

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1034, SUB 8

DOCKET NO. W-1034, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-1034, SUB 8

In the Matter of
Application by Water Resources, Inc., for
Authority to Increase Rates for Water Utility
Service in Rocky River Plantation Subdivision in
Cabarrus County and River Walk Subdivision in
Mecklenburg County, North Carolina

DOCKET NO. W-1034, SUB 10

In the Matter of
Lenny DeVitto, 8529 Indian Summer Trail,
Harrisburg, North Carolina 28075,

Complainant

v.

Water Resources, Inc.,
Respondent

**SUPPLEMENTAL
COMPLIANCE STATUS
UPDATE REPORT OF WATER
RESOURCES, INC.**

NOW COMES Respondent Water Resources, Inc. (“Water Resources” or “the Company”), by and through the undersigned counsel and files this Supplemental Compliance Status Update Report (“Report”), detailing the current status of the Company’s efforts to obtain compliance with certain regulations more particularly identified herein. The Report is intended to provide further updates to the Commission as a supplement to the Company’s Updated Report of Water Resources, Inc., which was filed in these dockets on August 8, 2022.

BACKGROUND

On April 18, 2018, in Docket No. W-1034, Sub 8, the Company filed an application for a rate increase. After proceedings on the application, on November 21, 2018, the Commission issued a Recommended Order Approving Agreed Upon Rates and Requiring Customer Notice (“Rate Case Order”), which became a final order of the Commission on December 7, 2018. The Rate Case Order included certain requirements for the Company to implement.

On June 17, 2021, in the General Court of Justice – Superior Court Division, Cabarrus County, the North Carolina Department of Justice (“NCDOJ”), on behalf of the State of North Carolina, on relation of the Department of Environmental Quality (“NCDEQ”), filed a Complaint and Motion for Injunctive Relief,¹ seeking the Court to provide prohibitory and/or mandatory injunctive relief to compel the Company’s compliance with NCDEQ’s water adequacy regulations. In summary, Water Resources’ Rocky River Plantation subdivision was historically served by two wells; however, one of those wells was inactivated when elevated levels of radium were discovered. The inactivation of Well #1 was done with the understanding that it was necessary to protect customers health and that it would trigger a violation of NCDEQ’s water adequacy regulations, which require public water systems to have two water sources. On July 15, 2021, the Superior Court Judge assigned to this matter signed the Consent Judgment agreed to between NCDEQ and Water Resources. The Consent Judgment requires, among other things, that the Company submit a plan for returning the Rocky River Plantation water system to compliance with NCDEQ’s water adequacy regulations (“Compliance Plan”). A true and accurate copy of the Consent Judgment is attached hereto as Exhibit A.

¹ See 21 CVS 2109.

On June 25, 2021, in Docket No. W-1034, Sub 10, Lenny Devitto, *pro se*, filed a complaint against the Company (“Complaint”). On August 19, 2021, the Company filed a Motion for More Specific Pleading, Motion to Dismiss, and an Answer to the Complaint.²

On August 19, 2021, Water Resources filed a motion seeking clarification of the Commission’s Rate Case Order. On September 21, 2021, the Commission issued an *Order Ruling on Motion for Clarification, Holding Complaint in Abeyance, and Requiring Public Staff Investigation*, directing Water Resources to replace meters in its Rocky River Plantation subdivision service area within four months and directing the Public Staff to investigate the status of Water Resources’ compliance with the Rate Case Order, NCDEQ’s Notices of Violation and Consent Judgment, and advising the Commission on whether the appointment of an emergency operator should be considered.

On December 20, 2021, the Public Staff filed its Report and Recommendations. In summary, the Public Staff concluded that the Company had not addressed the following required items: 1) the replacement of the vent screen and hatch on the elevated storage tank located in Rocky River Plantation subdivision; 2) the replacement of water meters in Rocky River Plantation subdivision; 3) the cleaning and recoating of the hydro-pneumatic tanks and ground storage tank located in River Walk subdivision; and 4) providing Rocky River Plantation subdivision with at least two operational wells, or in lieu of a second well, executing an alternative means of ensuring the Rocky River Plantation system is in compliance with the North Carolina Drinking Water Act and related regulations, as required by the Consent Judgment. The Public Staff also stated that

² Pursuant to the Commission’s July 29, 2022, *Order Requiring Compliance with 2018 Rate Case Order and DEQ Notices of Violation and Consent Judgment, and Requiring Filing of Further Reports*, at Ordering Paragraph No. 5, the complaint filed by Mr. Devitto continues to be held open pending further order of the Commission.

“[a]t this time, the Public Staff is not of the opinion that an emergency operator should be appointed,” noting that NCDEQ’s regional engineer agreed based on the view that the Rocky River Plantation subdivision is not in an imminent danger of losing adequate water utility service.³ Finally, with respect to this topic, the Public Staff stated that “[w]hile the Consent Judgment remains unresolved at this time, WRI is moving towards a resolution.”⁴

UPDATE ON STATUS OF COMPLIANCE PLAN UNDER THE CONSENT JUDGMENT

As noted above, the Consent Judgment requires the Company to provide a Compliance Plan to NCDEQ setting out actions required and dates upon which actions must be accomplished to return the Rocky River Plantation subdivision to compliance with NCDEQ’s water adequacy regulations.

After the entry of the Consent Judgment, the Company developed its Compliance Plan and submitted the proposed Compliance Plan to NCDEQ on August 12, 2021. That Compliance Plan was subsequently revised to reflect the efforts the Company was undertaking and to make adjustments to the timelines for achieving certain milestones. In summary of the Compliance Plan and subsequent revisions, the Company determined that an interconnection with the nearby water system of the Town of Harrisburg would be the most economical and technically appropriate method of providing a second water source for the system. However, in late 2021 and early 2022, it became clear that the interconnection would be more expensive, time consuming, and complex

³ Public Staff Investigation Report and Recommendations, p. 18, No. W-1034, Sub 8 and 10, (*filed* Dec. 20, 2021).

⁴ *Id.* at 19.

than initially expected. A critical aspect of achieving the interconnection with the Town of Harrisburg is the acquisition of an easement from one of Water Resources' customers. This aspect of the interconnection has proved more challenging than expected and is the subject of a more detailed and specific update below.

In response to the challenges experienced in obtaining voluntary agreement for the purchase of the easement, the Company spent several months in late 2021 and early 2022 exploring the option of re-activating the inactive well, mixing the water from the two wells, and filtering the water to ensure that NCDEQ's water quality standards were met and that customers were provided with safe drinking water. Water Resources President Dennis Abbott met with the Company's consulting engineer on-site at Rocky River Plantation on December 17, 2021, to provide data and information required to fully evaluate the "mixing" of water. In early January 2022, Water Resources maintained open communication with NCDOJ and NCDEQ regarding the feasibility of the "mixing" of water from the two wells. On or about February 7, 2022, the Company's consulting engineer determined that this approach would not be feasible, which was communicated to NCDOJ on the same day.

