NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

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April 19, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Metropolitan Sewerage/Water System, pursuant to G.S. 120-30.17(1).

Representative Tim D. Moffitt
Chair

Chair
Committee on Metropolitan Sewerage/Water System
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION

METROPOLITAN SEWERAGE/WATER SYSTEM COMMITTEE

NORTH CAROLINA GENERAL ASSEMBLY

REPORT TO THE 2012 SESSION of the 2011 GENERAL ASSEMBLY OF NORTH CAROLINA

MAY 14, 2012

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TRANSMITTAL LETTER

May xx, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration it's report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Metropolitan Sewerage/Water System, pursuant to G.S. 120-30.17 (1).

Respectfully submitted,

Senator Philip E. Berger President Pro Tempore of the Senate	Representative Thomas R. Tillis Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

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PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Metropolitan Sewerage/Water System , under authority of G.S. 120-30.17(1). The Committee was Representative Tim D. Moffitt, Chairs of the Committee. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

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COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Metropolitan Sewerage/Water System met 4 times after the 2011 Regular Session. The Committee's Charge can be found here. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

January 23, 2012

The first meeting of the Legislative Research Commission's Committee on Municipal Sewerage/Water System took place on January 23, 2012 at 2:00 p.m. in room 544 of the Legislative Office Building.

The Committee first heard a brief overview of the Sullivan Acts and history of the Asheville water system from Committee Staff. Vance Holloman, Deputy Treasurer, State and Local Finance Division, Department of State Treasurer then discussed the financial status of the Asheville Water and Sewer System.

The remainder of the meeting consisted of presentations of individuals from the Asheville area. Asheville's Vice Mayor Esther Manheimer gave an overview of the City's perspective on the Asheville Water and Sewer History. The Director of Water Resources for the City of Asheville, Steve Shoaf, gave an overview and history of the water system. He also discussed the financial stability of the system and the capital plans of the system. General Manager of the Metropolitan Sewerage District (MSD), Tom Hartye, gave a presentation on the organization and operation of the MSD. Steve Aceto, Chairman of the MSD Board of Directors presented on the historical overview of the MSD. The final presenter was Robert B. Long, attorney with Long, Parker, Warren, Anderson & Payne. Mr. Long discussed the history of the water dispute, and gave an overview of case law related to the dispute.

February 23, 2012

The second meeting of the Legislative Research Commission's Committee on Municipal Sewerage/Water System took place on February 23, 2012 at 9:00 a.m. in the Virginia C. Boone Mountain Heritage Building of the Western North Carolina Agriculture Center in Fletcher, North Carolina.

The meeting was held in the Fletcher, NC to hear from local officials and members of the public regarding regional water and sewer issues including the following:

- Increasing efficiencies in the delivery of services.

- Realization of economies of scale through better planning, engineering, and administration.
- The important role water and sewer has in economic development for the area.

The Committee accepted comments regarding the public water system managed by the City of Asheville along the three publicly stated potential study outcomes:

1. The water system remains managed by the City of Asheville.
2. The creation of an independent regional water authority similar to MSD.
3. Merging the water system with MSD, creating a regional authority.

The hearing time for interested parties was designated as:

9:00 a.m. - 10:00 a.m.	Elected Officials
10:00 a.m. - 12:00 p.m.	City of Asheville Residents
1:00 p.m. - 3:00 p.m.	Buncombe County Residents
3:00 p.m. - 4:00 p.m.	Henderson County Residents
4:00 p.m. - 5:00 p.m.	Business Community

Fourteen local officials and 67 members of the public addressed the Committee. A complete report of the comments is included in the minutes of the Committee in the Legislative Library.

March 14, 2012

The third meeting of the Legislative Research Commission's Committee on Municipal Sewerage/Water System took place on March 14, 2012 at 1:30 p.m. in room 643 of the Legislative Office Building.

The Committee heard from representatives of Buncombe County and Henderson County water systems on the local perspective of public water and sewer service. Bo Ferguson, City Manager of Hendersonville presented a description of the Hendersonville water and sewer structure, and plans for future improvements. Henderson County Attorney, Russell Burrell, discussed the local water system from Henderson County's perspective. Marcus Jones, Henderson County Engineer, presented the Committee with information on the operation of the sewerage system in Henderson County. Tom Hartye, General Manager of MSD, presented on the operation, future growth potential, and capital improvement plan of the MSD.

The Committee next heard from Reid Wilson, Executive Director of the Conservation Trust for North Carolina on the Asheville Watershed Conservation Easement. The easement is attached in Appendix D.

April 19, 2012

The forth meeting of the Legislative Research Commission's Committee on Municipal Sewerage/Water System took place on April 19, 2012 at 10:30 a.m. in room 643 of the Legislative Office Building.

Committee staff reviewed the draft report of the Committee. The Committee amended the draft report and then voted to approve the final report. The Committee staff was directed to prepare the final report of the Committee for submission to the Legislative Research Commission.

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FINDINGS AND RECOMMENDATIONS

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Finding 1 - The Metropolitan Sewer District (MSD) serves Asheville, Biltmore Forest, Black Mountain, Montreat, Woodfin, Weaverville, and the unincorporated parts of Buncombe County. The MSD also has an agreement for the wastewater treatment services for part of Henderson County. The MSD service area is over 180 square miles and services 51,000 customer accounts. The MSD was formed in 1962 to collect and treat wastewater.

In 1990, area local governments gave their collection lines to MSD for ownership and maintenance in "Sewer Consolidation" agreements. The following fifteen separate sewer systems were consolidated: City of Asheville, Town of Biltmore Forest, Town of Black Mountain, Town of Montreat, Town of Weaverville, Beaverdam Water and Sewer District, Busbee Sanitary Sewer District, Caney Valley Sanitary Sewer District, Crescent Hill Sanitary Sewer District, Enka-Candler Water and Sewer District, Fairview Sanitary Sewer District, Venable Sanitary Sewer District, Skyland Sanitary Sewer District, Swannanoa Water and Sewer District, and the Woodfin Sanitary Water and Sewer District.

The MSD is governed by a 12 member Board of Directors appointed by the following entities:

1. City of Asheville (3 members).
2. Buncombe County (3 members).
3. Biltmore Forest.
4. Black Mountain.
5. Montreat.
6. Weaverville.
7. Woodfin Sanitary Water and Sewer District.
8. Town of Woodfin.

Recommendation 1 - The Committee recommends the Metropolitan Sewerage District Act be amended to:

1. Reflect population shifts in single-county districts.
2. Modify representation in multicounty districts.
3. Allow metropolitan sewerage districts to exercise the same authority as metropolitan water districts.

Finding 2 - The Public Utility Water System, currently managed by the City of Asheville Water Resources Department, continues to be a topic of substantial concern within the unincorporated (non-City of Asheville) community. It is important to note that this discussion involves the rate-payers (customers of the water system) of the Public Utility Water System managed by the City of Asheville Water Resources Department, not ad-valorem (property) taxpayers per se. The concern regards ongoing public commentary regarding differential water rate limitations and tax inequities emanating from City of Asheville leaders and officials. This discourse contributes to continued distrust, unease and water insecurity with current and future rate-payers (water customers) in unincorporated (non-City of Asheville) Buncombe and Henderson Counties.

