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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2023-000140

Town of Lexington, South Carolina, ...Appellant,

v.

City of West Columbia, South Carolina, and The Central
Midlands Council of Governments, ... Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Town of Lexington, South Carolina,	)	Civil Action No. 2021CP3201321
	)	
Plaintiff,	)	
	)	
vs.	)	<u>ORDER GRANTING MOTION TO</u>
	)	<u>DISMISS UNDER RULE 12(B)(6)</u>
City of West Columbia, South Carolina,	)	<u>SCRCP, AND DENYING THE</u>
and The Central Midlands Council of	)	<u>MOTION TO DISMISS UNDER RULE</u>
Governments,	)	<u>12(B)(1)</u>
	)	
Defendants.	)	
	)	

The City of West Columbia, joined by the Central Midlands Council of Governments, moves to dismiss the Amended Complaint. The Court agrees that this case is foreclosed by the South Carolina Constitution. The motion to dismiss under Rule 12(b)(6), SCRCP, is granted, without prejudice. The court finds that it is premature to determine the issues related to waiver and failure to exhaust administrative remedies, and the motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) is denied.

BACKGROUND

As alleged in the Amended Complaint, Lexington and West Columbia are members of the Central Midlands Council of Governments (CMCOG), which is an affiliation of several counties and municipalities that assists with infrastructure planning and support for its members. Among the CMCOG's duties is to serve as the planning agency under Section 208 of the federal Clean Water Act ("CWA"), responsible for development and implementation of a plan for wastewater management within the Central Midlands region. (Am. Compl. ¶¶ 7–11.)

The following timeline from the Amended Complaint and undisputed facts is helpful in reviewing the case.

1972 “In 1972, Congress enacted the Clean Water Act (“CWA”) for the purpose of restoring and maintaining the ‘chemical, physical and biological integrity of the Nation’s waters.’” Am. Compl. ¶ 7 (quoting 33 U.S.C.A. § 1251). “The purpose of Section 208 of the CWA was to encourage and facilitate the development and implementation of area-wide wastewater management plans to address the fact that local water quality problems at the time were a result of sewer/waste treatment infrastructure not keeping pace with urban growth and development.” *Id.* ¶ 8. “Section 208 of the CWA required local governments to develop a regional planning and policy framework for attaining national water quality goals as set forth in the CWA, with a focus on eliminating the discharge of pollutants into navigable waters by developing regional wastewater systems and consolidating existing facilities (“208 Plan”).” *Id.* ¶ 9. “For purposes of developing a 208 Plan for a specific geographic area in South Carolina, the state, through the South Carolina Department of Health and Environmental Control (“DHEC”), may serve as the planning agency[,], or [DHEC] may designate planning agencies to serve that function.” *Id.* ¶ 10. “For the geographic area covering Richland, Lexington, Newberry, and Fairfield counties, the CMCOG is the designated planning agency, serving in this capacity under a Memorandum of Understanding with DHEC.” *Id.* ¶ 11.

1997 “The latest 208 Plan covering Lexington County was adopted by the CMCOG in 1997 (the “1997 208 Plan”).” *Id.* ¶ 12; *see also id.* Ex. A, 1997 208 Plan. “The 1997 208 Plan names designated management agencies (“DMAs”) that are responsible for implementing the 208 Plan within assigned management areas, including providing wastewater service or determining the appropriate method of delivery of wastewater service to that specified area.” *Id.* ¶ 13; *see also id.* at Ex. A, 1997 208 Plan at 55-56.¹ “The 1997 208 Plan names Lexington as the DMA for the

¹ Citations to the 1997 208 Plan refer to the actual page number(s) of the Plan itself, as opposed to the page number of the PDF attachment of the Plan to Town of Lexington’s Amended Complaint.

US 378/I-20 area.” *Id.* ¶ 14; *see also id.* Ex. A, 1997 208 Plan at Fig. 3.

“The 1997 208 Plan provides that ‘each [DMA] and its facilities is set up to be the major provider for each area and act as [a] general coordinator of wastewater collection, transportation[,] and treatment.’” *Id.* ¶ 15 (quoting *Id.* at Ex. A, 1997 208 Plan at 135). “Pursuant to the 1997 208 Plan, ‘Lexington is to implement the provisions of the plan for the prescribed management area, while eliminating and consolidating the number of dischargers through the development of a regional wastewater transportation system with final treatment at the Cayce WWTP [Wastewater Treatment Plant].’” *Id.* ¶ 16 (quoting *Id.* at Ex. A, 1997 208 Plan at 136). “West Columbia is also a DMA under the 1997 208 Plan, with a service area adjacent to the US 378/I-20 area.” *Id.* ¶ 17; *see also id.* Ex. A, 1997 208 Plan at Fig. 3.

“The 1997 208 Plan provides that ‘[w]here a municipality annexes lands into another designated management agency’s area, the municipality has the right to provide service to that area, ***provided no existing service is reasonably available and is shown to be the cost effective means of providing service.***’” *Id.* ¶ 30 (quoting *Id.* at Ex. A, 1997 208 Plan at 56) (emphasis added).

2018 West Columbia requested a conformity determination from the CMCOG for a sewer line it intended to build to serve an area along the Highway 378/I-20 corridor. (*Id.* ¶ 32.) At the time, this area was outside of the municipal limits of West Columbia, and under the 208 Plan, the Town of Lexington was the designated management agency for this area. (*Id.* ¶ 14.) Thus, at that time, in order for West Columbia to serve this area, a major Plan Amendment of the 208 Plan would have been required. (*Id.* ¶ 22.) West Columbia filed a request for a plan amendment, but no final action was taken on it, and West Columbia withdrew that request. (*Id.* ¶¶ 35–39.) West Columbia subsequently annexed the area into its municipal boundaries.

2021 Following annexation, West Columbia filed another request for a conformity determination with the CMCOG for the area in question. (*Id.* ¶ 41.)

March 17, 2021 The CMCOG contacted Lexington seeking comments on the request and providing an opportunity to object to it. (Central Midlands Section 208 Plan Conformance Review Form and attachments, Am. Compl., Exhibit B.)

March 18, 2021 The CMCOG forwarded the maps and other documents supporting the request to Lexington’s town manager and scheduled a call to discuss it. (*Id.*)

March 22, 2021 The town manager wrote that the Town “had no comments.” (*Id.*) That same day, the CMCOG issued its determination that West Columbia’s proposed construction conformed to the existing Section 208 Plan because the expansion is “within the municipal limits of the City of West Columbia.” (*Id.*; *see also* Am. Compl. ¶ 43 and Exhibit A.) Because the area had been annexed into West Columbia, Central Midlands did not require West Columbia to request a major Plan Amendment. (Am. Compl. ¶42.) The CMCOG concluded that by virtue of the annexation, no Plan Amendment was required and that West Columbia had become the designated management agency for the area in question. (Central Midlands Ans. ¶ 32.)

April 22, 2021 Lexington filed this suit, claiming that there is “uncertainty” about whether Lexington can provide sewer service within West Columbia’s territory, and asked the Court to declare that “Lexington is entitled to provide wastewater service or determinate an appropriate wastewater service delivery system to the US 378/I-20 area annexed by West Columbia.” (Am. Compl. ¶ 53(f).) The CMCOG was not named as a party.

June 23, 2021 West Columbia filed its first motion to dismiss.

July 14, 2021 The complaint was amended to add CMCOG as a defendant.

July 26, 2021 West Columbia filed the pending motion to dismiss.

October 8, 2021 South Carolina Regulations require DHEC to be the final word on whether a proposed wastewater construction permit is in conformity with the relevant Section 208 Plan. S.C. Code Ann. Regs. 61-67.100(E)(1), (8). Accordingly, the CMCOG forwarded its conformity determination to DHEC staff. DHEC staff issued a construction permit to West Columbia. Lexington did not seek administrative review of this permit decision.

DISCUSSION

West Columbia now moves to dismiss this case, arguing that the South Carolina Constitution gives West Columbia the authority to provide utility services within its own boundaries. West Columbia also argues that even if its authority to provide sewer services within its borders can be challenged, the appropriate avenue for doing so would have been to file a timely request for administrative review of the DHEC construction permit, which Lexington did not do. The Court addresses each argument in turn.

I. Home Rule

The South Carolina Constitution guards municipalities from encroachment and overreach by their neighbors. It provides that no law “shall be passed by the General Assembly” that allows for the construction or operation of sewer lines for any purpose, “without first obtaining the consent of the governing body of the municipality in control of the streets or public places proposed to be occupied for any such or like purpose.” S.C. Const. art. VIII, § 15. As noted above, DHEC (a state agency which operates under statutes and regulations adopted by the General Assembly) is the final word on whether a proposed wastewater construction permit is in conformity with the relevant Section 208 Plan. S.C. Code Ann. Regs. 61-67.100(E)(1), (8).²

² Lexington raises the issue that the laws in question in this case were not enacted by the General Assembly. However, there are a number of cases where local governments have sued concerning regulations and procedures implemented by State agencies. At this point, unless there is further correction or clarification provided, this court construes this contest as one to which Article VIII, § 15 applies.

The Supreme Court has consistently construed this constitutional protection to be a municipality's "right of consent" to any unauthorized infrastructure encroaching on its territory. *See, e.g., Berkeley Elec. Coop., Inc. v. S.C. PSC*, 304 S.C. 15, 19, 402 S.E.2d 674, 677 (1991); *see also Williamsburg Rural Water & Sewer Co. v. Williamsburg County Water & Sewer Auth.*, 357 S.C. 251, 260–61, 593 S.E.2d 154, 159 (Ct. App. 2003) (referring to Article VIII, Section 15 as providing local governments with a "veto power" and a "constitutional shield" against "intrusion" into their areas by other providers), *rev'd in unrelated part by* 367 S.C. 566, 627 S.E.2d 690 (2006).

South Carolina allows service providers to continue to provide services that they provided before annexation. Lexington argues that it already has infrastructure in the DMA for the US 378/I-20 area. It is the court's understanding that no Lexington infrastructure is located in the area annexed by West Columbia. The issue of determining whether Lexington's current infrastructure constitutes "existing service" that is "reasonably available and is shown to be the cost effective means of providing service" under the Rule 208 plan is discussed below.

The protections under Article VIII, §15 extend into annexed areas. *See, e.g., City of Aiken v. Aiken Elec. Coop.*, 305 S.C. 466, 468, 409 S.E.2d 403, 404 (1991) (describing Article VIII, § 15 as providing municipalities with "constitutional autonomy" for the provisions of services, and concluding that "the City was within its constitutional authority to designate an electric service supplier for new customers in the annexed area"); *cf. City of Rock Hill v. S.C. PSC*, 308 S.C. 175, 178–79, 417 S.E.2d 562, 564–65 (1992) (holding that Rock Hill did not have a constitutional right to provide electric service to a commercial customer because "[t]he area in question has not been annexed," and remanding the matter "to provide for a reasonable time for the City to either annex the area" or to consent to the provision of electricity by a different provider).

The General Assembly has enacted legislation that requires residents within a municipality to use the municipality's sewer system if the municipality so chooses, S.C. Code Ann. § 5-31-2030(3). South Carolina law requires a municipality to seek permission from another before providing "any of its services" in the territory of another municipality, *id.* § 5-7-60.

SECTION 5-31-2030. Powers of municipalities enumerated.

Each council is empowered by ordinance duly adopted: . . .

(3) To prescribe and enforce regulations (a) requiring persons who shall be residents of the municipality to make use of any sewer system which the municipality shall from time to time operate; and (b) generally with respect to the discharge of sewage and the use of privies, septic tanks and other sewage facilities within the municipality.

SECTION 5-7-60. Municipality authorized to perform any of its functions or to furnish any of its services; charges and financing.

Any municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, **except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities**, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina Public Service Authority may provide electric service pursuant to statute. For the purposes of this section **designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof**. Provided, however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned. (emphasis added)

West Columbia argues, and the Court agrees, that local government and Home Rule allow a municipality to be able to count on the ability to provide its own infrastructure and utility services to residents without the possibility of outside public or private providers encroaching on that right

or interfering with the municipality's ability to manage affairs within its own boundaries. Lexington admits that West Columbia annexed the area in dispute more than two years ago. (Am. Compl. ¶ 40.) West Columbia is expanding sewer services to its citizens within the annexed area. (*Id.* at Exhibit A.) Nevertheless, Lexington asks the Court to declare that Lexington "is entitled to provide wastewater service" within West Columbia over West Columbia's objection. (*Id.* ¶ 53(f)). While the court understands the reasoning for that position and recognizes the entry of a pact by local governments related to the CMCOG, it ultimately would be contrary to municipality control to prevent West Columbia from constructing a sewer system within its geographical boundaries, except where and to the extent that other providers have already established service.

Lexington cites the Supremacy Clause of the United States Constitution. This court has not seen an indication that federal law prescribes how a state must select among competing municipalities with respect to which can provide wastewater services to a given area. Indeed, the CMA yields to state authority to make determinations about implementation of the Act. Without a conflict between federal and state law, the Supremacy Clause plays no role. *See, e.g., State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 186–87, 525 S.E.2d 872, 877–78 (2000) (explaining the limited circumstances where federal law preempts state law and rejecting each argument because that case, as here, lacked any conflict between the two).

A mechanism was set up pursuant to the CWA that involves a determinative role for CMCOG and DHEC concerning which services may be established in a given area. Lexington was identified for this disputed area twenty-five years ago, but Lexington has not identified a provision of the CWA that cannot be satisfied if West Columbia is permitted to service the disputed area. The stated purpose of the CWA is to establish a coordinated mechanism concerning environmentally acceptable means of discharging effluent into waterways. There appears to be no

argument that the stated purpose of the CWA to avoid further water contamination appears to be met if West Columbia provides sewer service to residents within its boundaries. West Columbia and Lexington would be subject to the same DHEC environmental requirements.

West Columbia made an initial effort to provide sewer outside of its municipality in the disputed area. It withdrew that effort. It annexed into the area, and it obtained approval of the CMCOG and DHEC to place sewer services inside the city limits. Lexington was notified. Again, it is understandable that Lexington chose to rely upon the 1997 designation of the area, but the court cannot overlook that annexation changed the evaluation.

Under South Carolina Code Ann. Regs. 61-67.100(E)(8)(a), DHEC cannot issue a wastewater construction permit that conflicts with the 208 Plan: “All engineering reports and construction permit applications shall be reviewed to determine if they conflict with the applicable 208 Water Quality Management Plan, except those projects identified in subsection 67.100.E.8.b below.” Moreover, DHEC was required to make an independent determination that West Columbia’s requested permit was in conformity with the Section 208 Plan, rather than simply delegating that decision-making authority to Central Midlands. *See, e.g., Se. Res. Recovery, Inc. v. S.C. DHEC*, 358 S.C. 402, 407–08, 595 S.E.2d 468, 471 (2004) (requiring DHEC to make an independent determination of consistency with local solid waste management plans, rather than relying on a county’s “letter of consistency”).

Under the document that assigned the disputed area to Lexington, the continuation of the right to control sewer services within a management anticipates changes due to annexation. There is a caveat: “[w]here a municipality annexes lands into another designated management agency’s area, the municipality [here, West Columbia] has the right to provide service to that area, ***provided no existing service is reasonably available and is shown to be the cost effective means of***

providing service.” The only indication is that CMCOG and, ultimately, DHEC are the entities that make that determination. Lexington knew that West Columbia was seeking to expand sewer service into Lexington's management area. It knew about the application by the municipality that had annexed into that area. It was notified about what was being proposed and elected not to challenge it, except through this lawsuit filed after the determination had been made.

The CWA requires local agencies to craft a plan for providing certain services, including wastewater services, and then to implement the plan **in accordance with state law**. *See generally N. Colo. Water Conservancy Dist. v. Bd. of County Comm’rs*, 482 F. Supp. 1115, 1118–19 (D. Colo. 1980) (holding that “[t]he Clean Water Act provides for designation of planning agencies, but the planning process and **the powers that are exercised therein are matters of state law**” when remanding a dispute involving the implementation of a Section 208 Plan due to a lack of a sufficient federal nexus) (emphasis added).

In South Carolina, state law gives to municipalities control over providing sewer services to customers within their city boundaries. South Carolina laws do not conflict with the federal CWA. Accordingly, the Court finds that West Columbia’s motion is granted, and this case is dismissed pursuant to Rule 12(b)(6), SCRCF, without prejudice.

II. Administrative Review

As an additional argument, West Columbia asserts that the action should be dismissed under Rule 12(b)(1), SCRCF for lack of subject matter jurisdiction two grounds. First, on the ground that Lexington failed to avail itself of the correct administrative review process. It is asserted that Lexington could have responded to and challenged the CMCOG's review and challenged the DHEC permitting process and appeal from the decision. The argument is that, even if the court were to deny the Home Rule argument and allow the case to proceed on the theory that

Lexington is entitled to provide sewer service within West Columbia, there was a failure to pursue administrative remedies.³

This case is at the pleadings stage. The responsive pleadings filed were motions to dismiss. Paragraph 45 of Lexington's amended complaint asserts that the 208 Plan provides for public participation in making any amendment to the Plan and requires DHEC concurrence for such an amendment, neither the 208 Plan nor any state statute provides for administrative review or other due process for a party aggrieved by a CMCOG Conformance Request decision.

There is a difference between subject matter jurisdiction and exhaustion of administrative remedies. As Lexington argued, "Subject matter jurisdiction is defined as the power [of the court] to hear and determine cases of the general class to which the proceedings in question belong." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 100, 674 S.E.2d 524, 528 (Ct. App. 2009) (citations omitted). "This authority is distinct from the doctrine of exhaustion of administrative remedies, which is generally considered a rule of policy, convenience[,] and discretion, rather than one of law, and is not jurisdictional." *Id.* at 100, 674 S.E.2d at 529 (citation omitted). "Additionally, the doctrine of exhaustion of administrative remedies is often leveraged to avoid interference with the orderly performance of administrative functions." *Id.* (citation omitted). The Court of Appeals in *Capital City* stated that "a failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction." *Id.* (citation omitted).

If the court understands the situation correctly, the time has expired for Lexington to pursue the administrative remedies that West Columbia claims were available. So, dismissal without

³ West Columbia argues that Lexington's failure to object when invited to do so by Central Midlands operates as a waiver of any argument before this Court. *See generally State v. Burnett*, 226 S.C. 421, 425, 85 S.E.2d 744, 746 (1954) ("Where a party has the option to object or not, as he sees fit, the failure to exercise the option when the opportunity therefor presents itself must, in fairness to the court and to the adverse party, be held either to constitute a waiver of the right to object, or to raise an estoppel against the subsequent exercise thereof." (quoting 3 Am. Jur. 25, *Appeal and Error* § 246)).

prejudice would effectively be dismissal with prejudice. Dismissal on this ground should not be made at the pleading stage based on this record.

The second ground puts aside the issue of exhaustion of administrative remedies, and West Columbia claims that the only proper means to bringing this matter before the circuit court would have been through seeking a writ of certiorari.⁴ The court does not agree with that argument, though it does not rule on whether or not declaratory judgment is a proper vehicle to make this type of challenge, nor specify what other types of actions might be appropriate.

Accepting that Lexington did not request to be notified of DHEC's permit decision and did not request administrative review of the permit decision,⁵ and that DHEC remains the sole permitting authority for wastewater construction permits, issues have been raised concerning the methodology that is available to assert rights under the Plan and to contest actions taken that allowed West Columbia to obtain a construction permit within the area designated to Lexington.

This court finds that it is not proper at the pleadings stage to determine the issues of waiver or failure to exhaust administrative remedies.⁶ The motion to dismiss this case for lack of subject matter jurisdiction under Rule 12(b)(1), SCRCp, is denied.

⁴ It is asserted that, if Central Midlands' conformity determination was a final decision giving rise to procedural due process rights and if there were no other avenue for Lexington to seek review administratively, Lexington's proper recourse would have been to file a petition for a writ of certiorari from this Court. *See, e.g., League of Women Voters v. Litchfield-by-the-Sea*, 305 S.C. 424, 427, 409 S.E.2d 378, 380 (1991) (holding that when a decision giving rise to procedural due process rights is not subject to the Administrative Procedures Act, it is reviewable through "an action for writ of certiorari"), *rev'd in unrelated part by Brown v. S.C. DHEC*, 348 S.C. 507, 560 S.E.2d 410 (2002). Lexington never sought such a writ. It is argued that the term "certiorari" when used in the common law sense of the writ, refers to the order that the reviewing court transmits requiring compilation of the record of the decision below. One of the complaints of Central Midlands was that by failing to timely object, Lexington deprived staff of the ability to respond and to prepare a record for review. Instead, Lexington filed this action under the declaratory judgment statute for *de novo* review, not appellate review.

⁵ Lexington could have requested that DHEC notify it of any permit decision, and DHEC would have been required to notify it of the permit decision by certified mail so it could seek administrative review. S.C. Code Ann. § 44-1-60 (E)(1). Lexington made no such request.

⁶ West Columbia's position is that, had Lexington sought administrative review before DHEC, it would have been able to litigate the same issues before the Administrative Law Court, and it would have access to the appellate courts

CONCLUSION

The South Carolina Constitution and related statutes protect West Columbia's ability to provide services within its municipal boundaries, even where it has recently annexed an area into those boundaries. Accordingly, the Court grants this motion and dismisses this matter without prejudice pursuant to Rule 12(b)(6), SCRCPP. The motion to dismiss under Rule 12(b)(1), SCRCPP is denied.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]

as well. Pursuant to South Carolina Code § 44-1-60(E)(2), DHEC's permit decision became final and unappealable as a matter of law on October 23, 2021, as no one filed a request for a Final Review Conference with the DHEC Board during the fifteen-day appeal period. *A.O. Smith Corp. v. S.C. DHEC*, 428 S.C. 189, 204–05, 833 S.E.2d 451, 459–60 (Ct. App. 2019). Lexington certainly was on notice of the requirement that West Columbia obtain a DHEC construction permit, and as counsel for Central Midlands has argued, the only reason to seek a conformity determination is to obtain a DHEC wastewater permit.



Lexington Common Pleas

Case Caption: Town Of Lexington, South Carolina VS City Of West Columbia,
South Carolina , defendant, et al
Case Number: 2021CP3201321
Type: Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2022-08-17 13:26:50 page 14 of 14

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP3201321

Town Of Lexington, South Carolina
PLAINTIFF(S)

City Of West Columbia, South Carolina et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The plaintiffs filed a motion to have the court alter or amend its order dismissing this action. The motion will be decided on written submissions under Rule 59(f), SCRPC. By October 7, 2022, the moving party may file any additional documents in support of the motion that the court is requested to consider. The responding party(parties) may file any documents in opposition by October 19, 2022. The moving party may reply by October 26, 2022. Should the attorneys need to adjust these dates, they are instructed to request a modification of the deadlines. Copies of any documents e-filed must be forwarded to the undersigned judge and to all other counsel. The copies to the judge shall be sent directly to the judge's email at wkeesleyj@sccourts.org. There is no law clerk at this time.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/26/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ELECTRONICALLY FILED - 2022 Sep 26 12:04 PM - LEXINGTON - COMMON PLEAS - CASE#2021CP3201321



Lexington Common Pleas

Case Caption: Town Of Lexington, South Carolina VS City Of West Columbia,
South Carolina , defendant, et al
Case Number: 2021CP3201321
Type: Order/Scheduling Order

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2022-09-26 11:55:26 page 3 of 3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Town of Lexington, South Carolina,	)	Civil Action No. 2021CP3201321
	)	
Plaintiff,	)	
	)	
vs.	)	<u>ORDER REGARDING THE TOWN OF</u>
	)	<u>LEXINGTON'S MOTION TO ALTER</u>
City of West Columbia, South Carolina,	)	<u>OR AMEND</u>
and The Central Midlands Council of	)	
Governments,	)	
	)	
Defendants.	)	
	)	

The Town of Lexington, South Carolina (the Town) filed a motion under Rule 59(e), SCRCF, to reconsider, alter or amend the prior order of August 17, 2022, which granted the defendants' motion to dismiss under Rule 12(b)(6) SCRCF. The order rejected West Columbia's arguments under Rule 12(b)(1) concerning jurisdiction. Having reconsidered the matter, the motion is respectfully denied.

A motion to dismiss on the pleadings is one which requires the court to look to the four corners of the Complaint, unless matters outside the pleading are considered, in which case the court may consider the motion as one for summary judgment. If the motion is to be converted, the parties should be given a fair opportunity to address the motion in that fashion. Dismissal on the pleadings is a drastic remedy. The court's understanding is that the oral arguments were presented on matters within the Complaint and both sides argued material facts that are not in dispute. The court does not recall any argument related to additional discovery being needed to address the motion. Even if it were, the gist of the ruling is that once West Columbia annexed the area in

question, it had the right to provide wastewater treatment services within all areas of its corporate limits.

The Town also asserts that the order failed to rule on the Town's argument that there is no procedure to challenge the Central Midlands Council of Governments' decision, thus depriving the Town of appropriate review required by Article I, Section 22 of the South Carolina Constitution. Electronic mail communications were relied upon by West Columbia in its waiver argument, and the Town maintains that there were other communications. The Town claims that it was not in a position to present evidence in that regard because the motion was one filed under Rule 12(b).

Again, those issues do not appear to override the court's determination that the Complaint asserts that West Columbia annexed the area in question. The court found that once that occurred, West Columbia had a clear right to provide wastewater treatment services within its corporate limits. The court rejected the argument regarding procedural deficiencies sufficient to change that conclusion. The court also feels that it addressed the alleged lack of a procedural path to object to West Columbia's application in the section of the order rejecting the administrative remedies argument.

Having carefully reconsidered the well-reasoned arguments and issues raised by learned counsel, the motion under Rule 59 is denied.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Lexington Common Pleas

Case Caption: Town Of Lexington, South Carolina VS City Of West Columbia,
South Carolina , defendant, et al
Case Number: 2021CP3201321
Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2022-12-29 16:27:37 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
Town of Lexington, South Carolina
Plaintiff,

vs.

City of West Columbia, South Carolina
Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No. 2021-CP-32-

SUMMONS

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers, at their office, 1230 Main Street, Suite 700, Post Office Drawer 2426, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ Michael S. Traynham

J. David Black, SC Bar No. 68499

Michael S. Traynham, SC Bar No. 75117

NEXSEN PRUET, LLC

1230 Main Street, Suite 700

Columbia, South Carolina 29201

Telephone: (803) 771-8900

Email: DBlack@nexsenpruet.com

Email: MTraynham@nexsenpruet.com

Attorneys for Plaintiff

April 22, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
Town of Lexington, South Carolina
Plaintiff,

vs.

City of West Columbia, South Carolina
Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Case No. 2021-CP-32-

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Plaintiff, Town of Lexington, South Carolina brings this action against Defendant City of West Columbia, South Carolina, seeking declaratory relief related to the provision of wastewater service. Plaintiff alleges the following:

PARTIES AND JURISDICTION

1. The Plaintiff, Town of Lexington, South Carolina (“Lexington”) is a municipal corporation of the State of South Carolina located in Lexington County, and possessing those powers granted by the Constitution and statutes of the State to municipal corporations.
2. The Defendant, City of West Columbia, South Carolina (“West Columbia”) is a municipal corporation of the State of South Carolina located in Lexington County, and possessing those powers granted by the Constitution and statutes of the State to municipal corporations.
3. Plaintiff brings this action for declaratory judgment and such other relief as this Court deems appropriate pursuant to South Carolina Code Annotated §§ 15-53-10, et seq.
4. This matter involves a dispute over wastewater service in the area of US 378/I-20.
5. This Court has personal jurisdiction over the parties and jurisdiction over the subject matter of this dispute.

STATEMENT OF FACTS

6. In 1972, Congress enacted the Clean Water Act (“CWA”) for the purpose of restoring and maintaining the “chemical, physical and biological integrity of the Nation’s waters. 33 U.S.C.A. § 1251.

7. The purpose of Section 208 of the CWA was to encourage and facilitate the development and implementation of area-wide wastewater management plans to address the fact that local water quality problems at the time were a result of sewer/waste treatment infrastructure not keeping pace with urban growth and development.

8. Section 208 of the CWA required local governments to develop a regional planning and policy framework for attaining national water quality goals as set forth in the CWA, with a focus on eliminating the discharge of pollutants into navigable waters by developing regional wastewater systems and consolidating existing facilities (“208 Plan”).

9. For purposes of developing a 208 Plan for a specific geographic area in South Carolina, the state, through the South Carolina Department of Health and Environmental Control (“DHEC”) may serve as the planning agency or SCDHEC may designate planning agencies to serve that function.

10. For the geographic area covering Richland, Lexington, Newberry, and Fairfield counties, the Central Midlands Council of Governments (“CMCOG”) is the designated planning agency, serving in this capacity under a Memorandum of Understanding with DHEC.

11. The latest 208 Plan covering Lexington County was adopted by the CMCOG in 1997 (“1997 208 Plan”) and is attached in its entirety as **Exhibit “A.”**

12. The 1997 208 Plan names designated management agencies (“DMAs”) that are responsible for implementing the 208 Plan within assigned management areas, including providing

wastewater service or determining the appropriate method of delivery of wastewater service to that specified area. 1997 208 Plan at p. 55-56.¹

13. The 1997 208 Plan names Lexington as the DMA for the US 378/I-20 area. 1997 208 Plan at Fig. 3.

14. The 1997 208 Plan provides that “each [DMA] and its facilities is set up to be the major provide for each area and act as an [sic] general coordinator of wastewater collection, transportation and treatment.” 1997 208 Plan at 135.

15. Pursuant to the 1997 208 Plan, “Lexington is to implement the provisions of the plan for the prescribed management area, while eliminating and consolidating the number of dischargers through the development of a regional wastewater transportation system with final treatment at the Cayce WWTP [Wastewater Treatment Plant].” 1997 208 Plan at 136.

16. West Columbia is also a DMA under the 1997 208 Plan, with a service area adjacent to the US 378/I-20 area. 1997 208 Plan at Fig. 3.

17. The 1997 208 Plan provides that “[i]n the Central Midlands planning area of South Carolina, the water quality planning process under Section 208 of the Federal Clean Water Act is the responsibility of the [CMCOG] as the designated water quality planning agency. CMCOG maintains and periodically updates the Water Quality Management Plan (WQMP) as it strives toward preserving and enhancing state water quality standards and classifications for both surface and ground water.” 1997 208 Plan at p.1.

18. The 1997 208 Plan enumerates several specific goals and policies, including, in relevant part:

¹ Citations to the 1997 208 plan refer to the actual page number of the Plan itself as opposed to the page number of the PDF attachment of the Plan.

- (a) “To plan and develop a timely, orderly and efficient arrangement of public sewer facilities and services to serve as a framework for urban and rural development in the Central Midlands planning area.” 1997 208 Plan at 11.
- (b) “[Placing] the responsibility for developing a cost effective local wastewater management system on local governments within limits of the regional areawide plan[.]” 1997 208 Plan at 32.
- (c) “In determining wastewater needs, the primary goal is to provide reasonable, feasible and economical wastewater service to any particular area.” 1997 208 Plan at 44.

19. The 1997 208 Plan provides that “[i]n the event that a proposal or project is determined to be inconsistent with the WQMP, an application may be made to CMCOG to amend the Plan.” *Id.* at p.36.

20. The 1997 208 Plan provides that “[a]mendments are classified either as major or minor. CMCOG shall determine whether a request is either a major or minor amendment.” *Id.*

21. Major amendments include those which involve “[c]hanges in ... geographic management area such that the change significantly alters the provision of wastewater collection, transportation, treatment or potentially impairs water quality.”

22. The 1997 208 Plan provides that [a]ll amendments must be sponsored by a [DMA] or the CMCOG Board.” *Id.*

23. The 1997 208 Plan provides that “[o]nce a determination has been made that a plan amendment is required, the applicant shall request in writing to initiate the amendment process. The applicant will also be responsible for all initial submission requirements and any additional information or studies requested during the amendment process by the EPAC [Environmental Planning Advisory Committee] of CMCOG.” *Id.* at 38.

24. The 1997 208 Plan provides that “before an application can receive consideration by the CMCOG, the applicant may be required to provide information which, at a minimum where it applies, addresses the following: 1. Detailed description and scope of the project; 2. Preliminary

engineering data regarding facility design and cost; 3. Financing strategy and/or feasibility analysis; 4. Potential fiscal or engineering impact on existing facilities, if any; 5. Associated environmental risks or impacts; 6. Project justification or need; 7. Summary examination of alternative options, where appropriate; and 8. Timing and phasing of the project and proposal.” *Id.* at 39–40.

25. The 1997 208 Plan provides that “the burden of demonstrating the facts and merits of any plan amendment lies solely with the applicant and is subject to whatever level of review issued by the CMCOG staff, EPAC or CMCOG Board.” *Id.* at 40.

26. The 1997 208 Plan provides that “[a]fter the public information meeting, if one is held, all proposed amendments will be placed on the agenda of the Central Midlands Council Board. The EPAC Chairman, assisted by staff, will present the proposed amendment, recommendation of EPAC, and a summary of public comment.” *Id.* at 38.

27. The 1997 208 Plan provides that “DHEC and EPA, where required, must approve all amendments before they become part of the Regional Water Quality Management Plan.” *Id.* at 39.

28. The 1997 208 Plan provides that “[d]ecisions of the board of the Central Midlands Council of Governments are considered final and are given to [DHEC] for concurrence.” *Id.*

29. The 1997 208 Plan provides that “[w]here a municipality annexes lands into another designated management agency’s area, the municipality has the right to provide service to that area, provided no existing service is reasonably available and is shown to be the cost effective means of providing service.” *Id.* at p.56.

30. The 1997 208 Plan provides that “[b]efore DHEC can issue or re-issue a permit to construct or operate a wastewater treatment facility or related facilities in the 208 planning region, conformance with the Water Quality Management Plan must be determined.” *Id.* at p.40.

31. On September 26, 2018, West Columbia submitted a 208 Water Quality Management Plan Conformance Request (“Conformance Request”) for an upgrade and expansion of West Columbia’s wastewater system along the US 378 corridor.

32. Specifically, West Columbia desired to (1) construct a pump station and the associated sewer lines therein and (2) an amendment to the Management Agency Service Area Map enlarging its service capabilities.

33. The area under which West Columbia submitted its Conformance Request is inside Lexington’s designated management area as set forth in the 1997 208 Plan.

34. On March 13, 2019, pursuant to the procedural requirements of the 1997 208 Plan, West Columbia made a written request for an amendment to the Management Agency Area map in the CMCOG 208 Water Quality Management plan (“Proposed 1997 208 Plan Amendment”).

35. The purpose of this Proposed 1997 208 Plan Amendment was to (1) address the current Conformance Request, and (2) provide future guidance for future expansion and improvements to the West Columbia wastewater system.

36. This Proposed 1997 208 Plan Amendment set forth (1) Detailed description and scope of the project; (2) Preliminary engineering data regarding facility design and cost; (3) Financing strategy and/or feasibility analysis; (4) Potential fiscal or engineering impact on existing facilities, if any; (5) Associated environmental risks or impacts; (6) Project justification or need; (7) Summary examination of alternative options, where appropriate; and (8) Timing and phasing of the project and proposal.

37. After West Columbia presented its Proposed 1997 208 Plan Amendment to the CMCOG on March 13, 2019, there appeared to be insufficient support for its passage.

38. After West Columbia realized that its Proposed 1997 208 Plan Amendment was destined to fail, it rescinded its request.

39. Subsequent to the failed effort to amend the 1997 208 Plan, West Columbia undertook annexation of property in the US 378/I-20 area which was within the designated management area for Lexington.

40. Notwithstanding the failure to obtain an amendment to the 1997 208 Plan in 2019, West Columbia filed a renewed Conformance Request with the CMCOG on February 8, 2021 for the previously proposed expansion of its sewer collection system along Highway 378.

41. West Columbia's Conformance Request and proposed expansion is in direct contravention of the 1997 208 Plan in that it would allow West Columbia to provide wastewater service within Lexington's designated management area.

42. West Columbia's annexation of land within Lexington's designated management area does not allow it to usurp Lexington's designated management area in contravention of the 1997 208 Plan.

43. All land annexed by West Columbia within Lexington's designated management area is either (1) currently served by Lexington or (2) can easily and readily be served by Lexington.

44. Moreover, expansion of West Columbia's sewer service area as proposed would isolate Lexington infrastructure in other portions of its designated management area and nullify investments made by Lexington to expand sewer infrastructure within the US 378/I-20 area.

45. The economic consequences of West Columbia's expansion efforts would be contrary to the 1997 208 Plan's goals of developing efficient and cost effective local wastewater management systems.

46. West Columbia's expansion into the US 378/I-20 area would interfere with Lexington's ability to perform at least one contract with another utility service for provision of wastewater service to customers in the US 378/I-20 area, and would result in direct consequential damages to Lexington.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment Against the City of West Columbia)

47. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are consistent with the allegations of this First Cause of Action.

48. There exists an actual dispute and controversy between the parties which cannot be resolved absent declaratory relief by this Court. Declaratory judgment in the manner sought would eliminate this uncertainty and continued breach by West Columbia as a participant of the 1997 208 Plan. Accordingly, Lexington is entitled to a declaratory judgment pursuant to S.C. Code § 15-53-10, *et seq.*, against West Columbia, declaring the rights and legal relations of the parties as follows:

- (a) West Columbia's proposed expansion would require a major amendment to the 1997 208 Plan;
- (b) West Columbia is in violation of the 1997 208 Plan because it has refused to follow the procedures set forth to amend said Plan in order to expand its wastewater system along the US 378 corridor;
- (c) West Columbia is in violation of the 1997 208 Plan because its proposed expansion along the US 378 corridor would usurp Lexington's designated service area where wastewater service from Lexington is already reasonably available;

- (d) West Columbia is in violation of the 1997 208 Plan because its proposed expansion along the US 378 corridor would create cost and other inefficiencies contrary to the stated goals of the 1997 208 Plan;
- (e) Pursuant to the 1997 208 Plan, Lexington is entitled to provide wastewater service or determine an appropriate wastewater service delivery system to the US 378/I-20 area annexed by West Columbia.

WHEREFORE, the Plaintiff, the Town of Lexington, having fully complained against the Defendant, City of West Columbia, respectfully requests this Circuit Court to enter a judgment for Plaintiff including (1) a declaratory judgment as described herein, (2) costs, and (3) such other relief as is just, equitable and proper.

Respectfully submitted,

s/ Michael S. Traynham

J. David Black, SC Bar No. 68499

Michael S. Traynham, SC Bar No. 75117

NEXSEN PRUET, LLC

1230 Main Street, Suite 700

Columbia, South Carolina 29201

(803) 771-8900

Email: DBlack@nexsenpruet.com

Email: MTraynham@nexsenpruet.com

Attorneys for Plaintiff

April 22, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS	
COUNTY OF LEXINGTON	) ELEVENTH JUDICIAL CIRCUIT	
	)	
	) Civil Action Number 2021-CP-32-01321	
Town of Lexington, South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>MOTION TO DISMISS</u>
	)	
City of West Columbia, South Carolina,	)	
	)	
Defendant.	)	
	)	
	)	

For at least the following reasons, and pursuant to Rules 12(b)(1), 12(b)(6), and 12(b)(7), SCRCF, Defendant City of West Columbia (“West Columbia” or the “City”) moves to dismiss Plaintiff’s complaint for declaratory relief concerning certain actions taken by the Central Midlands Council of Governments (“Central Midlands”) under the Section 208 Water Quality Plan for the area (the “208 Plan”).

Defendant hereby asserts the right to an award of attorney’s fees and costs under S.C. Code Ann. § 15-77-300.

On March 22, 2021, Central Midlands issued a 208/201 Plan Conformance Review Form certification (the “Certification”). It informed DHEC that West Columbia was authorized to provide sewer service within certain areas recently annexed into the City. By law, the COG prepares and administers the 208 Plan and is the entity empowered to interpret it by granting or denying certifications. These certifications are a necessary prerequisite to the issuance of sewer construction permits by DHEC. A copy of the Certification is attached as Exhibit A and is subject to judicial notice. Central Midlands attached to the Certification the email correspondence with the Administrator for the Town of Lexington soliciting questions or comments concerning the request and indicating that Central Midlands intended to issue the Certificate to West Columbia.

The concluding email from the Town Administrators reads: “I don’t have any questions or comments.” Appendix A at page 5.

Without appealing the determination by the Central Midlands or contesting it in any way, and without even citing that decision to this Court, the Plaintiff filed the Complaint here. It asks the Court to issue a declaratory judgment contradicting and invalidating the Certification. Specifically, Plaintiff asks the Court to rule that under the 208 Plan, West Columbia may not serve the precise areas where the Central Midlands determined West Columbia was the only party authorized to provide service.

The Complaint should be dismissed for the following reasons:

- **Lack of Jurisdiction:** The Complaint seeks to attack the Certification indirectly and invalidate it without having appealed the decision to issue it and without having filed any objection at Central Midlands. Plaintiff did not ask Central Midlands to reconsider its decision in issuing the Certification, which it had every right to do. Nor did Plaintiff file a writ of certiorari with the Circuit Court naming Central Midlands as a party and seeking judicial review of the decision after reconsideration, as it also had every right to do.¹ Plaintiff cannot now rehabilitate these failures by collaterally attacking the Certification under the guise of a declaratory judgment. Because the failure to timely file an appeal of an adverse ruling is jurisdictional, the Court lacks jurisdiction to consider this case and should dismiss it pursuant to Rule 12(b)(1), SCRCP.

¹ *League of Women Voters of Georgetown Cty. v. Litchfield-by-the-Sea*, 305 S.C. 424, 427, 409 S.E.2d 378, 380 (1991), *overruled on other grounds by Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 560 S.E.2d 410 (2002)(overruled based on a subsequent statutory change granting contested case rights to parties contesting coastal zone management certifications, see nn. 1 and 2); *Rowe v. City of W. Columbia*, 334 S.C. 400, 405–06, 513 S.E.2d 379, 382 (Ct. App. 1999)

- **Lack of Jurisdiction:** Where determinations by governmental agencies are not subject to review under the South Carolina Administrative Procedures Act or other statutory grants of jurisdiction, the sole avenue for judicial review is by writ of certiorari. Accordingly, the South Carolina Uniform Declaratory Judgements Act does not grant the Court jurisdiction to hear this case.

- **Absence of an Essential Party:** The Town of Lexington asks this Court to review and reverse an unappealed, adverse decision issued by Central Midlands without making Central Midlands a party to this litigation. Accordingly, Plaintiff has failed to join a necessary party, and the complaint should be dismissed pursuant to Rule 12(b)(7), SCRPC.

- **Failure to Exhaust Remedies:** Plaintiff filed this claim without ever having raised before the Central Midlands the issues it seeks to have this Court address. These issues could have been raised by seeking reconsideration of the decision which it now attacks for the first time in this Court and thereafter by appeal by writ of certiorari. It is an established principle of appellate practice and declaratory judgement practice that the failure to exhaust remedies is a bar to relief.

- **Failure to File a Request for Rehearing:** It is also an established principle of appellate practice that a party must file for reconsideration before seeking judicial review of an action by an inferior body, especially where the party seeks to assert as grounds for appeal issues it asserts were not considered or properly decided in the decision below. Plaintiff has not met this requirement.

- **Discretionary Dismissal:** In light of the circumstances, the Court has discretion to dismiss this action under the South Carolina Uniform Declaratory Judgements Act and should exercise that right.

- **Failure to State a Claim:** Even if the Court had jurisdiction, the Town’s case still fails as a matter of law for at least two reasons. First, under the South Carolina Constitution and the South Carolina statutory law, only the City of West Columbia has the power to decide who may provide wastewater services within its municipal limits; the Town’s request that the Court hold otherwise is unconstitutional and unlawful. S.C. Const. art. VIII, § 15; S.C. Code Ann. § 5-7-60. Second, the Section 208 plan itself specifies that the City of West Columbia is the management agency for the “City of West Columbia and adjacent areas”—which is exactly the opposite of what the Town seeks through this litigation.