The Company then returned attention to achieving the interconnection with the Town of Harrisburg, and resumed the effort to obtain the interconnection with the Town of Harrisburg and revising the milestone deadlines for achieving that goal. Unfortunately, the Town of Harrisburg's review of the plans for the interconnection took more time than initially anticipated. In addition, agreement on the voluntary purchase of the easement remains elusive, as explained in more detail below. Nonetheless, the Company received the Town of Harrisburg's approval of the interconnection plans, and transmitted those plans to NCDEQ, which also approved the plans by

letter dated June 8, 2022. A true and accurate copy of the Engineering Plans Approval Letter is attached hereto as Exhibit B.

With the approval of plans, Water Resources proceeding procure materials and labor for the construction of the interconnection project. The procurement process has identified more specifically the costs for equipment and facilities that the Town of Harrisburg would require at the interconnection point. In particular, the Town of Harrisburg's required inspection and meter fees alone are expected to cost \$101,000, well in excess of what was anticipated at the time that the interconnection was first proposed in Water Resources' Compliance Plan. In addition, bids received for the construction work have been received and estimate the construction costs at approximately \$150,000. The project costs are, therefore, in excess of \$250,000, exclusive of the costs associated with acquiring the easement, engineering work, legal representation, and internal staff time devoted to the project, among other miscellaneous expenses.⁵ Even with approved engineering plans and notwithstanding the surprisingly high costs of the interconnection project, the Company is unable to complete that project without rights to access and ownership rights of the easement across the land of its customer.

Despite these challenges and throughout the entire time period discussed in this Supplemental Compliance Status Report, the Company has maintained open and constructive communications with NCDEQ. Water Resources' desired outcome from this proceeding is fully aligned with NCDEQ's desired outcome: to obtain compliance for the Rocky River Plantation system as soon as possible and at a reasonable cost. While the interactions between Company and NCDEQ remain constructive and collegial, NCDEQ has communicated to the Company that it

⁵ For context, the Company notes that its approved annual revenue from Rocky River Plantation in the Rate Case Order was \$39,607. See Rate Case Order, at p. 6.

will not consent to further extensions of time or revisions to the timelines for compliance under the Compliance Plan. On September 12, 2022, in Cabarrus County Superior Court, NCDEQ filed a Motion for Entry of Order to Show Cause for Civil Contempt. Counsel for the Company and NCDEQ are presently discussing the timing of the hearing or hearing(s) to be held in Cabarrus County Superior Court, with an expected hearing date in middle-late October.⁶

UPDATE ON STATUS OF EASEMENT ACQUISITION

As noted above, Water Resources has identified an interconnection with the Town of Harrisburg's water system as the most economical and technically feasible option for obtaining a second water source for Rocky River Plantation and, thereby, return the system to compliance with NCDEQ's water adequacy regulations. This interconnection is not possible, however, without the acquisition of an easement across the real property owned by Water Resources' customer Tonya Hook. Ms. Hook's property is located at 8500 Indian Summer Trail, at the corner of Indian Summer Trail and Tom Savage Dr. The easement would run parallel to Tom Savage Dr., to reach a water main owned by the Town of Harrisburg that runs along Rocky River Rd. Despite the Company's extensive efforts over the course of 27+ months, agreement on the voluntary sale of the easement has not been obtained.

Water Resources first contacted Ms. Hook on June 15, 2020, by telephone call. This call was followed by email communications on June 16, and August 17, 2020. On August 17, 2020, Ms. Hook informed the Company that she "does not wish to be a part of this project." The state of the initial and informal negotiations is detailed in the email communications between Water

⁶ Counsel for the Company expects a probable cause hearing to be scheduled prior to October 1, and that the show cause matter will come on for hearing on the merits in middle to late-October.

Resources and NCDEQ staff with dates of August 20 – September 21, 2020, which are attached here to as Exhibit C.

On June 28, 2021, now represented by counsel, the Company sent a letter to Ms. Hook offering to purchase the easement. After some exchange of communications, on September 15, 2021, Water Resources sent a letter to Ms. Hook, which the Company believed confirmed the essential terms of the purchase of the easement and expected to be accepted by Ms. Hook. The September 15, 2021 letter included a deed that would convey the easement to Water Resources. A compilation of the key communications exchanged between counsel for Water Resources and Ms. Hook is attached hereto as Exhibit D.

On September 29, 2021, Ms. Hook sent an email to counsel for the Company that added additional terms to the Company's offer previously communicated. The receipt of this email was cause of concern to the Company and prompted a reconsideration of the interconnection project. As mentioned above, the Company then explored the possibility of re-activating the Well 1 and mixing the water, as a better alternative method to achieve compliance in light of Ms. Hook's counter-offer. That work took several months, but proved fruitless.

On July 20, 2022, Water Resources responded to Ms. Hook indicating that her additional proposed terms were acceptable and requesting that she advise on whether she was prepared to sign the Deed of Easement previously provided to her.

On July 28, 2022, Ms. Hook responded by email stating that she was prepared to sign the Deed of Easement on the condition that Water Resources send payment to a "contact at the Town of Harrisburg." Ms. Hook proposed that she deliver the signed deed to that "contact" and receive her payment at that time. Also on July 28, 2022, Water Resources responded expressing a

willingness to cooperate with her as to how payment would be received, but a doubt that any staff person at the Town of Harrisburg would be willing to involve themselves in a private matter. That email also offered alternative arrangements for transferring payment, including offering to meet Ms. Hook at the Cabarrus County Courthouse to exchange payment and the signed deed. Later that same day, Ms. Hook responded by email expressing willingness to meet at the Courthouse and exchange payment and the signed deed.

On August 10, 2022, Water Resources transmitted to Ms. Hook a revised Deed of Easement and requesting that she set a date for the meeting at the courthouse. Water Resources did not receive a response to that email. On August 19, 2022, Water Resources sent an email requesting that Ms. Hook advise on whether she had decided to sign the easement.

On August 24, 2022, Ms. Hook responded by email with a document attached that is captioned “Right-of-Way Easement,” and expressing that this document “is in the format that I have agreed to sign. The conveyance of this easement should not be a ‘deed of easement.’” In addition, Ms. Hook’s email included some additional and changed terms that Water Resources believed had already been agreed to between the parties.

On August 25, 2022, Water Resources responded expressing confusion as to what Ms. Hook was attempting to communicate, and concern that state regulators would not find a “Right of Way Easement” as an acceptable real property interest for a public utility to install facilities upon. The same email further expressed confusion about what changes to the terms and conditions of the easement that Ms. Hook was requesting.

As of the date of this filing, Ms. Hook has not responded to Water Resources August 25 email.

