



Natural Resources  
Restoration & Conservation

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Mr. Rich Gannon  
North Carolina Department of Environment and Natural Resources  
Division of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
[Rich.Gannon@ncmail.net](mailto:Rich.Gannon@ncmail.net)

RE: Restoration Systems' Comments Regarding the Proposed Jordan Reservoir  
Nutrient Supply Strategy, 15A NCAC 02B .0262-.0272

Dear Mr. Gannon:

On behalf of Restoration Systems, I appreciate the opportunity to submit the following comments regarding the Proposed Jordan Reservoir Nutrient Supply Strategy, 15A NCAC 02B .0262-.0272.

Restoration Systems is North Carolina's largest provider of compensatory mitigation and nutrient off-sets. In the Neuse River basin we have supplied 155,707 30-year pounds of nutrient off-sets for use by the In-Lieu-Fee program operated by the N.C. Ecosystem Enhancement Program. We also have four employees living in the Jordan Lake watershed and several more whose drinking water comes from the reservoir. Consequently, we support a comprehensive, fair approach to improve and protect the lake's water quality that is informed by market economics and high regulatory standards.

We specifically support Section .0269 of the proposed rule which seems to enable the use of a private, market-based approach to accomplish reductions in nutrient loads. Section .0269 clearly defines the methodologies for buyers (those subject to the rules) and sellers (those with credits to offset nutrient loads) to interact. Unfortunately, the portions of the rule that define how the parties to the subject rule can meet their nutrient offset requirements do specify private "sellers" as described in Section .0269 as a compliance option. The specific sections that need to be amended to fully enable private nutrient offset markets include the following:

- Section .0265 (3)(a)(vi) – "Developers shall have the option of partially offsetting their nitrogen and phosphorus loads by funding offsite management measures. . . . Developers may utilize the offset option provided in Rule 15A NCAC 02B .0240 [payment to the N.C. DENR's Riparian Buffer Restoration Fund] for this purpose . . . Alternatively, developers may use an offset option provided by the local governments . . ." – *This section should be amended to include a third option of purchasing offset credits from a seller as described in Section .0269.*

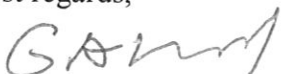
- Section .0265 (3)(a)(vi) – “Local governments shall have the following options . . .” – *This section should be amended to include the option for local governments to purchase offset credits from a seller as described in Section .0269.*
- Section .0266 (3)(a) – *Section vii should be added to enable local governments to use private market mechanisms and third-party sellers to achieve nutrient offsets from existing development.*
- Section .0268 – Mitigation for Riparian Buffers – *Part 6 should be amended to include the option for riparian buffer mitigation to be provided by private sellers of riparian buffer restoration through either a Riparian Buffer Mitigation Bank or a project-specific restoration site.*
- Section .0270 (6)(a)(ii) – “. . . proponent [applicant for an NPDES permit] may purchase a portion of the nonpoint source load allocation for a period of 30 years at the rate set in 15A NCAC 02B .0240 . . .” – *This section does not stipulate to what entities the payment may be made. Such entities should include private sellers of nutrient offsets as described in Section .0269.*

In addition to the specific language amendments detailed above, please consider implementing a policy of preference for private providers of nutrient offset credits and riparian mitigation as compared to payments to a state fund. The field of wetland and stream mitigation and the history of in-lieu of fee programs provide strong evidence that public funds are not the best way to implement meaningful ecological mitigation. Additionally, allowing market forces to determine the price of mitigation will encourage more appropriate behavior (such as all practicable avoidance and minimization) on the part of the purchasing community than an arbitrarily set, and often unreasonably low, price established by a government entity.

Finally, ***all providers*** of nutrient offsets, including the Ecosystem Enhancement Program or other government providers, should be explicitly subject to the provisions of .0269. Subsections 2-4 are common-sense regulatory “sideboards” to be expected of any offset provider. As written, however, it is not clear whether or not these provisions apply to all sellers -- including the government. (In fact, it is not at all clear who is in fact subject to these provisions.) Making all providers explicitly subject to the provisions of .0269 would create a level playing field and ensure that governments are not allowed to sell credits without achieving “genuine, accurate, and verifiable achievement of the purposes of this Rule” as the section demands.

I appreciate your time and consideration of these comments. Please do not hesitate to call if you have questions or need additional information.

Best regards,



George A. Howard  
Restoration Systems, LLC