouse, remove Dillsboro Dam and pursue the selected disposition path for the powerhouse as follows:
 - 1) On the same day, file both a revised 401 Water Quality Certification application and a request to withdraw the previously filed 401 Water Quality Certification application for the Dillsboro Project with the NCDWQ. The revised application will support dam removal (also removal of the powerhouse if that disposition path is chosen). Both filings will be completed by 6/1/04.
 - 2) File a license surrender application with the FERC by 6/1/04.
 - 3) Assuming NCDWQ approval and FERC approval to surrender the license and remove the dam (and possibly the powerhouse) are received (could be received as early as 6/1/05) and the approvals do not add any significant costs, burdens or risks beyond those contemplated in DPNA's license surrender and revised 401 applications, DPNA will decommission the powerhouse, complete dam removal and complete the selected powerhouse disposition path

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

within 3 years following the final FERC approval order and the closure of all legal challenge periods.

- 4) Complete any DPNA portion of the post-removal stream remediation and monitoring within 2 years following completion of dam removal.
- 5) Continue to operate the Dillsboro Project under the terms of the existing license until powerhouse decommissioning occurs.
- 6) Within 1 year following completion of dam removal and powerhouse decommissioning / disposition (including any necessary stream restoration and the DPNA portion of any post-removal monitoring), DPNA will:
 - a) Provide Local Governments the First Opportunity – Offer to convey interest in all its property associated with the Dillsboro Project, including land and any remaining structurally sound improvements, to the Town of Dillsboro. Allow a one-year window for the town to complete the conveyance. If the town doesn't want the property or is unable to complete the conveyance within the specified timeframe, the same offer will then be extended to Jackson County.
 - b) Free Up the Property if the Local Governments aren't Interested - If neither the Town of Dillsboro nor Jackson County complete the property conveyance within the specified timeframes, then DPNA may do with its property as it sees fit.
- 7) Within 1 year following completion of dam removal and powerhouse decommissioning / disposition (including any necessary stream restoration and the DPNA portion of any post-removal monitoring), DPNA will provide the Town of Dillsboro with a written accounting of the dam removal process, including a summary of the expected benefits.
- 8) Sharing the Benefits of Dam Removal Partnerships - DPNA has established a cost estimate of \$500,000 for the total Dillsboro Dam Removal/Powerhouse Disposition effort (including all steps from the environmental and engineering assessments planned for summer 2003, through completion of any DPNA portion of the post-removal stream remediation and monitoring). DPNA will pursue cost-share funding and in-kind service partnerships with other entities and will track DPNA's actual costs throughout the project. Provided that the Town of Dillsboro is a party to any future settlement agreement involving dam removal, then DPNA will share the benefits of any cost savings it achieves with the town for additional investment in the town's STEPS Initiative. DPNA will contribute an amount equal to DPNA's actual savings (compared to its total \$500,000 expected cost), up to a maximum DPNA contribution of \$100,000, to the town for additional investment in DPNA-selected elements of the town's STEPS Initiative. If the town is not a party to any future settlement agreement, then any DPNA cost savings will be added to the Riparian Habitat Enhancement initiative outlined below. Also, any DPNA cost savings above the \$100,000 contribution to the town of Dillsboro will be added to the Riparian Habitat Enhancement initiative outlined below. (Note: The \$100,000 potential contribution to the Town of Dillsboro is in addition to the \$50,000 contribution identified in Item F.1.d above). All

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

DPNA contributions will be made within 3 years following completion of all DPNA work activities associated with the Dillsboro Dam Removal/Powerhouse Disposition effort.

