

**Duke Power – Nantahala Area  
Nantahala Cooperative Stakeholder Team**

**Nantahala River Project (#2692)**

**Final Report**

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## **INTRODUCTION AND BACKGROUND**

Duke Power, a division of Duke Energy Corporation, Nantahala Area (Duke or DPNA), formerly known as Nantahala Power & Light (NP&L), with headquarters in Franklin, N.C. provides electric service to customers in the western North Carolina counties of Clay, Cherokee, Graham, Jackson, Macon and Swain. DPNA provides all of its power from its 11 hydroelectric stations and 13 reservoirs to help meet the needs of its 60,000+ customers in the DPNA service area. Electric demand has grown over the years such that the DPNA hydro stations supply only about 40% of the annual power needs for DPNA customers, with the remainder being purchased at a higher cost from Duke Power's other generating assets in the Carolinas.

The operation of these hydropower projects has provided an affordable and dependable supply of electrical power to a growing population in western North Carolina since 1929. These projects were built and began operations 50 to 80 years ago, well before modern regulatory requirements were in place. While providing much needed power to a growing customer base, these same hydroelectric facilities have also resulted in reduced flows and fluctuating flows of river reaches downstream from dams and fluctuating reservoir levels. This can result in a variety of impacts to water related natural resources.

DPNA operates these hydroelectric projects under licenses from the Federal Energy Regulatory Commission (FERC). These licenses expire in 2005 and 2006, except for the Queens Creek Project (FERC Project # 2694) which received a subsequent, 30-yr license in March, 2002. The process to obtain new licenses for these facilities officially began in 1999 with NP&L's release of the First Stage Consultation Package.

## **NANTAHALA COOPERATIVE STAKEHOLDER TEAM**

The relicensing of these facilities will have a significant impact on the future health of these important freshwater ecosystems as well as on the lives of the people and communities who utilize or live adjacent to these water resources. Although licenses for these projects were issued in the 1980's, they involved only limited review by resource management agencies. In pursuit of its new licenses DPNA has opted to pursue a modified Traditional Licensing Process (TLP) to gather meaningful and significant input from a broad spectrum of stakeholders on project operations and resource protection and enhancement. In late 2001, in an effort to identify issues and stakeholder interests in the Nantahala watershed, DPNA assembled the Nantahala Cooperative Stakeholder Team (hereafter referred to as NCST or "team"). The NCST consists of stakeholders who represent various interests and uses of the waters and related natural resources of the Nantahala River Basin upstream of Fontana Lake. Included on the NCST are

representatives of state and federal resource agencies, local governments, adjacent landowners, resource users, water dependent business, basin-wide conservation organizations, Duke Power and others. Although not proposed as a formal part of DPNA's enhanced TLP, the formation and work of the Nantahala Cooperative Stakeholder Team is supported by DPNA and Duke Power.

A formal charter that was drafted and approved by NCST members governed the NCST (see Appendix A). The charter specified the purpose and scope of the NCST, responsibilities of members and facilitators, decision processes, and how the group would interact with the public and the media.

### **Purpose**

The purpose of the NCST was to identify issues and interests related to the Nantahala hydropower project and its operation, and, using information derived from relicensing studies and other sources, develop a consensus agreement. The consensus agreement is a set of recommendations for the new project licenses that provide enhancement of the Nantahala River, its tributaries, and the related natural resources of the basin affected by DPNA's hydroelectric project. Team members who agreed to the provisions of the consensus agreement will continue working together to create a settlement agreement for submittal with DPNA's license application.

### **Scope**

The NCST's work was related to the licensing process for DPNA's Nantahala hydropower project (FERC Project #2692) which includes Nantahala Lake and three diversion dams: White Oak Creek, Dicks Creek and Diamond Valley, all of which are located in the Nantahala River Basin in Macon County, North Carolina. The area of concern for the NCST includes Nantahala Lake and the Nantahala River downstream from the dam to Fontana Lake; White Oak Creek Reservoir and White Oak Creek downstream from the dam to its confluence with the main stem of the Nantahala River; Dicks Creek Reservoir and Dicks Creek downstream from the dam to its confluence with the main stem of the Nantahala River (includes Diamond Valley Reservoir); and lands and waters affected by operation of the project including Duke Power project lands contiguous with the Nantahala Powerhouse. A similar stakeholder team was organized to address issues related to DPNA's projects on the East Fork and West Fork of the Tuckasegee River and the Dillsboro Project. In cases where issues overlapped between the two project watersheds the NCST, together with the Tuckasegee Cooperative Stakeholder Team, made recommendations that affect both basins.

### **Stakeholder Groups and Participants**

The team consisted of a broad range of stakeholders who represent various interests and uses of the waters and related natural resources of the Nantahala River Basin upstream of Fontana Lake. Each team member had the option to select an alternate of his/her choosing to substitute for the member if needed. Alternates were encouraged to attend NCST meetings along with the team member, and were to be fully briefed before attending any meetings as the sole representative. For organizational purposes each team member and alternate have been assigned to a primary interest category described below. The participant roster is contained in Appendix B.

### Adjoining Property Owner Interests

This category included individual property owners with land adjacent to DPNA property. Interests of this group were varied but were primarily focused on lake levels, and recreation facilities and access. All adjoining property owners on the NCST held property adjacent to the project reservoir.

### Basin-wide Conservation

The interests of team members in this category were centered on resource protection, enhancement, and mitigation throughout the basin. NCST representative organizations in this category were American Rivers, and the USDA Natural Resources Conservation Service.

### Boating

Boating, including powerboating on the reservoirs as well as kayaking, canoeing, rafting, and other paddling sports on streams and rivers, is a major recreational activity in the DPNA project area. Boating interests were represented on the NCST by American Whitewater, the Carolina Canoe Club, and the Nantahala racing club. These three organizations are focused on paddling interests, primarily on the mainstem and bypassed reaches downstream of the project. Powerboating and other lake boating interests were represented by lakeside property owners, and not a special interest group.

### Cultural Resources

The Cherokee Reservation is downstream of the project boundary on the Tuckasegee River and is potentially affected by relicensing. A representative of the Eastern Band of the Cherokee Indians was a member of the NCST.

### Economic Development

The important economic sectors of the DPNA region include tourism, retail trade, health and other services. The Director of Swain County Economic Development Commission represented a balance of these interests on the NCST.

### Federal Reservations

The Nantahala National Forest lies adjacent to the project boundary with lands along Nantahala Lake and the Nantahala River. US Forest Service representatives were active on the NCST, with interests in recreation access and facilities, wildlife habitat, and resource protection and enhancement.

### Fish and Wildlife

The fish and wildlife interest category was centered on protection, restoration, and mitigation of terrestrial and aquatic wildlife and its habitat. NCST representative organizations in this category consisted of the US Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, and the North Carolina Wildlife Federation, a nongovernment organization.

### Fishing

Representatives in the fishing interest category represented bank fishing and boat fishing in the reservoirs and streams in the project area. Trout Unlimited had a representative on the NCST in this interest category.

Power Supply

Power supply interests were represented by employees of Duke Power – Nantahala Area, and Duke Power. DPNA and Duke Power interests included balancing resource protection and enhancement with power production and company sustainability. Duke Power employees were present at every NCST meeting and staffed the Technical Leadership Teams and Shoreline Management Focus Group.

Public Recreation

A staff member of the North Carolina Division of Parks and Recreation represented general recreation interests of the project area. These interests included recreational access such as trails and greenways, recreational facilities, and lake levels and flow releases to support boating and fishing.

Public Safety

A member of the Nantahala Fire and Rescue Department represented public safety interests on the team. Interests in this category were centered on safety issues related to recreation activities such as boating, fishing. The Nantahala Fire and Rescue Department was also concerned with traffic congestion in the Upper Nantahala as a result of increased recreation use in the area.

Water-related Business

Water related business is an important component of the Nantahala-area economy, specifically rafting and boating. Business interests were represented a member of the Nantahala Gorge Association and the Nantahala Outdoor Center. Interests in this category were centered around stream flows and river access, particularly on the Nantahala River.

Water Quality

A staff member from the North Carolina Division of Water Quality represented water quality interests on the NCST. This agency is the responsible agency for granting Section 401 certifications. . Local water resource conservation and protection interests were represented by a staff of the Swain County Soil and Water Conservation District, and the director of the Southwestern RC&D.

