

NORTH CAROLINA COURT OF APPEALS

CITY OF ASHEVILLE,
a municipal corporation,

Plaintiff,

v.

STATE OF NORTH CAROLINA
And the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE COUNTY,

Defendants.

From Wake County
No. 13 CVS 6691

FILED
2014 NOV 20 P 12:54
CLERK COURT OF APPEALS
OF NORTH CAROLINA

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STATEMENT OF ORGANIZATION OF TRIAL COURT

Defendant State of North Carolina appeals from the 9 June 2014 Memorandum of Decision and Order Re: Summary Judgment granting plaintiff City of Asheville's motion for partial summary judgment, rendered following a special session of Wake County Superior Court on 23 May 2014, the Honorable Howard E. Manning, Jr., Judge Presiding, and as clarified by that Consent Order entered on 3 July 2014. Defendant State of North Carolina filed and served written notice of appeal on 8 July 2014.

The record on appeal was filed in the Court of Appeals on November 20 2014 and was docketed on November 20 2014.

STATEMENT OF JURISDICTION

This action was commenced by the filing of a verified complaint and issuance of summons on 14 May 2013.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-_____

FILED
2013 MAY 14 PM 12:21
WAKE COUNTY, N.C.

CITY OF ASHEVILLE,
a municipal corporation,

Plaintiff,

v.

STATE OF NORTH CAROLINA and
the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE
COUNTY, NORTH CAROLINA

Defendants.

VERIFIED COMPLAINT

Plaintiff City of Asheville ("Asheville" or the "City"), seeking a declaratory judgment pursuant to N.C. Gen. Stat. §1-253 *et seq.* and injunctive relief pursuant to North Carolina Rule of Civil Procedure 65, hereby alleges and says:

PARTIES

1. Asheville is a municipal corporation organized and existing under the laws of North Carolina and located in Buncombe County, North Carolina. Asheville is a body politic and corporate with capacity to sue as provided in N.C. Gen. Stat. §160A-11.

2. The State of North Carolina is a defendant (the "State").

3. The Metropolitan Sewerage District of Buncombe County, North Carolina (the "Buncombe MSD") is a body politic and corporate organized and existing under the provisions of Article 5 of Chapter 162A of the General Statutes of North Carolina and is located and operates in Buncombe County, North Carolina. The Buncombe MSD is joined as a party to this

action for the sole and limited purpose of bringing before the Court all entities who may be affected by Asheville's prayer for temporary, preliminary, and permanent injunctive relief under North Carolina Rule of Civil Procedure 65.

NATURE OF THE CASE

4. On or about May 13, 2013, HB 488, Session Law 2013-50 (the "Water Act" or "HB 488") became law, having been adopted by both houses of the North Carolina General Assembly, duly ratified, and not vetoed by the Governor as provided in Article II, Section 22(7) of the Constitution of North Carolina. Section 1 of the Water Act transfers all the assets and debts of the water supply and distribution system owned by Asheville, without its consent, over its strenuous objection, and contrary to the wishes of its citizens as expressed by referendum overwhelmingly opposing any sale or lease of the system that Asheville has owned, enlarged, improved, maintained, and operated for over 100 years. A true and complete copy of the Water Act is attached to this Verified Complaint as Exhibit A.

5. In this action Asheville seeks a declaration that Section 1 of the Water Act, which applies to Asheville alone among the many water supply systems in North Carolina, is a constitutionally prohibited local or special enactment and otherwise violates certain provisions of the North Carolina and United States Constitutions by depriving Asheville alone of its property for a purpose other than a constitutionally permitted purpose, and by impairing Asheville's contracts with the holders of outstanding bonds secured by the revenues of its water supply and distribution system. In the alternative, Asheville seeks to compel payment by the State of just compensation for the taking of Asheville's water system.

JURISDICTION AND VENUE

6. Pursuant to N.C. Gen. Stat. §1-253 *et seq.*, Asheville seeks a declaratory judgment as to the constitutionality of certain enactments of the General Assembly. As alleged below, a present and real controversy exists between the parties as to the constitutionality of such enactments. In addition, Asheville seeks to restrain and enjoin the application and operation of such unconstitutional enactments, which would otherwise apply to the water supply and distribution system owned and operated by Asheville. Accordingly, this action is properly brought in the Superior Court Division of the General Court of Justice pursuant to N.C. Gen. Stat. §§1-253 and 7A-245(a).

7. Jurisdiction over Asheville's alternative claim for an award of just compensation for the taking by defendant State of its water supply and distribution system is proper in this Court under *Corum v. Board of Governors*, 330 N.C. 761, 413 S.E.2d 276 (1992).

8. Venue of Asheville's First, Second, Third, and Fourth Claims is proper in this county under N.C. Gen. Stat. §1-82 in that the seat of government of the State of North Carolina lies in Wake County.

9. In the event Asheville is denied relief on its First, Second, Third, and Fourth Claims, then venue of Asheville's Fifth and Sixth Claims is proper in Buncombe County under N.C. Gen. Stat. §1-76, and Asheville moves under N.C. Gen. Stat. §1-83 to transfer venue of those claims to the Superior Court of Buncombe County.

FACTS COMMON TO ALL CLAIMS

10. Pursuant to N.C. Gen. Stat. §160A-11, §160A-311(2), and §160A-312, along with Chapter 399 of the 1933 Public Local Laws and N.C. Session Laws 2005-140 and 2005-139 (generally referred to as "Sullivan I," "Sullivan II," and "Sullivan III," respectively), Asheville currently owns, operates, manages, and maintains a water supply and distribution system for the supply, treatment, and distribution of water for drinking, cooking, and cleaning purposes, and for the operation of sanitary disposal systems for individuals and entities within its corporate limits and for some individuals and entities outside its corporate limits. The water supply and distribution system consists of the tangible system assets described below, and also includes approximately 147 trained and certified employees, numerous licenses and permits required by state and federal law, wholesale water supply contracts with other municipal entities, operating contracts for the supply of goods and services, and revenue accounts of more than \$2,218,000.00 held for the benefit of outstanding public bonds. The system also includes a number of intangible assets that are essential to its proper functioning but are not transferred to the New MWSD by the Water Act. These include an experienced, licensed, and skilled workforce, well-developed operating procedures and policies, and a strong and experienced management structure (collectively, including all aspects of the system described in this paragraph, the "Asheville Water System"). The Water Act breaks the links between the physical assets of the system and these intangible assets and thereby destroys the integrity of the Asheville Water System.

11. The Asheville Water System includes a protected watershed area consisting of over 20,000 acres of mountainous forestlands in Buncombe County. It is one of the largest municipally owned watersheds in the United States. Within the watershed area are two

impoundments, each of which supports a water treatment plant and which together are capable of treating and supplying a total of 36 million gallons of water per day. Asheville owns a third water treatment plant located at the confluence of the French Broad and Mills Rivers in Henderson County with a daily treatment capacity of 7.5 million gallons of water. The system also includes an additional 29 treated water storage reservoirs, some 1,661 miles of transmission and distribution lines for raw and treated water, and not less than 40 pump stations. In addition, various items of personal property owned by the City are used in the operation and maintenance of the Asheville Water System. The system currently serves approximately 125,000 residents (plus certain non-residents), a number significant in the Water Act.

12. The watershed area owned by the Asheville as part of the Asheville Water System contains several non-navigable streams, including Left Fork Bee Tree Creek, Wolfe Branch, Bell Branch, Right Fork Bee Tree Creek, Sugar Fork, Shute Branch, Long Branch, Saltrock Branch, North Fork Swannanoa River, Glassmine Branch, Stony Fork, Dry Branch, Little Fork, Big Branch, and Morgan Branch.

13. The acquisition, construction, expansion, upgrade, and replacement of the capital assets of the Asheville Water System have been financed from a combination of the operating revenues of the system, from grants and loans made to Asheville by federal and state governments, from general tax revenues of the City, and from the proceeds of general obligation and revenue bonds issued by and in the name of Asheville. Additionally, some distribution lines and other facilities (including 21 identified pump stations and related storage tank facilities) have been constructed by other governmental entities, such as Buncombe County, and by private entities and thereafter conveyed to Asheville.

14. On October 29, 1981, acting pursuant to Article 20 of Chapter 160A of the General Statutes, Asheville and Buncombe County entered into a comprehensive interlocal agreement relating to a number of matters, including allocation of law enforcement costs for the Buncombe County Sheriff's Department; transfer and operation of parks and recreation facilities and specified community recreation facilities; allocation of costs for the Asheville Civic Center; and funding of the Chamber of Commerce, rescue squad, nutrition program, and other outside agencies (the "1981 Interlocal Agreement"). Among other things, the 1981 Interlocal Agreement established a joint agency to administer certain aspects of the water supply and distribution systems then owned and operated by Asheville and by Buncombe County. After 1981, this agreement was amended and restated several times, with the last restatement and amendment dated August 13, 1996.

15. On May 27, 2004, as permitted by and in accord with the terms of the 1981 Interlocal Agreement, Asheville gave written notice of termination of the agreement to Buncombe County as a result of differences among the parties with respect to certain policies relating to the maintenance, operation, and management of the Asheville Water System. As a result of such termination (and subsequent conveyance of a limited number of system assets to the City from Buncombe County and water distribution entities therein), Asheville has complete legal ownership and control of all watershed lands, reservoirs, water treatment plants, storage facilities, and the various transmission and distribution lines comprising the physical assets of the Asheville Water System.

16. The Buncombe MSD was organized in 1962 for the purpose of constructing and operating facilities for the treatment and disposal of the sewerage generated within the jurisdiction of the political subdivisions comprising the district. Asheville is one of the sixteen

political subdivisions included in the district and it currently appoints three members to the governing board of the Buncombe MSD. The district does not now and has not since its inception provided water supply, water treatment, or water distribution services to the jurisdictions that are included in the district. Several of those jurisdictions, including the Town of Weaverville, the Town of Black Mountain, the Town of Biltmore Forest, and the Woodfin Water District, along with Asheville, have and will continue to have their own municipally owned and operated water supply and/or water distribution systems.

17. On May 1, 2013, the North Carolina General Assembly enacted the Water Act. The bill was ratified on May 2, 2013 and presented to the Governor on May 3, 2013. Section 1 of the Water Act purports to immediately and involuntarily transfer all assets and rights of operation of the Asheville Water System to a newly formed metropolitan water and sewerage district, which will operate in portions of Buncombe and Henderson counties (the "New MWSD"). Until the members of the New MWSD are appointed, the board of directors of the existing Buncombe MSD will function as the board of the New MWSD.

18. Metropolitan Water and Sewerage Districts, such as the New MWSD is to be, are a form of political subdivision not previously existing in North Carolina; they are created for the first time by Section 2 of the Water Act. Section 2 of the Water Act permits any two or more local governments to form a metropolitan water and sewerage district by agreement among them and for the parties to contribute to such districts their existing water supply, treatment, and distribution systems and their existing sewerage collection and treatment systems. However, Asheville alone among the local governments in North Carolina—indeed, alone among the local governments operating water systems in Buncombe and Henderson Counties—has no option or choice in the matter. Instead, the New MWSD is created by operation of the Water Act itself,

and the assets and debts of the Asheville Water System are transferred to the New MWSD by operation of law, without Asheville's consent.

19. Specifically, Section 1.(a) of the Water Act provides:

All assets, real and personal, tangible and intangible, and all outstanding debts of any public water system meeting all of the following criteria are by operation of law transferred to the metropolitan sewerage district operating in the county where the public water system is located, to be operated as a Metropolitan Water and Sewerage district:

- (1) The public water system is owned and operated by a municipality located in a county where a metropolitan sewerage district is operating.
- (2) The public water system has not been issued a certificate for an interbasin transfer.
- (3) The public water system serves a population greater than 120,000 people, according to the data submitted pursuant to G.S. 143-355(l).

Though drafted in general terms, the language of Section 1(a) in fact applies only to Asheville among all the water supply and distribution systems in North Carolina. The Asheville Water System is the public water system that meets the specific requirements of Section 1(a) of the Water Act. Indeed, as the legislative history of Section 1 makes abundantly clear, that section was never intended to apply to any municipality other than Asheville. Great care was taken in the drafting to ensure that no water system other than Asheville's would be subject to Section 1 of the Water Act. The intent to treat Asheville uniquely is further made clear by Section 162A-85.2, which prescribes the method for creation of a MWSD under the new Article 5A. Section 162A-85.2(a) provides: "Except as provided by operation of law" Since Asheville is the only entity forced into an MWSD by operation of law, it is excluded from the provision of Section 2 of the Water Act regarding *voluntary* creation of an MWSD.

20. The Water Act does not purport to change the existing uses or purposes of the assets of the Asheville Water System. The Water Act merely transfers assets of the Asheville Water System to a newly created entity, thus taking assets, both real and personal, owned by Asheville.

21. The Water Act contains no provision to compensate Asheville for the value of the assets purportedly transferred by the Water Act or for the fair value of the Asheville Water System as a going concern.

22. Section 6 of the Water Act provides that the Act shall become effective on May 15, 2013. It contains no transition provision. The Water Act contains no provisions related to the transfer of employees or the certifications which they hold as a requirement for operating the water system for the City. The Asheville employees who currently manage and operate the Asheville Water System *will not by operation of law become employees of the New MWSD*—indeed, they could not be compelled to do so by decree of the General Assembly. The Water Act contains no provision for the transfer to the new MWSD of existing contractual rights and obligations between Asheville and suppliers and customers of the system (including wholesale water-supply contracts with municipalities such as the Towns of Black Mountain and Weaverville). Upon information and belief, neither the Buncombe MSD nor the New MWSD has or will have the present ability to operate the Asheville Water System, lacking not only employees to manage and operate the system and contracts to acquire essential equipment and supplies for the system, but also such basic administrative capabilities as the reading of meters, billing of customers, and recordkeeping relating to the financial and operational management of the system.

23. The delivery of water of a quality that meets all state and federal requirements is vital to the health and safety of the users of Asheville's water, including Asheville's residents, and to the City's economic life. The State Division of Water Resources imposes strict health and safety regulations on the treatment of drinking water by any public water system, including rigorous certification requirements for treatment plant operators pursuant to N.C. Gen. Stat. §90A-29. The City has for many years trained such personnel, and currently employs an experienced staff of certified treatment plant operators. These personnel would no longer be affiliated with the water system once it is taken from the City. Any interruption or disruption of service to the users of Asheville's water, including the City's residents and businesses, its hospitals and other health care facilities, its schools and colleges, or its fire protection system, during the abrupt and unplanned transfer of the Asheville Water System's assets would effectively cause a state of emergency and result in irreparable harm to Asheville, its citizens, and other users of its water, which cannot be remedied by monetary damages.

24. To finance certain capital expenditures related to the Asheville Water System, Asheville issued pursuant to Article 5 of Chapter 159 of the General Statutes certain revenue bonds under a General Trust Indenture dated December 1, 2005 (the "Water Bonds"). The current outstanding principal balance on the Water Bonds is \$65,570,000. The bonds are secured on a parity basis from the net revenues of the Asheville Water System. Asheville is the issuer and obligor on the Water Bonds, which currently carry a credit rating of Aa2 from Moody's and AA from Standard & Poor's.

25. The Water Act, in requiring the immediate transfer of the assets of the Asheville Water System, will cause Asheville to breach numerous provisions of the General Trust Indenture.

26. Section 6.11(a) of the General Trust Indenture provides in pertinent part:

The Water System may be sold, mortgaged, leased or otherwise disposed of, in whole or in part, or the obligations of the City with respect to all of the Outstanding Bonds assigned, to another political subdivision or public agency in the State authorized by law to own and operate such system only (i) if there is filed with the Trustee (a) a report prepared by a Financial Consultant showing that there is no material adverse effect on the ability of the Water System to produce Revenues to satisfy the rate covenant contained in Section 6.6, (b) written evidence from any rating agency then rating the Bonds that such disposition will not adversely affect its rating then in effect on the Bonds, and (c) an opinion of Bond Counsel that such disposition will not adversely affect the federal or state income tax treatment of interest on the Bonds and (ii) for a disposition in whole, if such political subdivision or public agency assumes all of the obligations of the City under this Indenture.

27. Because the Water Act is self-executing and the transfer of assets required by Section 1 will occur on May 15, 2013 by operation of law, it will be impossible for Asheville to meet the requirements of Section 6.11(a) prior to the transfer to the New MWSD, resulting in a breach of the terms of the General Trust Indenture.

28. By eliminating Asheville's ownership of the assets and authority necessary to own, manage, and maintain the Asheville Water System, the Water Act will result in a breach of Section 6.9 of the General Indenture, which requires Asheville to "maintain or cause to be maintained the Water System in good condition and will continuously operate or cause to be operated the same in an efficient manner and at a reasonable cost as a municipal revenue-producing enterprise," and Section 6.18, which requires Asheville to "cause the Consulting Engineer to (i) inspect the Water System at least once annually and (ii) within 30 days after such inspection, submit to the City a report" concerning the maintenance and operation of the Asheville Water System.

29. The Water Act will also cause Asheville to breach Section 6.10 of the General Indenture, which requires Asheville to "carry or cause to be carried such insurance with a

reputable carrier or carriers, such as is maintained or carried by similar municipal systems as the Water System.” Following the transfer required by Section 1 of the Water Act, Asheville will no longer have an insurable interest and will be unable to maintain the insurance required by Section 6.10, resulting in yet another breach. (There is no provision for a newly created MWSD with no prior existence and no operating history to immediately obtain insurance; the contracting and underwriting of comprehensive and effective insurance policies for a system this complex by a new entity would undoubtedly take weeks if not months under the best of circumstances.)

30. Upon a default in performance of any contractual provision of the General Indenture that is not cured within thirty days of notice by the Trustee, the Trustee may declare the Bonds to be immediately due and payable, take possession of funds established under the General Indenture, initiate an action to require Asheville to carry out its obligations under the General Indenture, and take whatever action at law or in equity as may be necessary to enforce its rights against Asheville.

31. Such breaches and resulting consequences could result in an impairment of Asheville’s credit ratings and create great uncertainty as to Asheville’s ability to issue future debt for other capital expenditures required by the City.

CLAIMS FOR RELIEF

FIRST CLAIM: CONSTITUTIONALITY OF THE ACT

Article II, Sections 24(1)(a) and 24(1)(e) of the Constitution of North Carolina

32. Asheville incorporates by reference the allegations of paragraphs 1 through 31 of this Verified Complaint as if fully repeated here.

33. Article II, Section 24(1)(a) of the Constitution of North Carolina provides that “[t]he General Assembly shall not enact any local, private, or special act or resolution: (a) [r]elating to health, sanitation, and the abatement of nuisances.”

34. The treatment and supply of water for drinking, cooking, and cleaning purposes and for the operation of sanitary disposal systems are matters relating to health and sanitation within the meaning of Article II, Section 24(1)(a) of the Constitution of North Carolina.

35. Section 1 of the Water Act is a local act relating to the treatment and supply of water for drinking, cooking, and cleaning purposes, and for the operation of sanitary disposal systems applicable only to Asheville and its water system.

36. Article II, Section 24(1)(e) of the Constitution of North Carolina provides that “[t]he General Assembly shall not enact any local, private, or special act or resolution: (e) [r]elating to non-navigable streams.”

37. Section 1 of the Water Act purports to transfer to another entity the assets of the Asheville Water System, including a number of non-navigable streams that are integral components of the water supply network and which are located on the thousands of acres of real property constituting an irreplaceable part of the Asheville Water System.

38. Section 1 of the Water Act is a local act relating to non-navigable streams and is applicable only to Asheville and its Asheville Water System.

39. For the reasons set out herein and pursuant to Article II, Section 24(3) of the North Carolina Constitution, Section 1 of the Water Act is void and may not be enforced against Asheville.

SECOND CLAIM: CONSTITUTIONALITY OF THE ACT
Article I, Section 19 of the Constitution of North Carolina

40. Asheville incorporates by reference the allegations of paragraphs 1 through 39 of this Verified Complaint as if fully repeated here.

41. In its proprietary capacity as owner and operator of the Asheville Water System, Asheville is a person entitled to the protections of Article I, Section 19 of the Constitution of North Carolina.

42. The Water Act contains only minimal legislative findings as to the need for or the purposes behind the legislation. None of those findings in any way differentiates the Asheville Water System from other similarly situated municipal or county water systems in North Carolina. The cursory findings do not provide any rational basis for subjecting Asheville to the mandatory and compulsory provisions of Section 1 of the Act rather than the permissive and voluntary provisions of Section 2.

43. The cursory legislative findings of the Water Act recite and rely upon the purported benefits to be derived from regionalization of water supply systems across North Carolina's communities, but those findings do not address, among other things: (i) why regionalization should be a compulsory process only when existing water supply systems are located in counties where an existing Metropolitan Sewerage District is located, of which there are currently only three in North Carolina, as contrasted with counties where countywide sewer systems are operating under the governance of cities, counties, or other types of local authorities other than Metropolitan Sewerage Districts; (ii) why regionalization should be compulsory in the case of water supply systems located in counties having an existing Metropolitan *Sewerage* District but not in counties having an existing Metropolitan *Water* District created pursuant to Article 4 of Chapter 162A of the General Statutes; (iii) why regionalization is appropriate for some municipal water systems located in a county with a Metropolitan Sewerage District, such as Asheville's, but not for other municipal water systems located in the very same county, such as, illustratively, that of Black Mountain, Woodfin, and Weaverville; and (iv) why municipally

owned water systems that do *not* hold interbasin transfer certificates require compulsory regionalization whereas systems that *do* draw water from one river basin for use in another river basin do not warrant such regionalization.

44. The Water Act is completely devoid of any rational basis for subjecting the Asheville Water System to treatment different from that provided by the Act for all other publicly owned water systems in North Carolina, and fails to make a reasonable classification as required by controlling legal authority, providing no legal or other justification for this treatment of Asheville's water system only.

45. Section 1 of the Water Act is discriminatory, arbitrary, and capricious, without any rational basis because, among other reasons: (i) there will be no change in the use of the assets; (ii) the change in ownership will not result in or require any higher quality of water than that currently being provided; (iii) the Water Act does not extend protection of the public health or safety beyond that currently existing; and (iv) the Water Act does not require the use of the revenue generated from the operation of the water supply and delivery system to be used solely for the maintenance, upkeep, construction, and replacement of assets of such system, as the law now requires of the City. Thus, there is no discernible legitimate objective relating to the protection of the public health, morals, order, safety, or general welfare.

46. The Water Act's means and methods of implementing the transfer of assets are unreasonable because, among other reasons, the Water Act and its means and methods: (i) transfer the assets of the Asheville Water System to an entity that has never operated a public water supply and delivery system; (ii) transfer the assets to an entity that does not employ individuals qualified to operate a public water system, which systems are subject to extensive regulatory requirements for the protection of the public health and safety; (iii) provide no

funding for the newly formed entity to operate the extensive water supply and distribution system involuntarily transferred; (iv) interfere with a proprietary function of a local government, functions which are, by precedent "left to the sound discretion of the municipal authorities;" (v) conflict with General Statutes of long standing that expressly grant municipalities the right and authority to own and operate certain enterprises, including water supply and distribution systems (and does not repeal such authority of the City); and (vi) fail to provide any reasonable method for compensation to the City for the assets transferred.

47. Thus, for all of these reasons, the Water Act is contrary to the law of the land in violation of Article I, Section 19 of the Constitution of North Carolina.

THIRD CLAIM: CONSTITUTIONALITY OF THE ACT
Article I, Sections 19 and 35 of the Constitution of North Carolina

48. Asheville incorporates by reference the allegations of paragraphs 1 through 47 of this Verified Complaint as if fully repeated here.

49. In the operation of the Asheville Water System pursuant to Article 14 of Chapter 160A of the N.C General Statutes, Asheville acts in a proprietary capacity. In that capacity Asheville is entitled to the protections of Article I, Sections 19 and 35 of the North Carolina Constitution to the same extent as any private individual or corporation engaged in a similar enterprise.

50. Section 1 of the Water Act by operation of law transfers the assets and debts of the Asheville Water System to the New MWSD against the wishes of the system's owner, and thus would constitute an uncompensated taking of the water system assets by the State.

51. The transfer of assets and debts effectuated by Section 1 of the Water Act results in no change in the existing uses or purposes currently served by the Asheville Water System. It

is nothing more than an edict by the State that property now owned by Asheville shall belong to another entity.

52. In consequence of the matters alleged in paragraphs 48 through 51, Section 1 of the Water Act is not a valid exercise of the sovereign power to take or condemn property for a public use, since the property is already used for precisely the same purposes as are contemplated by the enactment that constitutes the taking. Section 1 of the Water Act therefore violates Article I, Sections 19 and 35 of the North Carolina Constitution.

FOURTH CLAIM: CONSTITUTIONALITY OF THE ACT
Article I, Section 10 of the United States Constitution

53. Asheville incorporates by reference the allegations of paragraphs 1 through 31 of this Verified Complaint as if fully repeated here.

54. Article I, Section 10 of the United States Constitution provides: "No state shall . . . pass any . . . Law impairing the Obligation of Contracts"

55. Asheville has issued the Water Bonds to pay certain capital expenses associated with the construction and operation of the Asheville Water System. Asheville has undertaken valid and binding contractual obligations with respect to the purchasers of the bonds.

56. Pursuant to Section 6.11(a) of the General Trust Indenture quoted above, Asheville is required to satisfy certain requirements prior to selling or otherwise disposing of the Asheville Water System. Unless the effectiveness of the Water Act is enjoined, the Act will cause an imminent breach of Section 6.11(a) of the General Trust Indenture because it will be impossible for Asheville to comply with the requirements of Section 6.11(a) by the effective date of the Water Act.

57. The Water Act substantially impairs the contractual relationship between Asheville and the holders of the Water Bonds in that it will cause a replacement of Asheville as

the obligor on such bonds in violation of the provisions of Section 6.11(a) of the General Trust Indenture. As a result of Asheville's default under the General Indenture, the Trustee may declare the Bonds to be immediately due and payable, take possession of funds established under the General Indenture, initiate legal action to require Asheville to carry out its obligations under the General Indenture, and take whatever action at law or in equity necessary to enforce its rights against Asheville.

58. Such impairment is not justified by any significant or legitimate public purpose.

59. Accordingly, the Water Act violates Article I, Section 10 of the United States Constitution.

FIFTH CLAIM: VIOLATION OF N.C. GEN. STAT. §159-93

60. Asheville incorporates by reference the allegations of paragraphs 1 through 31 and 53 through 59 of this Verified Complaint as if fully repeated here.

61. By the enactment of N.C. Gen. Stat. §159-93, the State covenanted and agreed with the holders of revenue bonds issued or to be issued by Asheville, including the bonds issued pursuant to the General Trust Indenture, that the State would take no action to impair the ability of Asheville to repay such bonds in accord with their terms or to cause Asheville to be unable to perform the terms of its agreements relating to such bonds, including the terms of the General Trust Indenture.

62. Asheville is a direct and intended beneficiary of the State's undertaking and agreement set forth in N.C. Gen. Stat. §159-93.

63. The outstanding Water Bonds are revenue bonds within the meaning and scope of N.C. Gen. Stat. §159-93 and are entitled to the protection of the State's undertaking and agreement set forth in that statute.

64. As set forth in this Verified Complaint, the Water Act will cause Asheville to be in violation of the terms of the General Trust Indenture governing the Water Bonds and potentially cause such Water Bonds to be in default.

65. Asheville currently has the right, but not the obligation, to draw upon its general tax revenues to repay the principal of and interest on the Water Bonds in the event the revenues from the Asheville Water System should be insufficient for such purposes. Although the Water Act purports to transfer the obligation to repay the Water Bonds from Asheville to the New MWSD, the New MWSD will have no ability to repay except to the extent of system revenues (assuming it can implement a collection system on a timely basis). By the express terms of the Water Act, the New MWSD will have no power of taxation and no ability to supplement the revenues from the Asheville Water System should such system revenues be insufficient to repay the bonds. (At numerous points in the history of the water system, Asheville relied on its general taxing authority to issue municipal bonds for capital expansions. The Act does not provide, however, for how capital funds might be obtained on an immediate basis in the event of an emergency, such as one that requires unanticipated major repairs to a treatment plant or that necessitates immediate action to preserve structural integrity of a dam or reservoir.) This detrimental reduction in the Asheville Water System's authority and alteration to bondholder expectations after their purchase of these bonds is a plain and unwarranted interference with an existing contractual relationship and constitutes a violation of the State's undertaking and agreement as set forth in N.C. Gen. Stat. §159-93.

SIXTH (ALTERNATIVE) CLAIM: JUST COMPENSATION
Article I, Sections 19 and 35 of the Constitution of North Carolina

66. Asheville incorporates by reference the allegations of paragraphs 1 through 31 of this Verified Complaint as if fully repeated here.

67. This claim is pleaded in the alternative to Asheville's First, Second, Third, and Fourth Claims.

68. In the operation of its water supply and distribution system, Asheville acts in a proprietary capacity exclusively for the benefit of its citizens and other users of the water supply. In such capacity Asheville is entitled to the protections of Article I, Sections 19 and 35 to the same extent as any private individual or corporation engaged in a similar enterprise.

69. Section 1 of the Water Act by operation of law transfers the assets of the Asheville Water System to the New MWSD against the wishes of the system's owner and thus constitutes a taking of the water system assets by the State.

70. The assets of the Asheville Water System are extremely valuable. Current audited financial statements assess its Net Asset Value to be greater than \$100,000,000.00; a recent study concludes that its replacement cost exceeds \$1,000,000,000.00.

71. Absent injunctive relief, the Water Act would deprive Asheville of the ownership of the Asheville Water System without any payment of compensation.

72. Pursuant to Article I, Sections 19 and 35 of the Constitution of North Carolina, Asheville demands payment by the State of just compensation for the value of the Asheville Water System in an amount to be determined at trial.

REQUEST FOR INJUNCTIVE RELIEF

73. Asheville incorporates by reference the allegations of paragraphs 1 through 59 of this Verified Complaint as if fully repeated here.

74. Enforcement of Section 1 of the Water Act threatens to cause imminent, irreparable harm to Asheville. Water and sewer services risk being disrupted or lost entirely upon the Water Act becoming effective, due to the New MWSD's lack of certified operating

personnel qualified to operate treatment plants supplying drinking water to the public under N.C. Gen. Stat. §90A-29. The citizens of Asheville face being without proper and sufficient water and sewer service until the Buncombe MSD (or its successor entity the New MWSD) is able to acquire or develop the capabilities necessary to manage and operate the Asheville Water System. The Water Act is also likely to irreparably harm Asheville's creditworthiness and its future borrowing capacity as a result of one or more potentially irreversible credit rating downgrades that result from defaults under the General Trust Indenture.

75. Asheville has no adequate remedy at law; monetary damages are incapable of protecting Asheville and its citizens from the loss of an operational public water system or from the future implications of a financial default or credit downgrade arising from breach of the General Trust Indenture.

76. Thus, in the absence of immediate action to preserve the status quo ante, imminent and irreparable harm will be inflicted upon Asheville and its citizens.