- d. If DPNA decides that the dam should not be removed, then:
- 1) The activities under Item F.2.c. above will not be required.
 - 2) The limitations in this document concerning fish passage and Section 18 mandatory conditioning authority under the Federal Power Act would not apply and the fish passage issue would be re-evaluated by the USFWS, the NCWRC and DPNA on the DPNA hydro projects.
 - 3) Any limitations in this document concerning minimum flows in the Nantahala River Bypass, the West Fork Bypass and in the Tanassee Creek Bypass (Bonas Defeat) would not apply. The minimum flow issue in these three locations would be re-evaluated by the NCDWQ, the NCWRC, the USFWS, the NCDWR, the USFS and DPNA and new proposals included in the 401 Water Quality Certification and FERC relicensing processes for the Nantahala Project, East Fork Project and the West Fork Project. The new proposals could include additional or modified minimum flows or other appropriate mitigation.
 - 4) DPNA will make any necessary revisions to its 401 Water Quality Certification and FERC license applications.
 - 5) Once any revised applications are received, the NCDWQ and the FERC will complete their reviews and issue their official decisions concerning the new licenses.
 - 6) By 12/1/05 or within 6 months following the FERC license approval order for the Dillsboro Project, whichever comes last, DPNA will construct a canoe / kayak portage around the dam.
 - 7) The DPNA contribution to the Unique Fishery Identification listed in Item F.3 below would not be required.

3. Unique Fishery Identification

- a. Provide support when requested, but not before the final FERC order concerning Dillsboro Project license surrender is received and the closure of all legal challenge periods has occurred, to the USFWS and the NCWRC on studies to determine the range and distribution of the sicklefin redhorse sucker in the Little Tennessee, Hiwassee and Tuckasegee Rivers.
- b. DPNA's contribution may be in the form of a one-time funding contribution, in-kind services or a combination of the two, not to exceed a total cost of \$40,000.

4. Southern Brook Trout Restoration Partnership

- a. Provide support when requested by the NCWRC, the USFWS and the USFS in a project to restore the native strain of brook trout to a selected stream in the vicinity of Tennessee Creek Hydro Station.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

- b. DPNA's contribution may be in the form of a one-time funding contribution, in-kind services or a combination of the two, not to exceed a total cost of \$40,000.

5. Soil & Water Conservation Enhancement

- a. Work with representatives from each county's Soil & Water Conservation District board to obtain each board's prioritized list of initiatives that would either (1) make physical improvements that protect soil or water resources, (2) educate landowners or school children on proper soil or water conservation practices, or (3) improve agency enforcement of existing soil or water conservation-related regulations. All initiatives must support improved soil or water conservation on lands that drain to any of the DPNA hydro reservoirs or the river sections between DNPA hydro reservoirs and reservoirs belonging to the Tennessee Valley Authority (TVA). The prioritized initiatives list will be requested from each board by 7/1/05.
- b. Review each board's prioritized list and select initiatives from the list to receive funding support from DPNA.
- c. Contribute \$40,000 per county in Cherokee, Clay, Jackson, Macon and Swain counties toward implementation of the DPNA-selected initiatives.
- d. Contributions will be made between 1 and 15 years following the issuance of the applicable new FERC licenses and the closure of all legal challenge periods.

6. Riparian Habitat Enhancement

- a. Provide DPNA funding to support initiatives within the DPNA service area that would either (1) protect or enhance fish and wildlife habitat directly, or (2) educate landowners or school children about the importance of healthy riparian areas to fish and wildlife habitat and about the related best management practices in riparian areas. All initiatives must support protection or enhancement of fish or wildlife habitat on lands that drain to any of the DPNA hydro reservoirs or the river sections between DNPA hydro reservoirs and reservoirs belonging to the Tennessee Valley Authority (TVA).
- b. Work with other interested stakeholder team members to define the process by 8/1/03 that will be used to prioritize potential initiatives.
- c. Once the prioritized list of initiatives is received (target date is 7/1/05), DPNA will select initiatives from the list to receive DPNA funding support. The total DPNA contribution will be \$200,000.
- d. Contributions will be made between 1 and 15 years following the issuance of the applicable new FERC licenses and the closure of all legal challenge periods.

7. Provide Conservation Land

- a. Purchase a selected tract of land and convey its interest in the land to a governmental entity or a non-profit conservation organization.
- b. If the tract that is currently being considered cannot be obtained at an acceptable cost to DPNA, then a replacement tract(s) of similar conservation value that can be obtained at an acceptable cost to DPNA will be pursued.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

- c. Purchase of the selected tract or replacement tract(s) will be pursued in 2003 and 2004 by DPNA.
- d. Conveyance of DPNA's interest in the property will occur in 2006 or within 1 year following issuance of the new FERC licenses for the East Fork, West Fork and Nantahala Projects and the closure of all legal challenge periods, whichever is longer.
- e. If conservation lands cannot be purchased at an acceptable cost to DPNA, then DPNA will meet with the USFS, USFWS, NCDWR, the NCWRC and other interested parties to any future settlement agreement to consider other mitigation possibilities.

