

## **Catawba Riverkeeper Foundation**

The Catawba Riverkeeper Foundation supports most of the AIP and ranks it a “Four (b)”. CRF’s ability to sign the FA will depend on the major reservations below being fully addressed:

### Section 4

4.1.1, 4.13 The FWQIP is incomplete and inadequate in its present draft. Since it will not be complete until the 401 Water Quality Certification is conducted in 2007 at the earliest, the recommended FWQIP included in the Final Agreement must not be binding on any parties to the Agreement.

4.15, 4.16 The mitigation package is incomplete and unbalanced. It was not approved, accepted or negotiated in good faith by Federal Agencies or a majority of stakeholders. Duke Energy, NDENR and SCDNR negotiated the draft mitigation package without including very many stakeholders, SCDHEC or Federal Agencies. Neither SCDNR nor NCDENR has accepted or agreed to the mitigation package yet. More riparian corridor protection, buffer zones and water should be provided. Where mitigation is provided as riparian corridor easements, the terms for the conservation easements must be redrafted to protect water quality, allow public access and trails. Attachment Q is incomplete, inadequate and unacceptable in its present draft.

4.2 through 4.12 The flows are inadequate. The durability of the agreement is jeopardized because two federal agencies with conditioning authority have made it clear that the flows are inadequate. The flows must be increased to levels acceptable to federal agencies in order to avoid renegotiation, withdrawal from and/or termination of the agreement.

### Section 10

Most recreation enhancements are dependent or conditioned upon a third party. The FA must include some provision to ensure that the Duke Energy will provide all the recreation enhancements itemized in the AIP in the event that a third party fails to perform as expected. The Final Agreement must provide a guarantee from Duke Energy that the public will not lose access areas and recreation enhancements as the ability of third parties to pay for capital enhancements, operations and maintenance changes over the next 30-40 years.

10.1.22 Duke Energy must specify in the Final Agreement that the lands referenced in this section will be made available for purchase from Crescent Resources by the entities referenced in the AIP. Without Final Agreement language that the land will be transferred by its subsidiary to the entities named in the AIP, Duke is not making any commitment that prohibits Crescent from selling the land to some other buyer. It is only offering funding for land that might not be available within the 3 year time frame

specified in this section. Both the funding and the guarantee that the transaction will occur is needed in order for CRF to sign the Final Agreement.

## Section 11

Species protection plans have not been available to stakeholders for review. The plans must be made available and upon review found acceptable.

## Section 13

13.1.2 The WQCMP is incomplete and inadequate in its present draft. It must be completed, made available to stakeholder for review prior to completion of the FA and upon review, found acceptable.

13.1.4 Attachment N is incomplete and inadequate in its present draft. It must be completed, made available to stakeholders for review prior to completion of the FA and upon review, found acceptable.

13.2.1 The FWQIP is incomplete and inadequate in its present draft. Duke has indicated it plans to modify only 12 out of 38 hydro units to provide more than 2 ppm of dissolved oxygen. The current draft list of site specific enhancements will not be sufficient to meet water quality standards. The FWQIP must be completed with provisions that will meet water quality standards, made available for stakeholders for review prior to completion of the FA and upon review, found acceptable. The FA must be amended to allow stakeholders to support subsequent 401 conditions imposed.

## Section 14

FERC determines the length of license. No enhancements should be conditioned on obtaining a 50 year license.

14.5.3 Stakeholders must not be prohibited from advocating for flood relief in the future.

## Section 15

Attachment O is incomplete and inadequate in its present draft. It must be completed, made available to stakeholder for review prior to completion of the FA and upon review, found acceptable.

## Section 16

16.2.2.2 The Water quality certification process will not begin until 2007. It may add burdens, costs and risks not currently included in the AIP especially since Attachment N, O and/or the FWQIP are not complete yet. The final agreement must allow for those changes without triggering renegotiation of the settlement agreement. The final agreement must not prohibit stakeholders from fully engaging in the 401 water quality certification process. Stakeholders must not be barred from advocating for safe, healthy

water in the Catawba River by being prohibited from participating in meetings, public hearings, communicating with the media, communicating in any public forum, agreeing with comments filed by FERC or any agency and lobbying state or elected officials, etc. It is ludicrous to ask stakeholders to give up their free speech rights, right to assemble and speak to elected officials and right to support agency decisions that protect water quality and provide safe drinking water when the terms and conditions in the AIP and Final Agreement that relate to water quality are incomplete and will not even be made available for stakeholders to review prior to the signature date for the AIP and may not even be complete by the FA.

16.5.3 Stakeholders are allowed to support fish passage prescriptions. The FA needs to allow stakeholders to support any future flow provisions mandated by the Endangered Species Act and the 401 Water Quality Certification process.

#### Section 17

Section 17 is not available to stakeholders for review. Section 17 must provide clear and fair provisions for amending the agreement or withdrawing from it. It must be completed, made available for stakeholders for review prior to completion of the FA and upon review, found acceptable.