Water Quantity

The primary interests in the water quantity category were minimum flows, recreation uses of waters, and water resource conservation and protection. Minimum flows and recreation uses were represented by a staff member of the North Carolina Division of Water Resources, the lead agency on hydropower relicensing within the North Carolina Department of Environment and Natural Resources

**Table 1. Nantahala Cooperative Stakeholder Team Members, Alternates, and Organizations by Primary Interest Category.**

<b>Primary Interest Category</b>	<b>Organization</b>	<b>Team Member</b>	<b>Alternate</b>
<b>Adjoining Property Owners</b>	Nantahala Community	Howard Cross	N/A
	Mountain Shadows	Don Bolling	Bob Gelder
	Nantahala Highlands	Mitch Larson	Vince West
	Nantahala Big Choga	Bud Penland	N/A

<b>Primary Interest Category</b>	<b>Organization</b>	<b>Team Member</b>	<b>Alternate</b>
	Community		
<b>Basin Wide Conservation</b>	American Rivers Natural Resource Conservation Service	David Sligh John Ottinger	N/A Kayla Hudson
<b>Boating</b>	Carolina Canoe Club American Whitewater Nantahala Racing Club	Bob Wiggins Kevin Colburn Howard Chambers	Bob Brueckner John Gangemi N/A
<b>Cultural Resources</b>	Eastern Band of Cherokee	Michael Bolt	N/A
<b>Economic Development</b>	Swain County Economic Development	Ronnie Stillwater	Ken Mills
<b>Federal Reservations</b>	National Forest Service	Donley Hill	Ray Johns
<b>Fish &amp; Wildlife</b>	NC Wildlife Resources Commission NC Wildlife Federation US Fish & Wildlife Service	Chris Goudreau Bill Kane Mark Cantrell	N/A N/A John Ellis
<b>Fishing</b>	Trout Unlimited	Steve Yurkovich	N/A
<b>Power Supply</b>	Duke Power Duke Power – Nantahala Area	Jeff Lineberger John Wishon	Steve Johnson Fred Alexander
<b>Public Recreation</b>	State Parks and Rec	Dwayne Stutzman	N/A
<b>Public Safety</b>	Nantahala Fire and Rescue	Jimmy Godsey	N/A
<b>Water-related Business</b>	Nantahala Gorge Association Nantahala Outdoor Center	Ken Kastorff Bob Hathcock	Jack Wise Payson Kennedy
<b>Water Quality</b>	NC Division of Water Quality Swain Co. Soil & Water Cons. District Southwestern RCD	Kevin Barnett Billy Dills Tim Garrett	N/A N/A N/A
<b>Water Quantity</b>	NC Division of Water Resources	Steve Reed	Jim Mead

### Team Structure

The NCST met as a group to discuss issues, identify interests, present and deliberate proposals, and work toward consensus on final recommendations. Full team meetings were convened nearly every month. An attendance record is contained in Appendix C.

Team members also met in smaller groups to discuss specific technical issues in greater detail, or issues that crosscut both the Tuckasegee and Nantahala watersheds. These groups included Technical Leadership Teams (TLTs), the Shoreline Management Focus Group, and the Nantahala-Tuckasegee Combined Committee that consisted of representatives of both the Tuckasegee and Nantahala Cooperative Stakeholder Teams.

The TLTs were formed to provide consultation and feedback on the technical scoping studies being performed by Duke Power and Duke Power consultants. The TLTs met periodically while the studies progressed and after the studies were completed. While the studies were in progress the TLTs assisted in developing study objectives, reviewed preliminary results, and advised on mid-course changes. After the studies were completed a few of the TLTs met to prepare recommendations to the entire NCST for adoption and inclusion in the final consensus agreement. The TLTs that prepared recommendations to the NCST were the Recreation Use and Needs TLT and the Fish and Instream Flow Survey TLT (also known as the Fish and Aquatics TLT). The TLTs and their composition are listed in Appendix D.

The Shoreline Management Focus Group was formed to incorporate a wider range of interests than was included in the Shoreline Management Plan TLT. The focus group consisted of several representatives of adjacent landowner groups, the NC Wildlife Resources Commission, and the US Fish and Wildlife Service. The purpose of the focus group was to provide intensive feedback and consultation on the development of the DPNA lake use restrictions, vegetation management requirements and the shoreline management guidelines.

The Nantahala-Tuckasegee Combined Committee was formed in the last six months of the stakeholder process to address interests/issues shared by both the Tuckasegee and Nantahala teams. Specifically, their mandate was to explore any new and/or more appropriate options for the respective projects, and review projects in a comprehensive fashion. The committee's work centered on the development of the emergency and maintenance protocols, and low flow protocols for the West Fork, East Fork, and Nantahala projects, and discussion of a potential resource enhancement fund to support mitigation projects across the entire project area.

Members of the Combined Committee were:

- Kevin Barnett, NC Division of Water Quality (NCST & TCST)
- Mike Bolt\*, Eastern Band of the Cherokee Indians (NCST & TCST)
- Mark Cantrell, U.S. Fish and Wildlife Service (NCST & TCST)
- Kevin Colburn, American Whitewater (NCST & TCST)
- Jeff Duncan\*, National Park Service (NCST & TCST)
- Tim Garrett, NRCS, Southwestern RC&D (NCST)
- Bob Gelder, Mountain Shadows HOA (NCST)
- Chris Goudreau, N.C. Wildlife Resources Commission (NCST & TCST)
- Bob Hathcock, Nantahala Outdoor Center (NCST)
- Donley Hill, USDA Forest Service (NCST & TCST)

Bill Kane, NC Wildlife Federation (NCST & TCST)  
Payson Kennedy, Nantahala River Outfitters (NCST)  
Jeff Lineberger, Duke Power (NCST & TCST)  
Doug Odell, Friends of Lake Glenville (TCST)  
Bud Penland, Big Choga Community (NCST)  
Steve Reed, Division of Water Resources-DENR (NCST & TCST)  
David Sligh\*, American Rivers (NCST & TCST)  
Bob Wiggins, Carolina Canoe Club (NCST)  
John Wishon, Duke Power - Nantahala Area (NCST & TCST)  
Steve Yurkovich, Trout Unlimited (NCST & TCST)

(\* Did not attend committee meetings)

### **Facilitators**

Mary Lou Addor and Steve Smutko, faculty of the Natural Resources Leadership Institute, and Rob Hawk, Community Development Agent with the NC Cooperative Extension Service provided facilitation services to the NCST under contract to DPNA. The primary task of the facilitators was to guide the meetings to stay within the bounds set by the team's charter. The responsibilities included managing the team's agenda, keeping written records of the meetings, helping the group stay on task and on process, protecting team members and their ideas from attack, and helping members reach consensus. The facilitators did not express their views on any substantive issues and were solely concerned with the process of the group.

### **Decision Process**

The team operated by consensus and team decisions were made only with concurrence of all members represented at the meeting. Consensus is the decision rule that allows collaborative problem solving to work. The rule prevents the tyranny of the majority, allows building of trust and the sharing of information, especially under conditions of conflict. Consensus does not mean that everyone will be equally happy with the decision, but all do accept that the decision is the best that could be made at the time.

Consensus requires sharing of information, which leads to mutual education, which, in turn provides the basis for crafting workable and acceptable alternatives. Consensus promotes joint thinking of a diverse group and leads to creative solutions. Also, because parties participate in the deliberation, they understand the reasoning behind the recommendations and are willing to support them.

In making decisions, each team member indicated his/her concurrence on a specific proposal using a five-point scale. The scale allowed team members to clearly communicate their intentions, assess the degree of agreement that exists, and register their dissatisfaction without holding up the rest of the Team. The five-point scale is as follows:

- 1 – Endorsement (i.e. Member likes it).
- 2 – Endorsement with Minor Point of Contention (i.e. Basically, member likes it).
- 3 – Agreement with Minor Reservations (i.e. Member can live with it).

- 4 – Stand aside with major reservations
  - a. Do not have sufficient information to agree with this proposal/provision
  - b. Formal disagreement, but will not block the proposal/provision
- 5 – Block – Member will not support proposal, sign settlement agreement, or work with stakeholder process. Blocking means that the member may work outside the stakeholder team process to meet his interests.

Facilitators measured the team’s consensus on a given proposal by open polling of the team members present. Ratings were not considered from any alternates or interested parties present when determining the team’s level of consensus. The levels of consensus were:

- Consensus - All Team members present rate the proposal as a 1, 2 or 3.
- Consensus with Major Reservations – All Team members present rate the proposal as a 1, 2 or 3, except at least one Team member rates it as a 4.
- No Consensus - Any Team member present rates the proposal as a 5.

When measuring consensus for very important decisions (e.g. the Team’s final recommendations), the facilitators conducted a roll call allowing each Team member to rate the proposal in question one at a time and acknowledge the team member’s rating.

### **Final Products**

The NCST’s final products include a Consensus Agreement and subsequent Settlement Agreement, described below.

#### **Consensus Agreement**

The Consensus Agreement is a set of concisely worded recommendations, arrived at through the team’s consensus decision-making process, which will provide enhancement of the Nantahala River, its tributaries affected by DPNA’s hydroelectric project, and the related natural resources of the basin. The Consensus Agreement is attached to the License Application and is more fully discussed below.

Any team member that rates a provision on the Consensus Agreement as a 4 must specify their dissent in a written statement of 100 words or less for inclusion in the final written report if the member so chooses. Any team member that rates a recommendation as a 5 is also required to specify their dissent in a written statement of 100 words or less for inclusion in the final written report.

#### **Settlement Agreement**

The settlement agreement is the formal agreement that NCST members or their organization’s authorized representative will sign. In the settlement agreement team members acknowledge their participation in the team’s activities, their concurrence that the other parts of the final written report are accurate and committing the organization that they represent to follow through on the terms of the settlement agreement. NCST members or their organization’s authorized representative who chose not to sign the settlement agreement will not be a party to the settlement agreement and therefore has no rights under it.

## Chronology

The NCST was convened by Duke Power with assistance of the facilitator team during the fall of 2001. The team held its initial meeting on November 14, 2001 and completed its task by signing a consensus agreement on May 16, 2003. The team met on 22 occasions, almost monthly, between those two dates. The meetings started with an initial description of the issues and interests of the team members, establishment of ground rules and team charter, and development of long-term agendas, moved to a review of technical study results, then progressed to the development of proposals and trial balloons, clarification of criteria to evaluate proposals, and deliberation of proposals, and culminated in the establishment of draft consensus agreements, and the negotiation of a final consensus agreement. The chronology of NCST meetings is given in more detail below.