77. For the foregoing reasons, Asheville requests that this Court enter a temporary restraining order, preliminary injunction, and permanent injunction enjoining the effectiveness, operation, and enforcement of Section 1 of the Act, prohibiting the Buncombe MSD and/or the New MWSD from assuming any authority or control over the assets of the Asheville Water System and its operation, and directing that Asheville may continue to own, manage and operate the Asheville Water System.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff City of Asheville prays as follows:

1. That the Court enter a Declaratory Judgment, pursuant to N.C. Gen. Stat. §1-253 *et seq.*, that Section 1 of the Water Act is unconstitutional as an invalid local act pursuant to Article II, Section 24(1)(a) of the Constitution of North Carolina;

2. That the Court enter a Declaratory Judgment, pursuant to N.C. Gen. Stat. §1-253 *et seq.*, that Section 1 of the Water Act is unconstitutional as a violation Article I, Sections 19 and 35 of the Constitution of North Carolina;

3. That the Court enter a Declaratory Judgment, pursuant to N.C. Gen. Stat. §1-253 *et seq.*, that Section 1 of the Water Act is unconstitutional as a violation of Article I, Section 19 of the United States Constitution in that it impairs Asheville's contract with bondholders;

4. That the Court enter a temporary restraining order, preliminary injunction, and permanent injunction enjoining operation and enforcement of Section 1 of the Water Act, forbidding the Buncombe MSD and/or the New MWSD from assuming any authority or control over the Asheville Water System, and directing that Asheville may continue to own, manage, and operate the Asheville Water System;

5. In the alternative to the relief sought in paragraphs 1 through 4 of this prayer for relief and in the event the Court judges that Asheville is entitled to no relief on its First, Second, Third, and Fourth Claims:

- a. that venue of Asheville's Fifth and Sixth Claims be transferred to the Superior Court of Buncombe County for purposes of trial;
- b. that following trial of Asheville's Fifth Claim, the Court award Asheville damages in an amount sufficient to indemnify Asheville from any liability or

loss it may incur on account of any breach or violation by Asheville of the terms of the General Trust Indenture or the Water Bonds;

- c. that following trial of Asheville's Sixth Claim, the Court award Asheville just compensation for the value of the Asheville Water System in an amount to be determined by the jury at trial;

6. That the Court award to Plaintiff its cost, expenses, and fees, including reasonable attorneys' fees, pursuant to applicable statutory and common law, including N.C. Gen. Stat. §6-19.1 and §6-20; and

7. That the Court grant such other and further relief as the Court deems just and proper.

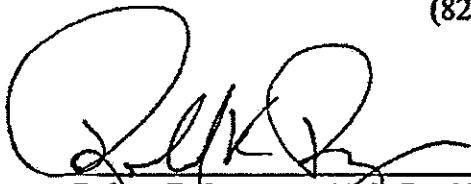
DEMAND FOR JURY TRIAL

Asheville demands trial by jury on all issues as to which right of jury trial exists.

Respectfully submitted this 14th day of May, 2013.



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COUNSEL FOR PLAINTIFF

STATE OF NORTH CAROLINA

VERIFICATION

COUNTY OF BUNCOMBE

The undersigned, being first duly sworn, deposes and says that he is City Manager of the City of Asheville, the Plaintiff herein; that he has read the foregoing Verified Complaint and to his personal knowledge the matters and statements contained therein are true, except as to those matters or statements made upon information and belief, and as to those he believes them to be true.


Gary W. Jackson
City Manager

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

SWORN TO AND SUBSCRIBED before me this 13 day of May, 2013.



Notary Public Magdalen Burleson
My Commission Expires:
5-6-2016

EXHIBIT A

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-50
HOUSE BILL 488

AN ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN PUBLIC WATER AND SEWER SYSTEMS TO A METROPOLITAN WATER AND SEWERAGE DISTRICT.

Whereas, regional water and sewer systems provide reliable, cost-effective, high-quality water and sewer services to a wide range of residential and institutional customers; and

Whereas, in an effort to ensure that the citizens and businesses of North Carolina are provided with the highest quality services, the State recognizes the value of regional solutions for public water and sewer for large public systems; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) All assets, real and personal, tangible and intangible, and all outstanding debts of any public water system meeting all of the following criteria are by operation of law transferred to the metropolitan sewerage district operating in the county where the public water system is located, to be operated as a Metropolitan Water and Sewerage District:

- (1) The public water system is owned and operated by a municipality located in a county where a metropolitan sewerage district is operating.
- (2) The public water system has not been issued a certificate for an interbasin transfer.
- (3) The public water system serves a population greater than 120,000 people, according to data submitted pursuant to G.S. 143-355(l).

SECTION 1.(b) All assets, real and personal, tangible and intangible, and all outstanding debts of any public sewer system operated by a subdivision of the State and body politic that is interconnected with the metropolitan sewerage district receiving assets pursuant to Section 1(a) of this act are by operation of law transferred to that metropolitan sewerage district to be operated as a Metropolitan Water and Sewerage District.

SECTION 1.(c) All assets, real and personal, tangible and intangible, and all outstanding debts of any public sewer system operated by the metropolitan sewerage district receiving assets pursuant to Sections 1(a) and 1(b) of this act, are by operation of law transferred to, and be operated as, a Metropolitan Water and Sewerage District, as established pursuant to this act.

SECTION 1.(d) Until appointments are made to the Metropolitan Water and Sewerage District established pursuant to this act, the district board of the metropolitan sewerage district in the county in which the public water system, the assets of which are transferred pursuant to Section 1(a) of this act, is located shall function as the district board of the Metropolitan Water and Sewerage District. All members of the metropolitan sewerage district shall continue to serve on the district board of the Metropolitan Water and Sewerage District until the governing body with appointing authority appoints or replaces that individual on the district board of the Metropolitan Water and Sewerage District.

SECTION 1.(e) All necessary permits for operation shall also be transferred to the Metropolitan Water and Sewerage District established pursuant to this act to ensure that no current and paid customer loses services due to the regionalization of water and sewer services required by this act. The new Metropolitan Water and Sewerage District shall immediately begin assessing all permits and the process for transferring the permit or applying for any



needed permits. All State agencies shall assist the new Metropolitan Water and Sewerage District in obtaining any needed permits in that entity's name.

SECTION 1.(f) For purposes of this section, the transfer of all outstanding debts by operation of law shall make the Metropolitan Water and Sewer District liable for all debts attached to and related to the assets transferred under this section, and the Metropolitan Water and Sewer District shall indemnify and hold harmless the grantor entity for any outstanding debts transferred under this section.

SECTION 2. Chapter 162A of the General Statutes is amended by adding a new Article to read:

"Article 5A.

"Metropolitan Water and Sewerage Districts.

"§ 162A-85.1. Definitions.

(a) Definitions. – As used in this Article, the following definitions shall apply:

- (1) Board of commissioners. – The duly elected board of commissioners of the county or counties in which a metropolitan water and sewerage district shall be created under the provisions of this Article.
- (2) City council or Council. – The duly elected city council of any municipality.
- (3) Cost. – As defined in G.S. 162A-65.
- (4) District. – A metropolitan water and sewerage district created under the provisions of this Article.
- (5) District board. – A water and sewerage district board established under the provisions of this Article.
- (6) General obligation bonds. – As defined in G.S. 162A-65.
- (7) Governing body. – As defined in G.S. 162A-32.
- (8) Person. – As defined in G.S. 162A-65.
- (9) Political subdivision. – As defined in G.S. 162A-65.
- (10) Revenue bonds. – Any bonds the principal of and the interest on which are payable solely from revenues of a water and sewerage system or systems.
- (11) Revenues. – All moneys received by a district from, in connection with, or as a result of its ownership or operation of a water and sewerage system, including moneys received from the United States of America, or any agency thereof, pursuant to an agreement with the district board pertaining to the water and sewerage system, if deemed advisable by the district board.
- (12) Sewage. – As defined in G.S. 162A-65.
- (13) Sewage disposal system. – As defined in G.S. 162A-65.
- (14) Sewerage system. – As defined in G.S. 162A-65.
- (15) Sewers. – As defined in G.S. 162A-65.
- (16) Water distribution system. – As defined in G.S. 162A-32.
- (17) Water system. – As defined in G.S. 162A-32.
- (18) Water treatment or purification plant. – As defined in G.S. 162A-32.

(b) Description of Boundaries. – Whenever this Article requires the boundaries of an area be described, it shall be sufficient if the boundaries are described in a manner which conveys an understanding of the location of the land and may be by any of the following:

- (1) By reference to a clearly identified map recorded in the appropriate register of deeds office.
- (2) By metes and bounds.
- (3) By general description referring to natural boundaries, boundaries of political subdivisions, or boundaries of particular tracts or parcels of land.
- (4) Any combination of the foregoing.

"§ 162A-85.2. Creation.

(a) Except as provided by operation of law, the governing bodies of two or more political subdivisions may establish a metropolitan water and sewerage district if all of the political subdivisions adopt a resolution setting forth all of the following:

- (1) The names of the appointees to the district board.
- (2) The date on which the district board shall be established.
- (3) The boundaries of the district board.

(b) Prior to the adoption of a resolution under subsection (a) of this section, the governing body shall hold at least two public hearings on the matter, held at least 30 days apart.

after publication of the notices of public hearing in a newspaper of general circulation, published at least 10 days before each public hearing.

"§ 162A-85.3. District board.

(a) Appointment. – The district board shall consist of members appointed as follows:

- (1) Two individuals by the governing body of each county served, wholly or in part, by the district.
- (2) One individual by the governing body of each municipality served by the district located in any county served by the district with a population greater than 200,000.
- (3) Two individuals by the governing body of any municipality served by the district with a population greater than 75,000, in addition to any appointments under subdivision (2) of this subsection.
- (4) One individual by the governing body of any county served by the district with a population greater than 200,000, in addition to any appointments under subdivision (1) of this subsection.
- (5) One individual by the governing body of a county in which a watershed serving the district board is located in a municipality not served by the district, upon recommendation of that municipality. The municipality shall provide to the governing body of the county a list of three names within 30 days of written request by the county, from which the county must select an appointee if the names are provided within 30 days of written request.
- (6) One individual by the governing body of any elected water and sewer district wholly contained within the boundaries of the district.

(b) Terms; Reappointment. – Terms shall be for three years. A member shall serve until a successor has been duly appointed and qualified.

(c) Vacancies; Removal. – If a vacancy shall occur on a district board, the governing body which appointed the vacating member shall appoint a new member who shall serve for the remainder of the unexpired term. Any member of a district board may be removed by the governing board that appointed that member.

(d) Oath of Office. – Each member of the district board, before entering upon the duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of the office. A record of each such oath shall be filed with the clerk or clerks of the governing boards appointing the members.

(e) Chair; Officers. – The district board shall elect one of its members as chairman and another as vice-chairman. The district board shall appoint a secretary and a treasurer who may, but need not, be members of the district board. The offices of secretary and treasurer may be combined. The district board may also appoint an assistant secretary and an assistant treasurer or, if the office is combined, an assistant secretary-treasurer who may, but need not, be members of the district board. The terms of office of the chairman, vice-chairman, secretary, treasurer, assistant secretary, and assistant treasurer shall be as provided in the bylaws of the district board.

(f) Meetings; Quorum. – The district board shall meet regularly at such places and dates as are determined by the district board. All meetings shall comply with Article 33C of Chapter 143 of the General Statutes. A majority of the members of the district board shall constitute a quorum, and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member, including the chairman, shall be entitled to vote on any question.

(g) Compensation. – The members of the district board may receive compensation in an amount to be determined by the district board but not to exceed that compensation paid to members of Occupational Licensing Boards as provided in G.S. 93B-5(a) for each meeting of the district board attended and for attendance at each regularly scheduled committee meeting of the district board. The members of the district board may also be reimbursed the amount of actual expenses incurred by that member in the performance of that member's duties.

"§ 162A-85.4. Expansion of district board after creation.

(a) After creation pursuant to G.S. 162A-85.2, the district board may expand to include other political subdivisions if the district board and the political subdivision adopt identical resolutions indicating the political subdivision will become a participant in the district board.

(b) Prior to adopting the resolution under subsection (a) of this section, the district board and the political subdivision shall hold at least two public hearings on the matter, held at least 30 days apart, after publication of the notices of public hearing in a newspaper of general circulation, published at least 10 days before each public hearing.

(c) Upon adoption of the identical resolutions, the political subdivision shall appoint a district member in accordance with G.S. 162A-85.3(a), if that political subdivision is entitled to an appointment under that section.

"§ 162A-85.5. Powers generally.

(a) Each district shall be deemed to be a public body and body politic and corporate exercising public and essential governmental functions to provide for the preservation and promotion of the public health and welfare, and each district is hereby authorized and empowered to do all of the following:

- (1) To exercise any power of a Metropolitan Water District under G.S. 162A-36, except subdivision (9) of that section.
- (2) To exercise any power of a Metropolitan Sewer District under G.S. 162A-69, except subdivision (9) of that section.
- (3) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

(b) Each district shall keep its accounts on the basis of a fiscal year commencing on the first day of July and ending on the 30th day of June of the following year.

"§ 162A-85.7. Bonds and notes authorized.

A metropolitan water and sewerage district shall have power from time to time to issue bonds and notes under the Local Government Finance Act.

"§ 162A-85.13. Rates and charges for services.

(a) The district board may fix, and may revise from time to time, rents, rates, fees, and other charges for the use of and for the services furnished or to be furnished by any water system or sewerage system. Such rents, rates, fees, and charges may not apply differing treatment within and outside the corporate limits of any city or county within the jurisdiction of the district board. Such rents, rates, fees, and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision.

(b) Any such rents, rates, fees, and charges pledged to the payment of revenue bonds of the district shall be fixed and revised so that the revenues of the water system or sewerage system, together with any other available funds, shall be sufficient at all times to pay the cost of maintaining, repairing, and operating the water system or sewerage system, the revenues of which are pledged to the payment of such revenue bonds, including reserves for such purposes, and to pay the interest on and the principal of such revenue bonds as the same shall become due and payable and to provide reserves therefor. If any such rents, rates, fees, and charges are pledged to the payment of any general obligation bonds issued under this Article, such rents, rates, fees, and charges shall be fixed and revised so as to comply with the requirements of such pledge.

(c) The district board may provide methods for collection of such rents, rates, fees, and charges and measures for enforcement of collection thereof, including penalties and the denial or discontinuance of service.

"§ 162A-85.17. Rights-of-way and easements.

A right-of-way or easement in, along, or across any State highway system, road, or street, and along or across any city or town street within a district is hereby granted to a district in case such right-of-way is found by the district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the Department of Transportation, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body.

"§ 162A-85.19. Authority of governing bodies of political subdivisions.

(a) The governing body of any political subdivision is hereby authorized and empowered to do any of the following:

- (1) Subject to the approval of the Local Government Commission regarding the disposition of any outstanding debt related to the water system or sewer system, or both, to transfer jurisdiction over and to lease, lend, sell, grant, or convey to a district, upon such terms and conditions as the governing body of such political subdivision may agree upon with the district board, the whole or any part of any existing water system or systems or sewerage system or systems or such real or personal property as may be necessary or useful in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance, or operation of any water system or sewerage system by the district, including public roads and other property already devoted to public use.
 - (2) To make and enter into contracts or agreements with a district, upon such terms and conditions and for such periods as such governing body and the district board may determine for any of the following:
 - a. For the collection, treatment, or disposal of sewage.
 - b. For the supply of raw or treated water on a regular retail or wholesale basis.
 - c. For the supply of raw or treated water on a standby wholesale basis.
 - d. For the construction of jointly financed facilities whose title shall be vested in the district.
 - e. For the collecting by such political subdivision or by the district of rents, rates, fees, or charges for the services and facilities provided to or for such political subdivision or its inhabitants by any water system or sewerage system and for the enforcement of collection of such rents, rates, fees, and charges.
 - f. For the imposition of penalties, including the shutting off of the supply of water furnished by any water system owned or operated by such political subdivision, in the event that the owner, tenant, or occupant of any premises utilizing such water shall fail to pay any such rents, rates, fees, or charges.
 - (3) To fix and revise from time to time, rents, rates, fees, and other charges for the services furnished or to be furnished by a water system or sewerage system under any contract between the district and such political subdivision and to pledge all or any part of the proceeds of such rents, rates, fees, and charges to the payment of any obligation of such political subdivision to the district under such contract.
 - (4) To pay any obligation of such political subdivision to the district under such contract from any available funds of the political subdivision and to levy and collect a tax ad valorem for the making of any such payment.
 - (5) In its discretion or if required by law, to submit to its qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the district under the provisions of this Article.
 - (b) Any such election upon a contract or agreement called under subsection (a) of this section may, at the discretion of the governing body, be called and held under the election laws applicable to the issuance of bonds by such political subdivision.
- "§ 162A-85.21. Submission of preliminary plans to planning groups; cooperation with planning agencies.
- (a) Prior to the time final plans are made for the extension of any water system or sewerage system, the district board shall present preliminary plans for such improvement to the county or municipal governing board for their consideration if such facility is to be located within the jurisdiction of any such county or municipality. The district board shall make every effort to cooperate with the county or municipality in the location and construction of any new proposed facility authorized under this Article.
 - (b) Any district board created under the authority of this Article is hereby directed, wherever possible, to coordinate its plans for the construction of any new water system or sewerage system improvements with the overall plans for the development of the planning area if such district is located wholly or in part within a county or municipal planning area.

(c) This section shall not apply to renovations, repairs, or regular maintenance of water systems or sewer systems.

"§ 162A-85.25. Adoption and enforcement of ordinances.

(a) A district shall have the same power as a city under G.S. 160A-175 to assess civil fines and penalties for violation of its ordinances and may secure injunctions to further ensure compliance with its ordinances as provided by this section.

(b) An ordinance may provide that its violation shall subject the offender to a civil penalty of not more than one thousand dollars (\$1,000) to be recovered by the district in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance. Any person assessed a civil penalty by the district shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the district within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the district may specify, the district may institute a civil action in the General Court of Justice of the county in which the violation occurred or, in the discretion of the district, in the General Court of Justice of the county in which the person assessed has his or its principal place of business, to recover the amount of the assessment. The validity of the district's action may be appealed directly to General Court of Justice in the county in which the violation occurred or may be raised at any time in the action to recover the assessment. Neither failure to contest the district's action directly nor failure to raise the issue of validity in the action to recover an assessment precludes the other.

(c) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the district for equitable relief that there is an adequate remedy at law.

(d) Subject to the express terms of an ordinance, a district ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(e) An ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense.

"§ 162A-85.29. No privatization.

The district board may not in any way privatize the provision of water or sewer to the customers of the district unless related to administrative matters only."

SECTION 3. G.S. 159-44(4) reads as rewritten:

"(4) "Unit," "unit of local government," or "local government" means counties; cities, towns, and incorporated villages; consolidated city-counties, as defined by G.S. 160B-2(1); sanitary districts; mosquito control districts; hospital districts; merged school administrative units described in G.S. 115C-513; metropolitan sewerage districts; metropolitan water districts; metropolitan water and sewerage districts; county water and sewer districts; regional public transportation authorities; and special airport districts."

SECTION 4. G.S. 159-48(e) reads as rewritten:

"(e) Each sanitary district, mosquito control district, hospital district, merged school administrative unit described in G.S. 115C-513; metropolitan sewerage district, metropolitan water district, metropolitan water and sewerage district, county water and sewer district, regional public transportation authority and special airport district is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the purposes for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses."

SECTION 5. G.S. 159-81(1) reads as rewritten:

"(1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, metropolitan water and sewerage district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, special district created under Article 43 of Chapter 105 of the General Statutes, regional public transportation authority, regional transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, a joint agency authorized by

agreement between two cities to operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike Authority described in Article 6H of Chapter 136 of the General Statutes and transferred to the Department of Transportation pursuant to G.S. 136-89.182(b), but not any other forms of State or local government."

SECTION 5.5. Article 5 of Chapter 162A of the General Statutes is amended by adding a new section to read:

"§ 162A-66.5. Approval of all political subdivisions required.

Prior to the adoption of a resolution under G.S. 162A-66 on or after April 1, 2013, the Environmental Management Commission shall receive a resolution supporting the establishment of a district board from (i) the board of commissioners of the county or counties lying wholly or partly within the boundaries of the proposed district and (ii) from the governing board of each political subdivision in the county or counties lying wholly or partly within the boundaries of the proposed district. If the Environmental Management Commission does not receive a resolution from each of those political subdivisions, the Environmental Management Commission may not adopt the resolution to create the district board."

SECTION 6. This act becomes effective May 15, 2013, and the Metropolitan Water and Sewerage District in Section 1 of this act shall be created by operation of law.

In the General Assembly read three times and ratified this the 2nd day of May, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Paul Stam
Speaker Pro Tempore of the House of Representatives

This bill having been presented to the Governor for signature on the 3rd day of May, 2013 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 14th day of May, 2013.

s/ Karen Jenkins
Enrolling Clerk

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-_____

FILED
2013 MAY 14 PM 12:26
WAKE COUNTY, C.S.C.
BY _____

CITY OF ASHEVILLE,)
a municipal corporation,)
)
Plaintiff,)
)
v.)
)
STATE OF NORTH CAROLINA and)
the METROPOLITAN SEWERAGE)
DISTRICT OF BUNCOMBE COUNTY,)
NORTH CAROLINA)
)
Defendants.)
_____)

**PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Pursuant to North Carolina Rule of Civil Procedure 65, Plaintiff City of Asheville ("Asheville") moves this Court for entry of a temporary restraining order and preliminary injunction to enjoin the operation and enforcement of HB488, Session Law 2013-50, which will be effective May 15, 2013 (the "Water Act"). In support of this Motion, Asheville respectfully shows the Court as follows:

1. On or about May 13, 2013, HB488, Session Law 2013-50 (the "Water Act" or "HB488") became law, having been adopted by both houses of the North Carolina General Assembly, duly ratified, and not vetoed by the Governor as provided in Article II, Section 22(7) of the Constitution of North Carolina. Effective May 15, 2013, Section 1 of the Water Act transfers all the assets and debts of the water supply and distribution system owned by Asheville, without its consent, over its strenuous objection, and contrary to the wishes of its citizens as

expressed by referendum overwhelmingly opposing any sale or lease of the system that Asheville has owned, enlarged, improved, maintained, and operated for over 100 years (the "Asheville Water System").

2. Section 1 of the Water Act is a constitutionally prohibited local or special enactment and otherwise violates certain provisions of the North Carolina and United States Constitutions by depriving Asheville of its property other than for a constitutionally permitted purpose and by impairing Asheville's contracts with the holders of outstanding bonds secured by the revenues of its public water supply and distribution system.

3. Asheville will suffer immediate and irreparable harm if the Act takes effect as scheduled on May 15, 2013 before its claims in this action can be adjudicated. Enforcement of Section 1 of the Water Act threatens to cause imminent, irreparable harm to Asheville and its citizens, including the possible disruption or loss of water services until the Buncombe MSD, or its successor entity the new Metropolitan Water and Sewerage District, can acquire or develop the necessary capabilities to manage and operate the Asheville Water System. In addition, the Water Act may or will cause Asheville to default on its currently outstanding revenue bonds associated with the Water System, which may additionally result in irreparable damage to Asheville's creditworthiness and its ability to issue future debt needed for its capital spending programs.

4. Asheville has no adequate remedy at law.

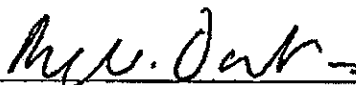
5. The balance of equities favors granting injunctive relief to maintain the status quo pending litigation regarding the constitutionality of the Water Act.

6. Asheville is entitled to an order enjoining the operation and enforcement of Section 1 of the Water Act, forbidding the Buncombe MSD from assuming any authority or

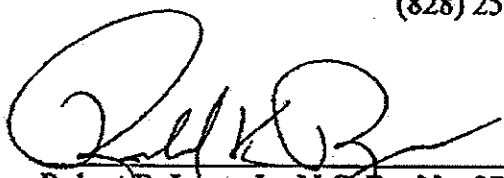
control over the Asheville Water System, and directing that Asheville may continue to own, manage and operate the Asheville Water System pending this litigation.

WHEREFORE, Asheville requests entry of a Temporary Restraining Order and a Preliminary Injunction enjoining the operation and enforcement of Section 1 of the Water Act, forbidding the Buncombe MSD from assuming any authority or control over the Asheville Water System, directing that Asheville may continue to own, manage and operate the Asheville Water System pending this litigation, and granting Asheville such other and further relief as shall be just and proper.

Respectfully submitted this 14th day of May, 2013.



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COUNSEL FOR PLAINTIFF

FILED

2013 MAY 14 PM 5:10
STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY, C.S.C. SUPERIOR COURT DIVISION
COUNTY OF WAKE 13-CVS- 006691

CITY OF ASHEVILLE,
a municipal corporation,

Plaintiff,

v.

STATE OF NORTH CAROLINA and
the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE COUNTY,
NORTH CAROLINA

Defendants.

TEMPORARY RESTRAINING ORDER

1. This matter came before the Court at 3:30 p.m. on May 14, 2013, upon application by Plaintiff City of Asheville ("Asheville") pursuant to North Carolina Rule of Civil Procedure 65(b) for entry of a temporary restraining order. Upon such application the Court considered the Verified Complaint, the Affidavit of Ronald Shoaf, and the arguments and submissions of counsel in attendance at the hearing. Counsel of record for Asheville was present at the hearing. Counsel advised the Court that they had given notice of the commencement of this action and of the application for a temporary restraining order to counsel for defendant Metropolitan Sewerage District of Buncombe County ("Buncombe MSD") and were authorized to state that Defendant Buncombe MSD does not oppose the entry of this temporary restraining order. Counsel also advised the Court that they had given notice of the commencement of this

action and of the application for a temporary restraining order to counsel for defendant State of North Carolina (the "State"). Counsel of record for the State was present at the hearing.

2. On or about May 13, 2013, HB 488, Session Law 2013-50 (the "Water Act" or "HB 488") became law, having been adopted by both houses of the North Carolina General Assembly, duly ratified, and not vetoed by the Governor as provided in Article II, Section 22(7) of the Constitution of North Carolina. Effective May 15, 2013, Section 1 of the Water Act transfers all the assets and debts of the water supply and distribution system owned by Asheville, without its consent, over its strenuous objection, and contrary to the wishes of its citizens as expressed by referendum overwhelmingly opposing any sale or lease of the system, which Asheville has owned, enlarged, improved, maintained, and operated for over 100 years (the "Asheville Water System").

3. Asheville has instituted this action seeking a declaration that Section 1 of the Water Act is a constitutionally prohibited local or special enactment and otherwise violates certain provisions of the North Carolina and United States Constitutions by depriving Asheville of its property other than for a constitutionally permitted purpose and by impairing Asheville's contracts with the holders of outstanding bonds secured by the revenues of its public water supply and distribution system. In the alternative, Asheville seeks to compel payment by the State of just compensation for the taking of Asheville's water system.

4. Asheville will suffer immediate and irreparable harm if the Act takes effect as scheduled on May 15, 2013 before its claims in this action can be adjudicated. Enforcement of Section 1 of the Water Act threatens to cause imminent, irreparable harm to Asheville and its citizens, including the possible disruption or loss of water services until the Buncombe MSD, or its successor entity the new Metropolitan Water and Sewerage District, can acquire or develop

the necessary capabilities to manage and operate the Asheville Water System. In addition, the Water Act may or will cause Asheville to default on its currently outstanding revenue bonds associated with the Water System, which may additionally result in irreparable damage to Asheville's creditworthiness and its ability to issue future debt needed for its capital spending programs.

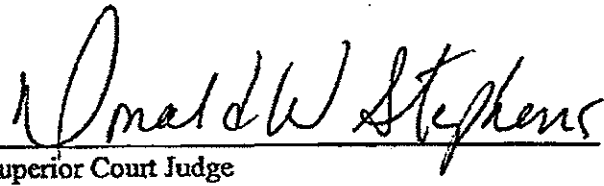
5. Asheville has no adequate remedy at law.
6. The balance of equities favors granting temporary injunctive relief to maintain the status quo pending hearing on Asheville's motion for a preliminary injunction.

IT IS HEREBY ORDERED AND DECREED THAT:

1. Until further Order of this Court or the expiration of 10 days from May 14, 2013, 5:00 pm
 - a. The State is restrained and enjoined from taking any action to implement or enforce Section 1 of the Water Act;
 - b. The Buncombe MSD, and all of its agents, servants, and employees having notice of this Order, are forbidden from assuming any authority or control over the Asheville Water System; and
 - c. Asheville may continue to own, manage, and operate the Asheville Water System pending further order of this Court.
2. Hearing on Asheville's motion for a preliminary injunction is scheduled for _____, 2013.
3. In accord with the provisions of North Carolina Rule of Civil Procedure 65(c), no security shall be required for this Order.

4. Counsel for Asheville shall cause copies of this Order to be delivered to counsel for the Buncombe MSD and to the Attorney General of North Carolina.

SO ORDERED THIS 14 day of May, 2013 at 5:00 o'clock p.m.


Superior Court Judge

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-6691

COUNTY OF WAKE

2013 MAY 15 PM 4:47

WAKE COUNTY C.S.C.

CITY OF ASHEVILLE, A Municipal
Corporation,

Plaintiff,

v.


STATE OF NORTH CAROLINA and
the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOME COUNTY,
NORTH CAROLINA,

Defendants.

ORDER ASSIGNING JUDGE

Pursuant to Local Civil Rule 2.2, the undersigned judge hereby assigns Judge Howard E. Manning, Jr. to preside over all matters involved in the above-styled action, except as otherwise directed by the Chief Justice of the North Carolina Supreme Court or by further order of this court.

So ordered this, the 15th day of May, 2013.


DONALD W. STEPHENS
SENIOR RESIDENT SUPERIOR COURT JUDGE

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-6691

FILED

2013 MAY 21 PM 1:31

WAKE COUNTY C.S.C.

BY

CITY OF ASHEVILLE, a municipal
corporation,

Plaintiff,

— against —

THE STATE OF NORTH CAROLINA
and the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE COUNTY,
NORTH CAROLINA,

Defendants.

ORDER

WHEREAS, on May 14, 2013, the Honorable Donald W. Stephens, Senior Resident Superior Court Judge of Wake County, North Carolina, entered a Temporary Restraining Order in this matter, a true and correct copy of which is annexed hereto as Exhibit 1 (the "TRO"); and

WHEREAS, in the TRO, Judge Stephens scheduled a hearing on the plaintiff's Motion for a Preliminary Injunction in this matter for ten o'clock in the forenoon on May 20, 2013 in courtroom 10-C of the Wake County Superior Court; and

WHEREAS, as evidenced by the signatures of their legal counsel below, the parties to this matter have stipulated and agreed that it would be beneficial to them to have additional time to prepare for the hearing on the plaintiff's Motion for a Preliminary Injunction; and

WHEREAS, as evidenced by the signatures of their legal counsel below, the parties have agreed that the TRO may and should be extended through and including August 6, 2013 and that the hearing on the plaintiff's Motion for a Preliminary Injunction should be re-scheduled for ten o'clock in the forenoon on August 6, 2013; and

IT APPEARING TO THE COURT that, pursuant to Rule 65(b) of the North Carolina Rules of Civil Procedure, a temporary restraining order shall expire by its terms within such time after its entry, not to exceed ten (10) days, as the court entering the temporary restraining order shall fix, unless, within the time so fixed, the court, for good cause shown, extends the temporary restraining order for a like period or unless the party(ies) against whom the order is directed consents that it may be extended for a longer period; and

IT FURTHER APPEARING TO THE COURT that an extension of the TRO through and including August 6, 2013 is in the interests of justice in that, among other things, it will enable the parties and their legal counsel to more fully prepare for the Court's hearing of the plaintiff's Motion for a Preliminary Injunction.

