

ATTACHMENT A

**A RESOLUTION TO SUPPORT THE OWASA BOARD OF DIRECTORS' POSITION
ON PROPOSED HUNTING ON OWASA PROPERTY
Resolution No. 153/2004-05**

Whereas, after carefully considering all of OWASA's obligations, responsibilities, and extensive public input including the April 27, 2005 letter from Moses Carey, Jr., Chair, Orange County Board of Commissioners, the OWASA Board of Directors unanimously agreed at its April 28, 2005 meeting to continue prohibiting hunting on the Cane Creek Reservoir; and

Whereas the OWASA Board further agreed to allow limited hunting on the 490-acre Mitigation Tract for bow hunting of deer, by daily permit only, and with the expected cooperation of the Wildlife Resource Commission (WRC) for inclusion in their Gamelands Program; and

Whereas the OWASA Board supported this limited hunting program with the expectation that it would satisfy any real or perceived 404 Permit obligations that OWASA may have with respect to hunting; and

Whereas, the OWASA Executive Director, Ed Kerwin has informed Commissioner Carey and Mayors Foy and Nelson that the WRC does not accept OWASA's proposal and has communicated this position to the U.S. Army Corps of Engineers.

**NOW THEREFORE, THE CARRBORO MAYOR AND BOARD OF ALDERMEN DO
HEREBY RESOLVE:**

Section 1. The Board hereby adopts this resolution in support of the OWASA Board of Directors' position on the proposed hunting on OWASA property.

Section 2. This resolution shall become effective upon adoption.



ORANGE WATER AND SEWER AUTHORITY

Quality Service Since 1977

May 11, 2005

Moses Carey, Jr., Chair
Orange County
Post Office Box 8181
Hillsborough, NC 27278

Mayor Kevin Foy
Town of Chapel Hill
306 North Columbia Street
Chapel Hill, NC 27516

Mayor Michael Nelson
Town of Carrboro
301 West Main Street
Carrboro, NC 27510

SUBJECT: UPDATE ON POSSIBLE HUNTING ON OWASA PROPERTY

Dear Chair Carey, Mayor Foy and Mayor Nelson;

I am writing to update our local governments on the recent developments regarding possible hunting on OWASA property since my March 29, 2005 letter to you. Attached for your information is our most recent letter to the N.C. Wildlife Resource Commission (WRC) regarding this matter.

At our April 28, 2005 Board of Directors meeting, after carefully considering all of our obligations, responsibilities and the extensive public input including the April 27, 2005 letter from Moses Carey, Jr., Chair, Orange County Board of Commissioners, the OWASA Board unanimously agreed to continue to prohibit hunting on the Cane Creek Reservoir. Further, the OWASA Board agreed that it would allow limited hunting on the Mitigation Tract for bow hunting of deer, by daily permit only, and with the expected cooperation of the WRC for inclusion in their Gamelands Program. The OWASA Board supported this limited hunting program with the expectation that it would satisfy any real or perceived 404 Permit obligations that OWASA may have with respect to hunting.

Regrettably, we understand from the WRC Director that they do not accept OWASA's proposal and they have communicated this position to the U.S. Army Corps of Engineers.

You may be assured that we will continue to keep you informed and involved regarding this matter and that we will work hard to make sure our long-term interests

Chair Moses Carey, Jr.
Mayor Kevin Foy
Mayor Michael Nelson
May 11, 2005
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are protected. As always, please let me know if you need additional information and/or a presentation to your Board (perhaps at the next Assembly of Governments meeting).