For these reasons, which shall be fully supported through further memoranda, exhibits, arguments of counsel, and all other submissions that the Court permits, the City of West Columbia seeks an order dismissing this case with prejudice.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/Belton T. Zeigler
 S.C. Bar No. 5754
 M. Todd Carroll
 S.C. Bar No. 74000
 Bryant S. Caldwell
 S.C. Bar No. 102206
 1221 Main Street, Suite 1600
 Columbia, South Carolina 29201
 (803) 454-6504

Attorneys for the City of West Columbia

Columbia, South Carolina
 June 23, 2021



MEMORANDUM

TO: Project File

FROM: Gregory Sprouse, Director Research, Planning, and Development

DATE: March 22, 2021

SUBJECT: 208 Certification – West Columbia US 378 PER

In February of 2021 the City of West Columbia submitted a 208 conformance request for a preliminary engineering report to evaluate the construction of wastewater infrastructure along the US Highway 378/I-20 corridor. The purpose of the project is to provide the infrastructure necessary to provide wastewater service to the properties in this area within the City's municipal limits. The area in question is primarily within the Town of Lexington's designated 208 management/service area, however, it is also located within the City of West Columbia's municipal limits as the City has annexed into this area over the last decade. Because the project as proposed in the PER is within the municipal limits of West Columbia, CMCOG considers the project to be in conformance with the 208 plan even though it is within the Town of Lexington's designated management area. This determination is supported by Section 2 of the Management Agency Policy in the 208 plan (p.56) which states "Where a municipality annexes lands into another designated management agency's area, the municipality has the right to provide service to that area, provided no existing service is reasonably available and is shown to be the cost-effective means of providing service." This determination is also supported by Sections 5-31-2030 and 5-7-60 of the South Carolina Code of Laws which allows a municipality to require a resident to make use of their sewer system and prohibits a municipality from providing service within another municipality unless permission is approved by that governing body (thus making it difficult for the Town of Lexington to provide service within the City of West Columbia's boundaries unless permission is given).

With the intention of promoting cooperation and coordination among management agencies and service providers, CMCOG staff makes all reasonable efforts to communicate with all parties when reviewing 208 conformance requests that may impact multiple management agencies or service providers. During the review of this conformance request, CMCOG communicated the preliminary determination of conformance with the Town of Lexington prior to issuing approval. The Town of Lexington did not object to CMCOG's determination that the project was in conformance with the 208 plan. CMCOG issued a certification of conformance on March 22, 2021. The conformance included comments stating that approval was only for service to properties within the municipal limits of West Columbia, and that future projects to provide service to properties in the study area outside of their municipal limits but within the Town of Lexington's 208 Management Area, will require a separate 208 conformance review to include approval from the Town of Lexington.

Serving Local Governments in South Carolina's Midlands

236 Stoneridge Drive, Columbia, SC 29210 • (803) 376-5390 • Fax (803) 376-5394 • www.centralmidlands.org



208/201 PLAN CONFORMANCE REVIEW FORM

1. Date: 2/8/2021
2. Project Name: US Highway 378 Collection System Extension
3. County: Lexington
4. General Location: (A General Location map must be provided with this form)
5. Type of Action for Review: PER
6. Type of Project: Pump Station
7. Type of Waste: Domestic
8. Volume (GPD): 550
9. Service Provider: City of West Columbia
10. Location of Treatment: Columbia Metro WWTP

Engineer Contact Info

Name: Andrew J. Zaengle, P.E.
Company: City of West Columbia
Address: 200 N. 12th Street, West Columbia, SC 29169
Phone: (803) 939-8625
Email: azaengle@westcolumbiasc.gov

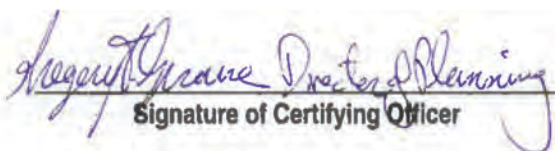
Service Provider Contact Info

Name: Andrew J. Zaengle, P.E.
Service Provider: City of West Columbia
Address: 200 N. 12th Street, West Columbia, SC 29169
Phone: (803) 939-8625
Email: azaengle@westcolumbiasc.gov

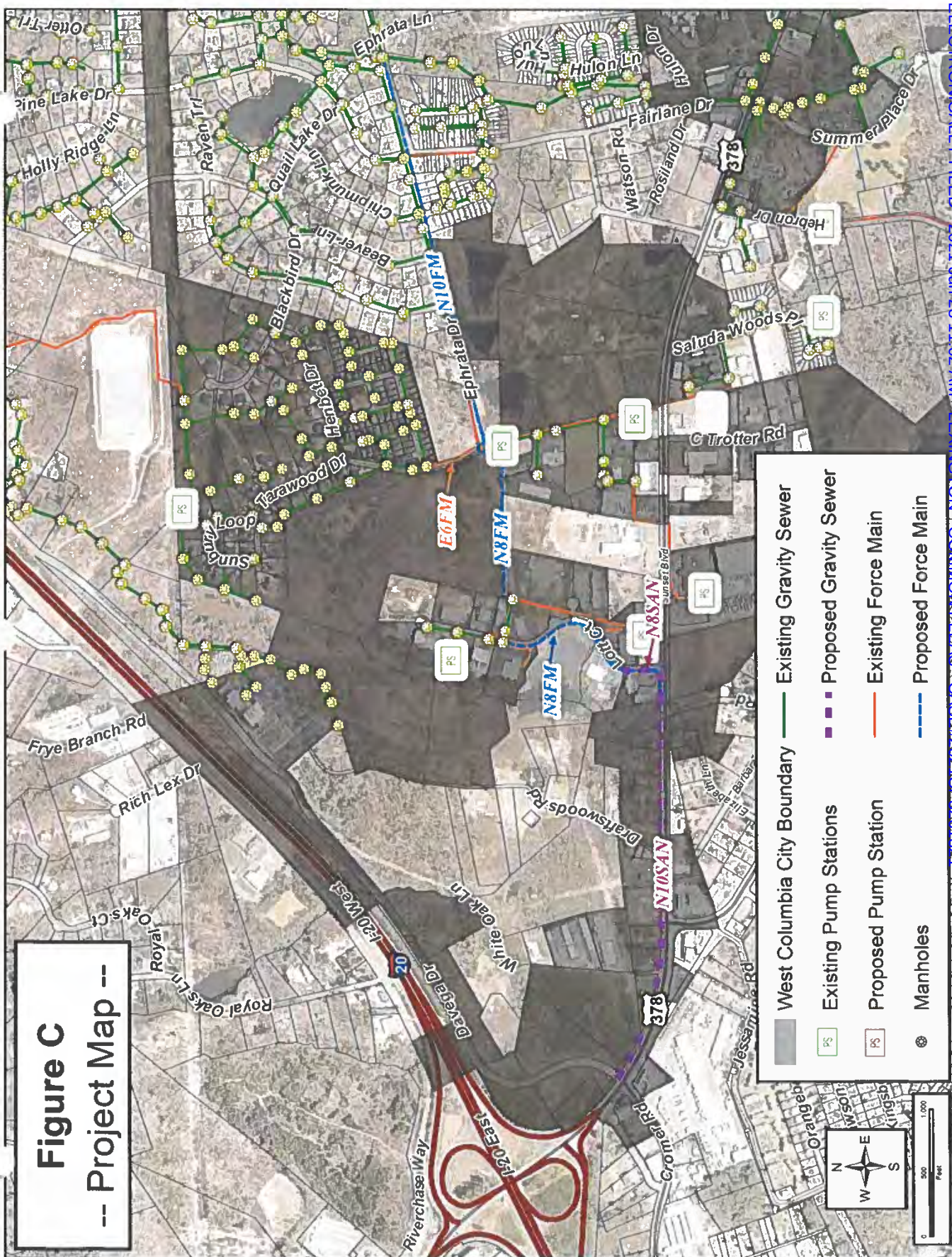
----- For Central Midlands COG Office Use only -----

Determination: This project (IS) IS NOT in conformance with the 208 plan.

Comments: The 208 certification is for the collection system extension to provide sewer service to properties located within the municipal limits of the City of West Columbia. Any projects to provide sewer service to properties in the PER study area that are not within the municipal limits of the City of West Columbia and are within the Town of Lexington's 208 Designated Management Area (DMA), will require a separate 208 conformance review and certification to include approval from the Town of Lexington.


Signature of Certifying Officer

3/22/21
Date





Gregory Sprouse <gsprouse@centralmidlands.org>

RE: 208 conformance

1 message

Britt Poole <bpoole@lexsc.com>
To: Gregory Sprouse <gsprouse@centralmidlands.org>

Mon, Mar 22, 2021 at 1:19 PM

Gregory,

I don't have any questions or comments, thanks for sending it over.

Thanks

Britt

Sincerely,

D. Britt Poole
Town Administrator
Town of Lexington
111 Maiden Lane
Lexington, SC 29072
803-951-1665
bpoole@lexsc.com



From: Gregory Sprouse <gsprouse@centralmidlands.org>
Sent: Monday, March 22, 2021 1:16 PM
To: Britt Poole <bpoole@lexsc.com>
Subject: Re: 208 conformance

Hi Britt,

I am following up from our conversation last week regarding the West Columbia 208 conformance request? Did you have any further questions or comments? I hope to finalize our review later today and issue the conformance to West Columbia sometime tomorrow. I am available anytime after 2:30 this afternoon or early tomorrow morning for a call if you want to discuss.

ELECTRONICALLY FILED - 2021 Jun 23 11:02 AM - LEXINGTON - COMMON PLEAS - CASE#2021CP3201321

Thanks so much for your help.

Best,

Gregory

--

Gregory Sprouse, AICP

Director of Research, Planning, and Development

Central Midlands Council of Governments

[236 Stoneridge Drive](#)

[Columbia, SC 29210](#)

803.744.5158

www.centralmidlands.org

On Thu, Mar 18, 2021 at 9:31 AM Gregory Sprouse <gsprouse@centralmidlands.org> wrote:

Hi Britt,

Per our conversation, the conformance request and maps are attached. My schedule is open on Monday so just let me know a time that works for you to follow up.

Best,

Gregory

--

Gregory Sprouse, AICP

Director of Research, Planning, and Development

Central Midlands Council of Governments

[236 Stoneridge Drive](#)

[Columbia, SC 29210](#)

803.744.5158

www.centralmidlands.org

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Gregory Sprouse <gsprouse@centralmidlands.org>

West Columbia 208 Conformance Request

1 message

Gregory Sprouse <gsprouse@centralmidlands.org>
To: "Poole, Britt" <bpoole@lexsc.com>

Wed, Mar 17, 2021 at 5:35 PM

Hi Britt,

I hope you are doing well. I am touching base with you regarding a 208 conformance request we received from the City of West Columbia for review of a PER to construct new sewer collection infrastructure to provide service to the properties in their municipal limits along 378. Since the project is intended to serve the properties within their municipal limits we consider it to be in conformance with the 208 plan. But because it impacts multiple service and management areas, we want to make sure we are adequately communicating with all impacted parties as a part of our review.

Do you have any time tomorrow morning or early afternoon for a call to discuss?

Best,

Gregory

--

Gregory Sprouse, AICP
Director of Research, Planning, and Development
Central Midlands Council of Governments
236 Stoneridge Drive
Columbia, SC 29210
803.744.5158
www.centralmidlands.org

ELECTRONICALLY FILED - 2021 Jun 23 11:02 AM - LEXINGTON - COMMON PLEAS - CASE#2021CP3201321

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Town of Lexington, South Carolina

Plaintiff,

vs.

City of West Columbia, South Carolina and the
Central Midlands Council of Governments

Defendant.

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

Case No. 2021-CP-32-01321

AMENDED SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint upon the subscribers, at their office, 1230 Main Street, Suite 700, Post Office Drawer 2426, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Amended Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

s/Michael Traynham

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July 14, 2021

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Town of Lexington, South Carolina

Plaintiff,

vs.

City of West Columbia, South Carolina and the
Central Midlands Council of Governments

Defendant.

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

Case No. 2021-CP-32-01321

**AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT**

Plaintiff, Town of Lexington, South Carolina brings this action against Defendants City of West Columbia, South Carolina, and the Central Midlands Council of Governments seeking declaratory relief related to the provision of wastewater service. Plaintiff alleges the following:

PARTIES AND JURISDICTION

1. The Plaintiff, Town of Lexington, South Carolina (“Lexington”) is a municipal corporation of the State of South Carolina located in Lexington County, and possessing those powers granted by the Constitution and statutes of the State to municipal corporations.

2. The Defendant, City of West Columbia, South Carolina (“West Columbia”) is a municipal corporation of the State of South Carolina located in Lexington County, and possessing those powers granted by the Constitution and statutes of the State to municipal corporations.

3. The Central Midlands Council of Governments (“CMCOG”) is a public agency created by statute, which includes 15 member governments and serves as the designated planning agency for purposes of implementing the 208 Water Quality Plan within Lexington County.

4. Plaintiff brings this action for declaratory judgment and such other relief as this Court deems appropriate pursuant to South Carolina Code Annotated §§ 15-53-10, et seq.

5. This matter involves a dispute over wastewater service in the area of US 378/I-20.

6. This Court has personal jurisdiction over the parties and jurisdiction over the subject matter of this dispute.

STATEMENT OF FACTS

7. In 1972, Congress enacted the Clean Water Act (“CWA”) for the purpose of restoring and maintaining the “chemical, physical and biological integrity of the Nation’s waters. 33 U.S.C.A. § 1251.

8. The purpose of Section 208 of the CWA was to encourage and facilitate the development and implementation of area-wide wastewater management plans to address the fact that local water quality problems at the time were a result of sewer/waste treatment infrastructure not keeping pace with urban growth and development.

9. Section 208 of the CWA required local governments to develop a regional planning and policy framework for attaining national water quality goals as set forth in the CWA, with a focus on eliminating the discharge of pollutants into navigable waters by developing regional wastewater systems and consolidating existing facilities (“208 Plan”).

10. For purposes of developing a 208 Plan for a specific geographic area in South Carolina, the state, through the South Carolina Department of Health and Environmental Control (“DHEC”), may serve as the planning agency or SCDHEC may designate planning agencies to serve that function.

11. For the geographic area covering Richland, Lexington, Newberry, and Fairfield counties, the CMCOG is the designated planning agency, serving in this capacity under a Memorandum of Understanding with DHEC.

12. The latest 208 Plan covering Lexington County was adopted by the CMCOG in 1997 (“1997 208 Plan”) and is attached in its entirety as **Exhibit “A.”**

13. The 1997 208 Plan names designated management agencies (“DMAs”) that are responsible for implementing the 208 Plan within assigned management areas, including providing wastewater service or determining the appropriate method of delivery of wastewater service to that specified area. 1997 208 Plan at p. 55-56.¹

14. The 1997 208 Plan names Lexington as the DMA for the US 378/I-20 area. 1997 208 Plan at Fig. 3.

15. The 1997 208 Plan provides that “each [DMA] and its facilities is set up to be the major provider for each area and act as an [sic] general coordinator of wastewater collection, transportation and treatment.” 1997 208 Plan at 135.

16. Pursuant to the 1997 208 Plan, “Lexington is to implement the provisions of the plan for the prescribed management area, while eliminating and consolidating the number of dischargers through the development of a regional wastewater transportation system with final treatment at the Cayce WWTP [Wastewater Treatment Plant].” 1997 208 Plan at 136.

17. West Columbia is also a DMA under the 1997 208 Plan, with a service area adjacent to the US 378/I-20 area. 1997 208 Plan at Fig. 3.

18. The 1997 208 Plan provides that “[i]n the Central Midlands planning area of South Carolina, the water quality planning process under Section 208 of the Federal Clean Water Act is

¹ Citations to the 1997 208 plan refer to the actual page number of the Plan itself as opposed to the page number of the PDF attachment of the Plan.

the responsibility of the [CMCOG] as the designated water quality planning agency. CMCOG maintains and periodically updates the Water Quality Management Plan (WQMP) as it strives toward preserving and enhancing state water quality standards and classifications for both surface and ground water.” 1997 208 Plan at p.1.

19. The 1997 208 Plan enumerates several specific goals and policies, including, in relevant part:

- (a) “To plan and develop a timely, orderly and efficient arrangement of public sewer facilities and services to serve as a framework for urban and rural development in the Central Midlands planning area.” 1997 208 Plan at 11.
- (b) “[Placing] the responsibility for developing a cost effective local wastewater management system on local governments within limits of the regional areawide plan[.]” 1997 208 Plan at 32.
- (c) “In determining wastewater needs, the primary goal is to provide reasonable, feasible and economical wastewater service to any particular area.” 1997 208 Plan at 44.

20. The 1997 208 Plan provides that “[i]n the event that a proposal or project is determined to be inconsistent with the WQMP, an application may be made to CMCOG to amend the Plan.” *Id.* at p.36.

21. The 1997 208 Plan provides that “[a]mendments are classified either as major or minor. CMCOG shall determine whether a request is either a major or minor amendment.” *Id.*

22. Major amendments include those which involve “[c]hanges in ... geographic management area such that the change significantly alters the provision of wastewater collection, transportation, treatment or potentially impairs water quality.”

23. The 1997 208 Plan provides that “[a]ll amendments must be sponsored by a [DMA] or the CMCOG Board.” *Id.*

24. The 1997 208 Plan provides that “[o]nce a determination has been made that a plan amendment is required, the applicant shall request in writing to initiate the amendment process.

The applicant will also be responsible for all initial submission requirements and any additional information or studies requested during the amendment process by the EPAC [Environmental Planning Advisory Committee] of CMCOG.” *Id.* at 38.

25. The 1997 208 Plan provides that “before an application can receive consideration by the CMCOG, the applicant may be required to provide information which, at a minimum where it applies, addresses the following: 1. Detailed description and scope of the project; 2. Preliminary engineering data regarding facility design and cost; 3. Financing strategy and/or feasibility analysis; 4. Potential fiscal or engineering impact on existing facilities, if any; 5. Associated environmental risks or impacts; 6. Project justification or need; 7. Summary examination of alternative options, where appropriate; and 8. Timing and phasing of the project and proposal.” *Id.* at 39–40.

26. The 1997 208 Plan provides that “the burden of demonstrating the facts and merits of any plan amendment lies solely with the applicant and is subject to whatever level of review issued by the CMCOG staff, EPAC or CMCOG Board.” *Id.* at 40.

27. The 1997 208 Plan provides that “[a]fter the public information meeting, if one is held, all proposed amendments will be placed on the agenda of the Central Midlands Council Board. The EPAC Chairman, assisted by staff, will present the proposed amendment, recommendation of EPAC, and a summary of public comment.” *Id.* at 38.

28. The 1997 208 Plan provides that “DHEC and EPA, where required, must approve all amendments before they become part of the Regional Water Quality Management Plan.” *Id.* at 39.

29. The 1997 208 Plan provides that “[amendment decisions] of the board of the Central Midlands Council of Governments are considered final and are given to [DHEC] for concurrence.” *Id.*

30. The 1997 208 Plan provides that “[w]here a municipality annexes lands into another designated management agency’s area, the municipality has the right to provide service to that area, provided no existing service is reasonably available and is shown to be the cost effective means of providing service.” *Id.* at p.56.

31. The 1997 208 Plan provides that “[b]efore DHEC can issue or re-issue a permit to construct or operate a wastewater treatment facility or related facilities in the 208 planning region, conformance with the Water Quality Management Plan must be determined.” *Id.* at p.40.

32. On September 26, 2018, West Columbia submitted a 208 Water Quality Management Plan Conformance Request (“Conformance Request”) for an upgrade and expansion of West Columbia’s wastewater system along the US 378 corridor.

33. Specifically, West Columbia desired to (1) construct a pump station and the associated sewer lines therein and (2) amend the Management Agency Service Area Map enlarging its service capabilities.

34. The area under which West Columbia submitted its Conformance Request is inside Lexington’s designated management area as set forth in the 1997 208 Plan.

35. On March 13, 2019, pursuant to the procedural requirements of the 1997 208 Plan, West Columbia made a written request for an amendment to the Management Agency Area map in the CMCOG 208 Water Quality Management plan (“Proposed 1997 208 Plan Amendment”).

36. The purpose of this 2019 Proposed 208 Plan Amendment was to (1) address the current Conformance Request, and (2) provide future guidance for future expansion and improvements to the West Columbia wastewater system.

37. This Proposed 1997 208 Plan Amendment set forth (1) Detailed description and scope of the project; (2) Preliminary engineering data regarding facility design and cost; (3) Financing strategy and/or feasibility analysis; (4) Potential fiscal or engineering impact on existing facilities, if any; (5) Associated environmental risks or impacts; (6) Project justification or need; (7) Summary examination of alternative options, where appropriate; and (8) Timing and phasing of the project and proposal.

38. After West Columbia presented its Proposed 1997 208 Plan Amendment to the CMCOG on March 13, 2019, there appeared to be insufficient support for its passage.

39. After West Columbia realized that its Proposed 1997 208 Plan Amendment was destined to fail, it rescinded its request.

40. Subsequent to the failed effort to amend the 1997 208 Plan, West Columbia undertook annexation of property in the US 378/I-20 area which was within the designated management area for Lexington.

41. Notwithstanding the failure to obtain an amendment to the 1997 208 Plan in 2019, West Columbia filed a renewed Conformance Request with the CMCOG on February 8, 2021 for the previously proposed expansion of its sewer collection system along Highway 378.

42. Despite the previous efforts to amend the 208 Plan to obtain consistency for a substantially identical project, West Columbia made no such effort to amend the 208 Plan in filing its Conformance Request in 2021.

43. On March 22, 2021, without any amendment to the 208 Plan, the CMCOG issued a Memorandum and Conformance Determination for this project, attached as **Exhibit “B.”**

44. The CMCOG Memorandum and Conformance Determination is in direct contravention of the plain language of the 208 Plan and beyond the authority of the CMCOG.

45. While the 208 Plan provides for public participation in making any plan amendment and requires DHEC concurrence for such an amendment, neither the 208 Plan nor any state statute provides for administrative review or other due process for a party aggrieved by a CMCOG Conformance Review decision.

46. West Columbia’s Conformance Request and proposed expansion is in direct contravention of the 1997 208 Plan in that it would allow West Columbia to provide wastewater service within Lexington’s designated management area.

47. West Columbia’s annexation of land within Lexington’s designated management area does not allow it to usurp Lexington’s designated management area in contravention of the 1997 208 Plan.

48. All land annexed by West Columbia within Lexington’s designated management area is either (1) currently served by Lexington or (2) can easily and readily be served by Lexington.

49. Moreover, expansion of West Columbia’s sewer service area as proposed would isolate Lexington infrastructure in other portions of its designated management area and nullify investments made by Lexington to expand sewer infrastructure within the US 378/I-20 area.

50. The economic consequences of West Columbia’s expansion efforts would be contrary to the 1997 208 Plan’s goals of developing efficient and cost effective local wastewater management systems.

51. West Columbia's expansion into the US 378/I-20 area would interfere with Lexington's ability to perform at least one contract with another utility service for provision of wastewater service to customers in the US 378/I-20 area, and would result in direct consequential damages to Lexington.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment Against West Columbia and CMCOG)

52. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are consistent with the allegations of this First Cause of Action.

53. There exists an actual dispute and controversy between the parties which cannot be resolved absent declaratory relief by this Court. Declaratory judgment in the manner sought would eliminate this uncertainty. Accordingly, Lexington is entitled to a declaratory judgment pursuant to S.C. Code § 15-53-10, *et seq.*, against West Columbia, declaring the rights and legal relations of the parties as follows:

- (a) The March 22, 2021 CMCOG Conformance Determination is beyond the CMCOG's authority and contrary to the plain language of the 208 Plan;
- (b) West Columbia's proposed expansion would require a major amendment to the 1997 208 Plan;
- (c) West Columbia is in violation of the 1997 208 Plan because it has refused to follow the procedures set forth to amend said Plan in order to expand its wastewater system along the US 378 corridor;
- (d) West Columbia is in violation of the 1997 208 Plan because its proposed expansion along the US 378 corridor would usurp Lexington's designated service area where wastewater service from Lexington is already reasonably available;
- (e) West Columbia is in violation of the 1997 208 Plan because its proposed expansion along the US 378 corridor would create cost and other inefficiencies contrary to the stated goals of the 1997 208 Plan;

- (f) Pursuant to the 1997 208 Plan, Lexington is entitled to provide wastewater service or determine an appropriate wastewater service delivery system to the US 378/I-20 area annexed by West Columbia.

WHEREFORE, the Plaintiff, the Town of Lexington, having fully complained against the Defendants, respectfully requests this Circuit Court to enter a judgment for Plaintiff including (1) a declaratory judgment as described herein, (2) costs, and (3) such other relief as is just, equitable and proper.

Respectfully submitted,

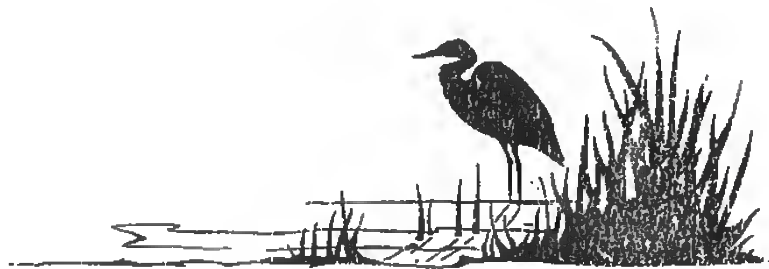
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July 14, 2021
Columbia, South Carolina

The 208 Water Quality Management Plan for the Central Midlands Region

*Fairfield
Newberry
Lexington
&
Richland
Counties*



*Adopted:
February 27, 1997*

**Prepared by the Central Midlands
Council of Governments**

Acknowledgements

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Special Appreciation:

South Carolina Department of Health & Environmental Control
 South Carolina Department of Natural Resources

The 208 Water Quality Management Plan
for the
Central Midlands Region

*Fairfield
Newberry
Lexington
&
Richland
Counties*

February 1997

Prepared By:
Central Midlands Council of Governments

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I. INTRODUCTION

With the passage of the Federal Water Pollution Control Act of 1972, 33 U.S.C.A. §§ 1251-1387 (PL 92-500; as amended PL 95-217, 1977; PL 100-4, 1987), Congress initiated major steps toward insuring future generations of the highest level of water quality possible. The Clean Water Act identified a number of planning programs to be undertaken at various levels of government. To maximize the efficient use of resources, Section 208 of the Act established an areawide approach to mitigating water pollution. Section 208 provided criteria to design local plans within a regional context based upon a comprehensive and integrated approach to water pollution abatement, which helped to ensure that the goals of the Act were achieved within the framework of local needs and requirements. The State of South Carolina continues to use regional planning agencies throughout the State as a means of administering the Act.

Purpose and Need

In South Carolina, the Department of Health and Environmental Control (DHEC) regulates activities affecting water quality and is responsible for establishing classifications and standards to protect beneficial uses of streams, lakes, and estuaries in the state. The planning process identifies actions to maintain water quality standards and addresses water quality issues associated with regional development. In the Central Midlands planning area of South Carolina, the water quality planning process under Section 208 of the Federal Clean Water Act is the responsibility of the Central Midlands Council of Governments (CMCOG) as the designated water quality planning agency. CMCOG maintains and periodically updates the Water Quality Management Plan (WQMP) as it strives toward preserving and enhancing state water quality standards and classifications for both surface and ground water.

The purpose of the 1996 WQMP is to revise the information -- the Central Midlands planning area (Fairfield, Lexington, Newberry and Richland Counties -- from the time of the last revision of the plan made in 1984, and to present current issues in water quality planning and policies to guide such planning.

More importantly, this document will serve as a tool for local decision makers when addressing land use and its influence on water quality. A holistic focus of water quality planning will prevent a piecemeal approach to decision making that leads to conflicts between development and conserving natural resources.

This 1996 Water Quality Management Plan supercedes all previous comprehensive plan revisions, annual plan updates and all past plan amendments.

Reason For Updating The Plan

The comprehensive revision of the WQMP was done in 1984 with several annual updates prepared thereafter. Long held assumptions made ten years ago regarding growth and environmental impacts now require revisiting. Also, since the adoption of the 1984 Plan, numerous plan amendments have been adopted which have fundamentally altered the direction and scope of the 1984 Plan and the planning process. As part of this comprehensive revision, the Plan will address current issues and will link knowledge and ideas regarding the balance of water quality and land development. Clean water is essential for health, safety, and welfare of the public. Prospective businesses and industries wanting to locate in the Central Midlands planning area require public sewer and water. With proper planning and policies, suitable locations for economic development can be identified that will not conflict with society's values of clean water and a healthy environment.

Background

During the 1960s and 1970s, local needs for water and wastewater plans merged with concerns in environmental protection. Historically, many local governments were faced with limited financial and technological means to foster growth and economic development while concurrently addressing its impacts to the environment. Nationally, water quality degradation prompted the federal government to act. It is from these two separate issues that a federal initiative established a process for watershed planning and grant-in-aid construction program to reduce water pollution nationwide.

Federal Water Pollution Control Act of 1972

The Federal Water Pollution Control Act (FWPCA) of 1972 - commonly known as the "Clean Water Act" (CWA) - was enacted by the US Congress to establish national goals for restoring and maintaining the physical, chemical, and biological integrity of the nation's waters. Section 208 of the Act established an areawide approach to maintaining water quality. Section 208 also provided criteria to designing local plans within a regional context, based upon a comprehensive and integrated approach to minimize water pollution. These criteria will ensure that the goals of the Act are achieved based on local needs and requirements. One of the guiding principles behind Section 208 is the responsibility of the local government to perform analyses and determine solutions to local problems. The statute gives considerable discretion to the

local governments in the water quality standards to recommend to the State for adoption and how to achieve them. South Carolina has continued using this regional approach to water quality management planning.

Two primary goals were established by the FWPCA: 1) Eliminate the discharge of pollutants into navigable waters by 1985, and 2) attain water quality which provides for the protection and propagation of fish, shellfish, and wildlife, and provides for recreation in and on the water by July 1, 1983. Although these goals were largely achieved, changes in the federal law (1977 and 1987), altered the direction and approach to meeting these goals. In general, the States have greater discretion to achieve both federal and state water quality objectives, allowing each State its own method and structure to reach them. Before the FWPCA, the Central Midlands Region had undertaken several previous studies which formed the foundation of its first 208 Plan.

Prior Local Efforts, 1968 - 1971

Federal Housing Administration Plans, 1968 - 1969

Prior to the enactment of the CWA, the Central Midlands area had undertaken several utility planning efforts. The first effort began in 1968-69 as the Federal Housing Administration (FHA) assisted local governments in planning for future utility infrastructure as housing needs expanded. These plans only addressed the non-urbanized areas as FHA was only concerned with the undeveloped and rural portions of the counties. Four plans were produced to address the water and sewer needs for the region over the next twenty years:

Comprehensive Water and Sewerage Plan - Richland County, 1968;
Comprehensive Water and Sewerage Plan - Lexington County, 1968;
A Comprehensive Water and Sewer Planning Study - Newberry County, 1969;
A Comprehensive Water and Sewer Planning Study - Fairfield County, 1969.

In summary, these plans recommended the following:

1. In Richland County, the City of Columbia should be the primary wastewater provider and expand as needed over time to serve outlying areas with a move toward a combined countywide system. In the interim, Chapin, Irmo and Eastover were to operate oxidation ponds until consolidated with the Columbia system.

2. In Lexington County, only Batesburg, Leesville and Lexington had facilities in the non-urbanized portion and were to upgrade and expand. Irmo and Swansea were recommended to develop more sophisticated systems (other than oxidation ponds) and expand to serve adjacent areas.

3. In Newberry County, the City of Newberry was to serve surrounding development as was the Town of Whitmire. The remainder of the County was to be served by the newly established Newberry County Water & Sewer Authority (1963).

4. In Fairfield County, the Town of Ridgeway was to recondition its facilities and prepare to serve areas outside the Town's limits with other areas using independent systems as needed.

These plans made the counties eligible for FHA funding and raised questions regarding future wastewater and water infrastructure needs. Although because of funding and program requirements, the exclusion of the region's urbanized areas, Columbia, West Columbia, Cayce, Springdale and the municipalities of Newberry and Winnsboro left empty an opportunity to promote any integrated and global strategy for optimizing resources for growth and infrastructure needs.

Housing and Urban Development Plans, 1971

Recognizing the limitations offered in the FHA plans, the Central Midlands Council of Governments undertook a second effort to update and expand the study of utility infrastructure problems. Three documents were produced under this effort:

Water and Sewer Plan for the Winnsboro Area, 1971;
Water and Sewer Plan for the Newberry Area, 1971;
Water and Sewer Plan for the Greater Columbia Area, 1971.

In summary, the plans recommended:

1. The Town of Winnsboro was to serve the town itself and surrounding development;
2. The City of Newberry was to serve itself and surrounding development including the area southwest of the City and Silverstreet. A new treatment plant was recommended at Bush River and Rocky Branch Creek;
3. The City of Columbia become the designated service provider throughout Richland County, excluding the area served by the East Richland County Public

Service District (ERCPD). Lexington, West Columbia and Cayce each were to have their own service areas with additional recommendation that West Columbia contract for wastewater treatment with the City of Columbia. Lexington and Cayce were to have their own treatment capability.

Planning Under The Clean Water Act, 1976 - Present

With the passage of the 1972 law, two programmatic issues arose: 1) completion of the planning requirements for grant-in-aid eligibility and 2) application of grant funding for construction of facilities. To receive funding for construction of new facilities, the region had to prepare a facilities plan that addressed the development of waste treatment plants, but at a minimum, how new facilities and their arrangement would improve the water quality standards in the area.

Columbia Metropolitan Sewerage Facilities Plan, 1976

To accomplish the task, the Columbia Metropolitan Sewerage Facilities Plan, 1976 was crafted. This plan was completed in conformance with Section 201 of the new 1976 Act and sought to describe the arrangement of treatment plants, lines and related infrastructure to serve the metropolitan area for the twenty years. The plan examined alternative waste management techniques for the best practical waste treatment technology over the life of the systems. The plan was prepared with the assistance of citizens, professional staff and consultants. Although later expanded to fully cover all four counties (amended 1980), the study area only addressed the metropolitan or urbanized area and five other municipalities in Lexington, Newberry and Fairfield Counties.

The basic plan recommended the City of Columbia expand its treatment capacity from 20 to 45 MGD; ERPSD expand to 48 MGD; Cayce expand to 7.6 MGD; a new plant for the Cedar Creek area and an interim plant near Lake Murray called Lands End to be later closed with waste transferred to the City of Columbia. The other municipalities (Batesburg, Leesville, Winnsboro, Newberry, Prosperity and Swansea) were to serve areas immediately adjacent as growth required.

The Columbia Metropolitan Areawide Water Quality Management Plan, 1978

While the "201 Facilities Plan" addressed the point source issues, the areawide plan was designed to focus on broad regional water quality matters such as non-point sources, management and implementation issues. Although as a matter of process, the areawide water quality management plan was to be prepared first, the 201 element or "facilities plan" was prepared in 1976 and was folded into the 208 element producing a single, comprehensive water quality management approach for water pollution issues for the region.

Specifically, Section 208 of the 1972 Act addresses the need for continuing areawide water quality management planning by local and state governments to develop and carry out solutions to water pollution problems. Its initial approach was to designate areas that are either urban/industrial complexes, heavily populated, and/or environmentally sensitive. However, a federal court decision ordered that the new law applied to all land and waters in the nation.

The water quality management plan looks at the total environment contributing to the quality of both surface and ground water. Beyond point discharges treated in the 201 Plan are the broadly referred to non-point sources; that is diffuse sources of pollution such as stormwater runoff, sedimentation, septic tank seepage and poor agricultural/chemical practices.

1980 & 1982 Water Quality Management Plan Annual Updates

The principal recommendation outlined in the 1980 update was to expand the planning boundaries to include all four counties in Central Midlands planning region as specified in planning council's state enabling legislation. The 1982 plan update outlined the status of outstanding sewer projects, addressed the issue of septic tank problems and prepared a separate document on administrative policies and procedures.

The Columbia Metropolitan Sewer Facilities Plan 1983/84 Update ("Comprehensive Revision")

The 1983/84 plan was somewhat different from the previous 1976 and 1978 planning effort in two ways. First, it only focused on the metropolitan area instead of the complete four county plan area. At the time the majority of water quality issues did occur with the metropolitan area despite the need to resolve some long-standing issues in Newberry and Fairfield Counties. Another aspect to the planning effort was the

limited amount of planning funding available to undertake a comprehensive revision. This prompted a second major difference from the previous 70's effort. Since the 1976 201 Facilities Plan and 1978 208 Plan, a number of plan changes had occurred affecting facility design and regional management agency participation. Faced with limited funding and the impact of previous changes, CMRPC decided that this comprehensive revision was to be a combined plan; that is it mixed the 201 element with the 208 element. This approach was a positive step which remediated the limitations created from the first plan.

In many respects, the '83/84 Plan revision was a refinement of the 1976 and 1978 plans in that it directly assigned specific geographical areas or "management areas" to certain jurisdictions with responsibility to implement the plan. In general, the plan recommended:

1. Nine management areas which cover the urbanized portion of the metropolitan area.
2. Identified individual projects and their costs to be completed within set timeframes.
3. Established coordination mechanisms for plan implementation and steps for non-point source remediation efforts.

1985 Water Quality Management Plan Annual Update

Following the adoption of 1983/1984 Comprehensive Revision, a 1985 annual update was prepared. It reported on the continuing planning efforts and reviewed the areawide plan by outlining the status of implementation steps taken by individual management agencies.

Since The 1983/84 Comprehensive Revision

Following the 208 Plan's adoption a number of changes occurred which altered the plan from its original blueprint to its current form. Of those changes, three developments have notably affected the provision of wastewater in the region and should be noted for their effects on the previous plan and any future plans.

Federal Perspective

First were changes at the national level. During the mid-1980s, the federal government no longer provided funding for grant-in-aid construction but instead instructed each State to set up a revolving loan fund for local governments to use in the development of their infrastructure. With this action came a reduction in the level of construction efforts by many locals and a subsequent decline in federal priority for 208 planning. Several years later (1987), the federal government acted further to reduce its direct involvement by allowing each State to devise its own programmatic and planning approach for satisfying each state's own needs while fulfilling the overall provisions of the Clean Water Act. It is from this framework that the 1996 Water Quality Management Plan is prepared.

Key Plan Amendments

A second fundamental change, but with a more local focus, was a 1986 plan amendment which designated Richland County as the management agency for the portion of the Wateree River Basin (Five, Twenty-five and Spears Creek Basins), where the plan had previously identified the City of Columbia as the provider. With the amendment was an action by Richland County selecting Wildewood Utilities as a franchise operator for providing service in this area. The net effect of this decision was that a private utility was to become a primary provider of sewer service for the northeast area of the County. Oversight regulation of Wildewood Utilities is performed by the SC Public Service Commission.

Lastly, the provision of service for the 12 & 14 Mile Creek Basin is expected to be fulfilled this year following a twenty year effort to develop a solution. The 12 & 14 Mile Creek basin is located in Lexington County and is the focus of development pressure. It is because of the absence of central sewer that the area remained largely undeveloped but the focal point of much debate and controversy. Initially planned with a treatment facility, Lorick's Ferry, to be built at the convergence of 12 & 14 Mile Creek, the effluent was recommended to discharge into the Saluda River. This alternative, though cost-effective, failed in the face of pressure by local environmental groups.

The alternative's demise created a vacuum for solutions which could fulfill the expectations of the Lower Saluda Corridor Plan, a subsequent planning effort sponsored by the State Water Resources Commission. In 1995, by a combined effort of the Town of Lexington, City of Cayce and the Lexington County Joint Municipal Water and Sewer Commission a solution was agreed upon by which the basin would be sewered by the Town of Lexington and the flow sent to Cayce for treatment. It is expected that this effort will provide the basis for sustained growth for the basin and form the structure for future service provided in the central portion of Lexington County.

In summary, the last remaining elements to the original 208 planning approach will

end or change with this latest update. The updated Water Quality Management Plan will be a policy plan designed to provide a framework for allocation and management decisions on water quality issues. Its policies will be shaped by the changing dynamics of economic conditions and the continuing attention to maintaining the water quality in the Central Midlands Region.

Authority And Jurisdiction

In 1975, the Governor of South Carolina designated CMRPC as the area wide water quality management planning agency for the Columbia Metropolitan and Lake Murray area in accordance with Section 208 of CWA. Section 208 provides guidelines to develop and implement solutions to water quality problems by local and state governments, such as the Department of Health and Environmental Control and the Department of Natural Resources. DHEC, through a memorandum of agreement, has entered into contracts with CMRPC over the years for water quality planning and implementation activities specified as part of the §208 WQMP and their subsequent updates.

Current Issues

Some of the current regional issues discussed in this plan include the following:

1. Groundwater quality - Evident in The 100 Largest Public Water Supplies in South Carolina - 1995, SCDNR, the Central Midlands planning area is fortunate as compared with other parts of the state in that only a small portion of its public drinking water comes from groundwater sources. This means that there is a lesser chance that drinking water supplies will be affected by groundwater contamination and current groundwater sources will be preserved for future use.

2. Individual septic systems - Have the potential for failure if not properly maintained. In the 1990 report, Handling And Disposal of Septage In The Central Midlands Region, CMRPC, it stated that a homeowner typically does not have their system properly maintained until it fails. The study found that 43% of all single family residences and mobile homes in the Central Midlands planning area use septic tank systems.

3. Wetlands protection and enhancement - This natural resource plays an important part in the filtration of sediment and excess nutrients, flood control, species habitat,

recreational opportunities, etc. In South Carolina, 24% of the geographic area of 4.7 million acres is considered wetlands. During the mid-1970s to the mid-1980s, South Carolina lost an estimated 61,000 acres of wetlands.

4. Non-point source (NPS) pollution - NPS pollution poses a significant impact to the water resources of the State. A 1993 Statewide Water Quality Assessment report prepared by SCDHEC found that 13% of the assessed river miles were determined to be only partially supporting or not supporting overall use because of nonpoint source pollution. Recent studies by the EPA (1993) indicate that most of the remaining water quality impairments to the nation's rivers, streams, and lakes result from non-point sources. Non-point sources of water pollution are those that cannot be traced to a specific discharge such as stormwater runoff from agricultural or urban land uses.

Planning Framework

The planning framework is composed of three parts: principles, goals and policies. As will be described in more detail principles provide the framework using mutually accepted assumptions. Goals and policies are a further refinement of these assumptions, specifically outlining approaches and directions for fulfilling the intent of the principles.

Principles

Principles are fundamental assumptions that provide a point of departure for the analysis or discussion of an issue. The following principles are the foundation for a comprehensive water quality management program in the Central Midlands planning area:

1. Good water quality is important to the health, safety and welfare of the citizens of the region.
2. Water quality is vulnerable to incremental and cumulative effects of development.
3. Water resources cannot be managed separately from the land resource; the two are linked.
4. Clean water enhances the overall "livability" of the region and helps to attract economic development.

5. Fewer large point source discharges are better than many small ones; they are more efficient, both financially and managerially.

6. Regional public wastewater systems are preferred over small private systems.

Goals

Goals are the end results of a directed effort. Goals reflect the vision and aspirations that a community has for the future. Goals are achieved when the regional policies are built upon the underlying principles discussed above.

1. To plan and develop a timely, orderly and efficient arrangement of public sewer facilities and services to serve as a framework for urban and rural development in the Central Midlands planning area.

2. To establish regional policies in order to help maintain and improve the quality of water resources of the Central Midlands planning area.

3. To restore, protect, develop, and enhance the natural, scenic, historical, economic, and recreational qualities of lands with critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, shorelands, scenic vistas, and unique natural areas.