### November 2001

The first meeting focused on introductions to the purpose and role of the NCST, operational procedures for the NCST, and development of a group charter. Team members identified potential stakeholder interests within the relicensing area and added a number of stakeholders to the team. Duke Power presented information on relicensing and the role of the FERC in the relicensing effort. The NRLI facilitators provided training in negotiation skills and developing stakeholder interest statements.

### December 2001 – March 2002

The focus of these four meetings was generation and refinement of relicensing issues and interests, development of the group charter, development of an issue – information flow process to aid in decision making, and the establishment of a long-term agenda. The team also received further training in principled negotiation and developing stakeholder interest statements, toured the Nantahala powerhouse, dams and other hydropower facilities, and discussed federal agency stakeholder roles with respect to federal mandatory conditioning.

### April – June 2002

Team members heard presentations on preliminary results of technical studies and refined the team charter to prepare for deliberation of proposals.

### July 2002

At the July 2002 meeting DPNA presented its first comprehensive proposal (trial balloon) for lake levels, recreation facilities and access, recreation flows, minimum flow and bypass flow, and resource protection. The trial balloon was discussed and evaluated.

### August 2002

Two meetings in August provided an opportunity for some team building activities including a float trip down the Nantahala River, and a tour of Nantahala Lake. The CHEOPS model was first introduced to the team and some preliminary scenarios were developed and run.

### September – October 2002

The NCST timetable was adjusted to accommodate delays in two key studies – instream flow incremental methodology (IFIM), and recreation use and needs. The deadline for a consensus agreement was extended from November 2002 to February 2003. New proposals were presented

to the team for its consideration, including the Conservation Community's trail balloon. Some final technical study results were presented.

#### November 2002

The November meeting was spent reviewing technical studies and developing performance measures and other criteria to evaluate proposals for water use and allocation, recreation facilities and access, and resource protection. These criteria were later used in evaluating CHEOPS runs. Preliminary results of the recreation use and needs study were presented. This information was used by the Recreation Use and Needs TLT to develop a comprehensive proposal on recreation facilities and access. The deliberation timeline was extended one month to accommodate delays in the IFIM study. December meetings were canceled.

#### February 2003

The NCST started shifting toward final negotiations. The Combined Committee began meeting to consider issues spanning the Tuckasegee and Nantahala watersheds. The Shoreline Management Focus Group presented its recommendations to the NCST for consideration and further discussion. Discussions between Duke Power and Dillsboro residents on dam removal were reconvened. The Recreation Use and Needs TLT presented a preliminary report and gathered input.

#### March 2003

Two meetings were held in March. The Recreation Use and Needs TLT presented its recommendations on recreation facilities and access. DPNA presented its second comprehensive trail balloon for evaluation and deliberation. Issues that captured most of the group's attention were recreation flows in the Nantahala bypass and Nantahala River, and recreation facilities and access in the upper Nantahala. The Combined Committee continued to work on emergency and maintenance protocols and low inflow protocols for the Nantahala project. They also considered a conceptual proposal for a resource conservation and enhancement fund.

#### April 2003

Three meetings were held in April. The Fish and Instream Flow Survey TLT reached agreement on minimum flows in the Nantahala bypass and presented their recommendations to the team. Duke presented three successive drafts of a consensus agreement. General consensus was reached on most recreation facilities, mainstem flows, provision of public information, and cultural resources. Lake levels were adjusted and finally agreed on. A resource conservation and enhancement fund was discussed in detail. Still unresolved were recreation flows in the Nantahala bypass, and the status of a resource conservation and enhancement fund.

#### May 2003

The NCST met one more time before settling on a consensus agreement. Discussions ensued and an agreement was reached on the establishment of funds to mitigate for soil and water conservation enhancement, trout restoration, and riparian habitat enhancement. Agreement was reached on a final draft of the shoreline management plan, including new language on lake use restrictions. No agreement could be reached on recreation flows and recreation access on the upper Nantahala and bypassed reaches, with one member blocking the provision in the final agreement. The team signed a consensus agreement on May 16, 2003.

## CONSENSUS AGREEMENT

The NCST worked to develop a comprehensive set of recommendations for the new license that addresses resource protection, enhancement, and mitigation measures commensurate with project impacts. The document developed out of this deliberation process is called the Consensus Agreement for the Nantahala Cooperative Stakeholder Team.

The Consensus Agreement is comprehensive in scope and includes numerous provisions for resource management, protection and enhancement opportunities including: new recreation facilities and access areas, improvements in recreation and rule curve information, changes in lake levels and rule curves, minimum flows and bypass flows, angling and boating recreation flows, resource enhancement initiatives, shoreline management, sediment management, and cultural resource protection. The complete Consensus Agreement is contained in Appendix E.

In formulating the Consensus Agreement NCST members worked to develop specific proposals and broad, comprehensive “trail balloons” to address specific resource protection, enhancement, or mitigation issues. Proposals and trial balloons were brought directly to the NCST by one or more stakeholders, or were brought to the team through a recommendation of a Technical Leadership Team (TLT) or focus group. For example, the Fish and Aquatics TLT brought the minimum flow and bypass flow recommendations to the team, and the Recreation Use and Needs TLT proposed a series of recommendations on recreation facilities and access. The lake use restrictions, shoreline vegetation management requirements, and the shoreline management guidelines were drafted by Duke Power with the assistance of a focus group of lakeshore property owners, wildlife specialists, and others. In each case the recommendations were discussed and debated by the full team for final inclusion in the Consensus Agreement.

Trial balloons, informal, preliminary proposals that attempted to comprehensively bring together recommendations to address the team’s issues and interests, were the primary tools used to fashion the Consensus Agreement. Duke Power representatives developed four successive drafts of a trail balloon that eventually led to the final Consensus Agreement. Each draft incorporated proposals brought to the team by the TLTs and other team members, and proposals that Duke Power drafted that could potentially meet the interests of most of the other members as well as their own. The individual proposals in the trail balloons later became provisions in the final Consensus Agreement.

Each proposal/provision was discussed and deliberated in the full team for final inclusion in the Consensus Agreement. The team attempted to reach a consensus on each provision using the 5-point consensus scale defined earlier. According to the team charter, agreement was reached on any provision that all team members rated as a 1, 2, or 3 on the consensus scale. Consensus at this level means that every team member endorsed the provision, endorsed it with a minor point of contention, or endorsed it with a minor reservation. The team could also be in consensus on any provision that a member rated as a 4 (4a or 4b). This was considered “consensus with major reservations”. Consensus was not reached on any provision that a member rated a 5 on the consensus scale. During discussions of each draft of the Duke Power’s trial balloons the facilitators took informal polls to determine where members stood on each proposal. If a member rated a proposal as a 4 or 5, the facilitators worked with the group to find a way to

change the proposal so that all members could at least endorse it with a minor reservation (3 on the consensus scale).

Although the group worked diligently to develop proposals that met the interests of all stakeholders, consensus was not possible on all proposals. Proposals in which a minority of team members rated as 4 or 5 went forward into the final consensus document and are more fully discussed in the following sections of this report. Team members who have major reservations with one or more proposals (4 on the consensus scale) are required by the team charter to specify their reservations in a statement of 100 words or less. Team members who rated one or more proposals as a 5, meaning that they intend to block that proposal are also required to specify their dissensions in a statement of 100 words or less. The reservation and dissention statements are contained in Appendices F and G, respectively.

At the time of the signing of the Consensus Agreement, of the 26 members/organizations represented on the NCST, 24 (92%) rated all provisions at a “4 or above” and will continue to work with the NCST to sign a settlement agreement. Twenty-two of those 24 members/organizations rated every provision as a “3 and above,” that is, they support all of the provisions in the Consensus Agreement and signed the “Full Consensus Acknowledgement” section of the Consensus Agreement. Two members with major reservations also signed the “Full Consensus Acknowledgement” section and listed the provisions with which they had major reservations. Two primary members/organizations rated at least one provision in the Consensus Agreement as a 5, meaning that they do not support the proposal and will not sign a settlement agreement. These members signed the “No Pursuit of Settlement Agreement” portion of the Consensus Agreement.

