



North Carolina Department of Environment and Natural Resources
Division of Water Resources

Pat McCrory
Governor

Thomas A. Reeder
Director

John E. Skvarla, III
Secretary

Cheoah River Resource Management and Enhancement Fund
Annual Report 2012

Introduction

This annual report is submitted to satisfy the requirements of the *Tapoco Project Relicensing Settlement Agreement* (RSA) that requires the preparation and distribution of an annual report to Fund Board members and advisors, and that Alcoa Power Generating Inc. (APGI) file the report with the Federal Energy Regulatory Commission (FERC) by June 30 of the following year. The Cheoah River Resource Management and Enhancement Fund (“Fund” - listed in the RSA as the North Carolina Resource Management and Enhancement Fund) was established through the Tapoco Project RSA and is to be administered by the Fund Board, composed of authorized representatives of the North Carolina Wildlife Resources Commission (NCWRC), North Carolina Department of Environment and Natural Resources (NCDENR), U.S. Department of Agriculture’s Forest Service (USFS), U.S. Department of Interior’s Fish and Wildlife Service (USFWS), and the Eastern Band of the Cherokee Indians (EBCI). APGI is required to provide an initial deposit of \$100,000 then annual deposits of \$25,000 (both in inflation adjusted dollars) except for the final 3 years of the existing 40-year license. The Fund Board delegated NCDENR-Division of Water Resources (DWR), under the authority of the RSA, to administer and disperse the Fund.

The fiduciary agreement requires that:

“The DENR will submit annually to all members of the Fund Board and the Tapoco Project Licensee, by March 31st:

- a. A detailed accounting of the Fund as of December 31 of the prior year, including all income and disbursements.
- b. An accounting of all cost-share or other contributions to the Fund for the prior calendar year.
- c. Commitments of funds not yet invoiced as of December 31 of the prior year.
- d. The balance of funds available for expenditure in the next year minus remaining commitments and anticipated expenses.
- e. A statement of all fiduciary expenses for the prior year.”

License Transfer

The FERC, in its October 4, 2012 “Order Approving Transfer of License,” approved the transfer of the license for the Tapoco Hydroelectric Project from APGI to Brookfield Smoky Mountain Hydropower LLC (“Brookfield”).¹ Brookfield, through its legal representative, in a December 3, 2012-dated

¹ FERC Accession Number 20121004-3016.

document submitted to FERC “its acknowledgement of acceptance of all the terms and conditions of the License Transfer Order, as well as certified copies of the instruments of conveyance, which demonstrate that [Brookfield] has the necessary rights to maintain and operate Project No. P-2169.”² The project transfer became official on November 15, 2012. The Tapoco Hydroelectric Project’s new name is Brookfield Smoky Mountain Hydro (BSMH).

2012 Board Activities

Jim Mead, with DWR, served as the Fund Board chair for the first half of 2012. Fred Tarver, also with DWR, served for the remainder of 2012. The Fund Board designated Mark Cantrell (U.S. Fish and Wildlife Service – Asheville Regional Office) to serve as 2013 Fund Board chair.

The annual payment of \$29,581.00 was received from APGI and deposited by DWR. (This report refers to calendar year unless otherwise noted.) The beginning balance for 2012 was \$71,675.46 and the ending unencumbered balance is \$31,004.79. A fiduciary report is included as Attachment 1.

The Fund Board held its annual meeting on October 25, 2012. The meeting agenda is included in Attachment 2. No project proposals were considered at the 2012 meeting and none have been received at this time for consideration. Projects previously approved for funding are included in Attachment 3.

The following projects were active in 2012:

- Captive culture and reintroduction of fishes and mussels (NCWRC);
- Propagation of wounded darters (Conservation Fisheries, Inc.);
- Management of Yellow Creek exotic vegetation (The Land Trust for the Little Tennessee);
- Gravel cleaning and installation (NCWRC and McNeely Trucking Co.).

