

The Asheville Water System and Buncombe County

Burnett Reservoir



BEETREE
RESERVOIR

Beetree
Reservoir

Beetree Road

Trail

Mills River

French
Broad
River



WATER SYSTEM MANAGEMENT PLAN #05-01683

FOR

**THE CITY OF ASHEVILLE
WATER RESOURCES DEPARTMENT
PWSID#01-11-010**

Last Update: September 23, 2005

The water system currently serves all of the City of Asheville, approximately 60% of Buncombe County and less than 1% of Henderson County. The major water supply is the City's watershed, which is comprised of 20,000 acres of mountainous forestland in eastern Buncombe County. Burnette Reservoir, the larger of two impoundment reservoirs, is located in Black Mountain. Bee Tree Reservoir, the smaller impoundment reservoir, is located in Swannanoa. Water is treated at the North Fork Water Treatment Plant (built at Burnette Reservoir in 1955 and expanded in 1992 to a capacity of 31 MGD). The William DeBruhl Water Treatment Plant (built at Bee Tree Reservoir in 1987 with a capacity of 5 MGD) is currently off line and is in the process of being upgraded.

The Mills River water supply was secured on the Mills River in Henderson County in 1994 through an agreement reached with Henderson County. Construction of a 5 million gallon-per-day water treatment facility on the Mills River was completed in October 1999. It was designed to accommodate future expansion, thus providing a plentiful supply of water for this region for the next 25 years.

26. The excess capacity in the water system maintained by the Asheville/Buncombe Water Authority is such that the system has a current capacity in excess of 41 million gallons per day and a current average usage of 22 million gallons per day.

RESPONSE: It is admitted that Asheville's water system has a current peak production capacity in excess of 42 million gallons per day (safe yield at 32 million gallons per day) and an average usage of 21 million gallons per day – but only assuming that the Bee Tree water facility is online. Unless otherwise admitted, Request No. 26 is denied.

REGISTERED

ASHEVILLE WATERSHED CONSERVATION EASEMENT

'96 DEC -3 P1:18

THIS CONSERVATION EASEMENT (herein "Conservation Easement") made this 15 day of November 1996, by and between the City of Asheville, a North Carolina municipal corporation (hereinafter the "Grantor") and the CONSERVATION TRUST FOR NORTH CAROLINA, a non-profit corporation organized under the laws of the State of North Carolina (hereinafter the "Grantee") with an address of 883 Washington Street, Raleigh, North Carolina 27605.

RECITALS:

A. The Grantor is the owner of certain real property known as the Asheville watershed (inclusive of the North Fork and Bee Tree watersheds) and consisting of 7,356+/- acres, more or less, located in Buncombe County, North Carolina, and more particularly described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter "Protected Property").

B. The Grantee is a nonprofit corporation established for the preservation and protection of land in its natural, scenic, and open space condition for scientific, educational, charitable, and aesthetic purposes.

C. The Grantor is desirous of conveying a perpetual Conservation Easement over the Protected Property, pursuant to the terms of the North Carolina Conservation and Historic Preservation Agreements Act of 1979 (N.C.G.S. 121-34 et seq.) and N.C.G.S. 160A-266 to 279, thereby restricting and limiting the use of the Protected Property, on the terms and conditions and for the purposes hereinafter set forth.

D. The Grantor conveys this Conservation Easement to the Grantee after approval by a majority of the members of the city council of the city of Asheville, NC, at a meeting duly held on

June 28, 1996.

ARTICLE I. PURPOSE OF EASEMENT

The Protected Property is used primarily to provide a clean, safe, plentiful source of drinking water for the people of the City of Asheville and surrounding areas. Subject to this primary use of providing water, the Grantor conveys this easement for the following purposes: to ensure that the Protected Property will be retained forever in its predominantly natural, scenic and forested condition; to protect native plants, animals and plant communities on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Protected Property described above.

Water Customers
Paid for the System

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE DRH50265-LB-103C (2/21)

Short Title: Sullivan Act II.

(Local)

Sponsors: Representatives Sherrill, Fisher, and Goforth (Primary Sponsors).

