



Appendix B

Bad Creek Relicensing Agreement

Explanatory Statement to be filed with
Final License Application

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Bad Creek Relicensing Agreement

Bad Creek Pumped Storage Project
FERC No. 2740

January 23, 2025



BUILDING A SMARTER ENERGY FUTURE

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APPENDIX A: PARTIES AND DESIGNATED REPRESENTATIVES

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**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

DUKE ENERGY CAROLINAS, LLC

THIS AGREEMENT ("Agreement" or "Bad Creek Relicensing Agreement-BCRA"), made and entered into as of January 22, 2025, by and between DUKE ENERGY CAROLINAS, LLC, with its principal place of business in Mecklenburg County, North Carolina (the "Licensee"); ADVOCATES FOR QUALITY DEVELOPMENT, INC ("AQD"); CATAWBA INDIAN NATION; Foothills Trail Conservancy ("FTC"); FRIENDS OF LAKE KEOWEE SOCIETY, INC. ("FOLKS"); NATURLAND TRUST ("NT"); Oconee County, South Carolina; SOUTH CAROLINA DEPARTMENT OF ARCHIVES AND HISTORY ("SCDAH"); SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL SERVICES ("SCDES"); SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES ("SCDNR"); SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION AND TOURISM ("SCPRT"); SOUTH CAROLINA WILDLIFE FEDERATION ("SCWF"); and UPSTATE FOREVER (UF); (all referenced BCRA Stakeholders and the Licensee collectively "Parties" (Appendix A) provided the duly authorized representative of each signs this Agreement), provides as follows:

WITNESSETH

WHEREAS, pursuant to a license issued by the Federal Energy Regulatory Commission ("FERC" or "Commission") (FERC Project No. 2740), the Licensee operates a hydroelectric power project, known as the Bad Creek Pumped Storage Project (the "Project" or "BC Project") which is located in Oconee County, South Carolina, approximately eight miles north of Salem. The Bad Creek Reservoir (or upper reservoir) was formed from the damming of Bad Creek and West Bad Creek and serves as the Project's upper reservoir. Lake Jocassee serves as the lower reservoir and is licensed separately as part of Duke Energy's Keowee-Toxaway Hydroelectric Project (FERC Project No. 2503). The Project consists primarily of the following major components.

- a) Two dams (impounding East and West Bad Creeks), creating Bad Creek Reservoir¹, a saddle dike, inlet/outlet structure, power tunnel, a powerhouse, a transmission line, a switchyard, and appurtenances.

WHEREAS, on February 23, 2022, the Licensee filed a timely Notice of Intent with the FERC to apply for a new license ("New License") for the Project; and

¹ The existing Bad Creek Reservoir is not open to the public.

WHEREAS, in its License Application to FERC, the Licensee is proposing to relicense the existing Project and expand it to include the Bad Creek II Complex, which consists of a new inlet/outlet (within the existing upper reservoir), water conveyance system, underground powerhouse, and lower reservoir inlet/outlet (along the shoreline of Lake Jocassee), which was completed in 1991. No modifications to the existing upper and lower reservoirs would be required for the Bad Creek II Complex other than construction of an upper reservoir inlet/outlet structure within the Bad Creek Reservoir and a lower reservoir inlet/outlet structure within Lake Jocassee. The Bad Creek II Complex also includes a new transmission line. While the Licensee is proposing the Bad Creek II Complex in its FERC License Application, this proposal is not a commitment to build the Bad Creek II Complex.

WHEREAS, beginning in February 2024, the Licensee and the Stakeholders formally met as the Bad Creek Project Relicensing Agreement Team ("BCRA Team") (Appendix A) to begin developing a non-binding Agreement-in-Principle ("AIP") regarding the issues related to the relicensing of the Project; and

WHEREAS, on October 17, 2024, the Parties signed the non-binding AIP concerning most substantive matters of interest to them related to the relicensing of the Project, and the Parties indicated in said AIP their desire to work together to convert the AIP into a binding Agreement; and

WHEREAS, U.S. FISH AND WILDLIFE SERVICE, by electing not to sign the BCRA was not afforded the opportunity to participate in the development of this Agreement but was afforded the opportunity to become a Party to this Agreement; and

WHEREAS, U.S. FISH AND WILDLIFE SERVICE and a representative of the FISHER KNOB community also participated in many of the BCRA Team meetings and were afforded the opportunity to become Parties to this Agreement; and WHEREAS, on or before July 31, 2025, the Licensee will file an application, consistent with this Agreement in all respects, with the FERC for a New License for the Project; and

WHEREAS, the Licensee will include this Agreement and the accompanying Explanatory Statement in its Application for New License; and

WHEREAS, within 60 days following the FERC's issuance of its Notice of Ready for Environmental Analysis, the Licensee will file an application, consistent with this Agreement in all respects, with the South Carolina Department of Environmental Services for a Water Quality Certification for the Project pursuant to §401 of the Clean Water Act ("401 WQC"), as amended; and

WHEREAS, the Licensee, the United States Army Corps of Engineers ("USACE"), and the Southeastern Power Administration ("SEPA") are currently parties to a water storage balancing agreement ("2014 NOA") requiring flow releases from the downstream Keowee Development at the Keowee-Toxaway Hydroelectric Project (FERC No. 2503) under certain circumstances; and

WHEREAS, the Parties agree that generating power at the Project's powerhouse(s) and managing the Project for fish habitat, public recreation, and other purposes are all important uses of the limited waters of the Project, and that the terms of this Agreement strike a reasonable balance among these uses and provide a basis for the Parties' concurrence in the issuance of a New License for the Project to the Licensee, subject to the applicable terms, covenants, and provisions of this Agreement; and

WHEREAS, the Licensee's Application for New License will include proposed facilities and actions to protect, mitigate, or enhance public recreational opportunities, cultural resources, fish and wildlife resources, water quality and quantity, protected species, the regional economy, and other resource enhancement initiatives in the Project area; and

WHEREAS, there are terms, phrases, and abbreviations specific to the BCRA Team Process that led to this Agreement and the acronyms and abbreviations are defined in Appendix B; and

WHEREAS, the Parties agree that sharing the burden during periods of low inflow and maintenance and emergency conditions is important, and that the Low Inflow Protocol ("LIP") for the Keowee-Toxaway Hydroelectric Project (Appendix C) and the Maintenance and Emergency Protocol ("MEP") for the Bad Creek Project (Appendix D)² are reasonable compromises by the Parties to define operational changes and communications requirements during these time periods; and

WHEREAS, the maps included in Appendix E are intended solely to assist in describing the locations and boundaries of specific tracts of land, but are not of survey quality; and

WHEREAS, the Parties understand that certain agreements will result in license articles to be included in FERC's New License for the Project. Those license articles are provided in Appendix F; and

WHEREAS, the Parties understand that certain governmental Parties have independent statutory responsibilities and processes that may result in mandates that are not consistent with the terms of this Agreement, and that it is nonetheless necessary to preserve the integrity and independence of those responsibilities and processes, and this Agreement specifically does so; and

WHEREAS, this Agreement is the culmination of the Parties' desires, as set forth in the October 17, 2024, AIP, to draft from the AIP a binding agreement that embodies the intent of the Parties; and

WHEREAS, this Agreement faithfully sets forth in more detail and specificity, in contractual terms, the concepts described and to which the Parties agreed to in the AIP, with mutually agreeable adjustments as negotiated by the Parties after the AIP was signed; and

WHEREAS, the Parties have now reached full agreement on the resolution of all the material resource matters identified and at issue in the New License for the Project, specifically including but not limited to hydropower generation; watershed and hydro operation practices that protect and sustain the quality and quantity of the waters of the Bad Creek and Keowee-Toxaway Projects; a well-managed and adequate water supply to serve the region for years to come; safe and sufficient access for users of motorized and non-motorized boats and safe and sufficient areas for fishing, hunting, hiking, sightseeing, camping, and other public recreation opportunities; opportunities to support tourism; balanced shoreline uses to accommodate diverse interests including undisturbed areas; conservation of the fish and wildlife resources as well as the habitats supporting those resources; and protection of Historic Properties and cultural resources, all of which result in the Parties relinquishing certain arguments and potential outcomes in exchange for the certainty of the agreed-upon terms and conditions;

NOW, THEREFORE, IN CONSIDERATION of all other actions and undertakings as set forth herein below, the Parties contract and agree as follows.

² In lieu of developing an MEP specific to Bad Creek, Duke Energy reserves the right to modify the existing KT MEP by including Bad Creek operations.

RESOURCE AGREEMENTS

The Parties agree that, except for the provisions in Appendix F, the provisions in the BCRA should not be incorporated into the terms of the New License that the FERC is expected to issue for the Project. The Parties have provided the specific language of the proposed License Articles in Appendix F.

1.0 Agreements on Full Consensus

The Parties acknowledge that: (i) they have participated fully in the activities of the BCRA Team Process and have a good understanding of the issues resolved herein; (ii) this Agreement is developed from and is consistent with the AIP signed by the Parties by October 17, 2024, except to the extent that it contains mutually agreeable minor adjustments as negotiated by the Parties after the AIP was signed.

1.1 The Parties to the BCRA agree they will request in writing during each applicable public notice period that FERC issue a New License on or before July 31, 2027, for the Project with a term of 50 years that is consistent with the BCRA.

1.2 The signatory Parties to the BCRA agree they will officially support requests by the Licensee to the FERC and other governmental agencies to grant all necessary approvals in advance of New License issuance including but not be limited to: a geotechnical exploratory pilot tunnel; septic and wastewater upgrades; and shoreline stabilization in the vicinity of the proposed Bad Creek Complex II (BCII) Powerhouse. However, the signatory Parties to the BCRA agree that this section does not preclude any Party's right to provide comments pursuant to each signatory Party's organization interests and department/agency responsibilities for other permit processes associated with this advance work.

1.3 Actions of the License

1.3.1 Application for New License – The Licensee shall develop and submit the Application for New License in a manner consistent with this Agreement and submit this Agreement with the Application for New License.

1.3.2 401 WQC – The Licensee shall submit its Section 401 Water Quality Certification (WQC) Request in a manner consistent with this Agreement and include this Agreement with the 401 WQC Request.

1.3.3 Other Relicensing Filings – The Licensee shall ensure all other filings it makes as may be required for relicensing the Project are consistent with this Agreement.

1.4 Actions of Parties to this Agreement other than the Licensee

The Parties to this Agreement, except the Licensee, agree they will support New License conditions, a timely issuance of a 401 WQC, and all other agency findings and documents associated with relicensing of the BC Project or implementation of the New License consistent with this Agreement by:

- a. Submitting statements, individually or collectively, within all the applicable public comment periods of the Licensee's submittals identified in Section 1.3. above requesting the relevant agencies take timely actions wholly consistent with the BCRA;
- b. Undertaking reasonable efforts to obtain regulatory agency actions wholly consistent with the BCRA in a timely manner; and
- c. Not supporting in any way efforts by entities seeking to obtain regulatory actions inconsistent with the BCRA or seeking to delay regulatory actions associated with relicensing of the BC Project (e.g., delaying FERC's issuance of a New License order beyond the expiration date of the Existing License for the BC Project [July 31, 2027]).

2.0 Normal Operating Ranges for Reservoir Levels Agreements

- 2.1 The Parties recommend the proposed Reservoir Elevations License Article, the full text of which is provided in Appendix F of this Agreement, be incorporated verbatim into any New License the FERC may issue for the Project.
- 2.2 No changes will be made to the Normal Operating Ranges for Lake Jocassee or Lake Keowee as stated in the existing license for the Keowee-Toxaway Hydroelectric Project (KT Project) as a result of relicensing the BC Project with or without construction of BCII.
- 2.3 Except when operating in some stages of the Low Flow Protocol (LIP), the Maintenance and Emergency Protocol (MEP), or other temporary condition as may be approved by the FERC, the Licensee will operate the BC Project in accordance with the following Normal Minimum Elevation and Normal Maximum Elevation:

Reservoir	Normal Maximum Elevation (ft local datum / ft AMSL)	Normal Minimum Elevation (ft local datum / ft AMSL)
Bad Creek	100.0 / 2310.0	-60.0 / 2150.0

- 2.4 The Parties recommend the proposed Low Inflow Protocol License Article, the full text of which is provided in Appendix F of this Agreement, be incorporated verbatim into any New License the FERC may issue for the Project.
- 2.4.1 Importance of Human Health and Safety and the Integrity of the Public Water Supply and Electric Systems – Nothing in the LIP will limit the Licensee’s ability to take any and all lawful actions necessary at its hydro projects to protect human health and safety, to protect its equipment from damage, to protect the equipment of the Large Water Intake owners from damage, and to ensure the stability of the regional electric grid and public water supply systems. It is recognized the Licensee may take the steps necessary to protect these things without prior regulatory consultation or notification.
- 2.4.2 The Licensee will make administrative updates to the KT Project LIP including modifying the Bad Creek Reservoir Usable Storage volume to reflect 31,808 acre-feet based on the 2018 LiDAR survey. The Licensee will also make any necessary updates to the LIP affecting the Bad Creek Reservoir Usable Storage resulting from excavation of the BCII Upper Reservoir Inlet/Outlet structure.
- 2.4.3 The signatory Parties to the BCRA agree to fully implement their water management responsibilities as applicable under the LIP.

- 2.4.4 The signatory Parties to the BCRA without specific responsibilities under the LIP agree to support implementation of the LIP by the Licensee and other Large Water Intake owners by: (1) undertaking a reasonable effort to communicate the severity of the drought and the restrictions associated with each LIP stage to their respective members; and (2) communicating the efforts of the Licensee and other Large Water Intake owners to reduce consumption of water from the KT Project.
- 2.4.5 The LIP defines the Minimum Elevations for each stage of the LIP. When a subsequent stage of the LIP is reached, the Licensee agrees each of its hydro project reservoirs must have reached its Minimum Elevation (with a small operating tolerance) of the previous stage of the LIP before each hydro project reservoir can be lowered to the next stage Minimum Elevation.
- 2.4.6 Revising the LIP - The revision process, including providing notice, consultation and filing of any necessary New License amendments or 401 WQC application identified in the LIP. The filing of a revised LIP by the Licensee will not constitute or require modification to the BCRA and any Party to the BCRA may be involved in the FERC's or South Carolina Department of Environmental Service's (SCDES) public processes for assessing the revised LIP.
- 2.4.7 The Licensee will operate the BC Project in accordance with the provisions of the LIP.

3.0 Actions to Support Maintenance and Emergency Conditions Agreements

- 3.1 The Parties recommend the proposed BC Project Maintenance and Emergency Protocol (MEP) License Article, the full text of which is provided in Appendix F of this Agreement, to be incorporated verbatim into any New License the FERC may issue for the Project.
- 3.2 The Licensee will develop a MEP to address planned and unplanned maintenance and emergency situations at the BC Project. The MEP will be submitted with the Final Application for inclusion in the New License. The MEP will be consistent with other existing agreements such as the 2014 New Operating Agreement (2014 NOA) and the LIP which covers both the BC and the KT Projects.
 - 3.2.1 Implementation - The Licensee will begin complying with the MEP within 60 days following the FERC's issuance of the New License, the end of all appeals, and closure of all rehearing and administrative challenge periods related to water quantity, including BC Project flow releases and reservoir levels, water quality issues and hydro operational issues.
 - 3.2.2 Revising the MEP - The revision process, including providing notice, consultation and filing of any necessary New License amendments or 401 WQC modifications will be identified in the MEP. The filing of a revised MEP by the Licensee will not constitute or require modification to the BCRA and any Party to the BCRA may be involved in the FERC's or SCDES's public processes for assessing the revised MEP.

4.0 Cultural Resources Agreements

- 4.1 The Parties recommend the proposed Cultural Resources License Article(s), the full text of which is provided in Appendix F of this Agreement, to be incorporated verbatim into any New License the FERC may issue for the Project.
- 4.2 Historic Properties Management Plan (HPMP) – The Licensee shall include the following actions in the proposed HPMP it files with the Final Application for New License:
 - 4.2.1 Listing Eligibility – Recommend Site 38OC249 for inclusion in the National Register of Historic Places.
 - 4.2.2 Archaeological Site Monitoring – The Licensee will annually monitor Site 38OC249 to document its status.
 - 4.2.3 Public Outreach – The Licensee in consultation with the South Carolina Department of Archives and History (SCDAH), the Eastern Band of Cherokee Indians Tribal Historic Preservation Office, Catawba Indian Nation, the South Carolina Department of Parks, Recreation and Tourism (SCPRT), the South Carolina Department of Natural Resources (SCDNR), and Friends of Lake Keowee Society (FOLKS) will develop a Cultural Resources Interpretive Exhibit Plan for the interpretive signage or other materials that display the cultural history of the BC Project area at the Bad Creek Visitors Center. The Bad Creek Visitors Center will be located in the planned new Hydro West Regional Support Building near Bad Creek and Bad Creek Visitors Overlook. The Cultural Resources Interpretive Exhibit Plan will include but may not be limited to: 1) identifying the final location of the exhibit (Bad Creek Visitors Center or other location); 2) interpretive signage and materials; 3) identifying the content(s) of the exhibit; and 4) finalizing a schedule for completing the exhibit. The Licensee will complete the exhibit within two years following completion of the Hydro West Regional Support Building or selecting an alternate exhibit location if the Hydro West Regional Support Building is not constructed.

5.0 Public Recreation and Aesthetics Agreements

- 5.1 The Parties recommend the proposed Recreation and Aesthetic Resources License Article, the full text of which is provided in Appendix F of this Agreement, to be incorporated verbatim into any New License the FERC may issue for the Project.
- 5.2 The Licensee will donate, within 60 days following signing the BCRA, all available trail and traffic counters used in the 2023 Recreation Use and Need (RUN) Study to the Foothills Trail Conservancy (FTC) for its use provided FTC is a Party to the BCRA.
- 5.3 Foothills Trail
 - 5.3.1 The Licensee will develop a Foothills Trail Interpretive Exhibit at the Bad Creek Visitors Center located in the planned new Hydro West Regional Support Building near Bad Creek provided SCPRT, Upstate Forever (UF), FOLKS, Advocates for Quality Development (AQD) and FTC are signatory Parties to the BCRA. If the planned new Hydro West Regional Support Building is not constructed by December 31, 2030, the Licensee will work with applicable stakeholders to develop the Foothills Trail Interpretive Exhibit at a county park or other identified location in the KT Project area to be determined in consultation with the signatory Parties to the BCRA. The Licensee will complete the exhibit within two years following completion of the Hydro West Regional Support Building or selecting an alternate exhibit location if the Hydro West Regional Support Building is not constructed.
 - 5.3.2 The Licensee will continue to maintain or arrange for the maintenance of the approximately 43-mile-long Duke Energy section of the Foothills Trail throughout the term of the New License.
 - 5.3.3 The Licensee will make repairs and improvements to the approximately 43-mile-long Duke Energy managed section of the Foothills Trail based on the 2023 RUN Study/Trail Assessment and Capacity relicensing study results. Repairs will be made prior to expiration of the Existing License and improvements will be part of the Recreation Management Plan (RMP) to be implemented in the New License. A schedule will be developed with the Recreation Resource Committee for implementation of the improvements and inclusion in the RMP.
 - 5.3.4 The Licensee will construct a storage building on Duke Energy property for use by FTC to store trail maintenance equipment and to provide office/working space for FTC volunteers provided FTC and UF are signatory Parties to the BCRA. The building will have electricity and storage space for vehicles and FTC will have key access to the storage facility. Duke Energy will provide this building to the FTC under a low-cost lease for the term of the New License, provided FTC continues volunteer maintenance support of the Foothills Trail. The Licensee will construct the storage facility within one year following commercial operation of BCII or within six years following issuance of the New License, the end of all appeals, and the closure of all rehearing and administrative challenge periods.

