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## BYLAWS FOR THE TALLASSEE FUND

### **Introduction:**

The Tallassee Fund ("Fund") was established through the Settlement Agreement among numerous parties to the relicensing proceeding for the Tapoco Project, FERC hydropower Project No. 2169-020 ("Project"). The Settlement Agreement was adopted and approved by FERC in its Relicensing Order dated January 25, 2005, which granted a 40-year license to Alcoa Power Generating, Inc. ("APGI"), effective March 1, 2005. The settling parties agreed to create the Tallassee Fund through Section 2.3 and Appendix B-4.2 of the Settlement Agreement. The licensee, APGI, is required to provide \$100,000 per year (in inflation-adjusted dollars) to the Fund for each of the 40 years of the license. Pursuant to Appendix B-4.2, Section IV, the Board of the Fund is to be comprised of one representative each from the following entities: The U.S. Fish and Wildlife Service, the U.S. Forest Service, Great Smoky Mountains National Park (a unit of the National Park Service), the Tennessee Department of Environment and Conservation, the Tennessee Wildlife Resources Agency, The Eastern Band of Cherokee Indians, The Nature Conservancy, the National Parks Conservation Association, the Tennessee Clean Water Network, and American Rivers (collectively "Fund Board"). APGI is to serve as an advisory member of the Board. Pursuant to Section V. A., the Fund Board hereby establishes these bylaws for administration and operation of the Fund.

### **I. Fund Purpose:**

The Purpose of the Fund is to finance natural resource stewardship activities including, but not limited to (1) threatened and endangered species recovery efforts, (2) ecosystem enhancements and restoration, (3) management and control of exotic species, and (4) environmental outreach and education directly related to the Project and non-Project lands in Tennessee currently owned by APGI, to mitigate the continuing environmental and social impacts associated with operation of the project. It is the intent of the Parties to limit its mitigation and enhancement projects to sites in the Little Tennessee River or on the adjacent watershed of the Little Tennessee River in Tennessee, and only for projects directly or indirectly related to the effects of Project operations.

### **II. Control of The Fund:**

Upon receipt of money from APGI or any other source into the Fund, the money and any interest earned thereon, shall be in the exclusive control of the Fund Board, to be disbursed and spent according to these bylaws and the terms of the Settlement Agreement, and APGI shall have no further responsibility for the management of said funds. The Fund Board, and the Members thereof, to the extent allowable by law, shall indemnify APGI and save APGI harmless in any litigation, save litigation initiated by APGI, in which the expenditures from the Fund are at issue. The Fund Board may direct APGI to deposit its annual contribution directly into a bank account

of its choosing or into the account of a fiduciary entity selected by the Fund Board pursuant to these Bylaws.

### **III. The Fund Board:**

#### **A. Organization:**

The Tallassee Fund will be administered by the "Fund Board" (or "Board") consisting of one authorized representative each from the U.S. Fish and Wildlife Service ("FWS"), the U.S. Forest Service ("USFS"), Great Smoky Mountains National Park (a unit of the National Park Service) ("NPS"), the Tennessee Department of Environment and Conservation ("TDEC"), the Tennessee Wildlife Resources Agency ("TWRA"), the Eastern Band of the Cherokee Indians ("EBCI"), The Nature Conservancy ("TNC"), the National Parks Conservation Association ("NPCA"), the Tennessee Clean Water Network ("TCWN"), and American Rivers ("AR"). No new entities may be added to the Board without an amendment to the Settlement Agreement, but entity members of the Board may resign from participation in the Board by written notice to all other members of the Board and to the Licensee. It shall be the responsibility of each organization comprising the Board to notify the Project Licensee in writing of the name of and contact information for their Fund Board representative. A member organization may appoint a new Board representative at any time by notifying the Board and the Licensee in writing of the change.