Moreover, the City of Asheville's primary method of growth, involuntary annexation, has been compromised by recent legislation and, therefore, creates increased concern for non-City of Asheville residents of Buncombe County when water system management issues are involved. As noted by City Attorney, Bob Oast, on March 23, 2011, "[b]ecause of legal and financial limitations related to water service, Asheville does not engage in voluntary annexations to the same extent that other cities are able to."[1] Broad statewide annexation reform, allowing persons facing involuntary annexation an opportunity to deny or approve annexation, will ultimately cause cities, such as the City of Asheville, to pursue other avenues of growth. These new limitations on all North Carolina municipalities exacerbates the fact that the City of Asheville does not possess the ability to utilize differential water pricing to compel voluntary annexation. This prohibition, as a result of Sullivan Acts I, II and III, is unique to Asheville and is rooted in a long, complex, history dating back to the Great Depression. Because of these circumstances, consideration must be given to the enactment of a proactive solution to avoid what will invariably lead, again and again, to conflict between the City of Asheville, on the one hand, and Buncombe County, Henderson County, the region's other communities and the State of North Carolina, on the other hand.

To fully understand the dynamics involved, a thorough understanding of the history must first be attained. This Committee has spent the past several months heavily investigating and researching the historical perspectives, community opinions, settled law, laws, and legal cases pertaining to the matter. The following are excerpts and summaries of that history. To facilitate a full understanding, source documents are available online and in the Legislative Library for review and consideration.

[1] Email from City of Asheville Attorney, Bob Oast to House Committee on Finance, March 23, 2011.

Admittedly, at the beginning of the 19th Century, and progressing over many years thereafter, the City of Asheville established a waterworks system to provide the citizens of the City of Asheville with an adequate water supply. Even today, the sources for that water supply remain located outside the contiguous boundaries of the City of Asheville. "Between 1923 and 1927, pursuant to various Acts of the Legislature, there were formed in Buncombe County six water and sewer districts. These districts were duly incorporated by the Legislature as municipal corporations for the purpose of furnishing to the residents of the respective districts water and sewer service. By the provisions of the various Acts of the Legislature, the districts were given geographical boundaries and were authorized to acquire rights of way for water and sewer lines, to construct such lines, and to hold elections authorizing the issuance of bonds in payment therefore."[2]

During the Great Depression, all of the aforementioned water districts went bankrupt. Therefore, beginning in 1928, the City of Asheville began selling water directly to individual customers (rate-payers), instead of the respective water districts. With the sale of water to individuals, the City adopted an ordinance that lowered the rates for all consumers. However, the rate for customers outside of the corporate limits was still double the rates paid by customers inside of the corporate limits. Due to default by the respective water districts on their bonds, Buncombe County assumed their liabilities and obligations, and acquired their corresponding rights and assets. Thus, Buncombe County became responsible for water line maintenance. In exchange for Buncombe County's assumption of those liabilities and obligations, differential water rates were no longer considered appropriate.

Therefore, in 1933, the General Assembly, through the efforts of Buncombe County Legislator William (Billy) Sullivan, enacted Chapter 399 of the 1933 Public-Local Laws. Commonly known as Sullivan I, this Act prohibited the City of Asheville from charging higher rates for water to residents of Buncombe County that were in a water district that incurred the aforementioned debt for the water system infrastructure. However, Sullivan I did allow the City of Asheville to terminate service for nonpayment of water by rate-payers. Sullivan I also provided that individuals outside of the City of Asheville were only entitled to the use of surplus water and, since Buncombe County owned the water lines, the Buncombe County Commissioners or trustees of the water districts were required to maintain the water lines.[3]

In 1955, in direct violation of Sullivan I, the Asheville City Council began charging water rates that were substantially higher for rate-payers outside of the corporate limits of the

[2] *Candler v. City of Asheville*, 247 N.C. 398, 101 S.E. 2d 470 (1958).
[3] *The Sullivan Acts are attached in Appendix E.*

City of Asheville than the rates for individuals within the corporate limits. Therefore, a law suit ensued regarding the constitutionality of Sullivan I. In *Candler v. City of Asheville*, 247 N.C. 398, 101 S.E. 2d 470 (1958), the Supreme Court of North Carolina specifically found that Sullivan I was constitutional and binding upon the City of Asheville. Thus, the City of Asheville was again prohibited from charging differential water rates to non-City of Asheville rate-payers.

By 1976, the indebtedness of all of the respective water districts was retired. In 1980, the Asheville City Council passed a resolution to challenge the validity of Sullivan I. However, before the lawsuit was filed, an interlocal agreement was entered into between the City of Asheville and Buncombe County regarding the water system. The agreement established the Asheville/Buncombe County Water Authority. The Water Agreement included provisions for the water system, as well as provisions relating to parks, recreation and law enforcement. In the Water Agreement, the City of Asheville specifically agreed not to challenge the validity of Sullivan I. The City of Asheville was also required, by the Agreement, to charge the same water rates for rate-payers inside and outside the corporate limits of the City of Asheville.

On November 11, 1995, leaders of the City of Asheville, Buncombe County and Henderson County came together and, by agreement, formed the Regional Water Authority which replaced the Asheville/Buncombe Water Authority. Its formation was in furtherance of an agreement between the City of Asheville and Henderson County, as a pre-condition, to allow Mills River, in Henderson County, to become an additional source of water for the Region. This regional agreement was driven by electoral consensus as well as the realization that our respective communities and economies are linked together. The agreement contained the following forward-looking language which demonstrated the intent of all of the parties involved:

SECTION XXI: REGIONAL WATER AND/OR SEWER AUTHORITY

> *21.0 It is the intention of the parties to this Agreement to establish herein the basis for the formation of a Regional Water and/or Sewer Authority, which would, at a minimum, include as members Henderson and Buncombe Counties, the Authority and Asheville. Pursuant to that intent, the parties herein shall in good faith work towards the creation of a regional authority and the promotion of said authority to other units of local government in the western part of North Carolina. At the time that the Regional Authority is created, all assets and improvements accumulated pursuant to this Agreement shall be transferred to such*

Regional Authority upon such terms and conditions as are then mutually acceptable.[4]

The agreement was a significant accomplishment. For the first time since the construct of the public water system, water security was enjoyed by the rate-payers in both the incorporated and the unincorporated areas. The de-politicizing of the public water system provided hope that a new era of regional cooperation and economic development synergy would spur smart industrial growth and opportunity for the region. The agreement also recognized that the public water system itself was truly a Public Utility Water System and acknowledged the contribution of non-City of Asheville rate-payers to its history.

Despite that history, in May, 2004, the Asheville City Council voted unanimously to unilaterally terminate the Regional Water Agreement to once again attempt to charge differential water rates, to compel voluntary annexation and to control growth outside of its corporate boundaries.[5] The City of Asheville gave Buncombe County a one year notice that they were unilaterally terminating the agreement.[6]

Additionally, the leadership of the City of Asheville has long claimed that the Public Utility Water System had fallen into disrepair (which was true). Therefore, since the members of the Regional Authority could not agree upon a Capital Improvement Plan (CIP) to fund maintenance and repairs, the City of Asheville felt it appropriate to unilaterally take over the Public Utility Water System. Those most knowledgeable of the matter, point out that "[f]rom 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."[7]

Essentially, the City of Asheville had taken (diverted) so much revenue from the water system to subsidize the City of Asheville's general fund, the City of Asheville itself was primarily (not solely) at fault for the system disrepair by not having dedicated the water funds for said maintenance and repair. Thus, the City of Asheville created the basis for its own complaint. Also, with the termination of the Regional Water Agreement, the City of Asheville made a determination that it would be able to successfully challenge the Sullivan Acts in Court and have them overturned. "When the dust settles, and when the

---

[4] Regional Water Supply and Water Service Agreement.