- 5.3.5 The Licensee will work with the existing owners of the underlying fee interest in land occupied by the Foothills Trail to extend the property easement(s) associated with the Duke Energy maintained portion of the Foothills Trail for a period at least concurrent with the New License term.³ The Licensee will extend the easement for the Foothills Trail on property owned in fee by Duke Energy for the term of the New License. New easements will be developed by June 30, 2025. SCDNR will advocate for and coordinate activities with the State of SC Department of Administration to procure the new easement or license agreement on property located in SC and will make its best efforts to get the new easement or license agreement in place by June 30, 2025.
- 5.3.6 The Licensee will provide the states of NC and SC, as applicable, the right of first refusal to purchase all or part of Duke Energy's portion of the Foothills Trail should the Project license be terminated provided FTC, SCDNR, UF, FOLKS, Naturaland Trust (NT), and AQD are signatory Parties to the BCRA. Right of first refusal also extends to the Foothills Trail infrastructure, improvements, and all spur trails and corridors. The Licensee will provide rights of first refusal within two years following FERC approval of the RMP.
- 5.3.7 The Licensee plans to install ten (10) primitive privies/outhouses in campgrounds along the portion of the Foothills Trail that is managed by Duke Energy provided FTC and UF are signatory Parties to the BCRA. The Licensee will conduct a two-year pilot study that includes installing and monitoring two privies in two locations to be determined in consultation with FTC. Upon conclusion of the pilot study and resulting feasibility assessment, Duke Energy and FTC will determine the locations of the remaining privies in consultation with the applicable landowners and regulatory/resource agencies. If vandalism occurs, Duke Energy will replace the affected privy once; any following vandalism will result in moving the privy to an alternate location to be determined in consultation with FTC, applicable landowners, and regulatory/resource agencies. Installation of the ten privies will be contingent upon approval by applicable landowners and regulatory/resource agencies in SC and NC. If continual vandalism of the privies occurs at any of the ten locations, the Licensee reserves the right to abandon the privies that have been repeatedly damaged and to not install additional privies. The Licensee will install the two pilot study privies within one year following FERC approval of the RMP and the remainder of the privies, if needed, within five years following FERC approval of the RMP.
- 5.3.8 The Licensee will continue consulting and working in good faith with the FTC on trail expansion (spur lands) on Duke Energy owned property provided the FTC, SCPRT, Oconee County, UF, FOLKS, and AQD are signatory Parties to the BCRA. The Licensee will provide a map of Duke Energy owned property and coordinate with FTC to develop spur trail(s) on Duke Energy property should any mutually agreeable locations be identified in the future.

³ Currently the SC Department of Administration issues license agreements on 10-year increments; the intent is to extend to the term of the FERC new license.

- 5.4 The Licensee will develop a Pumped Storage Operations Interpretive/Informative Exhibit at Devils Fork State Park if SCPRT is a signatory Party to the BCRA. The interpretive exhibit will be installed within five years following FERC approval of the RMP.
- 5.5 Additional Agreements if BCII is Constructed
- 5.5.1 Prior to the date of commercial operation of BCII, the Licensee will revise its FERC Public Safety Plan and install additional public safety measures in Whitewater Cove to educate recreational boaters on potential hazards associated with the addition of BCII and associated operations.
 - 5.5.2 Musterground Road will be closed to public access during construction of BCII. The Licensee will subsequently repair any damage to Musterground Road occurring during construction. The Licensee will ensure a well-maintained road exists prior to Musterground Road being reopened to the public.
 - 5.5.3 The Licensee, if required, will redesign the Musterground Road parking area and entrance road following construction of BCII and the adjacent new substation.
 - 5.5.4 The Licensee will provide FTC limited access for Foothills Trail maintenance activities to Musterground Road during construction of BCII.
 - 5.5.5 The Licensee will develop, in coordination with the Recreation Resource Committee, a Visual Resources Protection Plan that will implement measures to minimize visual and aesthetic impacts associated with construction and operation of BCII provided UF, AQD, FTC and FOLKS are signatory Parties to the BCRA. The plan will be developed at least one year prior to the start of BCII construction.
 - 5.5.6 The Licensee will provide temporary security monitoring at the gravel lot on the trail crossing at Highway 281 located on US Forest Service (USFS) lands, pending USFS approval, if FTC and UF are signatory Parties to the BCRA and provided the New License is consistent with the BCRA in terms of all public recreation, land management and land conservation requirements and provided this security monitoring does not result in conferring authority to any federal entity pursuant to Section 4e of the Federal Power Act in the New License associated with Federal Power Act Section 4e. This security monitoring device will be deployed in the form of a mobile surveillance trailer contingent on USFS approval. If vandalism occurs more than once to the mobile surveillance device, Duke Energy will remove and not replace the security device. The security device will be installed upon the start of BCII construction and closure of Musterground Road and the Bad Creek spur trail. The security device will be removed once the Bad Creek spur is reopened to the public.
- 5.6 The Licensee will improve the public information signage at the kiosks at the main boat ramp at Devils Fork State Park and Musterground Road. The Licensee will install the new signage within two years following the date of FERC approval of the RMP.

- 5.7 The Licensee will construct a courtesy dock at both the Devils Fork State Park Villa Ramp and the boat-in campground ramp provided the SCPRT, Oconee County, UF, FOLKS, AQD and FTC are signatory Parties to the BCRA. The courtesy dock at the Villa Ramp will include two boat slips with one slip outfitted with a boat lift designated solely for Oconee County emergency responders' use. The slip dedicated to applicable first responders should be designed to be effective at Normal Minimum Elevation in Lake Jocassee. Appendix E provides a map of the two proposed locations. The Licensee will construct the new courtesy docks within two years (at the boat-in campground ramp) and within four years (at the Villa Ramp) following issuance of the New License, the end of all appeals, and the closure of all rehearing and administrative challenge periods, provided the New License is consistent with the BCRA regarding public recreation.
- 5.8 The Licensee will include the agreements in Sections 5.3.2, 5.3.3, and 5.3.7 in the RMP it submits to the FERC with the Final Application for New License.
- 5.9 The Licensee will upgrade the Bad Creek Visitors Overlook with new amenities including viewing telescopes, interpretive signage, and a picnic area if SCPRT, FOLKS, UF, and AQD are signatory Parties to the BCRA. New amenities will be provided within five years following the date of FERC approval of the RMP or within one year following commercial operation of BCII, whichever is later.
- 5.10 Provided the New License is consistent with the BCRA regarding public recreation, the Licensee will provide one-time funding of \$1,500,000 to SCDNR for road maintenance on SCDNR's Jocassee Gorges road system if SCDNR and FTC are signatory Parties to the BCRA. The Licensee agrees that SCDNR has the option to transfer up to \$500,000 of the road maintenance fund to the Fisheries Enhancement and Management Program (Section 8.5) at the discretion of SCDNR. The Licensee will provide the funding within one year following issuance of the New License, the end of all appeals, and the closure of all rehearing and administrative challenge periods.

6.0 Land Conservation Agreements

- 6.1 All land leases listed in Section 6.2 will be for the term of the New License and are conditioned on the New License being consistent with the BCRA in terms of all public recreation, land management and land conservation requirements. The lessees that are signatory Parties to the BCRA agree to use their best efforts to either execute the leases or formally decline them within one year following Duke Energy's offer of the leasing document. Should Duke Energy decide in the future to sell these lands, SCDNR would have right of first refusal.
- 6.2 The Licensee will offer new leases for the properties listed below and depicted in the figure provided in Attachment E within one year following FERC approval of the RMP, at no cost, to SCDNR to support hunting and wildlife viewing and public recreation opportunities. These leases will be offered if SCDNR, SCPRT, UF, NT, FOLKS, Oconee County and South Carolina Wildlife Federation (SCWF) are signatories to the BCRA, and the properties listed below are not included in the FERC Project Boundary of the New License (except for any portion of the 525 KV transmission corridor).
- Beaty Tract - Parcel ID 037-00-01-004 (app. 557 acres)
 - Smeltzer Tract North - Parcel ID 037-00-01-003 (app. 189.7 acres)
 - Smeltzer Tract South - Parcel ID 045-00-02-021 (app. 120.5 acres)
 - Jocassee Tract - Parcel IDs 038-00-01-006 and 038-00-01-010 (app. 1019 acres)
- 6.3 Provided the conditions of Sections 6.1 and 6.2 above are met, then until the new leases are executed between the Licensee and SCDNR, if any of the existing Wildlife Management Area (WMA) leases for the properties listed in Section 6.2 above expire, the Licensee will extend the existing lease under the existing terms and conditions on a year-to-year basis. Once new leases are executed, all existing leases will terminate.
- 6.4 The Licensee will provide a one-time payment of \$500,000 to the Oconee County Conservation Bank to support future land conservation efforts if SCDNR, SCPRT, FOLKS, AQD, Oconee County, UF, NT, and FTC are signatory Parties to the BCRA and provided the New License is consistent with the BCRA in terms of all public recreation, land management and land conservation requirements. The Licensee will provide the funding within two years following issuance of the New License, the end of all appeals, and the closure of all rehearing and administrative challenge periods.

6.4.1 Additional Agreements if BCII is Constructed

- 6.4.1.1 The Licensee will mitigate the closure of Musterground Road and access to public hunting lands by improving, maintaining, and providing public access during hunting season to Brewer Road (Appendix E) if construction begins on BCII and SCDNR, SCPRT, FTC, UF, and NT are signatory Parties to the BCRA. The Licensee will provide up to three gates at locations to be determined in consultation with SCDNR and FTC to restrict vehicles from the Foothills Trail and to manage access to Brewer Road. The Licensee will also construct a game carcass disposal pit on Duke Energy property that SCDNR will monitor use of and maintain as needed. The game carcass disposal pit/area will be signed, fenced, and have a game processing/cleaning station. Public access to Brewer Road would be open prior to closure of Musterground Road and remain open until construction of BCII is completed and Musterground Road is reopened for public use. The Licensee will make improvements to Brewer Road by October 1, 2027, assuming construction of BCII begins upon New License issuance by July 31, 2027. If BCII construction is delayed, the Licensee will make the road improvements by October 1 in the year in which BCII construction begins, assuming BCII construction begins at least three months prior to October 1.
- 6.4.1.2 The Licensee will work with SCDNR to ensure SCDNR has access to manage Musterground Road and all SCDNR-owned property impacted during BCII construction.
- 6.4.1.3 The Licensee will provide a one-time payment of \$500,000 to the Oconee County Conservation Bank to support future land conservation efforts if SCDNR, SCPRT, FOLKS, AQD, Oconee County, UF, NT, and FTC are signatory Parties to the BCRA and provided the New License is consistent with the BCRA in terms of all public recreation, land management and land conservation requirements. The Licensee will provide the funding within one year following the start of commercial operation of BCII.
- 6.4.1.4 The Licensee will extend the existing Laurel Preserve Tract lease to SCDNR to expire with the term of the New License, thereby extending the existing lease through the term of the New License provided SCDNR, SCPRT, FOLKS, AQD, Oconee County, UF, NT, and FTC are signatory Parties to the BCRA and provided the New License is consistent with the BCRA in terms of land management and land conservation requirements. The Licensee will extend the existing lease within two years following issuance of the New License, the end of all appeals, and the closure of all rehearing and administrative challenge periods.

7.0 Shoreline Management Agreements

- 7.1 The Parties recognize there is no proposed Shoreline Management License Article(s) for the New License the FERC may issue for the Project.
- 7.2 Bad Creek Reservoir will continue to be closed to the public for the term of the New License due to safety concerns.
- 7.3 The Licensee does not plan to authorize any non-project uses of Bad Creek Reservoir for the term of the New License; therefore, a Shoreline Management Plan (SMP) is not required for the BC Project.
- 7.4 The Licensee will obtain necessary regulatory approvals from FERC consistent with the KT Project SMP requirements relating to impacts to Lake Jocassee shoreline associated with construction of the second powerhouse.
- 7.5 The Licensee will not authorize Large Water Intakes for any uses other than its own purposes in Bad Creek Reservoir.

8.0 Aquatic Resource Management/Protection Agreements

- 8.1 To maintain operational flexibility, the BC Project will only be subject to the Normal Operating Ranges of reservoirs and the LIP identified in Section 2.0, the MEP identified in Section 3.0 and measures identified in Section 8.2 to address fish entrainment. No other operational limitations shall be required by the New License.
- 8.2 Fish Entrainment Mitigation
 - 8.2.1 Inlet/Outlet Lighting Modifications – The Licensee will revise its FERC Public Safety Plan for the Bad Creek Project to redesign and modify lighting for the FERC-required public safety devices at the intake to eliminate or reduce the amount of light shining on Lake Jocassee's surface near the inlet/outlet structure(s). Such modifications may include, among other things, replacing white lights with red lights, boxed lighting, and illuminating signage from below rather than above the safety devices. The Licensee will implement the lighting modifications at the BCI Inlet/Outlet (I/O) structure within two years following issuance of the New License, the end of all appeals, and the closure of all rehearing and administrative challenge periods, and at the BCII I/O structure within two years following completion of the Acoustic Doppler Current Profiler (ADCP) study identified in Section 8.2.3.
 - 8.2.2 Hydro Unit Starting Sequence – When operating the BCI hydro units in pumping mode, the Licensee will use a start-up sequence of Unit 1, Unit 2, Unit 3, and Unit 4, to the extent practicable to minimize entrainment.
 - 8.2.3 If BCII is constructed, the Licensee will conduct an ADCP-based flow study within two years following commercial operation to identify unit sequencing to reduce entrainment. The Licensee will work with SCDNR to develop and implement a BCII hydro unit sequencing protocol within two years following completion of the study.
 - 8.2.4 If BCII is constructed, the Licensee will provide resources and conduct mobile hydroacoustic monitoring of pelagic forage fish in Lake Jocassee and Lake Keowee for a period of 10 years following commercial operation of BCII. If BCII operations change (i.e., shift back to a predominately nighttime pumping facility) after the 10-year monitoring period, the Licensee will consult with SCDNR regarding the need for any additional monitoring.
- 8.3 Operational Considerations for the BC Project when Lake Jocassee Levels Reach Potential for Increased Fish Entrainment
 - 8.3.1 The Licensee will operate its facilities to minimize fish entrainment, to the extent practical while Lake Jocassee pool elevations are below 335 meters (m) (1099 feet (ft)) above mean sea level (AMSL) (i.e., 89 ft local datum with the full pond elevation of 1110 ft AMSL referenced as 100.0 ft local datum).

- 8.3.2 When pool elevations in Lake Jocassee fall below 335 m (1099 ft) AMSL [89 ft local datum], the Licensee will implement operational changes at the BC Project in coordination with SCDNR, based upon hydro unit availability and other operational considerations, to minimize fish entrainment.

8.4 Fisheries Enhancement and Management

- 8.4.1 The Licensee will enter into a cost-sharing opportunity with SCDNR for Fisheries Enhancement and Management, as described below, provided (1) SCDNR, SCWF, FOLKS, Oconee County, and UF are signatory Parties to the BCRA, (2) the New License does not require the funding contributions listed below, and (3) the New License is consistent with the BCRA in terms of all other public recreation, fisheries management, water quantity, water quality and hydro operational requirements.

Provide \$10,500,000 in one-time funding to SCDNR within one year following New License issuance, the end of all appeals, and closure of all rehearing and administrative challenge periods, for use in implementation of SCDNR's Fisheries Enhancement and Management Program. Funds in the Fisheries Enhancement and Management Program may be utilized for the following:

In Lake Jocassee, Lake Keowee, and associated tributaries to the lakes, SCDNR may utilize the funds to support fisheries management activities including, but not limited to, creel surveys, fish stocking, habitat management/enhancement, fish surveys (e.g., electrofishing, gill net, trap net, etc.), research and associated costs for the aforementioned activities.

In the area defined as all properties north of the main line of the Norfolk Southern (So.) Railroad from the Georgia State line to SC Hwy 183 in Westminster, then north of SC Hwy 183 to the intersection of SC Hwy 183 and the Norfolk So. Railroad main line in Greenville and then north of the mainline of the Norfolk So. Railroad to the Spartanburg County line, SCDNR may utilize the funds to support trout management activities including, but not limited to, stream restoration to enhance angling opportunities, land management/acquisition to increase angler access, native brook trout restoration activities, trout stocking and management surveys, creel surveys, research, development of an additional coldwater hatchery that may be located outside of this defined area but that would support species found in this defined area, and associated costs for the aforementioned activities. Appendix E provides a map of the defined area for the Trout Management and Stream Enhancement Program.

The Licensee and SCDNR will establish the necessary written process for managing the funds in the Duke Energy managed interest-bearing account (e.g., providing fund balance reports, developing mutually agreeable supporting work plans [typically in 10-year increments], requesting fund distributions, disposition of any funds remaining in the account at the end of the New License term, etc.) prior to the funds being deposited and this fund management process will not be considered a part of the BCRA.

8.5 Additional Agreements if BCII is Constructed

- 8.5.1 The Licensee will provide one-time funding of \$1,000,000 for use in implementation of SCDNR's Fisheries Enhancement and Management Program. Funds in the Fisheries Enhancement and Management Fund may be utilized consistent with Section 8.4.1. The Licensee will provide its one-time contribution within one year following the start of commercial operation of BCII.

9.0 Species Protection Agreements

- 9.1 The Parties recommend the proposed Species Protection License Article(s), the full text of which is provided in Appendix F of this Agreement, to be incorporated verbatim into any New License the FERC may issue for the Project.
- 9.2 The Licensee will implement Species Protection Plans (SPPs) that may include federal or state listed species and/or State Wildlife Action Plan (SWAP) species agreed upon between the Licensee and SCDNR at the time of submittal of the SPPs with the Application for New License. The SPPs agreed upon by the Licensee and SCDNR may be developed to focus on an individual species or species guilds that could address multiple species in an ecosystem or ecological community. The Licensee will commit to supporting up to ten (10) SPPs.
- 9.3 The Licensee will install eagle and raptor protection measures (i.e., pole retrofits, substation caps and covers, flight diverters) at several strategic eagle use and flyway areas. Eagle/raptor protection measure retrofits to existing structures will be made within five years following New License issuance, the end of all appeals, and closure of all rehearing and administrative challenge periods, while similar protection measures for those structures associated with BCII will be outfitted during construction/installation.
- 9.4 The Licensee will implement an Integrative Vegetation Management Plan at the Project to include: (1) proposed detailed methods for vegetation management around Project facilities and rights-of-ways that includes protection of sensitive native plant and wildlife species and habitats, including riparian habitats; and (2) a schedule for implementing vegetation management at the Project. The Licensee will develop the Vegetation Management Plan in consultation with the Terrestrial and Wildlife Resource Committee and submit the plan with the Application for New License.
- 9.5 Pollinator Enhancement Program
- 9.5.1 Provided SCDNR, FOLKS, AQD, SCWF, UF, and NT are signatory Parties to the BCRA, and the New License is consistent with the BCRA for species protection and wildlife management requirements, the Licensee will implement a Pollinator Enhancement Program within 1) five years following commercial operation of BCII or 2) within five years following issuance of the New License and the end of all appeals, and closure of all rehearing and administrative challenge periods if BCII is not constructed. The Pollinator Enhancement Program will consist of the following elements:
- Planting of milkweed species (seeds and plugs) in strategic locations on BC Project property and designated areas on the transmission and distribution lines rights-of-way. This enhancement would benefit Monarch butterflies and other similar insect species (e.g., bumble bees) and would support Duke Energy's participation in the Monarch Candidate Conservation Agreement with Assurances (CCAA).
 - Add up to two Monarch CCAA monitoring sites on the BC Project transmission line corridor. Monitoring sites will be consistent with CCAA.

- Plant areas in the BC Project Boundary with native wildflower/grass pollinator and wildlife friendly seed mixes. There are several open areas (not going to be designated for spoil placement) that could support such activity.

9.6 The Licensee will provide one-time funding of \$500,000 to support the existing KT Habitat Enhancement Program provided SCDNR, FOLKS, AQD, SCWF, UF, Oconee County, and NT are signatory Parties to the BCRA, and the New License is consistent with the BCRA for species protection, fisheries management, water quality and wildlife management requirements. The Licensee will provide its one-time contribution within two years following issuance of New License, the end of all appeals, and closure of all rehearing and administrative challenge periods.

9.7 Wildlife Education and Outreach

9.7.1 The Licensee will sponsor an annual wildlife viewing/education event in the fall at the BC Project provided SCDNR, FOLKS, AQD, SCWF, UF, Oconee County, and NT are signatory Parties to the BCRA, and the New License is consistent with the BCRA for species protection, fisheries management, water quality and wildlife management requirements. The signatory Parties to the BCRA agree to meet in January annually to discuss planning details of the event. The first sponsored event will occur three years following the start of commercial operation of BCII. If BCII is not constructed, the first sponsored event will occur within three years following issuance of New License, the end of all appeals, and closure of all rehearing and administrative challenge periods.

9.8 Additional Agreements if BCII is Constructed

9.8.1 Design of any Fisher Knob Temporary Access Road, if constructed, will incorporate temporary bridges (not culverts) at all perennial stream crossings to minimize aquatic and riparian impacts.

9.8.2 Wildlife Enhancements

9.8.2.1 The Licensee will provide one-time funding of \$500,000 to support the existing KT Habitat Enhancement Program provided SCDNR, FOLKS, AQD, SCWF, UF, Oconee County, and NT are signatory Parties to the BCRA, and the New License is consistent with the BCRA for species protection, fisheries management, water quality and wildlife management requirements. The Licensee will provide its one-time contribution within one year following the start of commercial operation of BCII.

