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Dear Mr. Gannon and Mr. Robinson:

The North Carolina Farm Bureau Federation (NCFB) is the largest general farm organization in the State, representing the interests of farm and rural people. This letter is to comment on the proposed Jordan Lake Nutrient Management Strategy, and on the proposed regulations published in the June 15, 2007, NC Register. NCFB presented comments at the public hearings on the rules. These written comments are submitted in addition to those comments.

NCFB has been involved in the Jordan Lake issues for many years, including assisting farmers who lost land to the construction of the Lake. Farm Bureau staff served on a committee advising those who produced Lake nutrient models, and also served on the stakeholder group that has been meeting over the last few years. We appreciate the opportunity we were given to participate in that process.

Frankly, on the stakeholder group those of us representing agriculture and forestry were seriously outnumbered by representatives of cities and counties with concerns about the impact of a Jordan Lake Nutrient Management Strategy on the operation of their wastewater treatment plants and on their ability to grow in light of stormwater regulations. Only when the group split up into subgroups by interest area -- when we were able to meet with the DWQ staff as an agricultural and forestry subgroup -- did we feel that the legitimate concerns that we were trying to express for the agriculture and forestry community received the necessary attention to the unique aspects of agriculture in the Jordan Lake Basin.

Farm Bureau has a tremendous amount of experience with Basinwide regulations, and our comments are based on many years of being involved with the development of nutrient reduction strategies and rules dating back to the development of NC's first 208 Plan in the late 1970's and the Chowan River Restoration (CHORE) plan in the early 1980's. Of course, the EMC is aware of NCFB's role in the development and implementation of the agriculture strategy and rules in the Neuse and Tar-Pamlico Basin, and the NCFB staff member on both of the Basin Oversight Committees for those two basins has served on both BOC's since their inception.

We are providing this history in order for you to understand that we are approaching the Jordan Lake Strategy and proposed rules with a tremendous amount of experience over many years of being directly involved with assisting the agricultural community to meet,

and exceed, nutrient reduction targets. We feel that we can offer valuable insights based on success in dealing with water quality issues from nonpoint sources.

Equity Issues -- We realize that you have heard from many of the representatives of the development and local government communities that agriculture is not being regulated to the extent that other land uses are being regulated. First, in these rules agriculture must meet the same reduction goals as each other land use. Further, agriculture has been the only existing land use that has had to retrofit its ongoing existing activities in the previous basin regulations as it has to in this one. Also, with the proposed existing development retrofit rule, we feel that some equity has finally been proposed (with the limitation of there being no compliance schedule or consequences spelled out for that land use – more about that later.) Finally, agriculture has had ongoing federal mandatory compliance requirements in the conservation compliance provisions of the 1985 Farm Bill for far longer than Phase I and Phase II rules have had to be implemented. Those who claim that they are being unfairly treated by comparing their compliance requirements to agriculture might want to consider what they are asking for. They just do not know anything about what agriculture has been required to do or what it will be required to do in these rules. We oppose any more of the responsibility for and burdens of these nutrient reductions being shifted to farmers.

Support Agriculture as a Lower Intensity Land Use -- Farmers as a group, and farmland as a land use, are decreasing in this basin. Efforts should be made to assist farmers in installing BMPs where needed, and to support farming as a way to maintain working lands and as a less intensive land use than the development that is gobbling up the land in the Jordan Lake Basin. Agriculture really is part of the solution.

Agriculture and Nutrient Management Rules' proven track record – The agriculture and nutrient management rules in this proposal track the successful implementation patterns already used in the Chowan Basin (voluntary) and the Neuse and Tar-Pamlico Basins (regulatory.) The agricultural efforts in the Chowan Basin were a substantial contribution to the success achieved there from the time when the Chowan River was pea soup green. In the Neuse and Tar-Pamlico, agriculture has not only met its reduction goals, but far exceeded them. The proof of this is in the annual compliance status reports. We would like to point out that in the previous Strategies these types of reports were only required from one land use in the Neuse and Tar-Pam – agriculture.

We would like to bring your attention to the comments submitted on July 12 to DWQ by the NC Division of Soil and Water Conservation of DENR. Their letter makes many excellent points and provides many important statistics regarding the agricultural situation in the Basin. We support their comments, and for the next several paragraphs will be reiterating some of them and adding additional suggestions to others.

Baseline Date and Agricultural Reporting -- These statistics and their discussion also point to the real problem of developing a baseline date for the agricultural community. We would support using the steady baseline year of 1997 for agriculture. If that is not acceptable, then the agricultural reporting of progress should be based on averages as

well, as they discuss on page 3 of their letter. Most farmers have significantly reduced their use of fertilizer in the past few years due to cost, and due to the types of crops grown. Whether these reductions can be counted will be determined by what the baseline year is for the agriculture rule. Due to the studies and cropping patterns upon which the models were based, these reductions would not have been reflected in the estimates of nutrient contributions from cropland. If we start out with an assumption of higher than actual contributions, and if farmers have made additional reductions that are before the baseline date, expecting reductions as high as 35 percent are just not possible if a farmer is to continue to produce crops.

