

December 29, 2003

MEMORANDUM

To: The Honorable Marc Basnight, Co-Chairman

The Honorable Jim Black, Co-Chairman

The Honorable Richard Morgan, Co-Chairman

Joint Legislative Commission on Government Operations

The Honorable Charlie Albertson, Co-Chairman

The Honorable Dan Clodfelter, Co-Chairman

The Honorable Pryor Gibson, Co-Chairman

The Honorable Danny McComas, Co-Chairman

Environmental Review Commission

The Honorable David Weinstein, Co-Chairman

The Honorable Stan Fox, Co-Chairman

The Honorable Roger West, Co-Chairman

Joint Appropriations Subcommittee on Appropriations for Natural and
Economic Resources

Mr. Jim Johnson, Director, Fiscal Research Division

Ms. Jennifer Haygood, Fiscal Research Division

From: Robert Howard, Chairman, Board of Trustees

Bill Holman, Executive Director

Re: Clean Water Management Trust Fund's 2003 Annual Report

Introduction

We are writing on behalf of the Board of Trustees and staff of the Clean Water Management Trust Fund (CWMTF) to thank the members of the General Assembly of North Carolina for your continuing strong support for investments in clean water and to make our annual report to the General Assembly and the public pursuant to GS 113-145.6A.

GS 143-15(a) requires that the General Assembly appropriate a minimum of \$100,000,000 to CWMTF each year. The 2003 General Assembly made many difficult budget decisions and cut many programs, including CWMTF.

HB 397, Current Operations and Capital Improvements Act of 2003, appropriated \$62,000,000 to CWMTF in each year of the biennium. This is a cut of \$38,000,000 or 38% from CWMTF. Thanks to the appropriation of \$62,000,000 from the General Assembly to CWMTF in fiscal year 2003-2004 North Carolina continued to make progress in protecting and restoring water quality in calendar year 2003. As we face another challenging budget in 2004, the future of our state's environmental and economic health depends on your continued support and interest.

Background

The General Assembly for many years has advocated non-regulatory, incentive-based programs to complement North Carolina's environmental regulatory and educational programs and to ensure both a strong economy and healthy environment.

The 1996 General Assembly created the Clean Water Management Trust Fund (CWMTF) (GS 113-145) "to clean up pollution in the state's surface waters and to protect and conserve those waters that are not yet polluted." The CWMTF "shall be used to help finance projects that specifically address water pollution problems and focus on upgrading surface waters, eliminating pollution, and protecting and conserving unpolluted surface waters, including urban drinking water supplies" and "to build a network of riparian buffers and greenways for environmental, educational, and recreational benefit.

The CWMTF is an independent agency housed for administrative purposes in the Department of Environment and Natural Resources (DENR.) A twenty-one-member board of trustees establishes criteria, allocates funds, reviews applications, approves grants, and hires the executive director. Seven members are appointed by the Governor; seven, by the General Assembly upon the recommendation of the President Pro Tempore of the Senate; and seven, by the General Assembly upon the recommendation of the Speaker of the House. An advisory council composed of the Commissioner of Agriculture, Chair of the Wildlife Resources Commission, Secretary of DENR, and Secretary of Commerce or their designees advises the board of trustees.

Local governments or other political subdivision of the state, state agencies, and nonprofit conservation organizations, such as land trusts, may apply for grants. Deadlines for applications are June 1 and December 1 of each year.

The board of trustees typically meets 10 times per year - six times across the state and four times in Raleigh. In 2003, the board met in Greenville, Gastonia, Fayetteville, Cullowhee, Eden, Jacksonville, and Raleigh. In 2004, the board plans to meet in Moore County, Currituck County, Caldwell County, Morganton, Kinston, Greensboro, and Raleigh.