NOW, THEREFORE, upon the stipulations of the parties, as recited above and as evidenced by the signatures of their legal counsel below, it is ORDERED, ADJUDGED and DECREED as follows:

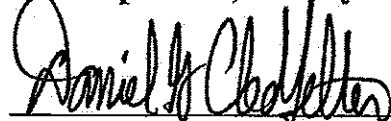
1. absent further order of the Court, the TRO shall not expire until 12:00 Midnight United States Eastern Daylight Savings Time on August 6, 2013;
2. the hearing on the plaintiff's Motion for a Preliminary Injunction in this matter is re-scheduled for ten o'clock in the forenoon on August 6, 2013;
3. except as otherwise expressly provided by this Order, the terms of the TRO shall remain unchanged; and
4. counsel for the plaintiff shall cause a copy of this Order to be served on counsel for all other parties to this action.

Nothing contained in this Order shall prevent any party from applying to the Court after the date of entry of this Order for a modification of one or more of the terms of this Order or the

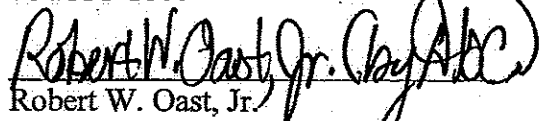
TRO or from seeking any other and/or further relief from the Court regarding any matter(s) relating to the conduct of this action.

STIPULATED TO:

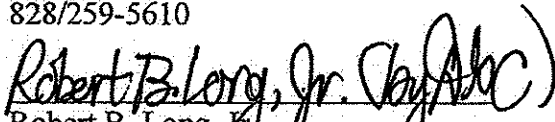
For the plaintiff, the City of Asheville



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For the defendant, the State of North Carolina

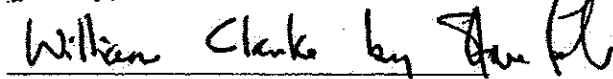


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Raleigh, North Carolina 27602-0629
919/716-6629

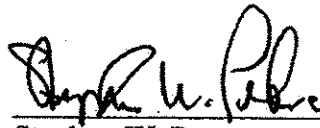


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**For the defendant, the Metropolitan
Sewerage District of Buncombe
County, North Carolina**

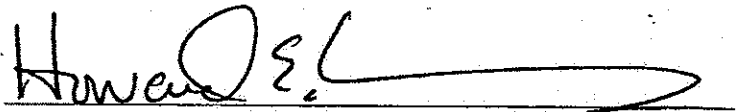


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Stephen W. Petersen
Smith Moore Leatherwood, LLP
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Raleigh, North Carolina 27601
919/755-8834

IT IS SO ORDERED THIS 21ST DAY OF MAY 2013.



Howard Manning, Jr.
North Carolina Superior Court Judge

Duplicate Copy of "Temporary Restraining Order" Omitted
Original set forth in its entirety at R pp. 38-41

Defendants.

)
)
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)
) **MOTION TO DISMISS OF THE STATE**
) **OF NORTH CAROLINA, FILED IN**
) **LIEU OF AN ANSWER**

1. dismissing the plaintiff's First Claim for Relief, which challenges the constitutionality of HB 488, Session Law 2013-50 ("HB 488"), under Article II, Sections 24(1)(a) and 24(1)(e) of the North Carolina Constitution, on the ground that the plaintiff's First Claim for Relief fails to state a claim upon which relief can be granted, in that, among other things: (i) HB 488 is not a local act; (ii) HB 488 does not relate to health, sanitation and the abatement of nuisances within the meaning of Article II, Section 24(1)(a) of the North Carolina Constitution; and (iii) HB 488 does not relate to non-navigable streams within the meaning of Article II, Section 24(1)(e) of the North Carolina Constitution; and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's First Claim for Relief, in

that, among other things, the plaintiff lacks capacity and standing to sue the State for the matters alleged in its First Claim for Relief;

2. dismissing the plaintiff's Second Claim for Relief, which challenges the constitutionality of HB 488 under Article I, Section 19 of the North Carolina Constitution, on the ground that the plaintiff's Second Claim for Relief fails to state a claim upon which relief can be granted, in that, among other things: (i) the General Assembly has plenary authority under the North Carolina Constitution to regulate the affairs of and to enact laws affecting every aspect of the life and existence of municipalities in this State; (ii) HB 488 does not create a class of municipalities that is limited only to the plaintiff; (iii) the General Assembly had rational reasons for enacting HB 488; (iv) HB 488 accomplishes public health, morals, order, safety and/or general welfare objectives; and (v) HB 488's means of implementation are reasonable; and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's Second Claim for Relief, in that, among other things, the plaintiff lacks capacity and standing to sue the State for the matters alleged in its Second Claim for Relief;

3. dismissing the plaintiff's Third Claim for Relief, which challenges the constitutionality of HB 488 under Article I, Sections 19 and 35 of the North Carolina Constitution, on the ground that the plaintiff's Third Claim for Relief fails to state a claim upon which relief can be granted, in that, among other things: (i) the General Assembly has plenary authority under the North Carolina Constitution to regulate the affairs of and to enact laws affecting every aspect of the life and existence of municipalities in this State; and (ii) HB 488 does not constitute or effect the taking of any property; and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's Third Claim for Relief, in that,

among other things, the plaintiff lacks capacity and standing to sue the State for the matters alleged in its Third Claim for Relief;

4. dismissing the plaintiff's Fourth Claim for Relief, which challenges the constitutionality of HB 488 under Article I, Sections 10 of the United States Constitution, on the ground that the plaintiff's Fourth Claim for Relief fails to state a claim upon which relief can be granted, in that, among other things, HB 488 does not impair the obligation of any contract(s); and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's Fourth Claim for Relief, in that, among other things, the plaintiff lacks capacity and standing to sue the State for the matters alleged in its Fourth Claim for Relief;

5. dismissing the plaintiff's Fifth Claim for Relief, which challenges the legality of HB 488 under N.C. Gen. Stat. §159-93, on the ground that the plaintiff's Fifth Claim for Relief fails to state a claim upon which relief can be granted, in that, among other things: (i) N.C. Gen. Stat. §159-93 is not an agreement between the State and the plaintiff, nor is the plaintiff the intended beneficiary of any agreement under N.C. Gen. Stat. §159-93; (ii) N.C. Gen. Stat. §159-93 does not prohibit the State from merely diminishing a municipality's ability to pay off bonds; (iii) to the extent the plaintiff had any relevant rights under N.C. Gen. Stat. §159-93, those rights were lawfully amended and superseded by HB 488; and (iv) there is no basis in law for the plaintiff's claim to damages for the State's alleged violation of N.C. Gen. Stat. §159-93; and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's Fifth Claim for Relief, in that, among other things, the plaintiff lacks capacity and standing to sue the State for the matters alleged in its Fifth Claim for Relief;

6. dismissing the plaintiff's Sixth Claim for Relief, which the plaintiff pleads in the alternative to its First, Second, Third and Fourth Claims for Relief and which "demands payment

by the State" for the value of the Asheville Water System, on the ground that the plaintiff's Sixth Claim for Relief fails to state a claim upon which relief can be granted, for the reasons set forth above, and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's Third Claim for Relief, in that, among other things, the plaintiff lacks capacity and standing to sue the State for the matters alleged in its Sixth Claim for Relief;

7. dismissing the plaintiff's Complaint and all of its Claims for Relief for failure to join one or more necessary parties, to wit: Henderson County and Buncombe County, as defined by Rule 19 of the North Carolina Rules of Civil Procedure; and

8. dismissing the plaintiff's request(s) for preliminary and permanent injunctive relief on the ground that: (i) none of the plaintiff's Claims for Relief states a claim upon which relief can be granted, for the reasons set forth above; (ii) this Court is without subject matter jurisdiction to adjudicate the plaintiff's First, Second, Third, Fourth, Fifth and Sixth Claims for Relief, in that, among other things, the plaintiff lacks capacity and standing to sue the State for the matters alleged in its First, Second, Third, Fourth, Fifth and Sixth Claims for Relief (as alleged above); and (iii) the plaintiff is barred from seeking or obtaining the equitable relief it requests by virtue of the doctrine of unclean hands, in that, among other things, the plaintiff has, on one or more occasions, violated one or more of the laws of this State respecting the water system that is at issue in this case.

In further support of its Motion to Dismiss, the State pleads the legal principles set forth in *Plemmer v. Matthewson*, 281 N.C. 722, 727, 190 S.E.2d 204, 208 (1972); *State of North Carolina v. Wall*, 271 N.C. 675, 683, 157 S.E.2d 363, 369 (1967); *Better Home Furniture Company of Winston-Salem, Inc. v. Baron*, 243 N.C. 502, 506, 91 S.E.2d 236, 239 (1956); *State of North Carolina v. Norman*, 237 N.C. 205, 211, 74 S.E.2d 602, 607 (1953), and *Styers v.*

Phillips, 277 N.C. 460, 481, 178 S.E.2d 583, 595 (1971) (Lake, J., dissenting), as well as *North Carolina State Highway Commission v. Hemphill*, 269 N.C. 535, 538-39, 153 S.E.2d 22, 26 (1967); *Kornegay v. City of Goldsboro*, 180 N.C. 441, 452, 105 S.E.2d 187, 192-93 (1920); *Bramham v. City of Durham*, 171 N.C. 196, 198, 88 S.E.2d 347, 348 (1916); *Swain v. Efland*, 145 N.C. App. 383, 390, 550 S.E.2d 530, 535 (2001); *Clark v. Visiting Health Professionals, Inc.*, 136 N.C. App. 505, 508-09, 524 S.E.2d 605, 607, *disc. rev. denied*, 351 N.C. 640, 543 S.E.2d 867 (2000).

Within the time prescribed by Rule 5(a1) of the North Carolina Rules of Civil Procedure, the State will file a memorandum of law in support of this Motion to Dismiss that more particularly identifies the specific facts and legal principles which mandate the dismissal of each of the plaintiff's claims and requests for relief as set forth above.

WHEREFORE, having stated with particularity the grounds supporting its Motion to Dismiss the plaintiff's Complaint and each and every purported claim for relief asserted therein, the State of North Carolina respectfully prays that the Court enter an Order dismissing with prejudice the plaintiff's Complaint, including the plaintiff's First, Second, Third, Fourth, Fifth and Sixth Claims for Relief and the plaintiff's request(s) for preliminary and permanent injunctive relief, taxing the costs of this action to the plaintiff and granting the State such other and further relief as the Court may deem just and proper.

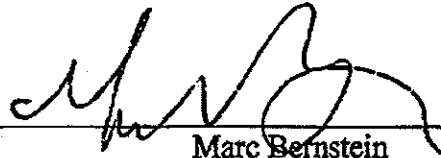
Respectfully submitted this 17th day of July 2013.

Signature lines appear on the following page



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Attorney for the State of North Carolina

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-6691

CITY OF ASHEVILLE, a municipal
corporation,

Plaintiff,

— against —

THE STATE OF NORTH CAROLINA
and the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE COUNTY,
NORTH CAROLINA,

Defendants.

ORDER

FILED
2013 AUG -9 PM 2:26
WAKE COUNTY, C.S.C.
BY _____

WHEREAS, on May 14, 2013, the Honorable Donald W. Stephens, Senior Resident Superior Court Judge of Wake County, North Carolina, entered a Temporary Restraining Order in this matter (hereinafter referred to as the "TRO"); and

WHEREAS, in the TRO, Judge Stephens scheduled a hearing on the plaintiff's Motion for a Preliminary Injunction in this matter for ten o'clock in the forenoon on May 20, 2013 in courtroom 10-C of the Wake County Superior Court; and

WHEREAS, the Court thereafter rescheduled the hearing of the plaintiff's Motion for a Preliminary Injunction for August 6, 2013 and the parties, through their respective legal counsel, stipulated and agreed that the TRO may and should be further extended through and including September 6, 2013, so that Judge Manning would have time following the August 6, 2013 hearing to determine and prepare his written decision addressing the plaintiff's Motion for a Preliminary Injunction; and

8/9/13
18 SES

WHEREAS, defendant the State of North Carolina requested that the date of the hearing of plaintiff's Motion for a Preliminary Injunction be continued, a request to which all parties consented; and

WHEREAS, on August 2, 2013, Judge Manning rescheduled the hearing of the plaintiff's Motion for a Preliminary Injunction for ten o'clock in the forenoon on September 6, 2013, directed that the briefs of all parties regarding the plaintiff's Motion for a Preliminary Injunction (including any supporting documents, such as affidavits) be filed with the Court and served upon all parties by no later than September 4, 2013 and noted that the Court will need until October 14, 2013 to determine and prepare its written decision addressing the plaintiff's Motion for a Preliminary Injunction; and

WHEREAS, as evidenced by the signatures of their respective legal counsel below, the parties have stipulated and agreed that the TRO may and should be extended through and including October 14, 2013; and

IT APPEARING TO THE COURT that, pursuant to Rule 65(b) of the North Carolina Rules of Civil Procedure, a temporary restraining order shall expire by its terms within such time after its entry, not to exceed ten (10) days, as the court entering the temporary restraining order shall fix, unless, within the time so fixed, the court, for good cause shown, extends the temporary restraining order for a like period or unless the party(ies) against whom the order is directed consents that it may be extended for a longer period; and

IT FURTHER APPEARING TO THE COURT that an extension of the TRO through and including October 14, 2013 is in the interests of justice in that, among other things, it will enable the parties and their legal counsel to more fully prepare for the Court's hearing of the plaintiff's Motion for a Preliminary Injunction.

WJ
8/12/13
SCJ

NOW, THEREFORE, upon the stipulations of the parties, as recited above and as evidenced by the signatures of their respective legal counsel below, it is ORDERED, ADJUDGED and DECREED as follows:

1. absent further order of the Court, the TRO shall not expire until 12:00 Midnight United States Eastern Time on October 14, 2013;
2. the hearing on the plaintiff's Motion for a Preliminary Injunction in this matter is rescheduled for ten o'clock in the forenoon on September 6, 2013;
3. the briefs of all parties regarding the plaintiff's Motion for a Preliminary Injunction (including any supporting documents, such as affidavits) be filed with the Court and served upon all parties by no later than September 4, 2013;
4. except as otherwise expressly provided by this Order, the terms of the TRO shall remain unchanged; and
5. counsel for the plaintiff shall cause a copy of this Order to be served on counsel for all other parties to this action.

Nothing contained in this Order shall prevent any party from applying to the Court after the date of entry of this Order for a modification of one or more of the terms of this Order or the TRO or from seeking any other and/or further relief from the Court regarding any matter(s) relating to the conduct of this action.

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Hand SCT
8/9/13

STIPULATED TO:

For the plaintiff, the City of Asheville

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IT IS SO ORDERED THIS 9th DAY OF August 2013.

Howard Manning, Jr.
Howard Manning, Jr.
North Carolina Superior Court Judge

FILED

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-6691

2013 OCT -2 PM 12:18
WAKE COUNTY, C.S.C.

CITY OF ASHEVILLE,
a municipal corporation,

Plaintiff,

v.

STATE OF NORTH CAROLINA and
the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE
COUNTY, NORTH CAROLINA

Defendants.

VERIFIED AMENDED COMPLAINT

Plaintiff City of Asheville ("Asheville" or the "City"), seeking a declaratory judgment pursuant to N.C. Gen. Stat. §1-253 *et seq.* and injunctive relief pursuant to North Carolina Rule of Civil Procedure 65, hereby alleges and says:

PARTIES

1. Asheville is a municipal corporation organized and existing under the laws of North Carolina and located in Buncombe County, North Carolina. Asheville is a body politic and corporate with capacity to sue as provided in N.C. Gen. Stat. §160A-11.
2. The State of North Carolina is a defendant (the "State").
3. The Metropolitan Sewerage District of Buncombe County, North Carolina (the "Buncombe MSD") is a body politic and corporate organized and existing under the provisions of Article 5 of Chapter 162A of the General Statutes of North Carolina and is located and operates in Buncombe County, North Carolina. The Buncombe MSD is joined as a party to this action for the

sole and limited purpose of bringing before the Court all entities who may be affected by Asheville's prayer for temporary, preliminary, and permanent injunctive relief under North Carolina Rule of Civil Procedure 65.

NATURE OF THE CASE

4. On or about May 13, 2013, HB 488, Session Law 2013-50 (the "Original Water Act" or "HB 488") became law, having been adopted by both houses of the North Carolina General Assembly, duly ratified, and not vetoed by the Governor as provided in Article II, Section 22(7) of the Constitution of North Carolina. Section 1 of the Original Water Act transfers all the assets and debts of the water supply and distribution system owned by Asheville, without its consent, over its strenuous objection, and contrary to the wishes of its citizens as expressed by referendum overwhelmingly opposing any sale or lease of the system that Asheville has owned, enlarged, improved, maintained, and operated for over 100 years. A true and complete copy of the Original Water Act is attached to this Amended Verified Complaint as Exhibit A.

5. On or about August 23, 2013, SB 341, Session Law 2013-388, in relevant part an amendment to the Original Water Act, became law, having been adopted by both houses of the North Carolina General Assembly, duly ratified and signed by the Governor. Session Law 2013-388 shall be hereinafter referred to as the "Amendment." A true and complete copy of the Amendment is attached to this Amended Verified Complaint as Exhibit B. Hereinafter, the Original Water Act, as modified by the Amendment shall be referred to as the "Amended Water Act."

6. In this action Asheville seeks a declaration that Section 1 of the Amended Water Act, which applies to Asheville alone among the many water supply systems in North Carolina, is a constitutionally prohibited local or special enactment and otherwise violates certain provisions

of the North Carolina and United States Constitutions by depriving Asheville alone of its property for a purpose other than a constitutionally permitted purpose, and by impairing Asheville's contracts with the holders of outstanding bonds secured by the revenues of its water supply and distribution system. In the alternative, Asheville seeks to compel payment by the State of just compensation for the taking of Asheville's water system.

JURISDICTION AND VENUE

7. Pursuant to N.C. Gen. Stat. §1-253 *et seq.*, Asheville seeks a declaratory judgment as to the constitutionality of certain enactments of the General Assembly. As alleged below, a present and real controversy exists between the parties as to the constitutionality of such enactments. In addition, Asheville seeks to restrain and enjoin the application and operation of such unconstitutional enactments, which would otherwise apply to the water supply and distribution system owned and operated by Asheville. Accordingly, this action is properly brought in the Superior Court Division of the General Court of Justice pursuant to N.C. Gen. Stat. §§1-253 and 7A-245(a).

8. Jurisdiction over Asheville's alternative claim for an award of just compensation for the taking by defendant State of its water supply and distribution system is proper in this Court under *Corum v. Board of Governors*, 330 N.C. 761, 413 S.E.2d 276 (1992).

9. Venue of Asheville's First, Second, Third, and Fourth Claims is proper in this county under N.C. Gen. Stat. §1-82 in that the seat of government of the State of North Carolina lies in Wake County.

10. In the event Asheville is denied relief on its First, Second, Third, and Fourth Claims, then venue of Asheville's Fifth and Sixth Claims is proper in Buncombe County under

N.C. Gen. Stat. §1-76, and Asheville moves under N.C. Gen. Stat. §1-83 to transfer venue of those claims to the Superior Court of Buncombe County.

FACTS COMMON TO ALL CLAIMS

11. Pursuant to N.C. Gen. Stat. §160A-11, §160A-311(2), and §160A-312, along with Chapter 399 of the 1933 Public Local Laws and N.C. Session Laws 2005-140 and 2005-139 (generally referred to as "Sullivan I," "Sullivan II," and "Sullivan III," respectively), Asheville currently owns, operates, manages, and maintains a water supply and distribution system for the supply, treatment, and distribution of water for drinking, cooking, and cleaning purposes, and for the operation of sanitary disposal systems for individuals and entities within its corporate limits and for some individuals and entities outside its corporate limits. The water supply and distribution system consists of the tangible system assets described below, and also includes approximately 147 trained and certified employees, numerous licenses and permits required by state and federal law, wholesale water supply contracts with other municipal entities, operating contracts for the supply of goods and services, and revenue accounts of more than \$2,218,000.00 held for the benefit of outstanding public bonds. The system also includes a number of intangible assets that are essential to its proper functioning but are not transferred to the New MWSD by the Amended Water Act. These include an experienced, licensed, and skilled workforce, well-developed operating procedures and policies, and a strong and experienced management structure (collectively, including all aspects of the system described in this paragraph, the "Asheville Water System"). The Amended Water Act breaks the links between the physical assets of the system and these intangible assets and thereby destroys the integrity of the Asheville Water System.

12. The Asheville Water System includes a protected watershed area consisting of over 17,000 acres of mountainous forestlands in Buncombe County. It is one of the largest municipally owned watersheds in the United States. Within the watershed area are two impoundments, each of which supports a water treatment plant and which together are capable of treating and supplying a total of 36 million gallons of water per day. Asheville owns a third water treatment plant located at the confluence of the French Broad and Mills Rivers in Henderson County with a daily treatment capacity of 7.5 million gallons of water. The system also includes an additional 29 treated water storage reservoirs, some 1,661 miles of transmission and distribution lines for raw and treated water, and not less than 40 pump stations. In addition, various items of personal property owned by the City are used in the operation and maintenance of the Asheville Water System. The system currently serves approximately 125,000 residents (plus certain non-residents), a number significant in the Amended Water Act.

13. The watershed area owned by the Asheville as part of the Asheville Water System contains several non-navigable streams, including Left Fork Bee Tree Creek, Wolfe Branch, Bell Branch, Right Fork Bee Tree Creek, Sugar Fork, Shute Branch, Long Branch, Saltrock Branch, North Fork Swannanoa River, Glassmine Branch, Stony Fork, Dry Branch, Little Fork, Big Branch, and Morgan Branch.

14. The acquisition, construction, expansion, upgrade, and replacement of the capital assets of the Asheville Water System have been financed from a combination of the operating revenues of the system, from grants and loans made to Asheville by federal and state governments, from general tax revenues of the City, and from the proceeds of general obligation and revenue bonds issued by and in the name of Asheville. Additionally, some distribution lines and other facilities (including 21 identified pump stations and related storage tank facilities) have been

constructed by other governmental entities, such as Buncombe County, and by private entities and thereafter conveyed to Asheville.

15. On October 29, 1981, acting pursuant to Article 20 of Chapter 160A of the General Statutes, Asheville and Buncombe County entered into a comprehensive interlocal agreement relating to a number of matters, including allocation of law enforcement costs for the Buncombe County Sheriff's Department; transfer and operation of parks and recreation facilities and specified community recreation facilities; allocation of costs for the Asheville Civic Center; and funding of the Chamber of Commerce, rescue squad, nutrition program, and other outside agencies (the "1981 Interlocal Agreement"). Among other things, the 1981 Interlocal Agreement established a joint agency to administer certain aspects of the water supply and distribution systems then owned and operated by Asheville and by Buncombe County. After 1981, this agreement was amended and restated several times, with the last restatement and amendment dated August 13, 1996.

16. On May 27, 2004, as permitted by and in accord with the terms of the 1981 Interlocal Agreement, Asheville gave written notice of termination of the agreement to Buncombe County as a result of differences among the parties with respect to certain policies relating to the maintenance, operation, and management of the Asheville Water System. As a result of such termination (and subsequent conveyance of a limited number of system assets to the City from Buncombe County and water distribution entities therein), Asheville has complete legal ownership and control of all watershed lands, reservoirs, water treatment plants, storage facilities, and the various transmission and distribution lines comprising the physical assets of the Asheville Water System.

17. The Buncombe MSD was organized in 1962 for the purpose of constructing and operating facilities for the treatment and disposal of the sewerage generated within the jurisdiction of the political subdivisions comprising the district. Further, the Buncombe MSD is interconnected with a non-district public sewer system operated by a subdivision of the state and body politic from which it receives raw sewage by way of interconnection and treats such raw sewage by agreement.

18. The Buncombe MSD does not now and has not since its inception provided water supply, water treatment, or water distribution services to the jurisdictions that are included in the district. Several of those jurisdictions, including the Town of Weaverville, the Town of Black Mountain, the Town of Biltmore Forest, and the Woodfin Water District, along with Asheville, have and will continue to have their own municipally owned and operated water supply and/or water distribution systems.

19. On May 1, 2013, the North Carolina General Assembly enacted the Original Water Act. The bill was ratified on May 2, 2013 and presented to the Governor on May 3, 2013. Section 1 of the Original Water Act purports to immediately and involuntarily transfer by operation of law, to become law on May 15, 2013 unless vetoed, all assets and rights of operation of the Asheville Water System to a newly formed metropolitan water and sewerage district, which will operate in portions of Buncombe and Henderson counties (the "New MWSD"). Until the members of the New MWSD are appointed, the board of directors of the existing Buncombe MSD will function as the board of the New MWSD.

20. On July 22, 2013, after the institution of this action and entry of restraining order herein, the North Carolina General Assembly ratified the aforementioned Amendment to the Original Water Act. The Amendment was signed by the Governor on August 23, 2013. The

Amendment modified the Original Water Act in two material sections: (1) the repeal of Section 1.(a)(2); and (2) the addition of Section 1.(g).

21. Metropolitan Water and Sewerage Districts, such as the New MWSD is to be, are a form of political subdivision not previously existing in North Carolina; they are created for the first time by Section 2 of the Original Water Act and by Section 2 of the Amended Water Act. Section 2 of the Water Act permits any two or more local governments to form a metropolitan water and sewerage district by agreement among them and for the parties to contribute to such districts their existing water supply, treatment, and distribution systems and their existing sewerage collection and treatment systems. However, Asheville alone among the local governments in North Carolina—indeed, alone among the local governments operating water systems in Buncombe and Henderson Counties—has no option or choice in the matter. Instead, the New MWSD is created by operation of the Amended Water Act itself, and the assets and debts of the Asheville Water System are transferred to the New MWSD by operation of law, without Asheville's consent.

22. Specifically, Section 1.(a) of the Amended Water Act provides:

All assets, real and personal, tangible and intangible, and all outstanding debts of any public water system meeting all of the following criteria are by operation of law transferred to the metropolitan sewerage district operating in the county where the public water system is located, to be operated as a Metropolitan Water and Sewerage district:

- (1) The public water system is owned and operated by a municipality located in a county where a metropolitan sewerage district is operating.
- (2) The public water system serves a population greater than 120,000 people, according to the data submitted pursuant to G.S. 143-355(l).

In addition, Section 1.(g) of the Amended Water Act provides:

For the purposes of this section, a public water system shall not include any system that is operated simultaneously with a sewer system by the same public body, in conjunction with the provision of other utility services for its customers.

Though drafted in general terms, the language of Section 1(a) in fact applies only to Asheville among all the water supply and distribution systems in North Carolina. The Asheville Water System is the only public water system that meets the specific requirements of Section 1.(a) of the Amended Water Act, as amended by Section 1.(g). Indeed, as the legislative history of Section 1 makes abundantly clear, that section was never intended to apply to any municipality other than Asheville. Great care was taken in the drafting to ensure that no water system other than Asheville's would be subject to Section 1 of the Amended Water Act. The intent to treat Asheville uniquely is further made clear by Section 162A-85.2, which prescribes the method for creation of a MWSD under the new Article 5A. Section 162A-85.2(a) provides: "Except as provided by operation of law" Since Asheville is the only entity forced into an MWSD by operation of law, it is excluded from the provision of Section 2 of the Amended Water Act regarding *voluntary* creation of an MWSD.

23. The Amended Water Act does not purport to change the existing uses or purposes of the assets of the Asheville Water System. The Amended Water Act merely transfers assets of the Asheville Water System to the newly created entity, thus taking assets, both real and personal, owned by Asheville.

24. The Amended Water Act contains no provision to compensate Asheville for the value of the assets purportedly transferred by the Amended Water Act or for the fair value of the Asheville Water System as a going concern.

25. As provided in Section 7, the Amended Water Act became effective on August 23, 2013, when it became law. It contains no transition provision. The Water Act contains no

provisions related to the transfer of employees or the certifications which they hold as a requirement for operating the water system for the City. The Asheville employees who currently manage and operate the Asheville Water System *will not by operation of law become employees of the New MWSD*—indeed, they could not be compelled to do so by decree of the General Assembly. The Amended Water Act contains no provision for the transfer to the new MWSD of existing contractual rights and obligations between Asheville and suppliers and customers of the system (including wholesale water-supply contracts with municipalities such as the Towns of Black Mountain and Weaverville). Upon information and belief, neither the Buncombe MSD nor the New MWSD has or will have the present ability to operate the Asheville Water System, lacking not only employees to manage and operate the system and contracts to acquire essential equipment and supplies for the system, but also such basic administrative capabilities as the reading of meters, billing of customers, and recordkeeping relating to the financial and operational management of the system.

26. The delivery of water of a quality that meets all state and federal requirements is vital to the health and safety of the users of Asheville's water, including Asheville's residents, and to the City's economic life. The State Division of Water Resources imposes strict health and safety regulations on the treatment of drinking water by any public water system, including rigorous certification requirements for treatment plant operators pursuant to N.C. Gen. Stat. §90A-29. The City has for many years trained such personnel, and currently employs an experienced staff of certified treatment plant operators. These personnel would no longer be affiliated with the water system once it is taken from the City. Any interruption or disruption of service to the users of Asheville's water, including the City's residents and businesses, its hospitals and other health care facilities, its schools and colleges, or its fire protection system, during the

abrupt and unplanned transfer of the Asheville Water System's assets would effectively cause a state of emergency and result in irreparable harm to Asheville, its citizens, and other users of its water, which cannot be remedied by monetary damages.

27. To finance certain capital expenditures related to the Asheville Water System, Asheville issued pursuant to Article 5 of Chapter 159 of the General Statutes certain revenue bonds under a General Trust Indenture dated December 1, 2005 (the "Water Bonds"). The current outstanding principal balance on the Water Bonds is \$65,570,000. The bonds are secured on a parity basis from the net revenues of the Asheville Water System. Asheville is the issuer and obligor on the Water Bonds, which currently carry a credit rating of Aa2 from Moody's and AA from Standard & Poor's.

28. The Amended Water Act, in requiring the immediate transfer of the assets of the Asheville Water System, will cause Asheville to breach numerous provisions of the General Trust Indenture.