[5] The City Council at this time consisted of: Mayor, Charles Worley; Vice-Mayor, Dr. Carl Mumpower; Councilman, Jan Davis; Councilman Dr. Joe Dunn; Councilwoman, Holly Jones; Councilwoman, Terry Bellamy and Councilman, Brownie Newman.

[6] Asheville City Council Minutes May 25, 2004, page 27.

[7] *Asheville v. State*, No. 05 CVS 10743 (Super. Ct. Wake Co Feb. 2, 2007)(memorandum of decision and order re: summary judgment), page 9.

City of Asheville has established its legal right to operate its water system like every other city in North Carolina – and despite what has been said, Asheville and Buncombe County are not that different from the rest of the State – you will have to explain publicly why you have passed up the opportunity to reach an agreement that was fair to everyone." (Quoting Mayor Worley).[8] With the Sullivan Acts out of the way, the City of Asheville could then pursue their long held desire to charge differential water rates to rate-payers in unincorporated areas, increase the price for its wholesale customers, control growth on its perimeter and coerce new non-City of Asheville rate-payers to agree to voluntary annexation in exchange for water connection, and consumption.

Differential water rates serve primarily two purposes for the City of Asheville. First, the City of Asheville has determined that with a differential water rate structure, an additional six million dollars (approximately) would flow unrestricted into the City of Asheville's general fund. "Regarding rate differentials, Mayor Bellamy said that when you look at differentials across the State of North Carolina, the average differential is 85% (they use that to offset costs). City Council is willing to give up our rate differential ability (which is about 85%) and for that 85%, it would cost us over $6 million. Today we would like to see a tax equity payment of $6 million for us to give up rate differential ability."[9] (Note: *This is a reference to an annual payment to the City of Asheville coming from Buncombe County taxpayers. Agreement to those terms would more than likely raise ad-valorem taxes on all County residents regardless of whether they were or were not rate-payers to the water system).* Furthermore, comparison to other Cities in North Carolina unnecessarily confuses the issue. The other cities completely own their distribution systems. However, the City of Asheville does not.

Second, the City of Asheville has long used the lack of a differential rate structure as justification for its involuntary annexations. Utilizing an escalating water rate structure for non-City of Asheville rate-payers, the City of Asheville would have the ability to coerce non-City of Asheville rate-payers to agree to voluntary annexation to obtain economic relief. In essence, in exchange for lower water rates by agreeing to annexation by the City of Asheville, a non-City of Asheville rate-payers property tax would almost double. Also, as noted in the aforementioned Minutes, the City of Asheville would <u>force</u> annexation in exchange for connection to the water system. Such actions by the City of Asheville obviously contradict and betray the history of the Public Utility Water System.

[8] Letter from Mayor Worley, dated June 24, 2005 to Chairman Ramsey, Buncombe County Commissioners, page 2.

[9] Asheville City Council Minutes, Monday, June 12, 2006.

(*Please review the* Factual Background *part of the Wake County Superior Court decision attached herein as it provides an excellent summary of the history).*[10]

In response to the City of Asheville's more recent actions to challenge Sullivan Act I, the North Carolina Legislature enacted, on June 29, 2005, Sullivan II (S.L. 2005-140) and Sullivan III (S.L. 2005-139).

Sullivan II expressly prohibits the City of Asheville from charging differential water rates to Buncombe County residents outside the corporate limits of the City of Asheville that are connected to the waterlines maintained by the Asheville/Buncombe Water Authority. This Act continued to allow the City of Asheville to terminate service for nonpayment and required the Buncombe County Commissioners or trustees of the water districts to maintain the water lines owned by Buncombe County.

Sullivan III amends the City of Asheville's public enterprise authority for the provision of water and sewer service to provide that rules adopted for the service must not provide for differential treatment for individuals outside of the corporate limits. This Act also, required petitions for voluntary annexations to include a statement that the petition is not based on representations regarding the availability of public enterprise services.

In October 2005, the City of Asheville filed a declaratory judgment action challenging the constitutionality of the respective Sullivan Acts. The constitutionality of the Acts was upheld by the North Carolina Court of Appeals. The North Carolina Supreme Court approved that decision by denying the City of Asheville's request for review.[11]

On May 16, 2006, City of Asheville Mayor, Terry Bellamy, sent a letter to the Buncombe County Legislative Delegation about the ongoing "water dispute". The Mayor stated, "At this point, we are prepared to continue our legal challenges against the Sullivan Acts; however we prefer a locally determined solution." Attached with this letter was a summary of the terms presented in offers and counter offers between the City of Asheville and Buncombe County.[12]

On June 22, 2006, the Chair of the Buncombe County Commissioners, Nathan Ramsey, sent a letter to the Mayor and members of the Asheville City Council, outlining a set of terms acceptable to the Buncombe County Commission relative to the "water dispute". The proposal represented significant concessions by Buncombe County to the City of Asheville on a number of issues. However, the ability to implement differential water

[10] *Asheville v. State*, No. 05 CVS 10743 (Super. Ct. Wake Co Feb. 2, 2007) (memorandum of decision and order re: summary judgment), page 2.
[11] *City of Asheville v. State,* 192 N.C. App 1, 665 S.E.2d 103 (2008), *appeal dismissed, disc. rev. denied, 672 S.E.2d 685 (2009).*
[12] Letter, City of Asheville with attachment, May 16, 2006.

rates was not one of those concessions. Therefore, the City of Asheville rejected the proposal and continued their legal challenges against the Sullivan Acts.[13]

As a result of the foregoing, the City of Asheville has considered, from time to time, a Legislative Agenda seeking legislation to be introduced by the local delegation to repeal the Sullivan Acts.[14]

The "water dispute" has also been reviewed by other local non-governmental organizations. On April 28, 2005, the Board of Directors for the Asheville Chamber of Commerce accepted the findings of and adopted the recommendations set forth by the "Water Agreement Task Force".

> "After considerable discussion, many meetings, and review of the background material, the committee recommends that the city pursue a sale of the Water Authority to the Metropolitan Sanitary District (MSD) for the following reasons:
>
> - The Metropolitan Sanitary District has a strong track record and culture of good service and efficiency.
> - It would create a one-stop shop (plan review, permitting, inspection and acceptance) for the two major utilities.
> - It would be a regional approach to utility extension and service.
> - There would be reduced administrative costs. (Attachment 1)
> - There would be reduced costs from highway relocation. (Attachment 2)"[15]

In early Spring of 2005, a League of Women Voters board member, Mr. Andrew Reed submitted a guest editorial regarding the results of their study. Although the League does not take an official position, the League board concurs with the opinions expressed.

> "A truly independent Regional Water Authority is best route out of this mess"
>
> "Clean, affordable water is integral to our region's physical and economic health, and the Water Authority exists for the sole purpose of providing it. The League of Women Voters of Asheville and Buncombe County proposes a simple, straightforward and nonpartisan approach to fulfill that purpose".

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[13] Letter, Buncombe County Board of Commissioners, June 22, 2006.

[14] City of Asheville, Staff Report, Legislative Agenda for 2007. See also, City Council minutes April 25, 2006, page 24.

[15] *Report From Water Agreement Task Force, Asheville Chamber of Commerce, April 28, 2005*.