On September 16, 2022, Water Resources sent a letter to Ms. Hook via certified mail, return receipt requested, demanding that Ms. Hook provide to Water Resources, on or before September 30, 2022, her final and best offer for the purchase of the easement. That letter states that if Ms. Hook fails to provide an acceptable final and best offer, consistent with the previous agreements already reached, the Company will file a complaint against her in Cabarrus County Superior Court seeking to condemn the needed easement through the use of eminent domain. A true and accurate copy of this letter is attached hereto as Exhibit E.

Finally, Water Resources notes that even if the executed deed of easement were in hand today, the Company anticipates a 10-month lead time to procure needed parts based upon proposals received from contractors for the construction of the interconnection with Town of Harrisburg's system.

CONCLUSION

In conclusion, Water Resources is presently unable to achieve compliance with NCDEQ's water adequacy regulations (and the Commission's Order requiring it to do so), because the Company has no right to enter upon Ms. Hook's property and construct and install the facilities necessary to achieve an interconnection with the Town of Harrisburg's system. The Company has diligently pursued a voluntary agreement with Ms. Hook, but that agreement remains elusive. Water Resources now has no option but to resort to condemnation litigation in attempt to acquire the easement needed to achieve a secondary water source for Rocky River Plantation. The Company is prepared to take that action, but remains hopeful that Ms. Hook will deliver an acceptable final and best offer before September 30, 2022, and that litigation can be avoided.

The consequence of the inability to obtain the needed easement is that Water Resources is now unable to achieve the milestones and deadlines in the Compliance Plan. The Company intends to defend its actions should the Cabarrus County Superior Court initiate proceedings in response to NCDEQ's Motion for Entry of Order to Show Cause for Civil Contempt. Water Resources' position is that the current state of non-compliance and the impossibility of achieving the Compliance Plan milestones is not willful and that Water Resources is not able to comply with the Consent Order nor able to take reasonable measures that would enable compliance.⁷ To the contrary, Water Resources is prepared to submit evidence that demonstrates that it has every intent to comply with the Compliance Plan and has taken every reasonable measure possible to achieve compliance.

Finally, it should be noted that Water Resources has not given up on efforts to return the Rocky River Plantation system to compliance with the Commission's regulations, orders, and directives or NCDEQ's water adequacy regulations. Water Resources' top priority remains providing its customers with safe drinking water that is available when needed. While the challenges facing the Company are substantial, Water Resources will continue to pursue every reasonable option to return Rocky River Plantation to compliance. The Company will also continue to keep the Commission and the Public Staff apprised of further developments.

WHEREFORE, Water Resources respectfully requests that the Commission take under advisement this Supplemental Compliance Status Update Report.

Respectfully submitted, this the 19th day of September, 2022.

BY: /s/ Patrick Buffkin

⁷ See N.C. Gen. Stat. § 5A-21.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Compliance Status Report has been served upon the parties of record in this proceeding, including the Public Staff-North Carolina Utilities Commission.

This the 19th day of September, 2022.

/s/ Patrick Buffkin
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STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 2109

2021 SEP 19 10 12 AM
CLERK OF SUPERIOR COURT

STATE OF NORTH CAROLINA, *ex rel.*,)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)

Plaintiff,)

v.)

WATER RESOURCES, INC.,)

Defendant.)

MA

CONSENT JUDGMENT

Plaintiff, the State of North Carolina, by and through the North Carolina Department of Environmental Quality, ("Plaintiff" or "DEQ"), and Defendant, Water Resources, Inc., hereby agree to the entry of this Consent Judgment in order to resolve the matter in controversy between the parties.

The Court makes, and the Plaintiff and Defendant (collectively "the Parties") hereby stipulate to, the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff is the sovereign State of North Carolina. This action was brought on the relation of the North Carolina Department of Environmental Quality ("DEQ"), the State agency established pursuant to N.C. Gen. Stat. § 143B-279.1 *et seq.*, and vested with the statutory authority to enforce the North Carolina Drinking Water Act contained in Article 10, Chapter 130A of the General Statutes and the rules promulgated thereunder. N.C. Gen. Stat. § 130A-326. The Division of Water Resources ("DWR") is a division within DEQ, and the Public Water Supply

(“PWS”) Section is a section within DWR. All actions taken by the PWS Section are necessarily actions of the Plaintiff. It is the mission of the PWS Section to promote public health by ensuring that safe, potable water is available in adequate quantities to the residents and visitors of North Carolina served by public water systems by assuring that such systems are properly located, constructed, operated and maintained.

2. Defendant Water Resources, Inc. is a North Carolina corporation with a principal office in Charlotte, North Carolina, and is the supplier of water for the public water supply system, a residential well water system designed to serve 50 or more connections and identified as PWSID # NC0113220, serving the residential community known as the Rocky River Plantation Subdivision.

3. The Rocky River Plantation Subdivision is located in Harrisburg, Cabarrus County, North Carolina. There are over 50 public water connections within the subdivision, serving approximately 264 residents annually.

4. On December 17, 2018, the PWS Section sent a Notice of Violation (“2018 NOV”) to Defendant for violation of the Combined Radium Standard in one of two wells, “Well 1,” during the period of January 1, 2018 through December 31, 2018. Among other things, the NOV ordered Defendant to return to compliance by June 30, 2019, to develop a plan for reducing the amount of contamination in the system, to submit quarterly status reports, and to advise residents of the violation.

5. On April 15, 2019, a Notice of Violation was sent to Defendant for continued violation of the Combined Radium Standard in Well 1 during the period of April 1, 2018 through March 31, 2019.

6. On June 13, 2019, another NOV was sent to Defendant for continued violation of

the Combined Radium Standard in Well 1 during the period of July 1, 2018 through June 30, 2019.

7. As Defendant began to explore options for returning to compliance and Well 1 remained in non-compliance, PWS Section staff recommended as a short term solution that Well 1 be taken out of service to protect the community. Well 1 was taken out of service on June 30, 2019. Defendant was aware at that time that pursuant to North Carolina's regulations governing water supply wells, the system must operate two wells, and that inactivating Well 1 would represent only a short term option. The PWS Section formally approved Defendant's request to inactivate Well 1 in September of 2019, and advised Defendant at that time that an NOV would be forthcoming for violation of 15A NCAC 18C .0402(g)(5) – the requirement that the system have at least two wells or another approved water supply source.

8. The consequences of having only one well for a system serving more than 50 connections is significantly elevated public health risk. Any disruptions, outages or failures of the sole remaining well elevate public health risk due to inadequate pressure in the distribution system which provides opportunity for contaminants to enter the system. Additionally, disruptions in water service further elevate public health risk as washing hands, flushing toilets, bathing, and food preparation are compromised.

9. On August 12, 2019, the PWS Section received a status report from Defendant wherein Defendant stated that the violation would be resolved by installing a new connection with the Town of Harrisburg. A copy of that status report is attached hereto as **Exhibit 1**, and incorporated herein by reference.