29. Section 6.11(a) of the General Trust Indenture provides in pertinent part:

The Water System may be sold, mortgaged, leased or otherwise disposed of, in whole or in part, or the obligations of the City with respect to all of the Outstanding Bonds assigned, to another political subdivision or public agency in the State authorized by law to own and operate such system only (i) if there is filed with the Trustee (a) a report prepared by a Financial Consultant showing that there is no material adverse effect on the ability of the Water System to produce Revenues to satisfy the rate covenant contained in Section 6.6, (b) written evidence from any rating agency then rating the Bonds that such disposition will not adversely affect its rating then in effect on the Bonds, and (c) an opinion of Bond Counsel that such disposition will not adversely affect the federal or state income tax treatment of interest on the Bonds and (ii) for a disposition in whole, if such political subdivision or public agency assumes all of the obligations of the City under this Indenture.

30. Because the Amended Water Act is self-executing and the transfer of assets required by Section 1 will occur by operation of law at a future date, it will be impossible for

Asheville to meet the requirements of Section 6.11(a) prior to the transfer to the New MWSD, resulting in a breach of the terms of the General Trust Indenture.

31. By eliminating Asheville's ownership of the assets and authority necessary to own, manage, and maintain the Asheville Water System, the Amended Water Act will result in a breach of Section 6.9 of the General Indenture, which requires Asheville to "maintain or cause to be maintained the Water System in good condition and will continuously operate or cause to be operated the same in an efficient manner and at a reasonable cost as a municipal revenue-producing enterprise," and Section 6.18, which requires Asheville to "cause the Consulting Engineer to (i) inspect the Water System at least once annually and (ii) within 30 days after such inspection, submit to the City a report" concerning the maintenance and operation of the Asheville Water System.

32. The Amended Water Act will also cause Asheville to breach Section 6.10 of the General Indenture, which requires Asheville to "carry or cause to be carried such insurance with a reputable carrier or carriers, such as is maintained or carried by similar municipal systems as the Water System." Following the transfer required by Section 1 of the Amended Water Act, Asheville will no longer have an insurable interest and will be unable to maintain the insurance required by Section 6.10, resulting in yet another breach. (There is no provision for a newly created MWSD with no prior existence and no operating history to immediately obtain insurance; the contracting and underwriting of comprehensive and effective insurance policies for a system this complex by a new entity would undoubtedly take weeks if not months under the best of circumstances.)

33. Upon a default in performance of any contractual provision of the General Indenture that is not cured within thirty days of notice by the Trustee, the Trustee may declare the

Bonds to be immediately due and payable, take possession of funds established under the General Indenture, initiate an action to require Asheville to carry out its obligations under the General Indenture, and take whatever action at law or in equity as may be necessary to enforce its rights against Asheville.

34. Such breaches and resulting consequences could result in an impairment of Asheville's credit ratings and create great uncertainty as to Asheville's ability to issue future debt for other capital expenditures required by the City.

CLAIMS FOR RELIEF

FIRST CLAIM: CONSTITUTIONALITY OF THE ACT

Article II, Sections 24(1)(a), 24(1)(e), 24(2), and 24(3) of the Constitution of North Carolina

35. Asheville incorporates by reference the allegations of paragraphs 1 through 34 of this Amended Verified Complaint as if fully repeated here.

36. Article II, Section 24(1)(a) of the Constitution of North Carolina provides that "[t]he General Assembly shall not enact any local, private, or special act or resolution: (a) [r]elating to health, sanitation, and the abatement of nuisances."

37. Article II, Section 24(2) of the Constitution of North Carolina provides as follows: "[n]or shall the General Assembly enact such local, private, or special act by the partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it."

38. Article II, Section 24(3) of the Constitution of North Carolina provides as follows: "[a]ny local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void."

39. The treatment and supply of water for drinking, cooking, and cleaning purposes and for the operation of sanitary disposal systems are matters relating to health and sanitation within the meaning of Article II, Section 24(1)(a) of the Constitution of North Carolina.

40. Section 1 of the Amended Water Act is a local act relating to the treatment and supply of water for drinking, cooking, and cleaning purposes, and for the operation of sanitary disposal systems applicable only to Asheville and its water system, and therefore relates to health and sanitation. Further, Section 1 of the Amended Water Act is discriminatory, arbitrary and capricious, and it is otherwise in violation of the aforementioned constitutional provisions.

41. Article II, Section 24(1)(e) of the Constitution of North Carolina provides that "[t]he General Assembly shall not enact any local, private, or special act or resolution: (e) [r]elating to non-navigable streams."

42. Section 1 of the Amended Water Act purports to transfer to another entity the assets of the Asheville Water System, including a number of non-navigable streams that are integral components of the water supply network and which are located on the thousands of acres of real property constituting an irreplaceable part of the Asheville Water System.

43. Section 1 of the Amended Water Act is a local act relating to non-navigable streams and is applicable only to Asheville and its Asheville Water System.

44. For the reasons set out herein and pursuant to Article II, Section 24(3) of the North Carolina Constitution, Section 1 of the Amended Water Act is void and may not be enforced against Asheville.

SECOND CLAIM: CONSTITUTIONALITY OF THE ACT
Article I, Section 19 of the Constitution of North Carolina

45. Asheville incorporates by reference the allegations of paragraphs 1 through 44 of this Amended Verified Complaint as if fully repeated here.

46. In its proprietary capacity as owner and operator of the Asheville Water System, Asheville is a person entitled to the protections of Article I, Section 19 of the Constitution of North Carolina.

47. The Amended Water Act contains only minimal legislative findings as to the need for or the purposes behind the legislation. None of those findings in any way differentiates the Asheville Water System from other similarly situated municipal or county water systems in North Carolina. The cursory findings do not provide any rational basis for subjecting Asheville to the mandatory and compulsory provisions of Section 1 of the Act rather than the permissive and voluntary provisions of Section 2.

48. The cursory legislative findings of the Amended Water Act recite and rely upon the purported benefits to be derived from regionalization of water supply systems across North Carolina's communities, but those findings do not address, among other things: (i) why regionalization should be a compulsory process only when existing water supply systems are located in counties where an existing Metropolitan Sewerage District is located, of which there are currently only three in North Carolina, as contrasted with counties where countywide sewer systems are operating under the governance of cities, counties, or other types of local authorities other than Metropolitan Sewerage Districts; (ii) why regionalization should be compulsory in the case of water supply systems located in counties having an existing Metropolitan *Sewerage* District but not in counties having an existing Metropolitan *Water* District created pursuant to Article 4 of Chapter 162A of the General Statutes; (iii) why regionalization is appropriate for some municipal water systems located in a county with a Metropolitan Sewerage District, such as Asheville's, but not for other municipal water systems located in the very same county, such as, illustratively, that of Black Mountain, Woodfin, and Weaverville; and (iv) why municipally owned

water systems that do *not* hold interbasin transfer certificates require compulsory regionalization whereas systems that *do* draw water from one river basin for use in another river basin do not warrant such regionalization.

49. The Amended Water Act is completely devoid of any rational basis for subjecting the Asheville Water System to treatment different from that provided by the Act for all other publicly owned water systems in North Carolina, and fails to make a reasonable classification as required by controlling legal authority, providing no legal or other justification for this treatment of Asheville's water system only.

50. Section 1 of the Amended Water Act is discriminatory, arbitrary, and capricious, without any rational basis because, among other reasons: (i) there will be no change in the use of the assets; (ii) the change in ownership will not result in or require any higher quality of water than that currently being provided; (iii) the Amended Water Act does not extend protection of the public health or safety beyond that currently existing; and (iv) the Amended Water Act does not require the use of the revenue generated from the operation of the water supply and delivery system to be used solely for the maintenance, upkeep, construction, and replacement of assets of such system, as the law now requires of the City. Thus, there is no discernible legitimate objective relating to the protection of the public health, morals, order, safety, or general welfare.

51. The Amended Water Act's means and methods of implementing the transfer of assets are unreasonable because, among other reasons, the Amended Water Act and its means and methods: (i) transfer the assets of the Asheville Water System to an entity that has never operated a public water supply and delivery system; (ii) transfer the assets to an entity that does not employ individuals qualified to operate a public water system, which systems are subject to extensive regulatory requirements for the protection of the public health and safety; (iii) provide no funding

for the newly formed entity to operate the extensive water supply and distribution system involuntarily transferred; (iv) interfere with a proprietary function of a local government, functions which are, by precedent "left to the sound discretion of the municipal authorities;" (v) conflict with General Statutes of long standing that expressly grant municipalities the right and authority to own and operate certain enterprises, including water supply and distribution systems (and does not repeal such authority of the City); and (vi) fail to provide any reasonable method for compensation to the City for the assets transferred.

52. Thus, for all of these reasons, the Amended Water Act is contrary to the law of the land in violation of Article I, Section 19 of the Constitution of North Carolina.

THIRD CLAIM: CONSTITUTIONALITY OF THE ACT
Article I, Sections 19 and 35 of the Constitution of North Carolina

53. Asheville incorporates by reference the allegations of paragraphs 1 through 52 of this Amended Verified Complaint as if fully repeated here.

54. In the operation of the Asheville Water System pursuant to Article 14 of Chapter 160A of the N.C General Statutes, Asheville acts in a proprietary capacity. In that capacity Asheville is entitled to the protections of Article I, Sections 19 and 35 of the North Carolina Constitution to the same extent as any private individual or corporation engaged in a similar enterprise.

55. Section 1 of the Amended Water Act by operation of law transfers the assets and debts of the Asheville Water System to the New MWSD against the wishes of the system's owner, and thus would constitute an uncompensated taking of the water system assets by the State.

56. The transfer of assets and debts effectuated by Section 1 of the Amended Water Act results in no change in the existing uses or purposes currently served by the Asheville Water

System. It is nothing more than an edict by the State that property now owned by Asheville shall belong to another entity.

57. In consequence of the matters alleged in paragraphs 48 through 51, Section 1 of the Amended Water Act is not a valid exercise of the sovereign power to take or condemn property for a public use, since the property is already used for precisely the same purposes as are contemplated by the enactment that constitutes the taking. Section 1 of the Amended Water Act therefore violates Article I, Sections 19 and 35 of the North Carolina Constitution.

FOURTH CLAIM: CONSTITUTIONALITY OF THE ACT

Article 1, Section 10 of the United States Constitution

Article I, Section 19 of the North Carolina Constitution

58. Asheville incorporates by reference the allegations of paragraphs 1 through 34 of this Amended Verified Complaint as if fully repeated here.

59. Article I, Section 10 of the United States Constitution provides: "No state shall . . . pass any . . . Law impairing the Obligation of Contracts . . .". Article I, Section 19 of the North Carolina Constitution provides: "No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land." North Carolina courts have interpreted the "Law of the Land" clause to prohibit the State from enacting laws impairing the obligations of contracts, just as the U.S. Constitution prohibits the federal government from doing the same.

60. Asheville has issued the Water Bonds to pay certain capital expenses associated with the construction and operation of the Asheville Water System. Asheville has undertaken valid and binding contractual obligations with respect to the purchasers of the bonds.

61. Pursuant to Section 6.11(a) of the General Trust Indenture quoted above, Asheville is required to satisfy certain requirements prior to selling or otherwise disposing of the Asheville

Water System. Unless the effectiveness of the Amended Water Act is enjoined, the Act will cause an imminent breach of Section 6.11(a) of the General Trust Indenture because it will be impossible for Asheville to comply with the requirements of Section 6.11(a) by the effective date of the Amended Water Act.

62. The Amended Water Act substantially impairs the contractual relationship between Asheville and the holders of the Water Bonds in that it will cause a replacement of Asheville as the obligor on such bonds in violation of the provisions of Section 6.11(a) of the General Trust Indenture. As a result of Asheville's default under the General Indenture, the Trustee may declare the Bonds to be immediately due and payable, take possession of funds established under the General Indenture, initiate legal action to require Asheville to carry out its obligations under the General Indenture, and take whatever action at law or in equity necessary to enforce its rights against Asheville.

63. Such impairment is not justified by any significant or legitimate public purpose.

64. Accordingly, the Amended Water Act violates Article I, Section 10 of the United States Constitution, and Article I, Section 19 of the North Carolina Constitution.

FIFTH CLAIM: VIOLATION OF N.C. GEN. STAT. §159-93

65. Asheville incorporates by reference the allegations of paragraphs 1 through 34 and 58 through 64 of this Amended Verified Complaint as if fully repeated here.

66. By the enactment of N.C. Gen. Stat. §159-93, the State covenanted and agreed with the holders of revenue bonds issued or to be issued by Asheville, including the bonds issued pursuant to the General Trust Indenture, that the State would take no action to impair the ability of Asheville to repay such bonds in accord with their terms or to cause Asheville to be unable to

perform the terms of its agreements relating to such bonds, including the terms of the General Trust Indenture.

67. Asheville is a direct and intended beneficiary of the State's undertaking and agreement set forth in N.C. Gen. Stat. §159-93.

68. The outstanding Water Bonds are revenue bonds within the meaning and scope of N.C. Gen. Stat. §159-93 and are entitled to the protection of the State's undertaking and agreement set forth in that statute.

69. As set forth in this Amended Verified Complaint, the Amended Water Act will cause Asheville to be in violation of the terms of the General Trust Indenture governing the Water Bonds and potentially cause such Water Bonds to be in default.

70. Asheville currently has the right, but not the obligation, to draw upon its general tax revenues to repay the principal of and interest on the Water Bonds in the event the revenues from the Asheville Water System should be insufficient for such purposes. Although the Amended Water Act purports to transfer the obligation to repay the Water Bonds from Asheville to the New MWSD, the New MWSD will have no ability to repay except to the extent of system revenues (assuming it can implement a collection system on a timely basis). By the express terms of the Amended Water Act, the New MWSD will have no power of taxation and no ability to supplement the revenues from the Asheville Water System should such system revenues be insufficient to repay the bonds. (At numerous points in the history of the water system, Asheville relied on its general taxing authority to issue municipal bonds for capital expansions. The Amended Water Act does not provide, however, for how capital funds might be obtained on an immediate basis in the event of an emergency, such as one that requires unanticipated major repairs to a treatment plant or that necessitates immediate action to preserve structural integrity of a dam or reservoir.) This

detrimental reduction in the Asheville Water System's authority and alteration to bondholder expectations after their purchase of these bonds is a plain and unwarranted interference with an existing contractual relationship and constitutes a violation of the State's undertaking and agreement as set forth in N.C. Gen. Stat. §159-93.

SIXTH (ALTERNATIVE) CLAIM: JUST COMPENSATION
Article I, Sections 19 and 35 of the Constitution of North Carolina

71. Asheville incorporates by reference the allegations of paragraphs 1 through 34 of this Amended Verified Complaint as if fully repeated here.

72. This claim is pleaded in the alternative to Asheville's First, Second, Third, and Fourth Claims.

73. In the operation of its water supply and distribution system, Asheville acts in a proprietary capacity exclusively for the benefit of its citizens and other users of the water supply. In such capacity Asheville is entitled to the protections of Article I, Sections 19 and 35 to the same extent as any private individual or corporation engaged in a similar enterprise.

74. Section 1 of the Amended Water Act by operation of law transfers the assets of the Asheville Water System to the New MWSD against the wishes of the system's owner and thus constitutes a taking of the water system assets by the State.

75. The assets of the Asheville Water System are extremely valuable. Current audited financial statements assess its Net Asset Value to be greater than \$100,000,000.00; a recent study concludes that its replacement cost exceeds \$1,000,000,000.00.

76. Absent injunctive relief, the Amended Water Act would deprive Asheville of the ownership of the Asheville Water System without any payment of compensation.

77. Pursuant to Article I, Sections 19 and 35 of the Constitution of North Carolina, Asheville demands payment by the State of just compensation for the value of the Asheville Water System in an amount to be determined at trial.

REQUEST FOR INJUNCTIVE RELIEF

78. Asheville incorporates by reference the allegations of paragraphs 1 through 64 of this Amended Verified Complaint as if fully repeated here.

79. Enforcement of Section 1 of the Amended Water Act threatens to cause imminent, irreparable harm to Asheville. Water and sewer services risk being disrupted or lost entirely upon the Amended Water Act becoming effective, due to the New MWSD's lack of certified operating personnel qualified to operate treatment plants supplying drinking water to the public under N.C. Gen. Stat. §90A-29. The citizens of Asheville face being without proper and sufficient water and sewer service until the Buncombe MSD (or its successor entity the New MWSD) is able to acquire or develop the capabilities necessary to manage and operate the Asheville Water System. The Amended Water Act is also likely to irreparably harm Asheville's creditworthiness and its future borrowing capacity as a result of one or more potentially irreversible credit rating downgrades that result from defaults under the General Trust Indenture.

80. Asheville has no adequate remedy at law; monetary damages are incapable of protecting Asheville and its citizens from the loss of an operational public water system or from the future implications of a financial default or credit downgrade arising from breach of the General Trust Indenture.

81. Thus, in the absence of immediate action to preserve the status quo ante, imminent and irreparable harm will be inflicted upon Asheville and its citizens.

82. For the foregoing reasons, Asheville requests that this Court enter a temporary restraining order, preliminary injunction, and permanent injunction enjoining the effectiveness, operation, and enforcement of Section 1 of the Act, prohibiting the Buncombe MSD and/or the New MWSD from assuming any authority or control over the assets of the Asheville Water System and its operation, and directing that Asheville may continue to own, manage and operate the Asheville Water System.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff City of Asheville prays as follows:

1. That the Court enter a Declaratory Judgment, pursuant to N.C. Gen. Stat. §1-253 *et seq.*, that Section 1 of the Amended Water Act is unconstitutional as an invalid local act pursuant to Article II, Section 24(1)(a) of the Constitution of North Carolina;
2. That the Court enter a Declaratory Judgment, pursuant to N.C. Gen. Stat. §1-253 *et seq.*, that Section 1 of the Amended Water Act is unconstitutional as a violation Article I, Sections 19 and 35 of the Constitution of North Carolina;
3. That the Court enter a Declaratory Judgment, pursuant to N.C. Gen. Stat. §1-253 *et seq.*, that Section 1 of the Amended Water Act is unconstitutional as a violation of Article I, Section 19 of the United States Constitution in that it impairs Asheville's contract with bondholders;
4. That the Court enter a temporary restraining order, preliminary injunction, and permanent injunction enjoining operation and enforcement of Section 1 of the Amended Water Act, forbidding the Buncombe MSD and/or the New MWSD from assuming any authority or control over the Asheville Water System, and directing that Asheville may continue to own, manage, and operate the Asheville Water System;

5. In the alternative to the relief sought in paragraphs 1 through 4 of this prayer for relief and in the event the Court judges that Asheville is entitled to no relief on its First, Second, Third, and Fourth Claims:

- a. that venue of Asheville's Fifth and Sixth Claims be transferred to the Superior Court of Buncombe County for purposes of trial;
- b. that following trial of Asheville's Fifth Claim, the Court award Asheville damages in an amount sufficient to indemnify Asheville from any liability or loss it may incur on account of any breach or violation by Asheville of the terms of the General Trust Indenture or the Water Bonds;
- c. that following trial of Asheville's Sixth Claim, the Court award Asheville just compensation for the value of the Asheville Water System in an amount to be determined by the jury at trial;

6. That the Court award to Plaintiff its cost, expenses, and fees, including reasonable attorneys' fees, pursuant to applicable statutory and common law, including N.C. Gen. Stat. §6-19.1 and §6-20; and

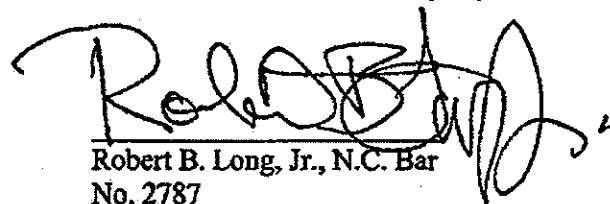
7. That the Court grant such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Asheville demands trial by jury on all issues as to which right of jury trial exists.

Respectfully submitted this 30th day of September, 2013.

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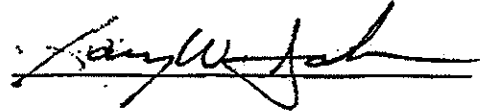
COUNSEL FOR PLAINTIFF

STATE OF NORTH CAROLINA

VERIFICATION

COUNTY OF BUNCOMBE

The undersigned, being first duly sworn, deposes and says that he is City Manager of the City of Asheville, the Plaintiff herein; that he has read the foregoing Verified Amended Complaint and to his personal knowledge the matters and statements contained therein are true except as to those matters or statements made upon information and belief, and as to those he believes them to be true.



Gary W. Jackson
City Manager

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

SWORN TO AND SUBSCRIBED before me this 30th day of September, 2013.


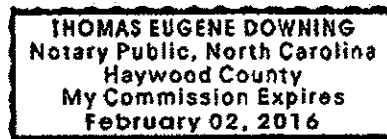

Notary Public 2-2-Thomas Eugene Downing
My Commission Expires:
2-2-2016

EXHIBIT A

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

3

HOUSE BILL 488
Committee Substitute Favorable 4/9/13
Third Edition Engrossed 4/11/13

Short Title: Regionalization of Public Utilities.

(Public)

Sponsors:

Referred to:

April 2, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER
3 SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN
4 PUBLIC WATER AND SEWER SYSTEMS TO A METROPOLITAN WATER AND
5 SEWERAGE DISTRICT.

6 Whereas, regional water and sewer systems provide reliable, cost-effective,
7 high-quality water and sewer services to a wide range of residential and institutional customers;
8 and

9 Whereas, in an effort to ensure that the citizens and businesses of North Carolina are
10 provided with the highest quality services, the State recognizes the value of regional solutions
11 for public water and sewer for large public systems; Now, therefore,
12 The General Assembly of North Carolina enacts:

13 SECTION 1.(a) All assets, real and personal, tangible and intangible, and all
14 outstanding debts of any public water system meeting all of the following criteria are by
15 operation of law transferred to the metropolitan sewerage district operating in the county where
16 the public water system is located, to be operated as a Metropolitan Water and Sewerage
17 District:

- 18 (1) The public water system is owned and operated by a municipality located in
19 a county where a metropolitan sewerage district is operating.
20 (2) The public water system has not been issued a certificate for an interbasin
21 transfer.
22 (3) The public water system serves a population greater than one hundred
23 twenty thousand (120,000) people, according to data submitted pursuant to
24 G.S. 143-355(l).

25 SECTION 1.(b) All assets, real and personal, tangible and intangible, and all
26 outstanding debts of any public sewer system operated by a subdivision of the State and body
27 politic that is interconnected with the metropolitan sewerage district receiving assets pursuant
28 to Section 1.(a) of this act are by operation of law transferred to that metropolitan sewerage
29 district to be operated as a Metropolitan Water and Sewerage District.

30 SECTION 1.(c) All assets, real and personal, tangible and intangible, and all
31 outstanding debts of any public sewer system operated by the metropolitan sewerage district
32 receiving assets pursuant to Sections 1.(a) and 1.(b) of this act, are by operation of law
33 transferred to, and be operated as, a Metropolitan Water and Sewerage District, as established
34 pursuant to this act.



SECTION 1.(d) Until appointments are made to the Metropolitan Water and Sewerage District established pursuant to this act, the district board of the metropolitan sewerage district in the county in which the public water system, the assets of which are transferred pursuant to Section 1.(a) of this act, is located shall function as the district board of the Metropolitan Water and Sewerage District. All members of the metropolitan sewerage district shall continue to serve on the district board of the Metropolitan Water and Sewerage District until the governing body with appointing authority appoints or replaces that individual on the district board of the Metropolitan Water and Sewerage District.

SECTION 1.(e) All necessary permits for operation shall also be transferred to the Metropolitan Water and Sewerage District established pursuant this act to ensure that no current and paid customer loses services due to the regionalization of water and sewer services required by this act. The new Metropolitan Water and Sewerage District shall immediately begin assessing all permits and the process for transferring the permit or applying for any needed permits. All State agencies shall assist the new Metropolitan Water and Sewerage District in obtaining any needed permits in that entity's name.

SECTION 1.(f) For purposes of this section, the transfer of all outstanding debts by operation of law shall make the Metropolitan Water and Sewer District liable for all debts attached to and related to the assets transferred under this section and the Metropolitan Water and Sewer District shall indemnify and hold harmless the grantor entity for any outstanding debts transferred under this section.

SECTION 2. Chapter 162A of the General Statutes is amended by adding a new Article to read:

"Article 5A.

"Metropolitan Water and Sewerage Districts.

"§ 162A-85.1. Definitions.

(a) Definitions. – As used in this Article the following definitions shall apply:

- (1) "Board of commissioners." – The duly elected board of commissioners of the county or counties in which a metropolitan water and sewerage district shall be created under the provisions of this Article.
- (2) "City council" or "Council." – The duly elected city council of any municipality.
- (3) "Cost." – As defined in G.S. 162A-65.
- (4) "District." – A metropolitan water and sewerage district created under the provisions of this Article.
- (5) "District board." – A water and sewerage district board established under the provisions of this Article.
- (6) "General obligation bonds." – As defined in G.S. 162A-65.
- (7) "Governing body." – As defined in G.S. 162A-32.
- (8) "Person." – As defined in G.S. 162A-65.
- (9) "Political subdivision." – As defined in G.S. 162A-65.
- (10) "Revenue bonds." – Any bonds the principal of and the interest on which are payable solely from revenues of a water and sewerage system or systems.
- (11) "Revenues." – All moneys received by a district from, in connection with, or as a result of its ownership or operation of a water and sewerage system, including moneys received from the United States of America, or any agency thereof, pursuant to an agreement with the district board pertaining to the water and sewerage system, if deemed advisable by the district board.
- (12) "Sewage." – As defined in G.S. 162A-65.
- (13) "Sewage disposal system." – As defined in G.S. 162A-65.
- (14) "Sewerage system." – As defined in G.S. 162A-65.
- (15) "Sewers." – As defined in G.S. 162A-65.

(16) "Water distribution system." – As defined in G.S. 162A-32.

(17) "Water system." – As defined in G.S. 162A-32.

(18) "Water treatment or purification plant." – As defined in G.S. 162A-32.

(b) Description of Boundaries. – Whenever this Article requires the boundaries of an area be described, it shall be sufficient if the boundaries are described in a manner which conveys an understanding of the location of the land and may be by any of the following:

(1) By reference to a clearly identified map recorded in the appropriate register of deeds office.

(2) By metes and bounds.

(3) By general description referring to natural boundaries, boundaries of political subdivisions, or boundaries of particular tracts or parcels of land.

(4) Any combination of the foregoing.

"§ 162A-85.2. Creation.

(a) Except as provided by operation of law, the governing bodies of two or more political subdivisions may establish a metropolitan water and sewerage district if all of the political subdivisions adopt a resolution setting forth all of the following:

(1) The names of the appointees to the district board.

(2) The date on which the district board shall be established.

(3) The boundaries of the district board.

(b) Prior to the adoption of a resolution under subsection (a) of this section, the governing body shall hold at least two public hearings on the matter, held at least 30 days apart, after publication of the notices of public hearing in a newspaper of general circulation, published at least 10 days before each public hearing.

"§ 162A-85.3. District board.

(a) Appointment. – The district board shall consist of members appointed as follows:

(1) Two individuals by the governing body of each county served, wholly or in part, by the district.

(2) One individual by the governing body of each municipality served by the district located in any county served by the district with a population greater than 200,000.

(3) Two individuals by the governing body of any municipality served by the district with a population greater than 75,000, in addition to any appointments under subdivision (2) of this subsection.

(4) One individual by the governing body of any county served by the district with a population greater than 200,000, in addition to any appointments under subdivision (1) of this subsection.

(5) One individual by the governing body of a county in which a watershed serving the district board is located in a municipality not served by the district, upon recommendation of that municipality. The municipality shall provide to the governing body of the county a list of three names within 30 days of written request by the county, from which the county must select an appointee if the names are provided within 30 days of written request.

(6) One individual by the governing body of any elected water and sewer district wholly contained within the boundaries of the district.

(b) Terms; Reappointment. – Terms shall be for three years. A member shall serve until a successor has been duly appointed and qualified.

(c) Vacancies; Removal. – If a vacancy shall occur on a district board, the governing body which appointed the vacating member shall appoint a new member who shall serve for the remainder of the unexpired term. Any member of a district board may be removed by the governing board that appointed that member.

(d) Oath of Office. – Each member of the district board, before entering upon the duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of the office. A record of each such oath shall be filed with the clerk or clerks of the governing boards appointing the members.

(e) Chair; Officers. – The district board shall elect one of its members as chairman and another as vice-chairman. The district board shall appoint a secretary and a treasurer who may, but need not, be members of the district board. The offices of secretary and treasurer may be combined. The district board may also appoint an assistant secretary and an assistant treasurer or, if the office is combined, an assistant secretary-treasurer who may, but need not, be members of the district board. The terms of office of the chairman, vice-chairman, secretary, treasurer, assistant secretary, and assistant treasurer shall be as provided in the bylaws of the district board.

(f) Meetings; Quorum. – The district board shall meet regularly at such places and dates as are determined by the district board. All meetings shall comply with Article 33C of Chapter 143 of the General Statutes. A majority of the members of the district board shall constitute a quorum, and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member, including the chairman, shall be entitled to vote on any question.

(g) Compensation. – The members of the district board may receive compensation in an amount to be determined by the district board but not to exceed that compensation paid to members of Occupational Licensing Boards as provided in G.S. 93B-5(a) for each meeting of the district board attended and for attendance at each regularly scheduled committee meeting of the district board. The members of the district board may also be reimbursed the amount of actual expenses incurred by that member in the performance of that member's duties.

"§ 162A-85.5. Powers generally.

(a) Each district shall be deemed to be a public body and body politic and corporate exercising public and essential governmental functions to provide for the preservation and promotion of the public health and welfare, and each district is hereby authorized and empowered to do all of the following:

- (1) To exercise any power of a Metropolitan Water District under Article 4 of this Chapter.
- (2) To exercise any power of a Metropolitan Sewerage District under Article 5 of this Chapter.
- (3) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

(b) Each district shall keep its accounts on the basis of a fiscal year commencing on the first day of July and ending on the thirtieth day of June of the following year.

"§ 162A-85.7. Bonds and notes authorized.

A metropolitan water and sewerage district shall have power from time to time to issue bonds and notes under the Local Government Finance Act.

"§ 162A-85.9. Determination of tax rate by district board; levy, collection, and remittance of tax.

(a) After each assessment for taxes following the creation of the district, the board or boards of commissioners shall file with the district board the valuation of assessable property within the district. The district board shall then determine the amount of funds to be raised by taxation for the ensuing year in excess of available funds to provide for the payment of interest on and the principal of all outstanding general obligation bonds as the same shall become due and payable, to pay the cost of maintaining, repairing, and operating any water system and any

sewerage system or systems, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions.

(b) The district board shall determine the number of cents per one hundred dollars (\$100.00) necessary to raise said amount and certify such rate to the board or boards of commissioners.