4. To promote the efficient management of water and wastewater distribution and collection systems through the elimination or consolidation of discharges and treatment facilities.

Policies

Policies are the building blocks used to construct the water management plan and to reach the plan's goals. Policies provide a common, consistent basis for making decisions. Regional plan policies discussed in Part IV include the use of biosolids; the elimination of discharges; the location, sizing, staging, and level of treatment; the use of population forecasts; the use of septic tanks; stormwater management; Total Maximum Daily Load or "TMDL" allocation; water reuse; maintaining the water supply; and wetlands.

Plan Components

There are two types of water plans – *output* plans and *process* plans. An *output* plan is a technical blueprint, specifying the quantity of water needed, construction schedules for treatment facilities, and financing alternatives for local governments. The *output* plan is inflexible. A *process* type plan defines general policies and goals and sets in motion an ongoing process. A *process* plan has inherent flexibility. It is a plan that can easily accommodate changing conditions.

This update of the WQMP is a departure from previous plans. The earlier plans were *output* type plans - inflexible in their implementation. They were incapable of changing nor did they provide a common, consistent basis for rational decisionmaking. This update of the plan will provide the necessary elements for decisionmakers to provide consistency for water and sewer planning activities.

This document is divided into six sections which include a explanation of the overall water quality framework including a general description of the planning area, institutional designations and responsibilities, administrative procedures, regional policies, basin management and plan implementation.

2. REGIONAL FRAMEWORK

General Description of The Region

Physical Setting & Location

The Central Midlands planning area of South Carolina consists of four counties located near the geographical center of the state; Fairfield, Lexington, Newberry, and Richland. The Columbia urban area is the largest urban complex in the region, and also the largest in South Carolina. The region accounts for about 9% of the State's total area or approximately 1,852,570 acres (749,733 ha.). The surface area for each county is:

<u>County</u>	<u>in Acres</u>	<u>in Hectares</u>
Fairfield	455,323	184,269
Lexington	486,222	196,773
Newberry	415,486	168,147
Richland	495,539	200,544

Source: South Carolina Statistical Abstract - 1993

The region is divided by several major interstate highway corridors: Interstate Routes 20, 26, and 77. Major metropolitan areas within easy driving distance of Columbia include Charlotte, NC (92 miles or 148 kilometers), and Atlanta, GA (215 miles or 346 km).

Topography & Geography

The Central Midlands planning area is located nearly equidistant between the Blue Ridge Mountains and the Atlantic Coast. The region falls within two broad physiographic provinces; the Southern Piedmont, and the Coastal Plain. In the Midlands, the Coastal Plain can be further divided into the Carolina-Georgia Sandhills and the Southern Coastal Plain.

The Southern Piedmont has gently undulating to rolling land surfaces which are dissected by numerous streams, typically with dendritic drainage patterns. The Piedmont terrain in the Midlands has gently to moderately steep slopes. The elevations range from 300 feet (91 meters) above mean sea level (MSL) near the Coastal Plain to 810 feet (247 meters) at the top of Little Mountain in Newberry

County. The uppermost portions of Lexington and Richland Counties and all of Fairfield and Newberry Counties are within the Southern Piedmont area. The remainder of the region, with the exception of the southernmost portion of Richland County, is considered Carolina-Georgia Sandhills. This area is characterized by excessively drained sand with gentle to moderate slopes. The elevations range from approximately 250 to 300 feet (76 to 91 meters) above sea level.

The lowest portion of Richland County is considered Southern Coastal Plain. Elevations normally occur in the 100 to 270 foot range (30 to 82 meters); the lowest occurring in the Congaree Swamp with an elevation of 80 feet (24 meters) above MSL. The topography is gently sloping.

Land Cover & Land Use

In addition to the urbanized areas in each county, the Central Midlands planning area includes a variety of land cover types including several broad forest types - bottomland, evergreen, mixed, and deciduous - nonforested wetlands/marsh, agricultural/ grassland, barren/disturbed and water. Table 1 on page 16 shows the number of acres found in each category. Table 2 shows the number of acres of public lands and its percentage of all land in the Midlands. Examples of public land are Sumter National Forest (Newberry and Fairfield Counties), Congaree Swamp National Monument (Richland County), and Harbison State Forest and Sesquicentennial State Park (Richland County). Fairfield County is the single most heavily forested county in the state; approximately 395,000 acres or 86.7% of the county's area is forested.

Additional information on land uses and land cover can be found in the Columbia Metropolitan Water Quality Management Plan, Technical Report No. 2: Inventories & Projections (Central Midlands Regional Planning Council, Columbia, SC, July 1978).

Basin Descriptions

There are three major river basins which influence water quality management planning in the Central Midlands planning area: Saluda-Edisto, Catawba-Santee, and the Broad.

Saluda-Edisto

The Saluda-Edisto River Basin is actually two separate river basins - they do not connect. The Saluda River "sub-basin" is located in the northwestern part of the state extending southeast to its end at the confluence with the Broad River near Columbia,

thence forming the Congaree River. The drainage basin encompasses portions of 12 South Carolina counties including Newberry, Lexington, and Richland. See page 15 for a general location map. Major tributaries drained by the Saluda include the Little River and the Bush River, both located in Newberry County. Streamflows on the lower portion of the river are modified by two hydroelectric dams, creating Lake Greenwood and Lake Murray.

The Edisto River "sub-basin" is located in south-central South Carolina. The drainage area for the North Fork of the Edisto includes the southwestern portion of Lexington County. Much of the Edisto River sub-basin corresponds with vast wetland areas. Major tributaries to the North Fork include Black Creek and Bull Swamp Creek, located in Lexington County.

Catawba-Santee

At its confluence with Big Wateree Creek in Fairfield County, the Catawba changes in name to the Wateree River. See page 20 for a location map. Tributaries in the Central Midlands planning area drained by the Catawba-Wateree River include Wateree Creek and Dutchman Creek in Fairfield County; and Rice, Twentyfive Mile, and Spears Creeks in Richland County. Streamflows are affected by dams at Fishing Creek Reservoir and Wateree Lake. In addition, formerly the US Natural Resource Conservation Service has completed two flood control projects; one at Fishing Creek in York County, and one at Wateree Creek in Fairfield County. There are several other water development projects occurring outside the Central Midlands planning area.

At the confluence of the Wateree and Congaree Rivers at the southernmost point of Richland County, the Santee River is formed. The Santee River's streamflow has been extensively modified, diverted, and rediverted by the US Army Corps of Engineers.

Broad

The Broad River Basin dominates the central Piedmont section of South Carolina. Sharing a long northern border with North Carolina, the basin tapers in a southeasterly direction and terminates at the confluence with the Saluda River near Columbia to form the Congaree River. See page 21 for a location map. The basin encompasses all or portions of 11 South Carolina counties including portions of all the Central Midlands' counties. The Broad River Basin is also the most populated of all the basins. It encompasses several of the state's larger urbanized areas including Greenville, Spartanburg, and Columbia. Major tributaries to the Broad River include the Pacolet, Tyger, and Enoree Rivers. Some smaller tributaries originating in the Central Midlands planning area include Little River and Cedar Creek, Fairfield County; Indian, Kings, and Cannons Creeks in Newberry County; and Crane Creek in Richland County.

TABLE 1: CENTRAL MIDLANDS PLANNING AREA LAND USE/LAND COVER BY COUNTY (IN ACRES), 1990.

COUNTY	EVERGRN FOREST	DECIDUOUS FOREST	MIXED FORES.	SCRUB/ SHRUB	SATURATED BOTTOMLAND FOREST	NONFORESTED WETLAND/ MARSH	AGRICULTURE/ GRASSLAND	BARREN/ DISTURBED	URBAN BUILT-UP LAND	WATER	COUNTY TOTAL
FAIRFIELD	175,404.0	1,307.0	217,843	13,178.0	346.0	0.0	21,856.0	974.0	7,225.0	17,190.0	455,323.0
LEXINGTON	140,340.0	6,242.0	100,636	31,804.0	9,550.0	0.0	80,272.0	2,017.0	73,284.0	42,077.0	486,222.0
NEWBERRY	42,588.0	2,743.0	245,869	27,264.0	268.0	0.0	70,483.0	625.0	13,790.0	11,857.0	415,486.0
RICHLAND	126,006.0	658.0	174,903	12,608.0	51,215.0	38.0	42,668.0	1,293.0	70,358.0	15,791.0	495,539.0
REGION TOTALS	484,338.0	10,950.0	739,251	84,854.0	61,379.0	38.0	215,279.0	4,909.0	164,657.0	86,915.0	1852570

Source: South Carolina Statistical Abstract, 1993

TABLE 2: STATE AND FEDERAL OWNED LANDS IN THE CENTRAL MIDLANDS PLANNING AREA (IN ACRES), 1986.

COUNTY	ALL LAND (1)	TOTAL PUBLIC LAND	STATE	FEDERAL	% PUBLIC LAND
FAIRFIELD	438,425.0	19,046.0	7,155.0	11,891.0	4.3
LEXINGTON	452,480.0	13,375.0	13,373.0	2.0	3.0
NEWBERRY	405,517.0	63,400.0	8,083.0	55,337.0	15.6
RICHLAND	487,411.0	93,905.0	23,801.0	70,104.0	19.3
REGION TOTALS	1,783,833.0	189,726.0	52,392.0	137,334.0	10.6 %

Two mainstream impediments to streamflow on the Broad is Parr Dam and Reservoir located 26 miles northwest of Columbia and the Columbia Canal.

The Parr Reservoir was constructed in 1914 for hydroelectric production and remains in use today. The 4,400 acre lake also serves the recreational needs of the local population.

Another stream modification occurs at the Columbia Canal. Now inactive, this navigation project was constructed in the early 1800's and used heavily by barge traffic during the mid-1800's. As the railroad gained in popularity, transportation on the canal decreased and it fell into disrepair. In the 1890's, the canal was repaired and a hydroelectric facility was constructed near its southern end. The canal and hydroelectric plant are still in use today. The City of Columbia also uses the canal as a source of municipal water supply.

Table 3: Central Midlands Planning Area - Drainage Basins & Watersheds

Basin Name	Basin #	Sub-Basin Name	Sub-Basin #	Watershed Name	Watershed #	Counties	Classification
Broad	1305	Broad	1106	Broad R. & tribs.	147	Ffld.	FW
				Sandy R. & tribs.	163	Ffld.	FW
				Broad R. & tribs.	196	Ffld., Nwby.	FW
				Lower Broad R. & tribs. (Crane Creek)	130	Ffld., Lex., Nwby Rich.	FW
				Little R. & tribs.	188	Ffld., Rich.	FW
				Jackson Cr. & tribs.	112	Ffld.	FW
				Cedar Cr. & tribs.	125	Ffld., Rich.	FW
				Tyger R. & tribs.	145	Nwby.	FW
				S. Fork Duncan Cr. & tribs.	199	Nwby.	FW
				Lower Enoree R. & tribs.	102	Nwby.	FW
Catawba-Santee	1305	Catawba	1103	Cane Cr. & tribs.	125	Ffld.	FW
				Rocky Cr. & tribs.	165	Ffld.	FW
				Wateree Lk. & tribs.	189	Ffld.	FW
		Wateree	1104	Big Wateree Cr. & tribs.	197	Ffld.	NC
				Wateree R. & tribs.	115	Rich.	FW
				Swaney's Cr. & tribs.	122	Ffld.	NC
				Twenty-five Mile Cr. & tribs.	128	Ffld., Rich.	FW
				Spears Cr. & tribs.	138	Rich.	FW
				Colonels Cr. & tribs.	149	Rich.	NC

Note: Watershed numbers coincide with Watershed Map on page 24.

Table 3: Central and Eastern Planning Area - Drainage Basins & Watersheds (Continued)

Basin Name	Basin #	Sub-Basin Name	Sub-Basin	Watershed Name	Watershed #	Counties	Classification
Saluda-Edisto	0305	Upper Saluda	0109	Saluda R. & tribs. (Lk. Greenwood)	185	Nwby.	FW
				Saluda R. & tribs.	106	Nwby.	FW
				Little R. & tribs.	117	Nwby.	FW
				Lk. Murray tribs.	135	Lex., Nwby.	FW
				Hollow Cr. & tribs.	163	Lex.	FW
				Lower Saluda R. & tribs. (12 & 14 Mile Creeks)	145	Lex.	FW
				Congaree R. & tribs.	164	Lex., Rich.	FW
				Congaree Cr. & tribs.	166	Lex.	FW
				Gills Cr. & tribs.	148	Rich.	FW
				Sandy Run & tribs.	183	Lex.	NC
				Cedar Cr. & tribs.	158	Rich.	FW
				Toms Cr. & tribs.	169	Rich.	FW
				Congaree R. & tribs.	172	Rich.	FW
		Edisto	0203	Upper N. Fork Edisto R. & tribs.	173	Lex.	FW
				N. Fork Edisto R. & tribs.	185	Lex.	FW
				Black Cr. & tribs.	175	Lex.	NC
				N. Fork Edisto R. & tribs.	186	Lex.	FW
				Bull Swamp Cr. & tribs.	187	Lex.	FW

Source: Sintelev Water Quality Assessment, SCDHEC, 1994, and Classified Waters, Regulations 61-69, SCDHEC.

Notes: FW = Freshwater, See Table 4, Page 30; NC = Not Classified; Fld = Fairfield, Lex = Lexington, Nwby = Newberry, Rich = Richland.

Water Resources: Opportunities & Constraints

The State of South Carolina has been blessed with an abundance of water resources. History shows that water has seldom been a limiting factor in the development of the state's economy. The state's population, however, is growing more rapidly and becoming more concentrated; this places an increasing burden on water supplies as suggested by Figure 1. An increase in the state's economic base suggests that an adequate supply of usable water at the right time and in the right place cannot be taken for granted.

Opportunities for utilizing the water resources of the Midlands Region are numerous due to the many rivers, lakes, and streams. Most municipalities' public drinking water comes from surface waters of the state. Recreational opportunities include the Lower Saluda River (canoeing and kayaking), and Lake Murray (boating, swimming, and fishing). The Congaree River and Riverfront Park offers the Midland's residents a land/water corridor ("riparian zone") for biking, picnicking, wildlife habitat, fishing, viewing nature, and other scenic and aesthetic amenities. Land use planning by the SC Department of Natural Resources has been implemented in the Lower Saluda River corridor in order to protect the natural characteristics of this river segment that is considered unique to many. The Congaree Vista (Riverfront) Project and the efforts of *The River Alliance* is another example of local planning in order to create an harmonious blend of natural resources conservation and development of the riparian land along the Congaree River.

Clearly, a community can reap economic and social benefits if its water resources are properly managed. On the other hand, water resources can become a liability if neglected or if a community permits a conflicting land use adjacent to a water body.

Surface water also offers man a method of disposing of treated waste effluent through its assimilative capacity-- its ability to dilute such waste to a point where it is no longer a threat to human health. Exceeding that capacity means that greater controls over land uses and pollutant dischargers may be necessary; leading to greater costs.

Public Water Systems

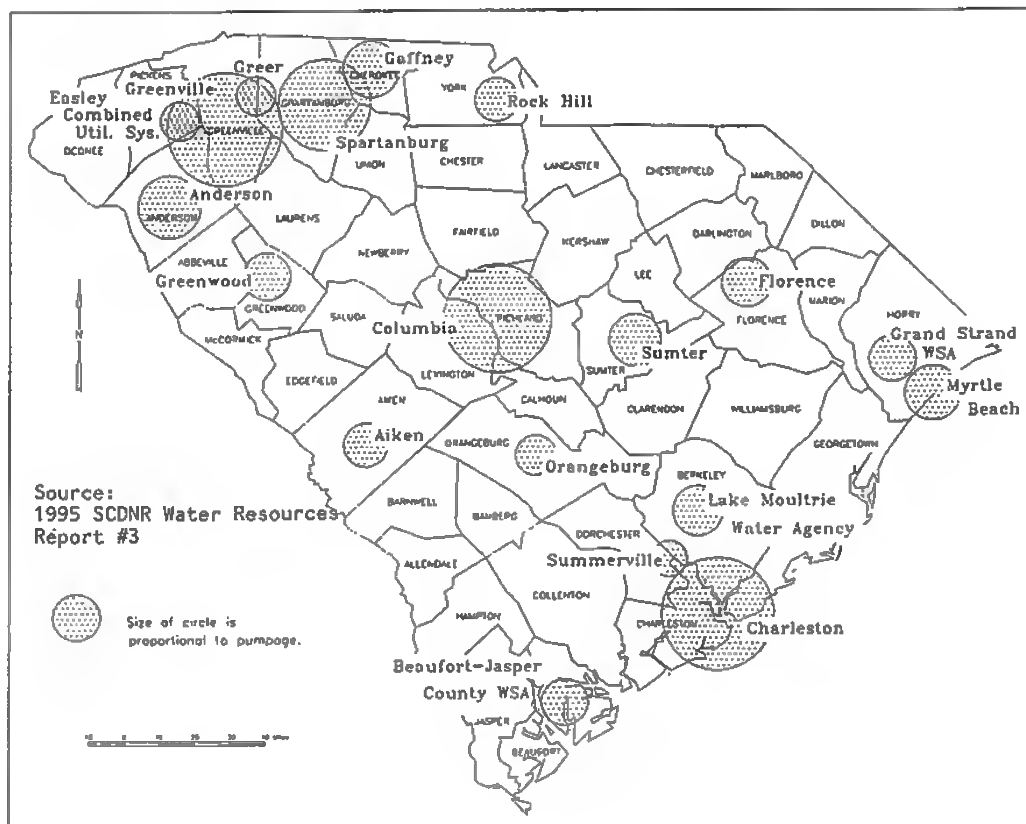
The following charts show water use by the 9 largest water systems in the region. The information was obtained from the 1995 SCDNR Water Resources Report #3. Most of the items are self-explanatory, but a few may need clarification. The term "population served" refers to the total population that obtains water from the system, plus any smaller systems which purchase water from the named system. Thus, the population shown under a town name may appear much larger than the town's actual size. In connection with this, it is important to note whether a water system produces its own water supply or purchases it from another system.

Under "Treatment", several code letters identify the types of treatment used. They are:

- B - Disinfection by-products control
- C - Corrosion control
- D - Disinfection
- F - Iron removal
- I - Inorganic removal
- N - No treatment at source
- P - Particulate removal
- S - Softening
- T - Taste/odor control
- Z - Fluoridation

The storage capacity listed includes elevated (EL), ground (GR), and pressure tank (PT); storage capacity is in millions of gallons.

Figure 1: Statewide System Demand For Public Water - 1996



State Rank in Size:3

CITY OF COLUMBIA
(Richland County)

Source of Supply:	Broad River (Columbia Canal) and Lake Murray		
Average Pumpage:	47 mgd	Population Served:	255,277
Plant Capacity:	90 mgd		
Treatment:	C,D,P,Z	Storage Capacity:	13.50 EL
		(million gallons)	19.30 GR
			00.00 PT
Per Capita Use:	184 gpd		
Remarks:	3 mgd sold to Fort Jackson.		

State Rank in Size:20

CITY OF WEST COLUMBIA
(Lexington County)

Source of Supply:	Saluda River and Lake Murray		
Average Pumpage:	4.9 mgd	Population Served:	38,507
Plant Capacity:	12 mgd		
Treatment:	C,D,P,T,Z	Storage Capacity:	6.00 EL
		(million gallons)	3.37 GR
			0.00 PT
Per Capita Use:	126 gpd		
Remarks:	About .5 mgd sold to smaller systems.		

State Rank in Size:26

CITY OF NEWBERRY
(Newberry County)

Source of Supply:	Saluda River		
Average Pumpage:	3.5 mgd	Population Served:	18,642
Plant Capacity:	7.92 mgd		
Treatment:	C,D,P,T	Storage Capacity:	1.50 EL
		(million gallons)	2.50 GR
			0.00 PT
Per Capita Use:	187 gpd		
Remarks:	About .5 mgd sold to smaller systems.		

State Rank in Size:28

CITY OF CAYCE
(Lexington County)

Source of Supply:	Congaree Creek	Population Served:	22,850
Average Pumpage:	3.2 mgd		
Plant Capacity:	6.4 mgd		
Treatment:	C,D,P,Z	Storage Capacity:	4.22 EL
		(million gallons)	1.50 GR
			0.00 PT

Per Capita Use: 140 gpd

Remarks:

State Rank in Size:30

FORT JACKSON (US ARMY)
(Richland County)

Source of Supply:	Purchased from Columbia	Population Served:	19,804
Average Pumpage:	3.0 mgd		
Plant Capacity:	6.55 mgd		
Treatment:	By Columbia	Storage Capacity:	2.00 EL
		(million gallons)	0.00 GR
			0.00 PT

Per Capita Use: 153 gpd

Remarks:

State Rank in Size:71

TOWN OF LEXINGTON
(Lexington County)

Source of Supply:	Twelve Mile Creek	Population Served:	19,804
Average Pumpage:	3.0 mgd		
Plant Capacity:	6.55 mgd		
Treatment:	C,D,P,T,Z	Storage Capacity:	0.55 EL
		(million gallons)	0.75 GR
			0.00 PT

Per Capita Use: 237 gpd

Remarks:

State Rank in Size:84

TOWN OF WINNSBORO
(Fairfield County)

Source of Supply:	192-Acre Lake and Sand Creek		
Average Pumpage:	1.2 mgd	Population Served:	10,331
Plant Capacity:	3.1 mgd		
Treatment:	B,C,D,P,Z	Storage Capacity:	1.22 EL
		(million gallons)	1.31 GR
			0.00 PT
Per Capita Use:	116 gpd		
Remarks:	About .25 mgd sold to smaller systems.		

State Rank in Size:89

BATESBURG-LEESVILLE
(Lexington County)

Source of Supply:	Lightwood Knot and Duncan Creeks		
Average Pumpage:	1.1 mgd	Population Served:	7,948
Plant Capacity:	2.1 mgd		
Treatment:	C,D,F,P,T,Z	Storage Capacity:	0.35 EL
		(million gallons)	1.00 GR
			0.00 PT
Per Capita Use:	138 gpd		
Remarks:	About 125,000 gpd sold to Ridge Spring.		

State Rank in Size:99

NEWBERRY COUNTY WATER & SEWER AUTHORITY
(Newberry County)

Source of Supply:	Purchased from Newberry; and eight wells in Paleozoic rock		
Average Pumpage:	0.9 mgd	Population Served:	7,619
Plant Capacity:	2.04 mgd		
Treatment:	D	Storage Capacity:	1.10 EL
		(million gallons)	2.00 GR
			0.00 PT
Per Capita Use:	120 gpd		
Remarks:			

Water Quality Assessment And Segment Classification

In an effort to evaluate the State's water quality, the Department of Health and Environmental Quality Control operates a permanent statewide network of primary ambient monitoring stations and flexible, rotating secondary and watershed monitoring stations. The ambient monitoring network is directed towards determining long-term water quality trends, identifying locations in need of additional monitoring efforts, and providing background data for planning and evaluating stream classifications and standards.

The monitoring data are also used in the process of formulating permit limits for wastewater discharges with the goal of maintaining State and Federal water quality standards and criteria in the receiving streams. These standards and criteria define the instream parameter concentrations which provide for protection and reproduction of aquatic flora and fauna, support the use classification of each waterbody, and serve as instream limits for the regulation of wastewater discharges or other activities. In addition, the data are used in the preparation of the biennial §305(b) report to Congress, which summarizes State waters with respect to use classification attainment by comparing the ambient monitoring network data to the State Water Quality Standards.

There are three classes of freshwaters identified by South Carolina regulations under "Water Classifications and Standards". Each classification consists of two parts: classified uses which must be protected, and water quality standards stringent enough to protect these uses. A description of these classes can be found in Table 4 on the following page.

In general, the quality of surface water resources (rivers & streams) in the Central Midlands planning area is mixed. Only 47% of the total river and stream miles assessed fully support overall use, including aquatic life use, recreational use, drinking water supply, and agricultural use. Table 5 lists the major watersheds within the Central Midlands planning area and the number of miles of full-support, partial-support, or non-support of overall use. The number of miles that either partially support or do not support overall use represents 53% of the total miles surveyed with an additional 1,088 miles that have not been assessed. Table 5 also lists the probable causes and sources of those segments with partial- or non-support. Several exceptional stream segments should be noted because the entire lengths fully support overall uses: Toms Creek in lower Richland County; and Black Creek in Lexington County.

Table 4: Freshwater Classifications

Class		Description
1. Outstanding Resource Water	ORW	Freshwaters or saltwaters which constitute an outstanding recreational or ecological resource or those freshwaters suitable as a source for drinking water supply purposes with treatment levels specified by the Department.
2a. Trout - Natural	TN	Freshwaters suitable for supporting reproducing trout populations and a cold water balanced indigenous aquatic community of fauna and flora. Suitable also for uses listed in Freshwaters.
2b. Trout - Put, Grow, & Take	TPGT	Freshwaters suitable for supporting growth of stocked trout populations and a balanced indigenous aquatic community of fauna and flora. Suitable also for uses listed in Freshwaters.
3. Freshwaters	FW	Freshwaters suitable for primary and secondary contact recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of the Department. Suitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora. Suitable also for industrial and agricultural uses.

Source: Water Classifications and Standards, SC DHEC, 1993.

Table 5: Riverine Summary Data - Use Support Levels in Miles

Watershed Name	Watershed #	Full Support	Partial Support	Non-Support	Not Assessed	Cause	Source
Broad R. & tribs.	047	14.29	0.02	57.08	0.0	Pathogens	Industrial point sources
Sandy R. & tribs.	063	7.4	0.0	119.43	0.0	Pathogens	NPS-runoff
Broad R. & tribs.	096	65.96	5.46	0	125.83	Pathogens	Industrial point sources
Lower Broad R. & tribs. (Crane Creek)	130	0.0	101.23	52.69	40.11	Pathogens	Industrial point sources
Little R. & tribs.	088	0.0	17.69	112.62	0.0	Pathogens	Agricultural NPS
Jackson Cr. & tribs.	112	0.0	0.0	48.05	0.0	Pathogens	Agricultural NPS
Cedar Cr. & tribs.	125	0.0	109.41	0.0	0.0	Pathogens	Industrial point sources
Tyger R. & tribs.	045	36.79	0.0	119.42	6.92	Pathogens	Industrial point sources
S. Fork Duncan Cr. & tribs	099	0.0	0.0	21.42	0.41	Pathogens	Municipal point sources
Lower Enoree R. & tribs.	102	0.0	0.0	117.98	2.85	Pathogens	Industrial point sources
Cane Cr. & tribs.	025	0.0	0.0	248.76	7.66	Pathogens & excess nutrients	Run-off
Rocky Cr. & tribs.	065	0.0	0.0	139.13	31.51	Pathogens	NPS
Wateree Lk. & tribs.	089	17.06	0.0	0.0	376.14		
Big Wateree Cr. & tribs.	097	1.94	0.0	0.0	60.95		
Wateree R. & tribs.	115	538.98	0.0	71.05	0.0	Nutrients	NPS
Swaney's Cr. & tribs.	122	30.03	0.0	77.41	0.0	Pathogens	NPS-pasture
Twenty-five Mile Cr. & tribs	128	17.03	228.13	3.5	0.0	Pathogens	NPS-urban
Spears Cr. & tribs.	138	71.42	29.16	28.7	0.0	Pathogens	Industrial point sources
Colonels Cr. & tribs.	149	91.18	0.02	0.0	0.0	Pathogens	Industrial point sources

Table 5: Riverine Summary Data - Use Support Levels in Miles (Continued)

Watershed Name	Watershed #	Full Support	Partial Support	Non-Support	Not Assessed	Cause	Source
Saluda R. & tribs. (Lk. Greenwood)	085	110.83	0.96	0.0	183.01	Nutrients	NPS-runoff
Saluda R. & tribs.	106	29.89	37.06	80.98	92.57	Pathogens	Municipal point sources
Little R. & tribs.	117	62.19	0.0	20.37	0.0	Pathogens	Pasture land runoff
Lk. Murray tribs.	135	0.0	0.0	8.71	73.91	Pathogens	Pasture land runoff
Hollow Cr. & tribs.	163	0.08	0.0	17.75	1.36	Pathogens	Source unknown
Lower Saluda R. & tribs. (12 & 14 Mile Creeks)	145	0.0	91.12	16.43	0.31	Pathogens & metals	Municipal point sources
Congaree R. & tribs.	164	246.36	9.04	4.71	4.4	Pathogens & turbidity	Municipal point sources
Congaree Cr. & tribs.	166	38.26	119.12	0.0	0.0	Pathogens, metals, & turbidity	Construction
Gills Cr. & tribs.	148	27.84	0.67	23.67	63.64	Organics & pathogens	Contaminated sediments & urban runoff
Sandy Run & tribs.	183	52.19	0.0	0.0	2.33		
Cedar Cr. & tribs.	158	145.26	38.91	0.0	0.0	Pathogens	Municipal point sources
Toms Cr. & tribs.	169	69.34	0.0	0.0	0.0		
Congaree R. & tribs.	172	84.93	0.0	0.0	12.78		
Upper N. Fork Edisto R. & tribs.	173	64.29	0.0	33.92	0.0	Pathogens	Agricultural NPS
N. Fork Edisto R. & tribs.	185	32.18	0.0	100.76	0.0	Metals	Source unknown
Black Cr. & tribs.	175	80.41	0.0	0.0	0.0		
N. Fork Edisto R. & tribs.	186	99.37	0.0	85.03	0.0	Metals	Source unknown
Bull Swamp Cr. & tribs.	187	83.71	0.0	19.23	1.93	Pathogens & Turbidity	Municipal point sources

Source: Satewide Water Quality Assessment, FY 1992-1993. A Report to Congress Pursuant to Section 305(b) of the Federal Water Quality Act, SCDHEC, Columbia, SC, 1994.

Table 6: Uses and Use Classifications.

Uses	Use Classifications
Fish and Wildlife	All classes
Domestic Water Supply	All Freshwater classes
Primary Contact Recreation	All classes
Secondary Contact Recreation	All classes
Agriculture	All Freshwater classes
Industrial	All Freshwater classes
Navigation	All classes
No degradation of existing uses	All classes
No degradation of natural conditions	Outstanding Resource Waters

Source: Statewide Water Quality Assessment, SC DHEC, 1994.

Environmental Issues

An important theme of this plan is the balance between economic development and natural resources preservation. Natural resource preservation should not be construed as anti-development, nor should the term imply pro-environment. It suggests compatibility between the two which provides overall benefits to the well-being of citizens and their communities including social, economic, cultural, and environmental. This principle does not require total mitigation of adverse environmental impacts from development, since any construction would have an impact on the environment. Instead, it suggests that developers be sensitive to the natural environment and either avoid, remedy, or mitigate impacts when feasible. For every development project, there is an opportunity to improve or conserve natural resources.

Information from a resources inventory, such as the one found in the Columbia Metropolitan Water Quality Management Plan (1978) should be utilized to evaluate growth and development in the Midlands Region such as floodplains, critical wildlife habitat, high soil erosion potential, historical landmarks, wetlands, etc.

Development Trends

From 1980 to 1990, the region's population grew by 10.1% from 462,030 to 508,798. Gains since then have been equally impressive. In terms of job creation, the region has also enjoyed growth. From 1980 to 1996, non-farm employment rose by 96,770 or 49% to a regionwide total of 293,220 persons. Driving the increase in population is the economic strength of the urbanized core. Employment in commercial trade and service, government and industry provide the basis for an expanding labor force. To meet this demand, housing construction has consistently risen as a whole in response.

Today, several key areas are engine for continued residential and commercial development: Town of Lexington, Northwest Richland County, Northeast Richland County, South of the Town of Winnsboro and along SC Hwy 76 near the City of Newberry. In each location, the provision of water and sewer coupled with an expanding commercial base has provided growing strength to the region's economy. As noted residential developed has expanded to meet the pressures of demand particularly in Lexington and Richland Counties. Table 8 highlights these trends in housing.

It is forecasted that residential development will continue to expand significantly in Lexington County as regional water and sewer enable higher density development to occur. Richland County is also expected to follow in residential growth with Newberry and Fairfield Counties with lesser gains. Demand for commercial development is also expected to trend residential patterns and expand in all four counties, particularly in the metropolitan area as it gains in strength as the growth center for the central portion of the State.

Demographics

Tables 7 & 8 illustrate the population and housing trends in the Central Midlands planning area. As shown, the largest portion of the population is found in Lexington and Richland Counties; these two counties account for nearly 90% of the region's total population. Long term projections show moderate growth for the region. Most of the population in Fairfield and Newberry Counties is centered around Winnsboro and the City of Newberry, respectively. Residents of these towns and the counties are, however, dependent upon Columbia and its urbanized area for more specialized consumer and medical services.

Table 7: Population Trends By County, 1980-2010, Source: CMRPC 1996.

County	1980	% change	1990	% change	2000	2010
Fairfield	20,700	+ 7.7%	22,295	+ 2.7%	22,900	23,500
Lexington	140,353	+ 19.0 %	167,611	+23.0 %	201,300	232,700
Newberry	31,242	+ 6.2 %	33,172	+ 4.6 %	34,700	36,200
Richland	269,735	+ 6.0 %	285,720	+ 13.0 %	312,600	337,100
Total Population (All Counties)	462,030	+ 10.1 %	508,798	+ 15.5 %	571,500	629,500

Table 8: New Construction By County, 1992-1995, Source: CMRPC 1996.

County	Type	1992	1993	1994	1995
Fairfield	Total Housing units	66	68	51	51
	Single family	66	68	51	49
	Multi-family	0	0	0	2
	Nonresidential	29	29	45	74
Lexington	Total Housing units	1,463	1,746	1,872	1,586
	Single family	1,463	1,524	1,434	1,158
	Multi-family	10	222	438	428
	Nonresidential	312	309	443	359
Newberry	Total Housing units	102	93	164	85
	Single family	98	93	116	85
	Multi-family	4	0	48	0
	Nonresidential	33	25	34	40
Richland	Total Housing units	1,710	2,221	1,902	2,179
	Single family	1,395	1,374	1,509	1,750
	Multi-family	315	847	393	429
	Nonresidential	615	919	797	839
Region Total	Total Housing units	3,341	4,128	3,989	3,901
	Single family	3,012	3,059	3,110	3,042
	Multi-family	329	1,069	879	859
	Nonresidential	989	1,282	1,319	1,312

Institutional Designations And Responsibilities

General

The institutional relationship between areawide planning and designated management agencies is designed to provide several benefits:

1. Areawide water quality management planning ensures an effective regional water quality management system is maintained. Since planning considers both point and nonpoint sources, local governments can consider the effects of both sources upon their water resource systems;

2. Individual facility permits and plans deal with construction, operation, and maintenance of collection, transport and treatment and places the responsibility for developing a cost effective local wastewater management system on local governments within limits of the regional areawide plan;

3. Assurance that similar activities in adjacent areas are compatible and that it should not be adversely impacted by activities in upstream areas; and

4. Promotes the orderly development of wastewater infrastructure for projected demands and fostering economic development.

The areawide planning process takes a broad perspective related to facility needs, scheduling, treatment levels and setting priorities for needed facilities. Management agencies, in addition to being responsible for implementing the regional plan, determine the need for and specific characteristics of wastewater treatment processes and the details of implementation with the framework of the regional plan.

Designated Water Quality Management Planning Agency

As the designated planning agency, CMCOG is responsible for updating and amending the Areawide Water Quality Management Plan for the four county region. This responsibility includes, and has been limited to, since 1985 recommending needed sewer collection, transport and treatment systems. As part of the planning process, CMCOG signed a Memorandum of Agreement with the SC Department of Health and Environmental Control (DHEC) in 1985. Under this Agreement, CMCOG is responsible for reviewing all sewer projects proposed for construction in the region. This includes collector systems for residential, commercial, or industrial development;

transport or "trunk" lines; and all wastewater treatment systems, including land application.

It is noted in the agreement that CMCOG will specifically:

1. review permits and projects for conformance with the plan;
2. coordinate administrative requirements for amending the plan;
3. coordinate other state agency's certifications of permits;
4. monitor and assess wastewater projects;
5. work with designated management agencies on implementing the plan;
6. revise and update as required the Water Quality Management Plan

Environmental Planning Advisory Committee

The Environmental Planning Advisory Committee (EPAC) is a successor to a former 300 member citizens advisory group which prepared the first water quality plan. The Committee is established by the CMCOG Board and acts in an advisory capacity only. It is composed of 22 voting members, generally representing the principal management agencies, environmental interests and local area citizen groups. The Chairman and Vice-Chairman are appointed by the Chairman of the CMCOG Board.

It is the purpose of the Committee to provide technical support to the Board on water quality issues and their impact on the Areawide Water Quality Management Plan. Issues or items are sent to the Committee by staff or the CMCOG Board as needed for implementing the regional plan. The committee is authorized to undertake needed studies, create working groups and conduct public forums to prepare its recommendations to the Board. Upon completion of its findings, the Committee prepares and submits a recommendation to the CMCOG, which acts and submits its findings to DHEC.

Management Agencies

Eligibility and Authority

The role of the Management Agency is to implement the Regional Water Quality Management Plan for its designated management area. To become a Management Agency, the agency must be certified or "designated" by the State. In South Carolina, management agencies have been determined by the Attorney General's Office to be limited to municipalities, counties or special purpose districts. Eligibility for management agency status is set out in the Clean Water Act (§ 208(c)) and outlined as follows:

1. The authority to carry out the appropriate portions of the Regional Water Quality Management Plan developed under the Act.

2. The authority to effectively manage wastewater treatment works and related facilities serving the area in conformance with the regional plan;

3. The authority, directly or by contract, to design and construct new works and to operate and maintain new and existing works as required by the regional plan.

4. The authority to accept and utilize grants and funds from other sources for wastewater treatment management purposes. Management agencies, after designation, are the only agencies authorized to receive federal funds, though other agencies may receive funds through designated agencies.

5. The authority to raise revenues, including the assessment of wastewater treatment charges.

6. The authority to incur short- and long-term indebtedness.

7. The authority to assure, in implementation of the wastewater treatment management plan, that each participating community pays its proportionate share of treatment costs.

8. The authority to refuse wastewater for treatment from any municipal or subdivision thereof which does not comply with any provision of the Regional Water Quality Management Plan.

9. The authority to accept industrial wastewater for treatment and manage pretreatment programs.

Management Agencies By Watershed

Provided below is a list of designated management agencies by watershed and county.

Saluda-Edisto Watershed

City of Newberry	Newberry County W & S A	Town of Chapin
Richland County	Town of Batesburg-Leesville	Town of Lexington
City of Cayce	City of West Columbia	City of Columbia
Town of Swansea	East Richland PSD	Town of Eastover
Lexington County	Lexington County JMW & SC	Town of Springdale

Broad River Watershed

Town of Whitmire	Newberry County W & S A	City of Newberry
Town of Winnsboro	Richland County	City of Columbia
East Richland PSD	Fairfield County	

Catawba-Santee Watershed

Town of Winnsboro	Fairfield County	Town of Ridgeway
Richland County		

3. ADMINISTRATIVE PROCEDURES

Public Participation

Public participation in water quality planning activities is encouraged under 40 CFR Part 25 - Public Participation in Programs under the Clean Water Act. Public participation may include public notification, public consultation, public hearings, public meetings, or advisory groups. Part 25 does not mandate the use of these public participation mechanisms; rather it sets requirements for implementing the mechanisms. Under the Freedom of Information Act (Title 30 SCC § 1-10, et seq), meetings of public agencies must be conducted in a public forum and given advance notice of the time and place such meetings will occur. Public hearings and meetings of the CMCOG Board and the Environmental Planning Advisory Committee are open to the public.

Several paths are used to secure public participation for the plan's preparation: 1) organized interests participation through the advisory planning committee, 2) input from the membership of the CMCOG Board, comprising of local elected officials and citizen appointees, 3) solicited comments from area planning commissions and economic development agencies and 4) public meetings.

Plan Amendments

In the event that a proposal or project is determined to be inconsistent with the WQMP, an application may be made to CMCOG to amend the Plan. Amendments are classified as either major or minor. CMCOG shall determine whether a request is either a major or minor amendment. *All amendments must be sponsored by a Designated Management Agency or the CMCOG Board.*

Major Plan Amendments

Major amendments are defined as the following:

1. New wastewater treatment facilities with a design flow of *1.0 MGD, or >*:
2. Existing WWTFs, which will be expanded by at least 50% of the current design capacity with respect to flow;

3. Changes in management agency status, condition or geographic management area such that the change significantly alters the provision of wastewater collection, transportation, treatment or potentially impairs water quality.

4. Proposed projects which conflict with the goals and objectives of the WQMP, such as those listed below, or specifically stated plan policies would require a plan amendment.

The consolidation of small, privately owned WWTFs into larger regional WWTFs, owned and operated by designated 208 Management Agencies; or

When consolidation is not feasible, not to allow privately owned WWTFs to be expanded above the present permitted levels, unless they are operated and maintained by the designated 208 Management Agency for that planning area; or

Requiring central sewer to be used wherever possible, to provide an acceptable method of wastewater treatment and effluent disposal for projected residential, commercial, or industrial growth areas.

Minor Plan Amendments

Minor amendments are defined as the following:

1. A new wastewater treatment facility with a design flow *less than* 1.0 MGD;
2. An existing WWTF which would be expanded by less than 50% of the current design capacity with respect to flow;
3. Changes in management agency status, condition or geographic management area such that the change does not significantly alter the provision of wastewater collection, transportation, treatment or potentially impairs water quality.
4. A proposed change in the current effluent disposal method, discharge point, or service area for an existing WWTF, that would be consistent with goals and objectives of the WQMP.

Review Criteria

A review of the proposal will take into account all relevant information including, but not limited to, the following: cost effectiveness, ability to implement, impact on existing and proposed facilities, existing agreements or contracts, public health, environmental, compatibility with local or state adopted land use or infrastructure plans and economic development. While each criteria is to be considered, its relative weight will be based upon the merits of the each proposed amendment.

Procedural Requirements

Process

Once a determination has been made that a plan amendment is required, the applicant shall request in writing to initiate the amendment process. The applicant will also be responsible for all initial submission requirements and any additional information or studies requested during the amendment process by the EPAC or CMCOG. Unless otherwise directed by the Chairman of EPAC with concurrence from the Chairman of CMCOG Board, the Environmental Planning Advisory Committee will review all **proposed major amendments** and submit recommendations to the CMRPC Board for final action. **Proposed minor amendments** may be brought before EPAC at the request of the Chairman before going to the Board. The applicant should be present during the EPAC or Board meetings to discuss or present the amendment and respond to questions. Recommendations from EPAC to the CMCOG are to be one the following:

1. Approval;
2. Approval with Conditions;
3. Denial -- In cases of denial, the applicant may choose to revise their application to conform with the plan.

After the public information meeting, if one is held, all proposed amendments will be placed on the agenda of the Central Midlands Council Board. The EPAC Chairman, assisted by staff, will present the proposed amendment, recommendation of EPAC, and a summary of public comments. The applicant and other parties may be invited to attend the meeting, and may address the issue at the discretion of the Council. Action by the Central Midlands Council of Governments will take one of the following forms:

1. Approval;
2. Approval with Conditions;
3. Denial; or
4. Referred back to EPAC for further study.

DHEC and EPA, where required, must approve all amendments before they become part of the Regional Water Quality Management Plan.

Grievances

Decisions of the Board of the Central Midlands Council of Governments are considered final and are given to the SC Department of Health & Environmental Control for concurrence.

Notice and Public Meeting Requirements

An advertised public information meeting may be held for **any plan amendment** as determined by CMCOG, and will be scheduled following an EPAC recommendation, where required. The meeting may be held in the applicant's jurisdiction or at the offices of the Council. The meeting will be scheduled for a weekday evening and held in a handicapped accessible public building.