10. On September 17, 2019, the PWS Section received another status report from Defendant outlining necessary steps to implement Defendant's preferred alternative of connecting to the Town of Harrisburg. In transmitting the September 17, 2019 status report, Defendant asked

that he be given additional time to come into compliance.

11. On November 21, 2019, based on the September 17, 2019 request for additional time, the PWS Section extended the date set forth in the 2018 NOV for returning the system to compliance from June 30, 2019 to September 30, 2020.

12. On September 21, 2020, less than ten days before the September 30, 2020 deadline for coming into compliance, Defendant claimed that the new connection could not be constructed due to Defendant's inability to obtain an easement agreement from one of the property owners.

13. On October 22, 2020, the PWS Section issued a Notice of Violation ("NOV") to Defendant, explaining that Defendant is operating the water system in continued violation of North Carolina Regulations. The PWS Section further explained that while Defendant's preferred resolution was connection to the Town, if connection to the Town could not be completed Defendant must take other action to resolve the violation. Such alternatives could include installing a treatment system for Well 1 and acquiring land to drill a new well to serve the water system. The NOV further advised the Defendant that if the violation was not corrected by January 20, 2021, the PWS Section would pursue issuance of an administrative penalty.

14. On February 3, 2021, the PWS Section assessed an Administrative Penalty against Defendant in the amount of \$4,500 plus a continuing penalty of \$50 per day until Defendant demonstrates that the water system has returned to compliance. In order to resolve the penalty, Defendant was advised that he must return the water system to compliance and pay the total penalty amount within 60 days of service of the penalty. Defendant was also advised of his right to appeal the assessment of the penalty.

15. Defendant received the penalty assessment on February 6, 2021. Defendant did not appeal the assessment. As of April 9, 2021, payment had not been received, and PWS Section

staff sent a letter on that date to Defendant advising that the PWS Section was preparing to refer the matter to the North Carolina Attorney General's Office to proceed with a collections action. The PWS Section further advised Defendant that Defendant must take immediate and appropriate action to return to compliance, and that the PWS Section reserved the right to initiate additional legal action through the Attorney General's Office to resolve the ongoing non-compliance issues at the water system.

16. As of the date of entry of this Consent Judgment, Defendant has failed to implement the plan set forth in the August 12 and September 17, 2019 status reports, the public water system at the Rocky River Plantation Subdivision continues to operate using only one well and no other approved water supply source, and Defendant remains in violation of North Carolina's Drinking Water Regulation set forth at 15A NCAC 18C .0402(g)(5).

CONCLUSIONS OF LAW

1. This matter is properly before this Court, which has jurisdiction over the Parties and subject matter of this action pursuant to N.C. Gen. Stat. § 130A-18 and other provisions of law.

2. Venue is proper pursuant to N.C. Gen. Stat. §§ 1-79 and 130A-18.

3. The North Carolina Drinking Water Act, N.C. Gen. Stat. § 130A-311 *et. seq.* is designed to "regulate water systems within the State which supply drinking water that may affect the public health." N.C. Gen. Stat. § 130A-312. Pursuant to N.C. Gen. Stat. § 130A-315(a), the Commission for Public Health has adopted drinking water rules to regulate water quality in 15A NCAC Subchapter 18C. DEQ is responsible for enforcing the Drinking Water Act and related regulations. N.C. Gen. Stat. §§ 130A-315(a), -326.

4. Pursuant to the Drinking Water Act, a public water system is defined as a

conveyance system that provides water to the public for human consumption and “serves 15 or more service connections or which regularly serves 25 or more individuals.” N.C. Gen. Stat. § 130A-313(10). Public water systems may be either community or noncommunity water systems. A community water system is one that “serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.” *Id.* Any person who “owns, operates, or controls a public water system” is a “supplier of water.” N.C. Gen. Stat. § 130A-313(11).

5. Defendant owns and operates the public water system serving Rocky River Plantation subdivision, and is a “supplier of water” pursuant to N.C. Gen. Stat. § 130A-313(11). As there are over 50 public water connections within the subdivision the system is a “public water system” and a “community water system” as defined by N.C. Gen. Stat. § 130A-313(10). As the system is a well water system that serves greater than 50 connections, North Carolina regulations mandate that the system have at least two wells. In lieu of a second well, another approved water supply source may be accepted. 15A NCAC 18C .0402(g)(5).

6. When a supplier of water violates the drinking water rules or the Drinking Water Act, DEQ may institute an action for injunctive relief in the superior court of the county where the violation occurred or where the defendant resides irrespective of all other remedies at law. N.C. Gen. Stat. § 130A-18.

7. When the State brings an action to vindicate the public interest pursuant to a statute which provides for injunctive relief to abate violations of law, the usual test for issuance of injunctions need not be met. *State ex rel. Edmisten v. Challenge, Inc.*, 54 N.C. App. 513, 521-22, 284 S.E.2d 333, 338-39 (1981) (explaining that irreparable harm need not be established by the State as long as the statutory conditions for issuance of an injunction exist); *State ex rel. Morgan*

v. Dare To Be Great, Inc., 15 N.C. App. 275, 189 S.E.2d 802 (1972) (negating the general rule that there will be no equitable relief if there is an adequate remedy at law when the statutory scheme provided the State with injunctive relief under the circumstances presented). For example, the State is not required to show actual injury, such as irreparable harm, in order to obtain injunctive relief, including a preliminary injunction. Rather, it must show only that the violative acts or practices adversely affect the public interest. *See Challenge, Inc.*, 54 N.C. App. at 521-22, 284 S.E.2d at 338-39. An adverse effect on the public interest exists as a matter of law where the statutory conditions for issuance of injunctive relief are present, i.e., where a violation of the applicable statute or regulations exists or is threatened. *Id.* at 522, 284 S.E.2d at 339.

8. As of the date of entry of this Consent Judgment, Defendant has failed to bring the water system into compliance and remains in violation of North Carolina's Drinking Water Regulations. Therefore, an adverse effect on the public interest exists as a matter of law. *See Challenge, Inc., supra*, 54 N.C. App. at 522, 284 S.E.2d at 339. Defendant's continued non-compliance exposes residents at the Rocky River Plantation subdivision to significantly elevated public health risks.

9. The State is entitled to permanent injunctive relief against Defendant to abate the violation of the Drinking Water Act and related regulations set forth in this Complaint pursuant to N.C. Gen. Stat. § 130A-18.

10. Based upon the Court's review of the pleadings and materials submitted, this Court has concluded that the relief reflected in the Consent Judgment represents a lawful, fair, and reasonable resolution of this matter, consistent with the purposes of the North Carolina Drinking Water Act, N.C. Gen. Stat. § 130A-311 *et. seq.*, and this Court further concludes that it is fully authorized and justified in entering this Consent Judgment.

11. The Parties expressly waive any argument that the recitation of the above Findings of Fact and Conclusions of Law is insufficient to support the injunctive relief ordered below.