(c) The board or boards of commissioners shall include the number of cents per one hundred dollars (\$100.00) certified by the district board in its next annual levy against all taxable property within the district, which tax shall be collected as other county taxes are collected, and every month the amount of tax so collected shall be remitted to the district board and deposited by the district board in a separate account in a bank in the State of North Carolina. Such levy may include an amount for reimbursing the county for the additional cost to the county of levying and collecting such taxes, pursuant to such formula as may be agreed upon by the district board and the board or boards of commissioners, to be deducted from the collections and stated with each remittance to the district board.

(d) The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in G.S. 159-28 and G.S. 159-31.

"§ 162A-85.13. Rates and charges for services.

(a) The district board may fix, and may revise from time to time, rents, rates, fees, and other charges for the use of and for the services furnished or to be furnished by any water system or sewerage system. Such rents, rates, fees, and charges may not apply differing treatment within and outside the corporate limits of any city or county within the jurisdiction of the district board. Such rents, rates, fees, and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision.

(b) Any such rents, rates, fees, and charges pledged to the payment of revenue bonds of the district shall be fixed and revised so that the revenues of the water system or sewerage system, together with any other available funds, shall be sufficient at all times to pay the cost of maintaining, repairing, and operating the sewerage system, the revenues of which are pledged to the payment of such revenue bonds, including reserves for such purposes, and to pay the interest on and the principal of such revenue bonds as the same shall become due and payable and to provide reserves therefor. If any such rents, rates, fees, and charges are pledged to the payment of any general obligation bonds issued under this Article, such rents, rates, fees, and charges shall be fixed and revised so as to comply with the requirements of such pledge.

(c) The district board may provide methods for collection of such rents, rates, fees, and charges and measures for enforcement of collection thereof, including penalties and the denial or discontinuance of service.

"§ 162A-85.17. Rights-of-way and easements.

A right-of-way or easement in, along, or across any State highway system, road, or street, and along or across any city or town street within a district is hereby granted to a district in case such right-of-way is found by the district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the Department of Transportation, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body.

"§ 162A-85.19. Authority of governing bodies of political subdivisions.

(a) The governing body of any political subdivision is hereby authorized and empowered to do any of the following:

(1) Subject to the approval of the Local Government Commission, to transfer jurisdiction over and to lease, lend, sell, grant, or convey to a district, upon

- 1 such terms and conditions as the governing body of such political
- 2 subdivision may agree upon with the district board, the whole or any part of
- 3 any existing water system or systems or sewerage system or systems or such
- 4 real or personal property as may be necessary or useful in connection with
- 5 the acquisition, construction, reconstruction, improvement, extension,
- 6 enlargement, equipment, repair, maintenance, or operation of any water
- 7 system or sewerage system by the district, including public roads and other
- 8 property already devoted to public use.
- 9 (2) To make and enter into contracts or agreements with a district, upon such
- 10 terms and conditions and for such periods as such governing body and the
- 11 district board may determine for any of the following:
- 12 a. For the collection, treatment, or disposal of sewage.
- 13 b. For the supply of raw or treated water on a regular retail or wholesale
- 14 basis.
- 15 c. For the supply of raw or treated water on a standby wholesale basis.
- 16 d. For the construction of jointly financed facilities whose title shall be
- 17 vested in the district.
- 18 e. For the collecting by such political subdivision or by the district of
- 19 rents, rates, fees, or charges for the services and facilities provided to
- 20 or for such political subdivision or its inhabitants by any water
- 21 system or sewerage system and for the enforcement of collection of
- 22 such rents, rates, fees, and charges.
- 23 f. For the imposition of penalties, including the shutting off of the
- 24 supply of water furnished by any water system owned or operated by
- 25 such political subdivision, in the event that the owner, tenant, or
- 26 occupant of any premises utilizing such water shall fail to pay any
- 27 such rents, rates, fees, or charges.
- 28 (3) To fix and revise from time to time, rents, rates, fees, and other charges for
- 29 the services furnished or to be furnished by a water system or sewerage
- 30 system under any contract between the district and such political subdivision
- 31 and to pledge all or any part of the proceeds of such rents, rates, fees, and
- 32 charges to the payment of any obligation of such political subdivision to the
- 33 district under such contract.
- 34 (4) To pay any obligation of such political subdivision to the district under such
- 35 contract from any available funds of the political subdivision and to levy and
- 36 collect a tax ad valorem for the making of any such payment.
- 37 (5) In its discretion or if required by law, to submit to its qualified electors under
- 38 the election laws applicable to such political subdivision any contract or
- 39 agreement which such governing body is authorized to make and enter into
- 40 with the district under the provisions of this Article.
- 41 (b) Any such election upon a contract or agreement called under subsection (a) of this
- 42 section may, at the discretion of the governing body, be called and held under the election laws
- 43 applicable to the issuance of bonds by such political subdivision.
- 44 "§ 162A-85.21. Submission of preliminary plans to planning groups; cooperation with
- 45 planning agencies.
- 46 (a) Prior to the time final plans are made for the location and construction of any water
- 47 system or sewerage system, the district board shall present preliminary plans for such
- 48 improvement to the county or municipal governing board for their consideration if such facility
- 49 is to be located within the jurisdiction of any such county or municipality. The district board
- 50 shall make every effort to cooperate with the county or municipality in the location and
- 51 construction of a proposed facility authorized under this Article.

(b) Any district board created under the authority of this Article is hereby directed, wherever possible, to coordinate its plans for the construction of water system or sewerage system improvements with the overall plans for the development of the planning area if such district is located wholly or in part within a county or municipal planning area.

(c) The approval of any such plan of the district shall be required from the governing body of the county or municipality prior to the start of construction.

"§ 162A-85.25. Adoption and enforcement of ordinances.

(a) A district shall have the same power as a city under G.S. 160A-175 to assess civil fines and penalties for violation of its ordinances and may secure injunctions to further ensure compliance with its ordinances as provided by this section.

(b) An ordinance may provide that its violation shall subject the offender to a civil penalty of not more than one thousand dollars (\$1,000) to be recovered by the district in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance. Any person assessed a civil penalty by the district shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the district within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the district may specify, the district may institute a civil action in the General Court of Justice of the county in which the violation occurred or, in the discretion of the district, in the General Court of Justice of the county in which the person assessed has his or its principal place of business, to recover the amount of the assessment. The validity of the district's action may be appealed directly to General Court of Justice in the county in which the violation occurred or may be raised at any time in the action to recover the assessment. Neither failure to contest the district's action directly nor failure to raise the issue of validity in the action to recover an assessment precludes the other.

(c) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the district for equitable relief that there is an adequate remedy at law.

(d) Subject to the express terms of an ordinance, a district ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(e) An ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense.

"§ 162A-85.29. No privatization.

The district board may not in any way privatize the provision of water or sewer to the customers of the district unless related to administrative matters only."

SECTION 3. G.S. 159-44(4) reads as rewritten:

"(4) "Unit," "unit of local government," or "local government" means counties; cities, towns, and incorporated villages; consolidated city-counties, as defined by G.S. 160B-2(1); sanitary districts; mosquito control districts; hospital districts; merged school administrative units described in G.S. 115C-513; metropolitan sewerage districts; metropolitan water districts; metropolitan water and sewerage districts; county water and sewer districts; regional public transportation authorities; and special airport districts."

SECTION 4. G.S. 159-48(e) reads as rewritten:

"(e) Each sanitary district, mosquito control district, hospital district, merged school administrative unit described in G.S. 115C-513; metropolitan sewerage district, metropolitan water district, metropolitan water and sewerage district, county water and sewer district, regional public transportation authority and special airport district is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the purposes for which it is authorized, by general laws

1 uniformly applicable throughout the State, to raise or appropriate money, except for current
2 expenses."

3 **SECTION 5.** G.S. 159-81(1) reads as rewritten:

4 "(1) "Municipality" means a county, city, town, incorporated village, sanitary
5 district, metropolitan sewerage district, metropolitan water district,
6 metropolitan water and sewerage district, county water and sewer district,
7 water and sewer authority, hospital authority, hospital district, parking
8 authority, special airport district, special district created under Article 43 of
9 Chapter 105 of the General Statutes, regional public transportation authority,
10 regional transportation authority, regional natural gas district, regional sports
11 authority, airport authority, joint agency created pursuant to Part 1 of Article
12 20 of Chapter 160A of the General Statutes, a joint agency authorized by
13 agreement between two cities to operate an airport pursuant to G.S. 63-56,
14 and the North Carolina Turnpike Authority described in Article 6H of
15 Chapter 136 of the General Statutes and transferred to the Department of
16 Transportation pursuant to G.S. 136-89.182(b), but not any other forms of
17 State or local government."

18 **SECTION 6.** This act is effective May 15, 2013, and the Metropolitan Water and
19 Sewer District in Section 1 of this act shall be created by operation of law.

EXHIBIT B

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-388
SENATE BILL 341

AN ACT TO ESTABLISH AN EXPEDITED PROCESS FOR THE MODIFICATION OF INTERBASIN TRANSFER CERTIFICATES AND FOR THE ISSUANCE OF INTERBASIN TRANSFER CERTIFICATES IN THE CENTRAL COASTAL PLAIN CAPACITY USE AREA AND THE COASTAL AREA COUNTIES AND TO AMEND S.L. 2013-50, AN ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN PUBLIC WATER AND SEWER SYSTEMS TO A METROPOLITAN WATER AND SEWERAGE DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.22G reads as rewritten:

"§ 143-215.22G. Definitions.

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part.

- (1) "River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub-basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.
- | | | |
|-----|------|--------------------------------|
| a. | 1-1 | Broad River. |
| b. | 2-1 | Haw River. |
| c. | 2-2 | Deep River. |
| d. | 2-3 | Cape Fear River. |
| e. | 2-4 | South River. |
| f. | 2-5 | Northeast Cape Fear River. |
| g. | 2-6 | New River. |
| h. | 3-1 | Catawba River. |
| i. | 3-2 | South Fork Catawba River. |
| j. | 4-1 | Chowan River. |
| k. | 4-2 | Meherrin River. |
| l. | 5-1 | Nolichucky River. |
| m. | 5-2 | French Broad River. |
| n. | 5-3 | Pigeon River. |
| o. | 6-1 | Hiwassee River. |
| p. | 7-1 | Little Tennessee River. |
| q. | 7-2 | Tuckasegee (Tuckasegee) River. |
| r. | 8-1 | Savannah River. |
| s. | 9-1 | Lumber River. |
| t. | 9-2 | Big Shoe Heel Creek. |
| u. | 9-3 | Waccamaw River. |
| v. | 9-4 | Shalotte River. |
| w. | 10-1 | Neuse River. |
| x. | 10-2 | Contentnea Creek. |
| y. | 10-3 | Trent River. |
| z. | 11-1 | New River. |
| aa. | 12-1 | Albemarle Sound. |



* S 3 4 1 - V - 6 *

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|-----|------|--------------------------------|
| bb. | 13-1 | Ocoee River. |
| cc. | 14-1 | Roanoke River. |
| dd. | 15-1 | Tar River. |
| ee. | 15-2 | Fishing Creek. |
| ff. | 15-3 | Pamlico River and Sound. |
| gg. | 16-1 | Watauga River. |
| hh. | 17-1 | White Oak River. |
| ii. | 18-1 | Yadkin (Yadkin-Pee Dee) River. |
| jj. | 18-2 | South Yadkin River. |
| kk. | 18-3 | Uwharrie River. |
| ll. | 18-4 | Rocky River. |
- (2) "Surface water" means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.
- (3) "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1), the following are not transfers under this Part:
- a. The discharge of water upstream from the point where it is withdrawn.
- b. The discharge of water downstream from the point where it is withdrawn.
- (4) "Public water system" means any unit of local government or large community water system subject to the requirements of G.S. 143-355(l).
- (5) "Mainstem" means that portion of a river having the same name as a river basin defined in subdivision (1) of this section. "Mainstem" does not include named or unnamed tributaries."

SECTION 2. G.S. 143-215.22L reads as rewritten:

"§ 143-215.22L. Regulation of surface water transfers.

(a) **Certificate Required.** – No person, without first obtaining a certificate from the Commission, may:

- (1) Initiate a transfer of 2,000,000 gallons of water or more per day-day, calculated as a daily average of a calendar month and not to exceed 3,000,000 gallons per day in any one day, from one river basin to another.
- (2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.
- (3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to 1 July 1993.

(b) **Exception.** – Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was in existence or under construction on 1 July 1993.

(c) **Notice of Intent to File a Petition.** – An applicant shall prepare a notice of intent to file a petition that includes a nontechnical description of the applicant's request and an identification of the proposed water source. Within 90 days after the applicant files a notice of intent to file a petition, the applicant shall hold at least one public meeting in the source river basin upstream from the proposed point of withdrawal, at least one public meeting in the source river basin downstream from the proposed point of withdrawal, and at least one public meeting in the receiving river basin to provide information to interested parties and the public regarding the nature and extent of the proposed transfer and to receive comment on the scope of the environmental documents. Written notice of the public meetings shall be provided at least 30 days before the public meetings. At the time the applicant gives notice of the public meetings, the applicant shall request comment on the alternatives and issues that should be addressed in the environmental documents required by this section. The applicant shall accept written comment on the scope of the environmental documents for a minimum of 30 days following

the last public meeting. Notice of the public meetings and opportunity to comment on the scope of the environmental documents shall be provided as follows:

- (1) By publishing notice in the North Carolina Register.
- (2) By publishing notice in a newspaper of general circulation in:
 - a. Each county in this State located in whole or in part of the area of the source river basin upstream from the proposed point of withdrawal.
 - b. Each city or county located in a state located in whole or in part of the surface drainage basin area of the source river basin that also falls within, in whole or in part, the area denoted by one of the following eight-digit cataloging units as organized by the United States Geological Survey:
 - 03050105 (Broad River: NC and SC);
 - 03050106 (Broad River: SC);
 - 03050107 (Broad River: SC);
 - 03050108 (Broad River: SC);
 - 05050001 (New River: NC and VA);
 - 05050002 (New River: VA and WV);
 - 03050101 (Catawba River: NC and SC);
 - 03050103 (Catawba River: NC and SC);
 - 03050104 (Catawba River: SC);
 - 03010203 (Chowan River: NC and VA);
 - 03010204 (Chowan River: NC and VA);
 - 06010105 (French Broad River: NC and TN);
 - 06010106 (French Broad River: NC and TN);
 - 06010107 (French Broad River: TN);
 - 06010108 (French Broad River: NC and TN);
 - 06020001 (Hiwassee River: AL, GA, TN);
 - 06020002 (Hiwassee River: GA, NC, TN);
 - 06010201 (Little Tennessee River: TN);
 - 06010202 (Little Tennessee River: TN, GA, and NC);
 - 06010204 (Little Tennessee River: NC and TN);
 - 03060101 (Savannah River: NC and SC);
 - 03060102 (Savannah River: GA, NC, and SC);
 - 03060103 (Savannah River: GA and SC);
 - 03060104 (Savannah River: GA);
 - 03060105 (Savannah River: GA);
 - 03040203 (Lumber River: NC and SC);
 - 03040204 (Lumber River: NC and SC);
 - 03040206 (Lumber River: NC and SC);
 - 03040207 (Lumber River: NC and SC);
 - 03010205 (Albemarle Sound: NC and VA);
 - 06020003 (Ocoee River: GA, NC, and TN);
 - 03010101 (Roanoke River: VA);
 - 03010102 (Roanoke River: NC and VA);
 - 03010103 (Roanoke River: NC and VA);
 - 03010104 (Roanoke River: NC and VA);
 - 03010105 (Roanoke River: VA);
 - 03010106 (Roanoke River: NC and VA);
 - 06010102 (Watauga River: TN and VA);
 - 06010103 (Watauga River: NC and TN);
 - 03040101 (Yadkin River: VA and NC);
 - 03040104 (Yadkin River: NC and SC);
 - 03040105 (Yadkin River: NC and SC);
 - 03040201 (Yadkin River: NC and SC);
 - 03040202 (Yadkin River: NC and SC).
 - c. Each county in this State located in whole or in part of the area of the source river basin downstream from the proposed point of withdrawal.

- d. Any area in the State in a river basin for which the source river basin has been identified as a future source of water in a local water supply plan prepared pursuant to G.S. 143-355(1).
 - e. Each county in the State located in whole or in part of the receiving river basin.
- (3) By giving notice by first-class mail or electronic mail to each of the following:
- a. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the source river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.
 - b. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the receiving river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.
 - c. The governing body of any public water supply system that withdraws water upstream or downstream from the withdrawal point of the proposed transfer.
 - d. If any portion of the source or receiving river basins is located in another state, all state water management or use agencies, environmental protection agencies, and the office of the governor in that state upstream or downstream from the withdrawal point of the proposed transfer.
 - e. All persons who have registered a water withdrawal or transfer from the proposed source river basin under this Part or under similar law in another state.
 - f. All persons who hold a certificate for a transfer of water from the proposed source river basin under this Part or under similar law in another state.
 - g. All persons who hold a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit for a discharge of 100,000 gallons per day or more upstream or downstream from the proposed point of withdrawal.
 - h. To any other person who submits to the applicant a written request to receive all notices relating to the petition.

(d) Environmental Documents. – The definitions set out in G.S. 113A-9 apply to this section. The Department shall conduct a study of the environmental impacts of any proposed transfer of water for which a certificate is required under this section. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. An environmental assessment shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes; except that an environmental impact statement shall be prepared for every proposed transfer of water from one major river basin to another for which a certificate is required under this section. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes. An environmental impact statement prepared pursuant to this subsection shall include all of the following:

- (1) A comprehensive analysis of the impacts that would occur in the source river basin and the receiving river basin if the petition for a certificate is granted.
- (2) An evaluation of alternatives to the proposed interbasin transfer, including water supply sources that do not require an interbasin transfer and use of water conservation measures.

- (3) A description of measures to mitigate any adverse impacts that may arise from the proposed interbasin transfer.

(e) **Public Hearing on the Draft Environmental Document.** – The Commission shall hold a public hearing on the draft environmental document for a proposed interbasin transfer after giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate where a copy of the environmental document can be reviewed and the procedure to be followed by anyone wishing to submit written comments and questions on the environmental document. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The Commission shall accept written comment on the draft environmental document for a minimum of 30 days following the last public hearing. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft environmental document.

(f) **Determination of Adequacy of Environmental Document.** – The Commission shall not act on any petition for an interbasin transfer until the Commission has determined that the environmental document is complete and adequate. A decision on the adequacy of the environmental document is subject to review in a contested case on the decision of the Commission to issue or deny a certificate under this section.

(g) **Petition.** – An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include all of the following:

- (1) A general description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities including current and projected areas to be served by the transfer, current and projected capacities of intakes, and other relevant facilities.
- (2) A description of all the proposed consumptive and nonconsumptive uses of the water to be transferred.
- (3) A description of the water quality of the source river and receiving river, including information on aquatic habitat for rare, threatened, and endangered species; in-stream flow data for segments of the source and receiving rivers that may be affected by the transfer; and any waters that are impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).
- (4) A description of the water conservation measures used by the applicant at the time of the petition and any additional water conservation measures that the applicant will implement if the certificate is granted.
- (5) A description of all sources of water within the receiving river basin, including surface water impoundments, groundwater wells, reinjection storage, and purchase of water from another source within the river basin, that is a practicable alternative to the proposed transfer that would meet the applicant's water supply needs. The description of water sources shall include sources available at the time of the petition for a certificate and any planned or potential water sources.
- (6) A description of water transfers and withdrawals registered under G.S. 143-215.22H or included in a local water supply plan prepared pursuant to G.S. 143-355(l) from the source river basin, including transfers and withdrawals at the time of the petition for a certificate and any planned or reasonably foreseeable transfers or withdrawals by a public water system with service area located within the source river basin.
- (7) A demonstration that the proposed transfer, if added to all other transfers and withdrawals required to be registered under G.S. 143-215.22H or included in any local water supply plan prepared by a public water system with service area located within the source basin pursuant to G.S. 143-355(l) from the source river basin at the time of the petition for a certificate, would not reduce the amount of water available for use in the source river basin to a degree that would impair existing uses, pursuant to the antidegradation policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation

Policy) (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto, or existing and planned consumptive and nonconsumptive uses of the water in the source river basin. If the proposed transfer would impact a reservoir within the source river basin, the demonstration must include a finding that the transfer would not result in a water level in the reservoir that is inadequate to support existing uses of the reservoir, including recreational uses.

- (8) The applicant's future water supply needs and the present and reasonably foreseeable future water supply needs for public water systems with service area located within the source river basin. The analysis of future water supply needs shall include agricultural, recreational, and industrial uses, and electric power generation. Local water supply plans prepared pursuant to G.S. 143-355(l) for water systems with service area located within the source river basin shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems.
- (9) The applicant's water supply plan prepared pursuant to G.S. 143-355(l). If the applicant's water supply plan is more than two years old at the time of the petition, then the applicant shall include with the petition an updated water supply plan.
- (10) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(h) **Settlement Discussions.** – Upon the request of the applicant, any interested party, or the Department, or upon its own motion, the Commission may appoint a mediation officer. The mediation officer may be a member of the Commission, an employee of the Department, or a neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section. The mediation officer shall make a reasonable effort to initiate settlement discussions between the applicant and all other interested parties. Evidence of statements made and conduct that occurs in a settlement discussion conducted under this subsection, whether attributable to a party, a mediation officer, or other person shall not be subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a certificate. The Commission may adopt rules to govern the conduct of the mediation process.

(i) **Draft Determination.** – Within 90 days after the Commission determines that the environmental document prepared in accordance with subsection (d) of this section is adequate or the applicant submits its petition for a certificate, whichever occurs later, the Commission shall issue a draft determination on whether to grant the certificate. The draft determination shall be based on the criteria set out in this section and shall include the conditions and limitations, findings of fact, and conclusions of law that would be required in a final determination. Notice of the draft determination shall be given as provided in subsection (c) of this section.

(j) **Public Hearing on the Draft Determination.** – Within 60 days of the issuance of the draft determination as provided in subsection (i) of this section, the Commission shall hold public hearings on the draft determination. At least one hearing shall be held in the affected area of the source river basin, and at least one hearing shall be held in the affected area of the receiving river basin. In determining whether more than one public hearing should be held within either the source or receiving river basins, the Commission shall consider the differing or conflicting interests that may exist within the river basins, including the interests of both upstream and downstream parties potentially affected by the proposed transfer. The public hearings shall be conducted by one or more hearing officers appointed by the Chair of the Commission. The hearing officers may be members of the Commission or employees of the Department. The Commission shall give at least 30 days' written notice of the public hearing as provided in subsection (c) of this section. The Commission shall accept written comment on the draft determination for a minimum of 30 days following the last public hearing. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft determination.

(k) **Final Determination: Factors to be Considered.** – In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of

the following items and state in writing its findings of fact and conclusions of law with regard to each item:

- (1) The necessity and reasonableness of the amount of surface water proposed to be transferred and its proposed uses.
- (2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans for public water systems with service area located within the source river basin prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems. Information on projected future water needs for public water systems with service area located within the source river basin that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the source river basin.
- (3) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the petition for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan for public water systems with service area located within the source river basin that has been submitted to the Department in accordance with G.S. 143-355(l).
- (4) The present and reasonably foreseeable future beneficial and detrimental effects on the receiving river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans prepared pursuant to G.S. 143-355(l) that affect the receiving river basin shall be used to evaluate the projected future water needs in the receiving river basin that will be met by public water systems. Information on projected future water needs that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the receiving river basin.
- (5) The availability of reasonable alternatives to the proposed transfer, including the potential capacity of alternative sources of water, the potential of each alternative to reduce the amount of or avoid the proposed transfer, probable costs, and environmental impacts. In considering alternatives, the Commission is not limited to consideration of alternatives that have been proposed, studied, or considered by the applicant. The determination shall include a specific finding as to why the applicant's need for water cannot be satisfied by alternatives within the receiving basin, including unused capacity under a transfer for which a certificate is in effect or that is otherwise authorized by law at the time the applicant submits the petition. The determination shall consider the extent to which access to potential sources of surface water or groundwater within the receiving river basin is no longer available due to depletion, contamination, or the declaration of a capacity use area under Part 2 of Article 21 of Chapter 143 of the General Statutes. The determination shall consider the feasibility of the applicant's purchase of water from other water suppliers within the receiving basin and of the transfer of water from another sub-basin within the receiving major river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the Commission's determination as to reasonable alternatives shall give preference to alternatives that would involve a transfer from one sub-basin to another within the major receiving

river basin over alternatives that would involve a transfer from one major river basin to another major river basin.

- (6) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.
- (7) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.
- (8) Whether the service area of the applicant is located in both the source river basin and the receiving river basin.
- (9) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(l) **Final Determination: Information to be Considered.** – In determining whether a certificate may be issued for the transfer, the Commission shall consider all of the following sources of information:

- (1) The petition.
- (2) The environmental document prepared pursuant to subsection (d) of this section.
- (3) All oral and written comment and all accompanying materials or evidence submitted pursuant to subsections (e) and (j) of this section.
- (4) Information developed by or available to the Department on the water quality of the source river basin and the receiving river basin, including waters that are identified as impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total maximum daily load (TMDL) limit under subsections (d) and (e) of section 303 of the federal Clean Water Act, or that would have their assimilative capacity impaired if the certificate is issued.
- (5) Any other information that the Commission determines to be relevant and useful.

(m) **Final Determination: Burden and Standard of Proof; Specific Findings.** – The Commission shall grant a certificate for a water transfer if the Commission finds that the applicant has established by a preponderance of the evidence all of the following:

- (1) The benefits of the proposed transfer outweigh the detriments of the proposed transfer. In making this determination, the Commission shall be guided by the approved environmental document and the policy set out in subsection (f) of this section.
- (2) The detriments have been or will be mitigated to the maximum degree practicable.
- (3) The amount of the transfer does not exceed the amount of the projected shortfall under the applicant's water supply plan after first taking into account all other sources of water that are available to the applicant.
- (4) There are no reasonable alternatives to the proposed transfer.

(n) **Final Determination: Certificate Conditions and Limitations.** – The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may impose any conditions or limitations on a certificate that the Commission finds necessary to achieve the purposes of this Part including a limit on the period for which the certificate is valid. The conditions and limitations shall include any mitigation measures proposed by the applicant to minimize any detrimental effects within the source and receiving river basins. In addition, the certificate shall require all of the following conditions and limitations:

- (1) A water conservation plan that specifies the water conservation measures that will be implemented by the applicant in the receiving river basin to ensure the efficient use of the transferred water. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the water conservation plan shall provide for the mandatory implementation of water conservation measures by the applicant that equal or exceed the most stringent water conservation plan implemented by a community water

~~system, as defined in G.S. 143-355(1), public water system that withdraws water from the source river basin.~~

- (2) A drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions or other emergencies that occur within the source river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, this drought management plan shall include mandatory reductions in the permitted amount of the transfer based on the severity and duration of a drought occurring within the source river basin and shall provide for the mandatory implementation of a drought management plan by the applicant that equals or exceeds the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(1), public water system~~ that withdraws water from the source river basin.
- (3) ~~The maximum amount of water that may be transferred on a daily basis, transferred, calculated as a daily average of a calendar month, and methods or devices required to be installed and operated that measure the amount of water that is transferred.~~
- (4) A provision that the Commission may amend a certificate to reduce the maximum amount of water authorized to be transferred whenever it appears that an alternative source of water is available to the certificate holder from within the receiving river basin, including, but not limited to, the purchase of water from another water supplier within the receiving basin or to the transfer of water from another sub-basin within the receiving major river basin.
- (5) A provision that the Commission shall amend the certificate to reduce the maximum amount of water authorized to be transferred if the Commission finds that the applicant's current projected water needs are significantly less than the applicant's projected water needs at the time the certificate was granted.
- (6) A requirement that the certificate holder report the quantity of water transferred during each calendar quarter. The report required by this subdivision shall be submitted to the Commission no later than 30 days after the end of the quarter.
- (7) Except as provided in this subdivision, a provision that the applicant will not resell the water that would be transferred pursuant to the certificate to another public water supply system. This limitation shall not apply in the case of a proposed resale or transfer among public water supply systems within the receiving river basin as part of an interlocal agreement or other regional water supply arrangement, provided that each participant in the interlocal agreement or regional water supply arrangement is a co-applicant for the certificate and will be subject to all the terms, conditions, and limitations made applicable to any lead or primary applicant.

(o) Administrative and Judicial Review. – Administrative and judicial review of a final decision on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes.

(p) Certain Preexisting Transfers. – In cases where an applicant requests approval to increase a transfer that existed on 1 July 1993, the Commission may approve or disapprove only the amount of the increase. If the Commission approves the increase, the certificate shall be issued for the amount of the preexisting transfer plus any increase approved by the Commission. A certificate for a transfer approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part. A certificate for the increase of a preexisting transfer shall contain all of the conditions and limitations required by subsection (m) of this section.

(q) Emergency Transfers. – In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health, safety, or welfare requires a transfer of water, the Secretary of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary shall consult with those parties listed in

subdivision (3) of subsection (c) of this section that are likely to be affected by the proposed transfer. However, the Secretary shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions of law in approving a temporary transfer under this subsection. If the Secretary approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary based on demonstrated need as set forth in this subsection.

(r) **Relationship to Federal Law.** – The substantive restrictions, conditions, and limitations upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government. This section shall govern the transfer of water from one river basin to another unless preempted by federal law.

(s) **Planning Requirements.** – When any transfer for which a certificate was issued under this section equals or exceeds eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S.143-355(l). When the transfer equals or exceeds ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(t) **Statement of Policy.** – It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. It is the public policy of this State that the reasonably foreseeable future water needs of a public water system with its service area located primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(u) **Renewal of Certificate.** – ~~A petition to extend or renew a certificate shall be treated as a new petition.~~

(v) **Modification of Certificate.** – A certificate may be modified as provided in this subsection.

(1) The Commission or the Department may make any of the following modifications to a certificate after providing electronic notice to persons who have identified themselves in writing as interested parties:

- a. Correction of typographical errors.
- b. Clarification of existing conditions or language.
- c. Updates, requested by the certificate holder, to a conservation plan, drought management plan, or compliance and monitoring plan.
- d. Modifications requested by the certificate holder to reflect altered requirements due to the amendment of this section.

(2) A person who holds a certificate for an interbasin transfer of water may request that the Commission modify the certificate. The request shall be considered and a determination made according to the following procedures:

- a. The certificate must have been issued pursuant to G.S. 162A-7, 143-215.22I, or 143-215.22L and the certificate holder must be in substantial compliance with the certificate.
- b. The certificate holder shall file a notice of intent to file a request for modification that includes a nontechnical description of the certificate holder's request and identification of the proposed water source.
- c. The certificate holder shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required for the modification of a certificate unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

- d. Upon determining that the documentation submitted by the certificate holder is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the request for modification in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the request for the modification and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The certificate holder who petitions the Commission for a modification under this subdivision shall pay the costs associated with the notice and public hearing.
- e. The Department shall accept comments on the requested modification for a minimum of 30 days following the public hearing.
- f. The Commission or the Department may require the certificate holder to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.
- g. The Commission shall make a final determination whether to grant the requested modification based on the factors set out in subsection (k) of this section, information provided by the certificate holder, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.
- h. The Commission shall grant the requested modification if it finds that the certificate holder has established by a preponderance of the evidence that the requested modification satisfies the requirements of subsection (m) of this section. The Commission may grant the requested modification in whole or in part, or deny the request, and may impose such limitations and conditions on the modified certificate as it deems necessary and relevant to the modification.
- i. The Commission shall not grant a request for modification if the modification would result in the transfer of water to an additional major river basin.
- j. The Commission shall not grant a request for modification if the modification would be inconsistent with the December 3, 2010 Settlement Agreement entered into between the State of North Carolina, the State of South Carolina, Duke Energy Carolinas, and the Catawba River Water Supply Project.