The Fund Board chair agreed to investigate the capture of Fund interest (\$1047.49) by the State of North Carolina in FY2011. The Fund Board chair reported back to the Fund Board by electronic mail on November 6, 2012. The Fund Board has not acted on this matter as of yet.

Graham County expressed an interest in contributing to the Fund. The Fund Board chair sent a letter to the Graham County Manager, dated October 31, 2012, welcoming the county’s interest.

The Land Trust for the Little Tennessee reported matching funds of \$5,307.06 from the USDA Wildlife Habitat Incentives Program (WHIP). Conservation Fisheries Inc. reported match funding of \$2,571.50.

There were no fiduciary expenses incurred by the Fund in 2012.

Brookfield maintains a website for central storage of Fund Board business items at:

www.smokymountainhydro.com/content/recreation_and_environment/nc_fund_board-35712.html.

² FERC Accession Number 20121203-5122.

Attachment 1

CHEOAH RIVER RESOURCE MANAGEMENT AND ENHANCEMENT FUND

Fiduciary Report

December 31, 2012

06/30/11	FY 2010 - 2011 Ending Balance		\$71,675.46
07/01/11	FY Starting Balance		\$71,675.46
03/30/12	Deposit - Alcoa 2012 payment		\$29,581.00
06/30/12	Interest July 1, 2011 to June 30, 2012		\$452.26
06/30/12	Disbursements FY 2011-2012		\$42,748.09
	<i>Virginia Tech (08/02/11)</i>	\$7,390.91	
	<i>Virginia Tech (11/22/11)</i>	\$12,593.58	
	<i>Land Trust for the Little Tennessee (12/20/11)</i>	\$6,000.00	
	<i>Conservation Fisheries, Inc. (01/17/12)</i>	\$7,881.60	
	<i>McNeely Trucking Co. (05/29/12)</i>	\$8,882.00	
06/30/12	FY 2011 - 2012 Ending Balance		\$58,960.63
07/01/12	FY Starting Balance		\$58,960.63
12/31/12	Interest July 1, 2012 to December 31, 2012		\$162.56
12/31/12	Disbursements FY 2012-2013		\$-
12/31/12	Balance ending December 31, 2012		\$59,123.19
12/31/12	Funds encumbered by contract as of 12/31/12		\$(28,118.40)
	<i>Land Trust for the Little Tennessee - Yellow Creek</i>	\$12,000.00	
	<i>Cons. Fisheries, Inc. - Prop. Wounded Darters</i>	\$16,118.40	
12/31/12	Funds available for contracting		\$31,004.79
	Prepared by:		
	Darren England, NC Division of Water Resources		
	March 31, 2013		

Attachment 2

Cheoah River Resource Management and Enhancement Fund

Annual Meeting
October 25, 2012, 1:00 p.m.
U.S. Fish & Wildlife Service Office Conference Room
160 Zillicoa Street
Asheville, NC

Meeting Agenda

1. Introductions
2. Update of Finances
3. Updates of Funded Projects
 - a. Management of Yellow Creek exotic vegetation (LTLT)
 - b. Propagation of wounded darters (CFI)
 - c. Captive culture and reintroduction of fishes and mussels (NCWRC)
4. Review of Fund Proposals for 2013
5. Other Fund Board Business
6. Select Chair for 2013
7. Review Action Items
8. Adjourn

Attachment 3

The 2011 Fund Board approved funding for the following proposals/projects at its **October 4, 2011** annual meeting.

Proposal	Requester	Amount
Captive culture of fish and mussels ¹	NC Wildlife Resources Commission	\$10,000 annually for 2012-2014
Hatchery propagation and reintroduction of Wounded Darters into the Cheoah River	Conservation Fisheries, Inc.	\$8,000 annually for 2012 and 2013
Gravel installation ²	NC Wildlife Resources Commission	\$5,000 for 2012

¹This contract should be awarded after receiving the 2012 APGI payment and the scope of work from WRC.