Moneys from CWMTF may be used to acquire conservation easements or land in fee simple to preserve riparian buffers, wetlands, floodplains, and greenways; to restore riparian buffers, streams, and wetlands; to repair failing wastewater collection and treatment systems; to eliminate failing septic tanks and straight pipes; to collect and treat stormwater pollution; to plan water quality projects; and for administration and staff. The board works through three principal committees: acquisitions, infrastructure/wastewater, and restoration/stormwater.

CWMTF applications forms for grants, grant evaluation guidelines, enabling legislation, lists of the board of trustees, staff directory, news releases, and other reports and documents are available at www.cwmf.net.

The executive director, deputy director, senior scientist, administrative officer, public information officer, and executive assistant are based in the central office in Raleigh. Five field representatives cover the coast, piedmont and mountain regions of the state. A part-time water quality advisor is home based.

Progress & Challenges

The extreme drought and **water quantity** were the water issues of 2002. Heavy rain and Hurricane Isabel in 2003 made flooding, stormwater pollution, and **water quality** the water issues of 2003.

In its North Carolina 20/20 report, the state's Progress Board laid out a series of performance targets to improve environmental quality by the year 2020. Those

targets included increasing the percentage of water bodies fully supporting their uses, ensuring that 100 percent of all North Carolinians have access to clean and safe drinking water, protecting and permanently preserving one million acres by 2010, and improving water quality to ensure the continued viability of the state's fisheries.

In its biennial 303(d) report to the US Environmental Protection Agency the DENR/Division of Water Quality estimates that 3485 miles of streams in North Carolina are impaired, not meeting their designated uses, or are polluted.

In almost all the areas cited by the North Carolina 20/20 report, CWMTF grants are playing a role in reaching those performance targets. Here are some examples:

- The CWMTF and its partners have helped protect 2,908 miles of riparian buffers and preserve 237,366 acres of land, thereby ensuring streams, rivers and lakes can continue or will be able to support their uses.
- CWMTF is helping the State achieve its goal of preserving a million acres of open space, as set out in GS 113A-240, and is helping Governor Easley implement his One North Carolina Naturally initiative.
- CWMTF grants have been used to develop watershed protection plans and to purchase buffers surrounding drinking water supplies.
- The CWMTF has funded 79 riparian buffer, stream and wetland restoration projects totaling over \$48.2 million to help maintain and preserve these important water quality filtering systems.
- CWMTF acquisition and restoration grants have been used to protect shellfishing waters, to help restore waters in areas closed to shellfishing, to restore oyster reefs and other fisheries habitat, and to provide public access to public waters.
- The CWMTF has assisted local governments with 99 wastewater improvement projects, investing over \$77.2 million to reduce discharges and more effectively treat wastewater so that fewer nutrients and other pollutants enter our rivers.
- CWMTF grants have funded 36 stormwater management projects totaling \$29.8 million to reduce pollution from urban runoff and decrease flooding.

Since 1996 the board of trustees has approved 512 grants for a total of \$405.1 million. CWMTF grants have leveraged at least \$643.3 million or 61% in private and other public funds.

The CWMTF continues to be an important tool in helping local governments protect their water resources. Since 1996, \$168.9 million – over forty percent of the \$405.1 million in CWMTF grants has gone to cities, counties and other local government agencies to finance local solutions to water quality problems.

All of these efforts are just as important to North Carolina's economic well-being as they are to the health and safety of its citizens and the environment. They enhance both the recreational and commercial fishing industries, strengthen North Carolina's travel and tourism industry, and help maintain North Carolina's high quality of life.

As the Progress Board asserts in its report, "...states can and do have strong economies and simultaneously protect the environment. In fact, the states with the strongest environmental records also claim the distinction of having the best job opportunities and climate for long term economic development."

2003 Highlights

The CWMTF Board of Trustees and staff reviewed 70 applications requesting over \$103 million in the spring of 2003 (2002B Cycle) and 101 applications requesting over \$174 million in the fall of 2003 (2003A Cycle) for a total of 171 applications requesting over \$277 million in 2003.