9.8.2.2 The Licensee will provide one-time funding of \$2,500,000 to support the development of a Wildlife Enhancement Program provided SCDNR, FOLKS, AQD, SCWF, UF, Oconee County, and NT are signatory Parties to the BCRA, and the New License is consistent with the BCRA for species protection, fisheries management, water quality and wildlife management requirements. Wildlife under this plan includes native terrestrial and aquatic wildlife including invertebrate, and vertebrate species. The Wildlife Enhancement Program would support species conservation including, but not limited to: propagation/restocking/re-establishment efforts, habitat restoration and protection, research to address questions regarding species of interest, such as species geographic distribution, population size and status, habitat suitability modeling; and genetics work. This program and its funding would not be used to introduce non-native species. This funding would be used in the area defined as all properties north of the main line of the Norfolk Southern (So.) Railroad from the Georgia State line to SC Hwy 183 in Westminster, then north of SC Hwy 183 to the intersection of SC Hwy 183 and the Norfolk So. Railroad main line in Greenville and then north of the mainline of the Norfolk So. Railroad to the Spartanburg County line (see Appendix E). The Licensee will provide funding within one year of the start of construction of BCII.

The Licensee and SCDNR will establish the necessary written process for managing the funds in the Duke Energy managed interest-bearing account (e.g., providing fund balance reports, developing mutually agreeable supporting work plans [typically in 10-year increments], requesting fund distributions, disposition of any funds remaining in the account at the end of the New License term, etc.) prior to the funds being deposited and this fund management process will not be considered a part of the BCRA.

10.0 Water Quality Agreements

- 10.1 The Parties recommend the proposed Water Quality License Article(s), the full text of which is provided in Appendix F of this Agreement, to be incorporated verbatim into any New License the FERC may issue for the Project.
- 10.2 The Licensee will request SCDES issue a 401 Water Quality Certification per the FERC's Integrated Licensing Process (ILP) regulations. The Licensee's Application for 401 Water Quality Certification will be consistent with the BCRA. The New License will not require water quality monitoring in or immediately downstream of Bad Creek Reservoir (e.g., tributaries or Lake Jocassee), unless BCII is constructed.
- 10.3 The Licensee will make a one-time funding contribution of \$500,000 to the Lake Keowee Source Water Protection Program for initiatives to protect and enhance water quality in the KT Project watershed (which includes the area draining to Bad Creek Reservoir) provided UF, AQD, NT, Oconee County and FOLKS are signatory Parties to the BCRA, and the New License is consistent with the BCRA for water quality, water quantity and hydro operations requirements. The funding will be used consistent with the Lake Keowee Source Water Protection Team Bylaws dated July 18, 2017, and will be provided within two years following the issuance of the New License, the end of all appeals, and closure of all rehearing and administrative challenge periods.
- 10.4 Additional Agreements if BCII is Constructed
 - 10.4.1 The Licensee will prepare a Water Quality Monitoring Plan (WQMP) in coordination with the Water Resources Committee effectively addressing water quality monitoring and associated impacts to water quality during construction of BCII. The WQMP will be used to support the application for 401 WQC.
 - 10.4.2 The Licensee will make a one-time funding contribution of \$500,000 to the Lake Keowee Source Water Protection Program for initiatives to protect and enhance water quality in the KT Project watershed (which includes the area draining to Bad Creek Reservoir) to mitigate for unavoidable impacts to water quality during construction of BCII, provided UF, AQD, NT, Oconee County and FOLKS are signatory Parties to the BCRA, and the New License is consistent with the BCRA for water quality, water quantity and hydro operations requirements. The funding will be used consistent with the Lake Keowee Source Water Protection Team Bylaws dated July 18, 2017, and will be provided within one year following the start of commercial operation of BCII.
 - 10.4.3 The design of any Fisher Knob Temporary Access Road, if constructed and to the extent practicable, will incorporate USFS Coweeta Hydrological Laboratory Best Management Practices to reduce erosion potential to protect water quality in Howard and Limberpole Creeks. The Licensee will provide the design plans to SCDNR for review and comment prior to construction.
 - 10.4.4 Design of the upland spoil areas will include French drains to minimize impacts to ephemeral and perennial streams and associated aquatic biota.

11.0 Other Agreements

- 11.1 The Parties agree, unless otherwise specifically stated herein, all provisions of funding or granting to a specified entity of any rights associated with real property are contingent upon said recipient of funding or real property rights having signed the BCRA. In the event the intended recipient of Licensee funds or grants of real property rights is eligible to sign the BCRA but either does not sign the BCRA or withdraws from the BCRA, the Parties acknowledge the Licensee is under no obligation to provide the funding or provision of such benefits to any entity.
- 11.2 Signatory Parties to the BCRA agree all Protection, Mitigation and Enhancement (PM&E) measures associated with and necessary to address effects of operation of the BC Project will be included in the New License and BCRA for the BC Project and any and all other agreements associated with BC Project operation, except for the KT Project Relicensing Agreement and the 2014 NOA, become null and void upon New License issuance, the end of all appeals, and closure of all rehearing and administrative challenge periods, including any future work plan(s) associated with the Existing License for the BC Project including the current Bad Creek Fisheries Memorandum of Understanding (MOU).
- 11.3 During the first 10 years of implementing the BCRA, the Licensee will host an annual meeting of the signatory Parties to the BCRA, following FERC issuance of the New License, to discuss the activities implemented in the previous year under the BCRA. The Licensee may, in lieu of a meeting, provide the BCRA signatories with an annual report. If BCII is constructed, the Licensee will host an annual meeting, or in lieu of an annual meeting, provide an annual report, for an additional three years of post-commercial operation of BCII to report on activities specific to BCII commercial operation.
- 11.4 The Parties agree all costs or payment amounts that are specified in dollars in this BCRA and are to be paid by the Licensee shall be adjusted on an annual basis in accordance with Section 27.0, and such escalation shall not begin until January 1 immediately following issuance of the New License and the closure of all rehearing and administrative challenge periods. The Parties also agree that if the Licensee places the identified funding in an external bank account for dedicated use to support the Licensee's funding commitments under the BCRA, then escalation of the deposited funding under this BCRA shall cease.
- 11.5 The Parties agree if the New License is for a term of less than 50 years, all costs and payment amounts that are specified in dollars in this BCRA will be prorated by the ratio of the actual New License term divided by 50.
- 11.6 Reporting Requirements for Funding Recipients – Any entity that receives Licensee funding under this Agreement will be required to provide documentation to the Licensee within two years of receipt of such funding, including any installment funding that occurs over multiple years, specifying how the funding was used and how the funding recipient met any of the designated restrictions for the use of such funding. The funding recipient will also provide the Licensee copies of final research reports, project summaries, or other summaries of work.

GENERAL AGREEMENTS AND PROCEDURES

12.0 Effective Date and Term of Agreement

- 12.1 This Agreement shall become effective for all Parties on the date of signature by the Parties or no later than January 22, 2025 ("Effective Date of this Agreement"). This Agreement shall remain in effect for the term of the New License and for any annual licenses issued subsequent thereto, unless terminated pursuant to Section 23.0.
- 12.2 If a rehearing of the FERC order issuing the New License is sought by any person or entity, including any Party, any Party may request a stay of the effective date of the order and/or any other dates or articles specified in the order until the resolution of the rehearing request and the expiration of the statutory periods for appeals. Any Party may oppose such request for stay.
- 12.3 The Parties agree to support a New License term of 50 years.

13.0 Offer of Settlement

The Licensee shall, by February 2025, provide to all Parties a draft "Explanatory Statement," which is required by FERC rules. Parties may provide comments to the Licensee within 45 days of receipt of the draft Explanatory Statement and the Licensee shall address such comments when filing this Agreement and the Explanatory Statement with the FERC.

14.0 Adoption by the FERC Without Material Modification

- 14.1 The Parties have entered into this Agreement with the express desire and expectation that the FERC will approve this Agreement as an Offer of Settlement and issue a New License for the Project that incorporates, without material modification, the proposed License Articles in Appendix F.
- 14.2 Except as provided herein, the Parties agree that, if the FERC incorporates the proposed License Articles into the New License without material modification, no Party will seek rehearing of the FERC order granting the New License for any issues covered by this Agreement or support in any way any such request for rehearing by any person or entity.
- 14.3 The Parties have entered into this Agreement with the express understanding that each term in this Agreement, including the proposed License Articles in Appendix F, is in consideration of each other term.

15.0 Statutory Responsibilities of Federal, Tribal, State and Local Governmental Bodies

- 15.1 Except as provided in this Section and elsewhere in this Agreement, by becoming Parties to this Agreement, all Parties that are governmental bodies, including Tribes, believe this Agreement is consistent with their statutory responsibilities.

- 15.2 Notwithstanding Section 15.1, nothing in this Agreement is intended or shall be construed to restrict any Party that is a governmental body or Tribe with responsibilities, duties, or obligations imposed by law from fulfilling its responsibilities, duties, and obligations under any applicable local, state, or federal law or regulation. Nothing in this Agreement is intended or shall be construed to restrict these governmental bodies and Tribes from fully and objectively considering any and all public comments received in any regulatory process related to the Project, from conducting an independent review of the Project under applicable statutes, or from providing comments to the FERC that are necessary to meet their responsibilities, duties, and obligations provided by law. All commitments and obligations of these governmental bodies and Tribes in, under, and pursuant to this Agreement shall be construed and interpreted as including, and meaning “to the extent allowed by local, state, and federal law and regulation, and consistent with local, state, and federal law and regulation.”
- 15.3 Notwithstanding Section 15.1, nothing in this Agreement is intended or shall be construed to affect or limit in any way the authority of the SCDES pursuant to 33 U.S.C. § 1341, and related state statutes and rules, to issue a 401 WQC, or to alter its 401 WQC, with whatever conditions the SCDES determines should be included. Nothing in this Agreement shall limit the right of the SCDES from enforcing its 401 WQC and from taking any steps within its discretion to protect and defend its authority, such as seeking rehearing of any FERC action regarding issues related to the exercise of SCDES’s authority with regard to its 401 WQC.
- 15.4 Nothing in this Agreement is intended or shall be construed to prevent any governmental body engaged in a public process from addressing issues included in this Agreement when raised before such governmental body in a public proceeding; provided, however, that addressing such issues in a public proceeding shall not relieve any Party that is a governmental body from its obligations to act consistently with this Agreement.
- 15.5 Nothing in this Agreement is intended to restrict, limit, interfere with, impede, or impair the rights, responsibilities, duties, or obligations of any governmental body in implementation of and in furtherance of its rights, responsibilities, duties, or obligations.
- 16.0 Parties’ Rights, Obligations and Restrictions During the Period when the FERC is Developing the New License and/or the SCDES is Developing the Water Quality Certification**
- 16.1 Parties’ Rights, Obligations, and Restrictions Related to the FERC’s Licensing Process for Developing the New License
- 16.1.1 The Parties reserve the right to be actively involved in the FERC licensing, including by intervention, in a manner consistent with this Agreement.

- 16.1.2 During the period of this relicensing prior to the FERC's issuance of the New License and the closure of all rehearing and administrative challenge periods, and except as allowed by Section 15.0, no Party may request or advocate by any means, including but not limited to intervention, filing comments with the FERC or any other agency, participating in public hearings or meetings, communicating with the media or in any public forum, encouraging, coaching or funding non-Parties to this Agreement, concurring with comments filed with the FERC or any agency, and communicating with or lobbying state or federal officials, for any New License requirements that would, if adopted by the FERC, be an Inconsistent Act.
- 16.1.3 Except as allowed by Section 15.0, during the period of this relicensing prior to the FERC's issuance of the New License and the closure of all rehearing and administrative challenge periods, no Party may request or advocate by any means, including but not limited to intervention, filing comments with the FERC or any other agency, participating in public hearings or meetings, communicating with the media or in any public forum, encouraging, coaching or funding non-Parties to this Agreement, concurring with comments filed with the FERC or any agency, and communicating with or lobbying state or federal officials, for New License reopeners of any kind beyond those that are included in the FERC's standard L-Form applicable to this Project.
- 16.2 Parties' Rights, Obligations and Restrictions during SCDES's Process for Developing the 401 WQC
- 16.2.1 The Parties reserve the right to be actively involved in any 401 WQC process in a manner consistent with this Agreement.
- 16.2.2 During the period of this relicensing prior to the FERC's issuance of the New License and the closure of all rehearing and administrative challenge periods, and except as allowed by Section 15.0, no Party may request or advocate by any means, including but not limited to intervention, filing comments with the FERC or any other agency, participating in public hearings or meetings, communicating with the media or in any public forum, encouraging, coaching or funding non-Parties to this Agreement, concurring with comments filed with the FERC or any agency, and communicating with or lobbying state or federal officials for, (i) any 401 WQC requirements or conditions that would result in an Inconsistent Act or (ii) 401 WQC reopeners of any kind other than a reopener for failure to comply with requirements of any 401 WQC.
- 17.0 Agreements on Action Steps when a Jurisdictional Body Imposes a Requirement that is an Inconsistent Act**
- 17.1 If any Party believes the actions of a Jurisdictional Body, through the imposition of a requirement or the failure to impose any requirement on the Licensee, have resulted in an Inconsistent Act, the Party shall notify the other Parties pursuant to Section 24.0.

- 17.2 If notice is given pursuant to Section 17.1, the Licensee shall convene a meeting of all Parties to determine by consensus a course of action to: (i) work with the FERC and any appropriate Jurisdictional Body to pursue an alternative to the Inconsistent Act that is acceptable to all Parties and to the FERC and the Jurisdictional Body(ies); (ii) acceptably rebalance and modify this Agreement; or (iii) take such other actions as the Parties may agree upon to address the Inconsistent Act. If requested by any Party, mediation as described in Section 26.2 may be used to help reach consensus. The Parties shall use their best efforts to cooperatively implement this Section to address the Inconsistent Act in a manner agreeable to all the Parties.
- 17.3 If the Parties modify this Agreement, pursuant to Section 20.0, to address the Inconsistent Act, the Licensee shall promptly file the Modified Agreement with the FERC, and any Party may take actions, such as submitting comments, consistent with the Modified Agreement. However, if all Parties do not agree to modify this Agreement to address the Inconsistent Act, then no Party may support the Inconsistent Act, and the Parties shall not modify this Agreement.
- 17.4 Any Party may pursue any available legal remedies (i.e., administrative or judicial review) to alter a proposed or final Inconsistent Act to conform to this Agreement whether or not that Party is simultaneously following the procedures in this Section 17.0. No Party shall oppose such legal remedies that seek only to conform the Inconsistent Act to this Agreement.

18.0 Review of Inconsistent Act Imposed by Jurisdictional Body that Substantially Negatively Affects a Party

- 18.1 A Party may initiate or maintain an action (e.g., administrative or judicial review), to contest an Inconsistent Act imposed by a Jurisdictional Body. Because this Agreement itself is legally enforceable, the omission of any proposed License Article from any authorization (including the New License and any 401 WQC), notwithstanding Section 17.0, shall not, by itself, be deemed an Inconsistent Act that conflicts with this Agreement. However, any Party may petition the issuing agency to include such Article in such authorization and may exhaust such administrative and related judicial processes. Conversely, the inclusion of any requirement of this Agreement in any authorization (including the New License and any 401 WQC) shall not, by itself, be deemed an Inconsistent Act that conflicts with this Agreement. However, any Party may petition the issuing agency to exclude such Article in such authorization and may exhaust such administrative and related judicial processes. No Party except the relevant Jurisdictional Body may oppose another Party's action pursuant to this Section 18.1.
- 18.2 No Party will seek to use its status as a Party to this Agreement to establish standing or aggrieved-party status to challenge any action of any governmental agency that is also a Party to this Agreement when that governmental agency's actions are pursuant to fulfilling its statutory duties.

- 18.3 If, after exhausting any legal reviews initiated pursuant to Section 18.1, any Party still believes the Jurisdictional Body's action or omission is an Inconsistent Act and that it is substantially negatively affected by the Inconsistent Act, then that Party may initiate withdrawal pursuant to Section 22.0 by giving notice of its intent to withdraw from this Agreement pursuant to Section 24.0. No Party may give Notice of Intent to Withdraw until all administrative and judicial challenges regarding the issue over which the Party intends to withdraw have been finally resolved and until all time periods for further administrative or judicial review have expired when that governmental agency's actions are complete pursuant to fulfilling its statutory duties.

19.0 Agreements on Action Steps upon Breach by Any Party

- 19.1 If any Party is alleged by any other Party to be in breach of this Agreement, the Party alleging the breach shall immediately notify, pursuant to Section 24.0, all Parties to this Agreement of the alleged breach and shall consult with the allegedly breaching Party to discuss the breach and reach a resolution satisfactory to all Parties. To allow for consultation, no Party may seek relief from a court or any other forum, including the FERC, concerning the alleged breach until sixty days have elapsed following the notice required in the preceding sentence, except that a Party may seek relief prior to the passing of the sixty days if the Party's rights would be prejudiced by such delay.
- 19.2 If any Party has a credible reason to believe it or another Party may be unable to comply with any future obligation under this Agreement, including any schedule, the Party may inform the other Parties. The Licensee shall convene the Parties to attempt to ensure clear communications concerning the potential breach and to identify actions that may be acceptable to all the Parties that would eliminate the concern relative to the potential breach.
- 19.3 The Parties agree to use their best efforts to cure any alleged breach of this Agreement in a reasonable and timely manner. If such best efforts and consultation fail to resolve the alleged breach or alleged anticipatory breach, any Party may pursue its legal remedies for any alleged breach or alleged anticipatory breach once the sixty-day period set forth in Section 19.1 has elapsed.
- 19.4 When any Party withdraws from this Agreement or is found to have breached this Agreement, the withdrawing or breaching Party is obligated to return any benefits previously obtained under this Agreement, if such benefits consist of monetary funds or interests in real property. The Parties acknowledge that no withdrawing or breaching Party ought to be able to withdraw from or breach this Agreement and retain benefits bargained for, and the Parties agree that this remedy is to be specifically enforceable.

20.0 Modification of this Agreement

- 20.1 Except as provided in Sections 2.4.6, 3.2.2, 20.2, 20.3, and 24.0, any modification of any provision of this Agreement to become effective must be made in writing and, after notice of the modification is provided pursuant to Section 24.0, signed by an authorized representative of each Party except that a Party who fails to respond to such notice within 60 days shall be deemed to have consented to the proposed modification. Except as provided herein, nothing in this Agreement is intended to limit the Parties' ability to modify this Agreement.
- 20.2 The Parties acknowledge that, for long-term clarity of this Agreement, it may be beneficial to remove from this Agreement those benefits and obligations that were conditioned on certain entities becoming Parties to this Agreement but are no longer benefits or obligations of this Agreement because these entities did not become Parties. The Parties agree that when considering modification of this Agreement, the Licensee shall also confer with the Parties to reform this Agreement for the limited purpose of reflecting accurately only the Parties' benefits and obligations hereunder by deleting specific benefits and obligations of entities that were signatories to the AIP but declined to become Parties to this Agreement. If any signatories to the AIP decline to become Parties to this Agreement, the Licensee will circulate a reformed Agreement to all Parties, pursuant to the notice provision of Section 24.0, and such reformed Agreement shall automatically supersede this Agreement unless any Party objects by giving notice to the Licensee within 60 days of notice of the reformed Agreement.
- 20.3 Prior to January 22, 2025, a Party to this Agreement may seek to initiate a process for rebalancing this Agreement if there is a loss of Agreement provisions conditioned upon the Party and at least one other AIP Signatory signing this Agreement, when at least one of said AIP Signatories does not sign this Agreement. If the attempt to rebalance this Agreement is unsatisfactory, the Party may seek to withdraw without following the procedures in Section 22.0.

21.0 Parties' Ability to Petition the FERC or SCDES

A Party may petition the FERC to amend the New License, pursuant to any reopener condition contained in the New License, or to take any other action with regard to the Licensee or the Project or may petition the SCDES to amend its respective 401 WQC, pursuant to any reopener condition included in any 401 WQC, or to take any other action with regard to the Licensee or the Project, so long as the amendment or other action would not substantially conflict with this Agreement and would not directly result in an Inconsistent Act for any other Party; provided, however, that before filing any such petition, the petitioning Party shall notify all other Parties pursuant to Section 24.0 and consult with any Party that indicates that it may be substantially negatively affected, but under no circumstance shall such consultation prevent a Party from pursuing such relief before the FERC or the SCDES within the time required by law or regulation.