> "The Water Authority is, simply, a public infrastructure that exists to serve its users. It collects rainfall and runoff from far outside the city limits. It operates treatment plants in Buncombe and Henderson Counties, and it serves both Asheville residents and tens of thousands who live outside the city. Our water system is already a regional operation, and to carry out its mission it must be truly independent".[16]

Given all of the foregoing, this Committee makes the following conclusions:

1. The City of Asheville does not own the entire Public Utility Water System;

2. Buncombe County owns part of the Public Utility Water System;

3. The Public Utility Water System is a "Public Enterprise" and, therefore, the City of Asheville cannot profit from its management;

4. The City of Asheville is constrained and prohibited from charging non-City of Asheville rate-payers higher water rates by Sullivan I;

5. The City of Asheville is constrained and prohibited from charging non-City of Asheville rate-payers higher water rates by Sullivan II;

6. The City of Asheville is constrained and prohibited from adopting rules for the provision of water that provide for differential treatment for non-City of Asheville rate-payers by Sullivan III;

7. The City of Asheville has attempted to charge non-City of Asheville rate-payers higher rates for water than City of Asheville rate-payers in direct violation of the Sullivan Acts;

8. The City of Asheville has intentionally failed to fulfill contractual obligations to other governmental entities regarding the Public Utility Water System;

9. The City of Asheville has refused to reach a reasonable agreement with Buncombe County regarding the Public Utility Water System;

10. It is the intent of the City of Asheville to charge non-City of Asheville rate-payers substantially more for water than City of Asheville rate-payers;

[16] *Asheville-Citizen Times,* March 25, 2005, Editorial, Page 9.

11. The City of Asheville desires to maintain control of the Public Utility Water System until persons sympathetic to the City of Asheville are elected into office and can repeal the respective Sullivan Acts;

12. Buncombe County has substantially contributed to and invested in the Public Utility Water System;

13. The City of Asheville refuses to acknowledge Buncombe County's contribution and investment in the Public Utility Water System;

14. The non-City of Asheville rate-payers should not continually face the threat of double, triple and possibly quadruple increases in their water rates; and

15. The non-City of Asheville rate-payers are at risk of inequitable treatment by the City of Asheville (i.e. paying a disproportionately high portion of the water rates and "forced" voluntary annexation).

16. The Committee encourages the regional water and sewer stakeholders specifically to:
    a. Study of the impact of a water system transfer on water ratepayers.
    b. Study of the impact of a water system transfer on sewer ratepayers.
    c. Study of the impact of a water system transfer on economic development prospects.
    d. Consider whether and how water system operators in the District other than COA and Henderson County ought to be encouraged to transfer their systems to the District.
    e. Consider what measures might be appropriate to prevent privatization or diversion of public water resources outside the District boundary over the long term. There is a trend towards private operators acquiring entire public systems in some form or other. Our District's water resources are definitely unique and desirable and can be expected to attract more attention as the years go by. In considering the measures to prevent privatization or diversion of public water resources outside the District boundary, include a study of all of the following:
        i. What is considered privatization of the water system.
        ii. What are the water and sewer functions that are currently subcontracted by the City of Asheville or MSD. What are the bulk contracts for water that are currently in place, or under consideration, for sale of water to large users including beer breweries and soft drink bottlers. How do these current practices stop the diversion of water resources outside of the District and prevent inappropriate private benefits?

iii. What current measures preclude the City of Asheville from privatizing or diverting water resources outside of the District?
iv. What steps should be taken to prevent the privatization of this public resource?

It is the Committee's opinion that direct repeal or defiance of the Sullivan Acts would produce such substantially negative outcomes in the region that a proactive remedy must be pursued and implemented in a timely fashion.

Recommendation 2 - After careful consideration of the information presented, the Committee recommends merging the Public Utility Water System with the Metropolitan Sewerage District of Buncombe County.

The benefits of combining the two utilities are undeniable. The benefits include, among numerous others, the following:

1. Each utility essentially serves the same residential, commercial and industrial customers;
2. Wastewater volumetric charges are directly linked to domestic water metered consumption;
3. Treatment of raw potable water and wastewater requires similar expertise, and similar interaction with Federal and State Authorities;
4. Economies of scale can be achieved in the areas of administration, planning and engineering; and
5. Single location for water and wastewater availability and planning.

The Committee recommends that the 2013 Session of the North Carolina General Assembly consolidate the Public Utility Water System with the Metropolitan Sewerage District of Buncombe County. Should the interested governments craft their own solution for consolidation, which achieves all the objectives of the Committee, before the 2013 North Carolina General Assembly convenes, due consideration would be given to the local plan. Action will not be taken if the parties are engaged in good-faith negotiations on this matter.

Finding 3 - The 1996 Asheville Watershed Conservation Easement is designed to protect the drinking water in and around Asheville. There are some places where the language in the conservation easement could be clearer. However, the issue can be addressed directly with the City of Asheville and the General Assembly does not need to act at this time.

Recommendation 3- The Committee recognizes the efforts of the Conservation Trust for North Carolina in protecting the drinking water in and around Asheville. It recommends that the Conservation Trust for North Carolina continue to work with the City of

Asheville as the parties consider clarifying the 1996 Asheville Watershed Conservation Easement.

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COMMITTEE MEMBERSHIP

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2011-2012

Speaker of the House of Representatives Appointments:

Representative Tim D. Moffitt, Co-Chair
Representative William Brawley
Representative William Brisson
Representative Chuck McGrady
Representative Tom Murry

COMMITTEE CHARGE

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The Legislative Research Commission shall study whether requiring large cities that have a municipal water system and that are located entirely within a Metropolitan Sewerage District to convey that water system to the district will improve the efficiency of providing public services. The Commission shall specifically examine House Bill 925, First Edition, 2011 Regular Session, and the following issues:

1) Financial stability of the current independent systems on a historic basis and the anticipated financial stability of a combined system.
2) Cost-benefit analysis of a combined system, including a review of assets and liabilities; personnel needs; equipment and infrastructure replacement schedules; facilities leased and owned; and fee schedules.
3) Debt obligation.
4) Taxpayer investments in the systems.
5) Audit of current financials.
6) Comparative analysis of the current system to existing public and private systems.
7) Conservation and water efficiency practices.
8) Best management practices.
9) The disposition of property in Article 12 of Chapter 160A of the General Statutes as it relates to a conveyance of a water system.
10) The transfer of permits when a water system is conveyed.
11) Any local acts applicable to the city or metropolitan sewerage district.
12) Other items the Commission deems relevant to the study.

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES
ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

(1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.

(2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.

(3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.

(5), (6) Repealed by Session Laws 1981, c. 688, s. 2.

(7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.

(8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.

(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

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Prepared by: Charles E. Roe, Conservation Trust for N.C.
Return to: William F. Slawter, Nesbitt & Slawter

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

REGISTERED

BK1938PG018

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. 16OA-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.

E. The Grantee is a tax-exempt public charity under section 501(c)(3) and 509(a)(2) of the Internal Revenue code, is authorized by the laws of the state of North Carolina to accept, hold and administer conservation easements, possesses the authority to accept and is willing to accept this conservation Easement under the terms and conditions hereinafter described, and is a "qualified organization" and an eligible donee within the meaning of N.C.G.S. 121-34 and within the meaning of Section 170(H)(3) of the Internal Revenue code and regulations promulgated thereunder.