G. Shoreline Management

1. **Interim Procedures** - Until the new requirements identified in Item G.4 below are implemented, continue enforcing shoreline protection measures for environmentally sensitive areas (e.g. Duke-designated wetlands) and continue limiting cutting of trees within the FERC project boundaries.
2. **Maps** - Develop shoreline classification maps for Nantahala Lake, identifying any unique areas that need protection for environmental, recreational, cultural or operational reasons and provide the associated lake use restrictions.
3. **Lake Clean Up** - Beginning in 2004, work with others to support an annual "Lake Wide Clean Up" on Nantahala Lake. DPNA's contribution will be to remove trash during the week following the clean-up from pre-designated disposal sites around the lake.
4. **Implement the final version of the lake use restrictions, vegetation management requirements and the shoreline management guidelines on 7/1/03. (See Exhibit A)**
5. **DPNA will continue reviewing and addressing lake security issues.**

H. Cultural Resources

1. **HPMP** - Develop a Historic Properties Management Plan (HPMP) for the Nantahala Project to ensure that significant cultural resources within the FERC Project boundary are documented and protected to the extent required by state and tribal historic preservation offices.
2. **Additional Studies** - Conduct additional archaeological studies of two identified sites if a planned drawdown of the lake to elevations that are 60 ft or more below Normal Full Pond Elevation will be conducted for 30 consecutive days or longer.
3. **Historic Properties Management Plan to be developed and implemented within 2 years following FERC issuance of the new license and the closure of all legal challenge periods.**

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

I. Monetary Values

- 1. CPI Adjustment** - The monetary values stated in this document are established in 2004 dollars. As funds are actually utilized in future years, they will be adjusted using the Consumer Price Index (CPI) to convert them from 2004 dollars to the appropriate dollar amount for the year in which the funds are actually used.

J. Sediment Management

- 1. DPNA will endeavor in good faith to operate its hydro projects in ways that minimize the need to draw the reservoirs down to mechanically remove sediment.**

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

II. The Nantahala Cooperative Stakeholder Team agrees in consensus to the following for the relicensing process and the term of the next FERC license period for DPNA's Nantahala Hydro Project:

A. Support continued operational flexibility for DPNA's Nantahala Hydro Project

- 1. Flow Prescriptions** – Provided Dillsboro Dam is removed, there will be no requests or support for prescribed flows of any kind (minimum flows, bypass flows, recreation flows, channel maintenance flows, etc.) other than the prescribed flows proposed herein, except for emergency requests to support human health, environmental health, human safety or to avoid property damage.
- 2. Lake Level Limitations** – There will be no requests or support for lake level restrictions of any kind other than those identified herein, except for emergency requests to support human health, environmental health, human safety or to avoid property damage.
- 3. Operational Restrictions** – There will be no requests or support for other hydro operational restrictions of any kind (e.g. ramping rate limits, peaking power limits, pulsing of hydro units, etc.), except for emergency requests to support human health, environmental health, human safety or to avoid property damage.
- 4. Low Inflow Protocol** – Agree to share the burden of low water availability in accordance with the attached Low Inflow Protocol (see Exhibit B).
- 5. Hydro Project Maintenance & Emergency Protocol** – Agree to the approach for temporary deviation from certain license conditions to handle specific abnormal situations in accordance with the attached Hydro Project Maintenance & Emergency Protocol (see Exhibit C).

B. Actively participate with DPNA in recreation area construction and/or management.

1. Access Area Operation and Maintenance

- a. NCWRC will enter into a cooperative maintenance agreement with DPNA similar to the existing agreement on other Duke Power lakes (see Exhibit D) for the access areas located on property owned by DPNA at Nantahala Lake (2), and the Nantahala River Bypass (1).
- b. USFS will operate and maintain the facilities that are located on land owned by the USFS.
- c. USFS will operate and maintain the facilities that are located on land leased from DPNA in accordance with the lease agreement and a written plan & schedule for operation and maintenance that will be reviewed and approved by DPNA.

