

Proposed Falls Lake Nutrient Management Strategy

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Comments of Steven J. Levitas

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Good evening. My name is Steve Levitas and I represent the City of Durham in connection with this rulemaking. As you have heard, Durham supports Stage 1 but strongly believes that Stage 2 needs to be thoroughly reexamined.

The Commission needs to use one of several mechanisms available to develop an more reasonable chlorophyll a standard for the Upper Lake that can actually be achieved, and at a cost that doesn't destroy the region's economy.

Falls Lake is highly heterogeneous – shallow and slow moving in its headwaters and deeper in its lower reaches. The different sections of the lake have different chemistry, different water quality, and different biota. In other words, they have different uses. So why do they have the same water quality standard?

DWQ has determined that the monitoring station just below Interstate 85 would barely meet the current standard if all the landscape was in a natural state. Above Interstate 85, the standard wouldn't be met even in primordial conditions. It's obviously impossible to achieve the standard given current reality.

And Stage 2 could cost in excess of \$2 billion. Imagine all the things that we could do for the people of this region with that amount of money. What will we get by spending that much on Stage 2? Will some species of fish that has never been able to live in the Upper Lake be able to do so at some point in the future?

Some would try to paint the sources of nutrients in the watershed as bad guys who are polluting a pristine water body and need to be held responsible at any price. In fact the problem was created not by the sources of nutrients but by the construction of the Lake.

In order to build an impoundment like Falls today, a party is required to obtain a certification from DWQ that the project will not cause a violation of water quality standards. Such a certification wasn't required when Falls built, but it was well understood at the time that creating this reservoir would result in eutrophic water quality. It wouldn't be possible to build a reservoir like Falls today without doing one of two things. Either programs would have to be put in place up front to reduce nutrient loadings so that water quality standards would be achieved or the standards would have to be changed.

Imagine what would have happened if a water quality certification had been required when Falls Lake was built. The Corps of Engineers would have had to come to the local governments in the upper watershed and say, "We'd like to build a lake here, but we need your help. We need you to adopt the most stringent wastewater treatment limits in the country that can't be achieved with any known, reasonably affordable technology. We need you to adopt the most stringent limits on new development anywhere in the state. And we need you to spend a billion dollars or more on an unprecedented program of stormwater retrofits." Do you think they would have gotten any takers? Of course not – the lake would never have been built unless the standard was changed.

But that didn't happen and the lake was built. And guess what – just as expected the chlorophyll a levels in the Upper Lake were immediately well above the standard and have remained so for almost 30 years. So I submit to you that the solution now is the same as it should have been when the Lake was built – classify the Upper Lake appropriately and differently from the Lower Lake so that the applicable standard is one that can be achieved. It is not to impose unprecedented, unreasonable, unachievable and exorbitantly expensive regulations on the Upper Lake watershed that won't even accomplish their intended purpose.