F. Grantor and Grantee recognize the conservation value of the Protected Property in its present state as forest land and surface water supply reservoirs, the preservation of which is pursuant to federal, state and local government policy, as evidenced by designation of the Asheville Watershed as a "nationally significant" natural area in the North Carolina Natural Heritage Protection Plan (1995), prepared by the North Carolina Natural Heritage Program, N.C. Department of Environment, Health and Natural Resources, pursuant to N.C.G.S. chapter 113A-164 of Article 9A.

6/25/96 1

Additionally, preservation of the Protected Property provides for the scenic enjoyment of the general public, as evidenced by its location and visual access to the public traveling on the Blue Ridge Parkway, a unit of the National Park system, which traverses the ridgetop above the Asheville Watershed.

The Protected Property yields significant public benefit by permanently protecting the principal public drinking water supply for the citizens of Asheville and Buncombe County.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity a conservation Easement of the nature and character and to the extent hereinafter set forth, over the Protected Property, for the benefit of the people of North Carolina, together with the right to preserve and protect the conservation values of the Protected Property.

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.

ARTICLE II. PROHIBITED ACTS

Grantor promises that it will not perform, and not knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the purposes for which this conservation easement is given.

ARTICLE III. CONSISTENT USES

The following uses and practices on the Protected Property, although not an exhaustive recital of consistent uses and practices, are consistent with this Easement, and these uses and practices shall not be precluded, prevented or limited by this Easement:

a) To produce and deliver drinking water, including the right to:

(i) build and maintain all structures, buildings and improvements necessary to collect, process and deliver water, including but not limited to the reservoirs, dams, treatment facilities, pipelines, roads, parking areas, office, maintenance and storage facilities that currently exist (hereinafter referred to as the "Water Production Facilities").

(ii) to replace all or part of the Water Production Facilities with facilities used for a like purpose.

(iii) the right to expand the Water Production Facilities to meet growing demand for water

usage or to comply with governmental regulations.

(iv) the right to remove and destroy any plant or animal within or immediately adjacent to the Water Production Facilities which interferes with the production and delivery of drinking water.

b) Uneven-aged, selective timber harvesting may be conducted below the 3600 foot topographic elevation, but in accordance with the following restrictions and conditions:

(i) Best Management Practice guidelines for the timber industry as the same may be promulgated by law or regulation in the state of North Carolina and amended from time-to-time.

(ii) maintenance and restoration, insofar as possible, of old-growth forests and preservation of the same where it already exists, as documented by the conservation Easement Documentation Report, established by Article VIII(A) below.

(iii) maintenance and protection of habitats of state-listed or candidate endangered or threatened species of plants or animals.

c) Development of recreational facilities in a manner not inconsistent with the use of the property as a primary water source, whether under existing regulations or under such regulations as may be promulgated in the future, whether such regulations are more or less restrictive.

d) Such other uses as the Asheville City Council may determine as is necessary and in the best interests of the City of Asheville provided:

(I) that such uses are consistent with the use of the property for drinking water production whether under existing regulations or under such regulations as may be promulgated in the future, including regulations that may be less restrictive as to the uses that are incompatible with water production, if the property is used for water production at the time of such uses.

(ii) that such uses are consistent with the maintaining of scenic views from the Blue Ridge Parkway and is compatible with the natural surroundings present on the property.

(iii) that such uses are carried out in such a manner as to minimize the destruction of trees and forest area.

ARTICLE IV. PROHIBITED USES

The following uses and practices are inconsistent with the purposes of this Conservation Easement and shall be prohibited upon or within the Protected Property, unless otherwise allowed pursuant to Article III above.

a) The division, subdivision or partition of the Protected Property except in conjunction with any consistent use.

b) The construction or placement of any permanent or mobile buildings or structures on the Protected Property except in connection with any consistent use.

c) The filing, dumping, excavation, and removal of soil, minerals, gravel or sand except in conjunction with any consistent use. However, this provision shall not prevent an archaeological excavation conducted with the approval of the Grantee.

d) The manipulation, degradation, pollution, alteration, or draining through human activities of the natural watercourses of the Protected Property except in conjunction with any consistent use.

e) The cutting or the destruction of trees or other plants, except as may be necessary for protection against outbreaks of disease or imminent hazard, or for maintenance of the Grantors public water supply or except in connection with any consistent use.

f) The introduction of non-native plants or animals or grazing of domestic animals.

g) The use of poisons except within structures.

h) The storage or dumping of trash, garbage, hazardous substances or toxic waste.

I) The construction of new roads except in connection with any consistent use.

j) Horseback riding or operation of vehicles except on existing roads for monitoring and management of the Protected Property or except in connection with any consistent use.

k) The construction of utility lines on the Protected Property other than to service allowed improvements or except in connection with any consistent use.

l) The erection of signs except as necessary for the management of the Protected Property and except in conjunction with any consistent use.

ARTICLE V. RIGHTS RETAINED BY GRANTOR

The Grantor retains the right to perform any act not specifically prohibited by this Conservation Easement and which is not inconsistent with the purposes for which this conservation Easement was given.

ARTICLE VI. ENFORCEMENT AND REMEDIES

A. If a breach of the terms of this conservation Easement by the Grantor or a third party comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of the breach. The Grantor shall have thirty (30) days after receipt of such notice to take actions that are reasonably calculated to correct the conditions constituting such a breach. If the Grantor fails to take such corrective action within thirty (30) days after written notice is provided by Grantee to Grantor, the Grantee may enforce the conservation restrictions and prohibitions by appropriate legal or equitable proceedings, as are reasonably necessary to require and compel the Grantor to correct such conditions, including but not limited to the exercise of the right to require that the Protected Property be restored promptly to the condition required by the conservation Easement.

B. No failure on the part of the Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right

to Grantee to enforce the same in the event of a subsequent breach or default.

C. Nothing contained in this conservation Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury or change in the Protected Property resulting from causes beyond the Grantors control, including, without limitation, fire, flood, storm, and earth movement, third parties, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property, or harm to the Protected Property resulting from such causes.

ARTICLE VII. PUBLIC ACCESS

The Grantor agrees to allow and does hereby grant visual access of the Protected Property to the general public from the Blue Ridge Parkway, other public roads, and adjacent public lands. The granting of this conservation Easement neither (1) conveys to the public any right to enter the Protected Property or to land or buildings owned by Grantor or on land that is adjacent to the Protected Property for any purpose whatsoever, nor (2) prohibits any public access thereto which may be permitted by Grantor.

ARTICLE VIII. DOCUMENTATION AND TITLE

A. Documentation Report. The parties acknowledge that the conservation Easement

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Documentation Report dated October 1, 1996, a copy of which is on file at the offices of the Grantee, accurately established the uses, structures, conservation values and condition of the Protected Property as of the date hereof.

B. Title. The Grantor represents that the Grantor is the sole owner of the Protected property in fee simple and has the right to grant and convey the aforesaid Conservation Easement.

ARTICLE IX. MISCELLANEOUS

A. Subsequent Transfers. Grantor agrees for itself, its successors and assigns, to notify Grantee in writing of the names and addresses of any party to whom the Protected Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Grantor, and its successors and assigns, further agree to make specific reference to this conservation Easement in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Protected Property is conveyed.

B. Conservation Purpose. Grantee, for itself, its successors and assigns agrees that this Conservation Easement shall be held exclusively for conservation purposes, as defined in Section 17 0 (h) (4) (a) of the Internal Revenue code.