Public notice for such meetings will be advertisement published in the newspaper of general circulation in the region at least fifteen (15) days prior to the meeting. The applicant will provide a review copy of the proposal to the Council. The proposal and supporting documentation will be made available for public review during normal business hours. The advertisement will state where these copies are available.

The public information meeting will be conducted by the Chairman of EPAC or his designee and staff of the Council. The applicant should attend the public meeting to assist in responding to questions concerning the proposed amendment. Verbal and written comments will be received at the meeting. Additional written comments may be submitted up to seven (7) days following the public meeting or prior to the next regularly scheduled Council Board meeting.

Plan Amendment Submission Requirements

At a minimum, before an application can receive consideration by CMCOG, the applicant may be required to provide information which, at a minimum where it applies, addresses the following:

1. Detailed description and scope of the project;
2. Preliminary engineering data regarding facility design and cost;
3. Financing strategy and/or feasibility analysis;
4. Potential fiscal or engineering impact on existing facilities, if any;
5. Associated environmental risks or impacts;
6. Project justification or need;
7. Summary examination of alternative options, where appropriate; and
8. Timing and phasing of the project or proposal.

Moreover, the burden of demonstrating the facts and merits of any plan amendment lies solely with applicant and is subject to whatever level of review issued by the CMCOG staff, EPAC or CMCOG Board.

Comprehensive Plan Revisions & Annual Plan Updates

For purposes of distinguishing future changes to the Plan, it is recommended that the Council undertake a comprehensive revision of the Plan every 10 years or when there has been a substantial and fundamental change in conditions in the 208 plan area. Under a comprehensive revision, all aspects of the plan are to revisited for validity and appropriateness. It is required that the CMCOG Board adopt the Plan and that public input has been taken as part of the revision process.

Annual plan updates are to be conducted at the end of each federal fiscal year. As part of the annual update, a summary of all significant changes in the plan will be identified, including a list of all major and minor plan amendments, significant or major shifts in the demographic or geographic characteristics of the region and modifications in the legal framework of the water quality planning process or state regulatory environment.

Conformance Reviews

Before DHEC can issue or re-issue a permit to construct or operate a wastewater treatment facility or related facilities in the 208 planning region, conformance with the Water Quality Management Plan must be determined.

DHEC, engineering consultants, or developers may submit the 208 conformance request form for review and concurrence. Upon receipt of the form, CMCOG staff reviews the information such as location of the project, disposal method, and any recommendations from the current 208 Plan.

Approval is generally granted to projects where it conforms to the plan goals and policies, consistent with the service strategy of the designated management agency and complies with state environmental regulations. Even if a project is not specifically supported by the current 208 Plan, the project may, if appropriate, be approved conditionally with the objective that compliance with the WQMP would follow in a timely manner. If the project is found not to be in conformance with the WQM Plan, the Plan must be amended.

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4. REGIONAL POLICIES

General

Certain planning functions and water quality issues require a policy statement to provide a common, consistent basis for making decisions. Roles, functions and regulations have changed since 1985 which require that the WQMP respond to new directions in water quality planning. The WQMP should not be viewed as a static, all-encompassing statement but rather, a flexible document which provides policy direction and summarizes special studies. As a general foundation, the WQMP contains 10 policy directions ranging from land application of biosolids to wetlands which, in conjunction with the objectives of the WQMP, provide direction on water quality planning and issues. Most of the policies include an implementation procedure as part of the policy and framework discussion.

Biosolids And Septage Collection & Disposal

Issue

The US Environmental Protection Agency (EPA) has done extensive research on the land application of municipal sewage sludge (biosolids). Studies have shown that biosolids are low in pollutants, high in nutrients and organic matter, and highly suitable for recycling on agricultural and non-agricultural land. Where biosolids have been applied in accordance with regulations, problems that have occurred are rare and are generally related to inadequate field management and not biosolids quality. To be acceptable for agricultural use, sewage sludge must receive treatment to eliminate or greatly reduce pathogens and odors. The final use or disposal of wastewater sludge, or biosolids, is regulated under 40 CFR Part 503 at the Federal level, and the South Carolina Pollution Control Act (§ 48-1-10 et seq. S.C.C.A.), and State regulation R61-9.

Policy

The use of biosolids and septage in land application should be supported. Well-managed practices such as land application as a soil amendment or fertilizer supplement benefit the land by supplying nutrients to crop lands and disposing of a waste product in a safe manner. Regulation of biosolids disposal for land application or other beneficial uses should continue to be done at the state level by the DHEC. Disposal through landfilling or composting is acceptable as a secondary alternative, where it is economically more acceptable.

Elimination of Discharges & Consolidation of Facilities

Issue

Consolidation of wastewater treatment and/or discharge facilities is encouraged by the State and Section 208 of the CWA, where appropriate. There are dozens of small, privately owned WWTFs that utilize a lagoon or a wastewater pond. The WQMP may identify opportunities for facility consolidation. Generally, publicly owned larger treatment facilities can provide service more effectively while providing a higher degree of treatment than can be achieved through smaller facilities. Further, the consolidation of facilities may help to eliminate smaller facilities which may not be financially capable of operating properly or may be in violation of their discharge permits.

Policy

Small, public or private domestic wastewater treatment facilities are considered temporary facilities. When a regional wastewater collection system, public or private, becomes available, these facilities will be required to connect to that system.

Location, Sizing, Staging, And Level of Treatment

Issue

In determining wastewater needs, the primary goal is to provide reasonable, feasible and economical wastewater service to any particular area. Consideration is given to the impact the treatment system will have on receiving waters, the ability to meet water quality standards and the impact a discharger may have on downstream dischargers. The need for a treatment system is based on growth and development which has been approved by local governments and is consistent with CMCOG's adopted regional water quality management plan goals.

Policy

Location - Any proposed new or expanded facilities are to be reviewed for conformance with the Plan, such that:

1. the proposed location will have no adverse effects on water quality, public health, welfare or safety;
2. the proposed facility is developed considering any local long-range comprehensive land development plan or water resources plan;
3. the proposed treatment works be so located that it is not unnecessarily endangered by natural hazards; and
4. the objectives of other water quality regulations will not be adversely affected.

Sizing and Staging - Ensure that the proposed facility minimizes the potential adverse impact on water quality and promotes the consolidation of treatment facilities whenever feasible, such that:

1. the existing treatment works are not overloaded when connecting new lift stations or interceptors;
2. the proposed treatment works are planned and constructed in a timely manner as needed;
3. the proposed treatment works are developed considering the long range land development for the area;
4. the proposed treatment works or interceptor protects water supplies;
5. the proposed treatment works will have adequately operational management, including legal authority and financial capabilities; and
6. that the objectives of other water quality regulations will not be adversely affected.
7. that temporary or interim facilities are considered acceptable alternatives for collection, transportation or treatment, provided the alternative specifies a long-term permanent plan with the appropriate timing and staging of facilities.

Level of Treatment - Identify threatened and impaired stream segments, and conduct special studies or wasteload allocations, to determine proper wastewater effluent limitations, such that:

1. wasteload allocations may be a limiting factor to treatment facility design; and
2. effluent quality and level of treatment at wastewater treatment facilities will be based on water quality standards as adopted by SCDHEC.

Population Forecasts

Issue

A basic foundation of water quality planning is the forecast of expected wastewater treatment needs, which is tied to future population, housing and employment levels. Forecasts help define wastewater flow rates and the capacity needed to treat the projected volume of wastewater. They can be used to indicate when facility expansion or capital improvements may be needed in the future. They are not intended to be used as limits to capacity.

Policy

Population forecasts in the WQMP shall be consistent with the Central Midlands planning area forecast developed for other regional planning programs. Population, housing and employment forecasts for the Central Midlands planning area will be utilized as guidelines for water quality planning activities. These forecasts will be evaluated every five years as required for transportation, economic development, community development and water quality planning purposes. The sum of population, housing and employment forecasts for individual wastewater service areas should not significantly differ from the regional forecasts.

In the preparation of subarea studies, it is appropriate to evaluate the effects of different growth assumptions. However, the CMCOG encourages the use of its subarea distributions as one of the alternative forecasts considered.

Septic Tanks And Other Individual Disposal Systems

Issue

In South Carolina, poorly designed and located individual systems can contribute significantly to non-point source and groundwater pollution in many areas. Higher density urban or suburban residential areas necessitate the use of public wastewater collection systems rather than septic tanks or small private treatment facilities (See Elimination of Discharges & Consolidation of Facilities).

Policy

CMCOG accepts the use of septic and other individual disposal systems as a means of waste disposal provided they are properly designed and maintained. Individual septic systems may be allowed in rural, low density (< 2.5 Dwelling Units per Acre (DUA)) areas when a public collection system may not be cost-effective. Urban or suburban areas with higher density residential developments (>2.5 DUA) should not utilize individual septic systems. When available and where cost-effective, existing individual disposal systems and new, urban or suburban developments should be required to connect to a public wastewater collection system. These connections improve the efficiency of the public system, and minimize the risks of surface and groundwater contamination resulting from septic and individual system failures. Local governments should identify concentrations of individual septic systems and target those areas for public sewer system extensions.

Stormwater Management

General

Managing stormwater is both fiscally and politically sound when approached as a preventive strategy. Contaminants found in stormwater are often a major contributor to poor water quality. Controlling the quantity and quality of stormwater helps to improve groundwater recharge, reduce sedimentation, and enhances overall water quality. All land disturbing activities that will disturb greater than two (2) acres require a NPDES stormwater management permit prior to construction. Further, all stormwater management plans must be in compliance with state regulations and attached with the permit application. In the State, SC DHEC administers this program.

Issue

Generally speaking, land development can have significant impacts to local and regional ecosystems, which can hinder further development. Clearing land can lead to increased soil erosion, sedimentation or water bodies where best management practices for controlling stormwater runoff are not implemented. Impacts to water resources include eutrophication resulting from increased nutrient runoff, and habitat loss, as well as, the loss of designated uses.

Policy

The WQMP supports the use of Best Management Practices (BMPs) for new development activities. Any new development which disturbs the land should incorporate BMP's. These practices are designed to mitigate potential water pollution impacts such as sedimentation, excess nutrients or pathogens, and aquatic habitat losses resulting from stormwater runoff. BMP's can include retention of vegetation, artificial barriers such as hay bales, the use of drainage channels along roads to reduce erosion, site stabilization using hydro-seeding, and livestock manure management. Developers should refer to the DHEC publication South Carolina Stormwater Management and Sediment Control Handbook For Land Disturbance Activities (1995).

Table 9: Stormwater Management Objectives

Objectives of Controlling Stormwater Runoff	
P	To prevent the degradation of property by enhancing the environmental character and quality of streams.
P	To prevent damages to life and property from flooding resulting from excessive rates and velocities of runoff.
P	To reduce public expenditures for replacement or repair of public facilities resulting from artificially induced flood peaks.
P	To enhance the quality of non-point source runoff by water retention measures.
P	To prevent degradation of stream quality due to impairment of the stream's biological system.
P	To prevent degradation of the stream caused by excessive flushing and sedimentation.
P	To maintain natural stream channels and prevent accelerated bank erosion by controlling the rate and velocity of runoff into streams.

Non-Point Source Pollution

Issue

Non-point source pollution (NPS) refers to runoff from ill-defined, diffuse sources from agricultural, urban, forested and other land uses. Nonpoint source pollution includes fertilizers, pesticides, sediment and contaminants such as street litter and automobile emissions carried by urban runoff. Impacts to water quality resulting from NPS include increased treatment costs, noxious odors and objectionable tastes, and the introduction of disease-bearing organisms to surface waters.

Non-point source pollution has caused problems in the Saluda River ranging from threats to trout habitat to aesthetic problems with turbidity. Most of the sediment problems of the Saluda come from its tributaries, particularly Rawls Creek, a watershed where much development is occurring. Some NPS pollution occurs where vegetated buffer strips along streams, rivers, and lakes are too narrow. Vegetation promotes the uptake of excess nutrients and runoff.

Policy

CMCOG supports efforts of local governments in the Central Midlands planning area to seek the financial and technical assistance necessary to create, maintain, and enforce comprehensive programs for sediment, erosion, and stormwater runoff. Moreover, CMCOG encourages local governments to use BMPs, which may include vegetated buffers or greater setbacks along water bodies in order to control erosion, sedimentation, and other water quality problems associated with runoff.

TMDL Allocation

Issue

TMDL, or "Total Maximum Daily Load" is a phrase from the Clean Water Act which serves to characterize the total acceptable amount of pollutants in mass which a body of water can assimilate under specified conditions without violating water quality standards or objectives. TMDL's are useful in determining the wasteload allocation (WLA) from point source wastewater discharges and may also be used to quantify non-point source load allocations. Conceptually, TMDL's should be developed for all waterbodies, however, the CWA requires TMDL's only for those waters which are not in compliance with water quality standards. In South Carolina, DHEC determines the TMDL's using mathematical water quality models and actual or assumed data.

Policy

The Plan, *generally but not exclusively*, recognizes a "market demand" allocation approach (that is no limitations on use where capacity is available) for assimilative capacity issues; however, consideration will be given to the following guidelines when evaluating TMDLs:

1. allocations should include sufficient capacity to allow for the continued population and economic growth of the Region,
2. costs of implementing allocation strategies should be fair to the affected discharges. Costs of increasing treatment levels, the proportion of problem causing pollutants originating from any one discharge, and the history of compliance of dischargers with permit conditions will be weighed,

3. allocation capacity to new, or expanded, discharges may not be given, if alternatives to the discharge are reasonable available, or if the discharger has a poor history of compliance with permit conditions.

Water Reuse

Issue

Reuse is an efficient means of preserving water resources in areas where those resources need to be protected. The quantity and quality of wastewater for reuse should be determined during the planning process.

Policy

The WQMP supports the concept of wastewater reuse for irrigation, as a method for additional removal of pollutants, or as a means for reducing the number and volumes of discharges into surface waters. Since every municipality has different circumstances, water reuse programs should be constructed and implemented at the local level.

Water Supply

General

Water quality planning is important in order to have a water supply that is free from disease-producing organisms and other physiologically undesirable substances. The general aim of water quality planning is to protect the resource for a variety of uses including drinking water, recreation, aesthetics, wildlife habitat, and propagation of aquatic species. Consequently, public and private entities in the Central Midlands planning area should consider these issues when proposing projects that may affect water quality within the CMCOG planning region.

1. Interbasin Transfer of Water

Issue

In South Carolina, the transfer of water from one river basin to another is prohibited by law. The Interbasin Transfer Act of 1985 (§ 49-21-10 et seq. S.C.C.A.) states that "no person shall withdraw, divert, pump, or cause directly the transfer of

either five percent of the seven-day, ten-year low flow, or one million gallons or more of water a day on any day, whichever is less, from one river basin and use or discharge all or any part of the water in a different river basin unless the person shall first obtain a permit from the SC Department of Health and Environmental Control (DHEC).

Policy

The SC DHEC, using the Interbasin Transfer Act, protects the water quality of the state by regulating natural stream flows that, if altered, could impair a stream's natural assimilative capacity. POTWs should comply with the requirements of this law.

2. Urban Lakes

Issue

Artificial impoundment construction can lead to positive or negative impacts on natural resources. Impoundments can provide important habitat to a wide variety of aquatic, terrestrial, and avian species. Threatened or endangered species are often associated with impoundments. The utilization of impoundments by waterfowl and wading birds is well documented.

It is equally well known, however, that impoundments can negatively impact natural systems by altering important natural functions and prohibiting or limiting movement of aquatic organisms, energy, and nutrients. Development adjacent to impoundments can be detrimental to wildlife and fishery resources and is often injurious to natural communities. Altering the natural flow of water can lead to eutrophication - a process by which a standing body of water becomes enriched with excess plant nutrients such as phosphorus and nitrogen, which results in excess algal production. This condition leads to lower dissolved oxygen (DO) levels, critical to fish species. Impoundments also lead to higher water temperatures, greater evaporation losses from the larger surface area, and excess sedimentation. Sedimentation decreases the oxygen supply to fish eggs and blocks fish gill filaments resulting in death (1).

Policy

Impoundment projects may produce public benefits which do not benefit natural resources. Artificial lakes in the Central Midlands planning area should be planned carefully with a view towards ecological consequences. The WQMP supports local government programs requiring long term strategies from urban lake developers

for maintaining water quality. Strategies may include special ordinances or development criteria designed to prevent polluted runoff from washing directly into artificially created urban lakes. Examples are limiting the proportion of the site covered by impervious surfaces; buffer strips; use of greater setbacks for principle residential dwellings and associated buildings; use of aeration devices to maintain a healthy level of DO.

3. Groundwater Impacts - Wellhead Protection

Issue

In South Carolina, groundwater is the source of drinking water for more than 60 percent of the State's population. This resource is also used by agricultural, industrial, and commercial interests. Due to this widespread use, groundwater contamination could have serious impacts to the state and its residents.

Groundwater contamination sites have been inventoried since 1980 by DHEC. Figure 2 on the following page depicts recent occurrences. It is important to note that while there has been a large increase in the number of sites, it is generally due to financial incentives from the state for remedial efforts that have prompted greater reporting of past problems rather than the discovery of new contamination in the state. The 1994 inventory listed 268 groundwater contamination sites in the Central Midlands Region.

Policy

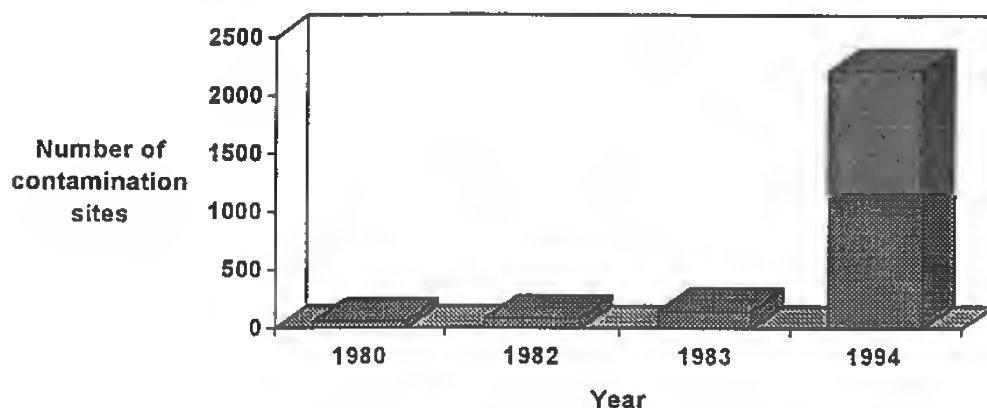
The groundwater protection policy for the State of South Carolina is founded on the belief that there is a direct connection between land use and groundwater quality, and that development of the human environment will impact groundwater, regardless of the regulatory safeguards employed. Because it is much less expensive to protect a pristine groundwater source than to restore a contaminated source, a logical goal of state and local governments' groundwater protection strategy should be to protect the present and future uses of the resource.

Hence, the WQMP supports the same pro-active approach to groundwater protection. CMCOG will encourage local planning commissions to strive to make the general public more aware of the origins of drinking water supplies, development activities which can impact those resources, and methods to better protect groundwater resources.

Furthermore, areas which are dependent upon groundwater as the main source of drinking water should consider adopting a comprehensive wellhead management strategy, including a Wellhead Protection Area Management Plan. The wellhead protection area (WHPA) refers to the area that will be managed by a community in order to protect groundwater resources.

This area includes "...the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield" (13).

Figure 2: Groundwater Contamination Sites in South Carolina, 1980-1994.



Source: SC Department of Health and Environmental Control, Groundwater Protection Division, 1994.

There are various measures, both regulatory and non-regulatory, that can be used to control activities in areas where wellheads occur. They include zoning ordinances, site plan reviews, design standards, source prohibitions, acquisition of property, education programs, and groundwater monitoring. The wellhead protection area (WHPA) can be delineated using several criteria and methods. The methods by which the area is defined may differ from one community to another.

Wetlands

Issue

Wetlands are areas that are periodically or permanently inundated by surface or ground water and support vegetation adapted for life in saturated soil. Wetlands serve important functions relating to fish and wildlife; food chain production; habitat, nesting, spawning, rearing and resting sites for aquatic and land species; storage areas for storm and flood waters; natural recharge areas where ground and surface waters are interconnected; and natural water filtration and purification functions. The US Army Corps of Engineers and SCDHEC have the authority to regulate wetland alterations under Sections 401 & 404 of the Clean Water Act.

Policy

CMCOG recognizes the ecological and societal values which make wetlands an important natural resource and supports the concept of wetlands protection. All CMCOG plans will distinguish the value of wetlands as part of the planning process and it will encourage local governments to adopt wetlands preservation as part of its zoning and land development regulations. Furthermore, CMCOG promotes the use of wetlands for water quality enhancement activities. The use of artificial and constructed wetlands for resource management purposes, such as wastewater treatment, stormwater abatement, and wildlife management is encouraged. Although the destruction of wetlands is prohibited by law, local governments should call to the attention of developers the potential existence of wetlands in any land development and that damage to wetlands threatens public safety and the general welfare. It is necessary for local governments to ensure maximum protection for nontidal wetlands and those activities in nontidal wetlands and adjacent upland sites that may adversely affect nontidal wetlands and to encourage restoration of already degraded or destroyed wetlands systems.

Management Agencies

Issue

The foundation for the management agency approach lies with the basin or service area strategy for resolving water quality problems. Following the State's watershed water quality management strategy, the 208 Water Quality Management Plan recognizes that most water quality problems are often not confined to one management agency but "spillover" into others which require multijurisdictional solutions. Generally, these problems are complex and interrelated, forcing mutual cooperation and coordination from all parties affected. It is the role of the 208 WQM Plan and CMCOG to promote that cooperation and coordination.

General Responsibility

Each management agency is to be responsible for implementing the Plan policies within its management area. Additionally, the following also applies to management agencies:

Policy

1. Designation and De-designation

Designation - Only municipalities, counties or special purpose districts are eligible for designation as a 208 management agency. All requests for new management agency applicants must: 1) satisfy the threshold requirements listed under Eligibility and Authority, 2) obtain approval of a 208 plan amendment and 3) receive a favorable recommendation from the Governor.

De-designation - A management agency may be de-designated under one of the following conditions: 1) no longer satisfies the threshold requirements listed under Eligibility and Authority, or 2) requests de-designation. De-designation of a management agency would require a plan amendment before forwarding to DHEC and the Governor. Any management areas de-designated will be redesignated as part of the 208 plan amendment. A petition for de-designation of a management agency for failure to meet the eligibility requirements may be initiated by any member government of CMCOG.

2. Provision of Service

Areas of No Service - In areas where no existing wastewater service exists, the designated management agency is to determine an appropriate service delivery system among cost-effective alternatives which is in conformance with the policies of the WQMP.

Areas of Private Service - The Plan recognizes existing private wastewater systems as providers but encourages their eventual integration into larger more efficient public systems. In general, expansion of private systems are discouraged, unless no cost-effective alternative method for service is available. All private service area expansions require a plan amendment.

Municipal Annexation - Where a municipality annexes lands into another designated management agency's area, the municipality has the right to provide service to that area, provided no existing service is reasonably available and is shown to be the cost-effective means of providing service.

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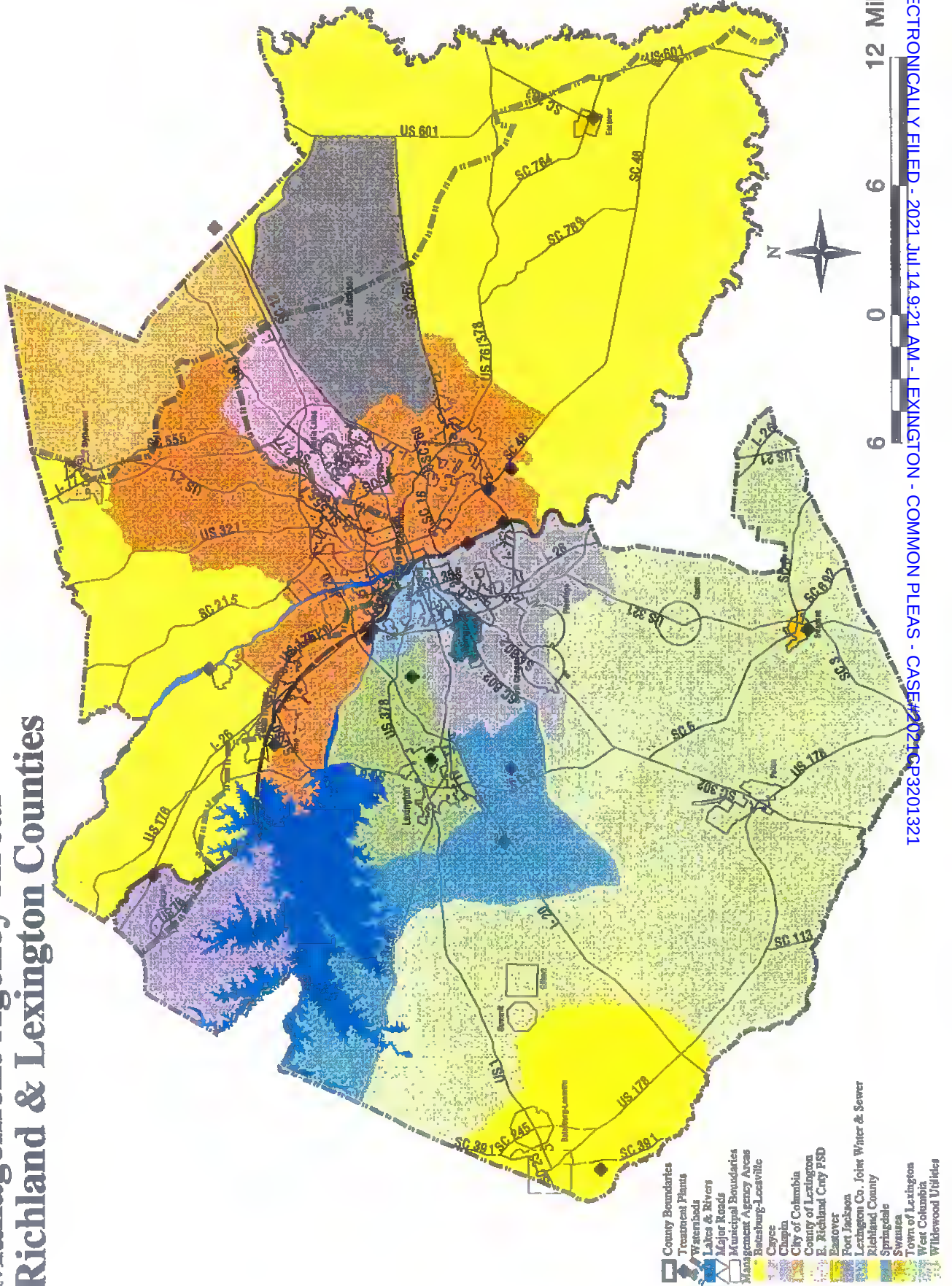
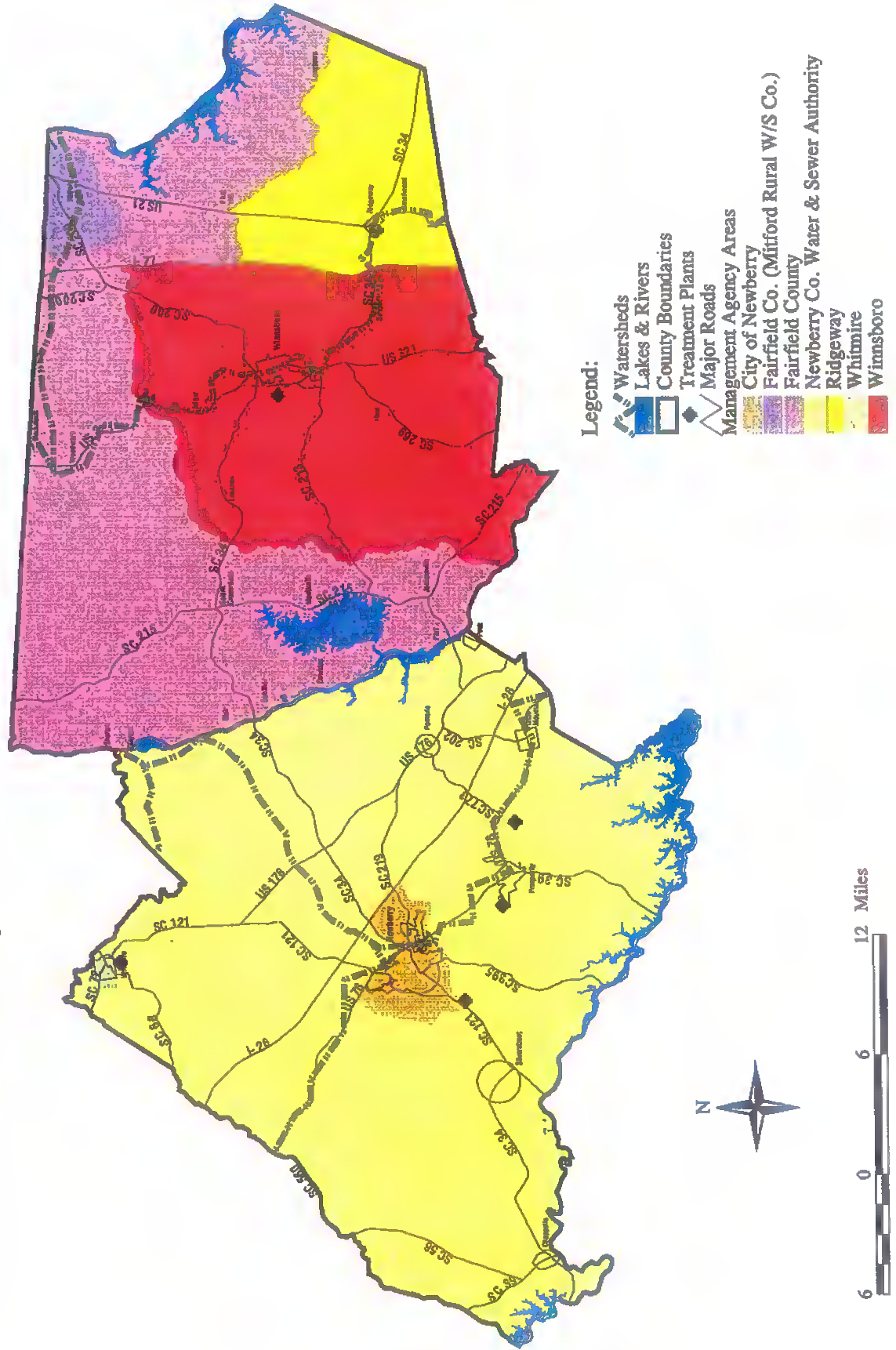


Figure 3
Management Agency Areas
Richland & Lexington Counties

Figure 4

Management Agency Areas Fairfield & Newberry Counties



VI. RIVER BASIN ASSESSMENT AND MANAGEMENT STRATEGY

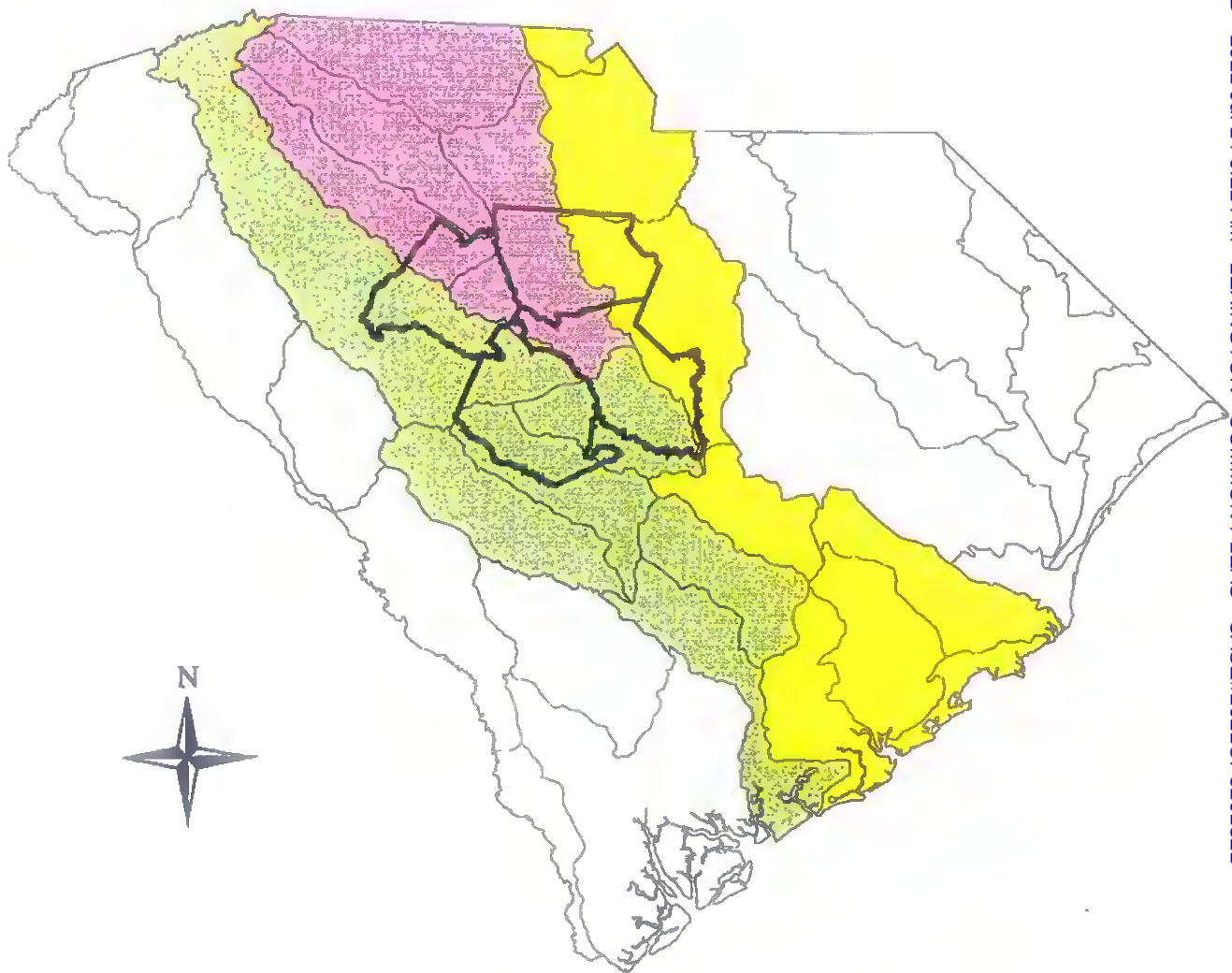
Taken from the State's *Watershed Water Quality Management Strategy in South Carolina, Program Description*, the basis for approaching water quality planning by watershed for the State is restated in the following:

"Over the past ten years to fifteen years, special water quality initiatives as well as congressional mandates have diverted attention and resources away from comprehensive water quality assessment and protection. In fact, it has been almost twenty years since SCDHEC has undertaken comprehensive water quality planning and water quality protection implementation on a watershed basis. In order to reemphasize a coordinated approach to river basin development and water quality maintenance or improvement; to better address congressional and legislative mandates; to better utilize current resources; and to better inform the public and regulated community of existing and future water quality issues, the Bureau of Water Pollution Control is initiating water quality assessment and protection on a watershed basis. Watershed water quality management recognizes the interdependence of water quality and all the activities that occur in the associated drainage basin: including monitoring, assessment, problem identification and prioritization, water quality modeling, planning, permitting, and other activities. In the Bureau of Water Pollution Control's Watershed Water Quality Management Strategy, these activities will be integrated by basin to watershed management plans and implementation strategies and serve to appropriately refocus water quality protection efforts.

From this broad State directed approach, the 208 Water Quality Management Plan will address policy and management issues by basin. Of the States five watershed's, the planning boundaries for the Central Midlands region lies within three - Broad, Catawba-Santee and Saluda-Edisto. To date, the SCDHEC has completed their assessment of the Catawba-Santee and Saluda-Edisto. The Broad River basin assessment is expected to be completed in 1998.

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Figure 5
Central Midlands Region Watersheds



Legend:

-  South Carolina Watersheds
-  Central Midlands Region
-  Broad River Watershed
-  Catawba-Santee Watershed
-  Saluda-Edisto Watershed

40 0 40 80 Miles

Broad River Basin Assessment and Management

Existing Basin Inventory

Water Resources

General

The Broad River Basin dominates the central Piedmont section of South Carolina. Sharing a long northern border with North Carolina, the basin tapers in a southeasterly direction and terminates at the confluence with the Saluda River near Columbia. The basin covers some 11 counties including the eastern portion of Newberry County, western portion of Fairfield County, the northern portion of Richland County and the extreme northeastern portion of Lexington County. The basin covers approximately 3,800 square miles and is identified as part of Watershed Management Units 501 & 502. Table 10 lists the related watersheds.

Table 10: River Basin & Watersheds

Basin Name	Sub-Basin	Watershed Name	Counties
Broad	Broad	Broad River & Tributaries	Fairfield
		Sandy Run & Tributaries	Fairfield
		Broad River & Tributaries	Newberry & Fairfield
		Crane Creek	Newberry, Fairfield & Richland
	Tyger Enoree	Little River	Fairfield & Richland
		Jackson Creek & Tributaries	Fairfield
		Cedar Creek & Tributaries	Fairfield & Richland
		Tyger River & Tributaries	Newberry
		Enoree River	Newberry
		S. Fork and Duncan Crks	Newberry
		Lower Enoree	Newberry

Fairfield County

The Broad River Basin occupies the western half of Fairfield County and lies entirely in the Piedmont Plateau. This basin, comprised of the Broad River and its

tributaries such as the Cedar Creek and the Little River, can provide a reliable surface water supply throughout the year using presently available storage facilities. On the Broad River, near Richtex in the southern region of the county, the average annual stream flow is 6,250 cubic feet per second (cfs). However, it may range from 149 cfs to 228,000 cfs. Lake Monticello, or the Monticello Reservoir on Frees Creek, has a surface area of 6,800 acres and is used for power, cooling water, recreation, and water supply. Water quality in the Fairfield County portion of the Broad River basin is generally good and does not impair current water uses.

Groundwater in the Piedmont Province of Fairfield County is found mainly in "fractures formed by fault and joint systems and in the saprolite layer" of the soil (S.C. Water Resources Commission, 1983). Saprolite collects and stores rain and runoff for the recharge of groundwater supply to fractures in the underlying rock. Most of the area in the Broad River basin is underlain by the Carolina Slate Belt which contains mostly argillite. Generally, groundwater use is limited to domestic activities as less than one-third of the average rainfall is available to recharge the supply. Wells may yield from 1 to 600 gallons per minute (gpm) and water quality is generally good. However, one well was found which exceeded acceptable water standards with radioactive isotope concentration. This well was disconnected from the public water supply network (S.C. Water Resources Commission, 1983).

Newberry County

The Broad River Basin occupies the eastern half of Newberry County and also lies entirely in the Piedmont Province. This basin, comprised of the Broad River and its tributaries such as Enoree River and Indian and Cannons Creek can provide a reliable surface water supply throughout the year only with adequate storage capabilities as Newberry is in the lower part of the basin. Average annual stream flow along the Broad River in Newberry ranges from 4,090 cfs to 6,250 cfs. The Enoree, located near Whitmire on the northern border of the county, has an average annual stream flow of 433 cfs. However, it may range from 108 cfs to 19,700 cfs. Parr Reservoir which was built on the Broad River in 1914, has a surface area of 4,400 acres and is used for the production of hydroelectric power and recreation. Water quality in the Newberry County portion of the Broad River Basin is generally good. Occasionally dissolved oxygen, fecal coliform bacteria, turbidity, and metals standards are compromised due to municipal and industrial point source discharges and non-point source runoff from urban areas (S.C. Water Resources Commission, 1983).

Groundwater in the Piedmont Province of Newberry County is found mainly in "fractures formed by fault and joint systems and in the saprolite layer" of the soil (S.C. Water Resources Commission, 1983). Saprolite collects and stores rain and runoff for the recharge of groundwater supply to fractures in the underlying rock. Most of the area in the Broad River Sub-basin is underlain by the Carolina Slate Belt which

contains mostly argillite. Generally, groundwater use is limited to domestic activities as less than one-third of the average rainfall is available to recharge the supply. Wells may yield from 10 to 150 gpm and water quality is generally good. (S.C. Water Resources Commission, 1983).

Recent data show that 34.5 percent of Newberry is wetlands of a high marsh, deciduous forest, coniferous forest, or bottomland hardwood nature. Low-lying areas around creeks and rivers have high potential for wetland propagation. Approximately 25 percent of all wetlands are located in the Pacolet-Madison-Cecil soils, which are mostly in the Broad River Sub-basin. Approximately 22 percent of the wetlands, mostly bottomland hardwoods, are in the Pacolet-Cecil-Enon soils that range throughout the western half of the county. Lastly, the Cecil-Hiawasse-Cataula soils have 21 percent of the wetlands, most of which are also bottomland hardwoods.

Richland County

The Broad River basin, found in northwest Richland County, covers most of the Piedmont Province and parts of the upper Coastal Plain. This basin, comprised of the Broad River and its tributaries such as Cedar and Crane Creeks, can provide a reliable surface water supply throughout the year only with adequate storage capabilities. Cedar Creek, near Blythewood, has an average flow of 50.5 cfs, but ranges from 0.66 cfs to 4,870 cfs depending on the amount of rainfall and runoff. Water quality in the Richland County portion of the Broad River basin is poor. This is partly caused by influents from Crane Creek which contain municipal wastewater discharge and urban runoff (Department of Health, Environment and Control, 1975). Crane Creek waters have elevated biochemical oxygen demand, fecal coliform bacteria, metal, phosphorus, and low dissolved oxygen content.

Groundwater in the Piedmont Province of Richland County is found mainly in "fractures formed by fault and joint systems and in the saprolite layer" of the soil (S.C. Water Resources Commission, 1983). Saprolite collects and stores rain and runoff for the recharge of groundwater supply to fractures in the underlying rock. Most of the area in the Broad River Sub-basin is underlain by the Carolina Slate Belt which contains mostly argillite. A 50 foot layer of the Middendorf Aquifer System lies over the slate belt in the extreme southeastern corner of the sub-basin. Around the towns of Blythewood, Killian, and Ballentine, most wells yield from 2 to 50 gpm and are used primarily for domestic activities. The water quality of these wells is generally good.

The Piedmont Plateau, or northwestern region, holds the highest percentage of Richland County's coniferous forested wetlands and bottomland hardwoods, 15.1 and 27.0 percent, respectively. These soils are the Tatum-Georgeville-Herndon soil association. Close to this region, in the upper Coastal Plain of the sub-basin, the Herndon-Helena-Georgeville soils hold 11.4 percent of the coniferous wetlands and 21.1 percent of the bottomland hardwoods. The Broad River basin contains 31.4 percent of all the wetlands of the county.

Lexington County

The southern fringes of the Broad River basin edge along the Lexington-Richland County border near Chapin. Streams that originate in this area exhibit low flows. Only 0.2 percent of Lexington's population is within this basin and water supply from it is close to zero.

Treatment Facilities

This information will be provided upon completion of the *Broad River Basin Watershed Water Quality Management Strategy*.

Treatment and System Capacity

Newberry County

While there are a number of small industrial and community systems in the basin, there are three public providers of sewer service. The City of Newberry has the largest system with a highly developed network capable of meeting large treatment needs. Its plant has a current capacity of 3.2 MGD with flows averaging 2.10 MGD per day. The City is undertaking an upgrade and expansion to 4.8 MGD over the next ten years. Industrial and non-industrial flows are about equal.

The second provider, The Newberry County Water & Sewer Authority, operates three plants: Dewalt plant which serves the Town of Prosperity; Plant #2 at Camping Creek which is east of the Town of Prosperity and a small community plant at Bedford Way Subdivision. The Dewalt plant is rated at 0.651 MGD and has a average flow of 0.3 MGD. No plans are made to expand this facility. Camping Creek is rated at 0.03 MGD and is cited for eventual elimination. Bedford Way is also rated at 0.03 is expected to remain in service with no plans for expansion.