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** as follows:

Defendant is ordered to do the following:

1. Within 30 days of the entry of this Consent Judgment, submit to the PWS Section for review and approval (which may include the addition of conditions by the PWS Section) a plan to interconnect the Rocky River Plantation system to the Town of Harrisburg water system, as presented in Defendant's August 12, 2019 plan, attached hereto as Ex. 1. The plan must include a proposed schedule setting forth the number of days for the completion of the following activities, in accordance with the Rules Governing Public Water Systems, 15A NCAC 18C .0301 - .0309:
 - a. Submitting complete engineering plans, specifications and reports for the interconnection to the Town of Harrisburg,
 - b. Completing construction and submitting an Engineer's Certification and Applicant's Certification for the completed interconnection to the Town of Harrisburg, and
 - c. Placing the interconnection into active service.
2. Alternatively, within 30 days of the entry of this Consent Judgment, submit to the PWS Section for review and approval (which may include the addition of conditions by the PWS Section) a plan for an alternative means of returning the system to compliance, such as installing a treatment system for Well 1 or installing a new well to serve the

community. The plan must set forth the activities necessary for implementation, and a proposed schedule setting forth the number of days for completion of each activity.

3. Whether Defendant chooses to interconnect with the Town of Harrisburg or chooses an alternative means of returning the system to compliance, Defendant shall utilize a qualified professional engineer licensed to practice in the State of North Carolina to design any option for returning the system to compliance that involves modification of the existing water system; and shall obtain approval from the PWS Section prior to construction of any option for returning the system to compliance that involves modification of the existing water system.
4. If the PWS Section requires revisions in order for any of the plans submitted to be approved, Defendant shall resubmit the plan incorporating said revisions within 15 days of written notification (via e-mail at dabbott@waterresourcesnc.com) by the PWS Section that such revisions are required.
5. Once a plan for returning to compliance is approved, including any conditions added by the PWS Section, Defendant shall execute the approved plan in accordance with the conditions and dates included therein.
6. Unless otherwise indicated, Defendant shall submit any plan for returning to compliance, or any revision thereto, to:

Clinton O. Cook, PE
Regional Engineer
Division of water Resources – Public Water Supply Section
North Carolina Department of Environmental Quality
clinton.cook@ncdenr.gov

with a copy to:

Jay Frick
Technical Services Branch Head

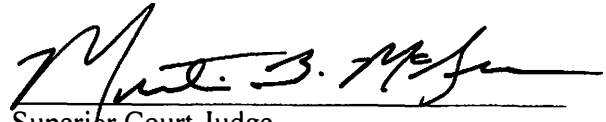
Division of water Resources – Public Water Supply Section
North Carolina Department of Environmental Quality
jay.frick@ncdenr.gov

7. Once the work set forth in the approved plan, including any conditions added by the PWS Section, is completed, Defendant shall submit a final report documenting the results of the activities set forth in the plan.
8. The exhibit attached to this Consent Judgment and those attached to the Complaint are authentic public records, and Defendant does not object to the entry of these exhibits into evidence.
9. DEQ retains its authority, in accordance with applicable law, to initiate any and all enforcement actions that would otherwise be available to it in the absence of this Consent Judgment.
10. Nothing in this Consent Judgment shall be interpreted or applied to allow Defendant to violate any applicable permit, statute, regulation or common law in the course of complying with its terms. This Consent Judgment does not relieve Defendant from any civil or criminal penalties, or damages caused to any third-party.
11. This Consent Judgment shall take effect immediately and shall remain in effect until the PWS Section deems the system to have been returned to compliance. The Parties shall comply with all terms of this Consent Judgment.
12. This Consent Judgment shall be binding upon Defendant's successors and assigns. Defendant shall not transfer any of the assets that are the subject of the Complaint, including the public water system for the Rocky River Plantation Subdivision, unless and until Defendant moves to join the transferee as a defendant in this case such that this Consent Judgment shall be binding upon the transferee and the Court issues an

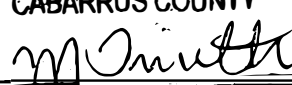
order granting such motion.

- 13. The Court shall retain continuing jurisdiction in this case to enforce the terms and conditions of this Consent Judgment, to modify this Consent Judgment, and to resolve disputes arising under this Consent Judgment, until all parties have complied with all provisions of this Consent Judgment.
- 14. The contempt provisions of Article 2, Chapter 5A of North Carolina General Statutes shall be available to enforce this Consent Judgment.
- 15. This Consent Judgment may be signed out-of-court, out-of-term, out-of-county, and may be signed in multiple counterpart originals, all of which, taken together, shall be considered one and the same document. Scanned signatures will be sufficient to render this Consent Judgment effective. Original signatures will be substituted at a later date.
- 16. Each undersigned representative of a party to this Consent Judgment certifies that the representative is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such party to this Consent Judgment.

This the 15th day of July, 2021.


 Superior Court Judge
 Cabarrus County

[ADDITIONAL SIGNATURES ON FOLLOWING PAGES]

A TRUE COPY
 CLERK OF SUPERIOR COURT
 CABARRUS COUNTY
 BY 
 Secretary, Deputy, Clerk Superior Court

CONSENTED TO BY:

NORTH CAROLINA DEPARTMENT
OF ENVIRONMENTAL QUALITY

By: *Robert W Midgette*
ROBERT W. MIDGETTE
Chief of the Public Water Supply Section, Division of Water Resources

CONSENTED TO BY:

WATER RESOURCES, INC.

By:


DENNIS C. ABBOTT
President

RECEIVED
 JUL 21 2021
 N.C. Dept. of Justice
 Environmental Division

JOSHUA H. STEIN
ATTORNEY GENERAL



Reply to:
Brenda Menard
Air Water & Natural Resources
Environmental Division
Tel: (919) 716-6966
Fax: (919) 716-6767
bmenard@ncdoj.gov

June 16, 2022

VIA ELECTRONIC MAIL ONLY

Patrick Buffkin
pbuffkin@gmail.com

Re: *State of North Carolina ex. rel., North Carolina Department of Environment Quality v. Water Resources, Inc.*, File No.: 21 CVS 2109, Cabarrus County

Dear Patrick:

Enclosed please find a letter dated June 8, 2022 sent to your client from the Public Water Supply Section of the Division of Water Resources approving engineering plans to interconnect the Rocky River Plantation water system with the Town of Harrisburg water system.

Please note that Water Resources, Inc. is not in compliance with the February 22, 2022 Revised Compliance Plan, which required Water Resources, Inc. to have completed construction of the interconnection by April 1, 2022, and to place the interconnection into active service by May 2, 2022. Water Resources, Inc. is therefore not in compliance with the Consent Judgment entered July 16, 2021.