Sincerely,



Mark Marcoplos, Chair
Board of Directors

Attachment

- c: Senator Eleanor Kinnaird (w/attachment)
- Representative Verla Insko (w/attachment)
- Representative Joe Hackney (w/attachment)
- Mr. W. Calvin Horton, Town of Chapel Hill (w/attachment)
- Mr. John Link, Orange County (w/attachment)
- Mr. Steven Stewart, Town of Carrboro (w/attachment)
- OWASA Board of Directors (w/attachment)
- Robert Epting, General Counsel (w/attachment)
- Ed Kerwin, Executive Director (w/attachment)

**ORANGE WATER AND SEWER AUTHORITY***Quality Service Since 1977*

May 11, 2005

Mr. Richard Hamilton
Executive Director
N.C. Wildlife Resources Commission
1702 Mail Service Center
Raleigh, North Carolina 27699-1702

Dear Mr. Hamilton:

On April 28, 2005, OWASA's Board of Directors adopted a Resolution indicating OWASA's intent to allow limited hunting on the 490-acre Mitigation Tract under the Wildlife Resources Commission's (WRC) Gamelands Program, but not to allow hunting on the Cane Creek Reservoir.

The Board's action would limit hunting on the Mitigation Tract to bow hunting for deer, by daily permit only, and contemplates cooperation with the WRC to develop the necessary hunting details under the Gamelands Program so that neighbors of the Mitigation Tract could be sure that these hunting activities would not present risks to them or their animals.

The Board proposes that the limited hunting recommended for the Mitigation Tract be substituted for any hunting requirement on the Reservoir.

It is particularly noteworthy that current public health regulations prohibit hunting on Class I Public Water Supply Reservoirs. Additionally, no person spoke in favor of hunting on the reservoir at OWASA's well-attended Board meeting on April 28, 2005. In light of the strong objections of property owners living adjacent to the Reservoir, the Board determined that the added expense and interference with OWASA's public fishing program on the Reservoir do not justify attempting to implement a Reservoir hunting program.

Furthermore, we believe, and request that OWASA's activities in acquiring and protecting 1,500 additional acres of land for wildlife and watershed protection purposes since the Cane Creek Reservoir was impounded in 1989, should be considered as the WRC determines whether OWASA's activities since 1982 have provided effective, satisfactory mitigation for the wildlife habitat loss caused by construction of the 500-acre Reservoir.

It is also important to understand that the area around the Cane Creek Reservoir has changed in character, and is more densely populated today, than it was when the 404 permit was

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issued for the project in 1982. At that time, neither OWASA nor nearby neighbors expected that there would be substantial community opposition to hunting at the Reservoir or on nearby conservation lands. Yet today, by way of the public meetings that OWASA has conducted, overwhelming community opposition to hunting has been expressed by citizens living near or adjacent to OWASA's Cane Creek Reservoir and Mitigation Tract.

OWASA's deliberative process has also included receipt of suggestions and directions from Orange County's Board of Commissioners, who have written to express their opposition to hunting on the reservoir and grave reservations about hunting on the Mitigation Tract. The County Commissioners underscored their interest in opening the Mitigation Tract to passive recreational uses not inconsistent with wildlife habitat preservation, but certainly inconsistent with open hunting on that land. (Orange County's letter is enclosed.)

As you well know, the OWASA staff worked for months with representatives of your staff in an effort to reach a compromise about a limited hunting program for the Mitigation Tract in substitution for any hunting on the reservoir. This effort arose out of our mutual understanding that times had changed, that the documents were unclear as to the nature and extent of hunting that could be allowed consistent with public safety and water supply protection, and that other conflicting public regulations appeared to prohibit hunting on the reservoir.

Substantial difficulty arises from interpreting the language of the 404 Permit, especially the part that relates to hunting, since unmeasured discretion seems apparent in the phrase, "to the satisfaction of the Commission." Without any indication of how the Commission is to make such a determination, what parameters need be applied, what goals might or should be met, how resource and public protection might be considered, it is our Counsel's considered judgment, with all due respect, that requiring OWASA to adopt whatever hunting program WRC staff might suggest is inherently arbitrary and capricious. Another way to view the "to the satisfaction" language is that it is void for vagueness, since on its face, one cannot determine by what process or within what means and methods, or for what particular public ends, that discretion is to be applied.