This would be like telling a man that he had to lose 35 percent of his actual weight beginning on the date of implementation. Suppose he actually weighed 200 pounds several years ago (date of studies used for model development), but the average for his community was 220 (results of the model.) Therefore 220 pounds was assumed to be his weight (and therefore became his baseline.) But on the date that he had to actually begin the diet (effective date of the rule) he had already lost weight and now weighed 175. Being mandated to lose 35 percent of 175 pounds could be really unhealthy. By the same token, suppose a farmer has already made significant fertilizer reductions, but the reductions are after model development, the current applications are lower than the model results, and occurred before the baseline date. There is a real possibility that growing of many crops might not be able to continue after an expected 35 percent reduction either due to lack of adequate nutrients to grow the crop or due to land being taken out of production to meet the mandate. Because there are so few farmers in the Upper New Hope arm and the eastern side of the New Hope arm of the Lake, there are few opportunities for shared compliance. That means this scenario in those parts of the basin is not that far-fetched. We urge the EMC to consider this as they deliberate baseline dates for agriculture and how to account for reductions that have already occurred.

Mechanism to adjust acreage taken out of agriculture from the baseline acres – Experience in the Neuse and Tar-Pam has shown that such a mechanism is necessary. DWQ staff can explain this to the hearing officers, as can Mr. Ellis. This was recently addressed by the staff in the preparation of the last Annual Reports from the BOC's for the other basins, and we support a mechanism being included in the rules.

Nutrient Management Rule – Pastureland and cropland are not over fertilized in the upper portions of the Neuse and the Tar-Pamlico Basins, and we feel certain that the same is true in the Jordan Lake Basin. Agricultural land, particularly pastureland is most likely underfertilized. A more thorough analysis of this, such as the studies of agricultural fertilization in the Neuse and Tar-Pamlico should be completed and the data analyzed before adopting a strategy that may have unintended consequences such as increasing fertilization without the commensurate changes in other cultural practices to increase the ability of the vegetation to absorb more nutrients (such as liming, reseeding, etc.) Please carefully consider this and possibly phase in the nutrient management rule for the different categories of fertilizer users. In addition to allowing for further analysis of data and education of farmers, this will help spread the workload over time of those who must

provide the nutrient management training. Perhaps an advisory group or task force could develop a reasonable and effective schedule.

Financial Support for BMP Education, Technical Assistance and Implementation and Underestimation of Costs to Farmers and Agricultural Agencies – Implementing these rules will be even more challenging than in the past, because the state and federal budgets have not kept up with the increasing demands on the agricultural professional community that provides the training and technical services to assist farmers with implementation of practices. In fact, the federal technical assistance staff is being reduced due to budget cuts.

The NC Agriculture Cost Share Program for Nonpoint Source Pollution has slipped further behind in meeting ever increasing demands for cost-sharing of best management practices. While some feel that the next national Farm Bill will provide additional funding for agricultural conservation, there is no guarantee that the Jordan Lake Basin will meet the requirements as a focus area for spending due to the relatively small amount of agriculture in the Piedmont versus the eastern part of NC.

Assuming, as is done in the Fiscal Analysis, that there will be adequate money for assisting farmers with cost-sharing of seventy five percent of the cost of BMPs is unrealistic. That amount of funds is not available now in the State, with most federal funds only sharing fifty percent of the cost. Many farmers who receive NC Ag Cost Share Funds do not receive the full seventy-five percent, due to applicant caps.

Unless a concerted effort is made to find adequate funds from many sources, such as those cited in the Division of Soil and Water Conservation's comments, it will be very challenging for farmers to meet these rules, particularly with the high reduction targets spread over so few farmers in the New Hope arm of the Lake.

Extended Implementation Schedule for Agriculture – We feel strongly that the implementation schedule for agriculture in the Jordan Basin should be lengthened. With the drought that NC is now experiencing, and is likely to experience for some time to come, it is going to be very difficult for farmers to recover from the tremendous hardships they are currently facing. We strongly urge you to extend the implementation schedule out at least two more years over what is proposed in order for farmers and the technical and professional staff who assist them to be able to work through these catastrophic drought conditions and for the farmers to start to recover from this (if and when the rains actually return.)

Special Concerns for Agricultural Implementation in the New Hope Arm – We feel that a study needs to be done that particularly focuses on the how many farms are actually left in this arm of the Lake, their location, and the practices or buffers that they may already have in place. There are very few farms on the eastern side of the Lake. There are very few farms in all of the Upper New Hope Arm of the Lake. The opportunities for those farmers to meet the high nutrient reduction goals in any collective compliance strategy will be few, leaving compliance options very limited.