2. Access Area Construction

- a. NCWRC will provide any cost-share funding and construction support as noted herein and will repair / rebuild the facilities that they maintain as needed, including getting any prior approvals from DPNA as may be required by the maintenance agreement.
- b. USFS will repair / rebuild the facilities located on their land as needed.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

- c. USFS will repair / rebuild the facilities located on land leased from DPNA as needed, including obtaining any prior approvals from DPNA as may be required by the lease agreement.

3. Consideration of Additional Public Recreation Facilities in the Future

- a. No additional public recreation facilities associated with the Nantahala Project beyond those noted herein will be requested by NCST members or the organizations they represent within the first 15 years of the new FERC license.
- b. Established mechanisms for monitoring growth in recreation facility demand (e.g. FERC Form 80, NC State Comprehensive Outdoor Recreation Plan, USFS recreation use monitoring, etc.) will be utilized as indicators of any potential need for additional facilities or facility expansions in the future.
- c. DPNA may also choose to undertake recreation use and needs studies if it desires to evaluate any future recreation needs that may be directly related to its hydro project.
- d. After the first 15 years of operation under the new FERC license, additional recreation facilities can be requested by NCST members or the organizations they represent. All such requests should be justified by the requester with the necessary supporting data.
- e. If DPNA agrees that additional recreation facilities that are directly related to its hydro project are needed, it will endeavor in good faith to budget funds and make the necessary improvements. Preference will be given to upgrades of existing facilities that require no additional property rights and for which substantial cost-share funds are made available from other sources.

C. Not oppose new FERC license conditions and compliance monitoring requirements and 401 Water Quality Certification conditions that are consistent with this agreement.

1. Compliance Monitoring

- a. All agencies will work cooperatively with DPNA to design adequate compliance monitoring programs that do not cause undue burden to DPNA.

2. FERC Licenses

- a. There will be no requests or support for any FERC license conditions that conflict with the above conditions or that add substantial additional burdens, costs or risks to DPNA beyond the burdens, costs and risks as noted herein.
- b. There will be no requests or support for any FERC license re-openers of any kind beyond those that FERC includes in licenses for hydro projects of this size.
- c. Provided Dillsboro Dam is removed, there will be no Section 18 Mandatory Conditions included in the new licenses for any of the DPNA hydros, beyond those absolutely essential to protect fish resources that are directly affected by operation of a DPNA hydro project. Also, provided Dillsboro Dam is removed, any Section 18 Mandatory Conditions must not conflict with the above conditions and will not add substantial additional burdens, costs or risks to DPNA beyond the burdens, costs and risks as noted herein. If the USFWS determines that any

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

Section 18 Mandatory Conditions should be required, it will impose the least cost alternative that ensures continued protection of fish resources. Also, it is the intent of the USFWS and DPNA to work together prior to the signing of any settlement agreement to identify some portion of the next license periods within which it is not expected that any Section 18 Mandatory Conditions, beyond the standard reservation of that authority, would be necessary or pursued.

- d. There will be no Section 4e Mandatory Conditions beyond those absolutely essential to protect National Forest resources that are directly affected by operation of a DPNA hydro project. Any Section 4e Mandatory Conditions must not conflict with the above conditions and will not add substantial additional burdens, costs or risks to DPNA beyond the burdens, costs and risks as noted herein. If the USFS determines that any Section 4e Mandatory Conditions should be required, it will impose the least cost alternative that ensures continued protection of National Forest resources.

3. 401 Water Quality Certifications

- a. There will be no requests or support from stakeholder team members other than the NCDWQ for any 401 Water Quality Certification conditions that conflict with the above conditions or that add substantial additional burdens, costs or risks to DPNA beyond the burdens, costs and risks as noted herein.
- b. If the NCDWQ requires 401 Water Quality Certification conditions that conflict with the above conditions or that add substantial additional burdens, costs or risks to DPNA beyond the burdens, costs and risks as noted herein, then the steps outlined in Item D. below will be pursued.
- c. There will be no requests or support for any re-openers of any kind in the 401 Water Quality Certifications for the Nantahala Hydro Project beyond the standard NCDWQ language included in 401 Water Quality Certifications for hydro projects.