22 Whereas, practically all, if not all, of the cost of the waterlines serving
23 Buncombe County (outside of the corporate limits of the City of Asheville, as the same
24 existed in 1959) has been paid by the County of Buncombe, the various water and sewer
25 districts of the County of Buncombe, by the Asheville/Buncombe Water Authority
26 pursuant to its duties to Buncombe County, and by private developers and landowners,
27 desiring water service in such areas and not paid by the City of Asheville; and

1 Whereas, the waterlines inside the corporate limits of the City of Asheville in
2 areas annexed by the City of Asheville after 1959 with preexisting waterlines in place
3 have not been purchased by the City of Asheville; and

4 Whereas, during the term of the Water Agreement, the County of Buncombe
5 has paid directly to the City of Asheville in excess of \$37,000,000 pursuant to that
6 Agreement; and

25 Whereas, the citizens of Buncombe County outside the corporate limits of the
26 City of Asheville now, or in the future to be, supplied water from lines connected to the
27 waterlines currently maintained by the Asheville/Buncombe Water Authority, and
28 replacements, extensions, and additions thereto, are entitled to obtain water at a fair rate
29 from the water system for which they have paid, through taxes, through payments for
30 water, and through direct payments by the County of Buncombe and its water and sewer
31 districts; and

32 Whereas, the population of Buncombe County is projected to grow by more
33 than thirty-eight percent over the next twenty-five years, and more than two-thirds of
34 that growth is projected to occur outside the current city limits of the City of Asheville;
35 and

36 Whereas, the Asheville/Buncombe Water Authority has developed substantial
37 excess capacity in anticipation of the growth of population in Buncombe County and of
38 supplying water to the additional population from facilities the cost of which has been,
39 and in the future will be, paid out of water system revenues; and

NORTH CAROLINA:

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05 CVS 10743

WAKE COUNTY:

CITY OF ASHEVILLE, a municipal
corporation,
Plaintiff,

vs.

STATE OF NORTH CAROLINA;

and

COUNTY OF BUNCOMBE, et al.
Defendants.

FILED
2017 FEB -2 PM 1:40
WAKE COUNTY, N.C. CLERK
86

MEMORANDUM OF DECISION AND ORDER RE: SUMMARY JUDGMENT

FACTUAL BACKGROUND

This case relates to the provision of water to citizens of Asheville and Buncombe County by the public water utility operated by the City of Asheville. Two of the challenged statutes, Sullivan I and Sullivan II, local acts of the General Assembly, regulate the rates that may be charged by that public utility. The third challenged statute, Sullivan III, also a local act, addresses other issues related to that public utility, primarily the expenditure of revenues from the utility and related accounting issues.

In *Candler*, the Supreme Court held that the Legislature had the authority to establish rates for municipally owned utilities. In considering all of the facts and circumstances of the case at that time in passing on the constitutionality of Sullivan I, the Court considered that the City of Asheville had contributed nothing to the construction of the systems in the water districts and that the City only served to pump water into the system, read the meters, and bill the customers. *Candler, supra* at 411. The Court also considered that slightly over 28% of the meters through which the City of Asheville furnished water were outside its corporate limits and that slightly over 27% of its total income for the water system was from consumers outside the City. *Candler, supra* at 411.

Those same factual underpinnings continue to exist today, except that even a greater percentage of the consumers from the public utility water system reside outside the City of Asheville.

From 1957 through fiscal year 2005, the City of Asheville did not put any funds into the water system. In fact, in addition to the net operating revenue for that period of time of almost \$114,000,000.00 (income less expenses), there were a number of payments made from the "water fund" as part of the "operating expenses." The City did so primarily through three budget items:

Administrative-reimburse general and other funds	Department wide expenditures	Tax and franchise benefits-paid to general fund
\$52,473,739	\$39,324,144	\$12,372,231

At present, over 43% of the meters through which Asheville furnishes water are outside its corporate limits, and the City derives over 42% of its revenues from the sale of water to consumers outside its corporate limits.

The history of the Asheville-Huncombe Water system for the last fifty years is, in principal, the same as set out in

Candler. Financially, if anything has changed, it is that the County has contributed to the system to an even greater extent, while the City has continued to be a net taker of funds from the public utility water system. The City has continued to take funds from the public utility water system while, as is clear from the record, the system has fallen farther and farther into disrepair. With the City of Asheville's lawful, unilateral termination of the Water Agreements which were to expire on June 30, 2005, the General Assembly, on 29 June 2005, enacted Sullivan II and Sullivan III.

DEPOSITION OF DAVID CHARLES HANKS

Monday, October 9, 2006

12:55 p.m.

