

C a t a w b a

SPRING / SUMMER 2010

# RIVERKEEPER®

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## PROTECTING YOUR WATER *WITHOUT COMPROMISE*

Litigation Update

Coal Ash Ponds  
Continue to Fester



GREAT BLUE HERON WITH RED EAR SUNFISH. LANDSFORD CANAL, SOUTH CAROLINA

# Chairman's Notes

By Rick Noble

How's your 2010 going? All in all 2010 has been and will be a very good year for CRF despite the challenges all nonprofit organizations face as they struggle to do more.....usually with less. Of course CRF needs your support and especially those contributions, but let's not belabor that obvious fact. Before I move on though I need to call your attention to CRF's recent decision to join/participate in EarthShare. Earthshare is a workplace giving program for environmental organizations . If your employer does not participate in Earthshare, please contact us for information about how to get your employer to participate in Earthshare.



The CRF Board will be meeting on April 30-May 1 for a 2 day strategic planning retreat to map out our plans for the next 3-5 years (an eternity in these times). We'll be talking about the vision, goals and objectives for Catawba Riverkeeper. Please let me know if you have any ideas or suggestions.

If you keep up with CRF via the electronic newsletter, this bi-annual print newsletter, occasional eblasts, and/or the website then you know that CRF is as active, actually more so, as ever and tackling ever more complicated, challenging issues and threats to the Catawba basin. I'm talking about abandoned construction sites with 20 foot craters eroded away, continued sanitary sewage overflows from communities with nearly empty bank accounts and coal ash ponds along the Catawba-Wateree that constantly release arsenic-laced water to our River and its drinking water reservoirs.

One final note of encouragement. Please stay connected to CRF. There are so many ways you can do that some of which I mentioned above. I would emphasize the numerous opportunities to volunteer, to attend educational events, to attend celebrations and benefit events, and to keep yourself energized with/by other CRF members. The opportunities are plentiful... you just have to take advantage of them.

## Youth Kayaking Program Expands as it Returns in June

By Terra Patterson

Last summer, the Catawba Riverkeeper launched a new program called the Youth Kayaking River Expedition. Designed for 11-18 year olds, the program provides youth with a hands-on opportunity to see how their drinking water is directly related to the water in the Catawba River system. Participants are taken on an eco-tour of the water in kayaks, and they are taught how pollution sources can affect the lake and the river and how they and their families can take actions to protect our waterways. They begin to understand the critical role the Catawba plays in their daily lives. The sessions are offered in a way that is both fun and highly educational. Our goal last year was to reach 200 youth with a message of water conservation and natural protection, and we exceeded that goal by 12.

Classes were offered to community members throughout last summer, as well as to the Boys & Girls Club of Greater Charlotte through a partnership with CRF. The program was so successful that we immediately began appealing to foundations in our area to secure funding to expand it for this summer. Thanks to funding provided by a grant for equipment from the Herbert and Anna Lutz Foundation in Chester, SC, we will be offering classes in Chester and York Counties this year in addition to working with the Boys & Girls Clubs in Mecklenburg and Gaston Counties to continue the program



from last summer. We will also be hiring an assistant to help run the program this year with funding secured from the Harris Upchurch Foundation. We are excited to have the opportunity to offer the classes to even more youth this summer.

The Youth Kayaking River Expedition program will resume in June, with trips being offered through the week and on Saturdays. Trips will last approximately 2 hours, and the cost is \$20 per participant with scholarships available. For more information or to register, please contact the CRF office at 704-679-9494 or email Tracy Tripp at [tracy@catawbariverkeeper.org](mailto:tracy@catawbariverkeeper.org)

# Litigation Update

By Rick Gaskins, Executive Director

Catawba Riverkeeper continues to use litigation as a last resort tool to protect water quality and assure sufficient water quality in the Catawba-Wateree basin. CRF is currently involved in three lawsuits: the Concord-Kannapolis inter-basin transfer litigation (the "Concord-Kannapolis IBT case"), the Cliffside mercury case ("Cliffside litigation"), and a trout stream buffer case (Hensley v. NC DENR). In addition, CRF continues to actively monitor the IBT litigation between South Carolina and North Carolina. There have been no major changes in the status of the Cliffside litigation since the last newsletter so this update will focus on the IBT and trout stream buffer cases.

## **IBT LITIGATION**

In 2006, Kannapolis and Concord applied for a permit to pipe water from the Catawba into the Rocky River basin. Catawba Riverkeeper led the effort to organize citizens and local municipalities in the Catawba basin to scrutinize the transfer of water out of the basin. In 2007, the Environmental Management Commission decided to allow Concord and Kannapolis to take up to 10 million gallons a day from the Catawba. Catawba Riverkeeper and a coalition of 18 Catawba municipalities appealed the decision.