Furthermore, recent cases from the United States Supreme Court suggest that the imposition of such duties by federal authorities upon a State or local agency violate the Tenth Amendment to the United States Constitution. Our Counsel is of the opinion that the hunting requirement imposed by the 404 Permit is flawed not just by reason of the arbitrary discretion it lodges in the Commission, but also under the Tenth Amendment to the United States Constitution.

Nevertheless, OWASA has worked diligently to cooperate with your staff in putting together a program to afford some public hunting on OWASA lands and to present that plan to the public and get public input for consideration.

Thus, after considering all of the public input, and in light of their duty to act so as to protect the public water supply, the OWASA Board of Directors determined on April 28, 2005 to

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authorize limited bow hunting by permit only on the Mitigation Tract and to continue to prohibit hunting on the Cane Creek Reservoir.

Unfortunately, your letter dated May 4, 2005, to the United States Army Corps of Engineers (COE) styles our disagreement as being merely about the meaning of the original permit documents. Our disagreement is broader than that.

- 1) OWASA believes that its extensive program of acquiring 1,500 additional acres of conservation lands near the Reservoir since 1989, where development is either prohibited or severely restricted, access is limited, and wildlife habitat is forever protected, both in fee simple and by perpetual conservation easements, should be considered as more than satisfactory mitigation for the habitat lost by inundation of the 500-acre Cane Creek Reservoir.
- 2) OWASA believes that habitat preservation is the most valuable component of wildlife resource management. In fact, OWASA is unaware of any data indicating the extent to which the lands inundated by the Reservoir were open to public hunting prior to construction of the Reservoir. Thus, it is impossible today to show how the hunting program desired by WRC staff actually mitigates whatever hunting may have been lost when the Reservoir was built.
- 3) OWASA believes that the 404 Permit does not adequately define or prescribe what hunting is to be allowed on either the Reservoir or the Mitigation Tract. That is why we worked together to devise an acceptable program. We regret that WRC staff decided to stop participating in that effort, and instead arbitrarily determined what hunting programs it would prescribe, and that WRC staff claimed the right to publish invitations to such hunting and to post OWASA's land as open for such hunting.

We are grateful for your recent determination not to publish and post our land, but it appears that WRC still insists upon the right unilaterally to define and prescribe what hunting will take place on OWASA lands. OWASA believes that a full and open deliberative process with public input, giving consideration to public safety and resource protection, as well as the conflicting public health mandates that appear to prohibit hunting on Class I public water supply reservoirs such as Cane Creek, must be conducted to determine what hunting should be allowed.

- 4) OWASA does not believe that hunting that is manifestly objectionable to most of its neighbors, or that places its public water supply resources in greater risk than what is typically accepted by our professional peers, or that causes undue expense to its customers and ratepayers, ought to be required or allowed on its property.
- 5) With all due respect, OWASA does not believe that the Commission has considered this matter with due process or otherwise, nor that any WRC staff has the authority to act unilaterally, without public input, and without full

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Commission review and approval, to indicate whether or not OWASA's April 28th Resolution provides acceptable "satisfaction" to the Commission. The action reflected in your May 4th letter to the COE, if intended as the WRC's final agency determination, appears to be in excess of your or its authority, and in violation of federal and state constitutional provisions.

It is OWASA's desire to continue to work with you and your staff to implement a public hunting program consistent with its Board's resolution of April 28th, and to ask the COE, in light of all of the protective activities undertaken by OWASA with respect to wildlife habitat in the Cane Creek watershed, to review the permit language, acknowledge the unenforceability of the "to the satisfaction" language, and in particular to give us its determination that OWASA is in compliance with the wildlife mitigation provisions of its 404 Permit.

Unless you advise me otherwise before May 25, 2005, OWASA will conclude that your May 4, 2005 letter, expressing for the Commission that the Commission is not satisfied with OWASA's hunting proposal, is intended as a final agency action, and will proceed accordingly.