Thanks to appropriations from the General Assembly and to the closing out of old grants the Board of Trustees of CWMTF approved 88 water quality grants totaling \$72,133,700 and 17 mini-grants totaling \$385,400 or a grand total of 105 grants for \$72,519,100 in calendar year 2003. The total invested in CWMTF-funded water quality projects, including CWMTF and other public and private funds was \$220,766,370 in calendar year 2003. A list of the projects is attached to this report.

Protection of the 4468-acre **Needmore tract on the Little Tennessee River in Swain and Macon Counties** has been a high priority of the NC Wildlife Resources Commission and The Nature Conservancy for many years. CWMTF provided \$6.6 million to assist in the purchase. The Ecosystem Enhancement Program, Natural Heritage Trust Fund, US Fish and Wildlife Service, and private funds provided the balance of the funds needed. Protecting Needmore will conserve 26 miles of the Little Tennessee River and 37 miles of tributary streams. It also helps conserve 57 species of fish, dozens of Cherokee and historic sites, and the largest cluster of mountain floodplain forests remaining the Southern Appalachians.

CWMTF, Natural Heritage Trust Fund, The Nature Conservancy, Wildlife Resources Commission and US Navy partnered to acquire **the 2500-acre Beck tract in Onslow County** for the state's gamelands program. CWMTF provided \$2,146,000. Acquisition of the Beck tract protects Stones Creek and the New River. It will also prevent encroachment on Camp Lejeune.

CWMTF continues to work with municipalities and counties on a variety of projects to protect and restore water quality. The **Town of Troy** replaced chlorination of its wastewater with ultraviolet radiation treatment in 2003 with help from CWMTF. Troy and CWMTF are working to prevent and reduce pollution of Densons Creek by improving wastewater treatment and by acquiring riparian buffers and greenways along the creek. CWMTF has funded four phases of greenway acquisition. The Ecosystem Enhancement Program (EEP) may fund Phase 5 in 2004.

The **City of Greensboro** with assistance from CWMTF acquired a key property for its stormwater treatment project on South Buffalo Creek. CWMTF has provided \$1,370,000 to Greensboro to acquire property and to construct its stormwater project.

Mecklenburg County and CWMTF continue our efforts to clean up Sugar Creek and other streams in Charlotte. Mecklenburg County dedicated a constructed wetland at the Bruns Avenue School on April 25, 2003. CWMTF has provided \$3.9 million to help Mecklenburg County and Charlotte restore urban streams.

Bessemer City has decommissioned its wastewater treatment plant, connected to Gastonia's wastewater system, and reduced infiltration and inflow in its sewer system with \$2,000,000 million grant from CWMTF. Regional wastewater systems generally collect and treat pollution to higher standards at lower costs.

Working with the Southern Appalachian Highlands Conservancy CWMTF acquired a conservation easement on the **Town of Canton's pristine 870-acre Rough Creek Watershed** with a \$689,000 grant. SAHC raised \$429,000 in private funds. Canton reinvested the funds to improve its drinking water system and its parks system.

The NC Coastal Land Trust (NCCCLT) acquired 911 acres from International Paper (IP) in November to continue its efforts to protect **Town Creek in Brunswick County**. CWMTF provided \$2 million. NCCLT will transfer the property to Brunswick County for a local park. NCCLT, IP, and CWMTF have protected more than 10,000 acres along Town Creek since 1997.

Working with The Conservation Fund CWMTF, EEP, NHTF provided funding to acquire part of the **headwaters of the Yadkin River**, the 5621-acre Mingo tract in Caldwell and Wilkes Counties. The Wildlife Resources Commission will manage the property as gamelands.

Conservation Reserve Enhancement Program (CREP)

CWMTF has provided state funds to match over \$200 million in US Department of Agriculture funds for the Conservation Reserve Enhancement Program (CREP). CWMTF provided a grant of \$5.4 million to the DENR/Division of Soil and Water Conservation (DSWC) in 1998 for the first phase of CREP. CWMTF provided a second grant of \$4.2 million to DSWC in 2003 for Phase 2 of CREP.