22.0 Withdrawal from this Agreement

- 22.1 A Party may initiate withdrawal from this Agreement if it is substantially negatively affected by an Inconsistent Act and has followed the procedures in Section 17.0, as applicable, to attempt to remedy the cause for the withdrawal.
- 22.2 A Party may initiate withdrawal from this Agreement without following the procedures in Section 17.0 if it is substantially negatively affected by: (i) withdrawal of another Party, as set forth in Section 22.8; (ii) a new law or regulation that requires a Party to act in a manner that breaches this Agreement, as set forth in Section 33.0; (iii) the invalidation of a portion of this Agreement, as set forth in Section 34.6; or (iv) transfer of the Existing or New License to a transferee that is not bound by all the terms of this Agreement, as set forth in Section 34.15.
- 22.3 A Party shall initiate the withdrawal process by providing Notice of Intent to Withdraw to all Parties in accordance with Section 24.0. This Notice must include a brief, non-binding statement setting forth:
- 22.3.1 The date and nature of the Inconsistent Act, or other event giving rise to the right to withdraw, including a reference to the specific section of this Agreement under which withdrawal is permitted; and
- 22.3.2 (i) If withdrawal is based on an alleged Inconsistent Act, how the alleged Inconsistent Act meets the definition of "Inconsistent Act" and how it conflicts with this Agreement; and (ii) how the alleged Inconsistent Act or event listed in Section 22.2 substantially negatively affects the withdrawing Party.
- 22.3.3 If any Party opposes the withdrawal, that Party shall submit a notice, pursuant to Section 24.0, to the withdrawing Party indicating that it opposes withdrawal and seeks arbitration of the Party's right to withdraw.
- 22.3.4 If, after 60 days from the Notice of Intent to Withdraw, no Party opposes the withdrawal, the withdrawal is final.
- 22.3.5 Within 30 days of the notice opposing withdrawal, the withdrawing Party shall post an Arbitration Escrow Fee of \$2,000. The Arbitration Escrow Fee shall be made payable to an acceptable escrow agent, which may be the Licensee, and shall bear a notation that it is to be held in escrow. Once the arbitrator is selected, the withdrawing Party shall ensure that the escrow agent may release the funds to the arbitrator upon proof of the withdrawing Party's failure to pay its share of the arbitration costs. If the withdrawing Party fails to post the Arbitration Escrow Fee in a timely manner, it shall thereby waive its right to withdraw based on the Inconsistent Act or other event cited in the withdrawal notice.
- 22.4 The arbitrator shall be selected and the arbitration conducted pursuant to the procedures of the American Arbitration Association under its Commercial Arbitration Rules. The arbitrator's decision shall be binding only as to the Parties before it.

- 22.5 Withdrawal shall be allowed only if the arbitrator determines that the withdrawing Party substantially complied with all material procedural prerequisites to withdraw specified in this Agreement and:
- 22.5.1 A requirement imposed by a Jurisdictional Body (i) conflicts with this Agreement and (ii) is an Inconsistent Act that substantially negatively affects the withdrawing Party; or
 - 22.5.2 The withdrawing Party was substantially negatively affected by the withdrawal of another Party, as set forth in Section 22.8; or
 - 22.5.3 A new law or regulation requires a Party to act in a manner that breaches this Agreement, as set forth in Section 33.0, and that breach substantially negatively affects the withdrawing Party; or
 - 22.5.4 A portion of this Agreement is invalidated which results in the withdrawing Party's being substantially negatively affected, as set forth in Section 34.6; or
 - 22.5.5 The Existing or New License is transferred to a transferee that is not bound by all the terms of this Agreement which results in the withdrawing Party's being substantially negatively affected, as set forth in Section 34.15.
- 22.6 An effective withdrawal relieves the withdrawing Party of its performance obligations under this Agreement.
- 22.7 The costs of the arbitration shall be shared equally between the Party seeking withdrawal (50 percent) and the combination of Parties requesting arbitration (50 percent). The Parties shall request that the arbitrator invoice each Party separately. Any unused amounts of the Arbitration Escrow Fee will be returned to the withdrawing Party.
- 22.8 Upon withdrawal of any Party, any other Party (hereinafter "Second Party") may exercise its right to withdraw pursuant to the procedures set forth in this Section 22.0, except that, if the issue goes to arbitration, withdrawal shall be allowed only if the arbitrator determines that (i) the Second Party substantially complied with all procedural prerequisites to withdrawal specified in this Agreement; and (ii) the previous withdrawal of another Party will substantially negatively affect the Second Party.
- 22.9 No Party is required to pursue administrative or judicial remedies prior to withdrawing; however, no Party may give Notice of Intent to Withdraw until all administrative and judicial challenges, if any, regarding the issue over which the Party intends to withdraw have been finally resolved and until all time periods for further administrative or judicial review have expired. Any right to withdraw is waived if the Party does not give Notice of Intent to Withdraw within 180 days of the expiration of the last time period for administrative or judicial review of a matter related to the reason for withdrawal.

- 22.10 If a Party is prohibited by law from submitting to binding arbitration, then, after that Party has provided Notice of Intent to Withdraw and after another Party has given notice of its opposition to withdrawal, as set forth in Section 22.3, the Party seeking to withdraw shall give notice to all Parties pursuant to Section 24.0 that it is prohibited by law from submitting to binding arbitration and shall provide with such notice evidence of the legal prohibition and shall within 30 days following provision of its notice of prohibition to submit to arbitration, file an action for declaratory judgment: (i) seeking the court's determination of its legal right to withdraw pursuant to the terms of this Agreement; and (ii) naming the Party opposing withdrawal as the defendant. The withdrawing Party shall serve notice of its filing of the declaratory judgment action on all Parties to allow any Party the opportunity to intervene. The court shall use the criteria set forth in Section 22.0 and sections cross-referenced therein to determine whether a Party seeking to withdraw is entitled to withdraw under this Agreement. If the Party seeking to withdraw fails to file an action for declaratory judgment within 30 days following its notice to the Parties of its prohibition to submit to arbitration, then it shall thereby waive its right to withdraw based on the Inconsistent Act or other event cited in the withdrawal notice.
- 22.11 Any opposition to any withdrawal shall be ineffective if the arbitrator determines that the Party opposing withdrawal failed to give notice to the withdrawing Party as required in Section 22.3.

23.0 Termination of this Agreement

This Agreement, and all obligations arising hereunder, shall terminate and be of no further force or effect upon withdrawal of the Licensee from this Agreement, upon the expiration, or other termination of the term of the New License and any annual licenses issued thereafter, or upon transfer of the Project to a subsequent owner⁴ that is not bound by any part of this Agreement.

24.0 Notice

Each Party shall designate a representative for the receipt of notices. All notices required to be given under this Agreement shall be in writing and be given by personal delivery, overnight express service, or U.S. mail to each Party using the contact information set forth in this Agreement and included as Appendix A. The sender shall retain proof of posting or delivery, and notices shall be effective upon the date and time identified on the proof of posting or delivery. The Licensee will be responsible for maintaining the contact information included in Appendix A. A Party may change the contact information or the designated representative by notifying the Licensee of such change, and such change will not be considered a modification of this Agreement. Each Party shall be responsible for providing the Licensee with their updated contact information in a timely and accurate manner. If a Party no longer exists at the time that notice is required to be given by this Agreement, notice to such Party is not required. If a Party required to give notice knows that another Party's designated representative is deceased or is no longer employed by and/or affiliated with such other Party, the Party required to give notice must make a reasonably diligent effort to provide notice to an appropriate person affiliated with such other Party. A "reasonably diligent effort" shall include notice to any person upon whom process could be served under the Federal Rules of Civil Procedure in effect at the time that notice is required to be given.

⁴ Entities not subject to FERC jurisdiction.

25.0 Licensed Project Cessation

- 25.1 In the event the Licensee decides to surrender the New License prior to its expiration, or the United States takes over the Project, the Licensee agrees to take the following actions.
- 25.1.1 Notify all Parties pursuant to Section 24.0 and convene a meeting for all Parties no later than 30 days after its decision to surrender the Project in whole or in part, or becoming aware that the United States may take over the Project in whole or in part.
 - 25.1.2 Notify all Parties at least 60 days prior to the Licensee's filing at the Commission an application to surrender its License in whole or in part.
 - 25.1.3 Negotiate in good faith with SCDNR, SCPRT, and any other interested Party with the objective of ensuring continued public access to Bad Creek Project lands through the remaining period of the New License term for those properties designated for public access and recreation in the New License and that will continue to be owned by the Licensee.
 - 25.1.4 Negotiate in good faith with SCDNR, SCPRT, and any other interested Party to develop a plan for managing lands and waters within the Project Boundaries.
 - 25.1.5 Within 180 days after becoming aware that any of the Project's developments will no longer be licensed by the FERC or after filing an application with the FERC to surrender the license for any of the Project's developments, and provided the Licensee desires to close and/or sell any affected Licensee-owned recreation land or recreation facilities at the Project, then provide notice to all Parties, pursuant to Section 24.0 and any applicable tribal or governmental entities, to offer to sell the affected Licensee-owned recreation land and facilities at the appraised market value, as determined by the average of two appraisals completed in accordance with Appraisal Institute standards, one appraisal to be paid for by Licensee and the other to be paid for by the first Party or tribal or governmental entity that notifies the Licensee, pursuant to Section 24.0, of its desire to acquire Licensee-owned recreation land and facilities. Any said recreation land or facilities that are leased to a Party to this Agreement will first be offered for sale to the lessee under the same arrangements above in this Section 25.1.5 for a period of 60 days. An offer to acquire such facilities by a Party or tribal or governmental entity may be for all or any portion of such Licensee-owned recreation land and facilities. One hundred and eighty (180) days after providing such notice of an offer to sell, the Licensee shall be free to sell to any entity any affected Licensee-owned recreation land or facilities for which the Licensee does not receive an acceptable purchase option from a Party, or tribal or government entity.

26.0 Dispute Resolution

26.1 Dispute Resolution – Except as otherwise specifically provided in this Agreement, disputes among Parties arising under or related to this Agreement or the New License shall be resolved as follows.

26.1.1 Consultation

26.1.1.1 Any Party alleging a dispute shall notify the Licensee. The Licensee shall notify all Parties pursuant to Section 24.0 and shall give at least 15 days' notice of a meeting scheduled to resolve the dispute. The Party alleging a dispute and each Party that attends such meeting or notifies all other Parties pursuant to Section 24.0 of the Party's interest in the resolution of the alleged dispute shall be considered to be an "Interested Party." The meeting notice shall describe the dispute and shall provide the time and location of the meeting. All Parties who are Interested Parties agree to engage in good-faith negotiations to resolve the dispute for a period of at least 45 days ("Consultation Period") from the date of notice provided by the Party alleging a dispute in an effort to resolve the dispute; except that, in emergency situations, or if required to preclude the running of any applicable limitations period, an Interested Party may, for good cause, seek relief prior to the expiration of the 45-day period.

26.1.1.2 The Interested Parties may agree to extend the Consultation Period up to an additional 75 days and may employ a mediator. To the extent allowed by law, the Parties shall consider any applicable limitations period, whether arising by statute, regulation, contract, or otherwise to be tolled during the Consultation Period. No Party shall raise as a defense to any action, whether judicial or administrative, the running of any period of limitation, so long as the action was filed within the limitations period plus the Consultation Period.

26.1.1.3 The Consultation Period ends when the times described above expire or when all Interested Parties except one indicate that consultation is no longer useful, whichever is sooner.

26.1.2 Consensus – Upon resolution of a dispute, by agreement or otherwise, the Interested Parties shall notify all Parties of the resolution. A resolution based on consensus shall have the unanimous support of all Interested Parties and no opposition from any other Party. Any resolution that requires modification of this Agreement requires written approval signed by all Parties, pursuant to Section 20.0.

26.1.3 Remedies – If, after the Consultation Period, the Interested Parties have not reached consensus, or in the event a schedule to cure an alleged noncompliance has been established through Consultation and a Party has not cured the failure within the time established, any Interested Party may seek resolution as follows.

26.1.3.1 Provisions of this Agreement that are Also Included in the New License – For disputes related to License Articles, a Party shall petition the FERC to enforce the License Article with which the Licensee is alleged to have failed to comply. If FERC enforces any alleged failure to comply with a License Article, such enforcement action shall be the sole remedy under this Agreement. If the FERC finds that a violation occurred but affirmatively declines to enforce a License Article or fails to act within a reasonable time after a petition to enforce has been filed, which period of time shall not be less than 180 days from the date on which the petition was filed, then such Party may file with the FERC a petition for rehearing regarding the alleged failure and pursue any further remedies, including judicial review. Once the 180-day period has expired or FERC has affirmatively indicated that it will not take enforcement action (whichever occurs sooner), any Party may seek to enforce, by any available means, any provision of this Agreement that was also incorporated into the New License, except that any Party may file such action sooner in order to preclude the running of any applicable limitations period. If any Party has sought direct review of any FERC action related to enforcement, the Party may not seek to enforce by other means until that action is resolved and any applicable review periods have expired.

26.1.3.2 Provisions of this Agreement that are Not Also Included in the New License – For disputes not related to License Articles, a Party shall seek resolution in a court or agency of competent jurisdiction.

26.2 Mediation Services

26.2.1 Any Party may propose the use of a professional mediator to facilitate dispute resolution. To initiate professional mediation, a Party shall notify all Parties pursuant to Section 24.0 and shall convene a meeting not sooner than 15 days nor more than 30 days following notice. Such notice shall state the date, time, and location of the initial meeting to consider mediation. At that initial meeting, all Parties in attendance shall determine their interest in mediation. Mediation is purely voluntary, and no Party shall be compelled against its will to participate in mediation.

26.2.2 Those Parties agreeing to mediation shall execute a contractually binding agreement with a professional mediator, and such agreement shall determine both how the mediating parties will share the cost of mediation and the schedule to undertake and complete mediation, to the extent allowed by law. No Party that chooses not to participate in mediation shall be responsible for any costs related to mediation. No mediated resolution shall modify this Agreement unless all the Parties so modify this Agreement pursuant to Section 20.0.

27.0 Adjustment for Inflation / Deflation

27.1 Unless otherwise indicated in this Agreement, all costs or payment amounts in this Agreement that are specified in dollars and are to be paid by the Licensee shall be adjusted on an annual basis and escalation shall not begin until January 1 immediately following issuance of the New License and the closure of all rehearing and administrative challenge periods according to the following formula:

$$AD = (D \times (NGDP)) / IGDP$$

Where:

AD = Adjusted dollar amount as of January 1 of the year in which the adjustment is made (or, in the case of the first adjustment, 2028).

D = Dollar amount prior to adjustment.

NGDP = GDP-IPD for the third quarter of the year before the adjustment date (or, in the case of the first adjustment, 2027⁵).

IGDP = GDP-IPD for the third quarter of the year before the previous adjustment date (or, in the case of the first adjustment, 2026).

27.2 "GDP-IPD" is the value published for the Gross Domestic Product Implicit Price Deflator by the U.S. Department of Commerce, Bureau of Economic Analysis in the publication "Survey of Current Business" (being on the basis of 2005 = 100), in the third month following the end of the applicable quarter. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted. If the base year for GDP-IPD is changed or if publication of the index is discontinued, the Licensee shall promptly make adjustments or, if necessary, select an appropriate alternative index to achieve the same economic effect. Adjusted amounts will be rounded to the nearest whole dollar.

⁵ Example assumes a License issuance by August 1, 2027.

28.0 Ability of Parties to Request FERC Approvals or New License Amendments Related to Non-Project Use Requests

- 28.1 Nothing in this Agreement shall impair or supersede the right of any Party to apply for and/or support, including by intervention, an amendment to the New License or other order from the FERC authorizing any entity to expand or modify an existing water intake or to add a new water intake, unless such amendment is specifically prohibited in this Agreement.
- 28.2 Unless such action is specifically prohibited in this Agreement, nothing in this Agreement shall impair or supersede: (i) any Party's right to file with the Licensee a Non-Project Use request that is in compliance with Duke Energy's shoreline management guidelines for the KT Project or to support (e.g., provide comments on individual lake use permit applications, such as marinas, multi-slip facilities, etc.), including by intervention, that request with the FERC; (ii) any Party's right to support, oppose, or request modification to such as request with the FERC, or (iii) any Party's legal obligations related to such requests.
- 28.3 Nothing in this Agreement is intended to or may be construed to alter, modify, amend, or in any way impact or affect state law applicable to the Non-Project Use requests.

29.0 Parties' Participation in Future Relicensings and 401 WQC

- 29.1 Nothing in this Agreement shall be construed to restrict any Party's participation or comments in future relicensings or 401 WQC related to licenses for this Project beyond the New License.
- 29.2 Nothing in this Agreement shall be construed to restrict any Party's participation in any other FERC licensing proceeding including any other project for which Duke Energy Carolinas, LLC is the licensee.

30.0 Early Implementation

Unless otherwise prohibited in the New License, the Existing License, or this Agreement, the Licensee at its own discretion may choose to voluntarily implement, partially or in full, any of the operational changes or its other obligations called for in this Agreement earlier than the dates indicated in this Agreement.

31.0 Coordination with the Licensee's Budgeting Cycle

Unless otherwise specified in this Agreement, the timing for financial contributions from the Licensee described in this Agreement will be coordinated with the Licensee's budgeting cycle. The Licensee's contributions will become available the latter of any of the following: (i) January 1 of the first calendar year after the issuance of the New License and the closure of all rehearing and administrative challenge periods if the date for financial contribution is on or before June 30; or (ii) January 1 of the second calendar year following the issuance of the New License and the closure of all rehearing and administrative challenge periods if the date for financial contribution is after June 30.

32.0 Assessments and Procedures for New Information or Material Mistakes

A Party that becomes aware of significant new information or a material mutual mistake may bring that information to the Licensee and/or may convene a meeting of all Parties pursuant to Section 24.0, inviting Parties to meet to discuss a modification of this Agreement pursuant to Section 20.0.

No Party may use new information as a defense to an alleged breach of this Agreement, as a basis for taking an action inconsistent with this Agreement, or as a basis to withdraw from this Agreement unless a Party has complied with the process in Section 32.0.

33.0 Procedures for New Law or Regulation

Should any new law, regulation, or other regulatory action, such as a permit or License requirement, require a Party to breach this Agreement (including, without limitation, for a governmental Party, denying that Party's funds with which to fulfill its obligations under this Agreement), such Party shall not be liable for such breach. Should a new law or regulation require a Party to act in a manner that breaches this Agreement, then any other Party that believes it is substantially negatively affected thereby may withdraw from this Agreement by following the procedures in Section 22.0. If arbitration is initiated, withdrawal shall be allowed only if the arbitrator determines that: (i) the withdrawing Party substantially complied with all procedural prerequisites to withdrawal specified in this Agreement; (ii) there is no adequate remedy at law or in equity for the breach and the breach substantially negatively affects the withdrawing Party; and (iii) the breach was required by or the unavoidable result of the new law or regulation.

34.0 Miscellaneous Agreements

- 34.1 No Admission of Liability – This Agreement is a compromise of many interests. The actions taken pursuant to this Agreement are not intended nor shall they be construed as an admission on the part of any Party, or its agents, representatives, attorneys, or employees that such Party was so obligated in any manner independent of this Agreement. Except as provided herein, no Party shall be prejudiced, prevented, or estopped from advocating in any manner or before any entity, including the FERC or any state agency, any position inconsistent with those contained in this Agreement regarding the licensing, permitting, and license compliance of this or any other hydropower project.
- 34.2 Agreement Terms Contractual – The terms of this Agreement are contractual and not mere recitals. This Agreement, including Appendices A through F, constitutes the entire Agreement between the Licensee and the other Parties with respect to the subject matter hereof, and all prior contemporaneous or other oral or written statements, representations, or agreements by, between or among any of the Parties, including the AIP, but not including the KT Project Relicensing Agreement and the 2014 NOA, are superseded hereby. However, nothing herein alters any valid easement, lease, user's agreement, or permit previously granted or issued by the Licensee to any entity that is a Party to this Agreement for use of Project land or Project waters.
- 34.3 Enforceability – As noted in Section 26.1.3, all terms of this Agreement not incorporated as License Articles shall be enforced through remedies available under applicable state or federal law.