The Public Water Supply Section acknowledges that there was some delay caused by Water Resources, Inc.'s evaluation of another alternative suggested by staff from the Utilities Commission. If Water Resources, Inc. will submit revisions to its Revised Compliance Plan incorporating the updated deadlines as set forth below, the Public Water Supply Section will not initiate contempt proceedings at this time.

Please update the February 22, 2022 Revised Compliance Plan to reflect the following updates to the deadlines for the remaining requirements:

- Complete construction and submit Engineer's and Applicant's Certification to the Public Water Supply Section **no later than September 9, 2022**; and
- Place the interconnection into active service by **no later than October 10, 2022**.

Please submit the update to the Revised Compliance Plan to reflect these deadlines by no later than the end of next week—**Friday, June 24, 2022**.

Feel free to call me at 919-716-6966 if you have any questions.

Sincerely,

/s/ Brenda Menard
Brenda Menard
Special Deputy Attorney General

Enclosure: June 8, 2022 Approval Letter

cc w/o enclosure: Jay Frick, Public Water Supply Section



ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

RICHARD E. ROGERS, JR.
Director

NORTH CAROLINA
Environmental Quality

June 8, 2022

Water Resources, Inc.
Attention: Dennis Abbott, President
5970 Fairview Road, Suite 710
Charlotte, North Carolina 28210

Re: Engineering Plans Approval
Distribution Extension
Rocky River Plantation S/D
Water System No.: NC0113220, Cabarrus County
Serial No.: 22-00402

Dear Applicant:

Enclosed please find one copy of the "Application for Approval..." together with one copy of the referenced engineering plans bearing the Division of Water Resources stamp of approval for the referenced project. These engineering plans are approved under Division of Water Resources Serial Number 22-00402, dated June 8, 2022.

Engineering plans prepared by Jeffrey D. McCluskey, P.E., call for the installation of approximately 50 feet of 8-inch water main, an 8-inch RPZ, valves and associated appurtenances at the intersection of Tom Savage Drive (SR 1296) and Rocky River Road (SR 1139) to interconnect the Rocky River Plantation S/D water system (NC0113020) with the Town of Harrisburg water system (NC0113025). The proposed 8-inch water main will connect to a proposed 8-inch water main and 4-inch water meter (to be owned by the Town of Harrisburg). This permanent interconnection will be used on an as needed basis and will satisfy the requirements of Rule .0402(g)(5) of another approved water supply source for the Rocky River Plantation S/D water system in lieu of a second well. This project must be constructed in accordance with the Town of Harrisburg's standard specifications.

Please note that in accordance with 15A NCAC 18C .0309(a), no construction, alteration, or expansion of a water system shall be placed into service or made available for human consumption until the Public Water Supply Section has issued Final Approval. Final Approval will be issued and mailed to the applicant upon receipt of both an Engineer's Certification and an Applicant's Certification submitted in accordance with 15A NCAC 18C .0303 (a) and (c).

These plans in the foregoing application are approved insofar as the protection of public health is concerned as provided in the rules, standards and criteria adopted under the authority of Chapter 130A-317 of the



North Carolina Department of Environmental Quality | Division of Water Resources
512 North Salisbury Street | 1634 Mail Service Center | Raleigh, North Carolina 27699-1634
919.707.9100

Water Resources, Inc.
Attention: Dennis Abbott, President
Page 2 of 2
June 8, 2022

EXHIBIT B. PG 4 OF 4.

OFFICIAL COPY

General Statutes. This approval does not constitute a warranty of the design, construction, or future operation of the water system.

One copy of the "Application for Approval..." and a copy of the plans with a seal of approval from the department are enclosed. One copy of the approved documents in a digital format (CD) is being forwarded to our Mooresville Regional Office. The second copy of the CD is being retained in our office.

If the Public Water Supply Section can be of further service, please call (919) 707-9100.

Sincerely,

 /for

Jay Frick
Deputy Section Chief
Public Water Supply Section
Division of Water Resources

Sep 19 2022

RWM/SB

Enclosures: Approval Documents

cc: Clinton Cook, P.E., Mooresville Regional Office
Cabarrus County Health Department
Mc2 Engineering, Inc.
Mallory Hodgson, P.E., Town of Harrisburg, PO Box 100, Harrisburg, NC 28075

dabbott waterresourcesnc.com <dabbott@waterresourcesnc.com>

9/21/2020 9:26 AM

RE: [External] Quarterly Update on Water Line Tie In To Harrisburg

To Haris Ali <haris.ali@ncdenr.gov> Copy Steve Proctor <steve.proctor@ncdenr.gov> •
Clinton Cook <clinton.cook@ncdenr.gov> • Austin D Pegues <austin.pegues@ncdenr.gov> •
Hornlean Chen <hornlean.chen@ncdenr.gov> • Jeff McCluskey <jeff@mc2eng.com> •
Mallory Hodgson <mhodgson@harrisburgnc.org>

Haris,

Unfortunately, I have not. The homeowner is not returning my calls or responding to my emails. I have offered payment for the easement as well, and she remains unresponsive.

As requested in my email of 8/19/2020, I am wondering what help, if any, the state can provide me on this issue. I believe there are some statutes that can come into play regarding access to the closest potable water supply, but I am not familiar with those statutes. Maybe I am incorrect on that? A single homeowner is impacting the potable water supply of an entire community.

Dennis Abbott

On September 8, 2020 9:55 AM Ali, Haris <haris.ali@ncdenr.gov> wrote:

Good morning Dennis,

Just trying to touch base and see if the easement has been acquired from the home owner. The deadline to comply with the MCL is approaching fast and a decision should be made.

Thank you!

Haris Ali

Rule Manager- Radionuclides, Inorganics (IOCs), Synthetic Organic Chemicals/Pesticides (SOCs), Asbestos
Compliance Services Branch
Public Water Supply Section, Division of Water Resources
North Carolina Department of Environmental Quality

1634 Mail Service Center
Raleigh, NC 27699

Office: 919-707-9091

Fax: 919-715-6637

Email: haris.ali@ncdenr.gov

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: dabbott waterresourcesnc.com <dabbott@waterresourcesnc.com>
Sent: Thursday, August 20, 2020 5:13 AM
To: Ali, Haris <haris.ali@ncdenr.gov>
Subject: [External] Quarterly Update on Water Line Tie In To Harrisburg

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to report.spam@nc.gov

Haris,

Attached is the updated plan for the tie-in to The Town of Harrisburg. I am trying to acquire the needed easement from the owner at the corner of Tom Savage Dr and Rocky River Rd. Her current position is that she will not grant us an easement. I have attached the preliminary plans so you can see what is needed. I don't know if there is help with the homeowner that the state can provide, or not. I have asked MC2 to look at the other options but so far have not gotten an answer.

I'm not sure where this leaves us at this stage of the project. Because of the numerous delays with the survey and now the with acquiring easement, there is no way this project will be completed by 10/1 even if I got the easement done this week.

Dennis C. Abbott

President

Water Resources, Inc.