#### **B. Board Powers:**

1. The Fund Board has ultimate power and authority to manage and expend the Fund. The Board shall also have the derivative authority, by consensus, to make grants from the Fund or to establish contracts, memoranda of understanding, or other agreements with (1) a fiduciary organization (including any appropriate state or federal agency) to assist with management of the Fund and (2) with any other person or entity to perform and accomplish the resource management, monitoring, and restoration tasks identified by the Fund Board as necessary for the restoration, management, and enhancement of resources directly affected by ongoing Project operations.

2. The Board shall have the authority, via consensus, to delegate to any one of its member entities, or to any fiduciary entity selected to manage the res of the Fund, the authority to make grants or to enter into contracts, cooperative agreements and other commitments on behalf of the Fund, to carry out the decisions of the Board regarding projects to be funded and executed. The Board shall reserve the power to withdraw any such delegations of authority by consensus. In decisions regarding a delegation to a specific entity that is a Board member or to withdraw such a delegation, the member entity shall recuse itself from the decision.

3. For purposes of this Section and Section IX, Consensus means: 1) the majority of the Board members present at the relevant decision-making meeting "like" the proposal being made; 2) all Board members present can "live with" the proposal; and 3) all Board members present will advocate the decision with others outside the Board, provided, that the documents

authorizing a fiduciary to manage all or part of the res or authorizing a member entity or a fiduciary to make grants or execute contracts on behalf of the Board must include the signature of an authorized representative of seven or more Board entities.

4. The Board may establish an Executive Committee of three members and delegate to that committee any matters within the purview of the full Board except the annual determination of what mitigation and enhancement projects to perform and the determination of what Fiduciary entity shall be entrusted with management of the funds. The Executive Committee shall have the authority to review final requests by the Fiduciary described below to release funds from the Fund in payment for project activities.

#### **C. Board Chair:**

1. The Board will be chaired by a member entity of the Board on an annual, basis, without cost to the Fund. The order of service shall be determined by the Board, which may decide to retain a member entity for multiple years of service as Chair, with the consent of that entity.

The Board Chair for the first year will be formally established by consensus at the initial Board meeting

2. Duties of the Chair will include arranging a place for Board meetings in east Tennessee, providing written notice of all meetings to the Board and the Licensee at least two weeks prior to the meeting, drafting an agenda, chairing meetings of the Board, and providing administrative support for the Board, including preparation of meeting minutes and the annual report. A representative of each organization on the Board is expected to serve as Board Chair for one year in each 10-year period beginning in 2005. However, a member entity may decline to serve as Chair for reasons of its governing law, policy, or lack of assets with which it can perform the duties of the Chair, or it may request that it be granted a variance and be excused from serving until a different year. In such case, the next entity stated in the rotation should step into the role of Chair. The period of service will be from January 1 through December 31 each year, except that the initial Chair shall serve from the date of the first meeting through December 31, 2006 and the Chair for 2044 shall serve through the end of the License term on March 1, 2045, and thereafter until all assets of the Fund have been properly expended and accounted for in a final report to the Fund Board.

3. In the event the Board Chair is vacated prior to completion of a given term, the Board members will convene in person, by proxy, or by telephone to elect a new Chair to serve the remainder of the current Board Chair's term.

#### **D. Meetings of the Board:**

1. The Board shall hold an annual planning meeting during the 4<sup>th</sup> quarter of each year at a place in east Tennessee determined by the Chair, to discuss and decide on appropriate projects and project funding priorities for the subsequent year. At this annual

meeting, the Board shall also review the implementation and status of activities previously approved for funding.

2. The Board Chair or any three members of the Board may call a special meeting of the Board at a time and place in east Tennessee at their discretion, by written notice to the authorized representatives of all organizations comprising the Board (which notice shall state the matters to be considered by the Board) and the Licensee at least two weeks in advance of the meeting.

3. At any meeting of the Board, an authorized representative may participate via telephone or by written proxy. A quorum of six must be present in person, by proxy, or by telephone for the Board to conduct official business. If a quorum is not present for a meeting, the Board Chair must re-arrange for the meeting at another place and time.