- 34.4 Force Majeure – The Parties agree neither the Licensee, nor any other Party, shall be in breach of this Agreement to the extent any delay or default in performance is due to causes beyond the reasonable control of the delayed or defaulting Party; provided the delayed or defaulting Party notifies the other Parties as soon as possible of: (i) the event; (ii) the expected duration of the event; and (iii) the delayed or defaulting Party's plan to mitigate the effects of the delay or default. Such causes may include, but are not limited to, natural disasters, labor or civil disruption, acts of terrorism, the inability to secure any legal authorization from another entity (e.g., a permit or license) where such legal authorization is a prerequisite or requirement for complying with this Agreement, or breakdown or failure of the Project works, provided such causes are beyond the reasonable control of the delayed or defaulting Party.
- 34.5 Applicable Law and Venue – The Parties agree that all actions arising wholly within North Carolina must be litigated in courts located in the State of North Carolina and shall be governed by North Carolina law; those actions arising wholly within South Carolina must be litigated in courts located in the State of South Carolina and shall be governed by South Carolina law; where an action arises in both states, or in the case in which an act or omission giving rise to an action to enforce this Agreement occurred in neither state or its state of origin cannot be determined, the action must be litigated in courts located in either the State of North Carolina or the State of South Carolina, and laws of the state where the action is brought shall govern. The Parties agree that such courts are convenient forums and irrevocably submit to the personal jurisdiction of such courts, except that the governmental bodies who are Parties do not by entering into this Agreement waive sovereign immunity, and such Parties waive such defense only to the extent required by law, if at all.
- 34.6 Severability – Should any provision of this Agreement or part hereof be held under any circumstances in any jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement or other part of such provision. If such invalidity or unenforceability substantially negatively affects any Party, that Party may withdraw from this Agreement pursuant to the procedures established in Section 22.0. If arbitration is initiated, withdrawal shall be allowed only if the arbitrator determines that: (i) the withdrawing Party substantially complied with all procedural prerequisites to withdrawal specified in this Agreement; and (ii) the unenforceability or invalidity of the relevant part of this Agreement substantially negatively affects the withdrawing Party.
- 34.7 Waiver Independence – No consent to or waiver of any provision of this Agreement shall be deemed either a consent to or waiver of any other provision hereof, whether or not they are similar, or a continuing consent or waiver, unless otherwise specifically provided.
- 34.8 Definitions – The terms, phrases, and abbreviations defined in this Agreement and all appendices to this Agreement are provided in Appendix B.

- 34.9 Water Rights Unaffected – This Agreement does not release, deny, grant, or affirm any property right, license, or privilege in any waters or any right of use in any waters nor impact or affect any requirements or obligations under state law. This Agreement does not authorize any person or entity to interfere with the riparian rights, littoral rights, or water use rights of any other kind of any other person or entity. No person or entity shall interpose this Agreement as a defense in an action respecting the determination of riparian or littoral rights or other water use rights.
- 34.10 Parties' Own Costs – Except as expressly provided for in this Agreement, all Parties are to bear their own costs of participating in this Agreement.
- 34.11 Existing Laws – Unless otherwise noted, any reference to any statute, regulation, or other document refers to the statute, regulation, or document as it exists on the date of the first signature on this Agreement. No changes to any document to which this Agreement refers are incorporated into this Agreement, unless explicitly provided for in this Agreement or unless such change is made in accordance with Section 20.0.
- 34.12 No Third-Party Beneficiary – This Agreement shall not create any right in any individual or entity that is not a Party hereto or in the public as a third-party beneficiary. This Agreement shall not be construed to authorize any such third party to initiate or to maintain a suit in law or equity or other administrative proceeding.
- 34.13 No Commitment of Funds – Nothing in this Agreement shall be construed as obligating any federal, tribal, state, or local agency to expend in any fiscal year any sum in excess of appropriations made by Congress, tribal councils, or state or local legislatures; administratively allocated for the purpose of this Agreement for the fiscal year or to involve any federal, tribal, state, or local agency in any contract or obligations for the future expenditure of money in excess of such appropriations or allocations.
- 34.14 No Government Agency Delegation – Nothing in this Agreement shall be construed as requiring or involving the delegation by any governmental agency to any other body of any authority entrusted to it by Congress, tribal council, or by the legislature of any state.

- 34.15 Successors and Assigns – This Agreement shall apply to, and be binding on, the Parties and their successors and assigns. No change in ownership of or transfer of the New License for the Project, or any of its developments shall in any way modify or otherwise affect any Party's interests, rights, responsibilities, or obligations under this Agreement. Unless prohibited by applicable law, the Licensee of the Project shall provide that, in any transfer of the Existing or New License for the Project, such subsequent licensee shall be bound by, and shall assume the rights and obligations of, this Agreement upon completion of the change of ownership and, as applicable, approval by the FERC of the license transfer. The Licensee shall provide notice to the other Parties at least 90 days prior to completing such transfer of the Existing or New License. Notwithstanding the foregoing provisions of this Section, if any subsequent licensee is only partially bound by the terms of this Agreement, any Party that believes that it is substantially negatively affected by the fact that the subsequent licensee is only partially bound by this Agreement may initiate withdrawal from this Agreement pursuant to the procedures established in Section 22.0. If arbitration is initiated, withdrawal shall be allowed only if the arbitrator determines that: (i) the withdrawing Party substantially complied with all procedural prerequisites to withdrawal specified in this Agreement; and (ii) the fact that the subsequent licensee is only partially bound by this Agreement substantially negatively affects the withdrawing Party.
- 34.16 Damages – Damages at law are an inadequate remedy to redress any prospective or continuing breach of this Agreement and any Party shall be entitled to specific performance only regarding such breach, and no Party may bring an action seeking monetary damages but shall be limited to seeking specific performance, injunctive, or declaratory relief. This Section shall not be construed to prohibit any Party from receiving money in settling any claim arising from a prospective or continuing breach.
- 34.17 Limitation of Applicability – This Agreement is made on the express understanding that it constitutes a negotiated settlement of issues specific to the Project. No Party shall be deemed, by virtue of execution of this Agreement, to have established precedent, or admitted or consented to any fact, opinion, approach, methodology, or principle except as expressly provided herein. In the event this Agreement is approved by the FERC, such approval shall not be deemed precedential or controlling regarding any particular issue or contention in any other proceeding.
- 34.18 Execution in Counterparts – This Agreement may be executed in separate counterparts, with each counterpart deemed to be an original having the full force and effect thereof, but with all such counterparts, taken together, constituting but one and the same document.
- 34.19 Full Legal Authority – Each Party to this Agreement represents that it has the full legal authority to execute this Agreement and that its signatory is authorized to bind the Party (principal) that it represents, and that by such representative's signature, such principal shall be bound upon full execution of this Agreement.

34.20 Timing – In various places throughout this Agreement, the following phrase related to timing of actions appears: “within ____ year(s) following the issuance of the New License, the end of all appeals, and the closure of all rehearing and administrative challenge periods.” The Parties acknowledge and agree that this phrase is intended to define the end of all periods during which someone may contest the validity of the New License or the 401 WQC, and it is further intended to make clear that certain required actions, described by this phrase, do not become requirements obligating Parties to act until all opportunities to contest or appeal the New License or the 401 WQC have come to a complete and final end.

SIGNATURES OF THE PARTIES

ADVOCATES FOR QUALITY DEVELOPMENT, INC.

By:



Gary Owens
President

12/10/24

(Date)

CATAWBA INDIAN NATION

By: Wenonah G. Haire, DMD

Wenonah G. Haire, DMD
Cultural Division Director
THPO Office

1/16/2025

(Date)

DUKE ENERGY CAROLINAS, LLC

By: Bryan P. Walsh

Bryan Walsh

Vice President, Carolinas Regulated Renewables and Lake Services

1/17/2025

(Date)

FOOTHILLS TRAIL CONSERVANCY

By: Andrew Gleason
Andrew Gleason
Chairman

1-17-2025
(Date)

FRIENDS OF LAKE KEOWEE SOCIETY, INC.

By: Dale Wilde
Dale Wilde
President

12/19/2024
(Date)

NATURALAND TRUST

By: 
Wes Cooler
Trustee

January 23rd, 2025
(Date)

OCONEE COUNTY, SOUTH CAROLINA

By: Amanda F. Brock

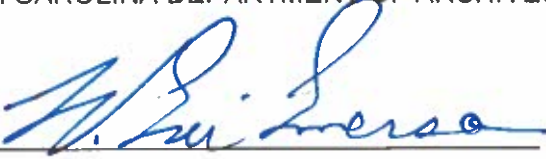
Amanda Brock
Oconee County Administrator

01.07.2025

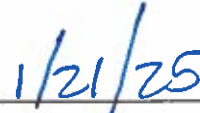
(Date)

SOUTH CAROLINA DEPARTMENT OF ARCHIVES AND HISTORY

By:

A handwritten signature in blue ink, appearing to read "W. Eric Emerson", written over a horizontal line.

Dr. W. Eric Emerson
Director

A handwritten date "1/21/25" in blue ink, written over a horizontal line.

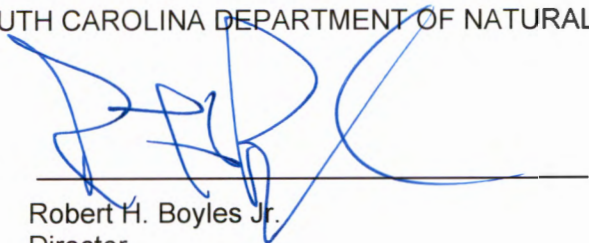
(Date)

SOUTH CAROLINA DEPARTMENT OF ENVIRONMENTAL SERVICES

By: Morgan Amedee January 13, 2025
Morgan Amedee (Date)
South Carolina Department of Environmental Services
Project Manager

SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES

By:



Robert H. Boyles Jr.
Director

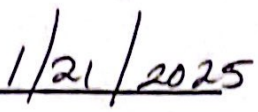
1-6-25
(Date)

SOUTH CAROLINA DEPARTMENT OF PARKS, RECREATION AND TOURISM

By: Paul McCormack 1-21-25
Paul McCormack (Date)
Director

SOUTH CAROLINA WILDLIFE FEDERATION

By: 
Sara Green
Executive Director


(Date)

UPSTATE FOREVER

By: 
Aldon Knight
Executive Director

1/17/2025
(Date)

APPENDIX A

Parties and Designated Representatives

APPENDIX A: PARTIES AND DESIGNATED REPRESENTATIVES

Party ¹	Designated Representative	Mailing Address	Overnight Express Address
Advocates for Quality Development, Inc.	Sue Williams	P.O. Box 802 Seneca, SC 29679	208 E Wynward Pointe Dr Salem, SC 29676
Catawba Indian Nation	Wenonah Haire, DMD Executive Director	1536 Tom Steven Road Rock Hill, South Carolina 29730	1536 Tom Steven Road Rock Hill, South Carolina 29730
Duke Energy Carolinas, LLC and Duke Energy Corporation	Alan Stuart Bad Creek Pumped Storage Senior Project Licensing Manager	Duke Energy 525 S.Tryon St., DEP – 35B Charlotte, NC 28201	Duke Energy 525 S.Tryon St., DEP – 35B Charlotte, NC 28202
Foothills Trail Conservancy	Andrew Gleason Chairman	404 Stewart Drive Easley, SC 29640	404 Stewart Drive Easley, SC 29640
Friends of Lake Keowee Society, Inc. - FOLKS	Dale Wilde President	FOLKS c/o The Alliances 1201 N. Fant Street Anderson, SC 29621	293 Settlement Blvd Sunset, SC 29865
Naturaland Trust	Wes Cooler Trustee	1119 Cleo Chapman Highway Sunset, SC 29685	1119 Cleo Chapman Highway Sunset, SC 29685
Oconee County, SC	Amanda Brock County Administrator	415 S. Pine Street Walhalla, SC 29691	415 S. Pine Street Walhalla, SC 29691
South Carolina Dept. of Archives and History	Elizabeth M. Johnson Director, Historical Services, D- SHPO	8301 Parklane Rd. Columbia, SC 29223	8301 Parklane Rd. Columbia, SC 29223
South Carolina Dept. of Environmental Services	Morgan Amadee Project Manager	2600 Bull St. Columbia, SC 29201	2600 Bull St. Columbia, SC 29201

¹ These entities are Parties to this Agreement provided their duly authorized representatives sign this Agreement. All Parties shall notify the Licensee of changes to the contact information for the Party's Designated Representative.

Party¹	Designated Representative	Mailing Address	Overnight Express Address
South Carolina Dept. of Natural Resources	Elizabeth C. Miller FERC Coordinator	P.O. Box 12559 Charleston, SC 29422-2559	217 Fort Johnson Road Charleston, SC 29412
South Carolina Dept. of Parks, Recreation and Tourism	Paul McCormack Director	1205 Pendleton Street Columbia, SC 29201	1205 Pendleton Street Columbia, SC 29201
South Carolina Wildlife Federation	Sara Green Executive Director	1519 Richland Street, Columbia, SC 29201	1519 Richland Street, Columbia, SC 29201
Upstate Forever	Aldon Knight Executive Director	507 Pettigru Street Greenville, SC 29601	507 Pettigru Street Greenville, SC 29601

APPENDIX B

Acronyms, Abbreviations, and Definitions

ACRONYMS, ABBREVIATIONS, AND DEFINITIONS

1968 Agreement An agreement between the Licensee, the U.S. Army Corps of Engineers (USACE), and Southeastern Power Administration (SEPA) that attempts to balance usable water storage between the Keowee-Toxaway Hydroelectric Project and the USACE's Hartwell and J. Strom Thurmond hydroelectric projects. The 1968 Agreement has been superseded by the 2014 New Operating Agreement (NOA).

2014 NOA New Operating Agreement between the Licensee, USACE, and SEPA that supersedes the 1968 Agreement and attempts to balance usable water storage between the Duke Energy Reservoirs in the Upper Savannah River Basin and the USACE Reservoirs.

A

ac acre(s)

ac-ft acre-feet

ADA Americans with Disabilities Act

ADCP Acoustic Doppler Current Profiler

AIP Agreement-in-Principle

AMSL above mean sea level; unless stated otherwise, all elevations given in AMSL are in feet and are referenced to the National Geodetic Vertical Datum of 1929 (NGVD29)

AQD Advocates for Quality Development, Inc.

B

BC Project Original license (the Existing License) was issued by the FERC to the Licensee for the Bad Creek Pumped Storage Project (FERC Project No. 2704) on August 1, 1977, as subsequently amended. The construction of the BC Project took roughly 10 years and began operating in 1991. The Existing License expires on July 31, 2027.

BCII Bad Creek Complex II – proposed by Duke Energy as part of a New License, this includes additional energy storage and generation capacity by constructing a new power complex

(including a new underground powerhouse) adjacent to the existing Bad Creek Powerhouse.

BCRA Bad Creek Relicensing Agreement or “Agreement”

BCRA Stakeholders Entities that participated in the BCRA process

C

C degrees Celsius

CCAA Candidate Conservation Agreement with Assurances

D

DCP Drought Contingency Plan: the plan used by the USACE to manage water quantity in the USACE Reservoirs in the Savannah River Basin during drought

D2SI Division of Dam Safety and Inspections (FERC)

DO dissolved oxygen

Duke Energy
Carolinas, LLC Duke Energy or Licensee

E

EAP Emergency Action Plan

F

°F degrees Fahrenheit

FERC or
Commission Federal Energy Regulatory Commission (Note: The FERC refers to itself in license articles, other documents, and conversation as the “Commission.”)

FK Fisher Knob Community

FOLKS Friends of Lake Keowee Society

ft foot / feet

FTC Foothills Trail Conservancy

G

GA Georgia

GW or Greenville Water Legally known as the Commissioners of Public Works of the City of Greenville

GDP-IPD Gross Domestic Product Implicit Price Deflator

H

HEP Habitat Enhancement Program

Historic Properties Sites, buildings, and structures included in or eligible for inclusion in the National Register of Historic Places

HPMP Historic Properties Management Plan

Hwy Highway

I

ILP Integrated Licensing Process

Inconsistent Act Any action by a Jurisdictional Body that increases the burden upon or cost or risk to a Party substantially beyond the burden, cost, or risk assumed by the Party in this Agreement, or deprives a Party of a substantial benefit promised by another Party in this Agreement, such as by relieving another Party of a substantial bargained-for obligation.

J

Jurisdiction Body A governmental body that has the authority to place requirements on the Licensee in accordance with statutory mandates (e.g., FERC, USFWS, NMFS, SCDES).

K

KT Basin Keowee-Toxaway River Basin

KT Project Keowee-Toxaway Hydroelectric Project – License issued by FERC to the Licensee for the operation and maintenance of the Keowee-Toxaway Hydroelectric Project (FERC No. 2503).

KT RA Keowee-Toxaway Relicensing Agreement – a relicensing agreement signed by its parties on September 18, 2013.

KTSWP Keowee-Toxaway Source Water Protection

L

Licensee Refers to Duke Energy Carolinas, LLC. The Licensee's reservoirs include Bad Creek Reservoir², Lake Jocassee, and Lake Keowee³. The Licensee is a Party but not defined in the BCRA as a stakeholder.

LiDAR Light Detection and Ranging

LIP Low Inflow Protocol – the protocol used by the Licensee and others to manage water quantity in the Licensee's Reservoirs in the Savannah River Basin during drought.

M

MEP Maintenance and Emergency Protocol

MGD million gallons per day

mg/L milligrams per liter

MOA Memorandum of Agreement

N

National Register National Register of Historic Places

NC North Carolina

New License The license anticipated to be issued by FERC to replace the Existing License.

NOA 2014 New Operating Agreement (2014)

NRHP National Register of Historic Places

NT Naturaland Trust

O

ONS Oconee Nuclear Station

P

Park Recreation areas provided and maintained by a county or state government which are available to the general public.

² The Bad Creek Reservoir is licensed as part of the Bad Creek Pumped Storage Project (FERC No. 2740)

³ Lake Jocassee and Lake Keowee are licensed as part of Duke Energy's Keowee-Toxaway (KT) Hydroelectric Project (FERC Project No. 2503).

Party(ies) A Party is a person or entity, including a corporation or other business organization, a unit of government, a social or environmental organization, a homeowner's association, or a club, with stated interests in the Bad Creek relicensing and who is a signatory to the BCRA.

PM&E Protection, Mitigation and Enhancement Measures

Project Bad Creek Pumped Storage Project

Project Boundary The line(s) demarking lands designated by the FERC as necessary for the operation of the Project and therefore, subject to FERC jurisdiction.

R

RMP Recreation Management Plan

RTE Rare, Threatened or Endangered

RUN Recreation Use and Needs

S

SC South Carolina

SCDES SC Department of Environmental Services

SCDNR SC Department of Natural Resources

SCPRT SC Department of Parks, Recreation and Tourism

SCSHPO SC State Historic Preservation Office

SCWF South Carolina Wildlife Federation

Seneca City of Seneca Light and Water

SEPA Southeastern Power Administration

SHPO State Historic Preservation Office

SMP Shoreline Management Plan

SPP Species Protection Plan

SWAP State Wildlife Action Plan

SWPP Source Water Protection Program

T

TBD to be determined

THPO Tribal Historic Preservation Office

U

UF Upstate Forever

Upper Savannah River Basin Portion of the Savannah River draining into J. Strom Thurmond Lake

U.S. or US United States

USACE U.S. Army Corps of Engineers

USACE Reservoirs Hartwell Lake, Richard B. Russell Lake, and J. Strom Thurmond Lake

USEPA U.S. Environmental Protection Agency

USFS U.S. Forest Service

USFWS U.S. Fish and Wildlife Service

USGS U.S. Geological Survey

W

WQC Water Quality Certification pursuant to §401 of the Clean Water Act

WQMP Water Quality Monitoring Plan

APPENDIX C

Low Inflow Protocol (LIP)

Low Inflow Protocol (LIP) for the Keowee-Toxaway Project

Purpose – To establish a joint management plan that Duke Energy Carolinas, LLC (Licensee), Seneca Light & Water (Seneca), and Greenville Water (GW), the current Large Water Intake owners for public water supply and regional power production on Lake Keowee, and any future Large Water Intake owners, will follow to properly respond to drought conditions in the Keowee-Toxaway River Basin (“KT Basin”), taking into consideration the KT Basin impacts on the Upper Savannah River Basin.

Key Facts and Assumptions

- 1) **Importance of Human Health and Safety and the Integrity of the Public Water Supply and Electric Systems** – Nothing in the LIP will limit the Licensee’s ability to take any and all lawful actions necessary at its hydro projects to protect human health and safety, to protect its equipment from damage, to protect the equipment of the Large Water Intake owners from damage, and to ensure the stability of the regional electric grid and public water supply systems. It is recognized the Licensee may take the steps necessary to protect these things without prior consultation or notification.
- 2) This LIP will support the management of the Licensee’s Reservoirs (Bad Creek, Jocassee and Keowee) in the Upper Savannah River Basin for the Licensee’s operations, while meeting the water resource needs of the public.
- 3) GW, Seneca, and the Licensee are the only entities with Large Water Intakes (i.e., maximum instantaneous capacity greater than or equal to 1 Million Gallons per Day (MGD)) for public, industrial or thermal power plant cooling use withdrawing water from the Licensee’s Reservoirs as of the date of this LIP.
- 4) Any Large Water Intake owner locating a new intake on Lake Keowee will be required to abide by this LIP.
- 5) Nothing in this LIP amends or replaces any other contract or agreement to which the Licensee and/or any other Large Water Intake owner is a party.
- 6) All elevations referenced for Lake Keowee are dependent on Oconee Nuclear Station (ONS) being modified such that it can operate with Lake Keowee as low as the new Critical Reservoir Elevation identified in this LIP.