In January 2010, Catawba Riverkeeper and most of the municipalities entered into a preliminary agreement to resolve the litigation. As part of the proposed settlement, Concord and Kannapolis agreed to use water from the Yadkin basin first, to implement the most progressive water conservation and reuse program in the state of North Carolina and to reduce withdrawals from the Catawba River during times of drought.

Concord and Kannapolis agreed to take no more than 3 million gallons a day from the Catawba until mid-2015, and only after they are withdrawing 5 million gallons per day from the Yadkin. Ultimately, Concord and Kannapolis can withdraw up to 10 million gallons per day from the Catawba under certain circumstances, but during droughts, depending upon the severity of the drought, Concord and Kannapolis must reduce their transfers from the Catawba from 6 million to 9 million gallons per day. Beyond flow restrictions, Concord and Kannapolis also agreed to a number of water conservation measures including, but not limited to, conservation friendly water rate structures, installing

high efficiency toilets and other environmentally friendly fixtures in city facilities and promoting water efficiency requirements and regulations for new developments. These measures could become a model for other communities. There are provisions built into the agreement to allow Catawba Riverkeeper to monitor compliance with the terms of the agreement and force compliance with the terms of the agreement, if necessary. The settlement addresses the primary concerns that led the Coalition and the Riverkeeper to appeal the IBT by providing additional protections beyond those included in the IBT permit.

"When coupled with the amendments that the North Carolina General Assembly made in the IBT law, this agreement will ensure the future protection of the Catawba River and its environment, while assuring adequate access to water by Catawba River basin residents and our neighbors," according to Catawba Riverkeeper David Merryman.

Of course, the water fight isn't totally over. South Carolina sued North Carolina over water rights to the river and that case is still pending before the U.S. Supreme Court. The Court recently issued a decision that denied Charlotte's request to intervene in the litigation and allowed Duke Energy to intervene in the litigation. Catawba Riverkeeper is evaluating whether it will ask to intervene in the Supreme Court case or continue to work with the parties behind the scenes.

## **TROUT STREAM BUFFER LITIGATION**

Catawba Riverkeeper recently filed a brief with the North Carolina Supreme Court in the case of Hensley v. North Carolina Department of Environment and Natural Resources. The case concerns whether it is appropriate to allow the construction of golf courses in the buffer area along trout streams. State law requires "25 foot undisturbed buffers" around trout streams in order to protect the water quality and keep the trout streams shaded. In the case before the court, the developer (Mountain Air Development Corporation) decided to build an additional nine holes on the golf course at a residential community near Burnsville, North Carolina (the "Project").

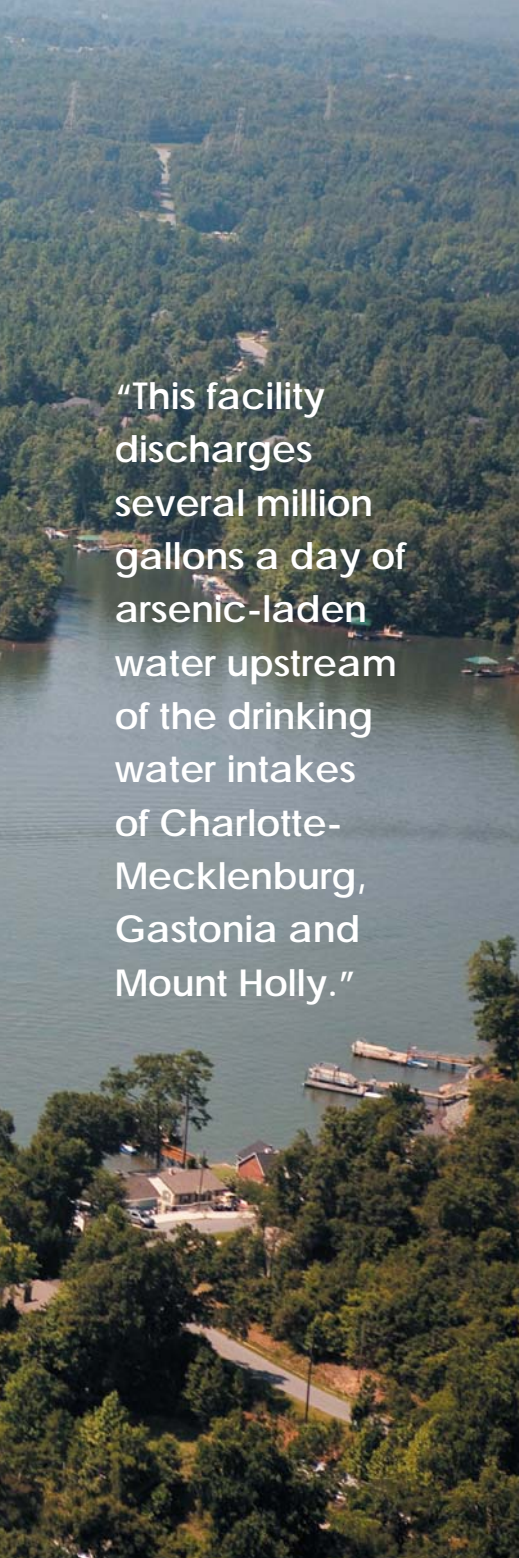
The Project involved the cutting of trees that shaded a trout stream and the burying of trout waters and buffer area to construct fairways over and adjacent to trout streams on the property. The court of appeals ruled in our favor, holding that DENR could not grant variances to construct golf courses and other development in and over trout streams and the required trout buffers. The developer appealed to the North Carolina Supreme Court, where the case is now pending.