4. Statutory Responsibilities of Governmental Agencies

- a. Nothing in this document will prevent any governmental agency from acting as it thinks it must to comply with its mandated statutory responsibilities.
- b. The governmental agencies that are members of the stakeholder team believe they can exercise their statutory duties in a manner that is materially consistent with this document.

D. Agree that the following actions will be taken if any jurisdictional body takes action that is materially inconsistent with any future settlement agreement that is developed based on this document:

- 1. DPNA will make the parties to any future settlement agreement aware of the situation.**
- 2. DPNA will work with the appropriate jurisdictional body to pursue any alternatives which eliminate the inconsistency and that are acceptable to both DPNA and the jurisdictional body.**

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

- 3. Once a consistent alternative is identified or if the material inconsistency cannot be satisfactorily eliminated, DPNA will:**
- a. Meet with the parties to any future settlement agreement to explain the situation and discuss any potential needs to revise the settlement agreement requirements to be consistent with the jurisdictional body's actions or to offset the additional burdens, costs or risks placed on DPNA by the jurisdictional body's actions.
 - b. The parties to any future settlement (including DPNA) will endeavor in good faith to cooperatively make timely changes to the settlement agreement that are necessary to meet the jurisdictional body's demands without increasing the overall burdens, costs and risks placed on DPNA.
 - c. Advise the parties to any future settlement of DPNA's planned actions, which may include partial or full withdrawal from the requirements of the settlement agreement if the parties and DPNA cannot agree on any necessary changes to the settlement agreement requirements.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

III. Full Consensus Acknowledgement - The undersigned Primary Members of the Nantahala Cooperative Stakeholder Team (NCST) acknowledge all of the following:

- A. Participation & Knowledge** - They have participated in the activities of the NCST and have a good understanding of the information contained herein.
- B. Consensus Level** - By signing below, they are indicating that based on their current knowledge level and consideration of their interests and those of the groups they represent, they are in agreement with the entirety of this document, (hereafter called a “consensus agreement”) with agreement being defined as a rating of 1-4 on the 5-point consensus scale identified in the NCST charter (see Exhibit E).
- C. Opportunity to Register Major Reservations** - That on the appropriate line within the signature block below, they have identified the paragraph, subparagraph and page numbers of any specific element(s) of this agreement that they rated as a “4” on the 5-point consensus scale identified in the NCST charter (see Exhibit E). Also, they will provide to the Natural Resources Leadership Institute (NRLI) not later than 6/30/03, a 100-word or less statement describing their basic reasons for having Major Reservations with the specific element(s).
- D. Settlement Agreement Development** – By being in agreement with the entirety of this document, their organization is requested to help develop and sign a binding settlement agreement not later than 9/15/03 that will convert this consensus agreement into a binding contract, subject to any changes, addition of details and terms and conditions as may be determined necessary by consensus of the parties signing the settlement agreement.
- E. Good Faith Effort to Sign Settlement** - That based on their current level of knowledge, they do not know of any reason why their organization would not sign the above-mentioned, binding settlement agreement, and that they will endeavor in good faith with the other parties noted below to develop the settlement agreement and acquire the signature of their authorized representative.
- F. No Legal Obligation** - That by signing below, they are not legally obligating their organization to sign any future settlement agreements.
- G. Filing Consensus Agreement** - DPNA will file this consensus agreement and the report information as identified in the NCST charter (see Exhibit E) with the FERC along with its license applications and with the NCDWQ along with its applications for 401 Water Quality Certifications as necessary for the relicensing process.
- H. Filing Settlement Agreement** - Provided that DPNA signs the future settlement agreement, that DPNA will also file the settlement agreement with the FERC and the NCDWQ for the agencies’ consideration as they process the license and / or license surrender applications and the 401 Water Quality Certification applications for the DPNA hydros. DPNA will also request that the FERC and the NCDWQ act consistently with the applicable terms of the settlement agreement as the agencies develop the new license documents or license surrender orders and the 401 Water Quality Certifications for the DPNA hydro projects.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

(Signature)

(Date)

(Printed Name)

(Organization)

(Paragraph, Subparagraph and Page Number of Any Agreement Elements for which Member has Major Reservations (i.e. Rated as a “4”)

=====

(Signature)

(Date)