The third provider is the Town of Whitmire which operates a 0.60 MGD facility. Plans have been proposed to expand the facility to a 0.85 MGD facility.

Lexington County

The Town of Chapin is the only provider of wastewater service in Lexington County that is also within the basin. The Town has a 1.2 MGD treatment plant with an extensive line network that extends throughout town, toward Lake Murray, and most recently to the I-26 Interchange. No plans for expansion are anticipated.

Richland County

In Richland County there are three major public treatment facilities: the City of Columbia's Metro plant, the East Richland Public Service District (ERPSD) Main plant and the County's Broad River WWTP. The City of Columbia's Metro plant is the region's largest and is rated at 40.0 MGD. The City is currently expanding and upgrading its plant to 60.0 MGD. It accepts additional flows from unincorporated portions of Richland and Lexington Counties and the City of West Columbia.

The ERPSD's Main plant is a 10.0 MGD facility. It is anticipated that an expansion to 14.0 MGD is planned in the next few years given the District's current rate of growth.

The County's Broad River plant is a 2.5 MGD facility that serves the northwest portion of the County. It has a design capacity of 15.0 MGD. Plans for expansion are expected in the near future.

Fairfield County

The Town of Winnsboro's wastewater treatment plan has a permitted capacity of 1.6 MGD and treats 700,000 gallons per day. Of its current flow, 200,000 gpd is industrial and 500,000 gpd is non-industrial. Its distribution system covers the municipal limits and some properties immediately adjacent.

Existing Population and Land Use

The estimated 1990 population of the basin lying within the 208 planning area boundary is approximately 127,565 persons. It is estimated that 73.0% of the population lies in Richland County, 15.0% in Newberry County and 12.0% in Fairfield County.

In eastern Newberry and western Fairfield Counties, the population is thinly spread throughout these rural areas. The eastern edge of Newberry County and portions of western Fairfield County is dominated by the Sumter National Forest with the balance of the area held in scattered, large-lot residential uses. Light commercial activities and several heavy industrial plants can be found throughout and at major highway intersections or just outside the two largest municipalities, the City of Newberry and Town of Winnsboro.

Northwest and northcentral Richland County is by contrast much more developed with higher density residential uses and large concentrations of commercial and industrial activity. The northwest area or "Broad River" corridor is experiencing rapid suburbanization with multiple subdivisions planned or under construction. The trend of commercial development is directly following this residential inflow, particularly as the population base expands. Commercial development and construction is typically

targeting the St. Andrews, Irmo, Harbison, Ballentine areas and along Broad River road.

In the northcentral area or Crane Creek sub-basin, industrial development has increased significantly with the relocation of numerous manufacturing firms from the northeastern portion of the country and foreign interests. Residential development has been modest with some new construction occurring in City of Columbia. Commercial construction has been stable generally tracking the trend in residential development. See Figure 6 for a detailed map of existing land use.

Projected Growth

Development Trends and Land Use

Fairfield County

Countywide population projections forecast a gradual increase of 11.6% from 1990 to 2015. Most of this growth is expected to occur in the central and eastern portions of the County. Like most predominately rural counties, with scattered residential development uses, commercial uses beyond the Town of Winnsboro are found in singular locations, at intersections and along the more heavily travelled roads. Significant populations shifts are not expected in this portion of the county, suggesting similarly limited changes in the land use pattern. Figure 7 illustrates the projected land use pattern.

Newberry County

Development in Newberry is expected to be modest. The majority of new commercial and industrial activity is also expected to be located outside of the basin. The limited growth forecasted is based upon the overall lack of adequate utilities to serve the area. While the upper portion of the basin is effectively excluded from development by the Sumter National Forest, new construction activity in the southern portion of the basin will largely be limited to individual residences placed on individual lots. Commercial and industrial activity is not expected to expand significantly but will track residential development and its demand for services and products.

Richland County

Significant growth and development is expected for this area. Ample available land that is served by water and sewer is forecasted to drive a substantial increase in all three land use categories: residential, commercial and industrial. In the northwest portion, the rate of residential development is anticipated to be sustained, followed by proportionate increases in commercial construction activity. Building on the existing

trend of commercial concentrations in the St. Andrews, Irmo and Harbison areas, the northwest will continue to emerge as a regional commercial hub for the area.

Along the I-77 Corridor which includes portions of the Crane Creek sub-basin, prospects for industrial development is also expected to remain strong. Development potential reinforced by an aggressive economic development policy by the City of Columbia and Richland County suggests continued new plant relocations. Areas such as Killian and Blythewood are expected to increase in population and construction activity. In contrast, some areas between Broad River and SC 321 will likely remain undeveloped. This area consist mainly of forestlands and cleared pasture. Most of the land is held by large paper companies with no expectation of conversion to more intensive uses.

Population and Employment Projections

Table 11 indicates a 22.0% increase in population and 23.0% increase in employment from 1990 to 2010. Most of this increase will be seen in Richland County as part of the intensifying of commercial and industrial development along the I-26 and I-77 Corridors. Newberry and Fairfield Counties, while experiencing change and growth, will be more modest and will largely be limited to increases in employment, particularly industrial development.

Table 11: Population and Employment Projections

Basin Number	1990 Population	1990 Dwellings	1990 Emp	2015 Population	2015 Dwellings	2015 Emp
3050106-010	35	12	0	39	12	15
3050106-040	40	14	0	44	14	0
3050106-050	6,047	2,190	3,350	6,806	2,247	5,562
3050106-060	101,728	39,239	57,506	126,520	61,002	68,431
3050106-070	1,635	569	510	1,850	610	750
3050106-080	9,695	3,343	4,357	10,827	3,447	6,000
3050106-090	2,492	940	531	3,123	1,296	696
3050107-050	15	5	0	17	6	0
3050108-020	460	171	178	520	175	200
3050108-043	1,715	637	1,282	1,938	652	1,500
3050108-050	3,703	1,376	1,039	4,183	1,407	1,444
Total	127,565	48,496	68,753	155,867	70,868	84,598

Needs Assessment and Projected Build-out Capacity

In Table 12, it is estimated that the 1990 wastewater flow generated is approximately 16.5 MGD for the basin. Of the 16.5 MGD estimated flow, current usage suggests an estimated 8.4 MGD is treated through septic tanks.

Projections for 2015 estimate build-out flow of 20.4 MGD. Projections for septic tank treatment are to remain proportionately the same. Projected septic tank treatment is estimated at 10.2 MGD.

Overall demand for treatment is expected to increase by 4.1 MGD, with demand for central sewer treatment to increase 2.1 MGD from 8.1 to 10.2 MGD.

Table 12: Estimated Existing and Projected Flow

Basin Number	1990 Flow	1990 Dwellings	1990 Emp.	2015 Flow	2015 Dwellings	2015 Emp.
3050106-010	3,850	12	0	4,740	12	15
3050106-040	4,400	14	0	4,840	14	0
3050106-050	785,920	2,190	3,350	960,020	2,247	5,562
3050106-060	13,317,770	39,239	57,506	16,586,010	61,002	68,431
3050106-070	195,950	569	510	227,040	610	750
3050106-080	1,218,910	3,343	4,357	1,400,990	3,447	6,000
3050106-090	292,650	940	531	369,290	1,296	696
3050107-050	1,650	5	0	1,870	6	0
3050108-020	57,440	171	178	64,800	175	200
3050108-043	238,350	637	1,282	271,340	652	1,500
3050108-050	443,500	1,376	1,039	513,270	1,407	1,444
Total	16,560,290	48,496	68,753	20,404,210	70,868	84,598

Watershed Assessment: Water Quality Issues and Standards

This information will be provided upon completion of the *Broad River Basin Watershed Water Quality Management Strategy*.

Management and Policy Issues

Management Agencies & Service Provision

General Basin Policy: There are eight (8) management agencies recommended for plan implementation in the basin. Generally, each management agency and its facilities is set up to be the major provider for each area and act as an general coordinator of wastewater collection, transportation and treatment. And, while other facilities identified in the plan may currently operate independently of a management agency's facilities or their related systems, all facilities within an agency's area may be identified for eventual consolidation and elimination for water quality, public health and cost-effectiveness objectives.

A. Management Agency: City of Newberry

Management Agency Area: City of Newberry and surrounding area.

General Policy: Under sole management agency direction, the City of Newberry is to implement the provisions of the plan for the prescribed management agency area with treatment at its Bush River facility.

Facility	Provider	Basin (s)	Permitted Capacity
Bush River	City of Newberry	3050109-150 (p)	3.2 MGD 1.6 MGD Planned

(p) portion of the basin

B. Management Agency: Town of Whitmire

Management Agency Area: Town of Whitmire and adjacent areas.

General Policy: Under sole management agency direction, the Town of Whitmire is to implement the provisions of the plan for the prescribed management area with treatment at its Duncan Creek facility.

Facility	Provider	Basin (s)	Permitted Capacity
Duncan Creek	Town of Whitmire	3050108-020 3050108-043	0.60 MGD

C. Management Agency: Newberry Water & Sewer Authority

Management Agency Area: Unincorporated Newberry County, excluding area immediately adjacent the City of Newberry.

General Policy: Under sole management agency direction, the Newberry Water & Sewer Commission is to implement the provisions of the plan for the prescribed management area, and with the long-term objective of consolidation of its facilities into a larger regional plant, separately or in conjunction, with the City of Newberry.

Facility	Provider	Basin (s)	Permitted Capacity
Dewalt	NCW&SA	3050109-150 (p)	.651 MGD
Camping Creek	NCW&SA	3050109-190	.03 MGD
Bedford Way	NCW&SA	3050109-190	.03 MGD

D. Management Agency: Town of Winnsboro

Management Agency Area: Central Fairfield County

General Policy: Under sole management agency direction, the Town of Winnsboro is to implement the provisions of the plan for the prescribed management agency area with treatment at its Jackson Creek facility.

Facility	Provider	Basin (s)	Permitted Capacity
Jackson Creek	Town of Winnsboro	0305104-010 (p)	1.6 MGD

(p) portion of the basin

E. Management Agency: Town of Chapin
Management Agency Area: Town of Chapin and Northeast Lexington County

General Policy: Under sole management agency direction, the Town of Chapin is to implement the provisions of the plan for the prescribed management area with treatment at its Wateree Creek facility.

Facility	Provider	Basin (s)	Permitted Capacity
Wateree Creek	Town of Chapin	3050109-190 (p)	1.2 MGD

F. Management Agency: City of Columbia
Management Agency Area: City of Columbia, portions of northwest and south-central Richland County and northeast Lexington County.

General Policy: Under sole management agency direction, the City of Columbia is to implement the provisions of the plan for the prescribed management agency area with treatment at the Columbia Metro Plant.

Facility	Provider	Basin (s)	Permitted Capacity
Columbia Metro	City of Columbia	3050109-190 3050109-210 3050110-010 3050110-030	40.0 MGD 20.0 MGD Planned Expansion

G. Management Agency: East Richland Public Service District (ERPSD)
Management Agency Area: Portions of Northeast Richland County

General Policy: Under sole management agency direction, the ERPSD is to implement the provisions of the plan for the prescribed management agency area such that wastewater flow is transported to the ERPSD Main plant for treatment.

Facility	Provider	Basin (s)	Permitted Capacity
ERPSD Main	ERPSD	3050110-030	10.0 MGD

H. Management Agency: Richland County**Management Agency Area: Unincorporated Richland County**

General Policy: Under sole management agency direction, Richland County is to implement the provisions of the plan for the prescribed management agency area such that the wastewater flow in the northwest portion of the County is transported to the Broad River plant for treatment.

Facility	Provider	Basin (s)	Permitted Capacity
Broad River	Richland County	3050109-090	2.5 MGD

Long Range Basin Planning

While the Regional 208 Water Quality Management Plan will act as the principal guide in directing actions taken by local designated management agencies, the plan also recognizes the impact of other planning efforts. For this reason, the 208 Plan attempts to blend with it related planning activities to better coordinate infrastructure needs and assist member local governments in their efforts to control the effects of growth and development on the environment.

River Alliance Corridor Plan

The River Alliance was formed in 1993 in an effort to construct a plan that would maximize the potential of the region's river system, specifically the confluence of the Broad, Congaree and Saluda Rivers. Its planning efforts focus on three major themes:

1. revitalizing the urban core which consists of the developed lands adjacent the rivers in the City of Columbia, W. Columbia, Cayce and unincorporated Richland and Lexington Counties,
2. preserve and protect the natural character of the environment, promoting wilderness protection, buffering controls, cluster development models and natural parklands; and
3. Encourage a corridor approach to land and water related recreation, while linking historical and cultural resources into an integrated system.

In total, the plan itself is comprised of more than 150 policy and project recommendations. It will be the task of the River Alliance to implement these projects and promote the policies among the member local governments. While the development process is its formative stages, the 208 Water Quality Management Plan endorses the efforts of the River Alliance as it relates to the protection of water quality and sensitive environmental use of the regions water resources.

Long Range Comprehensive Land Use Planning

Newberry County

In Newberry County zoning has not been adopted for the unincorporated area which precludes the legal requirement for land use planning. Of the municipalities in the basin, the City of Newberry and the Town of Whitmire have zoning and the required long-range development plans. While both municipalities anticipate growth of the next twenty-five years, only the City of Newberry forecasts the need for additional infrastructure improvement relating to its wastewater system. Specifically, the City in conformance with its land use plan calls for the extension of service immediately adjacent the City which would promote its annexation strategy. Currently, the City is also seeking to improve its wastewater plant by expanding its capacity.

Separate but related, Newberry County has undertaken an pro-active infrastructure planning effort titled the, *I-26 Corridor Utility Study, US 176 to Highway 32, Wilbur Smith & Associates, March 1996*. This study performed at the request of the Central Carolina Economic Development Alliance, examines the costs and feasibility of providing water and sewer service to all interchanges along Interstate 26. The County is currently working with the City of Newberry and the Newberry Water & Sewer Authority to implement its recommendations, in hopes of furthering economic development opportunities.

Fairfield County

Similar to Newberry County, Fairfield County has not implemented zoning, limiting the legal need for a long-range development planning. However, the County Planning in anticipation of infrastructure needs did adopt a land use plan, the *Comprehensive Land Use & Development Plan, Fairfield County, 1992*. In the document, it cited the I-77 corridor as the key development area for industrial and commercial development. Further, the plan forecasted the areas around the Monticello Reservoir and Jenkinsville as growing residential areas which given its proximity to sensitive streams and the reservoir suggests the need for public sewer.

The Town of Winnsboro has adopted zoning and a land development plan. And, while the plan itself does not address the extension of water and sewer lines beyond its

municipal limits, the Town has taken an aggressive economic development strategy to improve its sale of water and sewer. Also, while the Town has focused on the I-77 Corridor as its main economic future, it has extended its lines south and west along Pumphouse Road in anticipation of future needs..

Richland County

Since 1979, Richland County has had zoning, and subsequently has had several land use plans which address the basin. Two planning subareas cover the basin: the *Northwest Area* and the *Northcentral Area*. Both plans were recently completed as part of the County's revision of its comprehensive plan.

The Northwest Area plan recognizes significant growth in residential uses with the complimentary, yet delayed trend of commercial development over the next twenty-five years. Residential uses of a low to medium density will remain the driving force of change in the area. Commercial development is expected to continue along the major arterial in a dominant fashion, with some industrial uses mixed in at major highway intersections.

In the northcentral area, forestlands are the dominant use and is likely to remain so as most of the land is held by private timber companies. Current demand for developable land is projected to be satisfied in other parts of the county, insuring the northcentral area to be left as a largely rural, pastoral landscape.

Both plans forecast the need for increased wastewater distribution and treatment but recognize the current management agencies, City of Columbia and Richland County, as appropriate to meet the demands for service.

Catawba-Wataree River Basin Assessment and Management

Existing Basin Inventory

Water Resources

General

The Catawba-Wataree River Basin is a sub-basin which lies within the broader Catawba-Santee Basin. The Catawba-Wataree River Basin encompasses 2,381.6 square miles with geographic regions that extended from the Piedmont to the Sandhills and to the Upper Coastal Plain. It includes portions of Fairfield and Richland Counties and is identified as part of the Watershed Management Unit 0301. Table 13 lists the related basin and watershed relationships.

Table 13: River Basins & Watersheds

Basin Name	Sub-Basin Name	Watershed Name	Counties
Catawba-Santee	Catawba	Cane Cr. & Trib. Rocky Cr. & Trib.	Fairfield Fairfield
	Wataree	Wataree Lk. & Trib. Big Wataree Cr. & Trib. Wataree R. & Trib. Swaney's Cr. & Trib. Twenty-five Mile Cr. & Trib. Spears Cr. & Trib. Colonels Cr. & Trib.	Fairfield Fairfield Richland Fairfield Fairfield & Richland Richland Richland

Fairfield County

The Catawba-Wataree River basin lies in the eastern half of Fairfield County. Only a small portion of the southeastern corner, which has no major tributaries or influences on the sub-basin, lies in the Upper Coastal Plain. In Fairfield County, the Catawba River flows south until it merges with Big Wataree Creek. Here it becomes the Wataree River which flows through Wataree Lake. This river system's main tributaries include Wataree Creek, Dutchmans Creek, and Sawneys Creek.

Above the Wataree Dam, on the main stem of the river, a well sustained flow throughout the year provides a constant water supply. However, below the dam, daily fluctuations and low flows may limit water use activities. Tributaries are not reliable water sources because of low flows during periods of low rainfall. Storage facilities

better ensure surface water availability.

Wateree Lake, which has a surface area of 13,710 acres, is located on the eastern border between Fairfield and Kershaw Counties. This lake is used for power generation, municipal water supply and recreation. Water quality is generally good, however surface waters above the lake are of poorer quality than those below because of greater development around the Mitford area. Wateree Lake is eutrophic, or has heavy nutrient loading, primarily from point source discharges on the Catawba River. Although this has not significantly affected water use, continued nutrient loading could limit some water activities (S.C. Water Resources Commission, 1983).

Groundwater in the Catawba-Wateree basin of Fairfield County is mostly in the Carolina Slate Belt which traverses the Piedmont Province. This supply appears to be limited with many wells yielding only 10 gpm. This groundwater, high in iron and magnesium, generally has good water quality.

Recent data show that 33.9 percent of Fairfield is covered in wetlands of a high marsh, deciduous forest, coniferous forest, or bottomland hardwood nature. Low-lying areas around creeks and rivers have high potential for wetland propagation. Most are bottomland hardwoods which are primarily deciduous hardwood trees occurring in swamps or other partially or occasionally inundated environments. Approximately 29 percent of all wetlands are located in the Wilkes-Winnsboro-Madison-Mecklenburg soils, which are in both the Broad and Catawba-Wateree River basins. Approximately 20 percent of the wetlands, mostly bottomland hardwoods, are in the Pacolet-Cecil-Wilkes-Applying soils that range throughout the county in the southern region. The Georgeville-Herndon-Tatum-Helena soils have 15.8 percent of the wetlands in Fairfield County of which most are also bottomland hardwoods.

Richland County

The Catawba-Wateree River Basin runs along the eastern edge of Richland County, almost entirely in the upper Coastal Plain Province. Before reaching Richland County, the Catawba River flows south, until it merges in with Big Wateree Creek. Here, it becomes the Wateree River which flows through Wateree Lake, continuing south to the Richland/Sumter County border. Below Eastover, the main stem of the Wateree River gives an average annual flow of 7,090 cfs, with only slight variations. The main tributary found in Richland County is Colonels Creek which also gives a well sustained flow of 47 cfs. This is attributed to the location of the Creek in the Upper Coastal Plain sediments. Water quality is generally good (S.C. Water Resources Commission, 1983).

Groundwater in the Catawba-Wateree Basin of Richland County is mostly in the Carolina Slate Belt which traverses the Piedmont Province. This supply appears to be limited with many wells yielding only 10 gpm. However, below the Fall Line, the Middendorf, Black Creek, and Black Mingo Aquifer Systems provide much better sources of groundwater with the upper coastal plain sediments reaching depths up to

650 feet. The Black Mingo is the most shallow aquifer and provides most of the water for domestic and small municipal wells. This groundwater generally has good water quality (S.C. Water Resources Commission, 1983).

Wetlands of the Catawba-Wateree River Basin are concentrated in the Lower Coastal Plain which lies in a north to south band along the Wateree River in the lower most part of the sub-basin. This area contains mostly deciduous forested wetlands with some fresh water non-forested wetlands and some bottomland hardwoods. The entire southeastern border of Richland County, bounded by the Wateree River, has bottomland forest.

Treatment Facilities

There are 12 dischargers within the basin which are listed in Table 14.

Table 14: Discharges By County

Facility Name	NPDES Number	Watershed Management Code	Receiving Stream	Type	Cnty
Richard Winn Academy	SC0028134	03050104-010	Ready Creek	Minor Comm.	Fairfield
Jones & Frank SCPRT	SC0042048	03050104-010	Wateree Lake	Minor Ind.	Fairfield
White Oak Conf. Ctr.	SC0035980	03050104-020	Big Wateree Ck.	Minor Ind.	Fairfield
Union Camp	SC0038121	03050104-030	Wateree River	Major Ind.	Richland
Kennecott Mining Co.	SC0041378	03050104-050	Sawney's Creek	Minor Ind.	Fairfield
Fairfield Nursing Home	ND0067008	03050104-050	Sprayfield	Minor Comm	Fairfield
Kennecott Mining Co.	SC0041378	03050104-060	Bear Creek	Minor Ind.	Fairfield
Valhalla Co.	SC0043494	03050104-090	Spears Creek	Minor Comm	Richland
Hacienda MHP	ND0067598	03050104-090	Tile Field	Minor Comm	Richland
Homelite/ Textron	ND0072818	03050104-090	Sprayfield	Minor Ind.	Richland

Table 14 Continued: Discharges By County

Facility Name	NPDES Number	Watershed Management Code	Receiving Stream	Type	Cnty
SC National Guard Train.	SC0046108	03050104-100	Stormwater Runoff	Minor Ind.	Richland
US Marine Corp.	SC0038792	03050104-100	Leesburg Br.	Minor Ind.	Richland

Treatment and System Capacity

Fairfield County

It is important to note that while the Towns of Winnsboro, Ridgeway and Great Falls have no wastewater discharge points in the basin, each municipality does have interceptor or collection lines within it. For this purpose, a brief description of the system is provided.

The Town of Winnsboro's wastewater treatment plant has a permitted capacity of 1.6 MGD and treats 700,000 gallons per day. Of its current flow, 200,000 gpd is industrial and 500,000 gpd is non-industrial. Its distribution system covers the municipal limits and lands immediately adjacent.

The Town of Ridgeway's wastewater treatment plant has a permitted capacity of 120,000 gallons per day and treats 70,000 gallons per day. All the flow is non-industrial. Similar to the Town of Winnsboro, the Town of Ridgeway largely confines its system to the town limits.

The Town of Great Falls has extended an eight (8) inch line to the I-77/SC 200 interchange. The line is connected to the Town of Great Falls 1.4 MGD treatment plant by two pump stations.

Richland County

In unincorporated Richland County Wildewood Utilities is the only major wastewater provider. It is a private utility which was established in 1987 under an agreement with Richland County. The agreement terms permit Wildewood Utilities to offer service in the northeast portion of the county. This service area was granted by the SC Public Service Commission. Currently, the system operates a .75 MGD treatment facility with a permitted capacity for 2.25 MGD. The treated effluent is pumped to a rapid infiltration site for final disposal.

Population and Land Use

The estimated 1990 population of the basin within the 208 planning area is approximately 20,045 persons. It is estimated that 33.2% of the population lies in Fairfield County while 66.8% lies in Richland County.

In Fairfield County, the population is largely concentrated in and around the Town of Winnsboro with the remainder scattered throughout the county. Richland County's population, like Fairfield County, is concentrated in the upper northeastern portion, locally referred to as the Pontiac area. The lower portion of the basin as it follows the Wateree River is sparsely populated given most of it is unsuited for development.

Land use characteristics within the basin vary for each county. As shown in Figure 6, Fairfield County is rural and largely undeveloped, whereas Richland County is an urban county with a rapidly expanding population, particularly in the unincorporated areas.

In Fairfield County, the higher density residential and more intensive commercial uses can be found in and surrounding the Towns of Winnsboro and Ridgeway and along Lake Wateree. Scattered industrial uses are also located in the basin particularly along SC 34. In the remaining portion of the county the land use is characterized by scattered housing and isolated commercial or industrial uses (Kennecott Mining Company), separated by large tracts of forest land or open space.

For Richland County, the land use pattern is different. Contrastingly, the northeast portion of the county is largely made up of high density residential with a significant commercial and industrial presence. Non-residential development dominates the frontage of most of the arterial road network with high density residential locating between the arterials. While this pattern is consistent throughout the Pontiac area, the development pattern becomes less intense with more undeveloped lands near the Town of Blythewood and to the Fairfield County line.

The lower Richland portion remains undeveloped and mostly preserved in its natural state, consisting of marsh, lowlands, forested lands and open space. Generally, development is limited to scattered residential housing and isolated commercial or industrial sites, notably Union Camp and the SCE&G facilities.

Projected Growth

Development Trends and Land Use

Fairfield County

Countywide population projections indicate a gradual increase of 11.6% from 1990 to 2015. This growth is expected to be primarily in the Winnsboro area with less significant growth occurring in the Simpson and Ridgeway areas. It is anticipated that the I-77 Corridor will continue to be the focus of any new industrial development efforts

following the completion of utility improvements at the major interchanges. Highway - oriented commercial development, once relatively prominent along US 21 and US 321 has declined since the opening of I-77 which will likely attract most new commercial uses.

Like most predominately rural counties with scattered residential development, commercial uses beyond the Winnsboro area are found generally in singular locations, at intersections and along the more heavily traveled roads. As traffic increases, it is anticipated that modest growth of small commercial uses will occur, particularly near residential concentrations in the developing areas of Mitford, Lake Wateree, and south and west of Ridgeway. Figure 7 illustrates projected land use for the basin.

Richland County

In the northeast and southeast portions of Richland County the pattern of growth is determined by its proximity to infrastructure and services. Richland northeast is expected to maintain its predominate position as the key residential and industrial area of the county. I-77, as in Fairfield County, will act as the catalyst for the county's new industrial base with the areas around Clemson, Longcreek and Hardscrabble roads as boundaries for developing residential enclaves. Population projections for the northeast area are estimated at a 60% increase from 1990 to 2010. Following this trend of a growing residential core will be expanding commercial strips, largely following the major highways. US 1 will remain the principal "commercial corridor" with increasing highway-oriented uses extending to the Kershaw County line.

For lower Richland County, the growth is expected to be significantly more modest as limited utility infrastructure and suitable industrial sites restrict the areas ability to attract business and industry. The far reaches of lower Richland will likely remain rural with scattered small scale commercial development to area needs. New large industrial developments are unlikely as most of the infrastructure investments have been made in the northeast and I-77 corridor areas. Additional residential development is expected to small and largely consist of small, isolated subdivisions or large lot estates.

Population and Employment Projections

Table 15 reflects the general pattern of development described in the watersheds of Fairfield County, anticipating modest changes in population and jobs, while only portions of Richland County are likely to experience significant growth in new home building and business activity.

Table 15: Population and Employment Projections

Basin Number	1990 Population	1990 Dwellings	1990 Emp	2015 Population	2015 Dwellings	2015 Emp
3050103-090	96	33	26	107	34	100
3050103-010	44	15	12	49	15	50
3050104-020	782	269	550	873	278	1350
3050104-010	3,724	1,283	1,475	4,159	1,324	2,170
3050104-050	1,977	682	1,076	2,208	703	2,412
3050104-060	5,633	2,189	918	22,445	9,845	1,379
3050104-090	4,716	1,842	635	6,227	2,792	752
3050104-100	1,773	692	380	2,111	946	717
3050104-030	1,300	508	1,112	1,485	666	1,223
Total	20,045	7,513	6,184	39,664	16,603	10,153

Needs Assessment and Projected Build-out Capacity

From examining Table 16, it is estimated that the 1990 wastewater flow generated is approximately 2.42 MGD for the basin. Of the 2.42 MGD estimated flow, current usage suggests an estimated 1.39 MGD is treated by septic tanks.

Projections for 2015 estimate a build-out flow of 4.72 MGD. Projections for septic tank treatment are expected to decline as a proportionate share of treatment methods, particularly in Richland County where large-scale residential subdivisions will require central sewer. Projected septic tank treatment is estimated at 1.57 MGD.

Demand for treatment is expected to increase overall by 2.30 MGD, with demand for central sewer treatment expected to increase 2.12 MGD over the next twenty years.

Table 16: Estimated Existing and Projected Flow

Basin Number	1990 Flow (l)	1990 Dwellings	1990 Emp	2015 Flow (l)	2015 Dwellings	2015 Emp
3050103-090	11,340	33	26	14,970	34	100
3050103-010	5,200	15	12	6,890	15	50
3050104-020	103,520	269	550	138,530	278	1350

Table 16 Continued: Estimated Existing and Projected Flow

Basin Number	1990 Flow (1)	1990 Dwellings	1990 Emp.	2010 Flow (1)	2015 Dwellings	2015 Emp.
3050104-010	461,270	1,283	1,475	536,590	1,324	2,170
3050104-050	251,270	682	1,076	319,440	703	2,412
3050104-060	654,530	2,189	918	2,515,320	9,845	1,379
3050104-090	544,510	1,842	635	716,030	2,792	752
3050104-100	208,030	692	380	254,720	946	717
3050104-030	189,360	508	1,112	215,040	666	1,223
Total	2,429,030	7,513	6,184	4,717,530	16,603	10,153

(1) Flows are measured in gallons per day

Footnote: Flow estimates were calculated on 100 gpd per capita, 10 gpd for I&I and a range of 30 to 50 gpd per employee based upon commercial or industrial use.

Watershed Assessment: Water Quality Issues and Standards

Rocky Creek (3050103-090)

Description

Rocky Creek originates near the Town of Chester and accepts drainage from Grassey Run Branch, Bull Run Creek, Hooper Creek (Melton Branch), Barbers Creek (McDaniels Branch, Waters Branch), and Bull Skin Creek. Further downstream, Beaverdam Creek enters Rocky Creek followed by Little Rocky Creek (Shannon Creek, Bell Creek (Stover Creek), Hodges Branch, and Turkey Branch. Rocky Creek drains into Cedar Creek Reservoir near the Town of Great Falls. There are a total of 176.3 stream miles in this watershed, all classified FW. Turkey Branch and its tributaries are located in northeast Fairfield County.

Water Quality Issues

There are no water quality issues identified that relate to the planning area.

Catawba River (3050103-010)**Description**

The Catawba River flows out of the Cedar Creek Dam on Lake Wylie near the Town of Fort Mill, and is joined by Big Dutchman (Little Dutchman Creek), Dye Branch (Jones Branch), Manchester Creek, and Burgis Creek) before accepting drainage from the Sugar Creek watershed. Downstream from the Sugar Creek drainage, the Catawba River flows pass the Catawba Indian Reservation and is joined by Haggins Branch, Sixmile Creek (Barber Creek), Ferry Branch, Abernathy Creek, Greene Creek, and the Twelvemile Creek watershed. Further downstream, the river accepts the drainage of Rock Water Spring Branch, Dunn Creek, and the Cane Creek watershed near the Town of Fort Lawn. The Catawba River then flows into Fishing Creek Reservoir, which is impounded by the Fishing Creek Dam. Bear Creek forms an arm of the reservoir. The Catawba River is dammed again just downstream of the Fishing Creek Dam and the flow diverted to form Great Falls Reservoir.

The Rocky Creek watershed drains into the section of Cedar Creek Reservoir between Dearborn Dam and the Cedar Creek Dam. Debutary Creek drains into and forms an arm of Cedar Creek Reservoir just above the Cedar Creek Dam. All the ponds, lakes and streams in the Rocky Creek watershed are classified FW. The lower reaches of the Catabwa River sub-basin are located in the far northeast corner of Fairfield County near Mitford.

Water Quality Issues

There are no water quality issues identified that relate to the planning area.

Big Wateree Creek (3050104-020)**Description**

Big Wateree Creek accepts the drainage of Wall Creek, Willow Swamp Branch, Gaydens Creek, Scabber Branch, and Hogfork Branch before forming an arm of Wateree Lake. There are numerous lakes and ponds (13 - 22 acres) in the watershed used for recreation and flood control. All 64.2 stream miles are classified as FW. The sub-basin lies entirely within the northcentral-northeastern portion of Fairfield County.

Water Quality Issues

While aquatic life uses are fully supported, recreational uses on Big Wateree Creek are impaired by elevated fecal coliform bacteria concentrations from non-point sources.

The Big Wateree Creek is also water quality limited for BOD-5, NH₃-N, TRC and DO at the discharge point for the White Oak Conference Center. Wasteload allocations modelling has been conducted for the upper reaches of the Big Wateree and Wall Creeks.

Wateree River/Wateree Lake (3050104-010)

Description

The Catawba River flows out of Cedar Creek dam and is joined by Cedar Creek (Bell Branch, Rocky Creek, Gar Creek), McDowell Creek, Crooked Creek, and the Big Wateree Creek watershed to form the headwaters of the Wateree River and Wateree Lake. Little Wateree Creek originates near the Town of Winnsboro and accepts drainage from Horse Creek, McCulley Creek, Ready Creek, Minton Creek, (White Oak Branch), and Horse Branch before flowing into the Big Wateree Creek embayment. Langley Branch enter the lake just downstream of the confluence, and Taylor Creek and Dutchmans Creek (Cedar Fork, Lots Fork) form arms of the lake near Wateree Lake State Park. Moving downlake, streams draining into the lake include: Singleton Creek (Tranham Creek, Showerbath Branch, Little Beaver Creek), Stillhouse Branch, Colonels Creek, and White Oak Creek. There are a total of 453.8 stream miles in the watershed, all classified FW. Wateree Lake and the Wateree River form the eastern boundary of Fairfield County.

Water Quality Issues

Catawba River - Aquatic life uses are fully supported at the site just downstream of the confluence with Cedar Creek.

Wateree Lake - There are no impaired recreational usages of the lake. Eutrophication studies classified the headwaters, Big Wateree Creek arm, and the dam area as Category I for excessive nutrients and high productivity. A Phase I Diagnostic/Feasibility Study is currently underway, with study objectives emphasizing sediment and phosphorus loading. Despite decreasing trends in total phosphorus and nitrogen concentrations, the rate of decrease is very slow and the lake is still highly productive. Aquatic life uses may not be supported in the Dutchmans Creek arm due to elevated concentrations cadmium, chromium, copper, and zinc measured in water. This

is compounded by significantly increasing trends in pH and turbidity.

Aquatic life uses at the midlake site also may not be supported due to elevated concentrations of heavy metals in both water and sediment. Nearer the dam, aquatic life uses are partially supported due to a significantly declining trend in dissolved oxygen concentration, compounded by high concentrations of zinc measured in water in 1990 and 1991. Recreational uses are fully supported, but are threatened by a significantly increasing trend in fecal coliform bacteria concentrations.

The metals concentration in Wateree Lake sediment is high relative to freshwater streams in South Carolina; however, it is similar to values seen in other lakes in the State. It is recognized that aerial deposition is a potentially significant source of these metals.

No contaminants in the fish population were measured at levels that pose a threat to human health.

Both Wateree Lake and Little Wateree Creek are included on the Section 319 list of waters impacted by agricultural activities, and the Section 304 list for waters impacted by non-toxic pollutants.

Little Wateree Creek - Aquatic life uses are fully supported, and a significantly decreasing trend in total phosphorus concentration suggests improving conditions. Recreational uses are not supported at this site (monitoring station) due to fecal coliform bacteria excursions.

Ready Creek - Ready Creek is water quality limited for NH₃-N, TRC and DO at the discharge point for Richard Winn Academy (SC0028134). The lower reach of Ready Creek has been modeled for wasteload allocations.

McCulley Creek - The ground water in the area of the above storage tanks owned by Winnsboro Petroleum Company is contaminated with petroleum products as a result of spills and leaks. Surface water has been affected by ground water contamination. The facility is under enforcement action.

Sawneys Creek (3050104-050)

Description

Sawneys Creek originates near the Town of Ridgeway and drains into the Wateree River. Thorntree Creek and Bee Branch drain into Sawneys Creek. There are a total of 107.8 stream miles in this watershed, all classified FW. This basin lies largely in Fairfield County.

Water Quality Issues

Recreational uses are not supported at either of two monitoring stations on the Creek due to fecal coliform bacteria under Class FW standards. At the upstream location, aquatic life uses are fully supported based upon macroinvertebrate community data, but may be threatened due to an elevated concentration of cadmium and a very high concentration of zinc measured in 1991. A significantly decreasing trend in pH was also noted. A significantly decreasing trend in fecal coliform bacteria concentration at the upstream site suggests improving conditions. Aquatic life uses are fully supported at the downstream site.

The discharge from Kennecott Mining (SC0041378) is to be eliminated. Fairfield Nursing Home (ND 0067008) operates a sprayfield.

Nonpoint source contributions are considered a low threat although fecal coliform levels may require future TMDL development.

Twentyfive Mile Creek

Description

Twentyfive Mile Creek originates near the Town of Blythewood and accepts drainage from Simmons Creek, Ben Hood Branch, Round Top Branch, Rice Creek, Sandy Branch (Bridge Creek, Reedy Branch, Tuppler Branch), Rooky Branch, Flat Branch, and Bear Creek (Donnington Branch). Further downstream, Big Branch enters Twentyfive Mile Creek followed by Yankee Branch, Jim Branch (Spring Branch), Briar Branch, Dodge Branch, Horsepen Creek (Wolfpit Branch), Bell Branch (Rook Branch), Cook Run, Flat Branch, and Beaverdam Branch before draining into the Wateree River. There are several ponds and lakes (10-75 acres) in the watershed used for recreation and irrigation, and a total of 255.5 stream miles in this watershed, all classified FW. The majority of this watershed lies within northeast Richland County and portions of southeast Fairfield County.

Water Quality Issues

Twentyfive Mile Creek - Aquatic life uses are fully supported based on macroinvertebrate community data, and physical and chemical data. Significantly decreasing trends in five-day biochemical demand and total phosphorus concentration suggest improving conditions. Recreational uses are only partially supported at this site (monitoring station) due to fecal coliform bacterial excursions.

Bear Creek - Aquatic life uses may be only partially supported due to a very high concentration of zinc measured in water in 1991. Although there were dissolved oxygen excursions, these were typical of values seen in blackwater systems and were considered natural, not standards violations. Recreational uses are not supported at this site due to fecal coliform bacteria excursions.

Spears Creek (3050104-090)

Description

Spears Creek originates near the Town of Elgin and flows past Fort Jackson US Army Base before draining into the Wateree River. Spear Creek flows through several small lakes including an unnamed 85-acre lake before accepting the drainage of Sloan Branch, Kelly Creek (White Pond), Haig Creek, McCaskill Creek (Rununder Branch, Otterslide Banch), and Raglins Creek. Further downstream Madraw Branch, Moke Branch, and Pigeon Roost Branch enters Spears Creek near its confluence with the Wateree River. All the streams in this watershed are classified FW. The northwest corner and southern portions of this watershed are located in Richland County.

Water Quality Issues

Spears Creek - There are two monitoring sites along Spears Creek (Kershaw County). Excursions of pH occurred at both sites; however, these were typical of values seen in blackwater systems and were considered natural, not standards violations. Aquatic life uses are fully supported at the upstream site based on macroinvertebrate community data, but may be threatened by a significantly increasing trend in turbidity. A significantly increasing trend in dissolved oxygen and significant decreasing trends in five-day biochemical oxygen demand and total phosphorus suggest improving conditions. Also, although the use of DDT was banned in 1973, it is still very persistent in the environment. Recreational uses are only partially supported at this site due to fecal coliform bacteria excursions from nonpoint sources. Aquatic life uses are also fully supported at the downstream site. Recreational uses are not supported at this site due to fecal coliform bacteria excursions.

Spears Creek is water quality limited for NH-3N, DO, TRC and BOD-5 for the discharge point of the Valhalla Company (SC0043494). This discharge is cited for elimination.

Also affecting a Spears Creek tributary is the chromium contaminated ground water in the vicinity of the surface impoundments owned by Homelite Textron. This site is under EPA remedial action. The tributary has been modeled for a wasteload allocation.

Colonels Creek (3050104-100)**Description**

Colonels Creek originates near the community of Pontiac and flows through the Fort Jackson US Army Base property and into the Wateree River. Colonels Creek flows through DuPre Pond and Messers Pond, and accepts drainage from Buffalo Creek and Bee Branch on US property. Colonels Creek then accepts drainage from Jumping Run Creek and Leesburg Branch before flowing through Murray Pond and Goodwill Pond. All of the streams and ponds are classified FW. All of this sub-basin lies within Richland County.

Water Quality Issues

Colonels Creek - Aquatic life and recreational uses are fully supported. Although there were pH excursions, these were typical values in blackwater systems and were considered natural, not standards violations. No known groundwater or nonpoint source concerns were identified.

Wateree River (3050104-030)**Description**

Downstream from the Wateree Dam, the Wateree River accepts drainage from Grannies Quarter Creek watershed, Sawneys Creek watershed, Rocky Branch and Sanders Creek (Gum Swamp Creek). Camp Creek enters the river downstream near the City of Camden, as does the Twentyfive-mile creek watershed, Gillies Creek, Big Pine Tree Creek watershed, Town Creek, and Gillies Ditch (Jumping Gully). Further downstream, the Swift Creek watershed enters the river followed by Rafting Creek (Ellerbee Mill Pond, Bracey Mill Creek, Little Rafting Creek, Dinkins Mill Pond), the Spears Creek watershed, Gum Swamp Branch (Robert Branch), and the Colonels Creek watershed. Gum Swamp Branch flow through several oxbow lakes that include Ruggs Lake, Big Lake, Little Lake, and Dry Swamp Lake. The Wateree River flows past the Town of Eastover and just prior to its confluence with the Congaree River, Little River drains into the Wateree River. Kohlers Old River connects Halfway Creek to the river. The southeastern edge of Richland County lies in this sub-basin.

Water Quality Issues

Wateree River - There are four monitoring sites in this basin with two located in the County. One site is located at the basin's northern most point, and the second is at

its southern most point. Recreational uses are fully supported at all four sites. Aquatic life uses are fully supported in the northern station (CW-206), but may be threatened by a significantly increasing trend in turbidity. Significantly decreasing in total suspended solids, total phosphorus, and total nitrogen concentrations suggest improving conditions.

At the confluence of the with the Congaree River (southern station: CW-222), aquatic life uses are fully supported, but may be threatened by a significantly decreasing trend in dissolved oxygen concentration and a significantly increasing trend in turbidity. High concentrations of zinc were measured in water in 1989 and 1993. Significantly decreasing trends in total phosphorus and total nitrogen concentrations suggest improving conditions. Wasteload allocation modelling has been conducted for the Richland County segment of the Wateree River.

Management and Policy Issues

Management Agencies & Service Provision

There are four management agencies recommended for plan implementation in the basin:

A. Management Agency: Fairfield County Management Agency Area: Northeast Fairfield County

General Policy: Under sole management agency direction, Fairfield County will implement the provisions of the plan for the prescribed management agency area with a portion under contract by the Midford Water & Sewer Company and treatment service by the Town of Great Falls.

Facility	Provider	Basin (s)	Permitted Capacity
Catawba River	Town of Great Falls	3050103-090 3050103-010 3050104-020 (p)	1.4 MGD

(p) portion of the basin

B. Management Agency: Town of Winnsboro Management Agency Area: Central Fairfield County

General Policy: Under sole management agency direction, the Town of Winnsboro is to implement the provisions of the plan for the prescribed management agency area with treatment at the Jackson Creek plant.

