



Date: February 24, 2011

To: Thomas J. Bonfield, City Manager
Through: Theodore L. Voorhees, Deputy City Manager
Ed Venable, Engineering/Stormwater Manager
Paul Wiebke, Assistant Stormwater Manager
John Cox, Water Quality Manager
From: Michelle Woolfolk, Assistant Water Quality Manager
Subject: Resolution to Support Changes to the Upper Neuse River Basin Association

Executive Summary

The Falls Lake rules were adopted and went into effect on January 15, 2011. Consistent with the Consensus Principles adopted by the City of Durham in February 2009, the final Falls Lake rules includes provisions allowing for a re-examination of Falls Lake to potentially support alternative Stage 2 regulations. Concurrent with the development of the Falls Lake rules, NC General Statutes (NCGS) §77-119 *et. seq.* (Session Law 2010-155) for a Falls Lake Association was passed by the NC General Assembly. The General Statutes provide specific purposes and goals of a Falls Lake Association and how this association should interact with the NC Division of Water Quality. In response to the rules and legislation, the Upper Neuse River Basin Association (UNRBA) adopted new bylaws that are consistent with the Falls Lake Association described in the General Statutes. The UNRBA is prepared to take on the first step toward re-examination of Falls Lake by hiring a consultant to review existing information and recommend a plan for moving forward. This step is on hold pending additional funding by local governments in the Falls Lake watershed.

Recommendation

The Administration recommends that the City Council adopt the Resolution to support changes to the Upper Neuse River Basin Association in response to the Falls Lake Rules, to increase UNRBA dues by up to \$25,000 beginning fiscal year 2012, and continue support of the Consensus Principles to Guide the Falls Lake Nutrient Management Strategy relating to a re-examination of Falls Lake.

Background

Regulatory activity in the last year has caused the structure and purpose of the UNRBA to become less relevant and unable to support the growing needs of local governments. On November 18, 2010, the North Carolina Environmental Management Commission adopted the Falls Lake Nutrient Strategy rules, which became effective on January 15, 2011. The adopted Falls Lake Nutrient Strategy rules provide for staged and adaptive management to address excessive chlorophyll *a* levels in Falls Lake. The Falls Lake Nutrient Strategy rules address the Consensus Principles in many areas and include opportunities for collaboration between the NC Division of Water Quality and the affected parties. In particular, the Falls Lake Nutrient Strategy rules allow any person or affected party to submit technological, scientific and economic information that can inform the implementation of both Stages of the rules. (Stage 1 of the rules is intended to protect the lower part of the lake. Stage 2 of the rules calls for further

reductions as necessary to achieve water quality in the upper-most segment of the lake.) The Falls Lake Nutrient Strategy rules specify time frames for reporting to the Environmental Management Commission, with the first reporting date in January 2016.

On a separate timeline, the Falls Lake Watershed Association legislation (NC General Statutes §77-119 *et. seq.*) provided guidance for a local government organization seeking to work cooperatively with the NC Division of Water Quality on Falls Lake. These rules included the following specific purposes for a local government organization:

1. Providing a forum for sharing information in order to assist local governments in complying with State and federal laws that pertain to the water quality in the Falls Lake watershed
2. Providing a mechanism for participating local governments to coordinate and fund common technical resources
3. Planning for and conducting water quality monitoring in the Falls Lake watershed in coordination with the Department of Environment and Natural Resources
4. Coordinating with the Department of Environment and Natural Resources in the development of a transparent and accessible system for recording and maintaining nutrient offsets and credits that complies with any rules adopted to protect and restore water quality in the Falls Lake watershed
5. Providing a public forum to review and discuss innovative approaches to restore, protect, and maintain water quality in the Falls Lake watershed
6. Conducting and evaluating scientific research that describes or predicts conditions related to or affecting water quality in the Falls Lake watershed, including the reservoir.

The purposes outlined for the Falls Lake Watershed Association encompass support areas not addressed in the Falls Lake Nutrient Strategy rules. While the UNRBA has historically served the first and second purposes listed above, the remaining purposes are new directions that have not been served by UNRBA.

In response to both the Falls Lake Nutrient Strategy rules and the Falls Lake Watershed Association rules, the UNRBA developed a short-term plan to incorporate these new needs. ***The Path Forward: Making the Upper Neuse River Basin Association Effective in the Era of the Falls Lake Rules*** was developed by member governments to describe a future UNRBA direction. This document responds to the re-examination described in the Consensus Principles, the Falls Lake Nutrient Strategy rules, and the Falls Lake Watershed Association rules.

The UNRBA absorbed the functionality of the Falls Lake Watershed Association as of February 16, 2011 by adopting modifications to the bylaws. The organization is currently considering an increase to cooperative funding to move forward on Step 1 outlined in the Path Forward document.

Issues/Analysis

If City Council does not support the changes in the UNRBA, then the city will not have the benefit of a regional partnership to support the monitoring programs necessary. The City of Durham may need to implement some of the monitoring and modeling on its own in order to avoid imposition of draconian and economically unsustainable measures under Stage 2 of the rules.

Alternatives

The City could accept the existing Stage 2 requirements of the Falls Lake Rules at a cost significantly higher than \$645 million dollars and forego cooperative efforts to conduct studies that relieve

draconian mandates of Stage 2. Alternatively, the City could decide to pursue the necessary monitoring and modeling studies on its own to perform a re-examination of Falls Lake on its own without financial support from, or cooperative negotiations with, other local governments in the Falls Lake watershed.

Financial Impact

The short-term financial impact will be an annual increase in UNRBA dues of up to \$25,000 beginning fiscal year 2012. Funding is available in account 5500L041-728600. Excess funding will be required to complete the monitoring and modeling recommended for the re-examination of Falls Lake. The exact future costs for the monitoring and modeling will not be known until completion of Step 1 outlined in the Path Forward document.

SDBE

No SDBE review is applicable to the governance of the UNRBA.