### **Consensus Recommendations**

NCST members were in agreement over most of the provisions in the Consensus Agreement document. Most of the recommendations to provide new and expanded recreation facilities were supported by all members, as were provisions to enhance recreation information, changes in lake levels and rule curves, cultural resource enhancements, and most resource enhancement recommendations. Members/organizations that fully support the entirety of the Consensus Agreement are listed in Table 2 below:

**Table 2. NCST Members/Organizations Signing the Full Consensus Acknowledgement (Rating of 1-3 on all Provisions)**

<b>Primary Interest Category</b>	<b>Organization</b>	<b>Team Member</b>
<b>Adjoining Property Owners</b>	Nantahala Community	Howard Cross
	Mountain Shadows	Don Bolling
	Nantahala Highlands	Mitch Larson
	Nantahala Big Choga Community	Bud Penland
<b>Basin Wide Conservation</b>	Natural Resource Conservation Service	John Ottinger

<b>Primary Interest Category</b>	<b>Organization</b>	<b>Team Member</b>
<b>Boating</b>	Carolina Canoe Club	Bob Wiggins
	American Whitewater	Kevin Colburn
	Nantahala Racing Club	Howard Chambers
<b>Cultural Resources</b>	Eastern Band of Cherokee	Michael Bolt
<b>Economic Development</b>	Swain County Economic Development	Ronnie Stillwater
<b>Federal Reservations,</b>	National Forest Service	Donley Hill
<b>Fish &amp; Wildlife</b>	NC Wildlife Resources Commission	Chris Goudreau
	US Fish & Wildlife Service	Mark Cantrell
<b>Power Supply</b>	Duke Power	Jeff Lineberger
	Duke Power – Nantahala Area	John Wishon
<b>Public Recreation</b>	State Parks and Rec	Dwayne Stutzman
<b>Water-related Business</b>	Nantahala Gorge Association	Ken Kastorff
	Nantahala Outdoor Center	Bob Hathcock
<b>Water Quality</b>	NC Division of Water Quality	Kevin Barnett
	Swain Co. Soil & Water Cons. District	Billy Dills
	Southwestern RCD	Tim Garrett
<b>Water Quantity</b>	NC Division of Water Resources	Steve Reed

### **Consensus with Major Reservations**

The consensus process enabled NCST members to register any major reservations they have with any provision in the Consensus Agreement, yet continue to move forward and sign a settlement agreement. Members who registered a “4” on the consensus scale on a specific provision could identify their reservation in one of two ways: 4a – they do not have sufficient information to agree with the proposal/provision; or 4b –they could register their formal disagreement, but will not block the proposal/provision. Some members chose not to discriminate between 4a and 4b and simply indicated their reservation.

Two NCST members, representing wildlife and fishing, registered major reservations on the Consensus Agreement provisions related to the shoreline management plan. One member,

representing public safety, registered a reservation on vehicle parking and access on the upper Nantahala. Members/organizations that had a major reservation with one or more provision of the Consensus Agreement are listed below in Table 3. Specific provisions in the Consensus Agreement that received ratings of “4” follow, together with the names of the members/organizations who rated them.

In accordance with the group charter, TCST members who registered a “4” were required to submit a reservation statement that indicates the reasons why they were in disagreement over the specific provision. Reservation statements are contained in Appendix F.

**Table 3. NCST Members/Organizations Signing the Full Consensus Acknowledgement with Major Reservations (Rating of 4).**

<b>Primary Interest Category</b>	<b>Organization</b>	<b>Member</b>
Fish & Wildlife	NC Wildlife Federation	Bill Kane
Fishing	Trout Unlimited	Steve Yurkovich
Public Safety	Nantahala Fire and Rescue	Jimmy Godsey

Following is a listing of the provisions in the Consensus Agreement in which one or more members had major reservations.

Recreation Facilities

Page No, Item No: **p.2, 2.c.**

**Nantahala Bypass and Mainstem**

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)

*Formal disagreement but will not block the proposal/provision*  
 Jim Godsey, Nantahala Fire and Rescue

Resource Enhancement Initiatives

Page No, Item No: **p.8, F.**

**Resource Enhancement Initiatives (Generally)**

*Formal disagreement but will not block the proposal/provision*  
 Steve Yurkovich, Trout Unlimited

Shoreline Management

Page No, Item No: **p.13, G.4.**

Implementing the final version of the lake use restrictions, vegetation management requirements and the shoreline management guidelines on 7/1/03.

*Formal disagreement but will not block the proposal/provision*

Bill Kane, North Carolina Wildlife Federation

Steve Yurkovich, Trout Unlimited

**Recommendations Where Consensus Was Not Reached**

Two of the 26 members/organizations represented on the NCST registered at least one “5” on the Consensus Agreement. This means that they could not support the provision nor will they work toward a settlement agreement. A listing of those members/organizations is contained in Table 4. As of the signing date of the Consensus Agreement, three members had not indicated which of the provisions they could not agree to. Dissent statements from the two members are contained in Appendix G.

**Table 4. NCST Members/Organizations Signing the No Pursuit of Settlement Agreement (Rating of 5 on One or More Provisions)**

<b>Primary Interest Category</b>	<b>Organization</b>	<b>Member</b>
Basin-wide Conservation	American Rivers	David Sligh
Public Safety	Nantahala Fire and Rescue	Jim Godsey

Following is a listing of the provisions in the Consensus Agreement that the members listed as a “5.”

Minimum Flow and Bypass Flow

Page No, Item No: **(Nantahala Bypass)**

*Member will not support the proposal, sign the settlement agreement or work with the stakeholder process*

David Sligh, American Rivers

Recreation Flows

Page No, Item No: **p.7, 6. a.-e.**

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.

*Member will not support the proposal, sign the settlement agreement or work with the stakeholder process*

Jim Godsey, Nantahala Fire and Rescue

Page No, Item No: **p.8, 11. a.- b.**

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).

*Member will not support the proposal, sign the settlement agreement or work with the stakeholder process*

Jim Godsey, Nantahala Fire and Rescue

#### Resource Enhancement Initiatives

Page No, Item No: **(Specific provisions not specified)**

*Member will not support the proposal, sign the settlement agreement or work with the stakeholder process*

David Sligh, American Rivers

#### Sediment Management

Page No, Item No: **p.18, J.**

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.

*Member will not support the proposal, sign the settlement agreement or work with the stakeholder process*

David Sligh, American Rivers

**APPENDIX A**

**CHARTER OF THE NANTAHALA COOPERATIVE STAKEHOLDER TEAM**

## **Background**

Duke Power, a division of Duke Energy Corporation, Nantahala Area (Duke or DPNA), formerly known as Nantahala Power & Light (NP&L), with headquarters in Franklin, N.C. provides electric service to customers in the western North Carolina counties of Clay, Cherokee, Graham, Jackson, Macon and Swain. DPNA provides all of its power from its 11 hydroelectric stations and 13 reservoirs to help meet the needs of its 60,000+ customers in the DPNA service area. Electric demand has grown over the years such that the DPNA hydro stations supply only about 40% of the annual power needs for DPNA customers, with the remainder being purchased at a higher cost from Duke Power's other generating assets in the Carolinas. DPNA operates these hydroelectric projects under licenses from the Federal Energy Regulatory Commission (FERC). These licenses expire in 2005 and 2006, except for the Queens Creek Project (FERC Project # 2694) which received a subsequent, 30-yr license in March, 2002. DPNA is currently seeking new / subsequent licenses from the FERC for its remaining seven hydro projects. The FERC process to obtain new licenses can take five years or more and will include an Environmental Assessment (EA) or Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA). New licenses may be issued for a 30-50 year term.

The Nantahala Cooperative Stakeholder Team's (Team) work will be related to the licensing process for DPNA's Nantahala hydropower project (FERC Project #2692) which includes Nantahala Lake and three diversion dams: White Oak Creek, Dicks Creek and Diamond Valley, all of which are located in the Nantahala River Basin in Macon County, North Carolina. The project was built and began operation in 1942, well before modern regulatory requirements were in place. Although the license was issued in the 1980's, the licensing process involved only limited review by resource management agencies. The process to obtain a new license for this project is underway, and initial scoping comments and study requests have been provided by resource management agencies and other stakeholders and numerous studies are being completed. DPNA is using an enhanced Traditional FERC Licensing Process (or Hybrid TLP) which provides expanded public information efforts and additional opportunities for public input, but is not using the FERC's Alternative Licensing Process (ALP). Although not proposed as a formal part of DPNA's enhanced TLP, the formation and work of the Nantahala Cooperative Stakeholder Team is supported by DPNA and Duke Power.

## **Purpose**

The purpose of the Nantahala Cooperative Stakeholder Team will be to identify issues and interests related to the Nantahala Project and its operation. The Team will determine the information on the project and related resources that they need to review for an improved understanding of the natural resources in the basin, project operations, and the relationship between these two. The Team will also discuss the issues related to a new license and work to resolve areas of conflict through consensus. The Team will work cooperatively to develop recommendations for the new license for this project.

## **STUDY AREA**

The study area will include Nantahala Lake and the Nantahala River downstream from the dam to Fontana Lake; White Oak Creek Reservoir and White Oak Creek downstream from the dam to its confluence with the main stem of the Nantahala River; Dicks Creek Reservoir and Dicks Creek downstream from the dam to its confluence with the main stem of the Nantahala River (includes Diamond Valley Reservoir); and lands and waters affected by operation of the project including Duke Power project lands contiguous with the Nantahala Powerhouse.

## **Stakeholder Groups and Participants**

The Team consists of a broad range of stakeholders who represent various interests and uses of the waters and related natural resources of the Nantahala River Basin upstream of Fontana Lake. Although it is recognized that many stakeholders have multiple interests, for organizational purposes each Team member and alternate have been assigned to a Primary Interest Category (see Attachment 1).

**Members and Alternates.**

In the event that a Team member cannot attend a meeting, he/she may be represented by an alternate of his/her choosing without concurrence of the Team. Alternates are encouraged to attend Team meetings along with the Team member, but should be fully briefed by the Team member before attending any meetings as the sole representative.

**Voluntary Withdrawal and Replacement Appointments.**

If a Team member withdraws from the Team, he/she may appoint a replacement (typically their alternate) from the same organization without concurrence of the Team. If the member is unable to appoint a replacement from his/her organization, the facilitators may appoint a replacement member from the same Primary Interest Category. Replacement members are expected to take the learning initiative and spend extra time prior to their first Team meeting reading through all the past meeting summaries and this charter and talking with the facilitators and other Team members to be sure they understand the state of the Team's activities, how the Team operates and what will be expected of them. Replacement members should strive to minimize the impact of the loss of the member they're replacing on the Team's progress toward its goal (i.e. a set of consensus recommendations).

