

New Hope Arm of Jordan Lake unless it adopts alternative permanent rules for notice and comment; and

**Section 7.** The City Manager, the City Attorney, and the Utilities Director are authorized to continue discussions to achieve, through other alternative means, a legislative or administrative action that achieves a similar level of water quality improvement so as to avoid further deterioration of Falls Lake as a public water supply until the permanent rules are adopted and effective; and

**Section 8.** The 2009 General Assembly should adopt a statute making the N.C. Department of Environment and Natural Resources liable to pay attorneys' fees and other litigation costs in any action brought to enforce the non-discretionary mandate that the N.C. Environmental Management Commission publish permanent rules to protect and restore Falls Lake for notice and comment by 1 January 2010.

**Adopted:** June 2, 2009

**Distribution:** Department Heads

**WHEERAS**, the designated regulatory agencies have failed to meet prior deadlines established by the General Assembly, the 2009 General Assembly should include in any legislation to extend the deadline a means for enforcement of the statutory deadlines.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RALEIGH:**

**Section 1.** The water quality of Falls Lake has deteriorated at a rapid and unanticipated rate in the five years between 2003 and 2008, the year the Lake was first found to be impaired;

**Section 2.** The current level of water quality deterioration adversely impacts the drinking water supply source of the seven municipal governments, and the more than 450,000 people who rely on Falls Lake as their exclusive water supply source;

**Section 3.** Since local governments have failed voluntarily to adopt and implement measures to address the water quality problems in the Upper Neuse River Basin, it is not an adequate minimum protection measure to rely on local government to adopt protection measures on a voluntary basis;

**Section 4.** The 2009 General Assembly should refuse to extend the prior deadlines unless in the legislation extending the deadline, the General Assembly establishes additional protection measures designed to prevent the further deterioration of the water quality of Falls Lake, which measures would require at least that the Upper New Hope Arm Jordan Lake new development rules be applied in the Falls Lake Watershed to prevent further deterioration of Falls Lake as a drinking water supply by;

1. Local governments in both the Falls Lake Basin and the New Hope Arm of Jordan Lake; and
2. Local governments with jurisdiction for planning and development in any other 33 U.S.C. §1313(d) impaired water bodies in the Upper Neuse Basin;

**Section 5.** In the alternative to **Section 4.** above, the 2009 General Assembly should include in any legislation extending the deadlines requirements and authorizations for the N.C. Environmental Management Commission to:

1. Adopt as temporary rules the permanent rules sent to notice and comment by the Commission to protect and restore Falls Lake with the temporary rules to remain in effect until the permanent rules are effective,
2. Publish for notice and comment permanent rules to restore the Falls Lake water quality to N.C. minimum standards to remove the impairment rating of Falls Lake by 1 January 2010; and
3. Issue for notice and comment as the permanent rules to protect and restore the Fall Lake rules equivalent to the legislatively approved rules for the Upper

**WHEREAS**, the N. C. Division of Water Quality documented exceedances of the chlorophyll-a water quality standard of 50% to 84% in the Upper Falls Lake, which exceedances are shown in the attached map;

**WHEREAS**, the Upper Neuse Basin Association adopted an extensive set of recommendations for use by local governments in voluntary actions to protect Falls Lake;

**WHEREAS**, the local governments in the Upper Neuse Basin have failed to adopt and implement the voluntary measures recommended and developed by the Upper Neuse Basin Association;

**WHEREAS**, the 2009 General Assembly is reviewing permanent rules of the N.C. Environmental Management Commission adopted in response to similar excess nutrient loading which is adversely impacting Jordan Lake, another local drinking water supply reservoir;

**WHEREAS**, the level of impairment in Upper Falls Lake is similar in magnitude to the Upper New Hope Arm portion of Jordan Lake;

**WHEREAS**, the N.C. Environmental Management Commission failed to identify nutrient control criteria necessary to prevent excess nutrient loading in drinking water supply reservoirs to protect public health and other designated uses by 1 January 2009;

**WHEREAS**, the N.C. Environmental Management Commission has not adopted or proposed a nutrient management strategy for Falls Lake and it will not meet again until after 1 July 2009;

**WHEREAS**, the first step in the process to adopt permanent rules required that the N.C. Environmental Management Commission send to notice and hearing its permanent rules to implement the nutrient management strategy for Falls Lake by at least 1 January 2009 and the Commission has not reviewed or discussed permanent rules to send to public notice;

**WHEREAS**, the water quality condition of Falls Lake is significantly degraded since the 2005 General Assembly first found a need to adopt legislation directing attention by its expert agency to address the mounting public health problems posed by increased nutrient loading into drinking water reservoirs;

**WHEREAS**, the time required to adopt and implement rule to stabilize or improve the declining water quality of Falls Lake is at least five years unless immediate measures are taken to expedite the process;

**WHEREAS**, the 2009 General Assembly is considering legislation to further delay the elapsed and unmet prior deadlines to adopt and implement water quality measures intended to stabilize and restore the impairments of Falls Lake; and

**RESOLUTION NO. (2009) - 914**

**A RESOLUTION SEEKING  
ACTION BY THE GENERAL ASSEMBLY  
TO PROTECT AND RESTORE FALLS LAKE**

**WHEREAS**, the 2005 General Assembly found that “excessive nutrients are a major source of impairment of water quality in drinking water supply reservoirs”;

**WHEREAS**, the 2005 General Assembly directed the N.C. Environmental Management Commission to “identify any nutrient control criteria necessary to prevent excess nutrient loading in each drinking water supply reservoir to protect public health and other designated uses by 1 January 2009”;

**WHEREAS**, the 2005 General Assembly found that Falls Lake required a more expedited schedule and directed the N.C. Environmental Management Commission to “develop a nutrient management strategy” for Falls Lake by 1 July 2008, later amended by the 2006 General Assembly so as to extend the deadline to 1 July 2009;

**WHEREAS**, the 2005 General Assembly found that the Falls Lake required a more expedited schedule and directed the N.C. Environmental Management Commission to “adopt permanent rules to implement the nutrient management strategies” for Falls Lake by 1 July 2008, later amended by the 2006 General Assembly so as to extend the deadline to 1 July 2009;

**WHEREAS**, the Upper Neuse Basin Association adopted a comprehensive, integrated watershed management plan for the Upper Neuse River Basin in partnership with the N.C. Division of Water Quality in 2003;

**WHEREAS**, the report by the Upper Neuse Basin Association concluded in 2003 that water quality in the Upper Neuse was generally good and that even with anticipated growth, “[e]xisting regulations are expected to be adequate to meet the drinking water targets for all lakes through 2025”;

**WHEREAS**, the N. C. Division of Water Quality declared Upper Falls Lake to be a section 303(d) impaired water body, pursuant to 33 U.S.C. §1313(d), due to excess nutrients and sedimentation, and the remainder of Falls Lake to be an impaired water body due to excess nutrients;