C. Merger. Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Protected Property.

D. Assignment. The parties hereto recognize and agree that the benefits of this conservation

Easement are in gross and assignable by the Grantee to The Nature Conservancy, a nonprofit corporation organized and existing under the laws of the District of Columbia, whose address is 1815 N. Lynn street, Arlington, Fairfax county, Virginia 22209, or to an assignee designated by The Nature Conservancy, provided, however that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this conservation Easement, the organization receiving the interest will be a qualified organization and an eligible donee as those terms are defined in section 17 0 (h) (3) of the Internal Revenue code of 19 8 6 (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for the conservation purposes specified in Section 17 0 (h) (4) (A) of the Internal Revenue code, and Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance, set forth in Article I herein.

E. Access for Inspection and Research. The Grantee, its employees and agents and its successors and assigns, have the right, with five (5) days prior written notice to Grantor, to enter the Protected Property at reasonable times provided that the time and manner of such visitations shall be approved in advance by Grantor, such approval not to be unreasonably withheld or delayed, for the following purposes: (1) to inspect the Protected Property to determine whether the Grantor, its representatives, successors or assigns are complying with the terms, conditions restrictions and purposes of this Conservation Easement; (2) to conduct scientific research on the Protected Property.

F. Construction of Terms. This conservation Easement shall be construed to promote the purposes of N.C.G.S. section 121-34 et seq., the conservation and Historic Preservation Agreements Act, which authorizes the creation of Conservation Easements for purposes including those set forth in the recitals herein, and the conservation purposes of this conservation Easement, including such purposes as are defined in section 170(h)(4)(A) of the Internal Revenue code.

G Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements related to the conservation Easement. If any provision is found to be invalid, the remainder of the provisions of this conservation Easement, and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

H. Recording. The Grantee shall record this instrument in timely fashion in the official records of Buncombe county, North Carolina, and may rerecord it at any time as may be required to preserve their rights under this Conservation Easement.

I. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, to the parties at their addresses shown herein above or to other addresses as either party establishes in writing upon ratification to the other. In any case where the terms of this conservation Easement require the consent of the Grantee, such consent shall be requested by notice to the Grantee. Such consent shall be deemed to have been given unless, within fortyfive (45) days after receipt of notice, the Grantee mails notice to the Grantor of disapproval and the reason therefore.

J. Amendment, modification, Rescission. This conservation Easement may not be amended, modified, nor rescinded except upon written consent of both parties to this easement. The Grantor shall evidence authority to execute any such consent by adoption of a resolution or ordinance after due notice and upon the respective vote of the city council of the City of Asheville.

BK 1938 PG 053

As attested by the Seal of the Conservation Trust for North Carolina and the signature of its President affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this conservation Easement. This conservation Easement shall be effective as of the date recorded in the Registry of Deed, Buncombe county, North Carolina.

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto the Conservation Trust for North Carolina, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon the Grantor, its successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

IN WITNESS WHEREOF, the parties hereto have set their hands and caused these presents to be executed in their respective names by authority duly given this 15 day of November ,1996.

ATTEST:

City Clerk

THE CITY OF ASHEVILLE
a municipal corporation

By:
Mayor

ACCEPTED:

CONSERVATION TRUST FOR NORTH CAROLINA,
a not-for-profit corporation

By:
President

Secretary

Exhibit A. (Legal description for Protected Property to be attached)

BK 1938 PG 054

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, Janet M. Rhodes a Notary Public of the County and State aforesaid, certify that Magdalen Burleson personally came before me this day and acknowledged that he (she) is clerk of the City of Asheville, a North Carolina municipal corporation, and that by authority duly given and as the act of the city, the foregoing instrument was signed in its name by its mayor, sealed with its official seal, and attested by him (herself) as its clerk.

Witness my hand and official stamp or seal, this 29th day of October, 1996.

Janet M. Rhodes
Notary Public

[seal] JANET M. RHODES NOTARY PUBLIC BUNCOMBE COUNTY, N.C.

My commission expires 10-3-98.

STATE OF NORTH CAROLINA

COUNTY OF ~~BUNCOMBE~~ WAKE

I, Miriam R. Brown a Notary Public of the County and State aforesaid, certify that Charles E. Roe personally came before me this day and acknowledged that he is secretary of the Conservation Trust for North Carolina Inc. a North Carolina corporation, and that by authority duly given and as the act of the city, the foregoing instrument was signed in its name by its president, sealed with its official seal, and attested by him as its secretary.

Witness my hand and official stamp or seal, this 16 day of November, 1996.

Miriam R Brown
Notary Public

MIRIAM R. BROWN NOTARY [seal] PUBLIC WAKE COUNTY, N.C.

My commission expires My Commission Expires 2-26-2000.

State of North Carolina, County of Buncombe

Each of the foregoing certificates, namely of Janet M. Rhodes and Miriam R. Brown a notary or Notaries public of the State and County designated is hereby certified to be correct.

Filed for registration on this the 3 day of December, 19 96 at 1:18 P M.

Otto W. DeBruhl
OTTO W. DeBRUHL
Register of Deeds, Buncombe County

John M. Morgan
By: Asst./~~Deputy~~/Register of Deeds

Buncombe 02
Property Description

Asheville Watershed Easement

Beginning at point (1), said point is on the boundary between Buncombe and Yancey County and is further known as Balsam Gap on the Blue Ridge Parkway; thence southeasterly along the Buncombe-Yancey County boundary which is also the National Forest Boundary of Pisgah National Forest to point (2), the summit of Pinnacle Mountain, said point is also the common corner for Buncombe, Yancey, and McDowell counties; thence continuing along Buncombe-McDowell county boundary to point (3), the summit of Gray Beard Mountain, said point is further described as being the most northerly boundary of the Town of Montreat; thence southwesterly along the Town of Montreat Corporate limit to point (4), the northeast corner of property now or formerly owned by George and Nancy Duke as recorded in Buncombe County Register of Deed office in deed book 1062 page 59; thence westerly along the boundary of privately owned properties to point (5); said point is described as being approximately 115 feet southwesterly of the center of North Fork Road (SR 2469) and on the easterly boundary of property now or formerly owned by Robert E. Burnett as recorded in Deed Book 1195 Page 581; thence northerly along the boundary of private property and North Fork Road to point (6) the northeast corner of property now or formerly owned by the City of Asheville as recorded in Deed Book 1856 Page 182; said point is further described as being on the northerly boundary of property as shown on Plat Book 59 page 30 as recorded in the Buncombe County Register of Deeds office; thence northwesterly along privately owned property to point (7), said point is described as the most northerly point of property now or formerly owned by CBU Christian Fellowship Inc., as recorded in Deed Book 1778 Page 529, thence southwesterly along privately owned properties to point (8), in the center of Bee Tree Road, on the northerly boundary of property now or formerly owned by Ronnie J. and Mary J. Branch as recorded in Deed Book 1630 Page 583; thence northwesterly along privately owned properties to point (9), the most northerly point of property now or formerly owned by Joseph F. Mongovis, Trustee, as recorded in Deed Book 1051 Page 271, said point is also known as Paynes Knob; thence northerly along the Pisgah National Forest boundary to point (10), known as Lane Pinnacle, elevation 5230 feet; thence northeasterly along the ridge of Bull Mountain, which line is also known as the boundary between Swannanoa and Reems Creek townships to point (11), said point is the common corner of Swannanoa, Reems Creek and Ivy Townships; thence northeasterly along the Pisgah National Forest boundary passing Bearpen Knob, Pinnacle Gap, Craggy Pinnacle, and Bullhead Gap along the Great Craggy Mountains ridge line to the point of beginning.