- 7) Revising the LIP – During the term of the New License, the License and the Large Water Intake owners that are Parties to the Relicensing Agreement (RA) or that have intakes in Project reservoirs will review and update the LIP periodically to ensure continuous improvement of the LIP and its implementation. These evaluations and modifications will be considered at least once every five (5) years during the New License term. Modifications must be approved by a consensus of the Licensee and the applicable Large Water Intake owners. If consensus cannot be reached, then the dispute resolution procedures set forth in the RA will apply. Approved modifications will be incorporated through revision of the LIP and the Licensee will file the revised LIP with the FERC. If any modifications of the LIP require amendment of the New License, the Licensee will: (i) provide notice to all Parties to the RA advising them of the New License amendment and the Licensee's intent to file it with the FERC; (ii) submit a modification request to the South Carolina Department of Environmental Services (SCDES) for formal review and approval if required by any reopener conditions of the 401 Water Quality Certification for the Project; and (iii) file a license amendment request for FERC approval. The filing of a revised LIP by the Licensee will not constitute or require modification to the RA and any Party to the RA may be involved in the FERC's public process for assessing the revised LIP.
- 8) Transitioning to a Lower Critical Reservoir Elevation on Lake Keowee - The Licensee will operate in accordance with the provisions of this LIP, except Lake Keowee will remain at or above 94.6 ft local datum (794.6 ft AMSL) until ONS has been modified to allow full ONS operation down to the new Critical Reservoir Elevation stated below. Also, the Licensee may, in its sole discretion, decide to maintain Lake Keowee at or above 94.6 ft local datum (794.6 ft AMSL) until both of the following are complete:
- i. A New License that is consistent with the RA has been issued, the end of all appeals, and all rehearing and administrative challenge periods related to water quality and to water quantity, including Project flow releases and reservoir levels have closed; and
 - ii. The Licensee, the U.S. Army Corps of Engineers (USACE), and Southeastern Power Administration (SEPA) have signed a NOA that is wholly consistent with the RA.
- 9) The following table provides storage volumes at various lake elevations in the Licensee's Reservoirs. Data for Bad Creek Reservoir are from original licensing data. Data for Lakes Jocassee and Keowee are from a 2010 bathymetric study performed by the Licensee. These data are for planning purposes and not of physical survey quality.

Reservoir	Elevations in ft local datum		Storage Increment (ac-ft)
	Elev From	Elev To	
Bad Creek	100.0	-60.0	30,229
	Total		30,229
Jocassee	100.0	86.0	108,738
	86.0	82.0	30,000
	82.0	78.0	29,422
	78.0	74.0	28,860
	74.0	70.0	28,367
	Total		225,387
Keowee	100.0	95.0	83,886
	95.0	94.6	6,434
	94.6	94.0	9,581
	94.0	93.0	15,787
	93.0	92.0	15,564
	92.0	91.0	15,345
	91.0	90.0	15,130
	Total		161,727
Total for Licensee's Reservoirs			417,343

Definitions

- 1) **Critical Reservoir Elevation** – The Critical Reservoir Elevation is the highest level of water in a reservoir (measured by reference to local datum or in ft above mean sea level (AMSL)) below which any Large Water Intake used for public water supply, industrial water supply, or any regional power plant water supply located on the reservoir will not operate at its Licensee- approved capacity. The Critical Reservoir Elevations are:

<u>Reservoir</u>	<u>Critical Reservoir Elevation</u> (ft local datum / ft amsl)	<u>Type of Limit</u>
Lake Keowee	90.0 ¹ / 790.0 ¹	Power Production
Lake Jocassee	70.0 / 1080.0	Power Production
Bad Creek	- 60.0 / 2150.0	Power Production

Note 1 – This new Critical Reservoir Elevation is dependent on modifications at ONS.

- 2) Total Usable Storage – The sum of the volume of water contained between each reservoir's Critical Reservoir Elevation and its Full Pond Elevation, expressed in acre-feet (ac-ft), for the Licensee's Reservoirs or the Hartwell, Richard B. Russell, and J. Strom Thurmond reservoirs in the Upper Savannah River Basin (USACE Reservoirs).
- 3) Remaining Usable Storage – The sum of the volume of water contained between each reservoir's Critical Reservoir Elevation and the actual reservoir elevation at any given point in time, expressed in ac-ft, for the Licensee's Reservoirs or the USACE Reservoirs in the Upper Savannah Basin.
- 4) Storage Index – The ratio, expressed in percent, of Remaining Usable Storage to Total Usable Storage at any given point in time.
- 5) Large Water Intake – Any water intake (e.g., public water supply, industrial, agricultural, power plant, etc.) having a maximum instantaneous capacity greater than or equal to one million gallons per day (MGD) that withdraws water from the Licensee's Reservoirs.

Basic Responsibilities

Licensee's Responsibilities

The Licensee accepts the following basic responsibilities in furtherance of this LIP.

- 1) Monitor the following drought triggers and relevant data once per week.
 - Remaining Usable Storage in the Licensee's Reservoirs.
 - Composite average of selected United States Geological Survey (USGS) streamflow gages (Twelvemile Creek near Liberty, SC (USGS Gage # 02186000), Chattooga River near Clayton, GA (USGS Gage # 02177000), French Broad River near Rosman, NC (USGS Gage # 03439000)).

- U.S. Drought Monitor for the Upper Savannah River Basin (i.e., from Thurmond Dam upstream).
 - Composite Licensee rainfall gauge readings for the KT Basin.
 - Oconee County USGS groundwater gage (USGS Gage # 345051083041800 OC-233) (Note: Data from other groundwater gages can be added in the future if beneficial).
 - Remaining Usable Storage in the USACE Reservoirs downstream.
 - USACE Savannah River Basin drought status.
- 2) Coordinate drought calls (monthly or bi-weekly as noted for the particular drought stage) and provide trigger updates and operational and meteorological projections. In consultation with the Large Water Intake owners, select and communicate the LIP Stage based on the triggers established herein.
 - 3) Provide estimated water consumption rate by ONS (average for the current month and projections for the next month) and the estimated natural evaporation rate by reservoir from the Licensee's Reservoirs for the current month and projections for the next month.
 - 4) Quantify total weekly flow releases (hydro generation, flood gate releases, unit leakage, dam seepage) made from Keowee Dam for the previous four weeks.
 - 5) Coordinate with the USACE to make flow releases from Lake Keowee in accordance with the NOA and this LIP. The Remaining Usable Storage calculation for the Licensee's Reservoirs will be based on a maximum drawdown elevation of 790 ft AMSL for Lake Keowee, a maximum drawdown elevation of 1080 ft AMSL for Lake Jocassee, and a maximum drawdown elevation of 2150 ft AMSL for Bad Creek Reservoir.
 - 6) Request voluntary or require mandatory water use restrictions for withdrawing water from the Licensee's Reservoirs to irrigate lakeside properties depending on the LIP Stage.
 - 7) When operating in the LIP, except for flow releases that may be required for ONS testing or situations covered by the MEP, the Licensee will not make an intentional flow release from Keowee Dam if that flow release would drive the level of Lake Jocassee or Lake Keowee below its Minimum Elevation as specified for the applicable LIP stage. The Licensee may, however, reduce Lake Keowee's elevation below the Minimum Elevation as specified for the applicable LIP stage if required to

support pumping from Lake Keowee into Lake Jocassee.

Other Large Water Intake Owners' Responsibilities

Other Large Water Intake owners withdrawing water from the Licensee's Reservoirs accept the following basic responsibilities in furtherance of this LIP.

- 1) Provide current month and projections for next month's water use from the Licensee's Reservoirs and from any alternative water supply sources.
- 2) Provide overview of system conditions related to water use from the Licensee's Reservoirs (i.e., leaks, status of alternative water sources, etc.).
- 3) Request or require water use restrictions from water customers and/or make greater use of alternative water sources for the purpose of reducing water withdrawals from the Licensee's Reservoirs below what those withdrawals would have been otherwise, consistent with best practices and operating principles for those Large Water Intake owners' systems in accordance with the specific actions listed in this document at each LIP stage.
consider

LIP Stage Triggers

For the purposes of this LIP, the following triggers will define the LIP Stage.

Stage 0 (Low Inflow Watch) Drought Trigger Levels:

- 1) Storage Index in USACE Reservoirs and in the Licensee's Reservoirs is less than 90% (using the Critical Reservoir Elevations defined above); and
- 2) One of the following triggers:
 - a. Area-weighted U.S. Drought Monitor for Upper Savannah River Basin (Thurmond Dam and upstream) is greater than or equal to 0; or
 - b. Streamflow based on composite average of selected streamflow gages (Twelvemile Creek near Liberty, SC, Chattooga River near Clayton, GA, and French Broad River near Rosman, NC) is less than 85% of long-term average for the previous six months; or
 - c. Rainfall based on a composite average of the Licensee rain gauges for the KT Basin is less than 85% of long-term average for the previous six months.

Stage 1 Drought Trigger Levels:

- 1) USACE implements Level 1 of its existing Drought Contingency Plan; and
- 2) One of the following triggers:
 - a. Area-weighted U.S. Drought Monitor for Upper Savannah River Basin (Thurmond Dam and upstream) is greater than or equal to 1; or
 - b. Streamflow based on composite average of selected streamflow gages (Twelvemile Creek near Liberty, SC, Chattooga River near Clayton, GA, and French Broad River near Rosman, NC) is less than 75% of long-term average for the previous six months; or
 - c. Rainfall based on a composite average of the Licensee rain gages for the KT Basin is less than 75% of long-term average for the previous six months.

Stage 2 Drought Trigger Levels:

- 1) USACE implements Level 2 of its existing Drought Contingency Plan; and
- 2) One of the following triggers:
 - a. Area-weighted U.S. Drought Monitor for Upper Savannah River Basin (Thurmond Dam and upstream) is greater than or equal to 2; or
 - b. Streamflow based on composite average of selected streamflow gages (Twelvemile Creek near Liberty, SC, Chattooga River near Clayton, GA, and French Broad River near Rosman, NC) is less than 65% of long-term average for the previous six months; or
 - c. Rainfall based on a composite average of the Licensee rain gauges for the KT Basin is less than 65% of long-term average for the previous six months.

Stage 3 Drought Trigger Levels:

- 1) USACE implements Level 3 of its existing Drought Contingency Plan; and
- 2) One of the following triggers:
 - a. Area-weighted U.S. Drought Monitor for Upper Savannah River Basin (Thurmond Dam and upstream) is greater than or equal to 3; or
 - b. Streamflow based on composite average of selected streamflow gages (Twelvemile Creek near Liberty, SC, Chattooga River near Clayton, GA, and French Broad River near Rosman, NC) is less than 55% of long-term average for the previous six months; or

- c. Rainfall based on a composite average of the Licensee rain gages for the KT Basin is less than 55% of long-term average for the previous six months.

Stage 4 Drought Trigger Levels:

- 1) Storage Index in the Licensee's Reservoirs is less than 25%; and
- 2) One of the following triggers:
 - a. Area-weighted U.S. Drought Monitor for Upper Savannah River Basin (Thurmond Dam and upstream) is equal to 4; or
 - b. Streamflow based on composite average of selected streamflow gages (Twelvemile Creek near Liberty, SC, Chattooga River near Clayton, GA, and French Broad River near Rosman, NC) is less than 40% of long-term average for the previous six months; or
 - c. Rainfall based on a composite average of the Licensee rain gages for the KT Basin is less than 40% of long-term average for the previous six months.

Specific Actions at each LIP Stage

Stage 0

The Licensee will:

- 1) Notify the Large Water Intake owners that LIP Stage 0 has been reached;
- 2) Initiate monthly drought conference calls among the Large Water Intake owners and any other interested water system managers;
- 3) Provide detailed updates on drought triggers and other relevant data, as noted in the Basic Responsibilities section;
- 4) Provide data on the amount of water released from Lake Keowee, as required by the NOA for previous four weeks;
- 5) Provide flow releases from Keowee Dam as required by the NOA according to the following limitations:
 - a. When the Storage Index for the Licensee's Reservoirs is at or below 90% but greater than 85%, limit the total maximum weekly flow release (i.e., hydro unit flow releases, flood gate flow releases, unit leakage, and dam seepage) from the Keowee Dam to 25,000 ac-ft (1800 cfs on a weekly average basis) or a lesser

amount if required to avoid driving the level of Lake Jocassee or Lake Keowee below its Normal Minimum Elevation;

- b. When the Storage Index for the Licensee's Reservoirs is at or below 85% but greater than 80%, limit the total maximum weekly flow release (i.e., hydro unit flow releases, flood gate flow releases, unit leakage, and dam seepage) from Keowee Dam to 20,000 ac-ft (1440 cfs on a weekly average basis) or a lesser amount if required to avoid driving the level of Lake Jocassee or Lake Keowee below its Normal Minimum Elevation.

- 6) Provide the drought stage and other relevant information on the Licensee's lake information website.

Other Large Water Intake owners will provide detailed updates on relevant data as noted in the Basic Responsibilities section.

Stage 1

The Licensee will:

- 1) Notify the Large Water Intake owners and the South Carolina Department of Parks, Recreation, and Tourism (SCPRT) that LIP Stage 1 has been reached;
- 2) Coordinate monthly drought conference calls among the Large Water Intake owners and any other interested water system managers;
- 3) Continue to provide detailed updates on drought triggers and other relevant data, as noted in the Basic Responsibilities section;
- 4) Provide data on the amount of water released from Lake Keowee, as required by the NOA for previous four weeks;
- 5) Request those lake neighbors withdrawing water from the Licensee's Reservoirs for irrigating lakeside properties to voluntarily limit their withdrawals to no more than two days per week, with the days to be specified by the Licensee;
- 6) Reduce the Normal Minimum Elevation for Lake Keowee to 794.0 ft AMSL / 94 ft local datum (Stage 1 Minimum Elevation);
- 7) Reduce the Normal Minimum Elevation for Lake Jocassee to 1092.0 ft AMSL / 82 ft local datum (Stage 1 Minimum Elevation);

- 8) Provide flow releases from Keowee Dam as required by the NOA and limited to a total maximum weekly flow release (i.e., hydro unit flow releases, flood gate flow releases, unit leakage, and dam seepage) from Keowee Dam of 18,750 ac-ft (1350 cfs on a weekly average basis) or a lesser amount if required to avoid driving the level of Lake Jocassee or Lake Keowee below its Stage 1 Minimum Elevation; and
- 9) Provide the drought stage and other relevant information on the Licensee's lake information website.

Other Large Water Intake owners will:

- 1) Notify their water customers of the Low Inflow Condition through public outreach and communication efforts;
- 2) Reduce water withdrawals from Lake Keowee, as a goal, by 3-5% (or more) from the amount otherwise expected; and
- 3) Provide detailed updates on relevant data as noted in the Basic Responsibilities section.

Stage 2

The Licensee will:

- 1) Notify the Large Water Intake owners and SCPRT that LIP Stage 2 has been reached;
- 2) Coordinate bi-weekly drought conference calls among the Large Water Intake owners and any other interested water system managers;
- 3) Continue to provide detailed updates on drought triggers and other relevant data, as noted in the Basic Responsibilities section;
- 4) Provide data on the amount of water released from Lake Keowee, as required by the NOA for the previous two weeks;
- 5) Require those lake neighbors withdrawing water from the Licensee's Reservoirs for irrigating lakeside properties to limit their withdrawals to no more than two days per week, with the days to be specified by the Licensee;

- 6) Reduce the Stage 1 Minimum Elevation for Lake Keowee to 793.0 ft AMSL / 93 ft local datum (Stage 2 Minimum Elevation);
- 7) Reduce the Stage 1 Minimum Elevation for Lake Jocassee to 1088.0 ft AMSL / 78 ft local datum (Stage 2 Minimum Elevation);
- 8) Provide flow releases from Keowee Dam as required by the NOA and limited to a total maximum weekly flow release (i.e., hydro unit flow releases, flood gate flow releases, unit leakage, and dam seepage) from Keowee Dam of 15,000 ac-ft (1080 cfs on a weekly average basis) or a lesser amount if required to avoid driving the level of Lake Jocassee or Lake Keowee below its Stage 2 Minimum Elevation; and
- 9) Provide the drought stage and other relevant information on the Licensee's lake information website.

Other Large Water Intake owners will:

- 1) Notify their water customers of the Low Inflow Condition through public outreach and communication efforts with emphasis on the need to conserve water;
- 2) Reduce water withdrawals from Lake Keowee, as a goal, by 5-10% (or more) from the amount otherwise expected; and
- 3) Provide detailed updates on relevant data as noted in the Basic Responsibilities section.

Stage 3

The Licensee will:

- 1) Notify the Large Water Intake owners and SCPRT that LIP Stage 3 has been reached;
- 2) Coordinate bi-weekly drought conference calls among the Large Water Intake owners and any other interested water system managers;
- 3) Continue to provide detailed updates on drought triggers and other relevant data, as noted in the Basic Responsibilities section;
- 4) Provide data on the amount of water released from Lake Keowee, as required by the NOA for previous two weeks;

- 5) Require those lake neighbors withdrawing water from the Licensee's Reservoirs for irrigating lakeside properties to limit their withdrawals to no more than one day per week, with the day to be specified by the Licensee;
- 6) Reduce the Stage 2 Minimum Elevation for Lake Keowee to 792.0 ft AMSL / 92 ft local datum (Stage 3 Minimum Elevation);
- 7) Reduce the Stage 2 Minimum Elevation for Lake Jocassee to 1084.0 ft AMSL / 74 ft local datum (Stage 3 Minimum Elevation);
- 8) Provide flow releases from Keowee Dam as required by the NOA and limited to a total maximum weekly flow release (i.e., hydro unit flow releases, flood gate flow releases, unit leakage, and dam seepage) from Keowee Dam of 10,000 ac-ft (720 cfs on a weekly average basis) or a lesser amount if required to avoid driving the level of Lake Jocassee or Lake Keowee below its Stage 3 Minimum Elevation; and
- 9) Provide the drought stage and other relevant information on the Licensee's lake information website.

Other Large Water Intake owners will:

- 1) Notify their water customers of the Low Inflow Condition through public outreach and communication efforts with increased emphasis on the need to conserve water;
- 2) Reduce water withdrawals from Lake Keowee, as a goal, by 10-20% (or more) from the amount otherwise expected; and
- 3) Provide detailed updates on relevant data as noted in the Basic Responsibilities section.

Stage 4

The Licensee will:

- 1) Notify the Large Water Intake owners and the SCPRT that LIP Stage 4 has been reached;
- 2) Coordinate bi-weekly (or more frequently if needed) drought conference calls among the Large Water Intake owners and any other interested water system managers;

- 3) Continue to provide detailed updates on drought triggers and other relevant data, as noted in the Basic Responsibilities section;
- 4) Provide data on the amount of water released from Lake Keowee, as required by the NOA for previous two weeks;
- 5) Require those lake neighbors withdrawing water from the Licensee's Reservoirs for irrigating lakeside properties to cease all such withdrawals;
- 6) Reduce the Stage 3 Minimum Elevation for Lake Keowee to 790.0 ft AMSL / 90 ft local datum (Stage 4 Minimum Elevation);
- 7) Reduce the Stage 3 Minimum Elevation for Lake Jocassee to 1080.0 ft AMSL / 70 ft local datum (Stage 4 Minimum Elevation);
- 8) Provide flow releases from Keowee Dam as required by the NOA according to the following limitations:
 - a. When the Storage Index for the Licensee's Reservoirs is below 25% but greater than 10%, limit the total maximum weekly flow release (i.e., hydro unit flow releases, flood gate flow releases, unit leakage, and dam seepage) from Keowee Dam to 7,500 ac-ft (540 cfs on a weekly average basis) or a lesser amount if required to avoid driving the level of Lake Jocassee or Lake Keowee below its Stage 4 Minimum Elevation;
 - b. When the Storage Index for the Licensee's Reservoirs is at or below 10%, cease making intentional flow releases from Keowee Dam, except for flow releases that may be required for ONS testing or situations covered by the Maintenance and Emergency Protocol;
- 9) Provide the drought stage and other relevant information on the Licensee's lake information website.

Other Large Water Intake owners will:

- 1) Notify their water customers of the Low Inflow Condition through public outreach and communication efforts with increased emphasis on the need to conserve water;
- 2) Reduce water withdrawals from Lake Keowee 20-30% (or more) from the amount otherwise expected; and
- 3) Provide detailed updates on relevant data as noted in the Basic Responsibilities section.