CWMTF and DSWC have worked together to increase the incentives offered to farmers who sign up for permanent conservation easements. CWMTF has approved expansion of CREP into the Pasquotank, Roanoke, White Oak, and lower Cape Fear Rivers. The Chowan, Tar-Pamlico, Neuse, and upper Cape Fear Rivers were already covered.

The Soil and Water Conservation Commission will have to amend its rules in 2004 to incorporate the new incentives for farmers.

CWMTF has urged DSWC to increase processing of conservation easements and to reduce the backlog of enrollments in 2004. DSWC will report to the Board of CWMTF in April 2004 on its progress. DSWC will probably request additional funding from CWMTF in June 2004. CWMTF supports providing the state matching funds to continue CREP in NC – if DSWC improves administration of the program. If DSWC does not improve administration, CWMTF may not provide Phase 3 funding for CREP.

CWMTF is working with DSWC, local soil and water conservation districts, the US Natural Resources Conservation Service, and others to leverage other federal Farm Bill conservation programs, such as the wetlands reserve program (WRP) and the environmental quality incentives program (EQIP).

Ecosystem Enhancement Program (EEP)

The NC Departments of Environment and Natural Resources and Transportation and the US Army Corps of Engineers established the Ecosystem Enhancement Program (EEP) in 2002 to improve coordination and the quality of stream and wetland mitigation projects.

CWMTF and EEP coordinate their efforts. CWMTF refers all acquisition and restoration applications to EEP for review and potential funding. As of December 1, 2003 the Board of Transportation had approved full or partial funding of at least 12 CWMTF projects valued at over \$37 million.

CWMTF will share its expertise and experience in working with local governments and land trusts on contracts and conservation easements with EEP. CWMTF believes that CWMTF, EEP, and the public will benefit from consistent policies on contracts and conservation easements.

DuPont State Forest Settlement

In 2000 CWMTF provided \$12.5 million to DENR/Division of Forest Resources (CWMTF Project #1999A-005) to acquire a critical 2,200-acre inholding in DuPont State Forest in Transylvania and Henderson Counties. Unfortunately the State could not reach an agreement with the property owner, and the Council of State authorized condemnation of the property in October 2000.

The property owner and the State settled on the value of the property in August 2003. The Office of State Budget and Management (OSBM) transferred \$12.0 million from CWMTF to pay for the settlement. The Board of Trustees of CWMTF did not approve the transfer. OSBM committed to try to reimburse CWMTF \$8.0 million with \$4.0 million coming from DENR and \$4.0 million coming from Department of Transportation wetland and stream mitigation funds. As of December 29, 2003 CWMTF had not received any reimbursement for the DuPont State Forest settlement.

Base Realignment and Closure (BRAC)

The US Department of Defense will consider realignment and closure of military bases in 2005. The Department of Defense, the State of North Carolina, and many local governments are working together to prevent and reduce encroachment on military bases by acquiring conservation easements and land in fee simple and by regulating land uses.

In 2003 CWMTF, Natural Heritage Trust Fund, The Nature Conservancy, and the US Navy worked with the Wildlife Resources Commission to acquire the Beck tract (CWMTF Project # 2001B-036) in Onslow County to help protect Camp Lejeune.

The Wildlife Resources Commission applied to CWMTF for additional funds to protect water quality and Camp Lejeune in December. Goldsboro and Wayne County also applied to CWMTF for funds to acquire floodplain and converted wetlands near Seymour Johnson Air Force Base. With assistance from CWMTF the Sandhills Area Land Trust is conducting a riparian corridor conservation study on the Little River – the northern boundary of Fort Bragg.

CWMTF and the other conservation trust funds can assist the State and the military in protecting both the environment and the training mission of our bases.