20 Q. And tell me about the positions you've held
21 with the City of Asheville.

22 A. I was the solid waste manager in public
23 works for approximately six months.

24 Then, I went to the water department as the
25 operations manager for approximately two years.

1 I became the interim director, held that
2 position for about four-and-a-half years, and then
3 became the permanent director last year and am still in
4 that position.

6 Q. Do you know of any water lines that are
7 outside the corporate limits of the City of Asheville
8 today, the installation of which was paid for by the
9 city?

10 A. Would that include grant money?

11 If you could maybe reclarify that.

12 Q. Well, let me do it in two parts.

13 Exclusive of grant money, I'll come back and
14 ask you about that so you can tell me the complete
15 picture, exclusive of grant money, do you know of any
16 lines outside the city limits that the installation of
17 which was paid for by the city?

18 A. I'm not aware of any.

19 Q. Are you aware of any for which grant money
20 was used to install the lines?

21 A. Yeah. We have installed lines inside and
22 outside the corporate limits, using grant money.

ORDINANCE NO. 237

AN ORDINANCE AUTHORIZING THE ISSUANCE OF BONDS OF THE CITY OF ASHEVILLE
FOR THE PURPOSE OF REFUNDING OUTSTANDING DEBT.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ASHEVILLE:

ARTICLE I

GENERAL PROVISIONS

SECTION 1. Pursuant to The Municipal Finance Act, 1921, as amended, bonds of the City of Asheville (herein sometimes referred to as "new bonds") are hereby authorized to be issued in the aggregate principal amount of \$20,974,500. Of these bonds, \$5,654,832.28 principal amount of bonds shall be known as Water Refunding Bonds, and \$15,319,667.72 principal amount of bonds shall be known as General Refunding Bonds. The Water Refunding Bonds shall be issued for the purpose of refunding a like principal amount of outstanding water debt described in Article II of this ordinance. The General Refunding Bonds shall be issued for the purpose of refunding a like principal amount of other debt described in that Article.

SECTION 2. Debt refunded pursuant to this ordinance shall be cancelled simultaneously with the issuance of the new bonds to refund such debt.

CITY OF ASHEVILLE, NORTH CAROLINA

FINANCIAL AND STATISTICAL INFORMATION

POPULATION—1940 U. S. Census.....	51,310	1950 U. S. Census.....	53,000		
OUTSTANDING DEBT:					
Bonds					
Due 7/1/1976-*					
General Refunding.....	\$ 12,046,647.65	\$ 11,788,684.07	\$ 11,569,373.80	\$ 11,326,107.44	\$ 11,091,879.74
Water Refunding	5,035,709.41	4,908,086.36	4,873,069.56	4,870,385.92	4,861,295.80
Due 7/1/1961†					
General Refunding...	150,760.40	144,760.40	134,760.40	126,760.40	114,666.70
Funding	12,690.32	12,690.32	12,690.32	12,690.32	12,753.76
Unrefunded	5,134.35	1,634.37	1,634.37	1,634.37	1,000.00
Total City.....	\$ 17,250,942.13	\$ 16,855,855.52	\$ 16,591,528.45	\$ 16,337,578.45	\$ 16,081,596.00
Sanitary District Assumed†	888,689.09	864,892.04	859,439.24	837,510.88	819,064.51
Total Debt	\$ 18,139,631.22	\$ 17,720,747.56	\$ 17,450,967.69	\$ 17,175,089.33	\$ 16,900,660.51

*Non-callable issued under terms of Plan of Composition of Debt with creditors as of 7/1/1936. Interest rates: General, 1% to 7/1/1939, 1½% to 7/1/1939-41, 1½% to 7/1/1941-46, 2% 7/1/1946-51, 2½% 1956-61, 3¼% 1961-66, 4% 1966-76; Water, 2% to 7/1/1940, 2½% 7/1/1940-56, 3% 1956-62, 3¼% 7/1/1962-66, 4% 1966-76.

†Portions of five districts assumed under 1929 act of the General Assembly by virtue of extensions of city's corporate limits. Serviced by city-wide tax levy and through the General Sinking Fund. Balance of the indebtedness is serviced by tax levied by county commissioners in the portions of the respective districts lying outside corporate limits.

Note 1: City bonds authorized as of 7/1/1936 to refund outstanding debt: General \$15,319,667.72. Water \$5,654,832.28. Total \$20,974,500. Total debt at 7/1/1936, including sanitary district debt assumed, was \$22,192,791.91. No new bonds have since been issued.