4. Each member entity of the Board shall bear its own costs of attending the meeting in person or by telephone.

5. The Fund Board may make decisions only during meetings. A meeting occurs at the date, time and place identified by the Chair in advance of the meeting and only if all Board Members are present (even if only by telephone or proxy). If one or more Board Members are not present, the Fund Board may reach tentative decisions. These tentative decisions shall be communicated to non-present Board Members in writing by the Chair. If the non-present Board Member(s) fails to object to the tentative decisions within fourteen calendar days of the mailing of such notice, then the tentative decisions are final.

If any Board Member fails to attend two consecutive properly announced meetings, the Board Member shall be considered to consent to all subsequent decisions of the Board Fund (that is, all decisions made in the third meeting and beyond), until such Board Member again attends a meeting (physically, by telephone, or by proxy), provided that such Board Member may still object to such decision in writing within the fourteen calendar days specified above.

#### **IV. Advisors to the Board:**

In addition to APGI, one representative each of interested governmental or non-governmental organizations signatory to the Tapoco Project Relicensing Settlement Agreement, other than those that are Fund Board members, may serve as advisors to the Board. The Chair of the Board will send a notice to all entities that were signatories to the Settlement Agreement asking them to indicate if they wish to receive future notices of Board meetings. Only those entities making positive replies will be given future notices. Advisors will be given timely notice of all meetings of the Board and the opportunity to review and provide individual comments to the Board on project selection proposals, to participate in any meetings held by the Board regarding the use of

the Fund, and to review and comment on the annual report. The advisors will not be asked to provide consensus recommendations to the Board.

#### **V. Liability:**

A. The Members of the Board, both individually and in their official capacities for the entities they represent, assume no risks or liability for decisions or agreements made by the Board.

B. To the extent allowed by law, the Board shall delegate to member entities that are state or federal agencies the responsibility to select and arrange for the award of grants or contracts with persons or entities chosen to carry out project selection decisions by the Board. For any construction or performance contracts, the delegated governmental agency must agree to employ its normal contracting policies and procedures to the selection of appropriate contractors, and shall provide the normal forum of the agency to resolve any contract disputes, including contests over selection or non-selection for contracts, and tort claims arising from its actions. For the award of grants, the delegated government agency must agree to employ its normal process for solicitation and award of grants. Any grants shall place upon the grant recipient the duty to arrange for performance of the object of the grant at no further cost to the granting agency or the Board.

#### **VI. Nondiscrimination:**

The Board shall comply with all Federal and State statutes prohibiting illegal discriminations. These laws include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (40 U.S.C. 2000), which prohibits discrimination on the basis of race, color, disability, or national origin; (b) Title IX of the Education amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; and Section 504 of the Rehabilitation Act of 1973 as amended (29 USC 794) which prohibits discrimination on the basis of disabilities. Appropriate nondiscrimination statements will be included in all grants, contracts or agreements entered into by the Board or on behalf of the Board through an agency or a fiduciary organization.

#### **VII. Cost Share Supplementation:**

The Fund creates a "seed source" of monies that can be combined with other contributions to expand the scope of possible accomplishments. Accordingly, the Board will seek to combine funds from sources other than the Licensee to fund projects selected each year. By being a member of the Board, none of the Board entities are thereby committed to provide any supplemental funds to the Fund.

## VIII. Fund Administration:

**A. Fiduciary Entity.** Fund monies received from the Tapoco Project Licensee, as well as any other contributions to the Fund and any interest accrued thereon will be managed on behalf of the Fund by a fiduciary entity ("Fiduciary"). The Fiduciary must be identified prior to transfer of any funds from the Tapoco Project Licensee or any other source to the Fund.