Dennis C. Abbott

President

Water Resources, Inc.

Tonya Hook <tonya.r.hook@gmail.com>

8/17/2020 9:08 AM

Re: Water Line Location Map

To dabbott waterresourcesnc.com <dabbott@waterresourcesnc.com>

Hi.

I have reviewed the map and given it considerable thought and I do not wish to be a part of the project. Perhaps you can consult with the neighbors directly across the street from me?

Thanks.

Ms. Hook

On Aug 17, 2020, at 8:41 AM, dabbott waterresourcesnc.com <dabbott@waterresourcesnc.com> wrote:

Hi Ms. Hook. I am just following up to see if you have had a chance to review the drawing that I sent you. Is it possible that we can talk this week?

Dennis Abbott

On June 16, 2020 9:33 PM dabbott waterresourcesnc.com <dabbott@waterresourcesnc.com> wrote:

Ms. Hook,

Thank you again for taking my telephone call on MOnday. Attached is the drawing for the proposed location of the waterline to tie into the Town of Harrisburg water supply across the street. I look forward to speaking with you on Friday.

Dennis C. Abbott

President

Water Resources, Inc.

Dennis C. Abbott

President

Water Resources, Inc.

OFFICIAL COPY

Sep 19 2022

June 28, 2021

Tonya R. Hook
8500 Indian Summer Trail
Harrisburg, NC 28075

RE: *Condemnation of Easement; Lot 1 Planters Row*
Our File: 5455.021254

Dear Ms. Hook:

Dennis Abbott, owner of Water Resources, Inc., has tried unsuccessfully over the past few months to acquire an easement from you which will allow Water Resources to hook onto the public water supply for the Town of Harrisburg for the benefit of the residents of the Rocky River Plantation subdivision.

As a public utility regulated by the North Carolina Utilities Commission, Water Resources has the power of condemnation pursuant to the N.C. Gen. Stat. §§ 40A-3 and 40A-19, *et seq.* This power is virtually identical to the ability of a municipality or county when it can be shown the taking is for a public purpose. This water connection is for a public purpose.

I have been retained by Water Resources to prosecute a condemnation action to acquire an easement on your property.

Once initiated, the only essential issue is compensation, that is, "What is the fair market value of the taking?" It is not a question of can it or can it not be done. Here, this taking will be at the edge of your lot line, narrow, and will only be for the purpose of installing a 10 inch waterline underground. You will still be able to use the surface area including landscaping. Your compensable damages will be minimal.

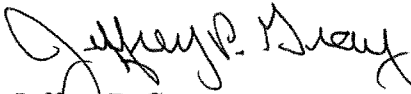
I would very much like to resolve this issue with you without having to file a condemnation petition with the Clerk of Superior Court. If you were to hire an attorney to defend such an action your attorney's fees and costs (which could include retaining an appraiser) would far exceed the value of this permanent utility easement.

I respectfully ask that you accept \$2,500.00 for this easement. I will prepare the necessary documents and there will be no out-of-pocket expenses for you.

I look forward to hearing from you.

Very truly yours,

BAILEY & DIXON, LLP


Jeffrey P. Gray

cc: Dennis Abbott





From: "Gray, Jeffrey"
Subject: FW: Hook Easement
Date: September 29, 2021 at 4:58 PM
To: dennis.abbott@fsresidential.com
Cc: "Buffkin, Patrick"

Mr. Abbott:

The below just arrived from Ms. Hooks. While I take a little umbrage with her modifying the Easement (especially since these terms were not in her initial offer) I don't want to take issue with her at the risk of jeopardizing this situation unless you feel you or your contractor cannot meet these additional conditions.

Please advise Patrick or me.

Jeff

From: Tonya Hook <tonya.r.hook@gmail.com>
Sent: Wednesday, September 29, 2021 4:54 PM
To: Gray, Jeffrey <JGray@bdixon.com>
Subject: Hook Easement

Hello Mr. Gray,

I have had the easement document reviewed and a few revisions were made to include the conditions set forth in my offer for granting the easement and to insure that the restoration work will be completed in a timely manner and as agreed.

Some of the changes that were made are:

-Added an expiration date for the temporary construction easement

Added that my property will be sodded, not seeded upon completion of the work.

-Added a due date for completion of the restoration of my property of 30 days after the work has been completed.

-Added that the existing fence will be reinstalled.

I will proceed with getting the easement executed and will

forward a signed copy to you via email.

Please transmit the check in my name to your contact at the Town of Harrisburg. Please provide me with their name and contact information, and I will pick up the check there and deliver the original, signed easement at that time.

Thank you for your time and attention to this matter.

Best Regards,

Tonya R. Hook



From: Patrick Buffkin pbuffkin@gmail.com
Subject: Fwd: FW: Hook Easement
Date: July 20, 2022 at 4:35 PM
To: tonya.r.hook@gmail.com
Cc: dabbott@waterresourcesnc.com dabbott@waterresourcesnc.com

Ms. Hook,

I am writing on behalf of Water Resources in an effort to resolve the negotiations over this easement acquisition. Water Resources accepts your counteroffer with the additional conditions added and is prepared to make payment of \$8750.00 upon receipt of your executed deed of easement. Would you please let me know if you need another copy of that deed for your signature or anything else to perform on our agreement?

Regards,

Patrick
Patrick Buffkin
Buffkin Law Office
Counsel for Water Resources, Inc.

From: Tonya Hook <tonya.r.hook@gmail.com>
Sent: Wednesday, September 29, 2021 4:54 PM
To: Gray, Jeffrey <JGray@bdixon.com>
Subject: Hook Easement

Hello Mr. Gray,

I have had the easement document reviewed and a few revisions were made to include the conditions set forth in my offer for granting the easement and to insure that the restoration work will be completed in a timely manner and as agreed.

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I will proceed with getting the easement executed and will forward a signed copy to you via email.

Please transmit the check in my name to your contact at the Town of Harrisburg. Please provide me with their name and contact information, and I will pick up the check there and deliver the original, signed easement at that time.


Thank you for your time and attention to this matter.

Best Regards,

Tonya R. Hook

--

Patrick T. Buffkin
(919) 971-2796

From: Tonya Hook tonya.r.hook@gmail.com 
Subject: Hook Easement Response 08.24.22
Date: August 24, 2022 at 10:05 AM
To: Patrick Buffkin pbuffkin@gmail.com, dabbott waterresourcesnc.com dabbott@waterresourcesnc.com

TH

Dear Mr. Buffkin,

The enclosed easement is in the format that I have agreed to sign. The conveyance of this easement should not be a “deed of easement”.

Comments as to the documents submitted for review:

- **The only changes that need to be made to the original, acceptable easement are: the year of execution and the expiration date of the temporary construction easement. All other matters have been addressed and agreed to.**

This is the only easement that I am willing to sign.