(w) Requirements for Coastal Counties. – A petition for a certificate to transfer surface water to supplement ground water supplies in the 15 counties designated as the Central Capacity Use Area under 15A NCAC 2E .0501, or to transfer surface water withdrawn from the mainstem of a river to provide service to one of the coastal area counties designated pursuant to G.S. 113A-103, shall be considered and a determination made according to the following procedures:

- (1) The applicant shall file a notice of intent that includes a nontechnical description of the applicant's request and identification of the proposed water source.
- (2) The applicant shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.
- (3) Upon determining that the documentation submitted by the applicant is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the petition in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the petition and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in

the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The applicant who petitions the Commission for a certificate under this subdivision shall pay the costs associated with the notice and public hearing.

- (4) The Department shall accept comments on the petition for a minimum of 30 days following the public hearing.
- (5) The Commission or the Department may require the applicant to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.
- (6) The Commission shall make a final determination whether to grant the certificate based on the factors set out in subsection (k) of this section, information provided by the applicant, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.
- (7) The Commission shall grant the certificate if it finds that the applicant has established by a preponderance of the evidence that the petition satisfies the requirements of subsection (m) of this section. The Commission may grant the certificate in whole or in part, or deny the request, and may impose such limitations and conditions on the certificate as it deems necessary and relevant."

SECTION 3.(a) Section 1 of S.L. 2011-298 reads as rewritten:

"**SECTION 1.** Notwithstanding G.S. 143-215.221 and G.S. 143-215.22L, a certificate issued pursuant to G.S. 143-215.22L is not required for a transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501."

SECTION 3.(b) Section 4 of S.L. 2011-298 reads as rewritten:

"**SECTION 4.(a)** This act is effective when it becomes law and applies to any transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated on or after August 31, 2007.

"**SECTION 4.(b)** Section 1 of this act shall expire if the cumulative volume of water transfers ~~transfers~~, by public water supply systems sharing a single intake, from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated on or after August 31, 2007, by any person that does not hold a certificate for an interbasin transfer on or before the effective date of this act, exceeds 8,000,000 gallons per day.

"**SECTION 4.(c)** Any transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated while Section 1 of this act is effective shall not require certification pursuant to G.S. 143-215.22L upon expiration of Section 1 of this act."

SECTION 3.(c) Section 7 of S.L. 2007-518, as amended by Section 4 of S.L. 2010-155 and Section 2 of S.L. 2011-298, reads as rewritten:

~~"SECTION 7.(a) Except as provided in subsections (b), (c) and (d) of this section, this~~
SECTION 7. This act becomes effective when it becomes law and applies to any petition for a certificate for a transfer of surface water from one river basin to another river basin first made on or after that date.

~~"SECTION 7.(c) For purposes of this subsection, "isolated river basin" means each of the following river basins set out in G.S. 143-215.22G(1):~~

g.	2-6	New River.
v.	9-4	Shalotte River.
aa.	12-1	Albemarle Sound.
hh.	17-1	White Oak River.

~~For a petition for a certificate for transfer of surface water from a river basin to an isolated river basin, this act becomes effective 1 July 2020. Prior to 1 July 2020, a petition for a certificate for transfer of surface water from a river basin to an isolated river basin shall be considered and acted upon by the Environmental Management Commission pursuant to the procedures and standards set out in G.S. 143-215.221 on 1 July 2007.~~

~~"SECTION 7.(d) Notwithstanding subsection (c) of this section, an applicant for a certificate for transfer of surface water from a river basin to an isolated river basin may request that the applicant be subject to the certification process that would apply if the transfer was not into an isolated river basin."~~

SECTION 4. Section 1(a)(2) of S.L. 2013-50 is repealed.

SECTION 5. S.L. 2013-50 is amended by adding a new section to read:

"SECTION 1.(g) For purposes of this section, a public water system shall not include any system that is operated simultaneously with a sewer system by the same public body, in conjunction with the provision of other utility services for its customers."

SECTION 6. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 2013.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 10:46 a.m. this 23rd day of August, 2013

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-6691

CITY OF ASHEVILLE, a municipal
corporation,

Plaintiff,

- against -

THE STATE OF NORTH CAROLINA
and the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE COUNTY,
NORTH CAROLINA,

Defendants.

STIPULATED CASE MANAGEMENT
ORDER AND ORDER EXTENDING
TEMPORARY RESTRAINING ORDER

✓

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WAKE COUNTY NC

By stipulation of counsel for the plaintiff and all the defendants, the Court hereby enters the following Case Management Order which shall govern this matter, except as modified by subsequent order.

The plaintiff has agreed to withdraw its Notice of Hearing of its Motion for a Preliminary Injunction, without prejudice to renewal, and the defendant, the State of North Carolina, has agreed to withdraw its Notice of Hearing of its Motion to Dismiss the plaintiff's Complaint, also without prejudice to renewal.

NOW, THEREFORE, upon the consent of the parties, it is ORDERED, ADJUDGED and DECREED as follows:

1. The plaintiff shall file and serve all counsel of record in this action with a copy of its Amended Complaint by no later than October 7, 2013.
2. The defendant, the State of North Carolina, shall file and serve all counsel of record in this action with a copy of its Answer to the plaintiff's Amended Complaint by no later than 30 calendar days after the date of filing and service of the plaintiff's Amended Complaint.

The defendant, the Metropolitan Sewerage District of Buncombe County, North Carolina, shall file and serve all counsel of record in this action with a copy of its Answer to the plaintiff's Amended Complaint by no later than 30 calendar days after the date of filing and service of the plaintiff's Amended Complaint.

3. Except as otherwise ordered by the Court, the parties shall have a maximum of 120 calendar days, commencing on September 30, 2013, within which to complete any discovery that they believe is necessary in this action.

4. The parties shall file any and all dispositive motions, including motions for judgment on the pleadings and/or motions for summary judgment, by no later than 30 calendar days following the end of the 120-day discovery period set out in paragraph 3 above; provided, however, that counsel for the parties may, if they wish and if all of them agree, establish a deadline for filing all dispositive motions that is sooner than 30 calendar days following the end of this 120-day discovery period. If the parties by stipulation so agree, they shall, within 5 calendar days of the execution of any such stipulation, notify the Court of the amended deadline.

5. Counsel for any party filing a dispositive motion shall work cooperatively with all other counsel in the case and with the Trial Court Administrator's Office to obtain a single date and time for the hearing of all dispositive motions filed by the parties. After having obtained such a date and time, counsel for all parties filing a dispositive motion shall file a notice of the hearing of any such dispositive motion(s) and shall serve said notice on all other parties to this action.

6. A party filing a dispositive motion shall file its brief in support of that motion, together with any affidavits, supporting documents and other supporting papers at the time of filing such dispositive motion.

7. A party opposing a dispositive motion previously filed with the Court shall file its brief in opposition to that motion, together with any affidavits, supporting documents and other supporting papers, no later than 25 calendar days after service of the movant's brief, affidavits, supporting documents and other supporting papers.

8. Reply briefs, affidavits and other papers, whether filed in support of or in opposition to a dispositive motion, shall be filed no later than 20 calendar days after service of the brief, affidavit or other paper to which it replies.

9. By consent of the defendant, the State of North Carolina, the Temporary Restraining Order entered herein on May 14, 2013 is hereby extended through and including 30 calendar days after the hearing by the Court of any and all dispositive motions filed pursuant to this Order, or until such time as the Court otherwise orders.

10. Except as otherwise expressly provided by this Order, the terms of the May 14, 2013 Temporary Restraining Order shall remain unchanged.

11. Within 5 calendar days following the entry of this Order, the plaintiff shall withdraw its Notice of Hearing of its Motion for a Preliminary Injunction, without prejudice to renewal, and the defendant, the State of North Carolina, shall withdraw its Notice of Hearing of its Motion to Dismiss the plaintiff's Complaint, without prejudice to renewal.

12. Nothing contained in this Order shall prevent any party from applying to the Court after the date of entry of this Order for a modification of one or more of the terms of this Order or the May 14, 2013 Temporary Restraining Order, or from seeking any other and/or further relief from the Court regarding any matter(s) relating to the conduct of this action.

13. Other than motions relating to discovery, all motions filed and pending before the Court as of the time of hearing of the dispositive motions referred to in paragraph 4 of this Order shall be joined for hearing with said dispositive motions unless otherwise ordered by the Court.

14. Counsel for the plaintiff shall cause a copy of this Order to be served on counsel for all other parties to this action.

STIPULATED TO:

For the plaintiff, the City of Asheville

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IT IS SO ORDERED THIS 4th DAY OF OCTOBER 2013.

Howard Manning, Jr.
Howard Manning, Jr.
North Carolina Superior Court Judge

FILED

NORTH CAROLINA

WAKE COUNTY

2013 OCT 29 AM 11:42

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 Cvs 006691

CITY OF ASHEVILLE,
a municipal corporation

Plaintiff,

v.

STATE OF NORTH CAROLINA and
the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE COUNTY,
NORTH CAROLINA

Defendant.

**ANSWER TO VERIFIED AMENDED
COMPLAINT**

NOW COMES the Defendant, Metropolitan Sewerage District of Buncombe County, North Carolina ("MSD") by and through counsel, and responds to the Amended Verified Complaint filed by the Plaintiff, City of Asheville ("Asheville"), as follows:

PARTIES

1. The allegations of paragraph 1 are admitted.
2. The allegations of paragraph 2 are admitted.
3. The allegations of paragraph 3, regarding the legal status, existence and location of MSD are admitted. The remaining allegations of paragraph 3 are admitted, on information and belief.

NATURE OF THE CASE

4. It is admitted that House Bill 488, Session Law 2013-50 became law on or about May 13, 2013 and that a copy of the statute is attached to the Complaint. The document speaks for itself.
5. It is admitted that House Bill 488, Session Law 2013-388 became law on or about August 23, 2013 and that a copy of the Amendment is attached to the Complaint. The document speaks for itself.
6. It is admitted that Asheville seeks a declaration that House Bill 488 is unconstitutional. It is further admitted that, in the alternative, Asheville seeks just compensation for the alleged taking of its water system.

JURISDICTION AND VENUE

7. The allegations of paragraph 7 are admitted.
8. It is admitted that jurisdiction regarding a claim for taking without just compensation lies in the Superior Court division of the General Court of Justice.
9. The allegations of paragraph 9 regarding venue are admitted.
10. MSD does not oppose the transfer of venue of Asheville's Fifth and Sixth Claims for Relief to the Superior Court of Buncombe County.

FACTS COMMON TO ALL CLAIMS

11. It is admitted that Asheville owns and operates a water system including certain intangible assets described in paragraph 11. MSD is without sufficient information to form an opinion as to the truth or falsity of the remaining allegations of paragraph 11, and the same are therefore, denied.
12. MSD is without sufficient information to form an opinion as to the truth or falsity of the allegations of paragraph 12, and the same are therefore, denied.
13. MSD is without sufficient information to form an opinion as to the truth or falsity of the allegations of paragraph 13, and the same are therefore, denied.
14. MSD is without sufficient information to form an opinion as to the truth or falsity of the allegations of paragraph 14, and the same are therefore, denied.
15. The allegations of Paragraph 15 are not made to MSD. The documents referenced in the paragraph speak for themselves.
16. MSD is without sufficient information to form an opinion as to the truth or falsity of the allegations of paragraph 16, and the same are therefore, denied.
17. The allegations of paragraph 17 are admitted. In 1990, MSD acquired, through agreements with Asheville and MSD's other constituent political subdivisions, all of the collector and interceptor sewers owned and operated by its member political subdivisions, including the City of Asheville. Since 1990, MSD has owned, operated, and maintained a system of interceptor and collector sewers and a wastewater treatment plant, collectively the "Sewerage System." Since 1990, MSD has repaired, rehabilitated and replaced approximately one million linear feet of sewer lines. In addition, MSD has made capital improvements and repairs to the Sewerage System exceeding \$293 million. It is further admitted that the Buncombe MSD treats, pursuant to contract, wastewater collected and transported by the Cane Creek Water & Sewer District located in Henderson County, North Carolina.

18. The allegations of paragraph 18 are admitted.
19. House Bill 488 speaks for itself.
20. House Bill 488 speaks for itself.
21. House Bill 488 speaks for itself.
22. House Bill 488 and the Amended Water Act speak for themselves.
23. The allegations of paragraph 23 call for a legal conclusion, and the same are therefore, denied. The document speaks for itself.
24. House Bill 488 speaks for itself.
25. House Bill 488 speaks for itself.
26. It is admitted that water is an important asset, that strict regulations are imposed on water systems, and that the City has experienced staff in its water department. It is denied that those employees would no longer be affiliated with the water system upon any transfer, and that this would result in a state of emergency for users of the Asheville water system. Any remaining allegations of paragraph 26 are denied.
27. The allegations of paragraph 27 are not directed to MSD, and MSD is without sufficient information to form an opinion as to the truth or falsity of the allegations of paragraph 27 and the same are therefore, denied.
28. MSD is without sufficient information to form an opinion as to the truth or falsity of the allegations of paragraph 28, and the same are therefore, denied.
29. Section 6.11(a) of the General Trust Indenture speaks for itself.
- 30-34. The allegations of paragraphs 30-34 are not directed to MSD, calls for legal conclusions, and the same are therefore, denied.

CLAIMS FOR RELIEF

FIRST CLAIM: CONSTITUTIONALITY OF THE ACT

Article II, Sections 24(1) (a) and 24(1) (e) of the Constitution of North Carolina

35. MSD realleges and incorporates herein by reference, its responses to paragraph 1-34 of the Complaint.
36. The allegations of paragraph 36 are admitted.
37. The allegations of paragraph 37 are admitted.

38. The allegations of paragraph 38 are admitted.
39. The allegations of paragraph 39 call for a legal conclusion, and the same are therefore, denied.
40. The allegations of paragraph 40 call for a legal conclusion, and the same are therefore, denied.
41. The allegations of paragraph 41 are admitted.
42. It is admitted that Section 1 of House Bill 488 transfers the assets of the Asheville water system including several reservoirs. MSD is without sufficient information to form an opinion regarding the allegations about the non-navigable streams, and the same are therefore denied.
43. The allegations of paragraph 43 call for a legal conclusion, and the same are, therefore, denied.
44. The allegations of paragraph 44 call for a legal conclusion, and the same are, therefore, denied.

SECOND CLAIM: CONSTITUTIONALITY OF THE ACT
Article I, Section 19 of the Constitution of North Carolina

45. MSD realleges and incorporates herein by reference it's responses to paragraphs 1-44 of the Complaint.
46. The allegations of paragraph 46 are not directed to MSD and are legal conclusions to which no response is required.
47. Paragraph 47 calls for a legal conclusion. The allegations of this paragraph are denied.
48. It is admitted that the legislative findings of House Bill 488 do not address those items listed by plaintiff in the paragraph. Except as so admitted, the allegations of paragraph 48 are denied.
49. Paragraph 49 calls for a legal conclusion. The allegations of paragraph 49 are denied.
50. Paragraph 50 calls for a legal conclusion. The allegations of paragraph 50 are denied.
51. The allegations of paragraph 51 call for a legal conclusion, and are therefore denied, except that MSD, or the MWSD, can and will be prepared to operate and maintain the water system if it is transferred.
52. Paragraph 52 calls for a legal conclusion and is denied.

THIRD CLAIM: CONSTITUTIONALITY OF THE ACT

Article I, Sections 19 and 35 of the Constitution of North Carolina

- 53. MSD realleges and incorporates herein by reference it's responses to paragraphs 1-52 of the Complaint.
- 54. The allegations of paragraph 54 are not directed to MSD and are legal conclusions to which no response is required.
- 55. Paragraph 55 calls for a legal conclusion, and is denied.
- 56. MSD is without sufficient information with which to form an opinion as to the truth or falsity of the allegations of paragraph 56, and the same are, therefore, denied
- 57. Paragraph 57 calls for a legal conclusion, and is denied.

FOURTH CLAIM: CONSTITUTIONALITY OF THE ACT

Article I, Section 10 of the United States Constitution

- 58. MSD realleges and incorporates herein by reference it's responses to paragraphs 1-57 of the Complaint.
- 59. The quoted portions of Article I, Section 10 of the United States Constitution and Article 1, Section 19 of the North Carolina Constitution speak for themselves. The remaining allegations of paragraph 59 state a legal conclusion and the same are, therefore, denied.
- 60. The allegations of paragraph 60 are not directed to MSD. MSD is without sufficient information with which to form an opinion as to the truth or falsity of the allegations of paragraph 60, and the same are therefore, denied.
- 61. The allegations of paragraph 61 are legal conclusions to which no response is required. Section 6.11(a) of the General Trust Indenture speaks for itself.
- 62. The allegations of paragraph 62, most of which are speculative, are denied.
- 63. The allegations of paragraph 63 are denied.
- 64. Paragraph 64 calls for a legal conclusion, and is denied.

FIFTH CLAIM: VIOLATION OF N.C. GEN. STAT. § 159-93

- 65. MSD realleges and incorporates herein by reference it's responses to paragraphs 1-64 of the Complaint.

- 66. Paragraph 66 calls for a legal conclusion, and is denied.
- 67. Paragraph 67 calls for a legal conclusion, and is denied.
- 68. Paragraph 68 calls for a legal conclusion, and is denied.
- 69. The allegations of paragraph 69 are denied.
- 70. The allegations of paragraph 70 are denied.

SIXTH (ALTERNATIVE) CLIAM: JUST COMPENSATION
Article I, Sections 19 and 35 of the Constitution of North Carolina

- 71. MSD realleges and incorporates herein by reference it's responses to paragraphs 1-70 of the Complaint.
- 72. There is no allegation in Paragraph 72 to which a response is needed.
- 73. Paragraph 73 calls for a legal conclusion, and is denied.
- 74. Paragraph 74 calls for a legal conclusion, and is denied.
- 75. MSD is without sufficient knowledge as to the value or replacement costs of the assets of the water system.
- 76. The allegations of paragraph 76 call for a legal conclusion, and are denied.
- 77. The allegations of paragraph 77 are not directed to MSD. The language from the N.C. Constitution speaks for itself.

RESPONSE TO REQUEST FOR INJUNCTIVE RELIEF

- 78. MSD realleges and incorporates herein by reference its responses to paragraphs 1-77 of the Complaint.
- 79. MSD denies that enforcement of House Bill 488 threatens to or will cause the citizens of Asheville and other towns served by MSD to be without proper and sufficient water and sewer service. The allegations as to irreparable harm to Asheville's creditworthiness and future borrowing capacity are not directed to MSD, and MSD makes no response.
- 80. The allegations of paragraph 80 are denied.
- 81. The allegations of paragraph 81 are denied.
- 82. By agreement of the parties, as embodied in the Stipulated Case Management Order, the Temporary Restraining Order is extended through and including thirty calendar days after

the hearing by the Court of any and all dispositive motions filed or until such time as the court otherwise orders.

RESPONSE TO DEMAND FOR JUDGMENT

WHEREFORE, Defendant Metropolitan Sewerage District of Buncombe County, North Carolina prays the court as follows:

1. That the Court, upon careful consideration of law and fact, enter a Declaratory Judgment, pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, regarding the constitutionality of House Bill 488 under all relevant provisions of the North Carolina and United States Constitutions.
2. That should the Court find the Act is constitutional, the Court allow sufficient time for the orderly transfer of assets from Asheville to the MSD or any new entity including time sufficient to satisfy the conditions of Section 6.11(a) of the General Trust Indenture governing the transfer of bonds.
3. MSD does not oppose to the transfer of venue of the City's Fifth and Sixth Claims to the Superior Court of Buncombe County for purposes of trial on the issues of just compensation, except that no damages for the alleged taking of the water system should be assessed to MSD.
4. That no costs or attorneys fees incurred as a result of this action be taxed against MSD.
5. For such other and further relief as to the Court may seem just and proper.

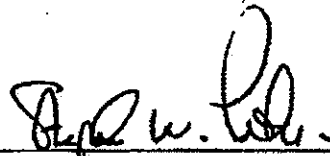
This the 29th day of October, 2013.



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STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE 2013/03/27 -7 PM 4:42 SUPERIOR COURT DIVISION
13-CVS-6691
WAKE COUNTY, C.S.C.

CITY OF ASHEVILLE, a municipal
corporation,)

Plaintiff,)

- against -)

THE STATE OF NORTH CAROLINA)
and the METROPOLITAN SEWERAGE)
DISTRICT OF BUNCOMBE COUNTY,)
NORTH CAROLINA,)

Defendants.)

MOTION TO DISMISS AND ANSWER
OF THE STATE OF NORTH CAROLINA,
FILED IN RESPONSE TO THE VERIFIED
AMENDED COMPLAINT OF THE CITY
OF ASHEVILLE

The defendant, the State of North Carolina, by and through its undersigned counsel, responds to the Verified Amended Complaint of the plaintiff, the City of Asheville, as follows:

FIRST DEFENSE

(Motions to Dismiss all or part of the Plaintiff's Verified Amended Complaint)

As and for its first Motion to Dismiss, the State of North Carolina respectfully moves the Court to dismiss the plaintiff's First Claim for Relief, which challenges the constitutionality of HB 488, Session Law 2013-50 ("HB 488"), under Article II, Sections 24(1)(a) and 24(1)(e) of the North Carolina Constitution, on the ground that the plaintiff's First Claim for Relief fails to state a claim upon which relief can be granted, in that, among other things: (i) HB 488 is not a local act; (ii) HB 488 does not relate to health, sanitation and the abatement of nuisances within the meaning of Article II, Section 24(1)(a) of the North Carolina Constitution; and (iii) HB 488 does not relate to non-navigable streams within the meaning of Article II, Section 24(1)(e) of the North Carolina Constitution; and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's First Claim for Relief, in that, among other things, the

plaintiff lacks capacity and standing to sue the State of North Carolina for the matters alleged in its First Claim for Relief.

As and for its Second Motion to Dismiss, the State of North Carolina respectfully moves the Court to dismiss the plaintiff's Second Claim for Relief, which challenges the constitutionality of HB 488 under Article I, Section 19 of the North Carolina Constitution, on the ground that the plaintiff's Second Claim for Relief fails to state a claim upon which relief can be granted, in that, among other things: (i) the General Assembly has plenary authority under the North Carolina Constitution to regulate the affairs of and to enact laws affecting every aspect of the life and existence of municipalities in this State; (ii) HB 488 does not create a class of municipalities that is limited only to the plaintiff; (iii) the General Assembly had rational reasons for enacting HB 488; (iv) HB 488 accomplishes public health, morals, order, safety and/or general welfare objectives; and (v) HB 488's means of implementation are reasonable; and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's Second Claim for Relief, in that, among other things, the plaintiff lacks capacity and standing to sue the State of North Carolina for the matters alleged in its Second Claim for Relief.

As and for its Third Motion to Dismiss, the State of North Carolina respectfully moves the Court to dismiss the plaintiff's Third Claim for Relief, which challenges the constitutionality of HB 488 under Article I, Sections 19 and 35 of the North Carolina Constitution, on the ground that the plaintiff's Third Claim for Relief fails to state a claim upon which relief can be granted, in that, among other things: (i) the General Assembly has plenary authority under the North Carolina Constitution to regulate the affairs of and to enact laws affecting every aspect of the life and existence of municipalities in this State; and (ii) HB 488 does not constitute or effect the

taking of any property; and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's Third Claim for Relief, in that, among other things, the plaintiff lacks capacity and standing to sue the State of North Carolina for the matters alleged in its Third Claim for Relief.

As and for its Fourth Motion to Dismiss, the State of North Carolina respectfully moves the Court to dismiss the plaintiff's Fourth Claim for Relief, which challenges the constitutionality of HB 488 under Article I, Sections 10 of the United States Constitution, on the ground that the plaintiff's Fourth Claim for Relief fails to state a claim upon which relief can be granted, in that, among other things, HB 488 does not impair the obligation of any contract(s); and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's Fourth Claim for Relief, in that, among other things, the plaintiff lacks capacity and standing to sue the State of North Carolina for the matters alleged in its Fourth Claim for Relief.

As and for its Fifth Motion to Dismiss, the State of North Carolina respectfully moves the Court to dismiss the plaintiff's Fifth Claim for Relief, which challenges the legality of HB 488 under N.C. Gen. Stat. §159-93, on the ground that the plaintiff's Fifth Claim for Relief fails to state a claim upon which relief can be granted, in that, among other things: (i) N.C. Gen. Stat. §159-93 is not an agreement between the State of North Carolina and the plaintiff, nor is the plaintiff the intended beneficiary of any agreement under N.C. Gen. Stat. §159-93; (ii) N.C. Gen. Stat. §159-93 does not prohibit the State of North Carolina from merely diminishing a municipality's ability to pay off bonds; (iii) to the extent the plaintiff had any relevant rights under N.C. Gen. Stat. §159-93, those rights were lawfully amended and superseded by HB 488; and (iv) there is no basis in law for the plaintiff's claim to damages for the State of North

Carolina's alleged violation of N.C. Gen. Stat. §159-93; and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's Fifth Claim for Relief, in that, among other things, the plaintiff lacks capacity and standing to sue the State of North Carolina for the matters alleged in its Fifth Claim for Relief.

As and for its Sixth Motion to Dismiss, the State of North Carolina respectfully moves the Court to dismiss the plaintiff's Sixth Claim for Relief, which the plaintiff pleads in the alternative to its First, Second, Third and Fourth Claims for Relief and which "demands payment by the State" for the value of the Asheville Water System, on the ground that the plaintiff's Sixth Claim for Relief fails to state a claim upon which relief can be granted, for the reasons set forth above, and on the further ground that this Court is without subject matter jurisdiction to adjudicate the plaintiff's Sixth Claim for Relief, in that, among other things, the plaintiff lacks capacity and standing to sue the State of North Carolina for the matters alleged in its Sixth Claim for Relief.

As and for its Seventh Motion to Dismiss, the State of North Carolina respectfully moves the Court to dismiss the plaintiff's request(s) for permanent injunctive relief on the ground that: (i) none of the plaintiff's Claims for Relief states a claim upon which relief can be granted, for the reasons set forth above; (ii) this Court is without subject matter jurisdiction to adjudicate the plaintiff's First, Second, Third, Fourth, Fifth and Sixth Claims for Relief, in that, among other things, the plaintiff lacks capacity and standing to sue the State of North Carolina for the matters alleged in its First, Second, Third, Fourth, Fifth and Sixth Claims for Relief (as alleged above); and (iii) the plaintiff is barred from seeking or obtaining the equitable relief it requests by virtue of the doctrine of unclean hands, in that, among other things, the plaintiff has, on one or more

occasions, violated one or more of the laws of this State respecting the water system that is at issue in this case.

SECOND DEFENSE

(Answer to the Plaintiff's Verified Amended Complaint)

For its Answer to the plaintiff's Verified Amended Complaint, the defendant, the State of North Carolina, by and through its undersigned counsel, alleges and says as follows:

1. The State of North Carolina admits the allegations contained in paragraph 1 of the plaintiff's Verified Amended Complaint, except that the State specifically denies that the plaintiff has capacity and standing to sue the State for the matters alleged by the plaintiff in its Verified Amended Complaint.

2. The State of North Carolina admits that it is a defendant in this action.

3. The State of North Carolina admits the allegations contained in the first sentence of paragraph 3 of the plaintiff's Verified Amended Complaint. The State is without knowledge or information sufficient to form a belief concerning the truth or falsity of the allegations contained in the second sentence of paragraph 3 of the plaintiff's Verified Amended Complaint, and therefore denies said allegations.

**THE STATE OF NORTH CAROLINA'S RESPONSE TO THE PLAINTIFF'S
ALLEGATIONS CONCERNING THE NATURE OF THIS CASE**

4. In response to the allegations contained in the first and third sentences of paragraph 4 of the plaintiff's Verified Amended Complaint, the State of North Carolina admits that, on or about May 13, 2013, HB 488, Session Law 2013-50, became law and that a true and correct copy of HB 488, Session Law 2013-50, is attached to the plaintiff's Verified Amended Complaint as Exhibit A. For its response to the allegations contained in the second sentence of

paragraph 4 of the plaintiff's Verified Amended Complaint, the State refers the plaintiff to Exhibit A to the plaintiff's Verified Amended Complaint, HB 488, Session Law 2013-50, a written document which speaks for itself. Except as expressly admitted herein, the State denies the allegations contained in paragraph 4 of the plaintiff's Verified Amended Complaint.

5. In response to the allegations contained in the first and third sentences of paragraph 5 of the plaintiff's Verified Amended Complaint, the State of North Carolina admits that, on or about August 23, 2013, SB 341, Session Law 2013-388, became law and that a true and correct copy of SB 341, Session Law 2013-388, is attached to the plaintiff's Verified Amended Complaint as Exhibit B. For its response to the allegations contained in the second and fourth sentences of paragraph 5 of the plaintiff's Verified Amended Complaint, the State refers the plaintiff to its Verified Amended Complaint, a written document which speaks for itself. Except as expressly admitted herein, the State denies the allegations contained in paragraph 5 of the plaintiff's Verified Amended Complaint.

6. In response to the allegations contained in paragraph 6 of the plaintiff's Verified Amended Complaint, the State of North Carolina asserts that said allegations constitute conclusions of law to which no responsive pleading is required. Should this Court determine that the State must admit or deny said allegations, the State responds to said allegations by referring the plaintiff to its Verified Amended Complaint for a statement of its terms and contents, given that said Complaint is a written document which speaks for itself.

THE STATE OF NORTH CAROLINA'S RESPONSE TO THE PLAINTIFF'S
ALLEGATIONS CONCERNING JURISDICTION AND VENUE

7. In response to the allegations contained in the first and third sentences of paragraph 7 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to its Verified Amended Complaint for a statement of its terms and contents, given that said Complaint is a written document which speaks for itself. In further response to the allegations contained the first and third sentences of paragraph 7 of the plaintiff's Verified Amended Complaint, as well as the second and fourth sentences of said Complaint, the State asserts that said allegations constitute conclusions of law to which no responsive pleading is required. Should the Court determine that the State must admit or deny said allegations, the State denies said allegations.

8. In response to the allegations contained in paragraph 8 of the plaintiff's Verified Amended Complaint, the State of North Carolina asserts that said allegations constitute conclusions of law to which no responsive pleading is required. Should the Court determine that the State must admit or deny said allegations, the State denies said allegations.