**B. Fiduciary's Duties:**

The duties of the Fiduciary shall include, but shall not be limited to:

1. Holding and safely managing the res of the Fund;
2. Investing the res in authorized state or federal government accounts, or in short-term Treasury securities or bank accounts insured by the FDIC, managing maturity dates to ensure that funds are available at times determined by the Board each year to pay for selected mitigation and enhancement projects, and accumulating any earned interest into the res of the Fund;
3. Obeying the instructions of the Board, consistent with state and federal law;

In addition, if the Fiduciary is not a state or federal agency, it shall also:

4. Be insured up to \$500,000 for losses of the res from any cause other than war;
5. Be insured for liability in at least the sum of \$1,000,000;
6. Be incorporated in or authorized to do business in the state of Tennessee, either as a for-profit financial institution or as a non-profit corporation qualified for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, and in good standing with the Tennessee Secretary of State.

**C. Fiduciary Management Fees:** The Board may negotiate and pay to any managing Fiduciary it determines to retain, an appropriate management fee from the res of the Fund.

**D. Fiduciary Disbursements and Reporting:**

The following disbursement and reporting requirements will be followed by the selected Fiduciary:

1. All disbursements from the Fund by the Fiduciary must be approved in writing by the full Board or, if so authorized, by the Executive Committee established by the Board.
2. The Fiduciary 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. Interest earned for the prior year.

- d. Commitments of funds not yet invoiced as of December 31 of the prior year.
- e. The balance of funds available for expenditure in the next year minus remaining commitments and anticipated expenses.
- f. A statement of all fiduciary expenses for the prior year.

**E. Contracting or Grant Making Delegee:**

1. Pursuant to Section III.B.2, the Board may delegate to the Fiduciary selected under Section VIII. A., or to any one of its member organizations, the authority of the Board to make grants from the Fund or to enter into contracts or other agreements with private contractors, government agencies, or non-profit entities to carry out the mitigation and enhancement projects selected by the Board for funding. The Delegee entity must agree to either perform the work itself or to perform for the Board the tasks of soliciting bids for projects and either making appropriate grants or contracting-out the projects in accordance with its normal contracting procedures. Where the Delegee is a government agency, it is expected that the agency will follow its approved grants procedures or contracting laws and procedures and will provide recourse to any aggrieved persons through the normal channels of relief provided by that governmental organization for claims under the applicable laws governing grants, procurement, contracts, or tort. If the Delegee entity is a non-governmental organization, it must agree to hold harmless and indemnify the Board against any claims whatsoever due to fault or defalcation in the process of soliciting bids and letting contracts for project work.

2. The Board or, if so authorized the Executive Committee of the Board, will approve Project Proposals as eligible for Grants from the Fiduciary.

3. The Fund Board shall negotiate with potential Delegees to obtain contracting or grant placement services for the lowest possible management fee. After a Delegee has been selected, its management fees, if any, shall be paid from the res of the Fund upon approval by the Board or the Executive Committee.

**IX. Project Funding Decisions:**

A. Project proposals may be solicited from universities, non-profit organizations, state or federal agencies, federally recognized Tribes, individuals, or corporations.

B. Proposals for use of monies from the Fund may be submitted to the Fund Board at any time. The Board may convene a meeting to discuss the proposal and to decide whether it is to be funded and by what amount. If grant-making or contract-making authority has been delegated by the Board, proposals for specific execution of projects must be routed through the delegee entity. Final funding decisions and release of funds held by a Fiduciary must be made by the full Board or the Executive Committee, consistent with Sections III.B.4. and VIII.E.2.

C. Each Board member entity shall respect the conflict of interest provisions that may be applicable to that entity pursuant to relevant law. No individual who represents a Board member entity (or their family) may benefit from any contract with or grant of monies from the Fund. All individuals who represent Board member entities shall be expected to receive only their normal compensation due as employees of the entity by which they are employed.