**New Member Appointments.**

A strong effort was made during the forming of the Team to encourage participation by representatives from all the various interests in the study area. While it is certainly the Team's desire to be inclusive and sensitive to the many various interests, the Team recognizes the need to remain focused and moving ahead if the Team's goal (i.e. a set of consensus recommendations) is to be achieved. When evaluating potential new members, the Team should first ensure that the interests that the potential new member would represent cannot reasonably be covered by an existing Team member. If the Team decides there is in fact a need to have additional interests represented, then the Team will identify potential candidates and review their qualifications (e.g. past experience in collaborative team processes, knowledge about the issues and the interests they represent, communications mechanisms for sharing information, etc.). The Team will decide by consensus if a particular candidate should be added to the Team. Once added to the Team, new members are expected to spend extra time prior to their first full meeting educating themselves on the Team's history, operations and expectations in the same fashion as is required for replacement Team members. New members must make every effort to minimize the impact of their addition on the Team's progress toward its goal (i.e. a set of consensus recommendations). Once the active negotiations have begun (i.e. once a comprehensive trial balloon (see below for description of trial balloons) has been floated to the Team), new members will not be added unless the Team decides by consensus that the specifics of the trial balloons under consideration significantly impact previously unidentified Primary Interest Categories.

**CONSTITUENT REPRESENTATION.**

Team members will be expected to represent (1) themselves, (2) organizations to which they belong, or (3) groups of constituents from a similar Primary Interest Category. Ideas presented within Team discussions will not be assumed to be the official position of the organizations or groups represented unless specifically stated to be so.

**Responsibilities of Team Members****Attending Meetings.**

Each Team member or alternate is expected to attend Team meetings and Team Members are expected to fully participate in all meetings. In the event that a member or alternate is not able to attend a meeting of the Team, and the member is not in agreement with any actions taken by the Team during his/her absence,

that member has until the meeting summary review at the next meeting to register his/her dissatisfaction with actions taken. A limited amount of time will be devoted to old business at meetings. E-mail may be used to expedite this process.

Preparing for Meetings.

**Team members shall read appropriate materials and arrive prepared to work. Materials presented for discussion must be distributed at least one week in advance of the meeting or as practical.**

Keeping Constituents Informed.

Members are expected to keep constituents informed through active but informal means. Members will receive meeting minutes and flip chart summaries for keeping constituents informed.

Understanding and Abiding by the Charter.

Team members and alternates are expected to read, fully understand, and conduct themselves in accordance with the requirements of this charter.

**RESPONSIBILITIES OF THE FACILITATORS**

Faculty of the Natural Resources Leadership Institute (NRLI) at NC State University will provide facilitation services to the Team under contract to DPNA. The primary task of the facilitators is to guide the meetings to stay within the bounds set by the Team's charter. The responsibilities include managing the Team's agenda, keeping written records of the meetings, helping the group stay on task and on process, protecting Team members and their ideas from attack, and helping members reach consensus. The facilitators will not express their views on any substantive issues and will be solely concerned with the process of the group.

Meeting Summaries

Facilitators will develop meeting summaries and will send them to the Team members, alternates and interested parties. Summaries from the previous meeting will be sent out at least one week prior to each upcoming meeting. Email will be the primary form of information dispersal and correspondence with the option of having material faxed or mailed to those that do not have access to email. Summaries shall include an attendance record, a summary of actions taken at the meeting, and other information pertaining to the deliberations. Discussion of new substantive issues will not commence until the summary of the preceding meeting is approved.

Agendas

At the end of each meeting, the Team will specify a tentative agenda for the following meeting. The facilitators will develop draft meeting agendas prior to each meeting. Final agendas will be approved by the Team at the start of each meeting and will include opportunities for public comment as required by this charter.

Roster

The facilitators will maintain a roster listing the names and contact information of individuals who have agreed to: (1) participate as active members and alternates of the Team; (2) abide by this charter; and (3) demonstrate a desire to reach consensus through this process.

## **Decision Process**

### **Use of Consensus**

The Team will operate by consensus and Team decisions will be made only with concurrence of all members represented at the meeting. Consensus is the decision rule that allows collaborative problem solving to work. The rule prevents the tyranny of the majority, allows building of trust and the sharing of information, especially under conditions of conflict. Consensus does not mean that everyone will be equally happy with the decision, but all do accept that the decision is the best that could be made at the time.

Consensus requires sharing of information, which leads to mutual education, which, in turn provides the basis for crafting workable and acceptable alternatives. Consensus promotes joint thinking of a diverse group and leads to creative solutions. Also, because parties participate in the deliberation, they understand the reasoning behind the recommendations and are willing to support them.

In making decisions, each Team member will indicate his/her concurrence on a specific proposal using a five-point scale. The scale allows Team members to clearly communicate their intentions, assess the degree of agreement that exists, and register their dissatisfaction without holding up the rest of the Team. The five-point scale is as follows:

- 1 – Endorsement (i.e. Member likes it).
- 2 – Endorsement with Minor Point of Contention (i.e. Basically, member likes it).
- 3 – Agreement with Minor Reservations (i.e. Member can live with it).
- 4 – Stand aside with major reservations
  - c. Do not have sufficient information to agree with this proposal/provision
  - d. Formal disagreement, but will not block the proposal/provision
- 5 – Block – Member will not support proposal nor sign settlement agreement nor work with stakeholder process. Blocking means that the member may work outside the stakeholder team process to meet his interests.

Facilitators will measure the Team's consensus on a given proposal by open polling of the Team members present. Ratings will not be considered from any alternates or interested parties present when determining the Team's level of consensus. The levels of consensus are:

- Consensus - All Team members present rate the proposal as a 1, 2 or 3.
- Consensus with Major Reservations – All Team members present rate the proposal as a 1, 2 or 3, except at least one Team member rates it as a 4.
- No Consensus - Any Team member present rates the proposal as a 5.

When measuring consensus for very important decisions (e.g. the Team's final recommendations), the facilitators will typically conduct a role call allowing each Team member to rate the proposal in question one at a time and acknowledging the Team member's rating.

For the Team's final written report, any Team member that rates a recommendation as a 4 can specify their dissent in a written statement of 100 words or less for inclusion in the final written report if the member so chooses. Any Team member that rates a recommendation as a 5 is required to specify their dissent in a written statement of 100 words or less for inclusion in the final written report. Dissenters who share the same basic concerns can use a single dissent statement of 100 words or less. Dissenters will also identify themselves by name / organization on their dissent statements. The number of members standing for or against any proposal will not be reported.

### **Use of Trial Balloons to Reach Final Consensus Recommendations**

A trial balloon is defined as an informal, preliminary proposal that attempts to comprehensively bring together recommendations to address the Team's issues and interests. Trial balloons are completely non-binding and may be withdrawn, in whole or in part, at any time prior to signing an agreement. Trial balloons are very helpful tools for progressing the Team towards consensus and Team members are encouraged to use them liberally. Because the interests vary and often compete with each other, Team members should structure trial balloons to address all the primary interests, not just the particular Team member's interests (i.e. keep trial balloons focused on mutual gains and remain open to compromise; use trial balloons as a test to determine what interests are being met and which interests are not being met).

### **Input From and Information to the Public, News Media, Elected Officials and the FERC**

The Team is intended to be representative of the public through the members' own organizations or affiliations, as well as through their work with other groups. All Team meetings are open to observation by the public, except for closed meetings (see below). A public comment period(s) of set duration (near the beginning, at the end or both) will be provided at each meeting of the Team and public speakers will have time limits set to allow as much participation as possible. The Team will not normally attempt to respond to public comments at the meeting in which they were made. The facilitators have the right to deny the floor to public speakers that are simply repeating previously delivered messages or that are unruly and facilitators will ask unruly public speakers to leave the premises. Summaries of Team meetings will be available to the public upon request and will also be available on the Team's website.

Except for closed meetings (see below), members of the press are welcome to attend Team meetings. Team members and alternates are free to present their interests and the interests of the groups and organizations they represent to the media. Team members and alternates will not address specific positions held by other team members or alternates, or negatively characterize the Team, other Team members, alternates, represented organizations or their interests in the media. Team members and alternates will also advise the leadership of organizations they represent that their organization should not participate in these negative media statements. Press points will be available at the end of each meeting. Team members, alternates and the organizations they represent will refrain from negotiating through the news media and will therefore avoid strong statements, whether for or against, to the media concerning the trial balloons of any team member.

Team members acknowledge a common desire to allow the Team the greatest opportunity to reach consensus agreement on its final recommendations. Team members therefore will not encourage elected officials to adopt resolutions or take positions for or against any trial balloons proposed by Team members prior to the Team's target date for reaching a settlement agreement. Team members, alternates or their organizations will not initiate formal or informal contact with FERC to advise FERC of their position on a particular trial balloon whether it is for or against the trial balloon, prior to the Team's target date for reaching a settlement agreement.

### **Closed Meetings**

On occasion, the Team may determine that all or a portion of a meeting should be closed. Any Team member can propose at any time that a particular discussion topic be closed. The facilitator will then stop the discussion and determine if the Team agrees. If the Team agrees, the topic will either be tabled for another closed session or the room will be cleared of everyone except the Team members, their alternates and the facilitators before resuming the discussion. Before concluding the closed session, the Team will decide by consensus to what extent the written meeting summary shall cover the topics discussed during the closed session. All deliberations concerning the dismissal of a Team member or alternate will be conducted in closed session.