Facility	Provider	Basin (s)	Permitted Capacity
Jackson Creek	Town of Winnsboro	0305104-010 (p)	1.6 MGD

(p) portion of the basin

C. Management Agency: Town of Ridgeway
Management Agency Area: Southeast Fairfield County

General Policy: Under sole management agency direction, the Town of Ridgeway is to implement the provisions of the plan in the prescribed management agency area with treatment the Cedar Creek plant.

Facility	Provider	Basin (s)	Permitted Capacity
Cedar Creek	Town of Ridgeway	0305104-010 (p) 0305104-050 0305104-060 (p)	0.120 MGD

(p) portion of the basin

D. Management Agency: Richland County
Management Agency Area: Portions of northeast and southeast Richland County

General Policy: Under sole management agency direction, Richland County is to implement the provisions of the plan as prescribed by its management agency area; such that, it is recognized that Wildewood Utilities operates as the County's franchise agent for portions of northeast Richland County, but must in all cases have Richland County concurrence on all plan implementation actions.

Facility	Provider	Basin (s)	Permitted Capacity
Spears Creek	Wildewood Util.	0305104-060 (p) 0305104-090 (p)	0.75 MGD Constr. 1.75 Planned
No Facility	Richland County	0305104-030 (p) 0305104-090 (p) 0305104-100 (p)	N/A

(p) portion of the basin

Long Range Basin Planning

While the 208 Water Quality Management Plan will act as the principal guide in directing actions taken by local designated management agencies, the plan also recognizes the impact of other planning efforts. For this reason, the 208 Plan attempts to blend related planning activities to better coordinate infrastructure needs and assist member local governments in their efforts to control the effects of growth and development on the environment.

Kershaw County 208 Water Quality Management Plan (Not Adopted)

Under its role as the designated management agency for the unincorporated area, Kershaw County recently completed its own 208 Water Quality Management Plan. Generally covered by the statewide 208 Plan, Kershaw County specifically undertook this effort to analyze local alternative methods of providing wastewater for the southern portion of the County where growth is widely expected to occur.

While the study provided a useful analysis of the issues confronting the County, the plan has not yet been adopted. Continued discussion among the principal players, City of Camden, Kershaw County and Town of Lugoff is expected while no immediate resolution is anticipated.

The area adjacent and affected by Richland County is the Elgin planning district. The plan calls for the continuation of the Spears Creek plant operated by Wildewood Utilities with expectations for expansion based upon demand as needed.

Long Range Comprehensive Land Use Planning

Fairfield County

Currently, Fairfield County has not adopted zoning, negating the state requirement for a long-range development planning. However, the County Planning in anticipation of infrastructure needs proceed and adopt a land use plan, the *Comprehensive Land Use & Development Plan, Fairfield County, 1992*. In the document, it cited the I-77 corridor as the key development area for industrial and commercial development. Further, the plan forecasted the areas around Lake Wateree and Mitford as prime residential areas which given its proximity to sensitive streams and the lake suggests the need for public sewer.

Richland County

Since 1979, Richland County has had zoning, and subsequently has had several land use plans which address the basin. There are two planning subareas: the *I-77 Corridor* and the *Northeast Area*.

The *I-77 Corridor* plan generally covers the reaches of I-77 to Hardscrabble Road and the extreme northeast portion of the County, while the *Northeast Area* plan addresses the area south of Rimer Pond Road to I-20 and the Kershaw County line. Both plans identify the area as having strong growth potential over the next twenty years with medium density residential (4 to 9 dwellings per acre) as the dominant land use. Similarly, both plans stress the need for adequate infrastructure to support additional industrial and commercial needs, with the I-77 area as a target for industrial uses and Two Notch Road and I-20 for commercial activity.

Again, each plan notes the need for a continuing extension of centralized sewer in each of these areas to sustain the impending growth and to protect the land from poor environmental management. Neither plan identifies the need for additional treatment facilities as both the I-77 and northeast areas are served by the City of Columbia and Wildewood Utilities, respectively.

Saluda-Edisto River Basin Assessment and Management

Existing Basin Inventory

Water Resources

General

The Saluda-Edisto River Basin consists of three sub-basins which cover the central and western portions of the four-county 208 planning area: the Saluda River, Congaree River and Edisto River. The entire Basin encompasses some four million acres and reaches from the Piedmont to the Coastal Plain. It includes portions of Newberry, Lexington and Richland Counties and is identified as part of Watershed Management Units 0201, 0202 and 0203. Table 17 lists the related basin and watershed relationships.

Table 17: River Basins & Watersheds

Basin Name	Sub-Basin Name	Watershed Name	Counties
Saluda-Edisto	Saluda	Saluda River (U)	Newberry
		Saluda River (L)	Newberry
		Little River	Newberry
		Clouds Creek	Lexington
		Lake Murray	Lexington & Newberry
		Hollow Creek	Lexington
		Saluda River	Richland & Lexington
	Congaree	Congaree River (U)	Richland & Lexington
		Congaree Creek	Lexington
		Gills Creek	Richland
		Sandy Creek	Lexington
		Cedar Creek	Richland
		Toms Creek	Richland
		Congaree River (L)	Richland
	Edisto	Chinquapin & Lightwood Knot Cr.	Lexington
		N. Fork Edisto River (U)	Lexington
		Black Creek	Lexington
		N. Fork Edisto River (L)	Lexington
		Bull Swamp Creek	Lexington

Footnote: (U) Upper portion; (L) Lower portion

Newberry County

Saluda River Basin

The Saluda River flows southeast along the southern border of the county. Near Chappells, the Saluda River has an average flow of 1,991 cfs, yet can range from 8 cfs to 63,700 cfs. With increasing distance downstream, flow is more variable because rainfall and groundwater support lessens. In the smaller streams and tributaries, the flow is more variable because they are below many hydropower facilities. Decreased groundwater support and average precipitation in southern Piedmont regions also have a variable affect on stream flow. Lake Murray, constructed in 1930, has the fifth largest surface area and the third largest volume of all the water bodies in the state. Located primarily in northern Lexington, it is used for hydroelectric power, recreation, and water supply.

Groundwater in the Saluda River basin is usually limited to fracture and joint zones and deep saprolite layers. The Shallow Sedimentary Rock Aquifer has been utilized mainly for domestic water uses. Shallow wells, 34-563 feet deep tap groundwater at the saprolite layer of sediment. The permeability of this layer decreases lower in the Piedmont which in turn decreases rain water infiltration. As a result, these wells yield only 2-400 gpm and are apt to run dry. The Shallow Sedimentary Rock Aquifer is used by Newberry County only as a secondary source for public water supply. Aquifers are recharged directly by precipitation or indirectly by groundwater storage in the saprolite layer. Groundwater obtained from the Saluda River basin in Newberry County is generally found to have good water quality (S.C. Water Resources Commission, 1983).

Lexington County

Saluda River Basin

The Saluda River, found in the Piedmont of Lexington County, has a stream flow modified by the water discharges from Lake Murray. From Newberry and Saluda Counties, the Saluda River flows through Lake Murray until it converges with the Broad River to form the Congaree River. Below Lake Murray, the Saluda has been found to average an annual stream flow of 2,929 cfs near Columbia. Generally, flow is greater than 430 cfs. In the smaller streams and tributaries, the flow is more variable because they are affected by many hydropower facilities. Decreased groundwater support and average precipitation in southern Piedmont regions also have a variable affect on stream flow. Lake Murray, constructed in 1930, has the fifth largest surface area and the third largest volume of all the water bodies in the state. Located primarily in northern Lexington, it is used for hydroelectric power, recreation, and water supply. Classified as mesoeutrophic, or having moderate to high nutrient levels, Lake Murray has generally good and improving water quality. However, some problem areas occur

in the upper reaches of the lake and in small coves where point and non-point source pollution enters from the upper Saluda and its tributaries.

Groundwater in the northern portion of the Saluda River basin provides Lexington County with a public water supply source. Two zones, the Shallow Sedimentary Rock Aquifer, and the Crystalline Rock Aquifer have been utilized for this purpose. Shallow wells, 60-100 feet deep tap groundwater at the saprolite layer of sediment. The permeability of this layer decreases lower in the Piedmont Province which in turn decreases rain water infiltration. As a result, these wells are apt to run dry. The Shallow Sedimentary Rock Aquifer is used by Lexington County only as a secondary source for public water supply due to limited availability compared to other sources found in the Coastal Plain Province. The Crystalline Rock Aquifer is composed of fractured igneous and metamorphic rocks. This deeper bedrock aquifer provides higher yields in faulted or jointed areas. All aquifers are recharged directly by precipitation or indirectly by groundwater storage in the saprolite layer. Around the Leesville area, the Tertiary Sand Aquifer System is a source of public water supply. Wells in this aquifer yield 50-150 gallons per minute. However, these groundwaters have been found to contain concentrations of Radium-226 which exceed safe drinking water standards. Radium-226, which disintegrates from thorium, is thought to have originated in the granitic outcrop areas near the Fall Line. Groundwater obtained from other sources of the Saluda River basin in Lexington is generally found to have good water quality (S.C. Water Resources Commission, 1983).

Wetlands in the Saluda River basin are minimal due to soil type and topography. Appling, Tatum, Georgeville, and Lakeland soils contribute to an average slope of seven percent in various watersheds of the basin. Scattered wetlands are found around Lake Murray and Twelvemile and Hollow Creeks (S.C. Water Resources Commission).

The northern Piedmont Province holds about 18 percent of Lexington's wetlands. Mostly bottomland hardwoods, the wetlands of the Tatum-Georgeville-Helena soils mixed with some Nason and Herndon soils are primarily deciduous hardwood trees occurring in swamps or other partially or occasionally inundated environments.

Congaree River Basin

The Congaree River basin is comprised of the Congaree River and its tributaries below the convergence of the Saluda and Broad Rivers. Stream flow near Columbia is very stable. Average annual stream flow is 9,425 cfs. This uniform, well-sustained flow provides a good water supply for Lexington County. Water quality of the Congaree River is generally good with exceptions arising as a result of municipal point source discharges and urban runoff (S.C. Water Resources Commission, 1983).

The Middendorf Aquifer System lies under the entire Congaree River basin. The Tertiary Sands Aquifer System overlies the Middendorf in the northern reaches while Black Mingo Aquifer System overlies it in the south. The stable water supply of the

Middendorf provides acidic, soft water, low in fluoride and chloride for this basin. In some isolated wells in the Cayce and West Columbia areas, acceptable drinking water standards are exceeded for naturally occurring radiation (S.C. Water Resources Commission, 1983).

There is an abundance of wetlands along the Congaree River, approximately 18 percent of the land area is forested wetland. Wetlands are also found in the Congaree Creek and Sandy Run areas (S.C. Water Resources Commission, 1995).

Edisto River Basin

In the western region of Lexington County, adjacent to Aiken County, the Chiquapin and Lightwood Knot Creeks converge to form the North Fork Edisto River in the Edisto River Sub-basin. Black Creek and Bull Swamp Creek contribute to the North Fork Edisto further south, flowing in a southeasterly direction. Stream flow in these waters is well-sustained. Historical analysis has indicated declining concentrations of total phosphorus and biochemical oxygen demand as a result of pollution control programs. The total phosphorus concentration exceeded EPA criteria of 0.1 mg/l and violated state standards for fecal coliform bacteria as a result of livestock and feedlot activity. Also, the nitrogen/phosphorus (N/P) ratio was lowest in the Edisto basin because of the excess phosphorus entering streams from point and non-point sources. A high N/P ratio is an indicator of a balanced aquatic ecosystem and an undisturbed watershed (S.C. Water Resources Commission, 1993).

In the Edisto River basin, near the North Fork Edisto River, there is a variable groundwater supply for Lexington County. Near the Fall Line, crystalline rock aquifers produce low yields, whereas further south, the Middendorf, Tertiary Sands, and Black Mingo Aquifer Systems are more utilized for public supply. The Middendorf and Tertiary Sand aquifers are the preferred systems of Lexington County primarily because of the large yields of available water. The Black Mingo is only partly in Lexington and is a secondary source. Sediments of the Middendorf Aquifer System lie near the surface of Lexington County and groundwater movement through the system is to the south and southeast. It produces soft, acidic water, very low in dissolved solids, which makes it corrosive to metal surfaces. The Tertiary Sand Aquifer System is composed of highly permeable quartzose sands with sandy clays and inter-fingered limestones. Direct precipitation recharges this aquifer in the outcropped areas adjacent to Orangeburg County. Water quality is acidic, high in iron and low in dissolved solids. Some wells in this area may contain hydrogen sulfide gas. Natural radioactivity, in excess of safe drinking water standards, occurs in isolated areas of the Edisto River basin. The Black Mingo Aquifer System is composed of fine sand, silty clays, fullers earth fossiliferous limestones, and some mixed shales (S.C. Water Resources Commission, 1993).

Wetlands of the Edisto River basin are concentrated along the larger water bodies such as the North Fork Edisto River, Black Creek and Bull Swamp Creek. Generally,

total percentage of wetlands found in a watershed of the Edisto basin increase toward the southeastern areas of Lexington. The North Fork Edisto watershed, from its origin to Black Creek has the highest percentage of wetlands, approximately eight percent, and these are classified as forested wetland (Department of Health and Environmental Control, 1995).

The entire Coastal Plain region has many soils which can be classified as wetlands. The large Lakeland Blaney soil association along with some Fuquay soils holds 46 percent of Lexington's total wetland area. Most of this acreage is bottomland hardwoods along streams or rivers. Twenty-four (24) percent of all wetlands is held in Lakeland, Fuquay, Alga, Dothan, and Vaucluse soils located in the southern areas of the county.

Richland County

Saluda River Basin

The southeastern boundary of the Saluda River basin fringes along the extreme western border of Richland county in the Piedmont Province. Only a small northern section of Lake Murray is within Richland County which contributes very little to the overall flow of the sub-basin. From Newberry and Edgefield Counties, the Saluda River flows through Lake Murray until it converges with the Broad River to form the Congaree River. Below Lake Murray, the Saluda has been found to average an annual stream flow of 2,929 cfs near Columbia. Generally, flow is greater than 430 cfs. In the smaller streams and tributaries, flows are more variable because they are below many hydropower facilities. Decreased groundwater support and average precipitation in southern Piedmont regions also have a variable affect on stream flow. Lake Murray, constructed in 1930, has the fifth largest surface area and the third largest volume of all the water bodies in the state. Located primarily in northern Lexington County, it is used for hydroelectric power, recreation, and water supply. Classified as mesoeutrophic, or having moderate to high nutrient levels, Lake Murray has generally good and improving water quality. However, some problem areas occur in the upper reaches of the lake and in small coves where point and non-point source pollution enters from the upper Saluda and its tributaries. Groundwater of the Saluda River Sub-basin is used minimally as only 6.5 percent of the population was within its boundaries in 1983(S.C. Water Resources Commission, 1983).

Wetlands in the Saluda River basin of Richland County are found on the Tatum-Georgeville-Herndon soil association of the Piedmont Province. Since this basin has no major tributaries or surface water in Richland County, wetland acreage is negligible.

Congaree River Basin

The Congaree River basin is comprised of the Congaree River and its tributaries below the convergence of the Saluda and Broad Rivers. A 45 mile segment of the Congaree, located between the Congaree Creek and the US Highway 601 Bridge is to be placed in the Scenic Rivers Program. Most of Richland County's agriculturally productive soils are on the Middle Coastal Plain, in the Congaree River Sub-basin. Near Columbia, stream flow on the main stem of the Congaree is very stable. Average annual stream flow is 9,425 cfs. This uniform, well-sustained flow provides a good source of water supply for Richland County. Eastern tributaries, such as Gills Creek, originate in almost impermeable soils which result in a less sustained flow. Water quality of the Congaree River is generally good with exceptions arising from municipal point source discharges and urban runoff (S.C. Water Resources Commission, 1983).

The Middendorf Aquifer System lies under the entire Congaree River basin. The Tertiary Sands Aquifer System overlies the Middendorf in the northern reaches while Black Mingo Aquifer System overlies it in the south. The stable water supply of the Middendorf provides acidic, soft water, low in fluoride and chloride for this basin. Near Eastover, groundwater, used mainly for domestic activities, is taken from the Black Mingo which yields 3 to 387 gpm (S.C. Water Resources Commission, 1983).

An abundance of wetlands are found along the Congaree River, and are a part of the Congaree Swamp National Monument. Comprising 22,000 acres of land in Richland County, the monument site is described as a "large flood plain complex," which has various types of forest lands according to elevation differences (Knowles and Brinson 1996). Deciduous forested wetlands are the predominate tree cover and may be the tallest temperate deciduous forest in the world. Also, fresh water non-forested wetlands and bottomland hardwoods are present in almost the same concentration.

Treatment Facilities

In the basin there 58 industrial, 37 community and 14 municipal active NPDES permitted dischargers. In Table 18 are the dischargers listed by basin.

Table 18: Discharges By County

Facility Name	NPDES Number	Watershed Management Code	Receiving Stream	Type	Cnty
Champion Intl. Corp.	SC0022730	03050109-150	Saluda River	Minor Ind.	Newberry
City of Newberry	SC0024490	03050109-150	Bush River	Mjr. Munic.	Newberry

Table 18 Continued: Discharges By County

Facility Name	NPDES Number	Watershed Management Code	Receiving Stream	Type	Cnty
Newberry W&SA	SC0040860	03050109-150	Bush River	Min. Munic.	Newberry
Federal Paper Board	SC0036064	03050109-150	Bush River Trib.	Minor Ind.	Newberry
Hermitage Industries	SC0039187	03050109-180	W. Creek Trib.	Minor Ind.	Newberry
Columbia Farms	SC0041599	03050109-180	Gin Branch	Minor Ind.	Lexington
SCPRT Dreher Is.	SC0026948	03050109-190	Lake Murray	Minor Com.	Newberry
Newberry W&SA Bedford Way	ND0062219	03050109-190	Spray Irrigation	Minor Com.	Newberry
Mallard Bay SD AAA Util.	ND0019640	03050109-190	Tile Field	Minor Com.	Newberry
Smallwoods SD CWS, Inc.	ND0007994	03050109-190	Low Pressure Irrigation	Minor Com.	Newberry
Rollingwood S/D	SC0022845	03050109-190	Lake Murray Trib.	Minor Com.	Lexington
Georgia Pacific	SC0022641	03050109-190	Camping Creek	Minor Ind.	Newberry
Newberry W&SA	SC0004471	03050109-190	Camping Creek	Min. Munic.	Newberry
Mii-Dera Garden Apts.	SC0032042	03050109-190	Steven's Creek	Minor Com.	Newberry
SCE&G McMeekin Station	SC0002046 (2 discharges)	03050109-210	Saluda River	Mjr. Ind.	Lexington
SCE&G Saluda Hydro	SC0002071 (5 discharges)	03050109-210	Saluda River	Mjr. Ind.	Lexington
Allied Fibers	SC0003557	03050109-210	Saluda River	Mjr. Ind.	Lexington

Table 18 Continued: Discharges By County

Facility Name	NPDES Number	Watershed Management Code	Receiving Stream	Type	Cnty
Philips Components	SC0003425	03050109-210	Saluda River & Lorick Br.	Mjr. Ind.	Lexington
Woodland Hills S/D	SC0029475	03050109-210	Saluda River	Minor Com.	Lexington
Bush River Utilities	SC0032743	03050109-210	Saluda River	Minor Com.	Lexington
I-20 Plant CWS, Inc.	SC0035564	03050109-210	Saluda River	Minor Com.	Lexington
Friarsgate S/D	SC0036137	03050109-210	Saluda River	Mjr. Com.	Lexington
Riverbanks Zoo	SC0037613	03050109-210	Saluda River	Minor Ind.	Lexington
Tenneco #6033	SC0045535	03050109-210	Saluda River	Minor Ind.	Lexington
EMRO MKTG #62	SC0040321	03050109-210	Saluda R. Trib.	Minor Ind.	Lexington
Town of Lexington	SC0026735	03050109-210	12 Mile Crk.	Mjr. Munic.	Lexington
Victorian Lake Estates	SC0034932	03050109-210	12 Mile Crk.	Minor Com.	Lexington
Fast Fare #SC-616	SC0045586	03050109-210	12 Mile Crk.	Minor Ind.	Lexington
Oak Grove Estates	SC0031201	03050109-210	12 Mile Crk.	Min. Munic.	Lexington
Oak Grove Elem.	SC0026018	03050109-210	12 Mile Crk.	Min. Com.	Lexington
Carolina Steel & Wire	SC0026239	03050109-210	12 Mile Crk.	Min. Ind.	Lexington
Vanarsdale S/D	SC0030945	03050109-210	12 Mile Crk.	Minor Com.	Lexington
Sun Machinery	SC0046221	03050109-210	12 Mile Crk.	Minor Ind.	Lexington

Table 18 Continued: Discharges By County

Facility Name	NPDES Number	Watershed Management Code	Receiving Stream	Type	Cnty
Watergate CWS, Inc.	SC0027162	03050109-210	14 Mile Crk.	Min, Munic.	Lexington
Lakewood Utilities	SC0034436	03050109-210	14 Mile Crk.	Minor Com,	Lexington
City of W. Columbia Whiteford	SC0043541	03050109-210	14 Mile Crk.	Min. Munic.	Lexington
Alpine Utilities	SC0029483	03050109-210	Stoop Creek	Minor Com.	Lexington
Keenan Oil/ Phillips 66	SC0041998	03050109-210	Double Branch	Min. Ind.	Lexington
SCE&G	SC0044296	03050109-210	Double Branch	Min. Ind.	Lexington
Gilbert Elementary School	ND0013587	03050109-210	Spray Irrigation	Minor Com.	Lexington
Lexington High School	ND0067016	03050109-210	Spray Irrigation	Minor Com.	Lexington
Windy Hill S/D	ND0067075	03050109-210	Spray Irrigation	Minor Com.	Lexington
Willows End S/D	ND0068861	03050109-210	Spray Irrigation	Minor Com.	Lexington
Cayce Quarry	SC0001058	03050110-010	Congaree River	Minor Ind.	Richland
Carolina Eastman	SC0001333	03050110-010	Congaree River	Mjr. Ind.	Richland
Westinghouse Electric Corp.	SC0001848	03050110-010	Congaree River	Mjr. Ind.	Richland
SCE&G Hydro Plant	SC0002062	03050110-010	Congaree River	Minor Ind.	Richland
City of Columbia WWTP	SC0020940	0305110-010	Congaree River	Mjr. Munic.	Richland

Table 18 Continued: Discharges By County

Facility Name	NPDES Number	Watershed Management Code	Receiving Stream	Type	Cnty
City of Cayce WWTP	SC0024147	03050110-010	Congaree River	Mjr. Munic.	Lexington
Teepak, Inc./ Coria Div.	SC0033367	03050110-010	Congaree River	Minor Ind.	Richland
ERPSD WWTP	SC0038865	03050110-010	Congaree River	Mjr. Minic.	Richland
City of W. Columbia WTP	SC0041076	03050110-010	Congaree River	Minor Ind.	Lexington
SC Dept. of Agriculture	SC0041386	03050110-010	Congaree River	Minor Ind.	Richland
Altantic Soft Drink Co.	SC0043125	03050110-010	Congaree River	Minor Ind.	Richland
SCE&G Coit Powr Plt.	SC0044814	03050110-010	Congaree River	Minor Ind.	Lexington
Chevron USA Cayce	SC0042455	03050110-010	Congaree R. Trib.	Minor Ind.	Lexington
Amerada Hess Corp.	SC0044971	03050110-010	Congaree R. Trib.	Minor Ind.	Lexington
Young's Food Store	SC0045705	03050110-010	Congaree R. Trib.	Minor Ind.	Lexington
Tarmac Mid-Atlantic	SC0002364	03050110-010	Rocky Branch	Minor Ind.	Richland
EMBRO Mktg #289	SC0045128	03050110-010	Rocky Br. Trib.	Minor Ind.	Richland
Silver Lake MHP	SC0031321	03050110-010	Toms Branch	Minor. Com.	Lexington
Rolling Meadows MHP	SC0033685	03050110-010	Toms Branch	Minor Com.	Lexington
SCDOT I-26 Rest Area	SC0040339	03050110-010	Savany Hunt Crk.	Minor Com.	Lexington

Table 18 Continued: Discharges By County

Facility Name	NPDES Number	Watershed Management Code	Receiving Stream	Type	Cnty
Charles Towne S/D Utility	SC0032760	03050110-010	Mill Creek	Minor Com.	Richland
Starlite S/D Terraceway	SC0030911	03050110-010	Reeder Point Br.	Minor Com.	Richland
SC Tractor & Equip.	SC0038024	03050110-010	Reeder Point Br.	Minor Ind.	Richland
Land & Lab Tech	ND0069761	03050110-010	Sludge Injection	Minor Com.	Unknown
Creekside MHP	SC0031143	03050110-020	Congaree Creek	Minor Com.	Lexington
Pine Ridge Middle School	SC0033430	03050110-020	Congaree Creek	Minor Com.	Lexington
LCJMW&SC Old Barnwell WWTP	SC0023680	03050110-020	Red Bank Creek	Min. Munic.	Lexington
LCJMW&SC Two Notch WWTP	SC0040789	03050110-020	Red Bank Creek	Min. Munic.	Lexington
Glenn Village CWS, Inc.	SC0030651	03050110-020	First Creek	Min. Com.	Lexington
Lex. County Edmund Landfill	SC0045110	03050110-020	Bear Creek	Minor Ind.	Lexington
Loxscreen Co.	SC0003174	03050110-020	Savana Branch	Minor Ind.	Lexington
Southern Plastics	SC0001881	03050110-020	6 Mile Creek	Minor Ind.	Lexington
Solar Farms	SC0039021	03050110-020	6 Mile Creek	Minor Ind.	Lexington
SC Fire Acad.	SC0039225	03050110-020	6 Mile Creek	Minor Ind.	Lexington
City of Cayce WTP	SC0040924	03050110-020	6 Mile Creek	Minor Ind.	Lexington
Racetrac Service Station	SC0044326	03050110-020	6 Mile Creek	Minor Ind.	Lexington

Table 18 Continued: Discharges By County

Facility Name	NPDES Number	Watershed Management Code	Receiving Stream	Type	Cnty
Columbia Metro Airport	SC0044322	03050110-020	6 Mile Creek	Minor Ind.	Lexington
Amoco Service Station	SC0044393	03050110-020	6 Mile Creek	Minor Ind.	Lexington
Parkwood MHP	SC0030473	03050110-020	6 Mile Creek	Minor Ind.	Lexington
Brookforest MH Est.	SC0031178	03050110-020	Dry Creek	Minor Com.	Lexington
Belle Meade S/D Midland Utilities	SC0030988	03050110-020	Dry Creek Trib.	Minor Com.	Lexington
Lloydwood SD, CWS, Inc.	SC0031402	03050110-020	Dry Creek Trib.	Minor Com.	Lexington
Anchor Continental	SC0002101	03050110-030	Gills Creek	Minor Ind.	Richland
Ridgeway Chevron	SC0044784	03050110-030	Gills Creek	Minor Ind.	Richland
Tennaco Station #62038	SC0046035	03050110-030	Gills Creek	Minor Ind.	Richland
Amphenol Products	SC0046264	03050110-030	Jackson Creek	Minor Ind.	Richland
Amerada Hess	SC0044989	03050110-030	Little Jackson Cr.	Minor Ind.	Richland
Fast Fare # SC-639	SC0045594	03050110-030	Little Jackson Cr.	Minor Ind.	Richland
Sears #1525 Columbia Mall	SC0044407	03050110-030	Lightwood Knot Br.	Minor Ind.	Richland
Pantry #470 Forest Acres	SC0042218	03050110-030	8 Mile Branch	Minor Ind.	Richland
Tennaco Service Station	SC0043770	03050110-030	8 Mile Branch	Minor Ind.	Richland
Textron Homelite	ND0072818	03050110-030	Spray Irrigation	Minor Ind.	Richland

Table 18 Continued: Discharges By County

Facility Name	NPDES Number	Watershed Management Code	Receiving Stream	Type	Cnty
SC Air Nat'l Guard	SC0000701	03050110-050	Cedar Creek	Minor Ind.	Richland
US Army Ft. Jackson	SC0003786	03050110-050	Cedar Creek	Minor Ind.	Richland
Cedar Creek MHP	SC0032018	03050110-050	Cedar Creek	Minor Com.	Richland
Gadsden Elem. School	SC0031526	03050110-050	Cedar Cr. Trib.	Minor Com.	Richland
Franklin Park SD/ CWS	SC0031399	03050110-050	Cabin Branch	Minor Com.	Richland
Hopkins Jr. High School	SC0031500	03050110-050	Cabin Br. Trib.	Minor Com.	Richland
Hopkins Elem. School	SC0031496	03050110-050	Horsepen Branch	Minor Com.	Richland
Square D Company	SC0004286	03050110-050	Goose Branch	Major Ind.	Richland
Town of Eastover WWTP	SC0038237	03050110-070	Griffins Creek	Min. Munic.	Richland
Town of Batesburg-Leesville WWTP	SC0024465	03030203-010	Duncan Creek	Mjr. Munic.	Lexington
Town of Batesburg-Leesville WTP	SC0041084	03050203-010	Duncan Creek	Minor Ind.	Lexington
Pelion Elem. School	ND0013561	03050302-040	Spray Irrigation	Minor Com.	Lexington
CE Taylor Pumping, Inc.	ND0070149	03050203-040	Septage Injection	Minor Ind.	Lexington
Town of Swansea	SC0023205	03050203-050	Bull Swamp	Min. Munic.	Lexington
Gaston Copper Recycling	SC0034541	03050203-050	Boggy Branch	Minor Ind.	Lexington

Treatment and System Capacity

Newberry County

While there are a number of small industrial and community systems in the basin, there are only two large public providers of sewer service. The City of Newberry has the largest system with a highly developed network capable of meeting large treatment needs. Its plant has current capacity of 3.2 MGD with flows averaging 2.10 MGD per day. The City is undertaking an upgrade and expansion to 4.8 MGD over the next ten years. Industrial and non-industrial flows are about equal.

The Newberry County Water & Sewer Authority operates three plants: Dewalt plant which serves the Town of Prosperity; Plant #2 at Camping Creek which is east of the Town of Prosperity and a small community plant at Bedford Way Subdivision. The Dewalt plant is rated at 0.651 MGD and has a average flow of 0.3 MGD. No plans are made to expand this facility. Camping Creek is rated at 0.03 MGD and is cited for eventual elimination. Bedford Way is also rated at 0.03 is expected to remain in service with no plans for expansion.

Lexington County

The gradual centralization of Lexington County's wastewater treatment, transportation and collection has been and continues to be a point of discussion as smaller systems compete against larger systems for new customers. Today as in the past, there are numerous players, both public and private, in the wastewater business. The County's increasing population outside of established municipalities has led to multiple players among the public providers and they principally include the Town of Batesburg-Leesville, Town of Chapin, Town of Lexington, City of Cayce, the Lexington County Joint Municipal Water & Sewer Commission (LCJMW&SA) and the Town of Swansea.

The Town of Batesburg-Leesville operates 2.0 MGD plant with no immediate plans for expansion.

The Town of Chapin operates a 1.20 MGD plant. No plans are expected for immediate expansion.

Town of Lexington operates two plants (Whiteford and Coventry Woods) with a combined capacity of 2.25 MGD. The Town of Lexington is currently constructing a regional transportation system for the 12 & 14 Mile Creek basins with treatment forwarded to the Cayce Main Plant. Its two operating plants are to be eliminated.

The City of Cayce operates a 8.0 MGD plant. Expansions plans are expected given the increase in flow anticipated by the 12 & 14 Mile Creek system.

The LCJMW&SC operates two plants (Two Notch and Old Barnwell) which are cited for merger and eventual elimination in the Cayce Main plant. Their combined

capacity is estimated at 1.2 MGD.

Lastly, the Town of Swansea has a 0.16 MGD lagoon system with no immediate plans for expansion or consolidation.

Richland County

In Richland County there are two major public treatment facilities and one smaller facility: the City of Columbia's Metro plant, the East Richland Public Service District (ERPSD) Main plant and the Town of Eastover's municipal plant. The City of Columbia's Metro plant is the region's largest and is rated at 40.0 MGD. The City is currently expanding and upgrading the plant to 60.0 MGD. It accepts flows from unincorporated portions of Richland and Lexington Counties and the City of West Columbia.

The ERPSD's Main plant is a 10.0 MGD facility. It is anticipated that an expansion to 14 MGD is planned over the next few years given the District's current rate of growth.

Richland County's Broad River plant is a 2.25 MGD facility. It has a design capacity of 15.0 MGD. Plans to expand the plant are expected.

The Town of Eastover has a small 0.025 MGD plant with no plans for expansion.

Existing Population and Land Use

The 1990 basin population was 361,540 persons with a county distribution approximately: Newberry, 7.0%; Lexington, 48.0% and Richland, 45.0%. Figure 2 illustrates the current land use pattern.

Newberry County

In Newberry County the majority of the population resides in or surrounding the City of Newberry, the Town of Prosperity and along Lake Murray. The land use pattern for that portion of the County is primarily single-family residential and general commercial development in or immediately adjacent the towns with some industrial sites located in close proximity. Additional residential subdivision development is found along Lake Murray with scattered service and retail commercial activity.

Lexington County

Almost the entirety of Lexington County is found within the basin, excluding a small portion of the northeast corner near Chapin. As a whole Lexington County is a

growing suburban county with numerous small municipalities serving as commercial hubs for the surrounding residential development. Generally, the north-central (Town of Lexington) and north-east (Town of Irmo, City of Cayce and West Columbia) portions of the County are urban in character; that is with higher residential densities intermixed with commercial and industrial development. Further west and south, the County takes on a more rural and undeveloped setting. Industrial development, while historically closer to the urban areas, is now being constructed in the center of the County along I-20 south of the Town of Lexington. The interstate's proximity to utilities make it a prime location for industrial activities and is expected to continue attracting new industry.

Richland County

The portion of Richland County that lies in the basin ranges in character from urban along the northern reaches near the Broad and Congaree Rivers to the rural in the southern areas or lower portion of the County. In the northern and central areas, the City of Columbia dominates the landscape with typical urban-style land uses, notably commercial uses along major highways, radiating from the central business district. In between the commercial corridors are residential uses ranging from single-family to apartment units. Once beyond the City's urban core, the developing fringe mirrors some aspects of downtown, such as the sprawling commercial development along the highways, but the residential activity changes. Apartment uses and smaller single-family housing become less obvious with larger lots and more suburban style housing blending into the neighborhoods.

Immediately beyond the developing fringe and reaching into the lower portion of the County, the landscape quickly becomes open with large wooded areas and cleared pastures. Lower Richland, while experiencing residential growth during the 1970s and early 1980s, still is largely pastoral in character as a holdover from its agricultural past. The Town of Eastover is the only incorporated municipality in the area. While Eastover has only a small population, it is the center of activity with some retail and service commercial uses. Beyond Eastover in all directions within the basin commercial and industrial uses are typically scattered among highway intersections or setback far from the road on higher, flat land. Figure 6 illustrates the current land use for basin.

Projected Growth

Development Trends And Land Use

Newberry County

Development in Newberry County is expected to be modest. The majority of new commercial and industrial activity will likely be adjacent the City of Newberry along

US 76 to the Town of Prosperity with other residential growth along the reaches of Lake Murray. Utility infrastructure remains the largest single barrier to greater growth in the areas beyond the municipalities. Future industrial and commercial uses are expected along the I-26 interchanges from Little Mountain to the City of Newberry as shown in Figure 7.

Lexington County

Lexington County will continue to be the fastest growing County in the region. The location and density of development will be very closely tied to planned infrastructure improvements in the eastern and northern portions of the fringe areas adjacent existing municipalities. Development is expected to continue along Lake Murray and expand north and east of the Towns of Lexington and Chapin. The eastward expansion of development will join the development occurring along the fringe of West Columbia to completely urbanize the area between the municipalities. More development is also expected to move west and south of the City of Cayce to encompass the communities of Edmund and Gaston.

In the rural areas, housing will continue to increase significantly, particularly in the form of manufactured housing which has been rising over the last seven years. The Towns of Batesburg-Leesville, Gilbert and Summit will likely see increased commercial development resulting from rising customer demand.

Industrial growth is expected to continue along I-20 and in the vicinity of the Metropolitan Airport, south of Cayce. This is anticipated given its poor soils for agricultural use and the eventual extension of utilities.

Sustaining agricultural uses are expected to continue in the southern portion of the County near Swansea and Pelion.

Richland County

The northern portion of the basin reaches into the urban core of Columbia and extends into lower Richland County just beyond the Town of Eastover and northward toward Fort Jackson. While this area is expected to grow, it largely lies outside the portions of the County most likely to experience the higher rates of residential development. The Columbia urban core and fringe will continue to develop and subsequently become larger as it provides employment for an 11 county market area. The land use pattern in the core is not expected to change significantly, although new residential development is likely to return to the Congaree Vista in ever increasing amounts.

Beyond the urban core eastward and southward, development will occur from infill and redevelopment with new construction being limited to the phasing of utility extensions by the City of Columbia. Some new industrial and commercial development

will continue to be relocated along the Southeastern Beltway, but will gradually giveaway as available land suitably zoned becomes scarce.

Further south toward the Town of Eastover, residential development will increase but limited to large lot single-family in small subdivisions or occur in a piecemeal fashion. While this form of residential growth is slow, it will fuel increased commercial traffic in the local communities, especially in Hopkins, Gadsden and Horrell Hill. Figure 7 illustrates the projected land use pattern for area.

Population and Employment Projections

Table 19 reflects the land use pattern shown in Figure 7, illustrating the significant growth that occurs in Lexington County and the modest changes in portions Newberry and Richland Counties. Between 1990 and 2010, the basin is projected to increase in population by 27.4%, and by 10.0% in employment.

Table 19: Population and Employment Projections

Basin Number	1990 Population	1990 Dwellings	1990 Emp.	2015 Population	2015 Dwellings	2015 Emp.
3050109-080	312	116	55	352	118	100
3050109-150	18929	7035	8028	21186	7203	9550
3050109-163	666	247	309	757	252	400
3050109-180	2655	983	1127	3352	1210	1391
3050109-190	19808	7470	4919	26277	11014	6357
3050109-200	1000	370	344	1397	504	428
3050109-210	82604	31011	38028	111540	48323	41357
3050110-010	33595	12917	25911	43987	18287	30473
3050110-020	44231	15578	14111	52898	22402	16059
3050110-030	123789	47779	64078	150554	64668	62897
3050110-040	1200	444	480	1410	509	564
3050110-050	10401	3358	3962	13618	4795	4658
3050110-060	1377	538	454	1575	706	519
3050110-070	1441	562	475	1648	739	543
3050203-010	6682	2475	2673	8841	3274	3536

Table 19 Continued: Population and Employment Projections

Basin Number	1990 Population	1990 Dwellings	1990 Emp.	2010 Population	2010 Dwellings	2010 Emp.
3050203-020	982	363	393	2030	733	812
3050203-030	3993	1479	1597	7323	3004	3329
3050203-040	2341	867	515	4317	1558	605
3050203-050	5182	1919	2073	7627	2753	3051
Total	361540	135511	169532	460668	192052	186629

Needs Assessment and Projected Build-out Capacity

Examining Table 20, it is estimated that the 1990 wastewater flow generated is approximately 45.3 MGD for the basin. Of the 41.7 MGD estimated flow, current usage suggests an estimated 24.4 MGD is treated through septic tanks.

Projections for 2015 estimate a build-out flow of 56.9 MGD. Projections for septic tank use is expected to decline as a proportionate share in Lexington and Richland Counties, while remaining stable in Newberry County. Projected septic tank treatment is estimated at 22.4 MGD.

Demand for effluent treatment is expected to increase overall by 11.6 MGD, with demand for central sewer to increase 13.6 MGD over the next twenty years.

Table 20: Estimated Existing and Projected Flow

Basin Number	1990 Flow (1)	1990 Dwellings	1990 Emp.	2015 Flow (1)	2015 Dwellings	2015 Emp.
3050109-080	35970	116	55	41920	118	100
3050109-150	2367250	7035	8028	2669560	7203	9550
3050109-163	82930	247	309	96270	252	400
3050109-180	332660	983	1127	419650	1210	1391
3050109-190	2350450	7470	4919	3112200	11014	6357
3050109-200	121000	370	344	167710	504	428
3050109-210	10379380	31011	38028	13675530	48323	41357

Table 20 Continued: Estimated Existing And Projected Flow

Basin Number	1990 Flow	1990 Dwellings	1990 Emp.	2015 Flow	2015 Dwellings	2015 Emp.
3050110-010	4522780	12917	25911	5814760	18287	30473
3050110-020	5331060	15578	14111	6348730	22402	16059
3050110-030	15680090	47779	64078	18649850	64668	62897
3050110-040	146800	444	480	173420	509	564
3050110-050	1269970	3358	3962	1648120	4795	4658
3050110-060	165490	538	454	190320	706	519
3050110-070	173360	562	475	199370	739	543
3050203-010	836590	2475	2673	1105590	3274	3536
3050203-020	120310	363	393	248660	733	812
3050203-030	493540	1479	1597	915500	3004	3329
3050203-040	273760	867	515	494820	1558	605
3050203-050	638430	1919	2073	941100	2753	3051
Total	45321820	135511	169532	56913080	192052	186629

(1) Flows are measured in gallons per day

Footnote: Flow estimates were calculated on 100 gpd per capita, 10 gpd for I/I and a range of 30 to 50 gpd per employee based upon commercial or industrial use.

Watershed Assessment: Water Quality Issues and Standards

Saluda River (3050109-080)

Description

Toney Creek, Mountain Creek, Little Creek, and the Broadmouth Creek watershed drain into the Saluda River in the upper portion of this watershed, and further downstream Turkey Creek enters the river to form an arm of Lake Greenwood. Tributaries of the western side of Lake Greenwood include Mulberry Creek, Camp Branch, and Quarter Creek. The Reedy River watershed and the Rabon Creek watershed join to form another arm of the lake. Also flowing into the eastern lake shore are Long Lick Branch and Cane Creek. As a reach of the Saluda River, this watershed accepts the drainage of all streams entering the river upstream of the watershed. There are a total of 294 stream miles in the watershed, all classified FW.

Water Quality Issues

Saluda River - Aquatic life uses are not supported for this section of the Saluda River due to methoxychlor (a pesticide) measured in excess of the acute aquatic life criterion in 1992. This is compounded by a significantly declining trend in dissolved oxygen concentration and a significantly increasing trend in turbidity, most likely the result of nonpoint source runoff. Dibromochloromethane was detected in water 1988. Recreational uses are fully supported.

The Saluda River is included on the Section 319 list of waters impacted by agricultural activities, resulting from computer modelling of NPS problems.

Saluda River - (03050109-150)

Description

This section of the Saluda River flows out of Lake Greenwood and is joined by Halfway Swamp and Sharps Branch near the Town of Chappells. Further downstream, Terrapin Creek and Mill Creek enter the river, followed by the Little River watershed, Rocky Branch, and Tosity Creek. Beaverdam Creek flows past the Town of Silverstreet and drains into the Saluda River arm of Lake Murray.

The Bush River originates near the City of Clinton where it accepts drainage from Shell Creek. Further downstream, near the City of Newberry, Rocky Creek, Big Beaverdam Creek, and Scott Creek flow into the Bush River. The Bush River then accepts drainage from Timothy Creek near the Town of Prosperity and drains into the

Saluda arm of the lake. Big Creek enters the lake just downstream of the confluence of the Saluda and Bush Rivers. There are a total of 208 stream miles in this watershed, all classified FW.

Water Quality Issues

Saluda River - Recreational uses are fully supported, but aquatic life uses are only partially supported upstream and midstream while fully supported downstream. Conditions appear to be improving at midstream, although high concentrations of copper and zinc were measured in previous years upstream and downstream, respectively.