#### **X. Dispute Resolution:**

In the event that any dispute arises that prevents the Board from making decisions under these Bylaws, the Board agrees to engage in good faith negotiations for a period of at least 90 days, if necessary, in an effort to resolve the dispute, said negotiations to be initiated by the aggrieved party. A minimum of one meeting shall be held to attempt to resolve the dispute during the 90-day period. In the event that resolution cannot be reached by the Board within the 90-day negotiating period, the dispute may be referred to the Parties to the Tapoco Project Relicensing Settlement Agreement and handled pursuant to the dispute resolution provisions contained therein.

#### **XI. Annual Reports:**

During its annual 4<sup>th</sup> quarter meeting each year the Board will review the progress and status of activities supported by the Fund and will prepare a report that reflects the amount of payments deposited into and disbursed from the Fund and the specific activities undertaken with monies from the Fund. This annual report shall be prepared and distributed to the members of the Board and the advisors, in the 1<sup>st</sup> quarter of each year covering activity in the previous calendar year. The Board shall deliver the final report to the Tapoco Project Licensee by June 15 of each year to enable the Licensee to file a copy of the report with FERC prior to June 30.

#### **XII. Bylaw Modifications:**

These Bylaws can be amended at any time in response to a proposal for amendment submitted by any designated Board member(s). The proposed amendment shall become effective upon consensus among the members of the Board present at a meeting of the Board in person, by proxy, or by telephone. The approval shall be documented by the signatures of the Board members present at the meeting.

A party proposing an amendment to these Bylaws shall provide written notice to the Board Chair with copies to the other Fund Board members. The notice shall state the substance and basis of the proposed amendment. The Board shall meet and confer as soon as possible, with a goal of meeting within 45 days of such notice. If a consensus is reached at the meeting that the proposed Bylaws amendment is acceptable, the Fund Board Chair will amend the Bylaws to reflect the proposed amendments and will mail a copy of the amended Bylaws to all members of the Fund Board, Alcoa Power Generating, Inc., and all Advisors to the Board named pursuant to Section IV, within 30 days of the meeting in which the proposed amendment was adopted.



THE FOREGOING BYLAWS ARE HEREBY APPROVED BY:

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION ✓

By \_\_\_\_\_

Name:

Title:

Address:

Date:

TENNESSEE WILDLIFE RESOURCES AGENCY

By: \_\_\_\_\_

Name:

Title:

Address:

Date:

*Aubrey David McTinnedy*  
Aubrey David McTinnedy  
Chief, Division of Environmental Science  
P.O. Box 40747  
Nashville, TN 37204  
1/26/06

U.S. FISH AND WILDLIFE SERVICE ✓

By \_\_\_\_\_

Name:

Title:

Address:

Date:

NATIONAL PARKS CONSERVATION ASSOCIATION

By \_\_\_\_\_

Name:

Title:

Address:

Date:

**TENNESSEE CLEAN WATER NETWORK**

By Renee Hoyos  
Name: Renee Hoyos  
Title: Executive Director  
Address: 706 Walnut St #206  
Date: Knoxville, TN 37902

1/26/04

**THE NATURE CONSERVANCY**

By \_\_\_\_\_  
Name:  
Title:  
Address:  
Date:

**AMERICAN RIVERS**

By \_\_\_\_\_  
Name:  
Title:  
Address:  
Date:

**THE NATIONAL PARK SERVICE,  
THROUGH GREAT SMOKY MOUNTAINS NATIONAL PARK**

By Keith R. Langdon  
Name: KEITH R. LANGDON  
Title: ACTING CHIEF, RMT SCIENCE DIV  
Address: GREAT SMOKY MTS NAT'L PARK  
107 PARK HQ ROAD, GATLINBURG, TN 37738  
Date: JAN. 25, 2006

**TENNESSEE CLEAN WATER NETWORK**

By \_\_\_\_\_  
Name:  
Title:  
Address:  
  
Date:

**THE NATURE CONSERVANCY**

By Scott Davis  
Name: Scott Davis  
Title: State Director, TN Chapter of The Nature Conservancy  
Address: 2021 21st Ave. South, Suite 400, Nashville, TN 37212  
  