## **Ground Rules**

In order to have the most efficient and effective process possible, Team members and alternates will follow these basic ground rules:

- A. Treat each other, the organizations represented in the Team and the Team itself with respect at all times and put personal differences aside in the interest of a successful Team.
- B. Stick to the topics on the meeting agenda; be concise and not repetitive.
- C. Work as team players and share all relevant information. Focus on honesty with tactfulness.
- D. Ask if they do not understand.
- E. Openly voice any disagreement with other members in the meetings.
- F. Look for mutually beneficial solutions.
- G. Follow through on their commitments.
- H. Share information discussed in the meeting with the organizations / constituents represented.
- I. Encourage free thinking and share relevant information with the Team.
- J. Commit to issues in which they have an interest.
- K. Speak one at a time in meetings as recognized by the facilitator.
- L. Everyone will participate, but none will dominate.
- M. Focus on the problem, not the person.
- N. Agree that it is OK to disagree.
- O. Honor a two-minute time limit for statements and responses.

## **Dismissal of Team Members or Alternates**

Team members and alternates acknowledge the importance of understanding this charter and communicating effectively with the organizations they represent. They also acknowledge that the success of the entire Team depends on their personal commitment to reach consensus and to conduct themselves according to the basic principles set out in this charter. Any Team member or alternate can be dismissed from the Team if the Team determines by consensus that the member or alternate's actions or the official actions of the organization they represent have been substantially contrary to the Team's charter.

## ***Procedure***

Any Team member can propose the dismissal of another member or alternate at any time. The member proposing the dismissal will inform the facilitator and the facilitator will inform the member or alternate that has been proposed for the dismissal and will establish a closed session of the Team prior to beginning the Team's discussion. In the closed session, the Team member proposing the dismissal will provide a brief explanation of the grounds for dismissal, particularly pointing out actions taken that were contrary to the Team's charter. The member or alternate that is proposed for dismissal will be given an opportunity to explain their actions or the official actions of their organization to the rest of the Team, either during the same closed session, or during a closed session at the next Team meeting. The Team member or alternate that was proposed for dismissal will be required to leave the room prior to the Team's deliberations. If an alternate is proposed for dismissal, the associated Team member will abstain from the decision-making process (i.e. the five-point scale rating). In rating proposals to dismiss members or alternates, Team members will not accept a lack of knowledge of the charter's requirements or a lack of clear communication between the Team member or alternate and their organization's officials as legitimate explanations for contrary behavior.

### ***Actions Upon Dismissal***

If the Team determines that dismissal is in order, the member or alternate will be asked to leave the premises for at least the remainder of that particular meeting and may only participate as a public observer in future Team meetings. Dependent on the circumstances, the Team may also decide that the individual will not be allowed to return to any future meetings in any capacity. If the cause of the dismissal was official actions of the member or alternate's organization contrary to the charter, the organization will not be allowed to have any members or alternates on the Team. Under no circumstances will:

- A Team member or alternate be re-instated to the Team once they have been dismissed. The Team will decide if appointment of a suitable replacement is in order and will pursue replacements as necessary.
- A Team member or alternate be dismissed simply because they or the organization they represent doesn't agree with the positions or interests of the rest of the Team.

### **Nature of the Final Product**

The Team's final product will be a written report including at least the following sections:

- **Background on the Team** - Brief descriptions of the Team and its chronology, the agencies and organizations that make up the Team, the Natural Resources Leadership Institute and the relationship between the Team's activities and DPNA's hydro relicensing process. Includes a map of significant features within the study area.
- **Description of the Primary Interest Categories** – A paragraph describing each of the Primary Interest Categories.
- **Summary of Consensus Recommendations** - A set of concisely worded recommendations, arrived at through the Team's consensus decision-making process, which will provide enhancement of the Nantahala River, its tributaries affected by DPNA's hydroelectric project, and the related natural resources of the basin. **NOTE:** Members who join in any consensus recommendation agree not to oppose that recommendation during the license application process to the FERC. The license application process began in 1999 with the release of the First Stage Consultation Package by NP&L and does not end until the FERC has issued a new license for the Nantahala Project and the period for rehearing or legal challenge has ended. Any Team member's position on a consensus recommendation is however subject to change if substantial new information becomes available prior to the completion of the license application process.
- **Summary of Significant Recommendations for Which Consensus was not Achieved** – A set of concisely worded recommendations that the Team discussed at length and at least half of the Team members rated as a 4 or less, but for which no consensus could be reached. For each recommendation, the names of dissenting member organizations will be identified.
- **Settlement Agreement** – The formal agreement that Team members or their organization's authorized representative will sign acknowledging their participation in the Team's activities, their concurrence that the other parts of the final written report are accurate and committing the organization that they represent to follow through on the terms of the settlement agreement. Team members acknowledge that if they or their organization's authorized representative choose not to sign the Team's settlement agreement, then that Team member and any organization they represent is not a party to the settlement agreement and therefore has no rights under it.
- **Appendices** – Includes this charter, the Team's roster, any dissention statements required by this

charter and other significant pieces of information developed by the Team.

### **Schedule and Duration**

The Team will meet periodically at times and locations of their choosing. The Team will work toward delivery of the following products on the noted schedule:

- **First Draft Report** - To allow coordination of the Team's recommendations to the maximum extent possible with those of the Tuckaseegee Cooperative Stakeholder Team, the Team will complete their First Draft Report, including all sections except the Settlement Agreement section, no later than November 30, 2002.
- **Final Report** – To clearly establish the Team's input into the FERC relicensing process, the Team will complete their Final Report, including all sections, no later than May 1, 2003.

The Team may continue meeting after May 1, 2003 if it so chooses.

### **Changes to the Charter**

Changes to the charter can be made at any meeting of the Team through a consensual procedure.

## Primary Interest Categories

<b>Primary Interest Category</b>	<b>Organization</b>	<b>Team Member</b>	<b>Alternate</b>
<b>Adjoining Property Owners</b>	Nantahala Community Mountain Shadows Nantahala Highlands Nantahala Big Choga Community	Howard Cross Don Bolling Mitch Larson Bud Penland	N/A Bob Gelder Vince West N/A
<b>Basin Wide Conservation</b>	American Rivers Natural Resource Conservation Service	David Sligh John Ottinger	N/A Kayla Hudson
<b>Boating</b>	Carolina Canoe Club American Whitewater Nantahala Racing Club	Bob Wiggins Kevin Colburn Howard Chambers	Bob Brueckner John Gangemi N/A
<b>Cultural Resources</b>	Eastern Band of Cherokee	Michael Bolt	N/A
<b>Economic Development</b>	Swain County Economic Development	Ronnie Stillwater	Ken Mills
<b>Federal Reservations,</b>	National Forest Service	Donley Hill	Ray Johns
<b>Fish &amp; Wildlife</b>	NC Wildlife Resources Commissi NC Wildlife Federation US Fish & Wildlife Service	Chris Goudreau Bill Kane Mark Cantrell	N/A N/A John Ellis
<b>Fishing</b>	Trout Unlimited	Steve Yurkovich	N/A
<b>Power Supply</b>	Duke Power Duke Power – Nantahala Area	Jeff Lineberger John Wishon	Steve Johnson Fred Alexander
<b>Public Recreation</b>	State Parks and Rec	Dwayne Stutzman	N/A
<b>Public Safety</b>	Nantahala Fire and Rescue	Jimmy Godsey	N/A
<b>Water-related Business</b>	Nantahala Gorge Association Nantahala Outdoor Center	Ken Kastorff Bob Hathcock	Jack Wise Payson Kennedy
<b>Water Quality</b>	NC Division of Water Quality Swain Co. Soil & Water Cons. District Southwestern RCD	Kevin Barnett Billy Dills Tim Garrett	N/A N/A N/A

<b>Primary Interest Category</b>	<b>Organization</b>	<b>Team Member</b>	<b>Alternate</b>
<b>Water Quantity</b>	NC Division of Water Resources	Steve Reed	Jim Mead

**APPENDIX B**

**NANTHALA COOPERATIVE STAKEHOLDER TEAM ROSTER**

**NANTAHALA COOPERATIVE STAKEHOLDER TEAM**

May 16, 2003

**TEAM MEMBERS**

**Kevin Barnett**

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Division of Water Quality-DENR  
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**Michael Bolt**

