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BOOK 00381
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INSTRUMENT # 00206

**Memorandum of Agreement
2010**

MEMORANDUM OF AGREEMENT

I. INTRODUCTION

This agreement is made and entered into by and between TENNESSEE VALLEY AUTHORITY ("TVA"), a federal agency and corporation created by an act of Congress, the STATE OF NORTH CAROLINA ("North Carolina"), acting by and through its Governor, SWAIN COUNTY, NORTH CAROLINA ("Swain County"), a political subdivision of the State of North Carolina acting by and through the Board of Commissioners for the County of Swain; and the UNITED STATES DEPARTMENT OF THE INTERIOR ("DOI"), acting by and through the Secretary of the Interior ("Secretary").

II. RECITALS

- A. The parties entered into a prior agreement dated 30 July 1943 (the "1943 Agreement") concerning the construction of Fontana Dam and related matters.
- B. As set forth under the provisions of the 1943 Agreement, the TVA acquired approximately 44,000 acres of land and transferred the same to the Department of the Interior for inclusion in the Great Smoky Mountains National Park and paid the State of North Carolina, in trust for Swain County, \$400,000.00 to be used for the payment of the principal on outstanding county road bonds. Therefore, the parties recognize that TVA has fulfilled all of its obligations under the 1943 Agreement and undertakes no further obligations herein.
- C. North Carolina and Swain County have discharged their obligations under the 1943 Agreement.

D. Swain County disputes whether the Department of the Interior has performed its obligations under the 1943 Agreement relating to the construction of the “North Shore Road.”

E. Pursuant to the 1943 Agreement, the Department of the Interior committed “as soon as funds are made available for that purpose by Congress” to “construct or cause to be constructed” a road, commonly referenced as the “North Shore Road,” from the eastern boundary of the Great Smoky Mountains National Park to a point on the Fontana Dam Access Road.

F. Construction of the “North Shore Road” has not been completed.

G. Pursuant to the National Environmental Policy Act and other laws, the National Park Service (NPS), a bureau of the Department of the Interior, prepared an Environmental Impact Statement (EIS) evaluating alternatives for the North Shore Road with its stated purpose being to “discharge and satisfy any obligations on the part of the United States that presently exist as the result of the 1943 Agreement.” The EIS evaluated a range of alternatives to fulfilling that purpose including renewing construction of the North Shore Road and entering into a monetary settlement of the 1943 Agreement with Swain County.

H. NPS approved a decision to “implement the Monetary Settlement Alternative” and to “convene a meeting of the signatories” to the 1943 Agreement on December 28, 2007.

I. Section 1007 of the “Department of Defense Appropriations Act, 2010,” P.L. 111-118 (December 19, 2009), expressly authorized the Secretary to make certain payments to Swain County in connection with the non-construction of the North Shore Road:

(1) Section 1007 authorized the Secretary to make a payment of four million dollars (\$ 4,000,000.00) to Swain County, North Carolina upon the enactment of the Act;

(2) Section 1007 authorized the Secretary to make an additional payment of eight million, eight hundred thousand dollars (\$8,800,000.00) to Swain County, North Carolina subject to the Department of the Interior, Swain County, the State of North Carolina, and TVA entering into an agreement that supersedes the agreement of July 30, 1943. By the instant agreement ("2010 Agreement") the parties intend to settle any and all claims under the 1943 Agreement, and to extinguish and supersede the 1943 Agreement in its entirety.

III. TERMS AND CONDITIONS

The parties hereby agree as follows:

1. The 1943 Agreement is hereby extinguished and superseded and shall be of no further effect.
2. The United States Department of the Interior shall pay or cause to be paid to or on behalf of Swain County (as hereinafter provided) as follows:
 - a. Eight million, eight hundred thousand dollars (\$8,800,000.00) within ten (10) business days after the "Obligation Date" which is one hundred twenty (120) calendar days after the execution of the 2010 Agreement by the last signatory hereto, as expressly authorized by Section 1007 of the "Department of Defense Appropriations Act, 2010";
 - b. Such additional sums, not to exceed thirty-nine million, two hundred thousand dollars (\$39,200,000.00), as are hereafter appropriated by Act of Congress for the

express purpose of effectuating the 2010 Agreement relating to the non-construction of the North Shore Road on or before December 31, 2020.

3. All payments to or on behalf of Swain County shall be held, managed and disbursed by the Treasurer of the State of North Carolina pursuant to the terms of Session Law 2008-13 enacted by the General Assembly of North Carolina and signed into law on 25 June 2008.

4. The full payment of such sums as have been and are hereafter appropriated by Act of Congress for the express purpose of effectuating the 2010 Agreement relating to the non-construction of the North Shore Road, as referenced in Paragraph 2, subject to the terms and conditions set forth herein, shall constitute full and complete settlement of all claims of Swain County, and all persons and entities claiming by, through or under Swain County against the United States of America, the Department of the Interior, North Carolina or TVA arising out of the 2010 Agreement and the 1943 Agreement. The parties agree that TVA has fulfilled its obligations and therefore has settled and disposed of all claims and demands which North Carolina and Swain County may have against TVA by reason of the flooding of North Carolina State Highway 288 and the construction, operation, and maintenance of Fontana Dam and Reservoir.

5. This Agreement is enforceable only by the parties. This Agreement is binding upon the parties, by and through their officials, agents, employees, and successors. No person or entity is intended to be a third party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and, accordingly, no person or entity may assert

any claim or right as a beneficiary or protected class under this Agreement in any civil, criminal, or administrative action.

6. This agreement may be executed in duplicate copies, each of which shall be considered an original.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by their proper representatives thereunto duly authorized as of the date first above set forth.

TENNESSEE VALLEY AUTHORITY

Tennessee Valley Authority Seal/Affixed

By: Anda A. Ray
Anda A. Ray
Tennessee Valley Authority

Date: 02-05-10

Attest: Charles L. Evans
Assistant Secretary

STATE OF NORTH CAROLINA

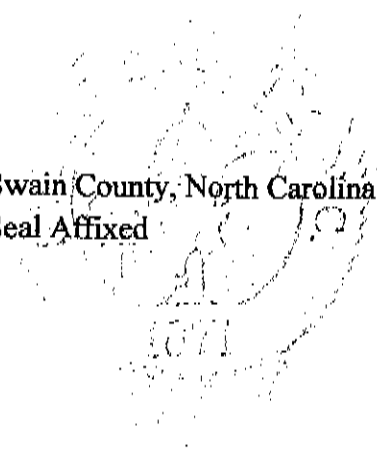
The Great Seal of the State of North Carolina Affixed

By: Ben Pearson
State of North Carolina

Date: 02-04-10

SWAIN COUNTY, NORTH CAROLINA
By the Board of Commissioners
For the County of Swain

Swain County, North Carolina
Seal Affixed



By: *Glen Jones*
Chairman

Date: 2-06-10

UNITED STATES DEPARTMENT OF
THE INTERIOR

By: *Ken Salazar*
Secretary

FEB 04 2010

Date: _____

Witnessed:

[Signature]

Date: 2/6/10

United States Representative
11th District, North Carolina

STATE OF NORTH CAROLINA
COUNTY OF SWAIN

I, Hester G. Sitton, Clerk of Superior Court for said County and State, certify that Glenn Jones personally came before me this day and acknowledged that he is the Chairman of the Swain County Board of Commissioners, North Carolina, a body politic and corporate, and that by authority duly given and as the act of the corporation the foregoing instrument was signed and its name, sealed with its corporate seal.

Witness my hand and official seal, this the 6th day of FEBRUARY, 2010.

Hester G. Sitton
Hester G. Sitton