Stormwater Problems and Phase II Rules

CWMTF is one of the few sources of funds local governments can seek to reduce stormwater pollution and flooding and to comply with EPA and state Phase II stormwater rules. Thirty-three counties and 123 municipalities are covered by EPA and State Phase I and Phase II Stormwater rules. CWMTF has funded 36 local stormwater projects totaling \$28.9 million.

2003 Legislative Action

The 2003 General Assembly demonstrated that protecting and restoring water quality remains a high priority of the State. HB 397, Current Operations and Capital Improvements Act of 2003, appropriated \$62,000,000 to CWMTF in fiscal year 2002-2003 and \$62,000,000 to CWMTF in fiscal year 2004-2005. The Office of State Budget and Management is withholding 2.0% of CWMTF's 2003-2004 appropriation or \$1,240,000.

Section 11.7 of HB 387 directed the Property Tax Subcommittee of the Revenue Laws Study Committee to study the positive and negative impacts of conservation land acquisition on local government ad valorem tax revenues. The subcommittee had not considered this issue as of December 1, 2003.

Section 11.8(b) of HB 397 authorized CWMTF for fiscal year 2003-2004 to spend up to \$4,100,000 to match federal, State, local, and private farmland preservation and forestland preservation funds and to acquire permanent conservation easements on working farms and forests. CWMTF has participated in some federal farmland preservation and forest legacy projects in calendar year 2003.

Section 6.8 of HB 397 directed the NC Department of Administration, in consultation with other agencies, to develop and implement a State-owned surplus real property disposal system. CWMTF recommends that surplus properties with high conservation values be allocated to conservation agencies such as the Division of Parks & Recreation and Wildlife Resources Commission. CWMTF also recommends that the State place permanent conservation easements on 100-year floodplains, riparian buffers, and wetlands before selling surplus properties.

Section 6.21 of HB 397 strengthened reporting requirements for non-state entities that receive state funds. CWMTF has amended its contracts to require non-state entities to comply with GS 143-6.1.

Section 6.23(a) of HB 397 authorized the Office of State Budget and Management to transfer up to twenty percent of the balance of any special fund other than CWMTF, NHTF, and PARTF to the Reserve for Special Funds Transfer. If OSBM determines that transfers from other special funds are insufficient, then it may transfer funds from CWMTF, NHTF, and PARTF. As of December 19, 2003 OSBM had not transferred any funds from CWMTF for this purpose.

The 2003 General Assembly also continued its strong support for CWMTF partners, the Parks and Recreation Trust Fund (PARTF) and Natural Heritage Trust Fund (NHTF). HB 855, Special (Vehicle) Registration Plates, by Representative Martha Alexander and others, increased the fee for personalized license plates by \$10 and dedicated half of the increase to the Parks and Recreation Trust Fund and half of the Natural Heritage Trust Fund. The General Assembly established the new Mayo River State Park (HB 1078) in Rockingham County and Haw River State Park (HB 1025) in Guilford and Rockingham Counties. The Division of Parks & Recreation will probably apply to CWMTF in the future to help acquire land for these two new state parks.

The CWMTF Board of Trustees supported SB 831, Stagger CWMTF Appointments, by Senator Charlie Albertson, to restructure the terms of board members to increase continuity in the decision-making process. Under the existing law the terms of two-thirds of the board expired on December 31, 2002. SB 831 also added three appointments to the board. Governor Easley signed SB 831 on August 14, 2003.

HB 738, Expand CWMTF Purpose, by Representative Paul Miller and others, and SB 551, Expand CWMTF Purpose, by Senator Jeanne Lucas and others, were referred to the House Committee on Environment and the Senate Committee on Appropriations/Base Budget, respectively, and were not acted upon.