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**APPENDIX C**

**NANTAHALA COOPERATIVE STAKEHOLDER TEAM  
MEETING ATTENDANCE RECORD**

**NANTAHALA COOPERATIVE STAKEHOLDER TEAM  
MEETING ATTENDANCE RECORD**

% Attendance	Firs Name	Last Name	11/14/01	12/18/01	1/16/02	2/20/02	3/20/02	4/17/02	5/15/02	6/19/02	7/17/02	8/14/02	9/18/02	10/16/02
67%	Fred	Alexander	X	X	X			X		X	X		X	X
33%	Kevin	Barnett								X	X			
48%	Don	Bolling	X	X							X	X		
38%	Michael	Bolt						X	X	X	X			X
86%	Mark	Cantrell	X	X	X	X	X	X	X	X	X	X	X	X
38%	Howard	Chambers												
86%	Kevin	Colburn	X	X	X			X		X	X	X	X	X
81%	Howard	Cross	X	X	X	X	X	X	X		X	X		X
48%	Billy	Dills		X	X	X		X		X			X	
14%	Jeff	Duncan			X					X		X		
0%	John	Ellis												
0%	John	Gangemi												
90%	Tim	Garrett	X	X	X		X		X	X	X	X	X	X
76%	Bob	Gelder			X		X	X	X	X	X	X		X
95%	Jim	Godsey	X	X	X	X	X	X		X	X	X	X	X
81%	Chris	Goudreau			X		X	X	X	X		X	X	X
86%	Bob	Hathcock	X	X	X	X	X		X	X		X		X
24%	Wayne	Haynes	X	X		X	X			X				
81%	Donley	Hill	X	X	X	X	X		X		X	X	X	
71%	Ray	Johns			X		X		X	X	X		X	X
76%	Steve	Johnson	X	X	X			X	X	X	X	X	X	
43%	Bill	Kane									X	X	X	X
67%	Ken	Kastorff					X	X	X	X	X	X	X	X
81%	Payson	Kennedy			X		X	X	X	X	X	X	X	X
24%	Mitch	Larson		X			X			X		X		X
90%	Jeff	Lineberger	X	X	X	X	X	X	X		X	X	X	X
0%	Jim	Mead												
19%	Ken	Mills									X		X	X
57%	John	Ottinger		X	X			X		X			X	X
100%	Bud	Penland	X	X	X	X	X	X	X	X	X	X	X	X
95%	Steve	Reed	X	X	X	X	X	X	X	X		X	X	X
19%	Trish	Stewart	X	X	X	X								

% Attendance	Firs Name	Last Name	11/14/01	12/18/01	1/16/02	2/20/02	3/20/02	4/17/02	5/15/02	6/19/02	7/17/02	8/14/02	9/18/02	10/16/02
10%	David	Sligh										X	X	
19%	Gary	Solesbee	X	X			X	X						
14%	Ronnie	Stillwell												X
24%	Dwayne	Stutzman	X				X			X				
29%	Jason	Walls	X	X	X	X	X	X						
76%	Vince	West			X	X	X		X	X	X	X		X
62%	Bob	Wiggins		X	X				X	X	X	X		X
5%	Jack	Wise												
100%	John	Wishon	X	X	X	X	X	X	X	X	X	X	X	X
62%	Steve	Yurkovich							X	X	X	X	X	X

**NANTAHALA COOPERATIVE STAKEHOLDER TEAM  
MEETING ATTENDANCE RECORD**

% Attendance	First Name	Last Name	11/20/02	2/5/03	3/5/03	3/19/03	4/3/03	4/22/03	4/23/03	5/14/03	5/16/03
67%	Fred	Alexander	X				X	X	X	X	X
33%	Kevin	Barnett					X	X	X	X	X
48%	Don	Bolling				X	X	X	X	X	X
38%	Michael	Bolt		X						X	X
86%	Mark	Cantrell	X		X	X	X			X	X
38%	Howard	Chambers		X	X	X	X	X	X	X	X
86%	Kevin	Colburn	X	X	X	X	X	X	X	X	X
81%	Howard	Cross	X			X	X	X	X	X	X
48%	Billy	Dills		X	X		X			X	
14%	Jeff	Duncan									
0%	John	Ellis									
0%	John	Gangemi									
90%	Tim	Garrett	X	X	X	X	X	X	X	X	X
76%	Bob	Gelder	X	X		X	X	X	X	X	X
95%	Jim	Godsey	X	X	X	X	X	X	X	X	X
81%	Chris	Goudreau	X	X	X	X	X	X	X	X	X
86%	Bob	Hathcock	X	X	X	X	X	X	X	X	X
24%	Wayne	Haynes									
81%	Donley	Hill		X	X	X	X	X	X	X	X
71%	Ray	Johns	X	X	X		X	X	X	X	X
76%	Steve	Johnson	X			X	X	X	X	X	X
43%	Bill	Kane			X	X			X	X	X
67%	Ken	Kastorff				X	X	X	X	X	X
81%	Payson	Kennedy	X	X	X	X		X	X	X	X
24%	Mitch	Larson									
90%	Jeff	Lineberger		X	X	X	X	X	X	X	X
0%	Jim	Mead									
19%	Ken	Mills	X								
57%	John	Ottinger		X	X	X	X			X	X
100%	Bud	Penland	X	X	X	X	X	X	X	X	X
95%	Steve	Reed	X	X	X	X	X	X	X	X	X
19%	Trish	Stewart									

% Attendance	First Name	Last Name	11/20/02	2/5/03	3/5/03	3/19/03	4/3/03	4/22/03	4/23/03	5/14/03	5/16/03
10%	David	Sligh									
19%	Gary	Solesbee									
14%	Ronnie	Stillwell	X							X	
24%	Dwayne	Stutzman					X	X			
29%	Jason	Walls									
76%	Vince	West	X		X	X	X	X	X	X	X
62%	Bob	Wiggins	X				X	X	X	X	X
5%	Jack	Wise	X								
100%	John	Wishon	X	X	X	X	X	X	X	X	X
62%	Steve	Yurkovich	X	X	X		X	X		X	X

**APPENDIX D**

**TECHNICAL LEADERSHIP TEAMS  
OF THE  
TUCKASEGEE COOPERATIVE STAKEHOLDER TEAM  
AND  
NANTAHALA COOPERATIVE STAKEHOLDER TEAM**

## Technical Leadership Study Teams (TLT)

### TLT: Aesthetics Evaluation

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Agency Contacts	
NCDENR	Steve Reed
USFS	Dave Wright
USFS	Ray Johns
Other Participants	
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### TLT: Botanical Survey

DPNA Lead	
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Other Participants	
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### TLT: Fish Survey

DPNA Lead	
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NCWRC	Chris Goudreau
USFWS	Mark Cantrell
USFS	Donley Hill
USFS	Ray Johns
Other Participants	
Land Trust for Little Tenn.	Suzi Wilkins Berl

### TLT: Wildlife Survey

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Other Participants	
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### TLT: Boating Instream Flow Survey

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Agency Lead	
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NCDWR	Jim Mead
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NCDPR	Kim Huband
	Dwayne Stutzman
USFWS	Mark Cantrell
USFS	Ray Johns
	David Wright

Other Participants

Private Boater	Shane Williams
NGO	Sam Fowlkes
NGO	Don O'Neal
Nantahala Gorge Assoc.	Ken Kastorff
Tuck Gorge Assoc.	James Jackson
Am. Whitewater	Kevin Colburn

**TLT: Fish Instream Flow Survey**

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------------	---------------

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USFWS	Mark Cantrell
USFS	Donley Hill
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	Jim Mead

Other Participants

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**TLT: Fish Passage Feasibility Study**

DPNA Lead

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------------	---------------

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USFWS	Mark Cantrell
USFS	Donley Hill
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Other Participants

None

**TLT: Shoreline Management Plan – Riparian Habitat Protection**

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	Richard Conley

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USFS	Donley Hill
NCDPR	Steve Hall
USFWS	Mark Cantrell
NCWRC	Chris Goudreau
NCWRC	Owen Anderson

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 Bear Lake Property Owner Ken Dingler

**TLT: Shoreline Habitat Survey**

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 USFS Donley Hill  
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**TLT: Macroinvertebrate Survey**

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 USFS Mark Cantrell  
 USFS Donley Hill  
 Ray Johns  
 Other Participants  
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**TLT: Lake Level Information Plan**

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**TLT: Rule Curve Evaluation**

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**TLT: Zone of Peaking Influence Study**

DPNA Lead

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USFS	Ray Johns
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**TLT: Historical Streamflow Series Evaluation**

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Other Participants	
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**TLT: Run of River Operation Plan**

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**TLT: Flow Communication Plan**

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**TLT: Trash Removal Plan**

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**TLT: Energy Conservation Evaluation**

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WNC Alliance Bill Crawford  
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Glenville Comm Dev Club Viola Bryson  
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**TLT: GIS Database**

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**TLT: Recreational Use and Needs Survey**

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NCDWR	Steve Reed
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NCDPR	Kim Huband
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Marina Owner	Bob Shuey
Glenshore HOA	Glenda Marshall
Tater Knob HOA	Carol Adams
Tuckasegee Gorge Assoc.	James Jackson
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**TLT: Impacts of Water Releases on Recreation Evaluation**

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NCDPR	Kim Huband
USFWS	Mark Cantrell
USFS	Ray Johns
	David Wright
Other Participants	
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Nantahala Gorge Assoc.	Ken Kastorff
Friends of Lake Glenville	Doug Odell
Tater Knob HOA	Carol Adams
Tuckasegee Gorge Assoc.	James Jackson
Private Boater	Shane Williams
NGO	Sam Fowlkes
American Whitewater	Kevin Colburn

**TLT: Recreation Opportunity Study**

DPNA Lead	
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Agency Lead	
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NCDWR	Jim Mead
NCDPR	Kim Huband
USFWS	Mark Cantrell
USFS	Ray Johns
USFS	David Wright
Other Participants	
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Tater Knob HOA	Carol Adams
Private Boater	Shane Williams
American Whitewater	Kevin Colburn

**TLT: Evaluation of High Water Availability for Recreation Releases**

DPNA Lead	
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Agency Lead	
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DWR/DEHNR	Jim Mead
DPR/DEHNR	Kim Huband
	Dwayne Stutzman
USFWS	Mark Cantrell
USFS	Ray Johns
	David Wright
Other Participants	
NGO	Don O'Neal
Tater Knob HOA	Carol Adams
NGO	Richard Streich
Private Boater	Shane Williams
Am. Whitewater	Kevin Colburn

**TLT: Sediment Management Plan**

DPNA Lead	
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Agency Contacts	
NCWRC	Chris Goudreau
USFWS	Mark Cantrell
USFS	Richard Burns
	Ray Johns
Other Participants	
Friends of Lake Glenville	Doug Odell
American Rivers	David Sligh

**TLT: Temperature and Dissolved Oxygen Survey**

DPNA Lead	
Duke Power	Jon Knight
Agency Contacts	
NCWRC	Chris Goudreau
USFWS	Mark Cantrell
USFS	Richard Burns
NCDWQ	Kevin Barnett
Other Participants	

East. Band Cherokee Indians	Mike Bolt
Little Tenn. Watershed Assoc.	James Johnson
Friends of Lake Glenville	Doug Odell

**TLT: Point Source Discharge Inventory**

DPNA Lead

Duke Power	Jon Knight
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Agency Contacts

NCWRC	Chris Goudreau
USFWS	Mark Cantrell
USFS	Richard Burns
NCDWQ	Kevin Barnett

Other Participants

East. Band Cherokee Indians	Mike Bolt
Little Tenn. Watershed Assoc.	James Johnson

**APPENDIX E**  
**NANTAHALA COOPERATIVE STAKEHOLDER TEAM**  
**CONSENSUS AGREEMENT**

## **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 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 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.