Frankly, we feel that taking more land out of agriculture to meet the agricultural rules is counterproductive to the overall strategy for water quality improvement in the New Hope arm of the Lake. We stressed in the Stakeholder process that this would be the most challenging area for meeting the agricultural regulatory requirements, and asked that these farmers not have these tremendous burdens placed on them at all, or to have them reduced. Mr. Richard Jenks, who testified in Elon, has his farm on the eastern side of the Lake in Wake County. He pointed out that he had lost land to the original construction of the Lake and that he is the last farmer left in his whole community. He stated that overly restrictive requirements would force him to do as so many of his farmer neighbors have done and sell out. These are the types of real threats to the open space that agricultural activity provides and are the types of unintended consequences that we hope you will strive to avoid as you consider these proposed regulations.

Stormwater Management for New and Existing Development – We support the comments of the DSWC in that there is no discussion of the ramifications if local governments choose not to complete or adequately address any step in the process of developing, adopting and implementing the stormwater management programs and regulations. There is also no timeline for achieving the initial nutrient reduction goals for stormwater management. Agriculture has had the “sword of Damocles” hanging over it in each previous rulemaking -- and in this one -- that if the agricultural strategy failed, a cookie-cutter set of BMPs would be mandated for all farmers in the Basin.

Consequences must be spelled out for the development community in order for there to be adequate incentive for them to participate and to comply with the new development requirements and for the local governments to meaningfully address the challenge of retrofitting existing development.

There are additional comments in the letter from the Division of Soil and Water Conservation that we will not repeat here, but that we support and hope you will consider in your deliberations.

Here are additional comments on the proposed regulations.

Forestry Activities in Buffers – We oppose the prohibition on harvesting any tree that has exposed primary roots on the streambank. This may promote rather than prevent sedimentation if these trees lose their support and fall into streams with massive amounts of soil attached to their roots. This prohibition would impair some necessary stream restoration activities. In many cases, these trees could be removed, the area protected and then revegetated to greater benefit than would be achieved by this prohibition. Also, we feel that in many circumstances, with appropriate precautions, wheeled and tracked equipment can be used in Zone 1 and should be allowed.

Regulating Pesticide Use -- We do not believe that the Environmental Management Commission has the statutory authority to regulate **pesticide use**. NCFB believes emphatically that this authority rests with the NC Pesticide Board and the NCDA&CS in NC law and with the EPA under the Federal Insecticide, Fungicide and Rodenticide Act

in federal law. Commissioner of Agriculture Steve Troxler recently sent a letter stating the statutory basis for this in addressing the Goose Creek rules. The Hearing Officers need to understand that the term “pesticide” is a “term of art” in NC and at the federal level and is designed to include anything from Warfarin to Roundup to Lysol. There is a reason why one Board has been granted this authority for decades to oversee the use of pesticides. It is a highly complicated and specialized area of law and regulation and the possibility for conflicting regulations and requirements is high. These rules should not attempt to regulate pesticide use.

Preharvest Notification – Early in the discussions of the rules there was a call for preharvest notification for forestry. We oppose preharvest notification for forestry and for agriculture. This is a burdensome proposal that would require unnecessary paperwork and take up valuable agency staff time that could be better used.

Application of Biosolids – Several commenters at the public hearings requested restrictions on the application of biosolids. The EMC actually adopted new biosolids application requirements when it recently adopted the new 15A NCAC 2T regulations. We do not feel that additional requirements for biosolids application should be adopted in this regulation. If there are shortcomings in the 2T rules, the appropriate place for those shortcomings to be addressed is there through a participatory rulemaking process where generators, users, applicators and neighbors can all concentrate on that issue. The Jordan Lake rules are not the place for this.

Requiring Local Governments to Adopt, Implement, Enforce and Pay for the Buffer Rules – We strongly oppose the proposed rule in 2B .0267 (4) that requires the local governments to adopt, implement, enforce and pay for the buffer rules. The local governments did not have to shoulder this burden in the Neuse and Tar-Pamlico rules, and they should not have to do so in these rules either. The answer that was given by Rich Gannon when our staff person asked why this was done at the Elon hearing was that the Division of Water Quality could not afford it. It is not rational to assume that the local governments can afford it either – in fact they are less likely to be able to do so. The state has already developed trained staff to determine where streams begin and end, to determine what activities are allowed or not allowed, what mitigation would be required if an activity is “allowed with mitigation,” etc. Local governments do not have that kind of expertise, nor are they likely to be able to afford it. It is unfair to shift this burden onto local governments and the taxpayers at the local level. What makes the citizens of the Jordan Lake basin different from those in the Neuse and the Tar-Pam, where these responsibilities and costs are borne by the State?

Further, the possibility for inconsistent determinations, mitigation requirements and enforcement is very high when you have dozens of local governments with varying levels of staff and expertise implementing these rules. This rule is a serious mistake, and this language should be removed and replaced with language from the Neuse and Tar-Pamlico rules that places this responsibility where it should lie – on the State of North Carolina.

We appreciate the opportunities that we have had to participate in this process and to provide these comments. If you have questions, please contact me at (919) 782-1705.

Sincerely,

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