9. In response to the allegations contained in paragraph 9 of the plaintiff's Verified Amended Complaint, the State of North Carolina asserts that said allegations constitute conclusions of law to which no responsive pleading is required. Should the Court determine that the State must admit or deny said allegations, the State denies said allegations.

10. In response to the allegations contained in paragraph 10 of the plaintiff's Verified Amended Complaint, the State of North Carolina asserts that said allegations constitute conclusions of law to which no responsive pleading is required. Should the Court determine that the State must admit or deny said allegations, the State denies said allegations.

**THE STATE OF NORTH CAROLINA'S RESPONSE TO THE
PLAINTIFF'S ALLEGATIONS CONCERNING WHAT THE PLAINTIFF
CHARACTERIZES AS "FACTS COMMON TO ALL CLAIMS"**

11. For its response to the allegation contained in the first sentence of paragraph 11 of the plaintiff's Verified Amended Complaint that the plaintiff owns the water system referred to by the plaintiff, the State of North Carolina alleges that the people of the State of North Carolina are the beneficial owners of said water system. For its response to the allegations contained in the balance of the first sentence of paragraph 11 of the plaintiff's Verified Amended Complaint, the State admits said allegations on information and belief. For its response to the allegations contained in the second, third and fourth sentences of paragraph 11 of the plaintiff's Verified Amended Complaint, the State asserts that it is without knowledge or information sufficient to form a belief concerning the truth or falsity of said allegations and therefore denies said allegations. The State denies the allegations contained in the fifth sentence of paragraph 11 of the plaintiff's Verified Amended Complaint.

12. Responding to the last clause of the last sentence of paragraph 12 of the plaintiff's Verified Amended Complaint (that the number "125,000" is a "significant" number in the Amended Water Act), the State of North Carolina refers the plaintiff to the Amended Water Act for a statement of its contents, terms and meaning, given that said Act is a written document which speaks for itself. The State denies the allegation contained in the second, fourth and sixth sentences of paragraph 12 of the plaintiff's Verified Amended Complaint that it owns the water system referred to therein and alleges that the beneficial owners of that system are the people of the State of North Carolina. In response to the balance of the allegations contained in paragraph 12 of the plaintiff's Verified Amended Complaint, the State asserts that it is without knowledge

or information sufficient to form a belief concerning the truth or falsity of said allegations and therefore denies said allegations.

13. For its response to the allegation contained in paragraph 13 of the plaintiff's Verified Amended Complaint that the plaintiff owns said watershed area, the State of North Carolina alleges that the beneficial owners of said water system assets are the people of the State of North Carolina. For its response to the remaining allegations contained in paragraph 13 of the plaintiff's Verified Amended Complaint, the State asserts that it is without knowledge or information sufficient to form a belief concerning the truth or falsity of said allegations and therefore denies said allegations.

14. In response to the allegations contained in paragraph 14 of the plaintiff's Verified Amended Complaint, the State of North Carolina admits that the acquisition, construction, expansion, upgrade and replacement of the capital assets of the water system referred to by the plaintiff in paragraph 14 of its Verified Amended Complaint were paid for with monies provided by the State of North Carolina and its citizens. Except as expressly admitted herein, the State is without knowledge or information sufficient to form a belief concerning the truth or falsity of the allegations contained in paragraph 14 of the plaintiff's Verified Amended Complaint and therefore denies said allegations.

15. For its response to the allegations contained in paragraph 15 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to Article 20 of Chapter 160 of the North Carolina General Statutes and to the "interlocal agreement" referred to by the plaintiff in paragraph 15 of its Verified Amended Complaint, including all amendments to and restated versions of said "interlocal agreement," written documents which speak for

themselves. The State further alleges that the beneficial owners of the water system referred to by the plaintiff in paragraph 15 of its Verified Amended Complaint are the people of the State of North Carolina. Except as expressly admitted herein, the State denies the allegations contained in paragraph 15 of the plaintiff's Verified Amended Complaint.

16. For its response to the allegation contained in the second sentence of paragraph 16 of the plaintiff's Verified Amended Complaint that the plaintiff owns or owned the water system referred to in said paragraph, the State of North Carolina alleges that, at all times relevant to this dispute, the beneficial owners of the water system referred to by the plaintiff in paragraph 16 of its Verified Amended Complaint are and have been the people of the State of North Carolina. For its response to the remaining allegations contained in paragraph 16 of the plaintiff's Verified Amended Complaint, the State refers the plaintiff to the written notice of termination and "subsequent conveyances" referred to by the plaintiff in paragraph 16 of its Verified Amended Complaint, written documents which speak for themselves.

17. The State of North Carolina admits the allegations contained in paragraph 17 of the plaintiff's Verified Amended Complaint on information and belief.

18. The State of North Carolina admits the allegations contained in paragraph 18 of the plaintiff's Verified Amended Complaint on information and belief, except that it avers that the beneficial owners of the water systems referred to in paragraph 18 of the plaintiff's Verified Amended Complaint are the people of the State of North Carolina.

19. For its response to the allegations contained in paragraph 19 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to Exhibit A to its Verified Amended Complaint, a written document which speaks for itself. Except as expressly

admitted herein, the State denies the allegations contained in paragraph 19 of the plaintiff's Verified Amended Complaint.

20. For its response to the allegations contained in paragraph 20 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to Exhibits A and B to its Verified Amended Complaint, written documents which speak for themselves. Except as expressly admitted herein, the State denies the allegations contained in paragraph 20 of the plaintiff's Verified Amended Complaint.

21. For its response to the allegation contained in the first sentence of paragraph 21 of the plaintiff's Verified Amended Complaint that metropolitan water and sewer districts are a form of political subdivision that did not exist in this State prior to the enactment of HB 488, Session Law 2013-50, the State of North Carolina admits said allegation upon information and belief. For its response to the balance of the allegations contained in paragraph 21 of the plaintiff's Verified Amended Complaint, the State refers the plaintiff to Exhibits A and B to its Verified Amended Complaint, written documents which speak for themselves. Except as expressly admitted herein, the State denies the allegations contained in paragraph 21 of the plaintiff's Verified Amended Complaint.

22. The State of North Carolina denies the allegation that "Great care was taken in the drafting to ensure that no water system other than Asheville's would be subject to Section 1 of the Amended Water Act." The State is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that "The Asheville Water System is the only public water system that meets the specific requirements of Section 1.(a) of the Amended Water Act, as amended by Section 1.(g)," and therefore denies said allegation. For its response to the

remainder of the allegations contained in paragraph 22 of the plaintiff's Verified Amended Complaint, the State refers the plaintiff to Exhibits A and B to its Verified Amended Complaint, written documents which speak for themselves.

23. For its response to the allegations contained in paragraph 23 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to Exhibits A and B to its Verified Amended Complaint, written documents which speak for themselves. Except as expressly admitted herein, the State denies the allegations contained in paragraph 23 of the plaintiff's Verified Amended Complaint.

24. For its response to the allegations contained in paragraph 24 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to Exhibits A and B to its Verified Amended Complaint, written documents which speak for themselves, and further avers that the beneficial owners of the water system referred to in paragraph 24 of the plaintiff's Verified Amended Complaint are the people of the State of North Carolina. Except as expressly admitted herein, the State denies the allegations contained in paragraph 24 of the plaintiff's Verified Amended Complaint.

25. For its response to the allegation contained in paragraph 25 of the plaintiff's Verified Amended Complaint that the employees of the current Asheville Water System "could not be compelled to [become employees of the new Metropolitan Water and Sewerage District] by decree of the General Assembly," the State of North Carolina avers that said allegation constitutes a conclusion of law to which no responsive pleading is required. Upon information and belief, the State denies the allegations contained in the last sentence of paragraph 25 of the plaintiff's Verified Amended Complaint. For its response to the remaining allegations contained

in paragraph 25 of the plaintiff's Verified Amended Complaint, the State refers the plaintiff to Exhibits A and B to its Verified Amended Complaint, written documents which speak for themselves.

26. In response to the allegations contained in paragraph 26 of the plaintiff's Verified Amended Complaint, the State of North Carolina admits that the water system referred to by the plaintiff in said allegations is important, that strict regulations are imposed on publicly controlled and operated water systems and that the plaintiff has experienced staff working in its water department. Further responding to the allegations contained in paragraph 26 of the plaintiff's Verified Amended Complaint, the State denies that the staff employees referred to by the plaintiff would no longer be affiliated with the water system upon a transfer of that system and that a state of emergency for the users of the water system would result or ensue following a transfer. The State denies the remaining allegations contained in paragraph 26 of the plaintiff's Verified Amended Complaint.

27. For its response to the allegations contained in the first and third sentences of paragraph 27 of the plaintiff's Verified Amended Complaint, as well as the plaintiff's allegation that "Asheville is the issuer and obligor on the Water Bonds," the State of North Carolina refers the plaintiff to Article 5 of Chapter 159 of the North Carolina General Statutes and the December 1, 2005 General Trust Indenture referred to by the plaintiff in paragraph 27 of its Verified Amended Complaint. The State is without knowledge or information sufficient to form a belief concerning the truth or falsity of the allegations that the current outstanding principal balance due on what the plaintiff refers to as the "Water Bonds" is \$65,570,000.00 and the allegation that the bonds currently carry a credit rating of Aa2 from Moody's and AA from Standard & Poor's.

28. The State of North Carolina denies the allegations contained in paragraph 28 of the plaintiff's Verified Amended Complaint.

29. For its response to the allegations contained in paragraphs 29 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to the December 1, 2005 General Trust Indenture referred to by the plaintiff in paragraph 27 of its Verified Amended Complaint.

30. The State of North Carolina denies the allegations contained in paragraph 30 of the plaintiff's Verified Amended Complaint.

31. The State of North Carolina denies the allegations contained in paragraph 31 of the plaintiff's Verified Amended Complaint.

32. The State of North Carolina denies the allegations contained in the first sentence of paragraph 32 of the plaintiff's Verified Amended Complaint; alleges that the second sentence of paragraph 32 of the plaintiff's Verified Amended Complaint states conclusions of law (and incorrect conclusions of law) to which no responsive pleading is required; and refers the plaintiff to the December 1, 2005 General Trust Indenture identified by the plaintiff in paragraph 27 of its Verified Amended Complaint for the State's response to the allegations contained in the last sentence of paragraph 32 of the plaintiff's Verified Amended Complaint.

33. For its response to the allegations contained in paragraph 33 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to the December 1, 2005 General Trust Indenture referred to by the plaintiff in paragraph 27 of its Verified Amended Complaint, a written document which speaks for itself, and further avers that the

allegations contained in paragraph 33 of the plaintiff's Verified Amended Complaint state conclusions (and incorrect conclusions) of law to which no responsive pleading is required.

34. The State of North Carolina denies the allegations contained in paragraph 34 of the plaintiff's Verified Amended Complaint.

**THE STATE OF NORTH CAROLINA'S RESPONSES TO THE
PLAINTIFF'S CLAIMS FOR RELIEF**

THE PLAINTIFF'S FIRST CLAIM FOR RELIEF: CONSTITUTIONALITY OF THE ACT
(Article II, Sections 24(1)(a), 24(1)(e), 24(2) and 24(3) of the Constitution of North Carolina)

35. The State of North Carolina re-alleges and incorporates by reference herein its responses contained in paragraphs 1 through 34 above.

36. For its response to the allegations contained in paragraph 36 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to Article II, Section 24(1)(a) of the Constitution of North Carolina, a written document which speaks for itself.

37. For its response to the allegations contained in paragraph 37 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to Article II, Section 24(2) of the Constitution of North Carolina, a written document which speaks for itself.

38. For its response to the allegations contained in paragraph 37 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to Article II, Section 24(3) of the Constitution of North Carolina, a written document which speaks for itself.

39. The allegations contained in paragraph 39 of the plaintiff's Verified Amended Complaint state conclusions of law to which no responsive pleading is required.

40. The State of North Carolina denies the allegations contained in paragraph 40 of the plaintiff's Verified Amended Complaint.

41. For its response to the allegations contained in paragraph 41 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to Article II, Section 24(1)(e) of the Constitution of North Carolina, a written document which speaks for itself.

42. For its response to the allegations contained in paragraph 42 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to SB 341, Session Law 2013-388, a written document which speaks for itself.

43. The State of North Carolina denies the allegations contained in paragraph 43 of the plaintiff's Verified Amended Complaint.

44. The State of North Carolina denies the allegations contained in paragraph 44 of the plaintiff's Verified Amended Complaint.

THE PLAINTIFF'S SECOND CLAIM FOR RELIEF: CONSTITUTIONALITY OF THE ACT
(Article I, Section 19 of the Constitution of North Carolina)

45. The State of North Carolina re-alleges and incorporates by reference herein its responses contained in paragraphs 1 through 34 and 36 through 44 above.

46. The State of North Carolina denies the allegations contained in paragraph 46 of the plaintiff's Verified Amended Complaint.

47. For its response to the allegations contained in paragraph 47 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to the legislative findings referred to by the plaintiff in said paragraph of the Verified Amended Complaint, a written document which speaks for itself.

48. For its response to the allegations contained in paragraph 48 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to the legislative findings referred to by the plaintiff in said paragraph of the Verified Amended Complaint, a written document which speaks for itself.

49. The State of North Carolina denies the allegations contained in paragraph 49 of the plaintiff's Verified Amended Complaint.

50. The State of North Carolina denies the allegations contained in paragraph 50 of the plaintiff's Verified Amended Complaint.

51. The State of North Carolina denies the allegations contained in paragraph 51 of the plaintiff's Verified Amended Complaint.

52. The State of North Carolina denies the allegations contained in paragraph 52 of the plaintiff's Verified Amended Complaint.

THE PLAINTIFF'S THIRD CLAIM FOR RELIEF: CONSTITUTIONALITY OF THE ACT
(Article I, Sections 19 and 35 of the Constitution of North Carolina)

53. The State of North Carolina re-alleges and incorporates by reference herein its responses contained in paragraphs 1 through 34, 36 through 44 and 46 through 52 above.

54. The State of North Carolina denies the allegations contained in paragraph 54 of the plaintiff's Verified Amended Complaint.

55. The State of North Carolina denies the allegations contained in paragraph 55 of the plaintiff's Verified Amended Complaint.

56. For its response to the allegations contained in the first sentence of paragraph 56 of the plaintiff's Verified Amended Complaint, the State of North Carolina avers that the focus of HB 488, Session Law 2013-50, and SB 341, Session Law 2013-388, is on the effective

governance of water and sewer resources in this State on a regional scale. The State denies the allegations contained in the second sentence of paragraph 56 of the plaintiff's Verified Amended Complaint.

57. In response to the allegations contained in the first sentence of paragraph 57 of the plaintiff's Verified Amended Complaint, the State of North Carolina denies that HB 488, Session Law 2013-50, and/or SB 341, Session Law 2013-388, effects or purports to effect a taking or condemnation of property. The State denies the allegations contained in the second sentence of paragraph 57 of the plaintiff's Verified Amended Complaint.

THE PLAINTIFF'S FOURTH CLAIM FOR RELIEF: CONSTITUTIONALITY OF THE ACT

(Article I, Section 10, of the United States Constitution and
Article I, Section 19 of the North Carolina Constitution)

58. The State of North Carolina re-alleges and incorporates by reference herein its responses contained in paragraphs 1 through 34, 36 through 44, 46 through 52 and 54 through 57 above.

59. For its response to the allegations contained in the first two sentences of paragraph 59 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to Article I, Section 10, of the United States Constitution and Article I, Section 19 of the North Carolina Constitution, written documents which speak for themselves. For its response to the remaining allegations contained in paragraph 59 of the plaintiff's Verified Amended Complaint, the State avers that said allegations constitute conclusions of law and denies said conclusions.

60. For its response to the allegations contained in paragraph 60 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to the December 1,

2005 General Trust Indenture referred to by the plaintiff in paragraph 27 of its Verified Amended Complaint, a written document which speaks for itself.

61. For its response to the allegations contained in the first sentence of paragraph 61 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to the December 1, 2005 General Trust Indenture referred to by the plaintiff in paragraph 27 of its Verified Amended Complaint, a written document which speaks for itself. The State denies the remaining allegations contained in paragraph 61 of the plaintiff's Verified Amended Complaint.

62. The State of North Carolina denies the allegations contained in paragraph 62 of the plaintiff's Verified Amended Complaint.

63. The State of North Carolina denies the allegations contained in paragraph 63 of the plaintiff's Verified Amended Complaint.

64. The State of North Carolina denies the allegations contained in paragraph 64 of the plaintiff's Verified Amended Complaint.

**THE PLAINTIFF'S FIFTH CLAIM FOR RELIEF:
VIOLATION OF N.C. GEN. STAT. §159-93**

65. The State of North Carolina re-alleges and incorporates by reference herein its responses contained in paragraphs 1 through 34, 36 through 44, 46 through 52, 54 through 57 and 59 through 64 above.

66. For its response to the allegations contained in paragraph 66 of the plaintiff's Verified Amended Complaint, the State of North Carolina refers the plaintiff to N.C. Gen. Stat. §159-93 and the judicial decisions interpreting that statute, written documents which speak for themselves. Otherwise, the State denies the allegations contained in paragraph 66 of the plaintiff's Verified Amended Complaint.

67. The State of North Carolina denies the allegations contained in paragraph 67 of the plaintiff's Verified Amended Complaint.

68. For its response to the allegations contained in paragraph 68 of the plaintiff's Verified Amended Complaint, the State of North Carolina avers that said allegations constitute conclusions of law to which no responsive pleading is required.

69. The State of North Carolina denies the allegations contained in paragraph 69 of the plaintiff's Verified Amended Complaint.

70. The State of North Carolina denies the allegations contained in paragraph 70 of the plaintiff's Verified Amended Complaint.

THE PLAINTIFF'S SIXTH (ALTERNATIVE) CLAIM FOR
RELIEF: JUST COMPENSATION
(Article I, Sections 19 and 35 of the Constitution of North Carolina)

71. The State of North Carolina re-alleges and incorporates by reference herein its responses contained in paragraphs 1 through 34, 36 through 44, 46 through 52, 54 through 57, 59 through 64 and 66 through 70 above.

72. Paragraph 72 of the plaintiff's Verified Amended Complaint does not state any allegations to which a responsive pleading is required.

73. The State of North Carolina denies the allegations contained in paragraph 73 of the plaintiff's Verified Amended Complaint.

74. The State of North Carolina denies the allegations contained in paragraph 74 of the plaintiff's Verified Amended Complaint.

75. The State of North Carolina is without knowledge or information sufficient to form a belief concerning the truth or falsity of the allegations contained in paragraph 75 of the plaintiff's Verified Amended Complaint, and therefore denies said allegations.

76. For its response to the allegations contained in paragraph 76 of the plaintiff's Verified Amended Complaint, the State of North Carolina avers that the beneficial owners of the water system referred to in paragraph 76 of the plaintiff's Verified Amended Complaint are the people of the State of North Carolina and denies the allegations contained in paragraph 76 of the plaintiff's Verified Amended Complaint.

77. Paragraph 77 of the plaintiff's Verified Amended Complaint does not state any allegations to which a responsive pleading is required; however, the State of North Carolina denies that the plaintiff is entitled to the relief identified and/or requested in paragraph 77 of its Verified Amended Complaint.

**THE STATE OF NORTH CAROLINA'S RESPONSE TO THE
PLAINTIFF'S REQUESTS FOR INJUNCTIVE RELIEF**

78. The State of North Carolina re-alleges and incorporates by reference herein its responses contained in paragraphs 1 through 34, 36 through 44, 46 through 52, 54 through 57, 59 through 64, 66 through 70 and 72 through 77 above.

79. The State of North Carolina denies the allegations contained in paragraph 79 of the plaintiff's Verified Amended Complaint.

80. The State of North Carolina denies the allegations contained in paragraph 80 of the plaintiff's Verified Amended Complaint.

81. The State of North Carolina denies the allegations contained in paragraph 81 of the plaintiff's Verified Amended Complaint.

82. For its response to the plaintiff's request contained in paragraph 82 of its Verified Amended Complaint for a temporary restraining order and a preliminary injunction, the State of North Carolina avers that said request has been rendered moot by the Court's entry of its Temporary Restraining Order and by the parties' subsequent agreements to keep that Order in effect pending the Court's determination of the parties' motions for summary judgment. The State also denies the allegation contained in paragraph 82 of the plaintiff's Verified Amended Complaint that the plaintiff is entitled to a permanent injunction in this action.

WHEREFORE, having stated with particularity the grounds supporting its Motion to Dismiss the plaintiff's Verified Amended Complaint and each and every purported claim for relief asserted therein and having fully answered said Verified Amended Complaint, the State of North Carolina respectfully prays that the Court:

1. dismiss the plaintiff's Verified Amended Complaint, including the plaintiff's First, Second, Third, Fourth, Fifth and Sixth (Alternative) Claims for Relief, the plaintiff's request for declaratory relief and the plaintiff's request for injunctive relief, with prejudice;
2. tax the costs of this action to the plaintiff;
3. permit the Temporary Restraining Order entered by the Honorable Donald Stephens on May 14, 2013 to expire; and
4. grant the State such other and further relief as the Court may deem just and proper.

Respectfully submitted this 6th day of November 2013.

Signature line appears on the following page.



/S/ I. Faison Hicks

I. Faison Hicks

North Carolina State Bar Number 10672
Attorney for the State of North Carolina

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mez

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF WAKE

13-CVS-6691

2014 FEB 27 P 3:43

CITY OF ASHEVILLE, a municipal
corporation,

WAKE COUNTY, C.S.C.

Plaintiff,

BY _____

- against -

THE STATE OF NORTH CAROLINA
and the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE COUNTY,
NORTH CAROLINA,

Defendants.

THE STATE OF NORTH CAROLINA'S
MOTION FOR SUMMARY
JUDGMENT AND BRIEF IN SUPPORT
OF ITS MOTION

Upon the pleadings, the written discovery taken in this matter, the annexed Affidavit of W. Scott Powell and the other matters of record herein, the defendant, the State of North Carolina,, hereby respectfully moves the Court, pursuant to Rule 56 of the North Carolina Rules of Civil Procedure and the Stipulated Case Management Order entered herein on October 4, 2013, for the entry of summary judgment dismissing the plaintiff's first, second, third, fourth and fifth purported claims for relief asserted in its Amended Complaint, as well as the plaintiff's Motion for a Preliminary and Permanent Injunction, on the ground that there is no genuine dispute as to any material fact and that the State is entitled to judgment as a matter of law.

In support of its Motion, the State respectfully shows unto the Court as follows:

Remainder of pleading constitutes legal argument and is omitted.

CONCLUSION

For each of the foregoing reasons, the State of North Carolina respectfully prays that the Court enter an Order granting its Motion for Summary Judgment as to the plaintiff's First, Second, Third, Fourth and Fifth purported Claims for Relief; dismissing the plaintiff's First, Second, Third, Fourth and Fifth purported Claims for Relief; dismissing the City's motion for a preliminary and permanent injunction; fashioning an Order that times the effectiveness of the Act in such a way that the Act's transfer provisions are consistent with the General Trust Indenture; and awarding the State of North Carolina such other and further relief as it may deem just and proper.

Respectfully submitted this 27th day of February 2013.

Signature of counsel appears on the following page.



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**Exhibit 1 to the State's Motion for Summary
Judgment and Brief in Support of That Motion**

House Bill 488, entitled "An Act to Promote the Provision of Regional Water and Sewer Services by Transferring Ownership and Operation of Certain Public Water and Sewer Systems to a Metropolitan Water and Sewerage District"

**Duplicate Copy of H.B. 488 Omitted
Original set forth in its entirety at R pp 28-34.**

2014 FEB 27 P 4:40

13-CVS-6691

WAKE COUNTY, C.S.C.

CITY OF ASHEVILLE,
a municipal corporation,

BY

Plaintiff,

v.

**STATE OF NORTH CAROLINA and
the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE COUNTY,**

Defendants.

**PLAINTIFF CITY OF ASHEVILLE'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, Plaintiff City of Asheville ("Asheville") moves the court for partial summary judgment against Defendant State of North Carolina ("State") and nominal Defendant Metropolitan Sewerage District of Buncombe County ("Buncombe MSD") on the grounds that the pleadings, interrogatories, admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that Asheville is entitled to judgment as a matter of law. In support of this motion, Asheville shows the following:

1. In this matter, Asheville is seeking a declaration that Section 1 of the Amended Water Act is unconstitutional under various provisions of the North Carolina Constitution and the U.S. Constitution, a declaration that Section 1 of the Amended Water Act is void for violating N.C. Gen. Stat. § 159-93, and a permanent injunction enjoining the operation and enforcement of Section 1 of the Amended Water Act.

2. Asheville filed its Verified Complaint in this matter on May 14, 2013, and its Verified Amended Complaint on September 30, 2013. Asheville requests that the Verified Amended Complaint be treated as an affidavit in support of this motion.

3. Defendants were properly served with Asheville's pleadings pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.

4. Defendant Buncombe MSD served its Answer on October 29, 2013, and Defendant State served its Answer on November 6, 2013. Defendants' Answers contain general denials (some directed at statements of law rather than fact) and do not raise a genuine issue as to any material facts relating to Asheville's claim against Defendants.

5. Asheville served its First Set of Interrogatories and Requests for Admission on the State on December 26, 2013. The State served its Answers and Responses on February 7, 2014.

6. In support of this motion, Asheville is relying on the following affidavits that it has previously filed in this case, each of which is included in the Appendix to the memoranda of law filed contemporaneously herewith:

- a. Affidavit of Stephen Shoaf, Director of Asheville's Water Resources Department, filed May 14, 2013 (Appendix, Tab I).
- b. Affidavit of Blake Esselstyn, Urban Planner III for Asheville's Department of Planning and Development, filed September 4, 2013 (Appendix, Tab O).
- c. Affidavit of Bradley Stein, Asheville's Risk Manager, filed September 4, 2013 (Appendix, Tab L).
- d. Affidavit of Gary Jackson, Asheville's City Manager, filed September 4, 2013 (Appendix, Tab N).

- e. Affidavit of Randy Perkins, counsel for Asheville, filed September 4, 2013 (Appendix, Tab K).
 - f. Affidavit of Samuel Hensley, Water Production Maintenance Supervisor for Asheville's Water Resources Department, filed September 4, 2013 (Appendix, Tab M).
 - g. Supplemental Affidavit of Stephen Shoaf, Director of the Water Resources Department of the City of Asheville, filed September 4, 2013 (Appendix, Tab J).
7. Defendants' Answers and the State's Answers and Responses to Asheville's First Set of Interrogatories and Requests for Admission, together with the pleadings and affidavits on record, show that the following material facts that are essential to Asheville's Motion for Summary Judgment are undisputed:
- a. For over a century, Asheville has owned, operated, managed, and maintained a system for the supply, treatment, and distribution of water for drinking, cooking, and cleaning purposes, and for the operation of sanitary disposal systems. This system (the "Water System") supplies water to a customer base that includes Asheville's residents, residents living in unincorporated areas of Buncombe County, to residents of other municipalities in Buncombe County indirectly by wholesale, and to residents of Henderson County.
 - b. The Water System has been built and maintained using a combination of taxes, service fees, connection charges, bonded debt, included outstanding revenue bonds, various federal and state grants, contributions from Buncombe County, and donations from property owners and developers. Asheville has from time to time relied on its

general taxing authority to issue general obligation municipal bonds for capital expansions.

- c. The Water System includes a protected watershed area consisting of over 17,000 acres of mountainous forestlands in Buncombe County, including multiple streams that are non-navigable. None of the streams in the Asheville-owned watershed that feed the two reservoirs in the Water System, Bee Tree Reservoir and North Fork Reservoir, are navigable by even the smallest of watercraft, such as a canoe or kayak.
- d. The Water System currently serves approximately 124,000 customers, some 48,000 of whom are located outside Asheville's city limits.
- e. The Water System is composed of both physical and intangible assets that are essential to its proper functioning.
- f. On May 13, 2013 Session Law 2013-50¹ became law in the manner provided in Article II, Section 22(7) of the Constitution of North Carolina, having been adopted by both houses of the North Carolina General Assembly, duly ratified, not vetoed and left unsigned by the Governor.
- g. Section 2 of the Act creates a new form of political subdivision, a "metropolitan water and sewerage district" ("MWSD"). Section 2 permits any two or more local governments to form an MWSD by agreement among them; it allows those governments to choose to contribute their existing water supply, treatment, and distribution systems and their existing sewerage collection and treatment systems to such an MWSD. But for Asheville, this transfer is compulsory and contrary to the wishes of its citizens as expressed in a referendum opposing a transfer of the system.

¹ The session law is referred to herein as the "Water Act" or the "Act".

Although the Water Act would effect this involuntary transfer, it would do so without any change in the existing uses or purposes currently served by the Water System.

- h. There are other municipal water systems located within the geographical boundaries of the existing Buncombe MSD (to be converted under the Act into the New MWSD), but those systems are not being consolidated with the Water System to form a true "regional" system. For example, Biltmore Forest is excluded from consolidation even though it has no independent supply of raw water and it has no facilities to treat raw water. Instead, it purchases at wholesale treated, finished water from Asheville, which it then re-sells to its retail customers at higher prices. All of the excluded water systems in Buncombe County, excepting Woodfin's, charge higher retail rates for water than Asheville. Woodfin, Weaverville, Hendersonville, and Black Mountain all charge differential, and higher, rates to customers who live outside their corporate limits than to residents inside their corporate limits.
- i. Asheville is one of many cities that supplies water not only to individuals and businesses within its borders, but also to surrounding municipalities and unincorporated areas. Asheville is one of a number of municipalities that operates a public water system in an area in which sewer services are provided by a non-municipal or regional entity (including metropolitan sewerage districts). Asheville is one of several municipalities that operates a municipal water system in a county in which a metropolitan sewerage district operates. Like Asheville, each of the municipalities of Charlotte, Durham, Raleigh, and Cary operates a large water system that supplies customers outside its city limits, while their respective counties of Mecklenburg (919,628 residents as of the 2010 Census), Durham (267,587 residents

as of the 2010 Census), and Wake (900,993 residents as of the 2010 Census) all have larger populations than Buncombe County (238,318 residents as of the 2010 Census). In Wake County alone, there are at least five separately owned municipal water supply systems and four separate municipal sewer systems.

- j. The Water System is no different in its governance and operation from other municipal water systems across North Carolina.
- k. Key to the development and maintenance of the Water System has been financing obtained via general obligation bonds and, more recently, revenue bonds issued by and in the name of Asheville pursuant to a General Trust Indenture dated December 1, 2005. As of the commencement of this litigation, the aggregate principal amount outstanding on the Water System bonds was approximately \$65,570,000, and the bonds carry a current credit rating of Aa2 from Moody's and AA from Standard & Poor's. Pursuant to the Indenture, any transferee of the Water System must meet certain requirements prior to the transfer yet neither Buncombe MSD nor any other entity organized and constituted pursuant to the provisions of Sections 1 and 2 of the Water Act has (a) filed with the Indenture Trustee the report required by the Indenture, (b) received any written evidence from any rating agency providing the information required by the Indenture, or (c) received any opinion of bond counsel containing the information required by the Indenture.
- l. There is only one metropolitan water district, organized under Article 4, Chapters 162A-31 through 59, that is currently operating in North Carolina: the Seagrove-Ulah Metropolitan Water District.

