

Water - the fight for our economic future.

By Henry McMaster

As recently reported, North Carolina is taking actions which could leave parts of South Carolina high and dry, and Charlotte-based Duke Energy is helping them.

Their actions would cut off a significant portion of South Carolina's water supply and we are engaged in an unprecedented legal battle to stop them.

This fight is over our water, our jobs, and our economic future.

North Carolina's actions, if unchecked, could cripple the economy of a large part of South Carolina and cause hardships for businesses and individuals throughout the region.

Further, their actions would give a green light to Atlanta and other Georgia cities to begin taking water from the Savannah River, from the upstate to the lowcountry, all to our detriment.

In January 2007, North Carolina approved an "inter-basin" transfer permit which would have allowed two of its cities, Kannapolis and Concord, to divert ten million gallons of water per day from the Catawba River, water which now flows directly into South Carolina. We discovered that earlier permits allowed such permanent withdrawals totaling an additional 62 million gallons per day, for a grand total – to date – of at least 72 millions gallons per day. South Carolina had no knowledge of these earlier permits, and we only learned of the one for Kannapolis and Concord while it was in progress.

Daily water diversions that large could dramatically cut the water supply to York, Chester, Fairfield, Kershaw, Lancaster, Sumter and Richland counties, which contain the Catawba-Wateree basin, as well as impair the water supply further downstream along the Santee and Cooper Rivers. Future diversions would hurt us even more.

The impact? Industries that depend on access to water could be lost and economic development efforts crippled at a time when we have the third highest jobless rate in the country. Businesses of many kinds, as well as tourism, agriculture, and recreation would suffer.

We attempted to avoid litigation. We asked North Carolina to reconsider. Our state officials contacted theirs. We proposed a bi-state compact to work out cooperative ways to share the Catawba River water flow. For six months, they ignored us.

Given no alternative, we brought a federal lawsuit against North Carolina to stop them. But instead of filing the case here, we went directly to the United States Supreme Court, asking it to decide an equitable way to apportion water flow between the two states. The Supreme Court granted our request, agreeing to hear the case itself in its' original jurisdiction as a trial court, the 138<sup>th</sup> time in our nation's history it has done so.

By now, the dispute could possibly have been resolved, or nearly so. But the process was significantly delayed in the fall of 2007 when Duke Energy, a North Carolina based company, and the City of Charlotte filed petitions to intervene in support of North Carolina's petition. Duke Energy, which has many customers in South Carolina, also began working closely with North Carolina on legal strategy. Among other things, Duke is claiming legal title to any and all "excess" water in the river. Duke and Charlotte's intervention has complicated the case and greatly increased the cost of litigation to the taxpayers of South Carolina.

Fortunately, others have backed our position in this struggle. In the spring of 2009, the U.S. Solicitor General announced to the Supreme Court that the federal government was supporting South Carolina's efforts to have Duke and Charlotte removed from the case. In his legal brief, he argued correctly that the dispute should be limited to the two states.

Despite tight budgets, many of our state's business and political leaders have vigorously joined the effort. The Lake Wateree Homeowners Association and the state homebuilders and realtors have provided funds. Our General Assembly has shown leadership and determination by fully funding the case. South Carolina municipalities have contributed, too, including York and Fairfield counties, Lugoff and Great Falls.

Our case has yet to be heard on its merits in Washington. But in the meantime, Duke applied for a certification from the S.C. Department of Health and Environmental Control (DHEC) for the five dams it operates on the Catawba-Wateree River system in South Carolina. North Carolina had already granted certification for the six dams there.

In its request, Duke agreed to provide only 25% of water to South Carolina along the Catawba River, a flow which fails to protect our state from excessive water withdrawals and drought, in our calculations. Further, Duke's application contains erroneous and incomplete data, we contend. As mentioned, Duke's support in the U.S. Supreme Court of North Carolina's unilateral actions concerning South Carolina's water supply threatens our legal position in that case. Now, a South Carolina regulatory agency issuing Duke a certification on this faulty data, agreeing to a 25% share of water, could further jeopardize the case.

For that reason, I asked the DHEC board on July 9<sup>th</sup> to delay the certification so my office could work with DHEC to address our legal concerns. In response, the DHEC board simply denied Duke Energy's certification request entirely. This is a victory for common sense.

This case is of historic importance to South Carolina. The Catawba River is only one of many sources of interstate water we depend on. Lake Hartwell and the Savannah River are shared with Georgia. We also share the Pee Dee, Broad, French Broad and Lumber Rivers with North Carolina.

If North Carolina and Duke Energy are not stopped on the Catawba, we are in jeopardy elsewhere to our north. And if North Carolina can do it, so can Georgia. Residents of Lake Hartwell, who have suffered from drought and U. S. Army Corps of Engineer decisions, know well the devastating consequences that may ensue.

This is a fight for South Carolina rights. It's a fight for our prosperity and well- being. No issue is more important to our state's economic future.