An aerial photograph showing a large body of water, the Catawba-Wateree River, with a coal ash pond facility situated on a small island or peninsula. The facility consists of several red buildings and a large area of ash. The surrounding landscape is densely forested with green trees. The water is a murky, brownish-green color.

# Coal Ash Ponds Continue to Fester

by David Merryman, *Catawba Riverkeeper*

The banks of the Catawba-Wateree River are home to six coal ash ponds: Duke Energy owns four “High Hazard Potential” ash ponds on three drinking water reservoirs (Lakes Norman, Mountain Island and Wylie) and SCE&G owns two ash ponds at Wateree Station in Eastover, SC. These ash ponds represent a three-fold threat to our River: (1) catastrophic failure, (2) the discharge of unlimited concentrations of arsenic and other heavy metals to surface water, and (3) groundwater contamination. For these reasons, Catawba Riverkeeper remains active in our efforts to address the problems and potential problems at the six ash ponds along the Catawba-Wateree River.



“This facility discharges several million gallons a day of arsenic-laden water upstream of the drinking water intakes of Charlotte-Mecklenburg, Gastonia and Mount Holly.”

**The definition of coal ash waste as hazardous or not continues to raise national attention.** On December 31, 2009, the U.S. EPA missed its promised date for the release of a regulatory decision regarding whether or not to treat and dispose of coal ash as a hazardous waste. The White House Office of Management and Budget continues to deliberate the effects of a potential EPA regulation and establish a position. During this federal regulatory delay, Catawba Riverkeeper worked with the Southern Environmental Law Center to schedule a meeting with the White House OMB to discuss our concerns relating to the impacts of coal ash on the Catawba-Wateree River in the Carolinas. Subsequently, we met with the White House OMB on March 10, 2010 to request federal regulations protecting citizens and their waterways from the heavy metals and other constituents contained in coal ash waste. Several other regional Waterkeeper organizations joined Catawba Riverkeeper during this meeting to discuss the wider-reaching impacts of coal ash on other community waterways and drinking water supplies throughout the Southeast.

**While we await a federal decision,** slurries of water-soaked coal ash continue to fill ponds along the banks of the Catawba-Wateree River. North and South Carolina state regulatory agencies have done little to update regulations to protect citizens and our drinking water supplies for harmful contamination.

**In fact, SC DHEC has taken steps to do just the opposite.** SCE&G has requested to amend its surface water discharge permit to the Wateree River. If approved, DHEC will completely remove arsenic discharge concentration limits and only require quarterly monitoring for the arsenic discharging from their two coal ash ponds along the Wateree River. With nearly 200 community members present to oppose these proposed changes, Catawba Riverkeeper spoke out against these actions that would remove and weaken protection of the Wateree River, its fish and its sediments from arsenic contamination.

Changes in North Carolina have moved the responsibilities of coal ash dam inspection from the Utilities Commission to NC DENR. Summer 2009 inspection reports of the four “High Hazard Potential” ash ponds showed a satisfactory safety rating, bringing with it some assurance against catastrophic failure. Regarding surface water discharge, however, the permit for Duke Energy’s Riverbend Steam Station, home to two ash ponds on Mountain Island Lake, expired on February 28, 2010. This facility discharges several million gallons a day of arsenic-laden water upstream of the drinking water intakes of Charlotte-Mecklenburg, Gastonia and Mount Holly. Marshall Steam Station’s coal ash discharge into Lake Norman expires on April 30, 2010 and Allen Steam Station’s on May 31, 2010.

Currently, Catawba Riverkeeper is preparing to sample groundwater, surface water, sediments and fish tissue around the discharge of these coal ash ponds. **Please read your email from Catawba Riverkeeper for updates regarding our sampling dates and results.** Also, please keep watch for alerts from Catawba Riverkeeper on how to help in our efforts to raise awareness and update/upgrade the discharge permits from these coal ash ponds to our beautiful River.

Please contact the  
Catawba Riverkeeper,  
David Merryman,  
to help us continue  
protecting your water.