- m. Nominal Defendant Buncombe MSD is one of only three "metropolitan sewerage districts," organized under Article 5, Chapters 162A-64 through 82, currently existing in the State. The other two are the Contentnea Metropolitan Sewerage District, operating in Pitt County (of which Greenville is the county seat) and formed by the towns of Ayden, Grifton, and Winterville, and the Bay River Metropolitan Sewerage District, operating in Pamlico County and serving the towns of Bayboro and Oriental. Neither the system in Pitt County nor the system in Pamlico County serves more than 120,000 people.
- n. The City of Greenville owns, and through the Greenville Utilities Commission operates, a water supply and distribution system and a sewer system, and it provides its customers electricity and natural gas service. The City of Greenville is the holder of an interbasin transfer certificate issued by the State allowing it to transfer water from the Tar River basin into the Contentnea Creek and Neuse River basins.
- o. The State admits that Section 1 of the Amended Water Act presently applies to no publicly owned water system in North Carolina other than Asheville. State's Resps. pp. 3-4, # 3.

8. The preceding undisputed facts show that there is no genuine issue as to any material fact. As discussed in Asheville's Memorandum in Support, filed contemporaneously herewith, Asheville is entitled to judgment as a matter of law.

WHEREFORE, judgment should be entered in favor of Asheville against Defendants:

(A) pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, declaring that Section 1 of the Amended Water Act is void as an invalid local act pursuant to Article II, Sections 24(1)(a), 24(1)(e), 24(2), and 24(3) of the North Carolina Constitution, as asserted in Asheville's First Claim for Relief;

(B) pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, declaring that Section 1 of the Amended Water Act is unconstitutional as a violation of Article I, Section 19 of the North Carolina Constitution, as asserted in Asheville's Second Claim for Relief;

(C) pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, declaring that Section 1 of the Amended Water Act is unconstitutional as a violation of Article I, Sections 19 and 35 of the North Carolina Constitution, regardless of whether the State pays just compensation, as asserted in Asheville's Third Claim for Relief;

(D) pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, declaring that Section 1 of the Amended Water Act is unconstitutional as a violation of Article I, Section 10 of the U.S. Constitution and Article I, Section 19 of the North Carolina Constitution, as asserted in Asheville's Fourth Claim for Relief;

(E) pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, declaring that Section 1 of the Amended Water Act violates N.C. Gen. Stat. § 159-93, as asserted in Asheville's Fifth Claim for Relief, but reserving for a later trial in the Superior Court of Buncombe County the determination of Asheville's damages;

(F) in the alternative to the relief request in (A) through (E) above, a declaration pursuant to N.C. Gen. Stat. § 1-253 *et seq.* that Asheville is entitled to just compensation for the taking of its assets, as asserted in Asheville's Sixth (Alternative) Claim for Relief, but reserving for a later trial in the Superior Court of Buncombe County the determination of Asheville's damages;

(G) granting a permanent injunction enjoining operation and enforcement of Section 1 of the Amended Water Act, forbidding Buncombe MSD and/or the New MWSD from assuming any authority or control over the Water System, and directing that Asheville may continue to own, manage, and operate the Water System;

(H) awarding Asheville its costs, expenses, and fees, including reasonable attorneys' fees, pursuant to applicable statutory and common law, including N.C. Gen. Stat. § 6-19.1 and § 6-20; and

(I) granting such other and further relief as is just and proper.

Submitted this 27th day of February, 2014.

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COUNSEL FOR PLAINTIFF

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-6691

CITY OF ASHEVILLE,
a municipal corporation,
Plaintiff,

v.

STATE OF NORTH CAROLINA and
the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE COUNTY.
Defendants.

MEMORANDUM OF DECISION AND ORDER RE: SUMMARY JUDGMENT

THIS MATTER is before the Court upon the State of North Carolina's ("the State") motion to dismiss the complaint, and upon cross motions for summary judgment pursuant to Rule 66, North Carolina Rules of Civil Procedure. Additionally, plaintiff, City of Asheville ("Asheville") has filed a motion for sanctions against the State arising out of discovery matters. These motions were heard at a special session of the Wake County Superior Court on Friday, May 23, 2014. Before proceeding further it is necessary to provide the following:

Factual Background and Procedural History of the Case

The Genesis of this lawsuit.

The Water Act of 2013 – Session Law 2013-50 and as amended by Session Law 2013-88. ("The Water Act") On May 13, 2013 Session Law 2013-50 became the law in the manner provided in Article II, Section 22(7) of the Constitution of North Carolina, having been adopted by both houses of the North Carolina General Assembly, duly ratified, not vetoed and left unsigned by the Governor. The Water Act or ("Act") was later modified on August 23, 2013, after the institution of this civil action, by Session Law 2013-388. For purposes of this Memorandum of Decision and Order (MDO) the Act, as amended by the foregoing, will be referred to as the Act, or The Water Act. Sections 1 and 6 of the Initial Act purported to immediately and involuntarily transfer all the assets and debts of the Asheville Water System to defendant Metropolitan Sewerage District of Buncombe County ("MSD"), without Asheville's consent, then to be operated as a "metropolitan water and sewerage district" ("MWSD") over Asheville's strenuous objection, and contrary to the wishes of its citizens as expressed by referendum held in November, 2012, which overwhelmingly opposed any sale or lease of the system. Section 1

does not make any provision for the transfer of the Water System ~~its~~ intangible assets—
Invaluable components without which the System simply cannot function.

Wesley
6/9/14

Section 2 of the Act creates a new form of political subdivision—the so-called MWSD. That section permits any two or more local governments to form an MWSD by agreement among them; it allows those governments to choose to contribute their existing water supply, treatment, and distribution systems and their existing sewerage collection and treatment systems to such an MWSD.

Asheville, alone among all local governments in North Carolina, has no choice in the matter. Instead, the New MWSD to operate in Buncombe and Henderson Counties is created by fiat of the Water Act, and the assets and debts of the Asheville Water System are involuntarily taken from Asheville and transferred to the New MWSD by operation of law. Sections 1 and 6 ("by operation of law") of the Act contain mandatory transfer provisions which currently apply only to the Asheville Water System. Included in the debts to be transferred, are Water Bonds issued by Asheville. From time to time as required for expansion and upgrades to the Water System, Asheville has issued revenue bonds (the "Water Bonds") under a General Trust Indenture dated December 1, 2005 (the "Indenture") with The Bank of New York (the "Trustee").

The Water Bonds were all issued pursuant to Article 5 of Chapter 159 of the General Statutes and are secured by the net revenues of the Water System. The Water Bonds are not issued by a separate entity; rather, the City of Asheville is the sole issuer and obligor on such bonds. Currently, the aggregate principal amount of Water Bonds outstanding is approximately \$65,570,000, and the bonds carry a current credit rating of Aa2 from Moody's and AA from Standard & Poor's. These ratings reflect both the rating agencies' and the general public's strong confidence in the long-standing integrity of Asheville's operation and management of the Water System.

While Section 1.(f) of the Act purports to cause the transfer to the New MWSD of all existing debts of the Water System and the assumption by the New MWSD of such debts "by operation of law," no provision is made anywhere in the Act for obtaining the consent of the Trustee or the bondholders to such transfer. The State has simply declared that the Trustee and the bondholders must look to a newly created, unrated "successor" to Asheville for repayment of the Water Bonds and performance of the Indenture obligations.

The effective date of the act was May 15, 2013.

What exactly does the Act purport to transfer and take away from the City of Asheville?

Answer: The entire Asheville Water System – lock, stock, barrels, pipes, woodlands and mountain streams as well as transferring the existing debt (\$65,570,000) in Water Bonds

to the "new" MWSD as described above.

The Asheville Water System. For over a century Asheville has owned, operated, managed, and maintained a system for the supply, treatment, and distribution of water for drinking, cooking, and cleaning purposes, and for the operation of sanitary disposal systems. This Water System supplies water to a diverse customer base, including Asheville's own residents, residents living in unincorporated areas of Buncombe County, indirectly by wholesale to residents of other municipalities in Buncombe County, and more recently, to some residents of Henderson County. The Water System has been built and maintained over the past century using a combination of taxes, service fees, connection charges, bonded debt, various federal and state grants, contributions from Buncombe County, and donations from property owners and developers. Asheville owns, operates, and maintains its water system as a public enterprise under N.C. Gen. Stat. § 160A-311 through § 160A-326. By resolution of the Board of Commissioners of Buncombe County (the "County") and by deed, dated May 15, 2012, the County voluntarily conveyed to Asheville all of the County's ownership interest in various water distribution lines and related facilities that had been previously owned by the County. The Water System is no different in its governance and operation from other municipal water systems across North Carolina.

The Water System includes a protected watershed area consisting of over 17,000 acres of mountainous forestlands in Buncombe County, all of it owned by Asheville. It is one of the largest municipally owned watersheds in the United States. The watershed contains a number of non-navigable streams, including Left Fork Bee Tree Creek, Wolfe Branch, Bell Branch, Right Fork Bee Tree Creek, Sugar Fork, Shute Branch, Long Branch, Saltrock Branch, North Fork Swannanoa River, Glassmine Branch, Stony Fork, Dry Branch, Little Fork, Big Branch, Morgan Branch, as well as other smaller, unnamed streams. None of the streams feeding either of the two reservoirs in Asheville's Water System, Bee Tree Reservoir and North Fork Reservoirs is navigable by even the smallest of watercraft, such as a canoe or kayak.

Within the watershed area are two impoundments, each of which supports a water treatment plant and which together are capable of treating and supplying a total of 36 million gallons of water per day. Asheville owns a third water treatment plant located at the confluence of the French Broad and Mills Rivers in Henderson County with a daily treatment capacity of 7 million gallons of water. The system also includes an additional twenty-nine treated water storage reservoirs, some 1,880 miles of distribution lines for treated water, and more than forty pump stations. The system currently serves approximately 124,000 customers, some 48,000 of whom are located outside Asheville's city limits.

The Water System is also composed of intangible assets that are essential to its proper functioning but that are not, and cannot be, transferred to the New MWSD by the Water Act. The system has approximately 147 trained and certified employees; numerous licenses and permits required by state and federal law; wholesale water supply contracts with other municipal entities; operating contracts for the supply of goods and services; and revenue accounts of more than \$2,218,000.00 held for the benefit of outstanding public bonds. In addition to the experienced and skilled workforce, other essential components of the system include well-developed operating procedures and policies, a strong and experienced management structure, and insurance coverage provided by policies held in the name of the City. If allowed to go into effect, Asheville contends that the Water Act would break the links between the physical assets of the system, which would be transferred to the New MWSD, and these intangible assets, which would remain with Asheville, thereby destroying the unity and integrity of the Asheville Water System.

The Lawsuit by Asheville to stop the Act from going into effect— Procedural history up to and including the May 23, 2014 hearing.

This lawsuit was filed before May 15, 2013. The Honorable Donald W. Stephens entered a Temporary Restraining Order ("TRO") blocking the Act going into effect. The case was then assigned to this Court pursuant to Local Rule 2.1 Wake County. The parties, by agreement, extended the TRO pending a hearing on Asheville's Motion for a Preliminary Injunction. In the interim, the State of North Carolina did not file an answer but instead, filed a motion to dismiss pursuant to Rule 12, North Carolina Rules of Civil Procedure.

In September, 2013, the Court held a hearing on Asheville's motion for preliminary injunction and the State's motion to dismiss the complaint. The TRO entered by the Honorable Donald W. Stephens in May, 2013, restraining the implementation of the legislation at issue remained in effect by consent of the parties and Order of this Court. Prior to the September, 2013 hearing the parties submitted memoranda of law, exhibits, affidavits and authorities, all of which the Court reviewed prior to the hearing.

Following that hearing the Court, in consultation with the parties, reached an accord that the parties would engage in discovery, be permitted to file an amended complaint and pleadings, and continue the original TRO in effect in order to have this matter come before the Court upon cross motions for summary judgment based upon undisputed material facts. This procedure made good sense because this case, no matter what the outcome, will be appealed to the appellate division and a decision on summary judgment declaring the rights of the parties under the law would be, in essence, a final judgment on most, if not all issues.

On September 30, 2013, Asheville filed its Verified Amended Complaint.

On October 31, 2013, the MSD filed its Answer.

On November 6, 2013, the State of North Carolina filed a Motion to Dismiss and Answer in response to the Verified Amended Complaint.

On February 27, 2014, Asheville filed its Motion For Partial Summary Judgment and a Motion for Discovery Sanctions against the State of North Carolina.

On February 27, 2014, the State of North Carolina filed its Motion for Summary Judgment.

On March 14, 2014, the State of North Carolina filed its Response to Asheville's Motion for Partial Summary Judgment.

On April 14, 2014, the State of North Carolina filed a Reply in further support of its Motion for Summary Judgment.

In addition, both parties have submitted memorandum of law and various replies to the motions for summary judgment.

The parties requested that the Court hold a hearing on the motions for summary judgment and the State's motion to dismiss on May, 23, 2014.

The Court, in preparation for the May 23, 2014 summary judgment hearing, spent over 12 hours reviewing the memoranda of law, exhibits, affidavits and the legislative Act at issue and other materials submitted by the State and Asheville, the total combination of which exceeded approximately one foot in height notwithstanding the case law submitted by "flash drive."

On May 23, 2014, counsel for all parties were present and counsel for the State and Asheville presented oral arguments. The Court, at the conclusion of the hearing, requested that counsel for the State and Asheville submit by Friday, May 30, a maximum two-page submission setting forth the relief requested by each party (except nominal defendant MSD) and from Asheville, copies of cited decisions in the N. C. Reports preceding Volume 265. These were timely served. The Court has now had the time and opportunity, uninterrupted by other court business, to thoroughly review the arguments, record and supporting authorities for all sides in this dispute about the Asheville Water System. From a review of the memoranda of both the State and Asheville and statements of counsel at the May 23, 2014 hearing as well as the record, there is no genuine issue as to any material facts in this matter that would prevent this Court from ruling on the issues presented as a matter of law pursuant to Rule 56, North Carolina Rules of Civil Procedure. This matter is now ripe for disposition.

Decision:

The Court has reached a decision on all of Asheville's Claims For Relief except for the two claims relating to the Water Bonds. The Court's decision on each claim follows:

First Claim for Relief:

The Water Act violates Article II, Section 24(1)(a) of the Constitution of North Carolina which provides as follows: that "[t]he General Assembly shall not enact any local, private, or special act or resolution: (a) [r]elating to health, sanitation and the abatement of nuisances." Article II, Section 24(2) of the Constitution of North Carolina provides as follows: "[n]or shall the General Assembly enact such local, private, or special act by the partial repeal of a general law, but the General Assembly may at any time repeal local, private or special laws enacted by it." Article II, Section 24(3) of the Constitution of North Carolina provides as follows: "[a]ny local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void." Article II, Section 24(1)(e) of the Constitution of North Carolina provides that "[t]hat the General Assembly shall not enact any local, private, or special act or resolution: (e) [r]elating to non-navigable streams."

Decision on First Claim For Relief. The Court based, upon the undisputed material facts of record, concludes as a matter of law that:

1. The Water Act is a local act which was specifically drafted and amended to apply only to Asheville and the Asheville Water System
2. The Water Act is a local act relating to the treatment and supply of water for drinking, cooking and cleaning purposes, and for the operation of sanitary disposal systems which is applicable only to Asheville and the Asheville Water System and therefore is a local act which relates to health and sanitation in violation of Article II, Section 24(1)(a) of the North Carolina Constitution.
3. The Water Act is a local act relating to non-navigable streams and is applicable only to Asheville and the Asheville Water System in violation of Article II, Section 24(1)(e) of the North Carolina Constitution.
4. The Water Act, a local act, was enacted in violation of the provisions of Article II, Section 24(1)(a) and Section 24(1)(3) and pursuant to Article II, Section 24(3) of the North Carolina Constitution is void, of no force and effect.

Second Claim For Relief:

The Water Act violates Article I, Section 19 of the Constitution of North Carolina in that the Act takes, without Asheville's consent, the Water System and transfers the Water System to another entity without any rational basis for doing so.

Decision on Second Claim For Relief. The Court based, upon the undisputed material facts of record, concludes as a matter of law that:

1. Asheville, in its ownership and operation of the Water System, pursuant to Article 14A of

Chapter 160A of the N.C. General Statutes, acts in a proprietary capacity and function. Acting in a proprietary capacity with respect to the Water System, Asheville is entitled to the protections of Article I, Section 19 of the North Carolina Constitution as a private individual or corporation engaged in a similar business enterprise. *Ashbury v.*

Albemarle, 162 N.C. 247(1913); *Candler v. City of Asheville*, 247 N.C. 398(1958).

2. The Water Act, by operation of law, transfers the assets and debts of the Asheville Water System without consent and over the objection of Asheville, the Water System's owner. The transfer of the entire Water System required by the Water Act results in no change in the existing uses or purposes currently served by the Asheville Water Systems.
3. Section 1 of the Act lacks a rational basis for selecting the Asheville Water System and subjecting the Water System to treatment different from that provided under the Act for all other publicly owned water systems in North Carolina and fails to make a reasonable classification as required by law.
4. The Water Act lacks a rational basis, including, but not limited to the fact that (a) the use of the assets of the Water System will not change under the transfer; (b) the transfer to the new "owner" the MSWD, will not result in any higher quality of water that is now provided by the Asheville Water System; (c) the Water Act does not expand or improve protection of health and sanitation beyond that now being provided by the Asheville Water System; (d) the new "owner" of the Asheville Water System is an entity that has never owned or operated a public water supply and delivery system; (e); The Water Act removes ownership of a proprietary function of local government which operates similar to a public corporate entity by simply taking the Water System away from the City of Asheville by force of law and without a rational basis.
5. The Water Act is contrary to the law of the land in violation of Article I, Section 19 of the North Carolina Constitution as the means utilized to achieve what the legislation sought to obtain bears no relation, rational basis or otherwise, to the Act's stated purpose.

The Third Claim for Relief:

The Water Act violates Article I, Sections 19 and 35 of the Constitution of North Carolina in that the Water Act transfers the Water System, a proprietary function of the City of Asheville, to the MSWD, resulting an unlawful taking of the Asheville Water System, which system is to be used for the same purposes as the Asheville Water System is presently being used.

Decision on Third Claim For Relief. The Court based, upon the undisputed material facts of record, concludes as a matter of law that:

1. Asheville in its ownership and operation of the Water System, pursuant to Article 14A of Chapter 160A of the N.C. General Statutes, acts in a proprietary capacity and function. Acting in a proprietary capacity with respect to the Water System, Asheville is entitled to the protections of Article I, Sections 19 and 35 of the North Carolina Constitution as a private individual or corporation engaged in a similar business enterprise. *Ashbury v. Albemarle*, 162 N.C. 247(1913); *Candler v. City of Asheville*, 247 N.C. 398(1958).
2. The Water Act, by operation of law, transfers the assets and debts of the Asheville Water System without consent and over the objection of Asheville, the Water System's owner. The transfer of the entire Water System required by the Water Act results in no change in the existing uses or purposes currently served by the Asheville Water Systems. The Water Act's transfer of the entire Water System, reduced to essentials, amounts to a taking of all the assets and debts of a proprietary municipal business from Asheville and places the assets and debts in the ownership of another entity. Consider the impact of the enactment of a statute requiring SAS to transfer its entire proprietary corporate business and its control to a competitor, another proprietary corporate business without SAS' consent for an alleged public purpose in favor of cutting costs and consolidation of business resources.
3. The Water Act is not a valid exercise of the sovereign power of the legislative branch of government (or the State of North Carolina) to take or condemn property for a public use where here, the property (the Water System) is being used for the same purposes as are intended to be done by the transfer of the Water System to the MWSD.
4. The Water Act violates Article I, Sections 19 and 35 of the North Carolina Constitution.

The Sixth (Alternative) For Relief.

The Water Act violates Article I, Sections 19 and 35 of the Constitution of North Carolina by transferring the Water System to MWSD without just compensation.

Decision on Sixth (Alternative) Claim For Relief. The Court based, upon the undisputed material facts of record, concludes as a matter of law that in the event that it may be determined that the Water Act is a valid exercise of the sovereign power of the State of North Carolina to take the Asheville Water System in the manner set forth in the Act then Asheville, as the owner of the Asheville Water System, is entitled to be paid just compensation for the Asheville Water System which current audited financial statements assess as its Net Asset Value to be greater than One hundred million dollars (\$100,000,000). (Verified Amended Complaint, p.75.) *State Highway Comm'n v. Greensboro Bd of Educ.*, 265 N.C. 36, 49 (1965).

The Fourth and Fifth Claims for Relief attack the constitutionality of the Water Act on the

basis that the Act, if implemented would violate Article I, Section 10 of the United States Constitution prohibiting states from passing any law which would impair the obligation of contracts and Article I, Section 19 of the North Carolina Constitution which prohibits the State from impairing the obligation of contracts. *Broadfoot v. City of Fayetteville*, 124 N.C. 472 (1899). Because of the decisions of the Court above, the Court declines to address these two claims.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

1. That the Water Act is in violation of Article II, Section 24(1)(a) and Article II, Section 24(1)(e) and pursuant to Article II, Section 24(3) of the North Carolina Constitution is void and unenforceable.
2. The Water Act is contrary to the law of the land in violation of Article I, Section 19 of the North Carolina Constitution as the means utilized to achieve what the legislation sought to obtain bears no relation, rational basis or otherwise, to the Act's stated purpose and is void and unenforceable.
3. The Water Act is not a valid exercise of the sovereign power of the legislative branch of government (or the State of North Carolina) to take or condemn property for a public use where here, the property (the Water System) is being used for the same purposes as are intended to be done by the transfer of the Water System to the MWSD. The Water Act violates Article I, Sections 19 and 35 of the North Carolina Constitution and is void and unenforceable.
4. The City of Asheville's Motion For Partial Summary Judgment as to the First, Second, Third and its Alternate Sixth Claims for Relief is granted.
5. That the State of North Carolina's Motion to Dismiss the complaint is denied.
6. That the State of North Carolina's Motion for Summary Judgment as to all Claims for Relief is denied.
7. That the City of Asheville's Motion for Discovery Sanctions is denied.
8. That the State of North Carolina is permanently enjoined from implementing or attempting to implement The Water Act.

This the 9th day of June, 2014.



Howard E. Manning, Jr.
Superior Court Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-6691

CITY OF ASHEVILLE,
a municipal corporation,

Plaintiff,

v.

STATE OF NORTH CAROLINA and
the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE COUNTY,

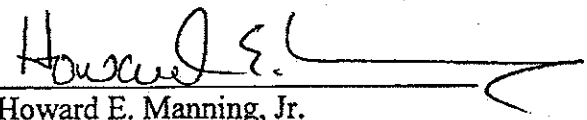
Defendants.

CONSENT ORDER

FILED
2014 JUN -3 PM 2:46
CLERK OF SUPERIOR COURT

The parties, through their counsel, have approached the Court with a request for clarification under North Carolina Rule of Civil Procedure 60(a) concerning the Court's disposition of Asheville's Fourth and Fifth Claims in the Order entered on June 9, 2014. In that Order the Court declined to reach the merits of Asheville's Fourth and Fifth Claims. Counsel have advised the Court that the June 9 Order can be read as having disposed of Asheville's Fourth and Fifth Claims as moot because of the ruling on Asheville's First, Second and Third Claims declaring the Water Act unconstitutional and void. They have requested clarification of this point in order to determine whether the Court may have had a different intention, meaning instead to reserve those claims for later decision. The Court did not intend to reserve for later decision Asheville's Fourth and Fifth Claims since they have been rendered moot by the Court's ruling on the other claims.

SO ORDERED this 2 day of July, 2014.


Howard E. Manning, Jr.
Superior Court Judge

With consent of:

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NORTH CAROLINA**

STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE 2014 JUL -8 22:10:37 SUPERIOR COURT DIVISION
13-CVS-6691

CITY OF ASHEVILLE, a municipal corporation,)
)

Plaintiff,

— against —

NOTICE OF APPEAL

THE STATE OF NORTH CAROLINA
and the METROPOLITAN SEWERAGE
DISTRICT OF BUNCOMBE COUNTY,
NORTH CAROLINA,

Defendants.

PLEASE TAKE NOTICE that the defendant in the above-captioned civil action, the State of North Carolina, hereby appeals to the North Carolina Court of Appeals from the "Memorandum of Decision and Order Re: Summary Judgment" entered on June 9, 2014 by the Honorable Howard E. Manning, Jr., North Carolina Superior Court Judge, granting the plaintiff's Motion for Partial Summary Judgment as to the plaintiff's First, Second, Third and alternate Sixth Claims for Relief; denying the State of North Carolina's Motion for Summary Judgment; denying the State of North Carolina's Motion to Dismiss the plaintiff's complaint; ruling that Session Law 2013-50, as later modified by Session Law 2013-388 (the "Act"), violates Article II, Section 24(1)(a) and Article II, Section 24(1)(e) of the North Carolina Constitution, such that, pursuant to Article II, Section 24(3) of the North Carolina Constitution, the Act is void and unenforceable; ruling that the Act is contrary to the Law of the Land in violation of Article I, Section 19 of the North Carolina Constitution, such that the Act is void and unenforceable; ruling that the Act is not a valid exercise of the sovereign power of the legislative branch of government or of the State of North Carolina to take or condemn property for a public use; ruling

that the Act violates Article I, Sections 19 and 35 of the North Carolina Constitution and, as such, is void and unenforceable; and permanently enjoining the State of North Carolina from implementing or attempting to implement the Act.¹

A true and correct copy of Judge Manning's June 9, 2014 "Memorandum of Decision and Order Re: Summary Judgment," from which appeal is taken, is attached to this Notice of Appeal as Exhibit 1 and is incorporated by reference herein.

This 8th day of July 2014.

ROY COOPER
Attorney General of the State of North Carolina



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¹ As clarified by Judge Manning's Consent Order entered on July 3, 2014.

STATEMENT OF TRANSCRIPT OPTION

Per Appellate Rules 7(b) and 9(c), the transcript of the summary judgment proceedings in this case, taken by Denise St. Clair, Court Reporter, on May 23, 2014, consisting of 98 pages, numbered 1-98, bound in one volume, will be electronically filed by Denise St. Clair promptly once a docket number is assigned to this appeal.

STIPULATION SETTLING RECORD ON APPEAL

Counsel for the Appellant and Appellee stipulate as follows:

1. The State's notice of appeal was timely filed and served on 8 July 2014. The proposed record on appeal was timely served on 26 September 2014. The certificates showing service of the notice of appeal and the proposed record may be omitted from the settled record.

2. A proposed record was served on 26 September 2014; a proposed alternative record was served on 23 October 2014; proposed amendments to the proposed alternative record were served on 3 November 2014; and the record was settled by agreement on 5 November 2015.

3. All captions, signatures, headings of papers, certificates of service and documents filed with the trial court that are not necessary for an understanding of the appeal may be omitted from the record, except as required by Rule 9 of the Rules of Appellate Procedure.

4. All affidavits supporting Asheville's and the State's motions were filed contemporaneously with the motions themselves and may be found in the Rule 9(d) Documentary Exhibits.

5. The parties have undergone a reasonable search for duplicative or substantially similar documents in the record and in the Rule 9(d)(2) documentary exhibits. For voluminous duplicates, a slip sheet has been inserted into the record or into the Rule 9(d)(2) documentary exhibits indicating where in the record the exhibit is set forth in its entirety.

6. The parties stipulate that the following documents constitute the agreed-upon record on appeal to be filed with the Clerk of the Court of Appeals:

- a. This printed record on appeal, consisting of pages 1 through 177;
- b. The transcript described in the Statement of Transcript Option (R p 170), which will be submitted by the court reporter upon receipt of a docket number for the appeal;
- c. A Rule 9(d)(2) documentary exhibit consisting of pages, consecutively numbered "Doc. Ex. 1,"

through "Doc. Ex. 661," which shall be cited as such. Three copies of the documentary exhibits are filed with this court pursuant to Rule 9(d)(2) of the North Carolina Rules of Appellate Procedure.

This the 5TH day of NOVEMBER, 2014.

For the Plaintiff-Appellee:


Daniel G. Clodfelter

For the Defendant-Appellant:


Gary R. Goveatt

PROPOSED ISSUES ON APPEAL

Pursuant to Rule 10 of the North Carolina Rules of Appellate Procedure, defendant-appellant intends to present the following issues on appeal:

1. Did the trial court err by failing to dismiss plaintiff City of Asheville's verified amended complaint on the grounds that plaintiff lacks standing and capacity to sue defendant State of North Carolina in connection with the matters alleged in plaintiff's complaint?
2. Did the trial court err in finding and concluding that there is no genuine issue as to any material fact preventing the court from entering judgment, as a matter of law, on plaintiff's first, second, third and sixth (alternative) claims for relief?
3. Did the trial court err in concluding that N.C. Sess. Laws 2013-50, as amended by N.C. Sess. Laws 2013-88 (collectively, "the Water Act"), is a local act relating to health and sanitation in violation of Art. II, § 24(1)(a) of the North Carolina Constitution?
4. Did the trial court err in concluding that the Water Act is a local act relating to non-navigable streams in violation of Art. II, § 24(1)(e) of the North Carolina Constitution?
5. Did the trial court err in concluding that the Water Act is "void, of no force and effect" under Art. II, § 24(3) of the North Carolina Constitution?
6. Did the trial court err in concluding that plaintiff, in its ownership and operation of the Asheville Water System, acts in a proprietary capacity and as such is entitled to the protections of Art. I, §§ 19 and 35 of the North Carolina Constitution?
7. Did the trial court err in concluding that the Water Act is contrary to the law of the land in violation of Art. I, § 19 of the North Carolina Constitution?
8. Did the trial court err in concluding that the Water Act is not a valid exercise of the State's power to take or condemn property for a public use?
9. Did the trial court err in concluding that the Water Act is an unlawful taking of the Asheville Water System

in violation of Art. I, §§ 19 and 35 of the North Carolina Constitution?

10. Did the trial court err in concluding that, in the event the Water Act is a valid exercise of the State's power to take the Asheville Water System, plaintiff is entitled to be paid just compensation pursuant to Art. I, §§ 19 and 35 of the North Carolina Constitution?
11. Did the trial court err in granting plaintiff's motion for partial summary judgment as to its first, second, third and sixth (alternate) claims for relief?
12. Did the trial court err in denying defendant State of North Carolina's motion to dismiss plaintiff's verified amended complaint?
13. Did the trial court err in denying defendant State of North Carolina's motion for summary judgment?
14. Did the trial court err by enjoining the State from implementing or attempting to implement the Water Act?

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Record on Appeal has been served this day by depositing a copy thereof in the United States mail, first class, postage prepaid, addressed to:

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This the 20th day of NOVEMBER, 2014



Gary B. Govert
Assistant Solicitor General