Date: January 25, 2006

**AMERICAN RIVERS**

By \_\_\_\_\_  
Name:  
Title:  
Address:  
  
Date:

**THE NATIONAL PARK SERVICE,  
THROUGH GREAT SMOKY MOUNTAINS NATIONAL PARK**

By \_\_\_\_\_  
Name:  
Title:  
Address:  
  
Date:

U.S. FOREST SERVICE

By Susan Shaw - Cherokee National Forest  
Name: Susan Shaw  
Title: Biological & Physical Resources, Planning, Lands, & Minerals Staff Office  
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Date: Cleveland, TN 37312  
1/26/06

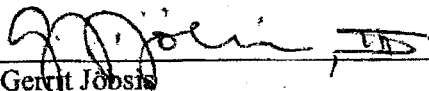
EASTERN BAND OF CHEROKEE INDIANS

By Michael Bolt  
Name: MICHAEL BOLT  
Title: OFFICE OF ENVIRONMENT & NATURAL RESOURCES  
Address: EASTERN BAND OF CHEROKEE INDIANS  
PO BOX 455, CHEROKEE, NC 28719  
Date: JANUARY 26TH 2006

**THE NATURE CONSERVANCY**

By \_\_\_\_\_  
Name:  
Title:  
Address:  
  
Date:

**AMERICAN RIVERS**

By   
Name: Geralt Jobsis  
Title: Director of Southeast Conservation  
Address: 1207 Lincoln Street, Suite 203-C  
Columbia, South Carolina 29201

Date: 01/26/06

**THE NATIONAL PARK SERVICE,  
THROUGH GREAT SMOKY MOUNTAINS NATIONAL PARK**

By \_\_\_\_\_  
Name:  
Title:  
Address:  
  
Date:

**U.S. FOREST SERVICE**

By \_\_\_\_\_  
Name:  
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Address:

**THE FOREGOING BYLAWS ARE HEREBY APPROVED BY:**

**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

By \_\_\_\_\_

Name:

Title:

Address:

Date:

**TENNESSEE WILDLIFE RESOURCES AGENCY**

By \_\_\_\_\_

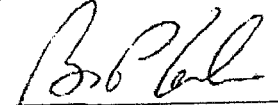
Name:

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Date:

**U.S. FISH AND WILDLIFE SERVICE**

By 

Name: Brian P. Cole

Title: Field Supervisor

Address: 160 Zillicoa Street, Asheville, NC 28801

Date: 1/26/6

**NATIONAL PARKS CONSERVATION ASSOCIATION**

By \_\_\_\_\_

Name:

Title:

Address:

Date:

THE FOREGOING BYLAWS ARE HEREBY APPROVED BY:

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

By Daniel C. Eagar  
Name: Daniel C. Eagar  
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Nashville, TN. 37243-1534  
Date: 26 January 2006

TENNESSEE WILDLIFE RESOURCES AGENCY

By \_\_\_\_\_  
Name:  
Title:  
Address:  
  
Date:

U.S. FISH AND WILDLIFE SERVICE

By \_\_\_\_\_  
Name:  
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Address:  
  
Date:

NATIONAL PARKS CONSERVATION ASSOCIATION

By \_\_\_\_\_  
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Date:

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TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

By \_\_\_\_\_

Name:

Title:

Address:

Date:

TENNESSEE WILDLIFE RESOURCES AGENCY

By \_\_\_\_\_

Name:

Title:

Address:

Date:

U.S. FISH AND WILDLIFE SERVICE

By \_\_\_\_\_

Name:

Title:

Address:

Date:

NATIONAL PARKS CONSERVATION ASSOCIATION

By Don Barger

Name: DON BARGER

Title: SENIOR DIRECTOR, SOUTHEAST REGION

Address: N. P. C. A.

706 WALNUT ST., SUITE 200

KNOXVILLE, TN 37902

Date: 3/3/06