

APPOINTMENT OF FIDUCIARY AND DELEGATION OF AUTHORITY

Pursuant to Section IV of the Operating Protocol for the Cheoah River Resource Management and Enhancement Fund (“Fund” or “Cheoah River Fund”), the Board of said fund (“Board”) does hereby delegate to the North Carolina Department of Environment and Natural Resources (“DENR”) the authority to act as a fiduciary for the Board for the purpose of managing the moneys of the Fund. This appointment becomes effective upon the signatures of the five designated representatives of the Board and the signature of an authorized representative of the DENR, indicating acceptance of the fiduciary responsibility.

This delegation of authority includes the power and authority to solicit and approve contracts or grants from the public or federal, state, or local government agencies, on behalf of the Board, for the purpose of carrying out the annual determinations of the Board for resource management and enhancement projects in the Cheoah River. This delegation includes no authority for DENR to consider making grants or entering contracts for projects not expressly approved by the Board.

By accepting this delegation of authority, the DENR hereby agrees to the following terms of its role as fiduciary for the Fund:

A. Fiduciary Duties:

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

1. Holding and safely managing the *res* of the Fund;
2. Issue payments to contractors or grantees upon the approval of the Board chair and at least one other Board member; and,
3. Obeying the instructions of the Board.
4. Provide 60 days written notice to the Board in the event that DENR no longer wishes to continue as the fiduciary for the Board.

B. Solicitation of Grants or Contracts:

The DENR shall use for the Fund the processes and procedures available to it under North Carolina law for the purpose of soliciting grant applications, reviewing same, and making awards of grants. If it chooses to proceed by means of contracts instead of grants, DENR shall employ the processes and procedures of North Carolina public contracting law to make its awards.

The DENR will provide recourse to any aggrieved persons through the normal channels of relief provided by North Carolina law for claims under the applicable laws governing grants, procurement, contracts, or tort.

C. Disbursements and Reporting:

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

1. All disbursements from the Fund must be approved in writing by the Board, acting through the Board Chair and at least one other Board member. After selecting a grantee, contractor or other entity to perform work on a project for a sum of money to be paid from the Fund, the DENR shall report the grant or contract to the Board and seek an authorization from the Board to release payments from the Fund in accordance with the grant, contract or other agreement with the performing party.
2. If the DENR selects itself to perform a project for the Board, it must still seek approval from the Board for payment of moneys from the Fund.
3. 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.

D. Project Oversight:

DENR shall monitor and oversee any grant it makes or contract it awards pursuant to the North Carolina laws and rules applicable to government grants and contracts. DENR may enlist the assistance of any Board member entity that has field personnel available to help monitor activities on the ground.

E. Non-Discrimination:

The DENR 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 DENR on behalf of the Board.

F. Management Fees:

Because it is in the public interest that DENR manage the Cheoah River Fund for the Board, the DENR shall not charge a management fee to the Cheoah River Fund.

G. Signature and Effective date

This appointment may be signed in separate parts. The appointment is effective as soon as each designated representative of the Board and an authorized representative of the DENR, indicating acceptance of the fiduciary responsibility signs a copy of this appointment and any one Board member is in possession of a signed copy from each Board Member. Signature pages follow.

-- ## --

June 2006

APPROVAL OF DENR AS FIDUCIARY FOR THE CHEOAH RIVER FUND BY:

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

BY: Richard B. Hamilton

NAME: RICHARD B. HAMILTON

TITLE: Executive Director

DATE: 6/20/06

June 2006

APPROVAL OF DENR AS FIDUCIARY FOR THE CHEOAH RIVER FUND BY:

UNITED STATES FISH AND WILDLIFE SERVICE

BY:



NAME:

MARK A. CANTRELL

TITLE:

Fish & Wildlife Biologist

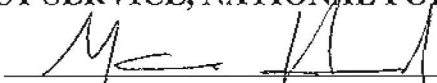
DATE:

22 June 2006

APPROVAL OF DENR AS FIDUCIARY FOR THE CHEOAH RIVER FUND BY:

APPROVAL OF DENR AS FIDUCIARY FOR THE CHEOAH RIVER FUND BY:

USDA FOREST SERVICE, NATIONAL FORESTS IN NORTH CAROLINA

BY:  _____

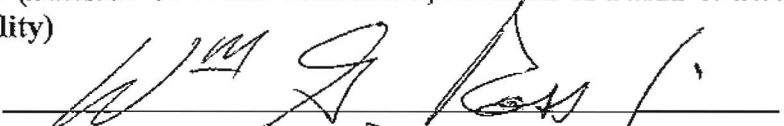
NAME: MARISUE HILLIARD

TITLE: Forest Supervisor

DATE: 6/29/06

APPROVAL OF DENR AS FIDUCIARY FOR THE CHEOAH RIVER FUND BY:

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (Division of Water Resources, Division of Parks & Recreation and Division of Water Quality)

BY: 
NAME: W^m G Ross Jr
TITLE: Secretary
DATE: 6/21/06

APPROVAL OF DENR AS FIDUCIARY FOR THE CHEOAH RIVE FUND BY:

EASTERN BAND of the CHEROKEE INDIANS

BY:

Michael L. Bolt

NAME:

MICHAEL L. BOLT

TITLE:

WATER QUALITY SECTION SUPERVIS 2

DATE:

June 20th 2006

June 2006

**ACCEPTANCE BY THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES:**

THE FOREGOING DELEGATION AND TERMS ARE ACCEPTED BY THE DENR,
ACTING THROUGH ITS SECRETARY, Wm G Ross. THIS 21 DAY OF June,
2006:

BY:

Wm G Ross

NAME:

Wm G Ross Jr.

TITLE:

Secretary

DATE:

6/21/06