²This initial estimate was revised following inspection of the stockpiled gravel and decision to clean and install all remaining stockpiled material.

- The 2010 Fund Board approved funding at \$6,000.00 per year (2011-2014) for the management of exotic vegetation in the Yellow Creek watershed by The Land Trust of the Little Tennessee.

Attachment 4

Cheoah River Resource Management and Enhancement Fund
Annual Meeting
October 25, 2012, 1:00 p.m.
USFWS Office and Conference Room
160 Zillicoa Street
Asheville, NC

Meeting Notes

Participants: Chris Goudreau (NCWRC)*
Dan Whyte (Brookfield)
David Harris (Brookfield)
Fred Tarver (NDENR)*
Jason Farmer (USFS)*
Jody Smet (EA Engineering)
JR Shute, Conservation Fisheries
Mark Cantrell (USFWS)*
Marshall Olson (APGI)
Michael Bolt (EBCI)*
Pat Rakes, Conservation Fisheries
Randy Garletts (Brookfield)
Steve Fraley (NCWRC)

* indicates Board member

Meeting Agenda: Attachment 1

Fred Tarver, acting Chairman, convened the meeting and noted that all Board members were in attendance. Fred summarized relevant portions of the Fund Board's Operating Protocol specific to membership, decision making, and annual reporting.

1. Update on Finances

Fred Tarver provided a copy of the financial report for July 1, 2011 through June 30, 2012 and July 1, 2012 through present (Attachment 2). Currently, there is \$59,055.79 in the account. After subtracting outstanding financial obligations, the Fund has approximately \$30,937.39 remaining, not considering the licensee's January 2013 contribution (expected to be approximately \$30,000). Interest accrued on the account; however, a 2010-2011 legislative action removed \$1,047.49 in interest from the account. The Fund Board's Operating Protocol allows interest to accrue to the account, which then becomes exclusive property of the Fund. Additionally, the Relicensing Settlement Agreement (RSA) includes language that any interest accrued by the Fund shall be reinvested in the Fund to be used for the purposes of the Fund. The Fiduciary Agreement between the NC Fund Board and NCDENR does not include this same language. There was some discussion about which of these legal documents governed. Fred agreed to discuss the issue with counsel (Marc Bernstein, Don Layton, Jerry Thornton) within 10 days of the meeting and to advise the Fund Board of counsel's guidance regarding this issue. Then, if appropriate, Fred and others could have conversations with the legislative and/or budget office to try to recapture the funds.

2. Updates of Funded Projects

Management of Yellow Creek exotic vegetation (LTLT)
(See Attachment 3)

Propagation of wounded darters (CFI)

J.R. Shute reported that CFI had released about 300-350 darters at three different sites (lower bridge at Tapoco Lodge, mouth of Yellow Creek, and below Rock Creek) on the Cheoah River in April 2012. Fish are about a year old when they are stocked. Monitoring of the darters is planned for fall 2012. For planning purposes, Mark Cantrell reminded J.R. of the one remaining Cheoah River high flow event on November 3. J.R. said that CFI has relocated wounded darters in the river, but not in high numbers. He commented that the habitat is still fairly limited. Steve Fraley agreed that the river is still lacking appropriate microhabitat. Mark asked if the gravel introductions seemed to be helping. There was some discussion about the best habitat being up by the Baptist church where there are significant inputs of sediment (i.e. more sand) into the river. Steve Fraley asked if future introductions would be made in the same locations or further upstream? J.R. said that CFI will concentrate its reintroductions of the darters in the same few areas to encourage reproduction. Pat Rakes said there needs to be sufficient enough long pool habitats for recruitment larvae to hold in the high gradient river. Pat suggested surveying down near Cheoah Dam to see if any reproduction larvae have been swept downstream as a monitoring priority. Mark commented that there are no high flow events in June and July 2013 or in August 2013 until August 31, which will hopefully provide a more stable period for reproduction and decrease the likelihood of larvae being swept down into the cold trout waters of Calderwood.