Very truly yours,



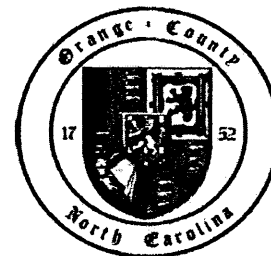
Ed Kerwin
Executive Director

Attachment

- c: Ms. Jean B. Manuele, Chief, Raleigh Regulatory Field Office U.S. Army Corps of Engineers (w/attachment)
- OWASA Board of Directors (w/attachment)
- Robert Epting, Esquire (w/attachment)

MOSES CAREY, JR., CHAIR
 BARRY JACOBS, VICE CHAIR
 STEPHEN H. HALKIOTIS
 ALICE M. GORDON
 VALERIE FOUSHEE

ORANGE COUNTY BOARD OF COMMISSIONERS
 POST OFFICE BOX 8181
 200 SOUTH CAMERON STREET
 HILLSBOROUGH, NORTH CAROLINA 27278



April 27, 2005

Mark Marcoplos
 Chair, OWASA Board of Directors
 P. O. Box 366
 Carboro, NC 27510

Dear Mark:

On April 12, the Board of County Commissioners discussed the recent correspondence from OWASA and the Wildlife Resources Commission regarding the plans for hunting on OWASA-owned lands in the Cane Creek watershed. The Board also reviewed its position on the potential for recreational use of the 490-acre "mitigation tract."

The Orange County Board of Commissioners remain supportive of OWASA's proposal for limited-scope hunting on the "mitigation tract," as defined by the OWASA in a letter of March 15. However, Orange County would find it difficult to commingle, even at different times of the year, public hunting and public hiking. Hiking is often enjoyed in the autumn, winter and spring in North Carolina, which would be in conflict with a variety of hunting activities that are now being suggested by the NCWRC from September through May with varying days of the week. This variable weekly schedule of hunting during prime hiking times of the year would be nearly impossible to manage and coordinate with the general public.

Preferably, Orange County would find it consistent with the Fish and Wildlife Coordination Act to develop a program of public use for hiking with a view to the conservation of wildlife resources throughout the year. The 490-acre wildlife preserve was purchased to replace lost habitat from the reservoir development. In today's environment, the public's interest in hiking has been heightened and serves as a significant means to respect wildlife resources. Using this area year-round for educational trails, to promote long-term public consciousness of wildlife habitat and watershed protection serves a more widespread and sustainable interest for the future conservation of our natural resources.

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Orange County has contributed to the furtherance of wildlife conservation and watershed preservation through its Comprehensive Plan and land use policies since 1981. As you know, Orange County and OWASA have held water resources as a paramount goal. Development policies have reduced density, managed flood prevention, regulated sedimentation and erosion control, increased open space, reduced imperviousness, and protected stream buffers and wildlife corridors throughout the County, including heightened consideration on over 18,000 acres of land that encompasses the entire Cane Creek watershed. This comprehensive mitigation effort should be considered satisfactory mitigation by the State and federal agencies, along with fishing at the reservoir.

Orange County consciously, in its planning efforts, recognizes the Fish and Wildlife Coordination Act, the Watershed Protection and Flood Prevention Act, the Water Resources Planning Act, and the Fish and Wildlife Act of 1956, and believes public hiking instead of hunting would provide to the public, important and educational recognition of multiple natural resources, both floral and faunal.

The County also agrees with OWASA's position that hunting on the reservoir lands near OWASA's Cane Creek park should not be allowed, and that limited hunting on the "mitigation tract" is a far preferable alternative, if hunting cannot be ruled out entirely.

Furthermore, the County remains interested in pursuing opportunities with OWASA for low-impact recreation activities on this property, as has been discussed in both the last three years and in recent months. If this proves feasible, recreational activity at this site could enable the County to meet some of the needs for parks and recreation in Bingham Township, which is currently not served with a park.

Please feel free to forward our comments to local State representatives. Thank you for the opportunity to comment.

Sincerely,



Moses Carey, Jr.
Chair, Orange County Board of Commissioners

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