- The format of the document is a combination of a “deed” and an “easement”, which is not acceptable. Below is a standard form for an easement, which is comparable to the enclosed easement that I am willing to sign.
- There is no need to have two separate documents.
- The subdivision sign is not located on the subject property and other matters are addressed in the easement form previously agreed to and submitted to Water Resources – items c and d
- There is no need for conditions that apply to improvements that are not permitted along the easement area – item e
- The fence is an existing improvement on the subject property and the Grantee(s) shall be responsible for any damages to it during construction, maintenance and repair of the water main – item f
- The Grantor is not permitted to make alterations to a public, underground water utility – item g



Best Regards,

Tonya R. Hook





From: Patrick Buffkin pbuffkin@gmail.com
Subject: Re: Hook Easement Response 08.24.22
Date: August 25, 2022 at 10:23 AM
To: Tonya Hook tonya.r.hook@gmail.com
Cc: dabbott waterresourcesnc.com dabbott@waterresourcesnc.com

Ms. Hook,

I received your email below with one attachment. I am sorry to have to say that I am confused about what you would like for Water Resources to do. It may also be worth mentioning that if you have an attorney advising you, then I would be obligated by the rules of professional conduct to communicate with your attorney or receive authorization from your attorney to communicate directly with you.

I think I have understood that you would prefer to execute a "Right-of-way Easement" instead of a "Deed of Easement." Unfortunately, I do not believe that would be acceptable to state regulators and in any event the document that you suggested seems to be in an old form. The document that I sent you is the modern styling and formatting for this type of document. There are legal differences, and based on my experience, the state regulators will insist that Water Resources receive a deed of easement.

As for the details in your list, I am having a hard time following what you are asking for in the way of changes. Would you like to have a phone call so that I can gain a better understanding? Please know that we are willing to work with you to reach agreement, but Water Resources answers to state regulators so the Company is not entirely in control of this process.

I look forward to your prompt reply.

Regards,

Patrick

On Wed, Aug 24, 2022 at 10:05 AM Tonya Hook <tonya.r.hook@gmail.com> wrote:

Dear Mr. Buffkin,

The enclosed easement is in the format that I have agreed to sign. The conveyance of this easement should not be a "deed of easement".

Comments as to the documents submitted for review:

- **The only changes that need to be made to the original, acceptable easement are: the year of execution and the expiration date of the temporary construction easement. All other matters have been addressed and agreed to.**

This is the only easement that I am willing to sign.

- The format of the document is a combination of a "deed" and an "easement", which is not acceptable. Below is a standard form for an easement, which is comparable to the enclosed easement that I am willing to sign.
- There is no need to have two separate documents.
- The subdivision sign is not located on the subject property and other matters are addressed in the easement form previously agreed to and submitted to Water Resources – items c and d
- There is no need for conditions that apply to improvements that are not permitted along the easement area – item e
- The fence is an existing improvement on the subject property and the Grantee(s) shall be responsible for any damages to it during construction, maintenance and repair of the water main – item f

- The Grantor is not permitted to make alterations to a public, underground water utility – item g

Best Regards,

Tonya R. Hook

--
Patrick T. Buffkin
(919) 971-2796

BUFFKIN LAW OFFICE

Patrick Buffkin, President
3520 Apache Dr.
Raleigh, NC 27609

September 16, 2022

Ms. Tonya Hook
8500 Indian Summer Trail
Harrisburg, NC 28075

*Via Certified Mail, Return Receipt Requested, with Electronic Courtesy copy to
tonya.r.hook@gmail.com*

RE: DEMAND FOR FINAL AND BEST OFFER FOR SALE OF EASEMENT

Dear Ms. Hook,

I write on behalf of my client Water Resources, Inc. (“Water Resources” or “the Company”), to demand that you provide a final and best offer for the sale of the easement across your property on or before September 30, 2022. As you are aware, we have been corresponding with you on behalf of the Company regarding the need to purchase an easement since former my law partner, Jeff Grey of the Bailey & Dixon law firm, first contacted you on June 28, 2021.

Since then, we have exchanged numerous communications by electronic mail. It was the Company’s belief that we had reached an agreement in principle on the key terms of the sale of the easement, but your most recent response indicates a fundamental disagreement about the form of the legal document that would accomplish the conveyance of the easement and disagreements that are less significant related to the terms and conditions of the easement. As of the date of this letter, you have not responded to my most recent communication to you, sent by electronic mail dated August 25, 2022.

Regrettably, Water Resources is now left with no option but to pursue litigation against you in a condemnation proceeding. As Mr. Grey has previously communicated to you, it is our belief that the Company will certainly prevail in the condemnation action, with any valuation of the property and compensation paid to you being uncertain. If we are forced to file a condemnation lawsuit, it will be the Company’s position that the acquisition of the easement is a valuable

improvement to your property, and, therefore, you are due zero compensation. You will be responsible for retaining counsel or representing yourself in the condemnation action, and responsible for hiring an appraiser to represent you. The condemnation lawsuit could take several months to resolve, but again, it is our opinion that the Company certainly will prevail in obtaining the easement because the easement is for a public purpose and the ability of a public utility to exercise condemnation authority is well-settled. It remains Water Resources' strong desire to resolve this matter without resort to litigation, but the Company finds itself with no other option to acquire the necessary easement.

In light of the foregoing, Water Resources hereby demands that you provide the Company with a final and best offer for the sale of the easement on or before September 30, 2022, at 5:00 p.m.

If the Company does not receive a final and best offer from you on or before that date and in a form that is acceptable to the Company, consistent with our prior agreements, then Water Resources will file a complaint against you in Cabarrus County Superior Court for the condemnation of the easement. Your final and best offer will be deemed unacceptable to the Company unless your offer allows the Company to select the location of the easement and determine the proper form of the legal document, and requests compensation not to exceed \$8,750, as we have previously agreed upon. Consistent with our other agreements, your fence will be re-installed or replaced and the turf will be re-sodded upon completion of the utility work. As I have previously communicated to you, the Company is not able to rely upon the staff of the Town of Harrisburg to receive payments or documents on your behalf; nonetheless, the Company will cooperate with in connection with providing your payment or any assurances that you need related to the timing and logistics of making a payment to you.

To reiterate and summarize, **unless Water Resources receives a final and best offer from you on or before September 30, the Company will move expeditiously to file a complaint against you in Cabarrus County Superior Court for condemnation of the easement.** Your final and best offer will be acceptable to the Company only if it allows Water Resources to select the location of the easement, determine the form of the legal document necessary to accomplish the conveyance of the easement to the Company, and requests no more than \$8,750 in

compensation. Water Resources will accept reasonable terms related to the restoration of the property, consistent with our previous communications.

I await your prompt response to this letter. Should you obtain counsel in connection with this matter, please have your attorney contact me as soon as possible.

Sincerely,

/s/ Patrick Buffkin

Patrick Buffkin

Buffkin Law Office

Counsel for Water Resources, Inc.