

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900

FACSIMILE:

(202) 326-7999

December 3, 2008

By E-Mail and First Class Mail

Special Master Kristin L. Myles
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, California 94105

**Re: *South Carolina v. North Carolina*, No. 138, Original:
South Carolina's Ninth Progress Report**

Dear Special Master Myles,

In advance of the telephonic hearing scheduled for Friday, December 5, 2008, we respectfully submit South Carolina's ninth progress report.

Discovery is ongoing. South Carolina made its second substantial document production on December 2, 2008. South Carolina is awaiting further document production from North Carolina, and working with North Carolina concerning search terms for certain electronic documents. In the last month, South Carolina received an initial production of documents from limited intervenor City of Charlotte; received responses and objections (but as yet no documents) from limited intervenor CRWSP, and is scheduled to meet and confer with CRWSP; and has continued to work with limited intervenor Duke to obtain documents that have not yet been produced. In response to the Rule 45 subpoenas, South Carolina has received an initial document production from the Cities of Concord and Kannapolis, Great Wolf Resorts, Inc., and the Town of Mooresville; and understands that the Town of Statesville is preparing its initial document production.

On November 17, 2008, on behalf of the party States and limited intervenors, South Carolina filed the Joint Proposed Case Management Plan for the Special Master's review and entry as an order to govern ongoing discovery. Pursuant to § 1 of the Joint Proposed CMP, South Carolina has served its document productions to North Carolina on all limited intervenors and also has provided North Carolina and limited intervenors copies of the document productions it has received pursuant to the Rule 45 subpoenas.

Finally, in the September 26, 2008 telephonic status conference, South Carolina committed by the December 5, 2008 conference to inform the Court of the geographic scope of the harms on which South Carolina intends to rely in proving its case, *see* Tr. 9/26/08, at 30-32, 51-52, and now provides that information here. South Carolina intends to limit its showing of harms to the Catawba River Basin to points north of the confluence of the Wateree River and the

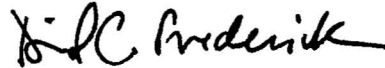
Special Master Kristin L. Myles

December 3, 2008

Page 2

Congaree River. South Carolina does not intend to rely on harms south of that point. This limitation will significantly assist the parties, limited intervenors, and the Court in more efficiently litigating the case. Because inquiry will not be necessary into harms south of the confluence of the Wateree River and the Congaree River, or into any effects caused by the Broad-Congaree River Basin as it joins the Catawba-Wateree River Basin, discovery and proof will be substantially streamlined.

Respectfully submitted,



David C. Frederick

*Special Counsel to the
State of South Carolina*

cc: Joint Proposed Case Management Plan, Appendix A, Service List