The Year Ahead

The CWMTF board and staff will review 83 applications requesting \$151.8 million this spring (2004A Cycle). CWMTF will also receive applications on June 1, 2004 and review them in the fall (2004B Cycle). Specific grant requests submitted on December 1, 2003 for the spring 2004 cycle include:

- A request for \$1.7 million from the City of Goldsboro and Wayne County to help protect Stoney Creek, a tributary of the Neuse River, and to prevent encroachment on Seymour Johnson Air Force Base;
- A request for \$891,150 from DENR/Division of Forest Resources to help protect Mountain Island Lake and to expand the Mountain Island Lake Educational State Forest in Gaston and Lincoln Counties;
- A request for \$3.2 million from the Southern Appalachian Highlands Conservancy to help protect water quality in Reems Creek, a tributary of the French Broad River in Buncombe County;
- A request for \$7.6 million from the Town of Spring Lake in Cumberland County to eliminate failing septic tanks and reduce pollution of the Little River, a major tributary of the Cape Fear River; and
- A request for \$7.7 million from DENR/Division of Soil & Water Conservation to implement phase three of the swine lagoon buyout program in the 100-year floodplain.

CWMTF may centralize water quality monitoring of its restoration and stormwater projects to improve quality and reduce costs in 2004. CWMTF is reviewing its policies regarding stewardship and long-term management of properties that are acquired with CWMTF funds. CWMTF is also reviewing the criteria by which it evaluates projects.

CWMTF hopes to develop consistent contracts, conservation easements, monitoring requirements, and stewardship policies with EEP.

Planning, design, permitting, bidding, and construction of wastewater, stormwater, and restoration projects take many years. CWMTF in 2003 began to start funding the design and permitting phase of projects to ensure that water quality objectives are being met, to develop more accurate estimates of cost, and to manage its cash balance. CWMTF has also reduced the average time to implement acquisition projects from 36 months to 12-18 months. CWMTF will continue to work to manage its cash balance in 2004.

2004 Legislative Issues

State law requires an appropriation of \$100 million to CWMTF in 2005-2006 and future years. CWMTF will work with the General Assembly this year to secure appropriations to continue North Carolina's progress in protecting and restoring water quality.

CWMTF supports the work of its partners: the Conservation Income Tax Program, Natural Heritage Trust Fund, Parks and Recreation Trust Fund, Farmland Preservation Trust Fund, and the new Ecosystem Enhancement Program.

The 2003 General Assembly considered SB 683, State Capital Facilities Financing, by Senators John Kerr and David Hoyle, and HB 1227, Finance Parks and Natural Heritage, by Representative Gordon Allen and others. Many provisions of SB 683 and HB 1227 were incorporated into the budget bill, HB 397. CWMTF is interested in certificates of participation financing for natural heritage, parks, clean water, and other purposes.

Tier I and Tier II counties are concerned that acquisition of land in fee simple by the Wildlife Resources Commission, Division of Parks & Recreation, and other agencies for conservation purposes is reducing their property tax base. CWMTF has encouraged the sellers and buyers of conservation properties in Tier I and Tier II counties where thirty percent or more of the land is in fee simple conservation ownership to provide a one-time payment worth ten times the ad valorem taxes of the property to the county. CWMTF respectfully recommends that the 2004 General Assembly consider legislation to enable CWMTF to provide some Tier I and Tier II counties with a one-time payment to compensate them for the loss of property tax revenues.

The 2002 General Assembly enacted SB 1161, Present Use Taxation Amendments, by Senator Fletcher Hartsell. SB 1161 clarified that farm or forestland taxed at present use would remain taxed at present use after a conservation easement was donated or acquired. CWMTF funds acquisition of many conservation easements. SB 1161 also directed that the Property Tax Subcommittee of the Revenue Laws Study Committee address other issues associated with property taxes and conservation easements. As of December 29, 2003 the Property Tax Subcommittee had not considered these issues.

CWMTF is available to assist the Governor and General Assembly in their efforts to prevent inappropriate development in floodplains and to mitigate flood hazards.

CWMTF is available to provide technical assistance to members of the General Assembly in the development of an incentive-based air quality program such as the Clean Air Trust Fund, proposed in SB 981 by Senators Steve Metcalf and Joe Sam Queen and HB 866 by Representative Phil Haire and others.

Please contact me if you need more information.