(Printed Name)

(Organization)

(Paragraph, Subparagraph and Page Number of Any Agreement Elements for which Member has Major Reservations (i.e. Rated as a “4”)

=====

(Signature)

(Date)

(Printed Name)

(Organization)

(Paragraph, Subparagraph and Page Number of Any Agreement Elements for which Member has Major Reservations (i.e. Rated as a “4”)

=====

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

IV. No Pursuit of Settlement Agreement - The undersigned Primary Members of the Nantahala Cooperative Stakeholder Team (NCST) acknowledge all of the following:

- A. Participation & Knowledge** - They have participated in the activities of the NCST and have a good understanding of the information contained herein.
- B. Consensus Level** - By signing below, they are indicating that based on their current knowledge level and consideration of their interests and those of the groups they represent, they are either (a) in agreement with some, but not all of this document (hereafter called a “consensus agreement”), with agreement being defined as a rating of 1-4 on the 5-point consensus scale identified in the NCST charter (see Exhibit E), (b) they are not in agreement with any of this document or (c) they are in full agreement with this document, but their organization cannot or will not sign a legally-binding settlement agreement.
- C. Provision of Dissention Statements** - That on the appropriate line within the signature block below, they have identified the paragraph, subparagraph and page numbers of any specific element(s) of this agreement that they rated as a “5” on the 5-point consensus scale identified in the NCST charter (see Exhibit E). Also, they have provided or will provide to the Natural Resources Leadership Institute (NRLI) not later than 6/30/03, a 100-word or less Dissention Statement describing their basic reasons for not being able to live with the specific element(s) that they rated as a “5” or their basic reasons for not signing a binding settlement agreement.
- D. No Participation in Settlement Agreement** - By not agreeing with the entirety of this document, their organization will not participate in the development of, or sign a binding settlement agreement.
- E. Reconsideration of Consensus or Settlement Position** - That if they should reconsider their decision and agree to this consensus agreement in its entirety and agree to pursue signing a settlement agreement, and provided that the Primary Member and the organization they represent have continuously complied with the behavioral boundaries established by the NCST charter (see Exhibit E), then they may contact DPNA or the NRLI and arrange to amend their signature on this consensus agreement accordingly, but not later than June 30, 2003. In such cases, they will then be able to help develop and potentially sign the settlement agreement with the other parties that agreed with the entirety of this consensus agreement.
- F. Favored Provisions May be Modified** - By not pursuing the settlement agreement, favored provisions of primary members and their organizations could potentially be modified without malice in the development of additional detail and other modifications deemed necessary for the creation of the settlement agreement.
- G. Filing Consensus Agreement** - DPNA will file this consensus agreement and the report information as identified in the NCST charter (see Exhibit E) with the FERC along with its license applications and with the NCDWQ along with its applications for 401 Water Quality Certifications as necessary for the relicensing process.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

H. No Obligations For DPNA - That since this consensus agreement does not constitute a legally-binding contract, DPNA is under no obligation whatsoever to request or agree with incorporation of any conditions in its new FERC licenses or the applicable 401 Water Quality Certifications that the undersigned believes may be necessary or otherwise desirable.

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

(Signature)

(Date)

(Printed Name)

(Organization)

(Paragraph, Subparagraph and Page Number of Any Agreement Elements that Member could not Live with (i.e. Rated as a "5"))

=====

(Signature)

(Date)

(Printed Name)

(Organization)

(Paragraph, Subparagraph and Page Number of Any Agreement Elements that Member could not Live with (i.e. Rated as a "5"))

=====

(Signature)

(Date)

(Printed Name)

(Organization)

(Paragraph, Subparagraph and Page Number of Any Agreement Elements that Member could not Live with (i.e. Rated as a "5"))

=====

Consensus Agreement for the Nantahala Cooperative Stakeholder Team (NCST)

V. List of Exhibits

- A. DPNA lake use restrictions, vegetation management requirements and the shoreline management guidelines – effective 7/1/03**
- B. Low Inflow Protocol for the Nantahala Project**
- C. Hydro Project Maintenance & Emergency Protocol for the Nantahala Project**
- D. Example Access Area Maintenance Agreement between Duke Power and the NCWRC**
- E. NCST Charter**