Captive culture and reintroduction of fishes and mussels (NCWRC)

Steve Fraley reported good success with NCWRC's propagation efforts. He said that in 2011, NCWRC released 8,000+ wavy-rayed lamp mussels at three sites, and an additional 3,000 rainbow mussels. In 2012, NCWRC released 5,000 wavy-rayed lamp mussels and 3,000 rainbow mussels. Assessment surveys in 2011 and 2012 showed that the reintroduced mussels are doing very well in terms of growth and gravidity. Steve explained that NCWRC's efforts to propagate elktoe for augmentation have been less successful. Recently (October 2012), NCWRC did translocate 97 elktoe adults from the Tuckasegee River into the Cheoah River in close proximity to the relic population to meet its goals for augmentation. Steve plans to try to propagate elktoes again in the spring of 2013. Steve anticipates no problem in 2013 meeting targets to release additional wavy-rayed lamp mussels and rainbow mussels into the Cheoah River.

Steve said that NCWRC has been releasing spotfin chubs into the Cheoah River for three years now. NCWRC's 2012 assessment surveys exceeded expectations. Continued expansion and breeding activity upstream from the release site, and upstream of the quarry hole, was documented.

Steve committed to submitting a report for the last two years. He asked if he should also submit a proposal for 2013. Chris Goudreau said yes, NCWRC should submit a proposal for 2013; funding in addition to the uncommitted funds will be available in January 2013. Chris suggested a multi-year proposal/contract.

Mark asked Steve what other species NCWRC would like to restore to the Cheoah River. Steve responded sicklefin redhorse, yellow and smoky madtoms, stone cat, and the olive darter. Steve said that the mussels are limited by available habitat. Mark agreed that smaller, finer substrates were needed; there is plenty of woody debris. Mark asked Steve about his observations with the flow regime. Steve said that all results have been positive, so he could not say anything but good things

about the flows. He noted that there has been algal growth and an explosion of hydrilla during the summer low flows, but this is usually broken up and washed away during high flow events. Mark asked Steve if he was seeing less of a species. Steve said that anecdotal observations indicate overall lower densities for all fish except for smallmouth bass. He could not be sure why, but suggested it might just be an adjustment to a new normal?

3. Review of Fund Proposals for 2013

There were no proposals for 2013 to review. Steve Fraley said again that NCWRC anticipates submitting a proposal for 2013 to continue its propagation and reintroduction of fishes and mussels into the Cheoah River.

It was noted that Graham County is willing to contribute \$1,000 to the NC Fund on an annual basis. Fred Tarver agreed to review the Operating Protocol in terms of receiving gifts and to discuss the issue with Darren England, NCDWR, and then he would write a letter to Graham County accepting the gift.

4. Other Fund Board Business

Chris Goudreau identified a need to update the NC Fund Board website with reports, copies of contracts etc. Chris will continue to work to collect the information that needs to be posted on the website and will work with the licensee to get it posted. Chris also committed to working with Darren England to close out old contracts and unencumber any unspent funds.

5. Select Chair for 2013

By consensus agreement, the Board elected Mark Cantrell as the Board's chairman for 2013. Mark agreed to establish funding priorities moving forward. There was some discussion about funding educational projects, such as informational kiosks about the river restoration, moving forward.

6. Review Action Items

Fred Tarver reviewed the following action items:

- Fred will contact legal counsel about the issue of interest monies being removed by the State from the Fund and will report back to the Fund Board within 10 days.
- Fred will discuss Graham County's offer of a gift to the Fund with Darren England, and others as appropriate, and draft a letter to the County accepting its offer.
- Chris Goudreau will work with Darren England to close out any old contracts and unencumber unspent funds.
- Chris will work with the licensee to update the NC Fund Board website.
- Mark Cantrell will serve as Fund Board chairman beginning January 1, 2013.