

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 18 February 2009

SUBJECT: Consideration of draft agreement with Polk County

ATTACHMENT(S): Draft agreement

SUMMARY OF REQUEST:

Attached for your discussion is a draft of an agreement with Polk County regarding the watershed designation for a large part of the southern portion of Henderson County, regarding water usage rights from Lake Adger, and regarding future water usage rights from Lake Summit.

County staff will be available to present further information on this matter.

BOARD ACTION REQUESTED:

Discussion of the Board's options regarding this issue.

DRAFT

STATE OF NORTH CAROLINA

COUNTIES OF HENDERSON AND POLK

**INTERLOCAL AGREEMENT FOR
SHARING WATER RESOURCES ON THE
GREEN RIVER**

THIS AGREEMENT is made by and between the County of Henderson, North Carolina, a body corporate and politic and one of the one hundred counties of the State of North Carolina (herein “Henderson County”), and the County of Polk, North Carolina, a body corporate and politic and another of the one hundred counties of the State of North Carolina (herein “Polk County”).

WHEREAS, the Green River rises in Henderson County and flows from Henderson County through Polk County on its way to its confluence with the Broad River; and

WHEREAS, within Henderson County the Green River is impounded into Lake Summit, before flowing on through southern Henderson County on into Polk County;

WHEREAS, within Polk county the Green River is impounded into Lake Adger, before flowing on through Polk County toward its confluence with the Broad River;

WHEREAS, the Green River may well become a significant and valuable source of drinking water for the citizens of both Henderson County and Polk County;

WHEREAS, Polk County now owns Lake Adger, and seeks a designation of the Green River watershed as a North Carolina Class 3 watershed, which designation will be a significant benefit to Polk County;

WHEREAS, a large portion of the proposed Class 3 watershed on the Green River lies within Henderson County, and if so designated, would greatly affect property owners in Henderson County whose property lies within such proposed watershed;

WHEREAS, Polk County, if such watershed designation is granted, intends to construct a potable water treatment facility on or near Lake Adger in Polk County (“the Lake Adger treatment plant”);

WHEREAS, Henderson County could in the future need to acquire a significant source of potable water for southern Henderson County; and,

WHEREAS, Henderson County and Polk County have agreed to work together, as stated herein, for the equitable and reasonable sharing of the Green River as a drinking water resource, and enter into this interlocal agreement, pursuant to the provisions of Part 1 of Article 20 of Chapter 160A of the North Carolina General Statutes.

IT IS THEREFORE AGREED AS FOLLOWS:

1. Watershed Designation Cooperation: Henderson County will cooperate with Polk

County in obtaining a “Class III Water Supply Watershed” designation from the Division of Water Quality of the North Carolina Department of the Environment and Natural Resources for that portion of the Green River watershed lying within Henderson County. Notwithstanding, however, should any portion of the Green River watershed lying within Polk County be designated as a Class IV Water Supply Watershed or any other designation less stringent than Class III, Polk County agrees to cooperate with Henderson County (upon Henderson County’s request) in obtaining the same, less stringent, designation for that portion of the Green River watershed lying within Henderson County.

2. Sale of Potable Water to Henderson County: Henderson County is allowed, but not required, first priority to purchase up to 500,000 gallons per day of potable water from the Lake Adger treatment plant once operational. The amount of potable water purchased, up to the 500,000 gallon limit, is within the sole discretion of Henderson County. Henderson County may, subject to availability, purchase a greater quantity of potable water from the Lake Adger treatment plant if Henderson County so desires. As used in this Agreement, the term “potable water” shall mean safe, clean drinking water meeting or exceeding all standards for water quality adopted by the North Carolina Department of the Environment and Natural Resources.

3. Price for Potable Water Sale: The price for which Henderson County shall pay Polk County for purchases of potable water from the Lake Adger treatment plant shall be based solely on the actual amount of water distributed into Henderson County, to be determined at a rate per 1,000 gallons of potable water that does not exceed the lowest rate charged any other customer, wholesale or retail, of the Lake Adger treatment plant.

4. Transmission Lines Within Polk County: As used herein, the term “water transmission lines” means potable water transmission lines, meters and all appurtenances thereto transmitting potable water from the Lake Adger treatment plant into Henderson County. Henderson County and Polk County shall cooperate in the design, location and construction of the water transmission lines. Polk County shall, where necessary for the acquisition of rights of way lying within Polk County which are determined by Henderson County to be necessary for the location or construction of the water transmission lines, exercise the power of condemnation to acquire such rights of way (permanent or temporary), and Henderson County shall reimburse Polk County’s reasonable expenses incurred in such condemnation action. Henderson County shall pay all costs incurred in the construction of the water transmission lines. All water transmission lines shall be the property of Henderson County, be solely operated by Henderson County in its discretion (including the determination of the customer base which may access the water transported in such water transmission lines), and the maintenance of the transmission lines shall be the sole responsibility of Henderson County.

5. Polk County will support any future attempt by Henderson County to withdraw unlimited quantities (as permitted by the State of North Carolina) of untreated water from Green River within Henderson County, including but not limited to Lake Summit. Further, Polk County will support any effort made by Henderson County to construct and operate a potable water treatment facility anywhere on or along the Green River.

6. Both Polk County and Henderson County shall cooperate in requesting of all members of the General Assembly of North Carolina, and particularly the members thereof resident in Polk or Henderson Counties, the passage of an act of the General Assembly to memorialize and grant force of law to the terms hereof.

ADOPTED by majority of the Board of Commissioners of Polk County, North Carolina, after motion duly made, and adopted by a majority of the Board of Commissioners of Henderson County, North Carolina, after motion duly made, the dates and year set forth below.

POLK COUNTY BOARD OF COMMISSIONERS

Date: _____

By: _____
Chairman

Attest:

Secretary to the Polk County Board of Commissioners

HENDERSON COUNTY BOARD OF COMMISSIONERS

Date: _____

By: _____
Chairman

Attest:

Secretary to the Henderson County Board of Commissioners