The Saluda River is also effluent limited at the discharge for Champion International (SC0022730).

The Saluda River is listed as a Section 319 impacted waterbody for NPS problems associated with agricultural activities.

Saluda River arm of Lake Murray - Eutrophication studies classify this area as a Category I for excessive nutrients and extremely high productivity. In-lake restoration for algae and macrophytes is recommended. Due to natural conditions and to the small number of samples, aquatic life uses are considered to be fully supported at all sites. Recreation uses are also fully supported.

Bush River - Monitored at three sites, aquatic life uses are fully supported at the upstream site, but may be threatened by a significantly declining trend in dissolved oxygen concentration and a significantly increasing trend in total nitrogen. Recreational uses are not supported at the upstream site due to fecal coliform bacteria excursions under FW standards; however, a significantly declining trend in the bacteria concentrations suggests improving conditions. Aquatic life uses are fully supported at the midstream and downstream sites, although a significantly increasing trend in pH was noted downstream. Recreational uses are not supported at either the midstream or downstream sites due to fecal coliform bacteria excursions under FW standards.

Bush River is water quality limited for ammonia, DO, TRC and BOD-5 at the discharge points of the City of Newberry's WWTP (SC0024490) and Newberry W&SA WWTP #2 (SC0040860).

The Bush River is also listed as a Section 319 impacted waterbody for NPS problems associated with agricultural activities.

Bush River arm of Lake Murray - Eutrophication studies classify this area as a Category I for excessive nutrients and extremely high productivity. High algal concentrations may impair swimming usage of the Bush River arm of the lake. Recreational uses are fully supported, while aquatic uses are only supported at the upstream monitoring site and are threatened at the downstream site by high

concentrations of zinc measured in 1990 and 1991. Derivatives of DDT were also detected in the sediment in 1988.

The Bush River Tributary is effluent limited at the discharge for Federal Paper Board plant (SC0036064).

Little River (03050109-163)

Description

This section of Little River receives drainage from the upper Little River watershed, and together with its tributaries drains into the Saluda River near the Town of Silverstreet. Garrison Creek flows into the Little River near the top of the watershed. Further downstream, the Little River accepts drainage from Sandy Run Creek, Mechanic Creek, Mudlick Creek, Davenport Branch, and Stephens Creek. There are a total of 84.7 stream miles in this watershed, all classified FW.

Water Quality Issues

Little River - Aquatic life uses are fully supported. Significantly increasing trends in pH and turbidity were noted upstream, most likely due to nonpoint runoff. Recreational uses are not supported in the upstream area due to fecal coliform bacteria excursions under Class FW standards. Recreational life uses are considered to be fully supported at the downstream site, despite fecal coliform bacteria excursions, due to the small number of samples.

This section of Little River is included in the Section 303 high priority list of waters targeted for TMDL development in relation to elevated fecal coliform concentrations, and is listed as water impacted by agricultural activities, citing a high potential for NPS problems.

Clouds Creek (03050109-180)

Description

The Clouds Creek watershed originates near the Town of Ridge Spring, and encompasses a total of 155.5 stream miles before entering the Little Saluda River. Clouds Creek is joined by Peters Creek and Indian Creek before flowing through Asbill Pond. Downstream of the pond, Clouds Creek accepts the drainage of Jacobs Branch, and Long Branch. West Creek originates near the Town of Batesburg-Leesville, and accepts the drainage of Bates Branch, Gin Branch, and Lick Creek before entering Clouds Creek at the base of the watershed. Clapboard Branch and Beaverdam Creek

enter Clouds Creek just at the base of the watershed. Clapboard Branch and Beaverdam Creek enter Clouds Creek just as it drains into the Little Saluda River.

Water Quality Issues

The West Creek Tributary and Gin Branch streams are effluent limited at the discharge points of Hermitage Industries (SC0039187) and Columbia Farms (SC0041599), respectively.

Saluda River (03050109-190)

Description

The Saluda River watershed and the Little Saluda River watershed merge to form the headwaters of Lake Murray. Spring Creek, Hawleek Creek, Rocky Creek, and Buffalo Creek flow into the waters of upper Lake Murray. Camping Creek and Bear Creek enter midlake on the northern shore, and the Hollow Creek watershed, Horse Creek, Little Hollow Creek, Beaverdam Creek, Rocky Creek, Beech Creek, and Twentymile Creek enter midlake on the south shore of the lake. Eighteenmile Creek drains into the lake near the dam. There are a total of 82.6 stream miles in this watershed, and Lake Murray extends over 51,000 acres.

Water Quality Issues

Lake Murray - Lake Murray was found to be nutrient limited in nitrogen as a result of testing in 1989. Eutrophication studies reclassified the lake headwaters from Category I to Category II, for an intermediate trophic condition, which may be susceptible to further degradation. The dam area is classified as a Category III for the lowest trophic condition and is recommended for preservation. Treatment for Hydrilla in selected areas of the lake began in 1993, for increasing public access. Herbicide treatment in selected areas of Lake Murray for Hydrilla was continued in 1994.

Generally, aquatic life uses are fully supported in the Lake, but may be threatened at the dam due to the high concentrations of zinc measured in 1988 and 1989. Derivatives of DDT were detected in sediment in 1988, together with a high concentration of chromium detected in 1988 and a very high concentration of chromium in 1990. Recreational uses are fully supported throughout the lake but show signs of an increasing trend in fecal coliform bacteria concentrations at four out of eight monitoring stations.

Camping Creek - Aquatic life uses are fully supported, however a significantly

increasing trend in pH was noted. Recreational uses are not supported due to fecal coliform bacteria excursions. Camping Creek is included on the Section 303 list of low priority waters which may require TMDL development in relation to fecal coliform, toxic metals, ammonia and dissolved oxygen. Camping Creek is also listed on the Section 304 (I) long list for impacted waterbodies due to nontoxic pollutants.

Both Lake Murray and Camping Creek are included on the Section 319 list for impacted waters by agricultural activities. Computer modelling indicates a high potential for NPS problems from agricultural activities in the headwaters. Currently, Camping Creek is under study for remediation for NPS activities.

Several areas are water quality limited at the following discharge points: SCPRT Dreher Is. at Lake Murray (SC0026948) for NH₃-N, DO and BOD-5; Rollingwood SD at Lake Murray Tributary (SC0022845) for NH₃-N, DO, TRC, BOD-5; GA Pacific at Camping Creek (SC0022641) for effluent; Newberry W&SA Plant #2 at Camping Creek (SC004471) for NH₃-N, DO, TRC and BOD-5 and Mii-Dera Garden Apartments at Stevens Creek (SC0032042) for NH₃-N, DO and TRC.

Hollow Creek (03050109-200)

Description

Hollow Creek accepts drainage from Caney Branch and Little Creek before draining into the middle region of Lake Murray. There are a total of 19.2 stream miles in this watershed, all classified as FW.

Water Quality Issues

Aquatic life uses are fully supported, but recreational uses are not supported due to fecal coliform bacteria excursions. Hollow Creek is included on the Section 303(d) high priority list of waters targeted for TMDL development in relation to the fecal coliform concentrations. The Creek is also on the Section 319 list.

Saluda River (03050109-210)

Description

This section of the Saluda River flows out of the Lake Murray dam and merges downstream with the Broad River to form the Congaree River in the City of Columbia. The lower Saluda River is protected under the SC Scenic Rivers Act. Rawls Creek,

Lorick Branch, and Kinley Creek drain into the Saluda River near the Town of Irmo. Juniper Creek and Long Creek join to form Twelvemile Creek near the Town of Gilbert. Twelvemile Creek accepts drainage from Hogpen Branch, Fall Branch, and Boggy Branch before flowing through the Town of Lexington to accept the drainage of Fourteenmile Creek and enter the River. Stoop Creek, Senn Branch and Double Branch enter the Saluda River just prior to its confluence with the Broad River. There are a total of 129 stream miles in this watershed, all classified FW.

Water Quality Issues

Saluda River - There are three monitoring sites along this section of the river. Aquatic life uses are not supported at the upstream site (below the dam) due to dissolved oxygen excursions, compounded by a significantly declining trend in dissolved oxygen concentration. This is at least partly due to the release of waters low in dissolved oxygen from the bottom of Lake Murray. Recreational uses are fully supported at this site.

Aquatic life uses are not supported at the midstream site (downstream from Rawls and Lorick Branch Creeks) due to dissolved oxygen concentrations. Recreational uses are also fully supported.

Aquatic life uses may be threatened at the downstream site (near 12 Mile and Kinley Creeks) due to a very high concentration of zinc in 1991, which is compounded by a significantly increasing trend in BOD-5. Recreational uses are only partially supported due to elevated concentrations of fecal coliform bacteria.

The lower Saluda River is included on the Section 303 (d) low priority list due to dissolved oxygen concerns. A permit driven TMDL was calculated for this segment proposing an Ultimate Oxygen Demand (UOD) of 3,900 lbs/day.

The Saluda River is also listed on Section 319 list of watersheds targeted for implementation action due to agricultural activities and urban runoff.

The Saluda River is water quality limited and effluent limited at the following discharges: SCE&G Hydro (SC0002046) for effluent; Allied Fibers (SC0003557), Phillips Components (SC0003425), Woodland Hills SD (SC0029475), Bush River Utilities (SC0032743), CWS I-20 Regional (SC0035564), Friarsgate SD (SC0036137), Riverbanks Zoo (SC0037613), each for DO; Tennaco #6033 (SC0045535) for toxics (metals); EMRO #62 (SC0040321) for effluent.

Rawls Creek - Aquatic life uses are fully supported, but recreational uses are not supported due to fecal coliform bacteria excursions under Class FW standards. Rawls Creek and Lorick Branch are both impacted by urban runoff.

Lorick Branch - Aquatic life uses are fully supported, but may be threatened by a significantly declining trend in dissolved oxygen concentration. Recreational uses are not supported due to fecal coliform bacteria excursions under Class FW standards.

Lorick Branch is water quality limited for effluent at the following discharge: Phillips Components (SC0003425).

Kinley Creek - Aquatic life uses are fully supported; however, a significantly increasing trend in pH was noted together with a high concentration of zinc in 1988 water samples. Sediment samples revealed a presence of chlorodane (pesticide) and a very high concentration of zinc in 1988. Recreational uses are not supported due to fecal coliform bacteria excursions under Class FW standards. Kinley Creek is impacted by agricultural and construction activities and urban runoff.

Rawls Creek, Lorick Branch and Kinley Creek are included in Section 303 (d) high priority list of waters for TMDL development in relation to elevated fecal coliform concentrations. Kinley Creek also has elevated level of suspended solids.

Twelvemile Creek - Aquatic life uses may be threatened due to extremely high concentrations of zinc measured in 1988 and 1991, and a very high concentration of copper measured in 1988. In 1992, zinc and copper did not exceed aquatic life acute criteria. A significantly decreasing trend in pH was also noted at this site. Recreational uses are only partially supported due to fecal coliform bacteria excursions under Class FW standards.

Twelvemile Creek is water quality and effluent limited at the following discharges: Coventry Woods (SC0026735) for NH3-N, DO and TRC; Victorian Lake Estates (SC0034932) for NH3-N, DO and TRC; Fast Fare #616 (SC0045586) for BOD-5 and metals; Oak Grove Estates (SC0031201) for NH3-N, DO, TRC and BOD-5; Oak Grove Elementary (SC0026018) for NH3-N, DO, TRC and BOD-5; Carolina Steel & Wire (SC0026239) for BOD-5; Vanarsdale SD (SC0030945) for NH3-N, DO, TRC and BOD-5; and Sun Machinery (SC0046221) for BOD-5.

Twelvemile Creek is also listed on the Section 304 (I) short list for waters not expected to meet applicable water quality standards after full implementation for NPDES permit conditions due, in part or entirely, to point source discharges of Section 307(a) toxics. Twelvemile Creek is also included on the Section 304(I) long list for impacted waterbodies due to concerns for ambient toxicity.

Fourteenmile Creek is water quality limited at the following discharges: CWS/Watergate (SC0027162) for NH3-N, DO, TRC and BOD-5; Lakewood Utilities WWTP (SC0034436) for NH3-N, DO, TRC and BOD-5; and Whiteford WWTP (SC0043541) for NH3-N, DO, TRC and BOD-5.

Stoop Creek is water quality limited at the following discharge: Alpine Utilities WWTP (SC0029483) for NH3-N, DO and TRC.

Double Branch Creek is water quality limited at the following discharges: Phillips

66 (SC0041998) for BOD-5 and metals; and SCE&G Holland Street (SC0044296) for BOD-5.

Congaree River (03050110-010)

Description

The Congaree River originates with the confluence of the Saluda River Basin and the Broad River basin in the City of Columbia. There are a total of 290 stream miles in this watershed, all classified FW. Rocky Branch flows into the Congaree River within the City of Columbia, followed by the Congaree Creek watershed and the Gills Creek watershed. Further downstream, Toms Branch, Big Lake, and Savany Hunt Creek enter the river. The river then accepts drainage from the Sandy Run watershed and Mill Creek. Big Beaver Creek accepts drainage from Rock Branch, Branham Branch, Little Beaver Creek, and Congaree Spring Branch before flowing in the Congaree River. Butlers Gut Creek connects Big Beaver Creek to Buyck Bottom Creek and to the river. Bates Mill Creek drains into the river at the base of the watershed. Another natural resource in the watershed is the Congaree River Swamp National Monument, a wetland preserve, which extends along the northeastern river bank in the lower portion of the watershed.

Water Quality Issues

Congaree River - Aquatic life uses are fully supported at the Saluda River side, but may be threatened by a significantly declining trend in dissolved oxygen concentration. A high concentration of zinc was measured in both water and sediment in 1988. Recreational uses are fully supported for this area.

Aquatic life uses are also fully supported for the Broad River side, but again may be threatened by a significantly declining trend in dissolved oxygen concentration. In 1988 toluene was detected in a water sample, and chlorodane was detected in sediment. The detection of organic chemicals at two monitoring sites is probably a result of nonpoint source runoff from the Columbia metropolitan area. Recreational uses are only partially supported in this area due to fecal coliform bacteria excursions under Class FW standards; however, a significantly declining trend in fecal coliform bacteria concentrations suggests improving conditions.

Aquatic life uses are fully supported in the downstream area. Although there were fecal coliform bacteria excursions at both sites, due to the small number of samples, recreational uses are considered to be fully supported.

The Congaree River is water quality and effluent limited for the following

discharges: Cayce Quarry (SC0001058) for effluent; Carolina Eastman (SC0001333) for effluent; Westinghouse (SC0001848) for effluent; SCE&G (SC0002062) for effluent; Columbia WWTP (SC0020940) for NH3-N, DO and TRC; Cayce WWTP (SC0024147) for NH3-N, DO and TRC; Teepak Inc. (SC0033367) for effluent; ERPSD WWTP (SC0038865) for NH3-N, DO and TRC; West Columbia Water Treatment Plant (SC0041076) for effluent; SCDaAg (SC0041386) for effluent; Atlantic Soft Drink (SC0043125) for effluent; SCE&G Coit Station (SC0044814) for effluent.

Also, the river is included on the Section 319 list of waters impacted for urban runoff.

Mill Creek - Excursions of pH have occurred; however they are consistent with the swamp-influenced waters seen in this region of the state, and as such are considered natural conditions, not standards violations. Aquatic life uses are fully supported in the upstream portion, but may be threatened by a significantly declining trend in dissolved oxygen concentration and a significantly increasing trend in turbidity. Recreational uses are not supported due to fecal coliform bacteria excursions, compounded by a significantly increasing trend in fecal coliform bacteria concentration.

Downstream, aquatic life uses are only partially supported due to dissolved oxygen excursions. A significantly increasing trend in turbidity was also evident in this portion. Recreational uses are only partially supported due to elevated fecal coliform bacteria concentrations. The increases in turbidity and fecal coliform are most likely due to nonpoint runoff, which prompted placement of Mill Creek on the Section 304 (I) long list for waters impacted by nontoxic pollutants.

Mill Creek is water quality limited for the following discharge: Charles Towne (SC0032760) for NH3-N, DO, TRC and BOD-5.

Congaree River Tributary - Congaree River tributary is water quality limited at the following discharges: Chevron USA - Cayce (SC0042455) for BOD-5 and toxics; Amerada Hess Corp #40234 (SC0044946) for BOD-5 and toxics; Amerada Hess Corp #40237 (SC0044971) for BOD-5 and toxics; and Young's Food Store (SC0045705) for BOD-5 and toxics.

Rocky Branch - Rocky Branch is water quality and effluent limited at the following discharges: Tarmac Mid-Atlantic (SC0002364) for effluent and EMRO Mktg #289 (SC0045128) for BOD-5 and Toxics.

Toms Branch - Toms Branch is water quality and effluent limited at the following discharges: Silver Lake MHP (SC0031321) for effluent and Rolling Meadows MHP (SC0033685) for NH3-N.

Savany Hunt Creek - Savany Hunt Creek is effluent limited at the following discharge: SCDOT/I-26 Rest Area.

Reeder Point Branch - The Reeder Point Branch is water quality and effluent limited at the following discharges: Starlite SD (SC0030911) for NH3-N, DO and TRC and SC Tractor & Equipment (SC0038024) for effluent.

Mill Creek is included on the Section 303(d) high priority list of waters targeted for TMDL development in relation to elevated fecal coliform concentrations. A TMDL was calculated for the Congaree River for ammonia toxicity due to its large size and close proximity of the dischargers. The TMDL for NH3-N is 8963 lbs./day.

Congaree Creek (03050110-020)

Description

The Congaree Creek watershed drains into the Congaree River near the City of Cayce. West Fork and East Fork join to form Scrouter Branch, which flows through Redmond Pond and Shealy Pond to enter Congaree Creek near its origin. Congaree Creek then flows through Hunt Pond before accepting the drainage from Red Bank Creek. Second Creek flows into First Creek, which in turn drains into Congaree Creek. Congaree Creek also accepts the drainage from Savana Branch, Sixmile Creek and Dry Creek. There are a total of 189.2 stream miles in this watershed, all classified FW. Due to the absence of point source dischargers and the presence of endangered species, Scrouter Branch together with Redmond Pond and Shealy Pond may qualify as potential ORW candidates. Another natural resource in the watershed is Peachtree Rock Preserve, located at the headwaters of Hunt Branch.

Water Quality Issues

Congaree Creek - There are two monitoring sites along Congaree Creek. Excursions of pH occurred at both sites; however, they are consistent with the swamp-influenced waters seen in this region of the State, and are considered natural conditions, not standards violations. Aquatic life uses may be threatened in the upstream portion due to a very high concentration of zinc measured in 1990, compounded by significantly increasing trends in pH and turbidity. The turbidity is most likely due to nonpoint runoff. Recreational uses are only partially supported due to fecal coliform bacteria excursions under Class FW standards, compounded by a significantly increasing trend in fecal coliform concentration.

Aquatic life uses and recreational uses are fully supported downstream, despite fecal coliform bacteria excursions, due to the small number of samples.

Congaree Creek is water quality and effluent limited at the following discharges: Creekside MHP (SC0031143) for effluent and Pine Ridge Middle School (SC0033430) for NH3-N, DO, TRC and BOD-5.

Red Bank Creek - Aquatic life and recreational uses are fully supported. Excursions of pH has occurred; however, they are consistent with swamp-influenced waters seen in this region of the State, and are considered natural conditions, not standards violations. Significantly increasing trends in turbidity were noted at both upstream and downstream sites, together with a significantly increasing trend in pH in the upstream portion. The turbidity is most likely a result of nonpoint source runoff.

Red Bank Creek is included on the Section 319 list of waters impacted by agricultural and resource extraction activities, and included on the Section 304 (I) long list for waters impacted by nontoxic pollutants.

Red Bank Creek is water quality limited at the following discharges: LCJMW&SC Old Barnwell WWTP (SC0023680) for NH3-N and TRC and the Two Notch Road WWTP (SC0040789) for NH3-N and TRC.

Savana Branch - Aquatic life uses are fully supported; however, significantly increasing trends in pH and turbidity were noted. The pH excursions are consistent with the swamp-influenced waters seen in this region of the State, and as such are considered natural conditions, not standards violations. The turbidity is most likely a result of nonpoint source runoff. Recreational uses are only partially supported at this site due to fecal coliform bacteria excursions, compounded by a significantly increasing trend in the concentration of fecal coliform bacteria.

The Savana Branch is water quality limited at the following discharge: Loxxscreen Company (SC0003174) for NH3-N.

Sixmile Creek - Aquatic life uses are only partially supported due to dissolved oxygen excursions. A significantly increasing trend in turbidity was noted at this site, most likely due to nonpoint source runoff. Recreational uses are fully supported.

Sixmile Creek is water quality and effluent limited at the following discharges: Southern Plastics (SC0001881) for effluent; Solar Farms (SC0039021) for TRC; SC Fire Academy (SC0039225) for effluent; Cayce Water Plant (SC0040924) for TRC; RaceTrac Service Station (SC0044326) for BOD-5 and toxics; Columbia Metro Airport (SC0044342) for effluent; Amoco Service Station (SC0044393) for BOD-5 and toxics; and Parkwood MHP (SC0030473) for NH3-N, DO, TRC and BOD-5.

First Creek is water quality limited at: CWS/Glenn Village (SC0030651) for NH3-N, DO, TRC and BOD-5.

Bear Creek is water quality limited at: Lexington County Landfill (SC0045110) for NH3-N, TRC and BOD-5.

Dry Creek is water quality limited at: Brookforest MH Estates (SC0031178) for TRC.

Dry Creek Tributary is water quality limited at the following discharges: Belle Meade SD (SC0030988) for NH₃-N, DO and TRC and CWS/ Lloydwood SD (SC0031402) for NH₃-N and TRC.

Lake Caroline - Aquatic uses are fully supported; however, significantly increasing trends in pH and turbidity were noted. Turbidity is most likely a result of nonpoint source runoff. Recreational uses are only partially supported at this site due to fecal coliform bacteria excursions under Class FW standards; however, a significantly declining trend in fecal coliform bacteria concentrations suggests improving conditions.

Gills Creek (03050110-030)

Description

Gills Creek flows through the northeastern section of the City of Columbia and drains into the Congaree River. There are a total of 147.4 stream miles in this watershed, all classified FW. Gills Creek originates near Sesquicentennial State Park and accepts the drainage of Bynum Creek, Rowell Creek, and Mack Creek before flowing through Boyden Arbor Pond, Rockyford Lake, and Forest Lake. Jackson Creek also originates near Sesquicentennial State Park and flows through Sesquicentennial Pond and Windsor Lake before accepting the drainage of Little Jackson Creek. Jackson Creek then flows through Carys Lakes and Spring Lake to join Gills Creek in Forest Lake. Downstream of Forest Lake, Gills Creek accepts the drainage of Eightmile Branch and Pen Branch before flowing through Lake Katherine. Wildcat Creek drains into Gills Creek downstream of Lake Katherine. Gills Creek and its associated wetlands drain into the Congaree River. Due to the absence of point source dischargers and the presence of endangered species, several streams may qualify as potential ORW candidates including: Rose Creek, Bynum Creek, and the headwaters of Gills Creek.

Water Quality Issues

Gills Creek - Aquatic life uses may be threatened in the upstream portion due to high concentrations of zinc measured in 1988 and 1992, and a very high concentration of zinc measured in 1989. These are compounded by a significantly declining trend in dissolved oxygen concentration, and significantly increasing trends in pH and turbidity. Aquatic life uses are fully supported at the downstream site, however a significantly increasing trend in turbidity was noted, most likely a result of nonpoint source runoff. A sediment sample revealed the presence of organic chemicals (DDT derivative) in 1992. Although the use of DDT was banned in 1973, it is very persistent in the environment.

Recreational uses are not supported upstream or downstream due to fecal coliform bacteria excursions under Class FW standards.

Gills Creek is water quality limited at the following discharges: Anchor Continental (SC0002101) for NH₃-N and TRC; Ridgeway Chevron (SC0044784) for BOD-5 and toxics and Tenneco #62038 (SC0046035) for BOD-5 and toxics.

Gills Creek and Forest Lake are both included in the Section 319 list of waters impacted by urban runoff. Data indicate on Gills Creek elevated levels of fecal coliform on numerous occasions, together with scattered elevated levels of turbidity and toxic materials (metals and organics), and excursions of DO and pH.

Jackson and Little Jackson Creeks are water quality limited at the following discharges: Amphenol Products (SC0046246) for BOD-5 and toxics; Amerada Hess #40245 for BOD-5 and toxics; and Fast Fare # 639 (SC0045594) for BOD-5 and toxics.

Lightwood Knot Branch is water quality limited at: Sears #1525 (SC0044407) for BOD-5 and toxics.

Eightmile Branch is water quality limited at the following discharges: Pantry #470 (SC0042218) for BOD-5 and toxics and Tennaco Direct Service Station (SC0043770) for BOD-5 and toxics.

Sesquicentennial Pond - The pond was stocked in 1989 with 300 grass carp, a biological control agent for aquatic plants, and sprayed with aquatic herbicides in 1990 to improve public access to the lake.

Windsor Lake - Aquatic life uses are fully supported; however a significantly increasing trend in turbidity was noted, most likely due to nonpoint source runoff. Excursions of pH occurred, however high pH levels occur naturally in lakes with significant phytoplankton communities and do not represent standards violations. Recreational uses are fully supported.

Forest Lake - Aquatic life uses may be threatened due to very high concentrations of zinc measured from 1989-1992. A significantly increasing trend in turbidity was also noted at this site. Recreational uses are fully supported, but a significantly increasing trend in fecal coliform bacteria concentrations warrants attention. Turbidity, fecal coliform, and zinc most likely result from nonpoint runoff. Forest Lake shows elevated fecal coliform levels on numerous occasions and scattered elevated turbidity and toxic material levels (metals). Forest Lake is also included on the Section 304 (I) long list for waters impacted by nontoxic pollutants.

Sandy Run (03050110-040)**Description**

Little Sandy Run flows into Sand Run which drains into the Congaree River. There are a total of 59.6 stream miles in this watershed, all classified FW.

Water Quality Issues

Sandy Run - Aquatic life and recreational uses are fully supported. Excursions of pH occurred; however, they are consistent with the swamp-influenced waters seen in this region of the state, and as such are considered natural conditions, not standards violations.

Cedar Creek (03050110-050)**Description**

The headwaters of Cedar Creek flow through Westons Pond, Harmons Pond, Morrells Pond, Clarkson Pond, and Duffies Pond before accepting the drainage of Reeves Branch and Myers Creek. After the confluence with Myers Creek, Cedar Creek flows through Wise Lake and Weston Lake and accepts drainage from Dry Branch before entering the Congaree River. The lower section of the watershed, from Wise Lake to the river, contains a large portion of the Congaree River Swamp National Monument, a wetland preserve. There are numerous recreational lake and ponds in this watershed and a total of 199.3 stream miles, all classified FW.

Water Quality Issues

Cedar Creek - Excursions of pH has occurred both in the upstream and downstream portions of the creek; however, they are consistent with the swamp-influenced waters seen in this region of the state, and as such are considered natural conditions, not standards violations. Aquatic life uses are fully supported in the upstream portion, although a significantly increasing trend in turbidity was noted, most likely a result of nonpoint source runoff. Recreational uses are only partially supported in the upstream portion due to fecal coliform bacteria excursion. Aquatic life and recreational uses are fully supported downstream.

Cedar Creek is included on the Section 319 list of waters impacted by agricultural activities and is also on the Section 304(I) long list for waters impacted by nontoxic pollutants.

Cedar Creek is water quality and effluent limited at the following discharges: SC Air National Guard (SC0000701) for effluent; US Army Fort Jackson (SC0003786) for DO and Cedar Creek MHP (SC0032018) for effluent.

Cedar Creek Tributary is water quality limited at Gadsden Elementary (SC0031526) for NH3-N, DO, TRC and BOD-5.

Cabin Branch is water quality limited at CWS/Franklin Park SD (SC0031399) for TRC.

Cabin Branch Tributary is water quality limited at Hopkins Jr. High (SC0031500) for NH3-N, DO and TRC.

Horsepen Branch is water quality limited at Hopkins Elementary for NH3-N and TRC.

Goose Branch is included on the Section 304(I) short list for waters not expected to meet applicable water quality standards after full implementation of NPDES permit conditions due, in part or entirely, to point source discharges of Section 307(a) toxics; Square D Company was the facility discharging the toxic effluent. Goose Branch is also included on the Section 304 (I) long list for impacted waterbodies due to concerns for ambient toxicity.

Goose Branch is water quality and effluent limited at: Square D (SC0004286) for BOD-5 and effluent.

Toms Creek (03050110-060)

Description

Toms Creek watershed contains a total of 78.9 stream miles, all classified FW. The headwaters of Toms Creek flow through Haithcock Pond and Westons pond before being joined by Ray Branch. The creek then flows through Drafts Pond and accepts drainage from McKenszie Creek before flowing into the Congaree River. Another natural resource is the Congaree River Swamp National Monument, which extends across the lower end of the watershed.

Water Quality Issues

Aquatic life and recreational uses are fully supported. Excursions of pH occurred; however, they are consistent with the swamp-influenced waters seen in this region of the state, and as such are considered natural conditions, not standards

violations. Recreational uses are considered to be fully supported, despite fecal coliform bacteria excursions, due to the small number of samples.

Congaree River (03050110-070)

Description

This section of the Congaree River incorporates a total of 109.1 stream miles, all classified FW. Griffens Creek drains into Running Lake, which in turn flows through Little Lake, Big Lake, and into Running Creek. Running Creek drains into Singleton Creek, which flows through Bates Old River to reach the Congaree River. Buckhead Creek enters the river further downstream. A small portion of the Congaree River Swamp National Monument is located near the top of the watershed, where the Toms Creek watershed enters. As a reach of the Congaree River, this watershed accepts the drainage of all streams entering the river upstream of the watershed.

Water Quality Issues

Congaree River - Aquatic life uses are not supported at the site just upstream of the Wateree River confluence due to a high concentration of copper measured in 1988 and a high concentration of zinc measured in 1989. A sediment sample revealed 2,6-dinitrotoluene in 1989. Significantly, increasing trends in pH and turbidity were also noted. Recreational uses are fully supported.

A TMDL was calculated for the Congaree River for ammonia toxicity due to the large size and close proximity of the dischargers. The TMDL for ammonia is 8963 pounds/day.

This section of Congaree River has been added to the Section 319 list due to elevated levels of zinc and copper.

Griffins Creek is water quality limited at the Town of Eastover WWTP(SC038237) for NH₃-N, DO, TRC and BOD-5.

Chinquapin Creek and Lightwood Knot Creek (03050203-010)

Description

Chinquapin and Lightwood Knot Creeks join to form the North Fork Edisto River. Chinquapin Creek originates near the Town of Monetta and accepts drainage from Duncan Creek, Horsepen Creek, Mare Creek, Rock Creek, and Shirley Branch before merging with Lightwood Knot Creek. The Town of Batesburg-Leesville lies near the headwaters of Duncan Creek and uses a small lake associated with the drainage for its

water supply. Lightwood Knot Creek flows through several ponds including Abells Millpond and Brodie Millpond, before accepting drainage from Hellhole Creek, Marlow Creek, Thrasher Branch, Mill Creek, and Long Branch. There are a total of 101.5 stream miles and numerous small lakes in this watershed, all classified FW.

Water Quality Issues

Chinquapin Creek - Aquatic life uses may be threatened at this site due to a very high concentration of zinc measured in 1988, together with a significantly declining trend in pH. Recreational uses are not supported due to fecal coliform bacteria excursions; however, a significantly declining trend in fecal coliform bacteria concentration suggests improving conditions.

Chinquapin Creek is included on the Section 319 list of waters impacted by agricultural activities. Samples show scattered levels of elevated metals. Computer modelling indicates a high potential for NPS problems from agricultural activities.

Lightwood Creek - Aquatic life uses are fully supported, but recreational uses are only partially supported due to fecal coliform bacteria excursions.

Duncan Creek - Duncan Creek is water quality limited at the discharge point for the Town of Batesburg-Leesville's WWTP (SC024465) and Water Treatment Plant (SC0041084) for NH₃-N, DO and TRCs and effluent, respectively.

North Fork Edisto River (03050203-020)

Description

The North Fork Edisto River accepts drainage from the Chinquapin Creek and Lightwood Knot Creek watershed, Carneys Creek, Crooker Branch, and Goose Platter Creek in the upper portion of the watershed. Other tributaries that enter the river as it moves downstream include Chalk Hill Creek, Marrow Bone Swamp Creek, Wolf Pit Branch, Big Branch, Hood Branch, Rambo Branch, and Giddy Swamp Creek. There are a total of 134.0 stream miles in this watershed, all classified FW. Due to the absence of point source dischargers and the presence of endangered species, all or part of the streams in this watershed may qualify as potential ORW candidates.

Water Quality Issues

North Fork Edisto River - Aquatic life uses and recreational uses are fully supported at the headwaters. Dissolved oxygen and pH excursions occurred; however, they were typical of values seen in blackwater systems and as such were considered natural conditions, not standards violations. Aquatic life uses may be threatened at the

downstream site due to a very high concentration of zinc measured in 1992. Recreational uses are fully supported, despite fecal coliform bacteria excursions, due to the small number of samples.

A fish consumption advisory has been issued by the SCDHEC for mercury and includes the streams in this watershed.

Black Creek (03050203-030)

Description

Black Creek originates near the Town of Gilbert and drains into the North Fork Edisto River. Black Creek flows through Taylor Pond and several other ponds before accepting the drainage of Pond Branch and flowing into Paxton Millpond. Downstream of the millpond, Little Black Creek enters Black Creek, which then flows through Clarks Millpond to accept drainage from Cedar Pond Branch, Spring Branch, Big Branch, McCartha Branch, and Coney Branch. There are a total of 80.5 stream miles in this watershed, all classified FW. Due to the absence of point source dischargers and the presence of endangered species, all or part of the streams in this watershed may qualify as potential ORW candidates.

Black Creek - Aquatic life and recreational uses are fully supported. Although pH excursions occurred, they were typical of values seen in blackwater systems and as such were considered natural conditions, not standards violations.

A fish consumption advisory has been issued by the SCDHEC for mercury and includes the streams within this watershed.

North Fork Edisto River (03050203-040)

Description

This section of the North Fork Edisto River accepts drainage from Cedar Creek, Jackson Creek, Hollow Creek, Pond Creek, Salem Creek, Penn Branch, and Big Beaver Creek. Further downstream, Turkey Branch enters the river. There are numerous ponds and a total of 186 stream miles in this watershed, all classified FW. Due to the absence of point source dischargers and the presence of endangered species, all or part of the streams in this watershed may qualify as potential ORW candidates. As a reach of the North Fork Edisto River, this watershed accepts the drainage of all streams entering the river upstream on the watershed.

Water Quality Issues

North Fork Edisto River - Aquatic life uses are fully supported in the upstream portion, but may be threatened at the downstream portion due to a very high concentration of zinc measured in 1992. Significantly increasing trends in pH and turbidity were also noted in the upstream portion. Although pH excursions occurred, they were typical of values seen in blackwater systems and as such were considered natural conditions, not standards violations. Recreational uses are fully supported at both sites.

A permit driven TMDL was calculated for the North Fork Edisto River that proposed ammonia limits at 1250 lbs./day as a monthly average, and TRC limits at 14.6 lbs./day for a monthly average and 25.24 lbs./day for a daily maximum.

The North Fork Edisto River is also included on the Section 319 list of waters impacted by agricultural activities. Water samples collected show scattered elevated of turbidity, metals and pH excursions.

A fish consumption advisory has been issued by SCDHEC for mercury and includes the streams within this watershed.

Bull Swamp Creek (03050203-050)

Description

Bull Swamp Creek originates near the Town of Gaston and flows through the Town of Swansea before draining into the North Fork Edisto River. Bull Swamp Creek flows through Spires Pond before accepting drainage from Boggy Branch, Fourth Creek, Third Creek, Cow Branch, Gardner Branch, and Little Bull Swamp Creek. Bull Swamp Creek then flows through Etheridge Mill Pond and into the North Fork Edisto River. There are a total of 108.0 stream miles in this watershed, all classified FW.

Water Quality Issues

Bull Swamp Creek - Bacterial conditions are expected to improve as new NPDES permit limits are instituted in the watershed. Although pH excursions occurred, they were typical of values seen in blackwater systems and as such were considered natural conditions, not standards violations. Aquatic life uses are not supported in the upstream portion due to dissolved oxygen excursions; however, this is a secondary monitoring site and sampling is purposely biased towards periods with potentially low dissolved oxygen concentrations. Significantly increasing trends in pH and turbidity were also noted. Recreational uses are only partially supported due to fecal coliform bacteria excursions.

Aquatic life uses are fully supported in the midstream, but significantly increasing trends in pH and turbidity were noted, and P,P'DDT was detected in the 1990 sediment sample. The use of DDT was banned in 1973, but it is very persistent in the environment. Recreational uses are fully supported. Aquatic life uses are fully supported downstream based upon macroinvertebrate community data. Recreational uses are also fully supported.

Bull Swamp Creek is included on the Section 319 list of impacted waters by agricultural and construction activity. Water samples collected show scattered elevated levels of turbidity and pesticides. Computer modelling indicates a high potential for NPS problems from agricultural and urban runoff for this stream. Bull Swamp is also included on the Section 304 list of waters impacted by nontoxic pollutants.

A fish consumption advisory has been issued by SCDHEC for mercury and includes the streams within this watershed.

Management and Policy Issues

Management Agencies & Service Provision

General Basin Policy: There are fifteen (15) management agencies recommended for plan implementation in the basin. Generally, each management agency and its facilities is set up to be the major provider for each area and act as an general coordinator of wastewater collection, transportation and treatment. And, while other facilities identified in the plan may currently operate independently of a management agency's facilities or their related systems, all facilities within an agency's area may be identified for eventual consolidation and elimination for water quality, public health and cost-effectiveness objectives.

A. Management Agency: City of Newberry

Management Agency Area: City of Newberry and surrounding area.

General Policy: Under sole management agency direction, the City of Newberry is to implement the provisions of the plan for the prescribed management agency area with treatment at its Bush River facility.

Facility	Provider	Basin (s)	Permitted Capacity
Bush River	City of Newberry	3050109-150 (p)	3.2 MGD 1.6 MGD Planned

B. Management Agency: Town of Chapin

Management Agency Area: Town of Chapin and Northeast Lexington County

General Policy: Under sole management agency direction, the Town of Chapin is to implement the provisions of the plan for the prescribed management area with treatment at its Wateree Creek facility.

Facility	Provider	Basin (s)	Permitted Capacity
Wateree Creek	Town of Chapin	3050109-190 (p)	1.2 MGD

C. Management Agency: Newberry Water & Sewer Authority

Management Agency Area: Unincorporated Newberry County, excluding area immediately adjacent the City of Newberry.

General Policy: Under sole management agency direction, the Newberry Water & Sewer Commission is to implement the provisions of the plan for the prescribed management area, and with the long-term objective of consolidation of its facilities into a larger regional system, separately or in conjunction, with the City of Newberry.

Facility	Provider	Basin (s)	Permitted Capacity
Dewalt	NCW&SA	3050109-150 (p)	.651 MGD
Camping Creek	NCW&SA	3050109-190	.03 MGD
Bedford Way	NCW&SA	3050109-190	.03 MGD

D. Management Agency: Town of Lexington

Management Agency: Central portion of Lexington County

General Policy: Under sole management agency direction, the Town of Lexington is to implement the provisions of the plan for the prescribed management area, while eliminating and consolidating the number of dischargers through the development of a regional wastewater transportation system with final treatment at the Cayce WWTP.

Facility	Provider	Basin (s)	Permitted Capacity
Coventry Woods (1)	Town of Lexington	3050109-210	1.95 MGD
Whiteford (1)	Town of Lexington	3050109-210	0.15 MGD

(1) To Be Eliminated

E. Management Agency: Town of Batesburg-Leesville**Management Agency Area:** Town of Batesburg-Leesville and adjacent area.

General Policy: Under sole management agency direction, the Town of Batesburg-Leesville is to implement the provisions of the plan for the prescribed management agency area with treatment at its Duncan Creek facility.

Facility	Provider	Basin (s)	Permitted Capacity
Duncan Creek	Town of Batesburg -Leesville	3050109-180 3010110-010	2.0 MGD

F. Management Agency: City of Cayce**Management Agency Area:** Eastern Central Lexington County

General Policy: Under sole management agency direction, the City of Cayce is to implement the provisions of the plan for the prescribed management agency area with treatment at its Cayce Main plant.

Facility	Provider	Basin (s)	Permitted Capacity
Cayce Main	City of Cayce	3050109-020 3050110-010	8.0 MGD

G. Management Agency: Lexington County Joint Municipal Water & Sewer Commission**Management Agency Area:** Red Bank Creek and North of Hwy 378

General Policy: Under sole management agency direction, the Commission can, in cooperation with others or separately, implement the provisions of the plan for the prescribed management area, such that it should eventually consolidate facilities into available regional systems with treatment at the Cayce WWTP or other approved facilities as recognized by the WQMP.

G. Management Agency: Lexington County Joint Municipal Water & Sewer Commission Facilities

Facility	Provider	Basin (s)	Permitted Capacity
Two Notch Road (1)	LCJMW&SC	3050109-020	0.40 MGD
Old Barnwell (1)	LCJMW&SC	3050109-020	0.80 MGD

(1) To Be Eliminated

H. Management Agency: City of West Columbia
Management Agency Area: City of West Columbia and adjacent areas

General Policy: Under sole management agency direction, the City of West Columbia is to implement the provisions of the plan for the prescribed management agency area such that wastewater flow is transported to the City of Columbia Metro Plant for treatment.

Facility	Provider	Basin (s)	Permitted Capacity
Columbia Metro	City of W. Columbia	3050109-210 3050110-010	40.0 MGD

I. Management Agency: Town of Swansea
Management Agency Area: Town of Swansea and adjacent area

General Policy: Under sole management agency direction, the Town of Swansea is to implement the provisions of the plan for the prescribed management agency area with treatment at its Bull Swamp facility.

Facility	Provider	Basin	Permitted Capacity
Bull Swamp	Town of Swansea	3050109-050	0.16 MGD

J. Management Agency: Springdale**Management Agency Area: Town of Springdale**

General Policy: Under sole management agency direction, the City of Springdale is to implement the provisions of the plan for the prescribed management agency area such that wastewater flow is transported to the City of Cayce Main Plant for treatment.

Facility	Provider	Basin (s)	Permitted Capacity
Cayce Main	Town of Springdale	3050110-010	8.0 MGD

K. Management Agency: Lexington County**Management Agency Area: Portions of Unincorporated Lexington County**

General Policy: Under sole management agency direction, the County of Lexington is to implement the provisions of the plan for the prescribed management agency area such that wastewater flow may be treated at an existing facility or a new facility that is recognized by the Plan.

L. Management Agency: City of Columbia**Management Agency Area: City of Columbia, portions of northwest and south-central Richland County and northeast Lexington County.**

General Policy: Under sole management agency direction, the City of Columbia is to implement the provisions of the plan for the prescribed management agency area with treatment at the Columbia Metro Plant.

Facility	Provider	Basin (s)	Permitted Capacity
Columbia Metro	City of Columbia	3050109-190 3050109-210 3050110-010 3050110-030	40.0 MGD 20.0 MGD Planned Expansion

M. Management Agency: East Richland Public Service District (ERPSD)
Management Agency Area: Portions of Northeast Richland County

General Policy: Under sole management agency direction, the ERPSD is to implement the provisions of the plan for the prescribed management agency area such that wastewater flow is transported to the ERPSD Main plant for treatment.

Facility	Provider	Basin (s)	Permitted Capacity
ERPSD Main	ERPSD	3050110-030	10.0 MGD

N. Management Agency: Richland County
Management Agency Area: Unincorporated Richland County

General Policy: Under sole management agency direction, Richland County is to implement the provisions of the plan for the prescribed management agency area such that the wastewater flow in the northwest portion of the County is transported to the Broad River plant for treatment.