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Sullivan I

H. B. 931 **CHAPTER 399**

AN ACT TO REGULATE CHARGES MADE BY THE CITY OF ASHEVILLE FOR WATER CONSUMED IN BUNCOMBE COUNTY WATER DISTRICTS.

The General Assembly of North Carolina do enact:

Charges for water by Asheville to users in Buncombe County regulated.

SECTION 1. That from and after the passage of this act it shall be unlawful for the City of Asheville, or any of the governing authorities, agents, or employees thereof, to charge, exact, or collect from any resident of Buncombe County, whose property is now connected or may hereafter be connected with the main of any water district which has paid or issued bonds for the payment of the expense of laying such main, a rate for water consumed higher than that charged by the City of Asheville to persons residing within the corporate limits of said city.

Discontinuance of supply for failure to pay rent.

SEC. 2. That the City of Asheville is hereby specifically authorized and empowered, through its officers, agents and employees, to cause any user of water who shall fail to pay promptly his water rent for any month to be cut off, and his right to further use of water from the city system to be discontinued until payment of any water rent arrearages.

Cutting out users outside City in emergencies.

SEC. 3. That it is the purpose and intent of this act to declare that persons residing outside of the corporate limits of the City of Asheville shall be entitled to the use of Asheville surplus water only, and the governing body of the City of Asheville is authorized and empowered to discontinue the supply of water to any districts, or persons, out of the corporate limits of the City of Asheville at any time that there may be a drought or other emergency, or at any time the governing body of the City of Asheville may deem that the city has use for all of its water supply.

Water wastage prohibited.

SEC. 4. That it shall be the duty of the County Commissioners of Buncombe County and/or the trustees of the different water districts operating outside of the corporate limits of the City of Asheville, in Buncombe County, to maintain the water lines in proper repair in order that there may not be a waste of water by leakage.

Conflicting laws repealed.

SEC. 5. That all laws and clauses of laws in conflict with this act are hereby repealed.

SEC. 6. That this act shall be in force from and after its ratification.

Ratified this the 28th day of April, A.D. 1933.

Sullivan II

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2005-140
HOUSE BILL 1065

AN ACT REGARDING WATER RATES IN BUNCOMBE COUNTY.

Whereas, the North Carolina General Assembly previously adopted Chapter 399 of the 1933 Public-Local Laws (known as the "Sullivan Act") to address the particular circumstances of the supplying of water to certain residents of Buncombe County by the City of Asheville and the charges therefor; and

Whereas, from the adoption of the Sullivan Act until the present, the City of Asheville, directly or through the Asheville/Buncombe Water Authority, has continued to supply water to certain consumers of water in Buncombe County outside the corporate limits of the City of Asheville in those areas of the County where water has been supplied by the City of Asheville, all at a rate no higher than that charged by the City of Asheville to similarly situated water consumers residing within the corporate limits of said city; and

Whereas, from and after 1981, the City of Asheville and the County of Buncombe have discharged various of their obligations relating to the provision of water to certain citizens of Buncombe County residing inside and outside the corporate limits of the City of Asheville and the maintenance and upkeep of their respective water facilities pursuant to an Agreement between the City of Asheville and the County of Buncombe establishing the Asheville/Buncombe Water Authority dated 29 October 1981 and certain supplements and amendments thereto (hereinafter "Water Agreement"); and

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

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

Whereas, at the time of the adoption of the Water Agreement, certain public recreational facilities were transferred to the County of Buncombe by the City of Asheville, and during the term of the Water Agreement, the costs related to those facilities have been borne by the County of Buncombe; and

Whereas, during the term of the Water Agreement, the County of Buncombe has expended $9,025,715 on capital expenditures for the public recreational facilities referenced above; and

Whereas, the City of Asheville has given notice to terminate the Water Agreement as of 30 June 2005; and

Whereas, the City of Asheville is entitled to a fair return on its capital investment; and

Whereas, upon the termination of the Water Agreement as noticed by the City of Asheville for 30 June 2005, the ownership of the public recreational facilities shall revert to the City of Asheville; and

Whereas, upon the termination of the Water Agreement as noticed by the City of Asheville for 30 June 2005, the ownership of all water system facilities conveyed to the City of Asheville pursuant to the Water Agreement shall revert to the County of Buncombe and its water districts; and

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

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

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

Whereas, 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; and

Whereas, the Mills River water treatment plant of the Asheville/Buncombe Water Authority was constructed at a location and in a manner that substantial additional capacity can be added to the water system now served by the Asheville/Buncombe Water Authority in the future without the construction of an additional water treatment plant; and

Whereas, the complicated pattern of dealings between the City of Asheville and the County of Buncombe regarding the provision of water to water consumers in Buncombe County connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto has now given rise to the issue of the rate that the City of Asheville may charge the water consumers in Buncombe County connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto to whom it provides water even though the Sullivan Act remains in full force and effect; and

Whereas, it is the exclusive right of the State to regulate the provision of and rates charged for public utilities to the citizens of the State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. From and after the effective date of this act, it shall be unlawful for the City of Asheville, or any of the governing authorities, agents, or employees thereof, to charge, exact, or collect from any water consumer in Buncombe County currently or hereafter connected to the waterlines currently maintained by the Asheville/Buncombe Water Authority, and replacements, extensions, and additions thereto a rate for water consumed higher than the rate

charged for the same classification of water consumer residing or located within the corporate limits of the City of Asheville. Classification of water consumer as referred to herein means the type of facility to which the water is provided (e.g., single-family residence, multiple-family residence, retail, commercial, industrial) without regard to geographic location within Buncombe County.

SECTION 2. The City of Asheville may, through its officers, agents, and employees, cause any user of water who shall fail to pay promptly his water rent for any month to be cut off and his right to further use of water from the city system to be discontinued until payment of any water rent arrearages, all consistent with G.S. 160A-314(b).

SECTION 3. It shall be the duty of the Board of Commissioners of Buncombe County and/or the trustees of the different water districts operating outside of the corporate limits of the City of Asheville in Buncombe County to maintain the waterlines owned by the County of Buncombe and such water districts in proper repair in order that there may not be a waste of water by leakage.

SECTION 4. To the extent that the Sullivan Act (Chapter 399 of the Public-Local Laws of 1933) does not conflict with this act, it continues to apply.

SECTION 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2005.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black

Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

Sullivan III

SESSION LAW 2005-139
HOUSE BILL 1064

AN ACT REGARDING THE OPERATION OF PUBLIC ENTERPRISES BY THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-312 reads as rewritten:

"**§ 160A-312. Authority to operate public enterprises.**

(a) A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises as defined in this Article to furnish services to the city and its ~~citizens.~~ citizens and other areas and their citizens located outside the corporate limits of the city. Subject to Part 2 of this Article, a city may acquire, construct, establish, enlarge, improve, maintain, own, and operate any public enterprise outside its corporate limits, within reasonable ~~limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service.~~limitations.

(b) A city shall have full authority to protect and regulate any public enterprise system belonging to or operated by it by adequate and reasonable rules. The rules shall be adopted by ordinance, and shall comply with all of the following:

(1) The rules shall apply equally to the public enterprise system both within and outside the corporate limits of the ~~city,~~city.

(2) The rules may not apply differing treatment within and outside the corporate limits of the city.