Recovery from LIP Stages

Recovery under this LIP as conditions improve will be accomplished by reversing the staged approach outlined above, except the only trigger to recover from a stage is for the storage index for the Licensee's Reservoirs or the USACE trigger must be exceeded for the current stage. The following table provides the storage levels required for recovery from a higher numbered "Stage X" to a lower numbered "Stage Y":

<u>Recovery from Stage X to Stage Y</u>	<u>Required Storage</u>
From Stage 4 to Stage 3	Licensee's Storage Index is greater than or equal to 25%
From Stage 3 to Stage 2	USACE implements Level 2 of its DCP
From Stage 2 to Stage 1	USACE implements Level 1 of its DCP

<u>Recovery from Stage X to Stage Y</u>	<u>Required Storage</u>
From Stage 1 to Stage 0	USACE returns to Normal operations
From Stage 0 to Normal	Licensee's Storage Index is greater than or equal to 90%

APPENDIX D

Bad Creek Maintenance and Emergency Protocol (MEP)

MAINTENANCE AND EMERGENCY PROTOCOL (MEP) FOR THE BAD CREEK PUMPED STORAGE PROJECT

Introduction

Under some emergency, equipment failure, power plant maintenance, and other situations, certain license conditions may be impractical or even impossible to meet and may need to be suspended or modified temporarily to avoid taking unnecessary risks. The objectives of this protocol are to define the most likely situations of this type, identify the potentially impacted license conditions, and outline the general approach the Licensee will take to mitigate the impacts to license conditions and to communicate with the resource agencies and affected parties.

Note: Due to the potential variability of these situations, this protocol is not intended to give an exact step-by-step solution for all situations. It does, however, provide basic expectations for the Licensee's approach to dealing with such situations. Specific details will vary and will be determined on a case-by-case basis as the protocol is implemented.

The Licensee will review the requirements of this protocol each time it is used and may revise the MEP from time to time as noted below.

Key Facts and Definitions

1. Human Health and Safety and the Integrity of the Public Water Supply and Electric Systems – Nothing in this protocol will limit the Licensee's ability to take any and all lawful actions necessary at the Bad Creek Pumped Storage Project (Project) to protect human health and safety, to protect its equipment from damage, to ensure the stability of the regional electric grid, to protect the equipment of the Large Water Intake owners from damage, and to ensure the stability of public water supply systems; provided that nothing in the Bad Creek Relicensing Agreement (BCRA) or MEP obligates the Licensee to take any actions to protect the equipment of Large Water Intake owners from damage or to ensure the stability of water supply systems. It is recognized the Licensee may provide this protection without prior consultation or notification.
2. Normal Full Pond Elevation – Also referred to simply as "full pond," this is the level of a reservoir corresponding to the point at which water would first begin to spill from the reservoir's dam(s) if the Licensee took no action. This level corresponds to the lowest point along the for the Project Reservoir. To avoid confusion among the many reservoirs the Licensee operates, it has adopted the practice of referring to the Full Pond Elevation for all its reservoirs as equal to 100.0 feet (ft) relative to local datum. The Full Pond Elevation for the Project Reservoir is:

Reservoir	Full Pond Elevation	
	Local Datum (ft)	Above Mean Sea Level (ft AMSL)
Bad Creek	100.0	2310.0

3. Normal Minimum Elevation – The level of a reservoir (measured in ft AMSL, or feet relative to the full pond contour with 100.0 ft corresponding to full pond) that defines the bottom of the reservoir’s Normal Operating Range for a given day of the year. If inflows and outflows to the reservoir are kept within some reasonable range of the average or expected amounts, hydroelectric project equipment is operating properly, and neither the Low Inflow Protocol (LIP) nor MEP has been implemented, reservoir level excursions below the Normal Minimum Elevation should not occur.
4. Normal Maximum Elevation – The level of a reservoir (measured in ft AMSL, or feet relative to the full pond contour with 100.0 ft corresponding to full pond) that defines the top of the reservoir’s Normal Operating Range for a given day of the year. If inflows and outflows to the reservoir are kept within some reasonable range of the average or expected amounts, hydroelectric project equipment is operating properly, and neither the LIP nor MEP has been implemented, reservoir level excursions above the Normal Maximum Elevation should not occur.
5. Normal Operating Range – The band of reservoir levels within which the Licensee normally attempts to maintain a given reservoir on a given day. The Project Reservoir has its own specific Normal Operating Range bounded by a Normal Maximum Elevation and a Normal Minimum Elevation. If inflows and outflows to the reservoir are kept within some reasonable range of the average or expected amounts, hydroelectric project equipment is operating properly and neither the LIP nor MEP has been implemented, reservoir level excursions outside of the Normal Operating Range should not occur. The New License for the Project includes the Normal Operating Ranges for the Project Reservoir (i.e., Normal Minimum, Normal Maximum) as listed in the proposed Reservoir Elevations License Article and as follows.

Reservoir	Normal Maximum Elevation (ft local datum / ft AMSL)	Normal Minimum Elevation (ft local datum / ft AMSL)
Bad Creek	100.0 / 2310.0	-60.0 / 2150.0

6. Returning to Normal – Some of the situations noted in this MEP can impact the Licensee’s ability to operate the Project in the most efficient and safest manner for power production. The Licensee will therefore endeavor in good faith to repair existing Project equipment and facilities and return them to service within a reasonable period of time, commensurate with the severity of the equipment / facility repair requirements. If the Licensee decides that repair is not cost-effective or that hydro station or dam retirement is necessary, the Licensee will notify the Parties to the Bad

Creek Relicensing Agreement (BCRA), pursuant to Section 24.0 of the BCRA and consult with them as well as with the Federal Energy Regulatory Commission (FERC) to determine any necessary modifications of the New License and / or the BCRA.

7. Incidental Maintenance – This is a maintenance activity at the Project works that is very brief in nature or that requires minimal if any deviation from normal license conditions and that does not require deviation from any license conditions related to the Normal Operating Ranges for reservoir levels, or that is less than 72 hours in duration. Except for the notification steps identified in the tables below for communication with resource agencies and affected parties for conditions that impact License requirements, Incidental Maintenance is exempt from the requirements of this protocol.
8. Notification Guidance
 - a. Scheduled Maintenance that Affects License Conditions – Typically, scheduled maintenance is planned in advance. Once a likely maintenance schedule has been established, the Licensee will endeavor in good faith to provide as much advance notice as possible to the affected parties identified in this protocol.
 - b. Unscheduled Maintenance and Emergencies that Affect License Conditions – It is not possible for the Licensee to assure any level of advance notice. For these situations, the Licensee will endeavor in good faith to inform the affected parties identified in this protocol within some reasonable amount of time after the situation has been identified.
9. Relationship Between this MEP and the LIP – The LIP provides for reductions in Keowee-Toxaway (KT) Project and Bad Creek (BC) Project water use and modification of the Normal Operating Ranges for reservoir levels when water demands on the KT and BC Project Reservoirs substantially exceed net inflow. Lowered reservoir levels caused by situations addressed under this MEP will not invoke implementation of the LIP. Also, if the LIP has already been implemented at the time this MEP is initiated, the Licensee will typically suspend its implementation of the LIP requirements until the MEP situation has been eliminated. The Licensee may however choose to continue with the LIP.
10. Restricted Reservoir Access – No public recreation access is allowed at the Project Reservoir due to safety concerns associated with the significant reservoir fluctuations throughout the day.
11. Critical Reservoir Elevation – Unless otherwise defined herein, the Critical Reservoir Elevation is the level of water in a reservoir (measured by reference to local datum or in ft AMSL) below which the BC Project will not operate at the Licensee-approved capacity. The Critical Reservoir Elevation is as follows.

Reservoir	Critical Reservoir Elevation (ft local datum / ft AMSL)	Type of Limit
Bad Creek	-105.0 / 2105.0	Power Production

12. Abbreviations for Organizational Contacts – Advocates for Quality Development (AQD); Fisher Knob Community (FK); Foothills Trail Conservancy (FTC); Friends of Lake Keowee Society (FOLKS); South Carolina Department of Natural Resources (SCDNR); South Carolina Department of Environmental Services (SCDES); South Carolina Department of Parks, Recreation and Tourism (SCPRT); United States Fish and Wildlife Service (USFWS); and United States Army Corps of Engineers - Savannah District (USACE).
13. Voltage and Capacity Emergencies – The electric transmission system serving the Project area is part of the Licensee’s main transmission system. The Licensee’s system is connected to other large transmission systems located in the southeast. If the Licensee’s system reliability is at risk due to Voltage and Capacity Emergencies, the ability to provide secure and continuous electric service to the Licensee’s electric customers becomes compromised. The Licensee continuously monitors the electric transmission system. Therefore, for the purposes of this protocol, a Voltage or Capacity Emergency shall exist when declared by the Licensee.
14. Preparation for High Inflow Events – With modern forecasting, it is possible to forecast many high inflow events days in advance and to increase hydro generation hours to lower reservoir levels to reduce the potential for spilling and high water. This type of advance action is typically taken from one to five days or more before the expected arrival of the storm. The Normal Operating Ranges of reservoir levels may not allow for this type of reservoir level reduction under anticipated heavy inflow circumstances, and therefore, allowances are made in this MEP to lower reservoir levels below the Normal Minimum Elevations if needed in preparation for such events.
15. Revising the MEP – The Licensee will review the requirements of this MEP each time it is used and will consult with the organizations listed in Item 11 above if the Licensee determines modifications are warranted. If the MEP is modified, the Licensee will inform the Parties to the BCRA. If any modifications of the MEP require amendment of the New License, the Licensee will: (i) provide notice to all Parties to the BCRA, pursuant to Section 24.0 of the BCRA, advising them of the proposed New License amendment and the Licensee’s intent to file it with the FERC; (ii) request the SCDES formally review and approve modification of the 401 Water Quality Certification if required; and (iii) file a license amendment request for FERC approval if required. The filing of a revised MEP by the Licensee will not by itself constitute or require modification of the BCRA, and any Party to the BCRA may be involved in the FERC’s or SCDES’s public processes for assessing the revised MEP but may not oppose any part of a revised MEP that is consistent with the MEP included in the BCRA.

Guidance for Responding to MEP Conditions

This section provides guidance for responding to the most likely MEP conditions (see Table 1 below) when this protocol will be enacted. Required normal reservoir operating ranges are the license requirements most likely to be affected by MEP conditions.

Table 1: Conditions and Potential Impacts to License Requirements

Condition	Condition Name	Indications
MEP1	Hydro Unit Maintenance	Maintenance will require hydro unit shutdown
MEP2	Dam Safety Emergency	Imminent Failure Condition or Potential Failure Condition per the Emergency Action Plan (EAP) (i.e., dam failure has occurred, is imminent or a potentially hazardous situation exists) or some other dam safety concern is identified including high-level security threats
MEP3	Voltage or Capacity Emergency	Voltage or capacity conditions on the electric grid in the Licensee's system or the larger regional electric grid cause the Licensee's system reliability and safety to be at risk and a voltage or capacity emergency is declared by the Licensee
MEP4	Reservoir Drawdown Below Normal Minimum Elevation due to maintenance, emergency, or other reasons (not due to low or high inflow)	The reservoir level is below Normal Minimum Elevation
MEP5	Expected or existing high inflow event	The water level at a reservoir is or is projected to be significantly above or below the Normal Operating Range

Communication with Resource Agencies and Affected Parties

The Licensee will implement the appropriate communications based on the potential license requirements affected by the MEP condition. Communications include the Licensee notifying the organization of the MEP event and the Licensee's planned actions.

Generally, for unplanned and unscheduled MEP conditions, notifications occur as conditions unfold.

Condition MEP1.1 – Scheduled Hydro Unit Maintenance

Mitigating Actions

1. Drawing Down the Affected Reservoir – To minimize the impacts to its electric customers, the Licensee may choose to draw down the reservoir using its hydro units during maintenance operations. The Licensee may draw down reservoir levels to the point the Project Reservoir is considered drained (-105.0 ft local datum / 2105 ft AMSL).

Communication with Resource Agencies and Affected Parties

Notification	Comments
FERC SCDES SCDNR USACE USFWS	If the maintenance will affect the Normal Operating Range for the Project Reservoir level, provide notification when maintenance schedules are determined, but at least 30 days prior to beginning the reservoir drawdown or the hydro unit maintenance.
General Public	When the Licensee determines the response to a MEP condition will potentially impact license conditions, the Licensee will add appropriate messages to its public information Web site and its reservoir level toll-free phone system plus implement other appropriate measures to inform the general public.

Condition MEP1.2 – Unscheduled Hydro Unit Maintenance

Mitigating Actions

1. Drawing Down the Affected Reservoir – To minimize the impacts to its electric customers, the Licensee may draw down the reservoir using its hydro units during maintenance operations. The Licensee may draw down the reservoir level to the point the Project Reservoir is considered drained (-105.0 ft local datum / 2105 ft AMSL).

Communication with Resource Agencies and Affected Parties

Notification	Comments
FERC SCDES SCDNR USACE USFWS	If the maintenance will affect the Normal Operating Range for the Project Reservoir level, perform notification promptly after the unscheduled maintenance begins, but no longer than 10 days afterwards.
General Public	When the Licensee determines the response to a MEP condition will potentially impact license conditions, the Licensee will add appropriate messages to its public information Web site and its reservoir level toll-free phone system and implement other appropriate measures to inform the general public.

Condition MEP2 – Dam Safety Emergency

Mitigating Actions

1. Safety Must Come First – If an Imminent Failure Condition or Potential Failure Condition is declared per the Licensee's EAP, or if other dam safety concerns arise, the Licensee may modify or suspend any license conditions immediately and for as long as necessary to restore the dam to a safe condition.

Communication with Resource Agencies and Affected Parties

Condition MEP2 – Dam Safety Emergency	
Timing of Communication	Comments
During EAP Imminent Failure Condition or Potential Failure Condition	Conducted strictly in accordance with the Licensee's EAP. In cases where dam safety concerns arise that are not an Imminent Failure Condition or Potential Failure Condition per the Licensee's EAP, consultation with resource agencies and affected parties will occur as soon as practical after the dam safety concern arises.
Once Dam Safety Conditions Have Stabilized	When the Licensee determines the response to a MEP condition will potentially impact license conditions, the Licensee will add appropriate messages to its public information Web site and its reservoir level toll-free telephone system to inform the general public.
Bad Creek Road Closure Notification	The Licensee will implement notification procedures for any temporary closures of Bad Creek Road to AQD, FK, FOLKS, FTC, and SCPRT.

Condition MEP3 – Voltage and Capacity Emergencies

Mitigating Actions

1. Suspension of the Normal Operating Range for Reservoir Level – If a voltage or capacity emergency (as defined above) occurs, the Licensee may modify or suspend reservoir level operating limitations immediately and for as long as necessary, if doing so would allow additional hydro station operation needed to restore the electric grid to a stable condition.

Communication with Resource Agencies and Affected Parties

Notification	Comments
FERC SCDNR SCDES USFWS USACE	Perform notification as soon as practical, but no longer than 10 days following the deviation from a license condition for Voltage or Capacity Emergency reasons.
General Public	When the Licensee determines the response to a MEP condition will potentially impact license conditions, the Licensee will add appropriate messages to its public information Web site and its reservoir level toll-free telephone system plus implement other appropriate measure to inform the general public.

Condition MEP4.1 – Reservoir Drawdown (Planned)

Mitigating Actions

1. Avoid Falling Below the Critical Reservoir Elevation – To the extent practical, the Licensee will avoid falling below the Critical Reservoir Elevation defined for the Project as one ft below the crest of the water retaining structure for the intake (-105 ft local datum / 2105 ft AMSL).

Communication with Resource Agencies and Affected Parties

Notification	Comments
FERC SCDES SCDNR USACE USFWS	Provide notification when approximate drawdown dates are determined, but at least 30 days prior to beginning drawdown.
General Public	When the Licensee determines the response to a MEP condition will potentially impact license conditions, the Licensee will add appropriate messages to its public information Web site and its reservoir level toll-free telephone system implement other appropriate measures to inform the general public.

Condition MEP4.2 – Reservoir Drawdown (Unplanned)

Mitigating Actions

1. Avoid Falling Below Critical Reservoir Elevation – To the extent practical, the Licensee will avoid falling below the Critical Reservoir Elevation as noted above.

Communication with Resource Agencies and Affected Parties

Notification	Comments
FERC SCDES SCDNR USACE USFWS	Perform notification as soon as practical, but no longer than 10 days after the drawdown begins.
General Public	When the Licensee determines the response to a MEP condition will potentially impact license conditions, the Licensee will add appropriate messages to its public information Web site and its reservoir level toll-free telephone system and to implement other appropriate measures to inform the general public.

Condition MEP5 – Expected or Existing High Inflow Event

Mitigating Actions

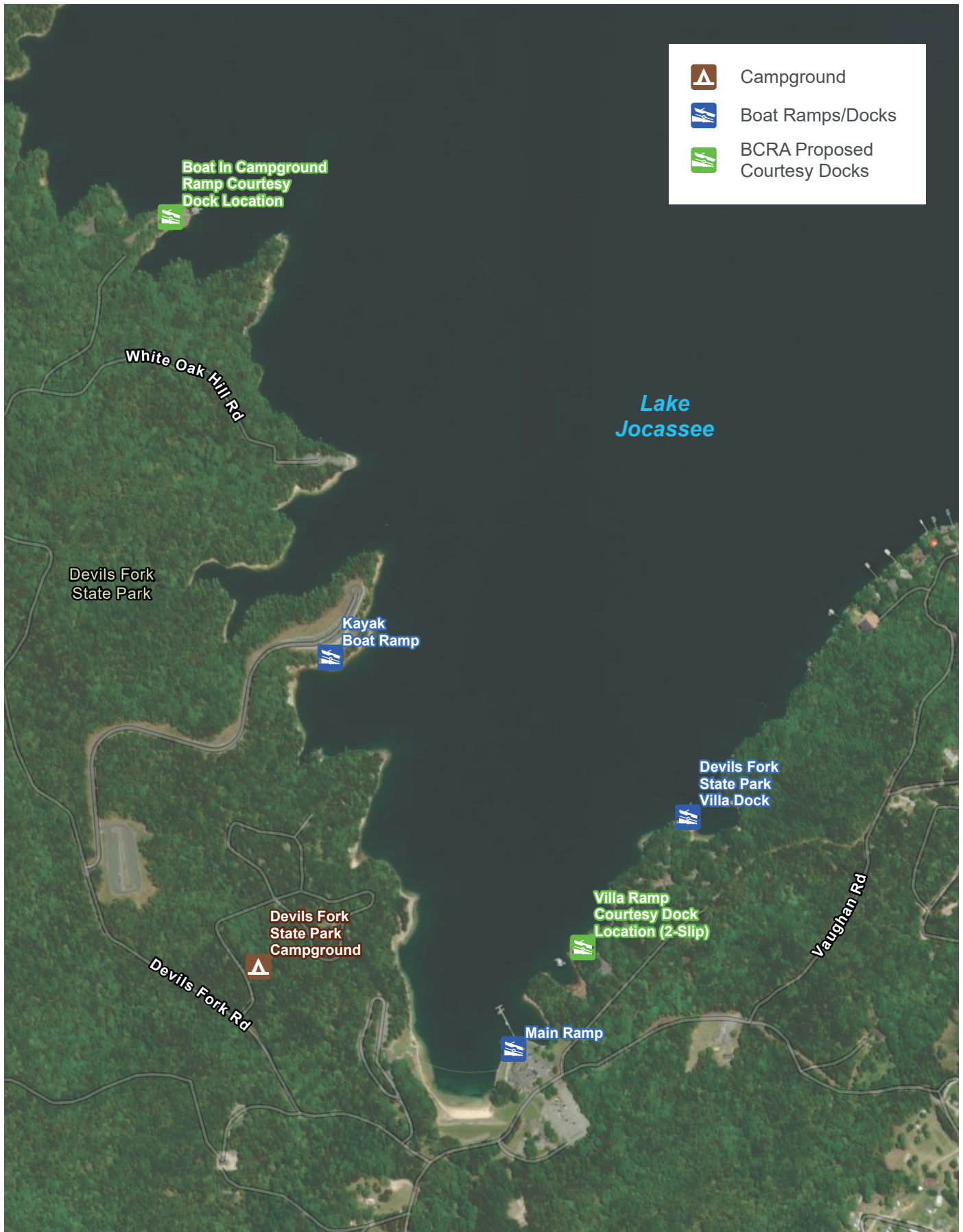
1. As outlined in the Key Facts and Definitions section of this protocol, in preparation for high inflow events to the Upper Savannah River Basin and to minimize the potential for impacts to Duke Energy projects, the Licensee may reduce the reservoir level below the Normal Minimum Elevation. The reservoir level may be below the Normal Minimum Elevation for as long as necessary to minimize the effects of the high inflow event on the Project Reservoir and downstream reservoirs and to manage reservoir elevations during high inflow events.

