



Catawba Lands Conservancy Position Statement
Agreement in Principle (AIP)
Catawba-Wateree Hydro Project
April 13, 2006

Background

The Conservancy is a formal stakeholder in the Duke Re-licensing process. We requested, and received, stakeholder status with the specific intent to participate in the re-licensing process to promote land conservation in our area. It is not uncommon for land set-asides to result from re-licensing.

We have actively participated in many public meetings over the last 18 months, both for the broad Metro Advisory Group and for the Land Sub-committee. Unfortunately, we have not been successful in advocating for the conservation of lands in our immediate area. The conservation lands contemplated by the AIP reflect two factors: one, those lands desired by the state agencies; and two; lands made available by Crescent. Nearly all the conservation lands are located upstream in the Lake James and Bridgewater areas.

Duke Energy is engaged in a traditional licensing process, meaning that the AIP will be translated into a Final Agreement (FA) over the summer, and the Final Agreement will be signed August 1, 2006 after review by all teams. This is all leading to Duke's license application which must be filed by August 31, 2006, followed by review by Federal Energy Regulatory Commission (FERC) in 2007-8, and likely issuance of a license in 2008 or 2009.

The Charter for participating stakeholders calls for all participants to sign the AIP whether they agree with it or not. A vote of "not in consensus" is signified by signing as a "5" on a scale of 1-5. While the AIP is non-binding, our signature is important to show our likely position regarding the FA. When we sign, we declare a consensus scale rating of 1 to 5 (explained below) as an expression of our level of support. We can submit comments or statements of reservations with our signature.

Agreement in Principle

The AIP is a complex document covering all significant aspects of the river system including lake levels, flows for recreation and aquatic habitat, cultural resources, species protection, shoreline management, water quality enhancements, among others. A link to the AIP will be provided on the Conservancy's web site.

Distillation of the agreement produced the following important issues that are relevant to the Conservancy and its mission. Here are several key conclusions from the re-licensing process and from the AIP:

- State and federal agencies have largely determined the key land-related terms of the AIP;
- Land enhancements proposed by the AIP for our area are limited to recreational-related lands and relatively small parcels. These lands will be used for swimming, canoe access, boat launches, etc.
- The land subcommittee identified a number of key land parcels for conservation – nearly all of those lands were removed from the process by Duke.
- Many of the provisions of the AIP are stipulated on signatures by NC Wildlife Resources Commission and NC DENR. If these NC state agencies are signatories of the Final Agreement, Duke will make available \$4,000,000 to the State for land purchases and land conservation in the water shed. The amount is increased to \$6,500,000 if a 50 year license is issued. The agreement is silent on an inflation factor for the purchase money.
- The AIP proposed 28.6 bank miles of conservation easements (344 acres) along the Johns, Catawba and Linville Rivers to be transferred to NC (or a land trust if NC chooses) as mitigation for project impacts on NC flows and habitat. (This is not conditioned on the 50 year license and is described in Section 4.1.5).
- The AIP also proposes 150 total acres (12.5 bank miles) of conservation along the Johns River subject to a 50 year license. This land is designed to mitigate reduced flows in the watershed.
- The recreational provisions of the plan specify 5,132 acres that are expected to be purchased by identified entities with support from Duke Energy. These lands are to be purchased for public recreation and land conservation purposes. These lands were specified by the State agencies (or limited county requests).

In summary, the most significant, land-related provisions of the AIP amount to \$9.3 million plus about 1,225 acres plus the easements. Here is a summary listing (see attachment for complete listing of recreational land set-asides of the AIP):

- 560 acres in Bridgewater (North Bend Tract) to NC DENR if it signs AIP;
- 420 acres at Catawba Linville Confluence to NC DENR if it signs AIP;
- 275 acres Paddy Creek recreation land to NC DENR if it signs the AIP;
- 2,882 acres Johns River Game lands (Johns River and Lake Rhodhiss confluence) bargain sold by \$2,640,000 (Duke's contribution) if NC DENR signs AIP;
- 600 acres Mountain Creek Park bargain sold by \$1,140,000 (Duke's contribution) to Catawba County if it signs AIP;
- \$4,000,000 for conservation to NC DENR and / or the NC WRC if it signs, increased by \$1,500,000 if 50-year license is issued.

For perspective, consider this: Unofficially, the cost to Duke of implementing the AIP is very roughly estimated at about \$200,000,000. This is not confirmed or official. The land conservation component reflects 10 to 20% of the total implementation costs. It is difficult, if not impossible to effectively compare this land package with other settlement agreements across the US. As an additional reference point, roughly \$80-100 million has apparently been spent on consultants, legal, and convening fees. The land component of the package therefore equals about ¼ of the consultant's fees.

The bottom line here is that the agreement is not optimal. However, there are significant land set-asides overall; they are just not located in our footprint. Also, while we do not have first hand knowledge of proposed conservation lands, the state agencies have targeted them as important

for recreation and conservation. There is undoubtedly significant conservation value rendered to the public by the AIP.