(3) The rules shall make access to public enterprise services available to the city and its citizens and other areas and their citizens located outside the corporate limits of the city equally.

(4) The rules may prioritize the continuation of the provision of services based on availability of excess capacity to provide the service.

(5) The rules ~~and~~ may be enforced with the remedies available under any provision of law.

(c) A city may operate that part of a gas system involving the purchase and/or lease of natural gas fields, natural gas reserves and natural gas supplies and the surveying, drilling or any other activities related to the exploration for natural gas, in a partnership or joint venture arrangement with natural gas utilities and private enterprise.

(d) A city shall account for a public enterprise in a separate fund and may not transfer any money from that fund to another except for a capital project fund established for the construction or replacement of assets for that public enterprise. Obligations of the public enterprise may be paid out of the separate fund. Obligations shall not include any other fund or line item in the city's budget."

SECTION 2. G.S. 160A-31(a) reads as rewritten:

"(a) The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a

petition signed by the owners of all the real property located within such area. The petition shall be signed by each owner of real property in the area and shall contain the address of each such ~~owner.~~ owner and a statement that the owner's petition for annexation is not based upon any representation by the municipality that a public enterprise service available outside the corporate limits of that municipality would be withheld from the owner's property without the petition for annexation."

SECTION 3. G.S. 160A-58.1(c) reads as rewritten:

"(c) The petition shall contain the names, addresses, and signatures of all owners of real property within the proposed satellite corporate limits (except owners not required to sign by subsection (a)), shall describe the area proposed for annexation by metes and bounds, and shall have attached thereto a map showing the area proposed for annexation with relation to the primary corporate limits of the annexing city. The petition shall also contain a statement from the owner that the owner's petition for annexation is not based upon any representation by the municipality that a public enterprise service available outside the corporate limits of that municipality would be withheld from the owner's property without the petition for annexation. When there is any substantial question as to whether the area may be closer to another city than to the annexing city, the map shall also show the area proposed for annexation with relation to the primary corporate limits of the other city. The city council may prescribe the form of the petition."

SECTION 4. This act applies only to the City of Asheville. Section 1 of this act shall not apply to the operation of public transportation systems or off-street parking facilities and systems as public enterprises.

SECTION 5. This act becomes effective June 30, 2005. Section 1 of this act applies to the fiscal year 2005-2006 and thereafter. Any assets, liabilities, or equity of a public enterprise operated or held by the city during the fiscal year 2004-2005 shall be transferred to a separate fund in accordance with G.S. 160A-312, as amended by Section 1 of this act, when this act becomes law. Sections 2 and 3 apply to petitions for annexation received by the municipality on or after June 30, 2005.

In the General Assembly read three times and ratified this the 29th day of June, 2005.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H **D**

BILL DRAFT 2011-LBz-421B [v.1] (03/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/19/2012 10:34:45 AM

Short Title:	MSD Amendments.	(Public)
Sponsors:	Representative.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA METROPOLITAN SEWERAGE DISTRICTS ACT TO REFLECT POPULATION SHIFTS IN SINGLE-COUNTY DISTRICTS, TO MODIFY REPRESENTATION IN MULTICOUNTY DISTRICTS, AND TO ALLOW METROPOLITAN SEWERAGE DISTRICTS TO ALSO EXERCISE THE SAME POWERS AS METROPOLITAN WATER DISTRICTS, ALL AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S METROPOLITAN SEWERAGE/WATER SYSTEM COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 162A-67(a) is amended by adding a new subdivision to read:

"(2a) Upon the expansion of the district into another county so that the district lies in two counties, the three board members appointed by the county in which the largest portion of the district lies (determined with reference to the land area of the district lying within the county as a percentage of the land area of the entire district at the time such appointment or reappointment is made) shall continue to serve on the district board, and the board of commissioners of the county in which the largest portion of the

district lies shall, upon completion of their respective terms, reappoint such members or appoint other qualified voters residing in the county and district as their successors such that the county in which the largest portion of the district lies shall always have three members on the district board. The board of commissioners of the county in which the lesser portion of the district lies (determined with reference to the land area of the district lying within the county as a percentage of land area of the entire district at the time such appointment or reappointment is made), shall appoint to the district board two qualified voters residing in the county and district to serve for a term of three years, and shall, upon completion of the board members' respective terms, reappoint such members or appoint other qualified voters residing in the county and district as their successors such that the county in which the lesser portion of the district lies, shall always have two members on the district board."

SECTION 2. The prefatory language of G.S. 162A-67(a) reads as rewritten:

"(a) Appointment of Board for District Lying Wholly or Partly outside City or Town Limits. – The district board of a metropolitan sewerage district lying in whole or in part outside the corporate limits of a city or town shall be appointed ~~immediately after the creation of the district~~ in the following manner:"

SECTION 3. G.S. 162A-67(a)(4) reads as rewritten:

"(4) The governing body of each political subdivision, other than counties, lying in whole or in part within the district, shall appoint one member of the district ~~board.~~ board, except that no appointment shall be made by or in behalf of a political subdivision which has not appointed a member to the district board as of July 1, 2012, and which does not own or operate a public system for the collection of wastewater at the time of such appointment. ~~No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board or boards of commissioners shall be the governing body.~~ If any city or town within the district shall have a population, as determined from the latest decennial census, ~~greater than that of all other political subdivisions (other than counties) and unincorporated areas within the district,~~ more than one-half the combined population of all other political subdivisions (other than counties) and unincorporated areas within the district, the governing body of any such city or town shall appoint three members. For purposes of determining district board representation of political subdivisions other than counties,

population shall be determined by reference to the most recent decennial census population of such political subdivisions and unincorporated areas of counties within the district which have district board representation at the time of such appointment and not merely that portion of the population residing within the district boundary itself. ~~All members and their successors appointed by the governing bodies of political subdivisions other than counties shall serve for a term of three years and shall be qualified voters residing in the district and the political subdivision from which they are appointed.~~"

SECTION 4. G.S. 162A-69 is amended by adding a new subdivision to read:

"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:

…..

(13c) To exercise all the powers of a Metropolitan Water District under Article 4 of this Chapter.

….."

SECTION 5. This act becomes effective July 1, 2012.

SUPPORTING DOCUMENTATION

The following supporting documents are located in the Legislative Library with the Committee minutes:

Email from City of Asheville Attorney, Bob Oast to House Committee on Finance, March 23, 2011.

Candler v. City of Asheville, 247 N.C. 398, 101 S.E. 2d 470 (1958).

Regional Water Supply and Water Service Agreement.

Asheville City Council Minutes May 25, 2004.

Asheville v. State, No. 05 CVS 10743 (Super. Ct. Wake Co Feb. 2, 2007)(memorandum of decision and order re: summary judgment).

Letter from Mayor Worley, dated June 24, 2005 to Chairman Ramsey, Buncombe County Commissioners.

Asheville City Council Minutes, Monday, June 12, 2006.

City of Asheville v. State, 192 N.C. App 1, 665 S.E.2d 103 (2008), *appeal dismissed, disc. rev. denied, 672 S.E.2d 685 (2009).*

Letter, City of Asheville with attachment, May 16, 2006.

Letter, Buncombe County Board of Commissioners, June 22, 2006.

City of Asheville, Staff Report, Legislative Agenda for 2007.

City Council minutes April 25, 2006.

Report From Water Agreement Task Force, Asheville Chamber of Commerce, April 28, 2005.

Asheville-Citizen Times, March 25, 2005, Editorial, Page 9.