**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 1<sup>st</sup> 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.

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.

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. 2<sup>nd</sup> 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 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:**
  - f. 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.
  - g. 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.
  - h. 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.
  - i. 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.
  - ii. 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.

1. **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.
2. **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.
3. **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.
4. **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.**
5. **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.
- 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 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 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.
- 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.
- 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.**

**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.**

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.
- e. 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.**

**2. Compliance Monitoring**

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

**3. 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 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.

**4. 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.**
  - 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.

- 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.

- 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 Dissent 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 Dissent 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.

**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.

**APPENDIX F**  
**NANTHALA COOPERATIVE STAKEHOLDER TEAM**  
**RESERVATION STATEMENTS**

**In regards to: “4” vote on 2-c**

As the Nantahala Fire and Rescue Department is strongly against any release of water into the by-pass of the Nantahala River, we can not support the proposal to improve parking for an in/take out for kayaks.

Respectfully,

Jim Godsey  
Nantahala Fire and Rescue Department  
Traffic Control Officer  
36 Maplewood Dr.  
Aquone, NC 28781  
jsgodsey@webworks.com

**Nantahala Consensus Agreement.  
Dissention Statement**

**Bill Kane, NC Wildlife Federation**

Para G.4,p.13, "Shoreline Management'

The Vegetation Management document allows the establishment of docks/piers in sensitive vegetated areas. Such areas make up 4% or less of the affected lake shoreline. The exploitation and degradation of such scarce shallow water habitat should not be allowed. Furthermore, the permitting of piers/docks in sensitive vegetated areas in the Nantahala and Tuckasegee rivers establishes a terrible precedent for allowing such piers/docks in other Duke impoundments. The loss of such scarce habitat will have an adverse impact on all associated wildlife.

The overall Shoreline Management Plan does not adequately protect the shoreline from erosion and lake side property runoff. It does not prohibit mowing down to water's edge or establish sufficient buffers.

Bill Kane, President  
North Carolina Wildlife Federation

**Resource Enhancement Initiatives – Nantahala River.**

Trout Unlimited voted a 4b on this issue.

During the last two meetings Stakeholders brought numerous proposals requesting mitigation for problems that appeared to be unresolved during this relicensing. DPNA dismissed those proposals out of hand.

Duke will likely be awarded a 30-40 year license and they have agreed to only provide resource enhancement funds for the first 15 years of the license. Who will address issues of stream and riparian habitats, thermal alterations, etc. during the last half to two-thirds of the project period? The money Duke contributes to the Resource Enhancement Initiative is not very generous in amount and cannot be carried beyond the 15 year time limit.

**Comment on the document titled “Classifications and Land Use Restrictions For the Nantahala Area”. This document is part of the Shoreline Management Guidelines (SMG) item G. in the Consensus Agreement.**

Trout Unlimited voted a 4b on this issue.

DPNA has completed a habitat assessment along the shorelines of its reservoirs. One habitat type “Vegetated Areas/Coves with Stream Confluence” comprises less than 2% of the shoreline area yet contains sensitive habitat including jurisdictional wetlands. Although the Land Use Restrictions say – No piers, clearing, excavation, or shoreline stabilization may occur an exception is allowed in a section entitled –Appeals for Piers/Docks Having No Practical Alternatives.

Trout Unlimited cannot support any exemption for the destruction of a critically important habitat. This relicensing process should be about repairing adverse effects of fluctuating water levels rather than seeking additional habitat loss by permitting construction in sensitive areas.

Steven P. Yurkovich

For

Trout Unlimited

**APPENDIX G**  
**TUCKASEGEE COOPERATIVE STAKEHOLDER TEAM**  
**DISSENTION STATEMENTS**

**In regards to: "5" vote on 6-a,b,c,d, and 11-a,b**

As the only fire and rescue department in the by-pass area of the Nantahala River, we are strongly against any release of water into the by-pass for recreation al boating for the following reasons:

- 1) Increased Traffic – with the estimates of 200-250 private boaters this will greatly increase traffic on our only east west road causing an increase in traffic accidents and also impeding our emergency vehicles and personnel who are responding to emergency calls.
- 2) Safety – Sections of the by-pass is about 50 feet down from the road to the river. This will cause great risk to any rescuer who must descend to complete a rescue.

Respectfully,

Jim Godsey  
Nantahala Fire and Rescue Department  
Traffic Control Officer  
36 Maplewood Dr.  
Aquone, NC 28781  
jsgodsey@webworks.com

**Dave Sligh  
American Rivers**

### **Comments Related to the Latest Duke draft consensus agreement From American Rivers**

First, I should explain that I have been on sick leave in several large blocks of time during the last three months and some before that. Obviously, I haven't been present at stakeholder meetings or active in the discussions with all the stakeholders, however my American Rivers colleagues have been in fairly frequent contact with some of the citizens and NGOs involved in this case, with whom we have common interests and concerns for the Duke relicensings. I am not sure whether I am still officially considered to be a member of the stakeholder teams as a primary representative, since I've been absent so long, but I would like to stay on that list, if other members of the teams consent.

I have viewed many of the comments that have been submitted by parties such as the Western NC Alliance, Trout Unlimited, American Whitewater, and NC Wildlife Federation and I concur with many of the recommendations for necessary consensus points that they have raised. Whether as a formal stakeholder team member or not, I will continue to advocate for these issues in both FERC and NC proceedings and hope they can be adequately addressed in a consensus agreement.

I do not raise any issues or offer any recommendations here that I haven't previously commented on.

Bypass Flows - It should come as no surprise to anyone that I cannot agree to Duke's failure to provide at least minimal year-round flows to any bypass reach in the system, including the stretch below Lake Glenville. I must recommend that the language in any consensus agreement include Duke's commitment to provide necessary flows to this and all other bypassed stream segments. I am unwilling, without further consultation with allies which I will pursue as quickly as possible, to suggest any specific flow numbers. The flows provided throughout the year to the West Fork should contain some variability and provide habitat and processes needed to maintain at least some representative and sustained population of native species and to provide refuge and other biological benefits. It also must provide for aesthetic and recreational uses of this stream segment. As with many stream reaches that have been severely altered for long periods of time, the degree to which these functions can be restored are subject to limitations and uncertainty. I do not presume to suggest that optimum conditions can be easily or predictably restored, with conditions and resources as they stand today. However, failure to restore this stream section to a state of basic biological, physical, and chemical integrity is simply not a legally supported option and is not one with which I could ever agree. There can be considerable room, however, between flows minimally required and flows that citizens could use and enjoy in this stream, were Duke Power not granted permission to use it for power generation.

Mitigation Funds - I believe, the degree to which continued impairment of this stream reach and of the entire watershed may continue in certain forms, including disrupted flows, barriers to animal and materials migration, and other impacts can and should be determined on a whole-

system basis. While I will not assent to "writing off" any stream segment for its basic uses and values, I do think that the ecological and human benefits that can accrue from riparian protections, greenways development, dam removal (as proposed by Duke at Dillsboro), and a range of other activities and funding Duke could provide may be acceptable mitigation on a watershed scale that could allow these hydropower licenses to be issued. I stress that the amount of other mitigation efforts by Duke must, in some way, be calibrated to the negative impacts this generation system has and will continue to have on this watershed and its citizens. The size of a mitigation fund and related efforts by Duke for overall mitigation must be set, based at least in part, on the magnitude of habitat impaired (in stream miles, acres, etc.) and on the degree of variation from conditions that would support natural biodiversity, system integrity, and self-sustaining processes and populations (degree of variance from a "natural flow regime", changes in stream temperature patterns, etc.).

I fully realize that Duke will have some limit on the amount of resources they are willing to devote to these projects, of their own volition. However, in whatever forum necessary, I feel obligated to continue to state that continuing costs to these natural systems and their human users are high and can only be continued for the generations to come if properly balanced by some other measures. I hope that a balance between the degree of necessary restoration and mitigation can be reached in the stakeholder consensus process and I will continue to cooperate toward that goal.

I believe others have already made most other points I would offer, so I'll stop here.

Thank you for considering these ideas.

Dave Sligh  
American Rivers