Communication with Resource Agencies and Affected Parties

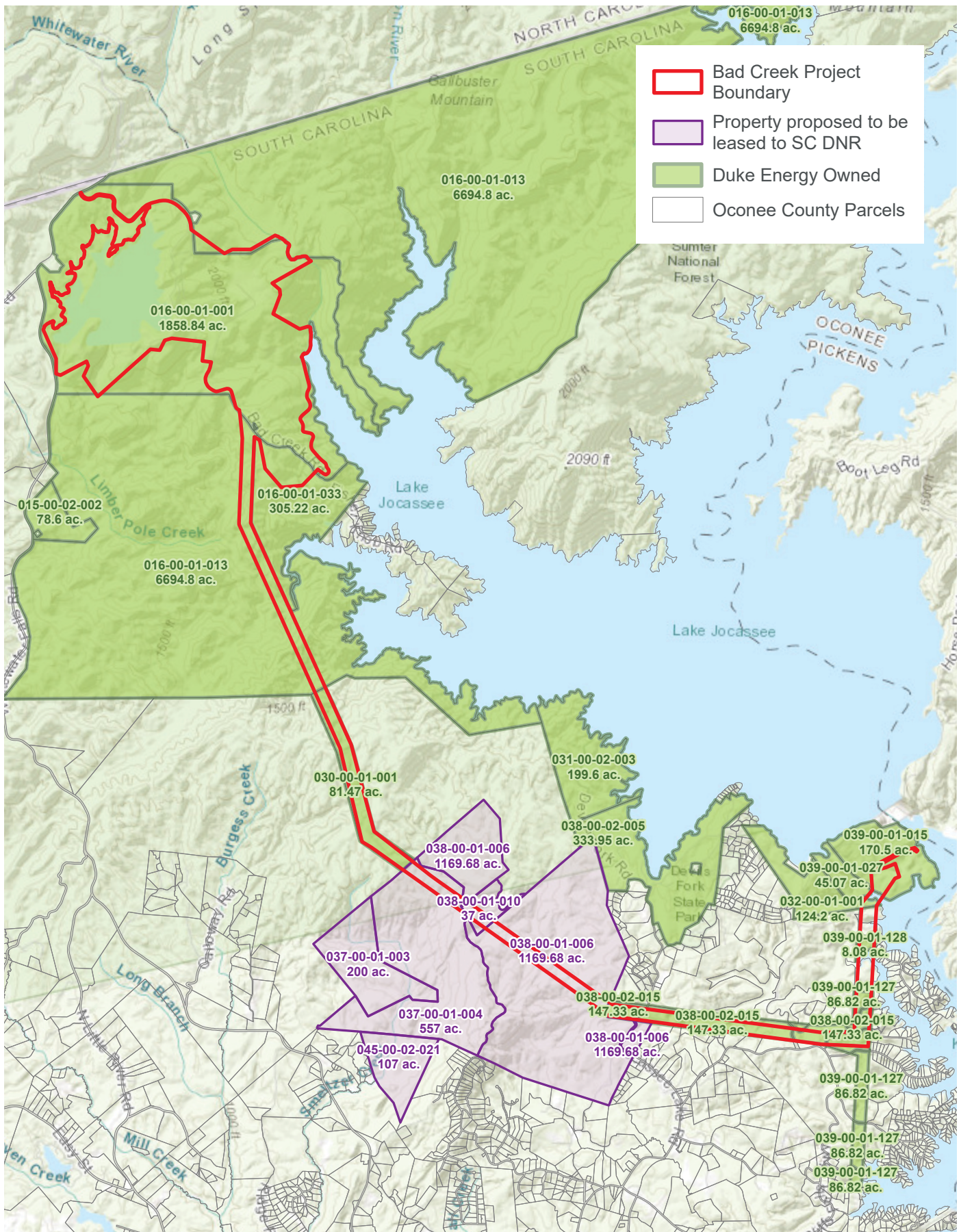
Condition MEP5 – Expected or Existing High Inflow Event	
Notification	Comments
FERC SCDES SCDNR USACE USFWS	The Licensee will perform notification as soon as practical following or prior to a deviation from license requirements for an existing or expected high inflow event.
General Public	When the Licensee determines the response to a MEP condition will potentially impact license conditions, the Licensee will add appropriate messages to its public information Web site and its reservoir level toll-free phone system plus implement other appropriate measure to inform the general public.

APPENDIX E
Maps and Figures

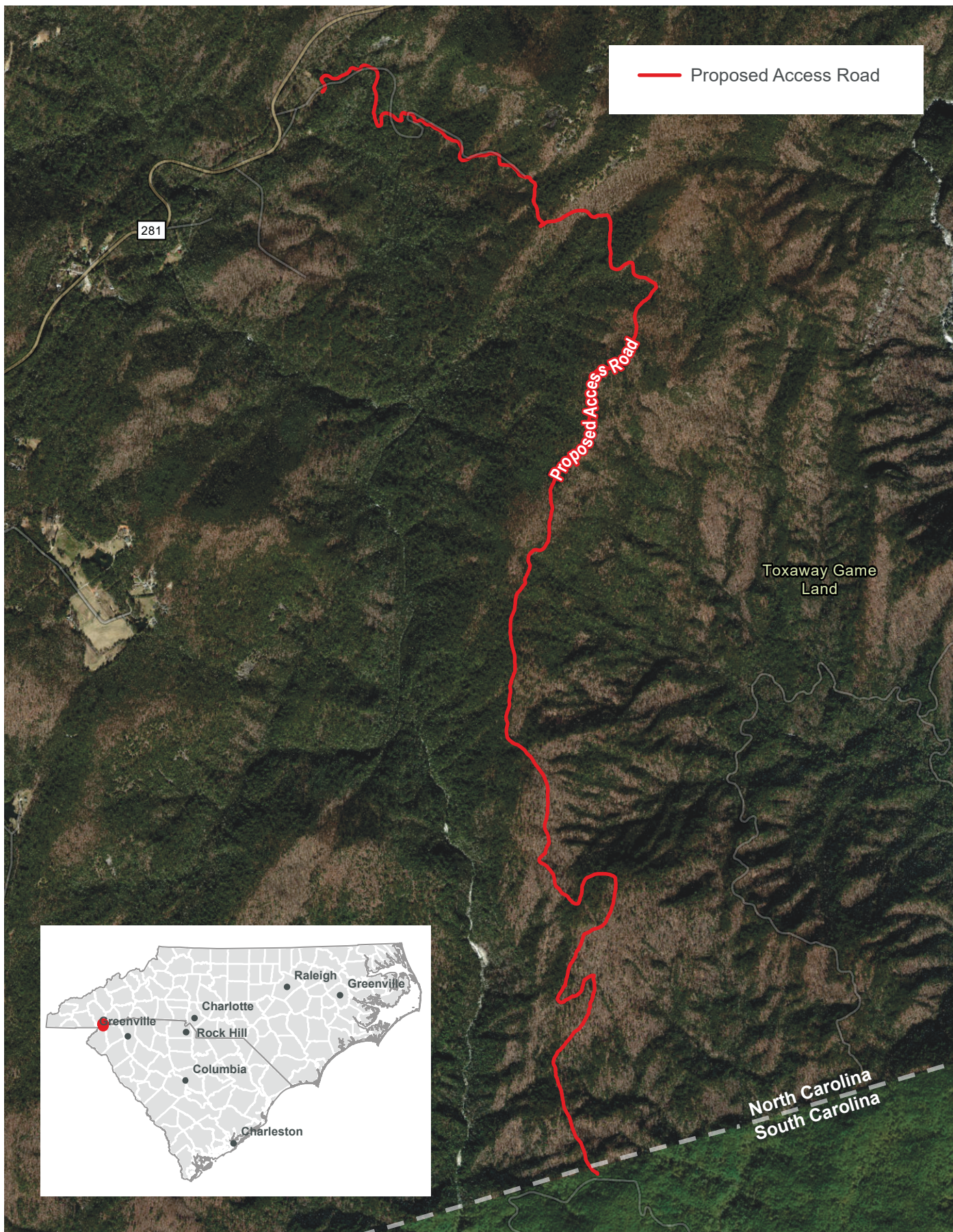
Location of Proposed Courtesy Docks at Devil's Fork State Park



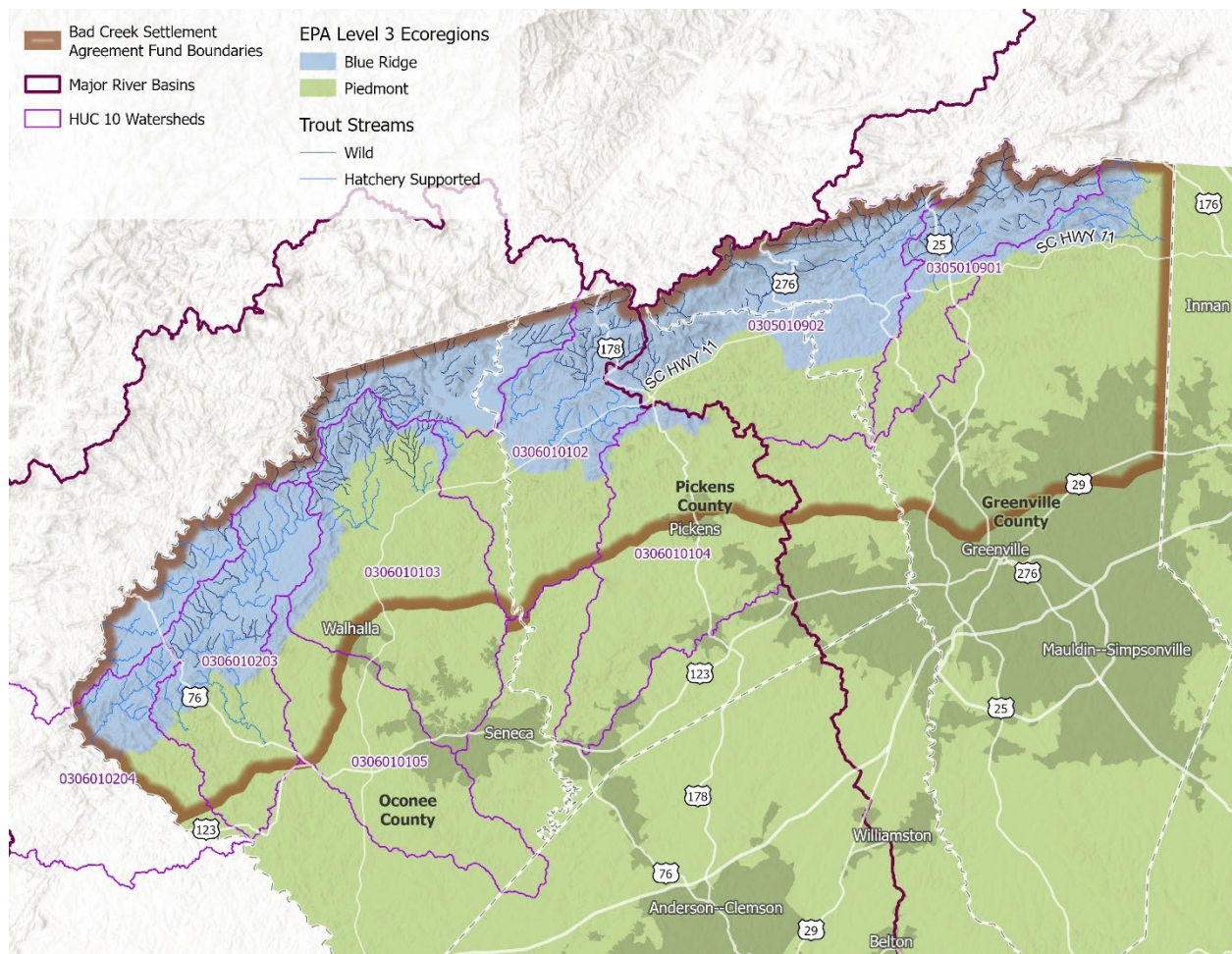
Anticipated Leases to SCDNR with Tax ID Parcel Numbers



Location of Proposed Brewer Road Access



**Geographic Scope of Trout Management and Stream
Enhancement Program and Wildlife Enhancement Fund**



Geographic Scope of Trout Management and Stream Enhancement Program and Wildlife Enhancement Fund (depicted by brown line)

APPENDIX F
Proposed License Articles

Article 205. Start of Construction

The licensee shall commence construction of the second powerhouse and associated ancillary facilities within five years from the date of the license issuance and shall complete the construction within thirteen years from license issuance. Within 30 days of the start of construction, the licensee shall file with the Commission notification of the construction commencement date. The Commission will use the commencement of construction date to revise the project's annual charges under the license.

Article 317. Water Quality Monitoring Plan during Construction.

The Water Quality Monitoring Plan (WQMP) filed with the license application (see license application Appendix {to be determined}) is approved.

Article 318. Revegetation Plan.

Within one year of license issuance, or at least 90 days prior to the start of any ground-disturbing activity, whichever comes last, the licensee must file for approval a Revegetation Plan. The plan must include the proposed revegetation measures included in the provisions in the license application. The plan must also include the following items:

- (1) a description of measures to be used to minimize, to the extent feasible, disturbance to vegetation, including confining construction activities and personnel to existing roads and disturbed areas, and designating specific access routes and areas of disturbance on the ground with visible markings;
- (2) a description of the measures to be used to minimize disturbance to wetlands and water features, including using plates or other suitable structures for crossing wetlands or water features;
- (3) a description of techniques and best management practices to be used to promote revegetation, including returning disturbed areas to original contours where practicable, revegetating disturbed areas as soon as it is feasible to do so, and controlling the establishment of noxious weeds;
- (4) a description of the seed mixes and plant species to be, the planting densities and methods, and fertilization and irrigation requirements;
- (5) detailed monitoring methods, criteria for measuring the success of revegetation efforts, and a monitoring schedule that addresses short-term (first 3 to 5 years) and long-term monitoring needs;
- (6) protocols for managing noxious weeds on project lands during construction;

- (7) an implementation schedule; and,
- (8) a provision to file a report with the Commission by December 31 of years 4 through 7 of BCII operation that documents the monitoring results and provides either recommendations for continued monitoring, or recommendations to discontinue monitoring.

Measures in the plan apply to all lands within the project boundary.

The licensee must prepare the plan after consultation with South Carolina Department of Natural Resources and the U.S. Fish and Wildlife Service. The licensee must include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee must allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing must include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Land disturbing activities must not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee must implement the plan, including any changes required by the Commission.

Article 401. Water Quality Certification.

The license must implement the conditions in the Water Quality Certification issued by the South Carolina Department of Environmental Services on xxx, 20xx {to be determined}, and attached to this order as Appendix {to be determined}.

Article 402. Reservoir Elevations.

Upon the effective date of this license, the licensee must operate the Bad Creek Project within the Maximum Elevation of 2,310 feet above mean sea level and Minimum Elevation of 2,150 feet above mean sea level. The Minimum Elevation must be implemented in accordance with the Low Inflow Protocol (LIP), required by Article 403 of this order, or the Maintenance and Emergency Protocol (MEP), required in Article 404.

Article 403. Low Inflow Protocol.

Upon the effective date of this license, the licensee must implement, "The Low Inflow Protocol" (LIP) attached to this order as Appendix {to be determined}.

The licensee must notify the Commission as soon as possible, but no later than 10 days after implementing Stage 1 of the LIP, or after implementing each subsequent change in stage. Temporary modifications to the LIP must be made in accordance with the procedures in the LIP. For all such temporary modifications, or other conditions beyond the control of the licensee, the licensee must notify the Commission as soon as possible, but no later than 10 days after each such event and provide the reason for the modification to the LIP.

The approved LIP must not be amended without prior Commission approval. The Commission reserves the right to make changes to the Low Inflow Protocol. Upon Commission approval, the licensee must implement any changes required by the Commission.

Article 404. Maintenance and Emergency Protocol.

Upon the effective date of this license, the licensee must implement, “The Maintenance and Emergency Protocol” (MEP) and attached to this order as Appendix {to be determined}.

The licensee must notify the Commission as soon as possible, but no later than 10 days after implementing any change in project operation required by the MEP. Temporary modifications to the MEP must be made in accordance with the procedures in the MEP. For all such temporary modifications, or other conditions beyond the control of the licensee, the licensee must notify the Commission as soon as possible, but no later than 10 days after each such event and provide the reason for the modification to the MEP.

The approved MEP must not be amended without prior Commission Approval. The Commission reserves the right to require changes to the MEP, and upon Commission approval, the licensee must implement any changes required by the Commission.

Article 405. Visual Resources Management.

The Visual Resources Management Plan filed with the license application (see License Application Appendix {to be determined}) is approved.

Within six months of completing project construction, file a report with the Commission documenting the steps taken to minimize visual effects. Include in the report photographs showing views of the constructed project facilities from the key observation points identified in the Visual Resources Analysis Study Report.

Article 406. Species Protection.

The proposed measures to enhance pollinator habitat and protect avian species (exclusive of the bald eagle and peregrine falcon measures in Article 408) as proposed in the license application are approved. These include:

- (1) Integrated vegetation management on the primary transmission line right-of-way to promote early succession and pollinator habitat.
- (2) Implementation of the licensee's avian protection measures.
- (3) Implementation of Article 405 Visual Resources Management Plan to limit external lighting that could affect wildlife species.
- (4) Use of native seed mixes for Site restoration and revegetation as required in Article 318.

Article 407. Threatened and Endangered Species Protection.

Threatened and endangered species surveys were conducted during the licensing of the project expansion. Construction activities will be conducted in compliance with the required time of year restrictions for threatened and endangered species, as discussed/agreed upon with the relevant agencies and as applicable. If endangered or threatened wildlife or occupied habitat that was not previously identified is encountered during project construction, the licensee shall suspend clearing and ground-disturbing activities and obtain guidance from the South Carolina Department of Natural Resources and the U.S. Fish and Wildlife Service, as applicable, on how to avoid or minimize potential effects. The licensee shall file documentation of consultation, copies of any measures recommended by these agencies, and specific descriptions of how the agencies' comments or recommendations are accommodated during construction.

The Commission reserves the right to require changes to the species protection plan or any measures identified to protect endangered or threatened wildlife or habitat. Ground-disturbing activities shall not begin until the licensee is notified by the Commission that the survey results have been accepted, and if required, the protection measures or species protection plan is approved. Upon Commission approval, the licensee shall implement the species protection plan and/or habitat protection measures, including any changes required by the Commission.

Article 408. Bald Eagle and Peregrine Falcon Protection.

Prior to any land-disturbing activities, the licensee shall identify the location of all active bald eagle and peregrine falcon nests with potential to be disturbed by construction noise

and activity associated with project construction, using survey methods determined in consultation with the U.S. Fish and Wildlife Service. The licensee shall determine areas of potential disturbance using the U.S. Fish and Wildlife Service's National Bald Eagle Management Guidelines, 2007, which identifies recommended protection buffers based on the intensity of construction related noise and surrounding environment. The licensee shall file nesting survey results with the Commission, marked "Not for Public Disclosure," with copies provided to the U.S. Fish and Wildlife Service and the South Carolina Department of Natural Resources.

If active nests are within recommended protection buffers for proposed construction activities, the licensee shall, after consultation with the South Carolina Department of Natural Resources and the U.S. Fish and Wildlife Service, develop a construction plan that would schedule construction activities to avoid disturbance to nesting bald eagles and peregrine falcons. The licensee shall file the construction plan with the Commission for approval. The plan shall also include documentation of consultation, copies of recommendations on the completed plan after it has been prepared and provided to the above-mentioned agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific evidence.

The Commission reserves the right to require changes to the plan. Land disturbing activities shall not begin until the licensee is notified by the Commission that the nesting survey results have been accepted, and if required, that the construction plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 409. Special Status Bat Protection.

Bat surveys were conducted during the licensing of the project expansion and appropriate protection measures were developed in consultation with the U.S. Fish and Wildlife Service and the South Carolina Department of Natural Resources to prepare a plan to mitigate for lost roosting habitat. The licensee shall file the Special Status Bat Protection Plan with the Commission for approval. The licensee shall include with the plan an implementation schedule, documentation of consultation, copies of recommendations on the completed plan after it has been prepared and provided to the above agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not

adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific evidence.

The Commission reserves the right to require changes to the plan. Disturbance to existing structures shall not begin until the licensee is notified by the Commission that the survey results have been accepted, and if required, that the Special Status Bat Protection Plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 410. Recreation Management Plan.

The Recreation Management Plan filed with the license application (see License Application Appendix {to be determined}) is approved. The Commission reserves the right to require changes to the plan.

Article 411. Programmatic Agreement and Historic Properties Management Plan.

The licensee shall implement the Final Programmatic Agreement between the Federal Energy Regulatory Commission, the South Carolina State Historic Preservation Officer, and [TRIBES TBD] for Managing Historic Properties that May be Affected by Issuance of a License. The Historic Properties Management Plan (HPMP) for the project filed with the license application (see License Application Appendix {to be determined}) is approved.

In the event that the Programmatic Agreement is terminated, the licensee shall implement the provisions of its approved HPMP. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license.

Article 412. Use and Occupancy.

In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the

licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.