AIP – Other Issues Noted – Not Related to Land (Provided as information only)

- Significant non-land related issues exist for many stakeholders, among them:
 - Several sections of the AIP are incomplete and in draft form – several stakeholders have indicated that they will not sign until the document is complete;
 - Increased potential for SC flooding at Lake Wateree, without proper mitigation;
 - Conflicts between the requirements of AIP and the Final Agreement (FA) regarding future 401 Water Quality Process;
 - Inadequate future flows for migratory fish populations;
 - Lack of clarity regarding Crescent Resource’s intent to make lands available to communities, given that Duke Energy is the proposed licensee;
 - Improper escalation terms regarding future land gifts or acquisitions;
 - Many of the regional enhancements specified in the AIP are conditioned on Duke obtaining a 50 year (not less) license;
 - Few of the recreational facilities will actually be built and funded by Duke – most require significant public investment;
 - Water Quality provisions will not be finalized prior to the AIP or the FA, and Section 16 severely limits the potential for public comment regarding future communications with FERC or 401 Water Quality discussions – many stakeholders feel strongly that the AIP and FA should not prohibit stakeholders from full engaging in the 401 water quality process that will commence in 2007;
 - Stakeholders are concerned that the FA is vulnerable to being re-opened by mandatory requirement imposed in future years by state or federal agencies.

Signing the AIP

We sign the AIP by declaring a consensus (support) ranking. There are 4 levels of consensus (1-4), and one level of “walk away” (level 5):

1 – Endorsement

2 – Endorsement with minor point of contention

3 – Agreement with minor reservations

4 – Stand aside with major reservations – will not block the final proposal

5 – Block – member will not support the proposal and is removed from the process.

Signing the agreement as a 1 to 4 indicates our support of the agreement. Signing as a 5 removes us from the process going forward. It should be noted that Duke will present its first draft of the FA on April 20, four days before the reservation / dissent statements are due and 3 days after the last day to sign the AIP.

The Conservancy’s signature and level of support will be made public along with our statement of reservations. Our statements will be submitted to FERC with the final agreement.

It appears that most stakeholders will be signing the AIP with a level 4 consensus, and most plan to submit comment statements of major reservations. It remains unclear where the federal and state agencies stand on signing the AIP. Some information from NC DENR indicates that they

will sign as a 4. It is likely that more than one of the key agencies will not sign, or will sign as a 5, and the ramifications of this are not clear.

Conservancy Position

On April 12, 2006 the Conservancy's Board of Directors considered the AIP and approved a signature with a support level of 4. Also approved was the statement of reservations presented on the following page.



Catawba Lands Conservancy – AIP Statement of Reservations

Catawba Lands Conservancy appreciates the opportunity to participate in the re-licensing process, and greatly values the stakeholder efforts. The Conservancy believes that there are many public, conservation benefits embodied in the Agreement in Principle (AIP). Most significantly, the process has resulted in land conservation and greater protection of the Catawba River. Implementation of the AIP will help promote long-term preservation and enjoyment of the river system, our area's most precious natural resource.

Catawba Lands Conservancy supports the AIP, subject to the reservations presented below:

1. We believe that the mitigation package is unbalanced in that it lacks inclusion of adequate provisions for land conservation in the Metro Group area, including land conservation for Mountain Island Lake (MIL). While we have reservations about the elimination from the AIP of several conservation parcels as presented by the Land Subcommittee, we are most concerned about protection of MIL as North Carolina's largest drinking water source serving over 800,000 people. The AIP contemplates that reduced flows to MIL be mitigated by buffer easements and conserved lands far upstream in Burke County, NC. While we understand that this is being driven in part by the mitigation rules of the 401 Water Quality Process, we find the approach inadequate. The technical requirements related to stream orders effectively render Johnson Creek (2nd order stream for MIL) ineligible for protection under the applicable guidelines. This defies conservation logic and ignores the vulnerability of MIL and safe drinking water to land use development in the area of Johnson Creek. The lands along both sides of Johnson Creek are owned and controlled by Carolina Centers (arm of Duke). We believe that adequate and permanent buffers along both sides of Johnson Creek should be conserved.
2. Attachment Q to the AIP "Draft Conceptual Conservation Easement Outline" presents terms for conservation easements contemplated by the AIP. We feel the proposed conservation easement is inadequate in terms of stated restrictions and in terms of the width of the riparian buffer. An acceptable easement is one consistent with easement requirements promoted by North Carolina's Clean Water Management Trust Fund.
3. The window for establishment of many land options in the AIP closes in December 2006. The short time frames for land acquisition options may place undue burden on the state of North Carolina and on local governments. The time frames for establishing options should be expanded to provide more flexibility for the optionees.
4. The land resource enhancements prescribed in the AIP that are tied to the issuance of a 50-year license should be unconditional and be applicable even if the license term is less than 50 years.

5. A land parcel identified as very important by many stakeholders, and one we lobbied hard for, included an addition to the Lake Norman State Park. This tract was taken out of the process and we have been told that NC will purchase the land directly from Crescent at a discount price. We are concerned that since it is out of the process the stakeholders have no way to ensure that Crescent remains a willing seller and that the price will be acceptable to NC.