Note 2: Buncombe County—Outstanding Debt at 6/30/1951, \$17,028,389.38, including all school district debt, \$2,957,500, assumed in 1950 but not including \$3,800,000 School Building bonds authorized and unissued. This is only overlapping debt upon the City.

OPERATIONS—Water Department	1946-47	1947-48	1948-49	1949-50	1950-51	1951-52 Budget
Revenue						
Water Sales	\$610,404.13	\$676,305.81	\$687,146.57	\$680,545.74	\$695,178.62	\$700,000.00
Meter Rents	16,055.31	16,651.93	17,008.61	17,374.16	17,906.31	17,000.00
Sewer Connections	18,832.69	15,346.85	13,551.75	20,299.50	15,940.00	13,000.00
Other Revenue	782.08	599.12	691.26	567.49	392.42	600.00
Total Revenue	<u>\$646,075.21</u>	<u>\$708,903.71</u>	<u>\$718,398.19</u>	<u>\$718,786.89</u>	<u>\$729,417.35</u>	<u>\$736,600.00</u>
Expenditures						
Administrative	\$ 18,888.75	\$ 23,266.54	\$ 25,478.00	\$ 27,618.00	\$ 30,492.00	\$ 30,492.00
Legal	5,566.50	5,168.33	6,840.00	5,980.00	6,177.00	6,283.50
General Accounting	10,321.00	10,412.90	13,650.00	13,909.00	14,304.00	15,645.00
Billing and Collecting.....	46,372.61	47,009.21	49,954.79	53,665.57	52,916.30	56,565.00
Watersheds	19,264.85	23,189.96	27,133.31	31,391.25	31,984.26	27,410.00
Maintenance						
Meters	16,567.25	19,861.58	21,807.28	24,029.84	20,437.94	23,062.90
County System	2,400.00	4,680.00	5,760.00	6,380.00	5,700.00	5,760.00
Lines, Hydrants, Sewers.....	57,411.49	81,656.86	155,203.26	105,612.27	119,542.89	106,535.60
Total Expenditures	<u>\$176,792.45</u>	<u>\$215,245.38</u>	<u>\$305,826.64</u>	<u>\$268,585.93</u>	<u>\$281,554.39</u>	<u>\$271,754.00</u>
Net Operating Revenue.....	<u>\$469,282.76</u>	<u>\$493,658.33</u>	<u>\$412,571.55</u>	<u>\$450,200.96</u>	<u>\$447,862.96</u>	<u>\$463,846.00</u>
Application of Net Operating Revenue—						
Sinking Fund	\$230,000.00	\$230,000.00	\$230,000.00	\$230,000.00	\$230,000.00	\$230,000.00
To City General Fund†						
Payments in lieu of Taxes.....	113,846.00	113,846.00	113,846.00	113,846.00	113,846.00	113,846.00
Contribution	125,459.16	141,151.49	69,000.00	107,000.00	104,000.00	23,475.00
For New Bond Issue						96,525.00
Balance—Deficit* to Current Surplus.....	22.40*	8,660.84	274.45*	645.04*	16.96	
	<u>\$469,282.76</u>	<u>\$493,658.33</u>	<u>\$412,571.55</u>	<u>\$450,200.96</u>	<u>\$447,862.96</u>	<u>\$463,846.00</u>

†Payments in lieu of taxes and franchise benefits have been a practice in use by the city for many years. Theoretically they are charges made as though the water system were privately owned. Contributions are a transfer of the balance of net operating revenue to the General Fund. Both the payments and contributions are supplements to General Fund revenue and they have no legal significance as to their application. Actually all of the Net Operating Revenue, after payment of \$230,000 annually to the Water Sinking Fund, will be subject to the pledge for payment of the \$2,750,000 Water Bonds offered for sale on 11/27/1951. See "Operations—Water Sinking Fund."

Water Rate

Ash. C. T. 2. Hike Passes

7-1-60 1st Reading

A 25 per cent hike in water rates effective Friday, July 1, was given first reading passage by City Council Thursday in anticipation of financing needs for a proposed \$4,500,000 water transmission lines bond issue.

The rate boost, forecast earlier this month as a necessary preliminary to the bond issue scheduled for August, raises the present minimum water bill from \$1.85 to \$2.31 with all other categories increased in the same ratio.

The July 1 effective date means that readings of meters at the new rate will begin immediately, but the increased charges won't start showing up in customer billings until August. 7-1-60