**704-679-9494**

david@catawbariverkeeper.org

# CRF Poised to Hire Upper Catawba Riverkeeper

The Catawba Riverkeeper is excited to announce that we will be expanding our staff to include an Upper Catawba Riverkeeper who will reside in and focus on the upper part of the basin. CRF launched an Upper Catawba Riverkeeper campaign in October to raise the matching funds needed to secure a \$25,000 grant from the Z. Smith Reynolds Foundation (ZSR). The campaign kick-off was held at board member John Wilson's "Peaky Top" family home in Blowing Rock, and in February the second event was held in Morganton at the home of Robert and Dawn Collett. Both events were extremely successful, and we have raised the necessary funds to allow us to receive the full grant from ZSR. However, we still need to raise approximately \$8,000 to cover all first year expenses and at least \$42,000 per year thereafter to sustain this important program. To do this, we are asking potential contributors to consider making a multi-year pledge of support.

The upper Catawba River basin faces many of the same environmental challenges as the lower basin, including sedimentation and storm water runoff from residential and commercial development, but the impacts of activities is often more severe due to steep slopes. Other issues in the upper basin include mining, logging, and ornamental shrub and tree nurseries. These and other issues contribute to the harm to fish and other wildlife, destruction of aquatic habitat, stream bank erosion, and of course the quality of our drinking and recreational water throughout the Catawba River basin. The Upper Catawba Riverkeeper will expand upon CRF's work with local residents to identify and prioritize critical water issues facing the upper basin. Hiring an Upper Catawba Riverkeeper will also benefit other parts of the basin by improving the quality of our headwaters and by allowing our Riverkeeper to spend more time addressing issues elsewhere.

**Our next fundraising event will be held in Hickory in early June. If you are interested in making a donation or pledge to support the Upper Catawba Riverkeeper program or would like more information, please contact Terra Patterson at 704.679.9494 or [terra@catawbariverkeeper.org](mailto:terra@catawbariverkeeper.org).**

## Tracy Tripp Joins CRF as Community Coordinator

*By Rick Gaskins, Executive Director*

Catawba Riverkeeper Foundation announces the addition of Tracy Tripp as the new Community Coordinator. Starting in March, Tracy brings a background of over 10 years of teaching Environmental Science and Marine Biology in the Public School System and developing Outdoor Adventure Programs for school club organizations. Tracy takes pride in understanding the value of our natural resources and conservation thereof. She believes that education is the strongest method of encouragement towards keeping the rivers clean and inhabitable for all.

Her guiding principle is to actively engage others in dialogue linked with providing outdoor experiences and imagery that will inspire individuals to take proactive actions resulting in the betterment of self, community and the natural environment. To these ends, Tracy is excited about using her skills and passion for marketing, outdoor recreation and multi-media images to raise awareness of our Catawba River basin needs. If you are interested in any of the programs here or in making a gift of support, contact Tracy at 704-679-9494 or at [tracy@catawbariverkeeper.org](mailto:tracy@catawbariverkeeper.org).



# Member Profile: Randy Miller

By Tracy Tripp

Randy doesn't do it for the recognition... he is a Midwestern born and raised, "dyed in the wool" fisherman. He loves to catch and release fish. Lot's of them.

He also takes photographs, and the combination of these two passions has made him an invaluable contributor to CRF. He is a trained Covekeeper and Muddy Water Watch participant. He is also certified to inspect and keep track of sedimentation in the lake around construction sites.

Randy and his wife now live on Mountain Island Lake, but have spent previous years in Indiana where he worked in television as a cameraman, news photographer and in film and video production. They moved to Los Angeles, CA where he was a freelance director of photography and cinematography projects.

Relaxing when time permits on Mountain Island Lake, Randy is a preeminent supporter of the Catawba River basin and all that it encompasses. His time and talent, supply us with images and a watchful eye for things both threatening and beautiful. Please visit [www.catawbariverkeeper.org](http://www.catawbariverkeeper.org) to see more of Randy's fine art photography and photojournal documentation of Covekeeper and Muddy Water Watch activities.



## Cover Photo

by Ken Teeter

Ken is an aspiring photographer whose primary focus is capturing the extraordinary moments within our natural world. His goal is to share those moments with others and to promote conservation efforts. He is a member of the Carolinas Nature Photography Association as well as the Catawba Riverkeeper Foundation. Ken supports the CRF with significant gifts of his time and talents, often getting up at 3am to travel to find just the perfect light as the sun rises over the river or lakes of the basin. Ken's vision helps convey the Riverkeepers work in a meaningful and impactful way.



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*As a contributor to CRF, you provide the support needed to make a lasting difference in the future of the Catawba River. Membership shows your commitment to a cleaner, healthier river and your desire to be a part of the only environmental advocacy organization dedicated to the Catawba River.*

Giving Period September 1 2009 through February 28 2010

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