Facility	Provider	Basin (s)	Permitted Capacity
Broad River	Richland County	3050109-090	2.5 MGD

O. Management Agency: Town of Eastover
Management Agency Area: Town of Eastover

General Policy: Under sole management agency direction, the Town of Eastover is to implement the provisions of the plan for the prescribed management agency area such that the wastewater flow is transported to the Town's plant.

Facility	Provider	Basin (s)	Permitted Capacity
Eastover	Town of Eastover	3050109-060 (p)	.025 MGD

Long Range Basin Planning

While the Regional 208 Water Quality Management Plan will act as the principal guide in directing actions taken by local designated management agencies, the plan also recognizes the impact of other planning efforts. For this reason, the 208 Plan attempts to blend with it related planning activities to better coordinate infrastructure needs and assist member local governments in their efforts to control the effects of growth and development on the environment.

Lower Saluda River Corridor Plan

During the 1980s community interest in protecting the Lower Saluda River prompted the SC Water Resources Commission (Currently SC Department of Natural Resources) to declare the river eligible for Scenic River Designation. From this step came a public effort to undertake a comprehensive resource management plan sponsored by the SC Water Resources Commission and SC Department of Parks, Recreation & Tourism.

Completed in July of 1990, the plan outlined specific recommendations addressing water quality. Reprinted from the plan and incorporated in the previous 208 Water Quality Management Plan, it states:

III. Water Quality Protection

We recommend that the Lower Saluda Task Force support efforts to improve and protect the water quality of the lower Saluda River by addressing point and non-point pollution sources in the following manner:

A. Non-point Source Pollution

1. Encourage and support efforts of local governments within the Lower Saluda River Corridor to seek financial and technical assistance necessary to create, maintain and enforce comprehensive programs for sediment, erosion and stormwater runoff.

2. Support effective efforts to rectify existing sediment, erosion, stormwater runoff and flooding problems identified in high growth areas such as Kinley and Rawls Creek watersheds. [Non-point source pollution has caused problems in the Saluda River ranging from threats to the fishery such as trout to the aesthetic problems of turbidity. Most of the sediment problems of the Saluda come from its tributaries, particularly Rawls Creek. Other non-point source pollution problems occur where

vegetated buffers are too thin. The Task Force strongly supports the two recommendations above as a means to better control these types of pollution problems.}

3. Tributaries of the lower Saluda River should be protected by a vegetated buffer sufficient to control erosion, sedimentation and other water quality problems associated with runoff.

B. Point Source Pollution

We recommend that jurisdictions bordering the Lower Saluda River watershed begin planning for future consolidation of domestic wastewater, and amend the 208 area-wide waste treatment management plan to reflect this goal. We also recommend that all domestic wastewater discharge be eliminated from the lower Saluda River. [One of the most controversial topics in recent years concerning the lower Saluda River has been the use of the river for the disposal of domestic wastewater. The Task Force encourage long-range comprehensive planning in order to better facilitate a regional approach to the treatment and disposal of domestic wastewater. The Task Force also recommends as a future goal that domestic wastewater discharges be eliminated for the lower Saluda River.]

C. Support the reclassification of the lower Saluda River from Class A to Trout Waters (Put, Grow and Take).

River Alliance Corridor Plan

The River Alliance was formed in 1993 in an effort to construct a plan that would maximize the potential of the region's river system, specifically the confluence of the Broad, Congaree and Saluda Rivers. Its planning efforts focus on three major themes:

1. revitalizing the urban core which consists of the developed lands adjacent the rivers in the City of Columbia, W. Columbia, Cayce and unincorporated Richland and Lexington Counties,

2. preserve and protect the natural character of the environment, promoting wilderness protection, buffering controls, cluster development models and natural parklands; and

3. Encourage a corridor approach to land and water related recreation, while linking historical and cultural resources into an integrated system.

In total, the plan itself is comprised of more than 150 policy and project recommendations. It will be the task of the River Alliance to implement these projects and promote the policies among the member local governments. While the development process is its formative stages, the 208 Water Quality Management Plan endorses the efforts of the River Alliance as it relates to the protection of water quality and sensitive environmental use of the regions water resources.

The Edisto River Basin Project

The Edisto River Basin Project is a comprehensive, multi-year planning effort to address the natural resource issues in the basin associated with land use changes from development. The SCDNR and the National Oceanic Atmospheric Administration (NOAA) created in the project in 1988. Its goals were to create a natural resource database using current computer technology for facilitating better decisions regarding resource allocation. A second goal was to develop public policy procedures which address resource management of the basin and promote its proper stewardship by a collective management effort of local, state and federal policy-makers.

Recommendations from the project which relate to the 208 planning process highlight several key objectives: 1) infrastructure should be developed in locations sensitive to the natural resources of the basin, 2) maintenance of the natural hydrology of the basin to promote and protect the basin's biodiversity, and 3) limit and reduce the impact from nonpoint source pollution as much as possible.

The 208 Plan accepts each of these objectives and reinforces their application basinwide in its regional planning policies.

Long Range Comprehensive Land Use Planning

Newberry County

In Newberry County zoning has not been adopted for the unincorporated area which precludes the state legal requirement for land use planning. Of the municipalities in the basin, the City of Newberry and the Town of Prosperity have zoning and the required long-range development plans. While both municipalities anticipate growth of the next twenty-five years, only the City of Newberry forecasts the need for additional infrastructure improvements relating to its wastewater

system. Specifically, the City in conformance with its land use plan calls for the extension of service immediately adjacent the City which would promote its annexation strategy. Currently, the City is also seeking to improve its wastewater plant by expanding its capacity.

Separate but related, Newberry County has undertaken an pro-active infrastructure planning effort titled the, *I-26 Corridor Utility Study, US 176 to Highway 32, Wilbur Smith & Associates, March 1996*. This study performed at the request of the Central Carolina Economic Development Alliance, examines the costs and feasibility of providing water and sewer service to all interchanges along Interstate 26. The County is currently working with the City of Newberry and the Newberry County Water & Sewer Authority to implement its recommendations, in hopes of furthering economic development opportunities.

Lexington County

In examining the basin boundaries almost all of Lexington County lies in the basin. In response rapid growth since the 1970s, Lexington County and the majority of its municipalities have adopted some form of zoning and conduct land use planning. The County's land use planning efforts largely focus on reducing infrastructure congestion resulting from developing land use patterns. Using a combination of the conventional district style form and a modified performance base approach, the County has emphasized the use of mitigation techniques as the method for lessening the impacts of land use incompatibility. In summary, the County recognizes the gradual suburbanization of the County from the more developed eastern portion to the growing central portion and Lake Murray shore area.

The municipalities are overwhelmingly using the district style zoning approach with each jurisdictions emphasis targeting annexation strategies. Similar to many developing counties, the municipalities are becoming the hub of economic development efforts with the surrounding rural lands converting to suburban residential communities. Lexington County's land use strategy supports this pattern of development and subsequently promotes the need for extensive water and sewer networks to sustain its growth. In part, this partially explains the presence of over eight wastewater providers and numerous private systems.

Richland County

Richland County's subarea land use plan, *Lower Richland*, is the key land use policy guide for this portion of the basin. Described in that document, the County forecasts that the area is to likely remain rural with some development in and around the Columbia urban fringe. Past development history reinforces this

view as water and sewer is limited in its availability. Despite previous efforts to improve the provision of utility services by the County, large scale demand has not materialized prompting action by the County or some other private provider.

Future land development projections suggest a continuation of this pattern. Yet, the demand of wastewater is significant as many pockets of residential and some commercial areas operate on septic tanks. It is likely that in the absence of a strong residential building trend is started, the provision of wastewater and other utilities will not as quickly forthcoming as hoped by many in Lower Richland.

Plan Implementation

Facilities Management

1984 - 1985 Columbia Metropolitan 201/208 Water Quality Management Plan

While this 1996 Plan represents an overall revision to the previous 1978 and 1985 efforts, the plan will continue to recognize and use as a guide the 201 facility component of the 1985 WQM Plan. In summary, the 1985 Plan identified facilities for consolidation and closure that are to be carried forward as part of this plan, but with an implementation strategy linked to this revision. Namely, that actions taken under the recommendations listed in the 1985 plan are done in the name of this 1996 revision, and that must be in conformance with the regional plan policies.

It is also important to note that while major amendments to the plan from 1985 to the present are carried forward as part of this revision, *where interpretation issues arise, the original plan amendments are subordinate to the general regional policies.*

208 Plan Certificates of Conformance

As part of a memorandum of agreement between SCDHEC and CMCOG, a review will be conducted on all activities which involve SCDHEC review and approval of Preliminary Engineering Reports, construction permits, and effluent discharge permits in the Central Midlands 208 planning area for conformance with 208 Regional Water Quality Management Plan.

Any conflicts (non-conformance) will be evaluated by CMCOG and, where appropriate, the Regional Water Quality Management Plan will be amended. No permits or approvals in conflict with the WQM Plan will be issued by SCDHEC.

SC Project Notification and Review (SCPNRS)

As provided by the SC Project Notification and Review System which implements Presidential Executive Order 12372, CMCOG is the regional clearinghouse for review of applications by State and local agencies for federal assistance.

Administered at the State level by the Grant Services Unit, Office of the Governor, the SCPNRS process provides the opportunity by appropriate state and local officials to review and comment, and be involved in efforts to obtain and use federal assistance, and to assess the relationship of proposals to their plans and programs.

All projects which are federally financed will be reviewed and provided with comment in relation to the 208 WQM Plan, where appropriate.

Non-Point Source Pollution Management

Nonpoint source pollutants are generally introduced to a waterbody during a storm event and enter the system from diverse areas. Nonpoint source contributions originate from a variety of activities that include agriculture, silviculture, construction, storm water runoff, hydrologic modification, landfills, mining, and residual wastes. In fulfillment of the Clean Water Act, the State in conjunction with other federal and local agencies manage several programs which reduce the impact of nonpoint source pollution. The following is a summary explanation of the principal activities.

State Program Activities

The State's NPS Management Program fulfills certain requirements of both Section 319 of the Clean Water Act Amendments of 1987, and Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990. The program comprehensively addresses NPS pollution by providing a framework for agency coordination and cooperation and a strategy for effectively implementing management measures to control NPS pollution.

Issued by USEPA, the *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* is used by SCDHEC which compiles technology and management methods to control NPS. The measures focus on five major categories of nonpoint sources: 1) agricultural runoff; 2) urban runoff, 3) silvicultural runoff, 4) marinas and recreational boating; and 5) channelization and channel modification, dams and streambank and shoreline erosion. USEPA has also included management measures for wetlands, riparian areas, and vegetated treatment systems that apply generally to various categories of sources of nonpoint pollution.

South Carolina implements these recommended technology-based management methods statewide, as they are equally applicable outside of coastal watersheds.

Soil and Water Conservation Planning

Within the 208 planning boundary, each county has through its local conservation district has developed long-range plans which, in part, addresses nonpoint source pollution. Listed are the objectives and strategies by County.

Fairfield County

In the areas of erosion, sediment control, stormwater water management and water quality, the objective is to reduce off-site sediment to land and water resources and improve water quality of ground and surface waters of Fairfield County. Specific steps include:

1. review all submitted sediment and erosion control plans for adequacy of measures to reduce erosion and retain sediment on development sites,
2. assist the county by recommending measures to control erosion and sediment on construction sites,
3. encourage the municipality of Winnsboro to enforce its erosion control ordinance,
4. report to the county council, on an annual basis, the status of the erosion and sediment control ordinance,
5. cooperate with SCDNR and other state agencies in implementing a nonpoint source management program for agriculture, urban, stormwater runoff, construction, and mining under the CWA, and
6. cooperate with local, state and federal agencies in identifying water quality problems areas.

Newberry County

The Newberry County Soil and Water Conservation District has adopted several strategies addressing nonpoint pollution:

1. initiate programs and provide technical assistance for landusers to implement and maintain conservation systems that will reduce the rate of erosion to tolerable levels, including providing public information, conduct monitoring of Food Security Act plans and develop individual property-owner conservation plans,
2. reduce the impact of nonpoint pollution in urban and built-up areas by providing plan review and local sediment control ordinances, assist landusers in identifying soil and water resource problems, sponsoring informational seminars and cooperating with local, state and federal agencies on nonpoint source issues, and
3. to identify and provide technical assistance to treat point and nonpoint sources of pollution, primarily sediment and animal waste through assisting livestock producers in developing animal waste management plans, and completing the objectives in the Bush River-Camping Creek Water Quality Project Plan.

Lexington County

Conservation resource concerns and objectives identified by the Lexington County Soil and Water Conservation District which directly relate to nonpoint source pollution include: cropland erosion; sediment, erosion and stormwater management and water quality.

Specifically, the District would like to reduce the percentage of land eroding from 42% to 25% by increasing contour farming, increasing acreage of grass waterway and terracing, and increase conservation tillage.

In the area of urban erosion and sedimentation, the district continues to carry several services such as reviewing plans addressing sediment and erosion, working with the Sediment Control Advisory Council to assess county needs, providing education materials, assisting directly with flood prevention projects, and seek funding for technical assistance.

Lastly, water quality issues are a high priority as the District also seeks to reduce runoff and sediment in the rivers and streams, improving overall water quality. The District currently works with SCDHEC in administering nonpoint source programs.

Richland County

In Richland County, the Soil and Water Conservation District has identified a number of resource concerns specifically relating to nonpoint issues: soil erosion, water quality, agricultural waste, flooding and provision of water and sewer.

The District has set as a goal to reduce the percentage of land eroding from 37.0% to 20.0%, by preparing conservation plans, increasing conservation techniques such as contour farming, terracing, conservation tillage and field stripping. Other efforts include education and local technical assistance to developers.

For water quality concerns, the goals focus on reducing runoff and sediment by improving sediment control discharge locations and working with SCDHEC on identifying problems areas.

In the area of agricultural waste the District provides management alternatives for land application of waste, contact land owners and offer technical assistance in soils and proper waste discharge and coordinate with state regulatory agencies on current regulations and procedures.

Lastly, the District also encourages the expansion of water and sewer throughout the County as certain soil types have restrictions for septic tanks due to soil texture and flooding; shallow wells produce low water quantity and can contain pollutants.

County Program Efforts

As of the adoption of the 1978 Areawide Water Quality Management Plan, programmatic efforts to reduce nonpoint pollution were generally confined to the adoption of soil and erosion control and storm drainage ordinances. CMCOG first prepared model ordinances of each and began promoting their adoption by the regions local governments.

The objective of this effort is not to reduce sediment loss to zero, but prevent serious problems which could be expected to occur in the absence of sound management practices. Since 1985, most local governments have adopted the ordinances, including the major potential areas of urbanizing Richland and Lexington Counties.

Financing Options

Historically, the CWA outlined a grant funding mechanism to finance the development of wastewater facilities identified through the 208 planning process; however, in 1988 Congress modified this financing strategy and converted the program from direct grants to a loan program. This programmatic changed formed the basis of the State Water Pollution Control Revolving Loan Fund (SRF).

State Water Pollution Control Revolving Loan Fund

In response to federal legislative action, South Carolina established a Revolving Loan Fund (RLF) for wastewater treatment purposes, which was authorized by the Federal Water Pollution Control Act (PL-100-4). SCDHEC administers the technical and programmatic portions of the program, while the SC Budget and Control Board makes the loans and manages the funds. Eligible applicants include counties, municipalities and special purpose districts which are involved with wastewater treatment. Eligible activities include wastewater treatment plants, interceptors, system upgrades, and collector systems. Loan terms are for below market fixed rate financing for up to 20 years at 100% of reasonable costs of the project. Generally, all projects must be identified on a priority list to be eligible for the loan.

SC Infrastructure Revolving Loan Fund

The SC Infrastructure Facilities Authority Act created the SC Infrastructure Facilities Authority for the purpose of providing communities with various types of financial assistance required for environmental facilities that are necessary for both

protection of the environment and economic expansion. The Act also created the SC Infrastructure Revolving Loan Fund (SIRF) as a vehicle for the Authority to offer affordable financing for such facilities. The SIRF is a state funded and administered revolving loan fund for the construction of water and sewer facilities that is not connected with any federal program or requirements.

Initial capitalization of the SIRF is eight (8.0) million dollars and available on a first come, first serve basis. The maximum loan is two (2) million dollars and has no minimum loan threshold. Municipalities, counties and special purpose districts are eligible.

The SIRF will provide loans only for cost effective projects in viable systems that address the construction of, or improvements to, publicly owned facilities for drinking water supply, treatment and distribution; and sanitary wastewater treatment, collection and disposal, but only when such a project is not technically or financially eligible for the State Water Pollution Control Revolving Loan Fund (SRF), or that no funds are available in the SRF.

SC Community Development Block Grant (CDBG) Program

Administered through the SC Department of Commerce, this grant program is open to cities and counties only. It addresses improvement to public facilities or housing while meeting one of the following objectives: 1) improve, preserve or develop areas of a community in which the population is predominately low to moderate income (LMI), 2) improve community services to a predominately low to moderate income population and 3) alleviate documented threats to the public health or welfare of the community.

The program is designed to give maximum priority to activities which will benefit low and moderate income persons. The State defines low to moderate income as 80% or less of the median family income for the project area. Each public facility must be designed to provide a minimum of 51% benefit to LMI persons. Economic development projects funded under this program must result in the creation of jobs, with at least 51% of the jobs created filled by persons who are low to moderate income.

USDA - Rural Development Administration

Grants, loans or combinations of financing are available to local governments that are considered rural (populations of less than 10,000) and predominately low to moderate income. The applicable interest rate for loans is based upon a community's median family income. Grants to supplement loans are available for up to 75% of costs if the area to be served meet income requirements and if monthly rates meet or exceed rates for other comparable systems.

State Budget and Control Board - Division of Local Government

Grants are available to local governments as supplemental funding for projects which contain other sources of funds. This office also administers the Revolving Loan Fund (RLF).

US Economic Development Administration (EDA)

Funds are available for infrastructure projects related to economic development purposes. Grants of up to 50% of project costs are available for public works and development facilities that create or retain permanent private sector jobs. The amount of funding for a project depends on the number of jobs involved.

Palmetto Economic Development Corporation (PEDCO)

The PEDCO is a private, non-profit corporation representing fifteen of the state's twenty electric cooperatives and Santee Cooper and administers the Santee Cooper Economic Development Investment Fund, which provides loans and grants for industrial/commercial development purposes. Assistance is available to areas served by cooperatives, and is partially funded by the sponsoring cooperative. Grants are available for infrastructure improvements for new or expanding businesses. Technical assistance grants are available for engineering studies.

REFERENCES

1. Bolich, Robert W. (1994). Shoreline Management Planning: A Strategy for TVA's Marginal Strip Property. Unpublished master's thesis, The University of Tennessee, Knoxville.
2. Central Midlands Regional Planning Council (1984). Land Resources Management Plan for the Year 2005, Unpublished report, Columbia, SC.
3. Denver Regional Council of Governments (1991). Clean Water Plan, Volumes I and II, Unpublished report, Denver, CO.
4. Ellerbe, C.M. (1974). South Carolina Soils and Their Interpretations for Selected Uses, S.C. Land Resources Conservation Commission, Columbia, SC.
5. Garcia, Margot (1992). "Wetlands Protection: A Planning Perspective", Environmental Planning Quarterly, (9) 2:7-10.
6. Just v. Marinette County (1972) 201 N.W. 2d 761.
7. Marshall, William D. (1993). Assessing Change in the Edisto River Basin: An Ecological Characterization, South Carolina Water Resources Commission, Report No. 177, Columbia, SC.
8. New York State Department of Environmental Conservation (1986). Stream Corridor Management: A Basic Reference Manual, Bureau of Water Quality, Albany, NY.
9. South Branch Watershed Association, et. al., "Municipal Stormwater Management", Lebanon, NJ. (n.d.)
10. South Carolina Department of Health and Environmental Control (1987). Land Application of Sludge Guidance Manual, Unpublished booklet, Columbia, SC.
11. South Carolina Department of Health and Environmental Control (1994). A General Guide to Environmental Permitting in South Carolina, Columbia, SC.
12. South Carolina Department of Health and Environmental Control (1996). Statewide Water Quality Assessment, FY 1992-1993: A Report to Congress Pursuant to Section 305 (b) of the Federal Water Quality Act, Columbia, SC.

13. South Carolina Department of Health and Environmental Control (1994). Wellhead Protection Program. Technical Guidance Document for South Carolina: Local Groundwater Protection, unpublished document, Columbia, SC.
14. South Carolina Department of Natural Resources (1994). The South Carolina Catawba River Corridor Plan, a report of the Catawba River Task Force, Report No. 2, Columbia, SC.
15. South Carolina Water Resources Commission (1983). South Carolina State Water Assessment, Report No. 140, Columbia, SC.
16. United States Army Corps of Engineers (1985). "Regulatory Program: Applicant Information", Pamphlet No. EP 1145-2-1, Charleston, SC.
17. United States Environmental Protection Agency (1994). Biosolids Recycling: Beneficial Technology for a Better Environment, EPA Report 832-R-94-009, Washington, DC.
18. United States v. Riverside Bayview Homes, Inc. (1985) 474 U.S. 121, 133-34.
19. United States Code of Federal Regulations (1992). Title 40 Section 130 - Water Quality Planning and Management.
20. Witten, Jon, and Scott Horsley (1995). A Guide to Wellhead Protection, American Planning Association, Planning Advisory Service, Report Number 457/458, Chicago, IL.

APPENDIX

Existing Land Use - Central Midlands Region

Future Land Use - Central Midlands Region

Glossary

1. Water Quality Management Plan - refers to the plan required by Section 208 of the Clean Water Act and CFR 40 Part 130.
2. The Clean Water Act - (Public Law 92-500) In 1972, Congress passed the Federal Water Pollution Control Act. Its purpose is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." P.L. 92-500 was amended in 1977 and 1987. The 1987 law is referred to as the "Clean Water Act" and is the law under which the water quality management program is operated.
3. Central Midlands Regional Planning Council - the administrative agency for water quality management planning in the Central Midlands planning area.
4. South Carolina Department of Health and Environmental Control - the state-level planning and coordinating agency for water quality management planning.
5. Non-Point Source - NPS is an unconfined area from which pollutants are washed into a body of water. Examples of NPS are agricultural run-off, urban run-off, and sedimentation from construction sites.
6. National Pollutant Discharge Elimination System - allows the EPA or the SCDHEC to require and issue a permit for the discharge of any pollutant or combination of pollutants into a lake or stream. Under NPDES, a discharge must be controlled according to Public Law 92-500 and its time requirements for pollution abatement.
7. Section 201 - Refers to a section of the Clean Water Act requiring a "facility plan" (wastewater plant/system engineering and design plans) to be prepared before any EPA wastewater facility construction grants or loans could be issued to an applicant. Because the EPA no longer offers grant monies, this requirement is not enforced. However, if a jurisdiction seeks loan money from the State Revolving Loan Fund (a Federal financing substitute for grant money), it must prepare a 201 plan as supporting documentation for the loan.
8. Section 208 - refers to the section of Public Law 92-500 that provides for the development and implementation of Water Quality Management Plans.
9. Central Midlands planning area - the area encompassing Fairfield, Lexington, Newberry, and Richland Counties, South Carolina.

10. mg/l or milligrams per liter - unit of measurement for expressing concentrations of pollutants such as suspended solids, biological oxygen demand, or dissolved oxygen.
11. Designated Management Agency - Term used to describe those agencies selected by the governor and EPA to carry out the provisions of the water quality management plan.
12. Designated Management Agency Area - A defined area where the Designated Management Agency has responsibility for implementing the water quality management plan.
13. Dissolved Oxygen (DO) - The concentration of oxygen dissolved in water. Adequate oxygen levels are necessary to maintain biological metabolism, aquatic life, and a balanced biotic community. Insufficient dissolved oxygen concentration may result in fish kills, anaerobic decomposition of organic material, and subsequent production of noxious gasses and floating sludge. These undesirable conditions adversely impact recreational water use.
14. Biochemical Oxygen Demand (BOD) - The amount of oxygen consumed by aerobic biological processes in the decomposition of organic material.
15. Nutrients - All substances essential for the maintenance, growth, and reproduction of living organisms. Two of the most important nutrients affecting aquatic biological systems are phosphorus and nitrogen. Phosphorus is a major component of living cells and is essential to respiration and photosynthesis. Nitrogen is important for bacterial decomposition of organic matter. These nutrients are normally present in limited quantities and restrict biological productivity. However, when present in large amounts, nutrients increase aquatic plant and algal growth and accelerate eutrophication, the natural aging process of water bodies. At advanced stages of eutrophication decomposing organic material and elevated respiration rates deplete dissolved oxygen in the water resulting in fish kills and other noxious conditions indicative of poor water quality. Many nutrients enter surface waters from natural sources; however, man's domestic, agricultural, and industrial activities often directly or indirectly contribute excessive amounts.
16. Sludge, or biosolids - Any solid, semi-solid, or liquid residue generated from a municipal, private domestic (including septage), commercial, industrial, or water supply treatment plant which is not approved as part of point source discharge.



MEMORANDUM

TO: Project File
FROM: Gregory Sprouse, Director Research, Planning, and Development
DATE: March 22, 2021
SUBJECT: 208 Certification – West Columbia US 378 PER

In February of 2021 the City of West Columbia submitted a 208 conformance request for a preliminary engineering report to evaluate the construction of wastewater infrastructure along the US Highway 378/I-20 corridor. The purpose of the project is to provide the infrastructure necessary to provide wastewater service to the properties in this area within the City's municipal limits. The area in question is primarily within the Town of Lexington's designated 208 management/service area, however, it is also located within the City of West Columbia's municipal limits as the City has annexed into this area over the last decade. Because the project as proposed in the PER is within the municipal limits of West Columbia, CMCOG considers the project to be in conformance with the 208 plan even though it is within the Town of Lexington's designated management area. This determination is supported by Section 2 of the Management Agency Policy in the 208 plan (p.56) which states "Where a municipality annexes lands into another designated management agency's area, the municipality has the right to provide service to that area, provided no existing service is reasonably available and is shown to be the cost-effective means of providing service." This determination is also supported by Sections 5-31-2030 and 5-7-60 of the South Carolina Code of Laws which allows a municipality to require a resident to make use of their sewer system and prohibits a municipality from providing service within another municipality unless permission is approved by that governing body (thus making it difficult for the Town of Lexington to provide service within the City of West Columbia's boundaries unless permission is given).

With the intention of promoting cooperation and coordination among management agencies and service providers, CMCOG staff makes all reasonable efforts to communicate with all parties when reviewing 208 conformance requests that may impact multiple management agencies or service providers. During the review of this conformance request, CMCOG communicated the preliminary determination of conformance with the Town of Lexington prior to issuing approval. The Town of Lexington did not object to CMCOG's determination that the project was in conformance with the 208 plan. CMCOG issued a certification of conformance on March 22, 2021. The conformance included comments stating that approval was only for service to properties within the municipal limits of West Columbia, and that future projects to provide service to properties in the study area outside of their municipal limits but within the Town of Lexington's 208 Management Area, will require a separate 208 conformance review to include approval from the Town of Lexington.

Serving Local Governments in South Carolina's Midlands

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208/201 PLAN CONFORMANCE REVIEW FORM

1. Date: 2/8/2021
2. Project Name: US Highway 378 Collection System Extension
3. County: Lexington
4. General Location: (A General Location map must be provided with this form)
5. Type of Action for Review: PER
6. Type of Project: Pump Station
7. Type of Waste: Domestic
8. Volume (GPD): 550
9. Service Provider: City of West Columbia
10. Location of Treatment: Columbia Metro WWTP

Engineer Contact Info

Name: Andrew J. Zaengle, P.E.
Company: City of West Columbia
Address: 200 N. 12th Street, West Columbia, SC 29169
Phone: (803) 939-8625
Email: azaengle@westcolumbiasc.gov

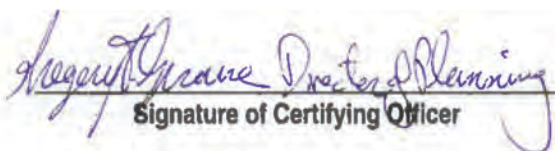
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Service Provider: City of West Columbia
Address: 200 N. 12th Street, West Columbia, SC 29169
Phone: (803) 939-8625
Email: azaengle@westcolumbiasc.gov

----- For Central Midlands COG Office Use only -----

Determination: This project (IS) IS NOT in conformance with the 208 plan.

Comments: The 208 certification is for the collection system extension to provide sewer service to properties located within the municipal limits of the City of West Columbia. Any projects to provide sewer service to properties in the PER study area that are not within the municipal limits of the City of West Columbia and are within the Town of Lexington's 208 Designated Management Area (DMA), will require a separate 208 conformance review and certification to include approval from the Town of Lexington.


Signature of Certifying Officer

3/22/21
Date

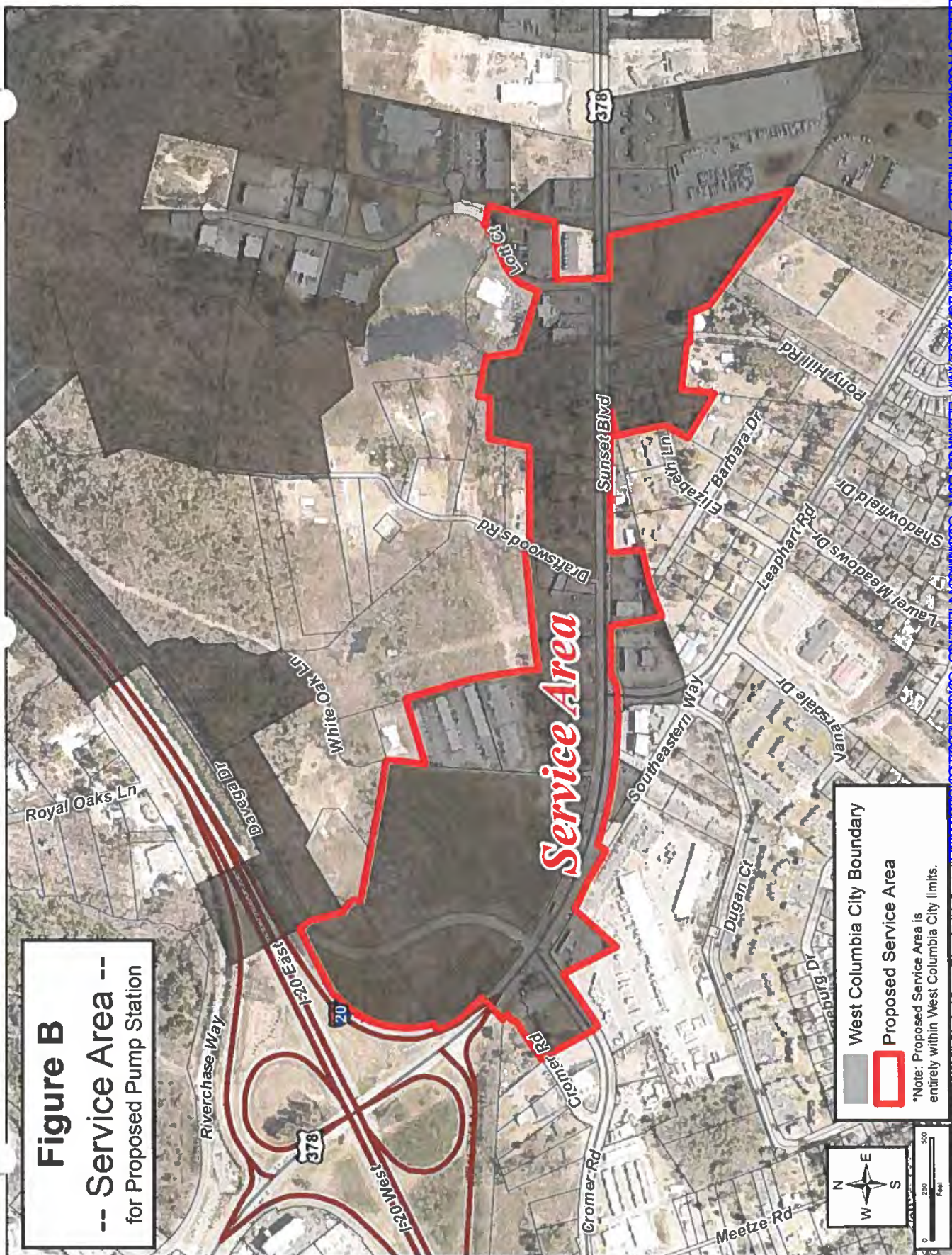
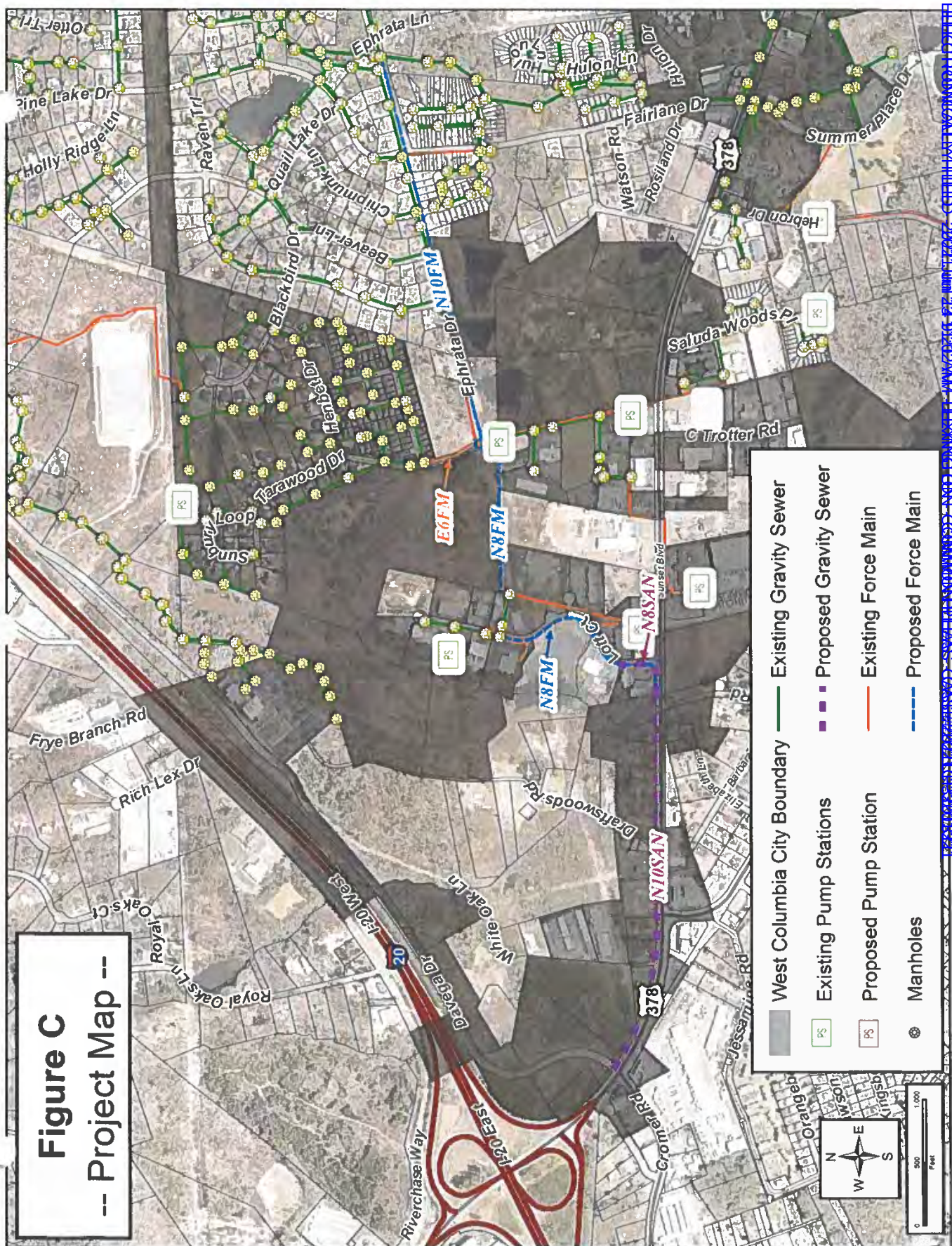


Figure C
-- Project Map --



STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	) ELEVENTH JUDICIAL CIRCUIT
	)
	) Civil Action Number 2021-CP-32-01321
Town of Lexington, South Carolina,	)
	)
Plaintiff,	)
	)
v.	) <u>MOTION TO DISMISS PLAINTIFF’S FIRST</u>
	) <u>AMENDED COMPLAINT</u>
	)
City of West Columbia, South Carolina, and the	)
Central Midlands Council of Governments	)
	)
Defendants.	)

For at least the following reasons, and pursuant to Rules 12(b)(1) and 12(b)(6), SCRPC, Defendant City of West Columbia (“West Columbia” or the “City”) moves to dismiss Plaintiff’s first amended complaint for declaratory relief concerning certain actions taken by the Central Midlands Council of Governments (“Central Midlands”) under the Section 208 Water Quality Plan for the area (the “208 Plan”).¹

Defendant hereby asserts the right to an award of attorney’s fees and costs under S.C. Code Ann. § 15-77-300.

On March 22, 2021, Central Midlands issued a 208/201 Plan Conformance Review Form certification (the “Certification”). It informed DHEC that West Columbia was authorized to provide sewer service within certain areas recently annexed into the City. By law, the COG prepares and administers the 208 Plan and is the entity empowered to interpret it by granting or denying certifications. These certifications are a necessary prerequisite to the issuance of sewer construction permits by DHEC. A copy of the Certification is attached as Exhibit A and is subject to judicial notice. Central Midlands attached to the Certification the email correspondence with

¹ Defendant previously filed this motion in response to Plaintiff’s initial complaint. Plaintiff has since filed an amended complaint that joined the Central Midlands as a party. Accordingly, Defendant re-files its motion to dismiss in response to the amended complaint.

the Administrator for the Town of Lexington soliciting questions or comments concerning the request and indicating that Central Midlands intended to issue the Certificate to West Columbia. The concluding email from the Town Administrators reads: "I don't have any questions or comments." Appendix A at page 5.

Without appealing the determination by the Central Midlands or contesting it in any way, and without even citing that decision to this Court, the Plaintiff filed the Amended Complaint here. It asks the Court to issue a declaratory judgment contradicting and invalidating the Certification. Specifically, Plaintiff asks the Court to rule that under the 208 Plan, West Columbia may not serve the precise areas where the Central Midlands determined West Columbia was the only party authorized to provide service.

The Amended Complaint should be dismissed for the following reasons:

- **Lack of Jurisdiction:** The Amended Complaint seeks to attack the Certification indirectly and invalidate it without having appealed the decision to issue it and without having filed any objection at Central Midlands. Plaintiff did not ask Central Midlands to reconsider its decision in issuing the Certification, which it had every right to do. Nor did Plaintiff file a writ of certiorari with the Circuit Court naming Central Midlands as a party and seeking judicial review of the decision after reconsideration, as it also had every right to do.² Plaintiff cannot now rehabilitate these failures by collaterally attacking the Certification under the

² *League of Women Voters of Georgetown Cty. v. Litchfield-by-the-Sea*, 305 S.C. 424, 427, 409 S.E.2d 378, 380 (1991), *overruled on other grounds by Brown v. S.C. Dep't of Health & Env't Control*, 348 S.C. 507, 560 S.E.2d 410 (2002)(overruled based on a subsequent statutory change granting contested case rights to parties contesting coastal zone management certifications, see nn. 1 and 2); *Rowe v. City of W. Columbia*, 334 S.C. 400, 405–06, 513 S.E.2d 379, 382 (Ct. App. 1999)

guise of a declaratory judgment. Because the failure to timely file an appeal of an adverse ruling is jurisdictional, the Court lacks jurisdiction to consider this case and should dismiss it pursuant to Rule 12(b)(1), SCRCP.

- **Lack of Jurisdiction:** Where determinations by governmental agencies are not subject to review under the South Carolina Administrative Procedures Act or other statutory grants of jurisdiction, the sole avenue for judicial review is by writ of certiorari. Accordingly, the South Carolina Uniform Declaratory Judgements Act does not grant the Court jurisdiction to hear this case.

- **Failure to Exhaust Remedies:** Plaintiff filed this claim without ever having raised before the Central Midlands the issues it seeks to have this Court address. These issues could have been raised by seeking reconsideration of the decision which it now attacks for the first time in this Court and thereafter by appeal by writ of certiorari. It is an established principle of appellate practice and declaratory judgement practice that the failure to exhaust remedies is a bar to relief.

- **Failure to File a Request for Rehearing:** It is also an established principle of appellate practice that a party must file for reconsideration before seeking judicial review of an action by an inferior body, especially where the party seeks to assert as grounds for appeal issues it asserts were not considered or properly decided in the decision below. Plaintiff has not met this requirement.

- **Discretionary Dismissal:** In light of the circumstances, the Court has discretion to dismiss this action under the South Carolina Uniform Declaratory Judgements Act and should exercise that right.

- **Failure to State a Claim:** Even if the Court had jurisdiction, the Town's case still fails as a matter of law for at least two reasons. First, under the South Carolina Constitution and the South Carolina statutory law, only the City of West Columbia has the power to decide who may provide wastewater services within its municipal limits; the Town's request that the Court hold otherwise is unconstitutional and unlawful. S.C. Const. art. VIII, § 15; S.C. Code Ann. § 5-7-60. Second, the Section 208 plan itself specifies that the City of West Columbia is the management agency for the "City of West Columbia and adjacent areas"—which is exactly the opposite of what the Town seeks through this litigation.

For these reasons, which shall be fully supported through further memoranda, exhibits, arguments of counsel, and all other submissions that the Court permits, the City of West Columbia seeks an order dismissing this case with prejudice.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/Belton T. Zeigler
 S.C. Bar No. 5754
 M. Todd Carroll
 S.C. Bar No. 74000
 Bryant S. Caldwell
 S.C. Bar No. 102206
 1221 Main Street, Suite 1600
 Columbia, South Carolina 29201
 (803) 454-6504

Attorneys for the City of West Columbia

Columbia, South Carolina
 July 26, 2021

**MEMORANDUM**

TO: Project File
FROM: Gregory Sprouse, Director Research, Planning, and Development
DATE: March 22, 2021
SUBJECT: 208 Certification – West Columbia US 378 PER

In February of 2021 the City of West Columbia submitted a 208 conformance request for a preliminary engineering report to evaluate the construction of wastewater infrastructure along the US Highway 378/I-20 corridor. The purpose of the project is to provide the infrastructure necessary to provide wastewater service to the properties in this area within the City's municipal limits. The area in question is primarily within the Town of Lexington's designated 208 management/service area, however, it is also located within the City of West Columbia's municipal limits as the City has annexed into this area over the last decade. Because the project as proposed in the PER is within the municipal limits of West Columbia, CMCOG considers the project to be in conformance with the 208 plan even though it is within the Town of Lexington's designated management area. This determination is supported by Section 2 of the Management Agency Policy in the 208 plan (p.56) which states "Where a municipality annexes lands into another designated management agency's area, the municipality has the right to provide service to that area, provided no existing service is reasonably available and is shown to be the cost-effective means of providing service." This determination is also supported by Sections 5-31-2030 and 5-7-60 of the South Carolina Code of Laws which allows a municipality to require a resident to make use of their sewer system and prohibits a municipality from providing service within another municipality unless permission is approved by that governing body (thus making it difficult for the Town of Lexington to provide service within the City of West Columbia's boundaries unless permission is given).

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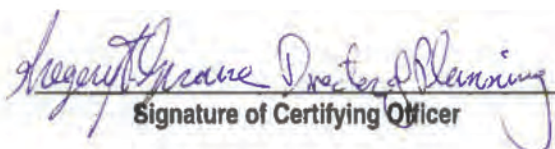
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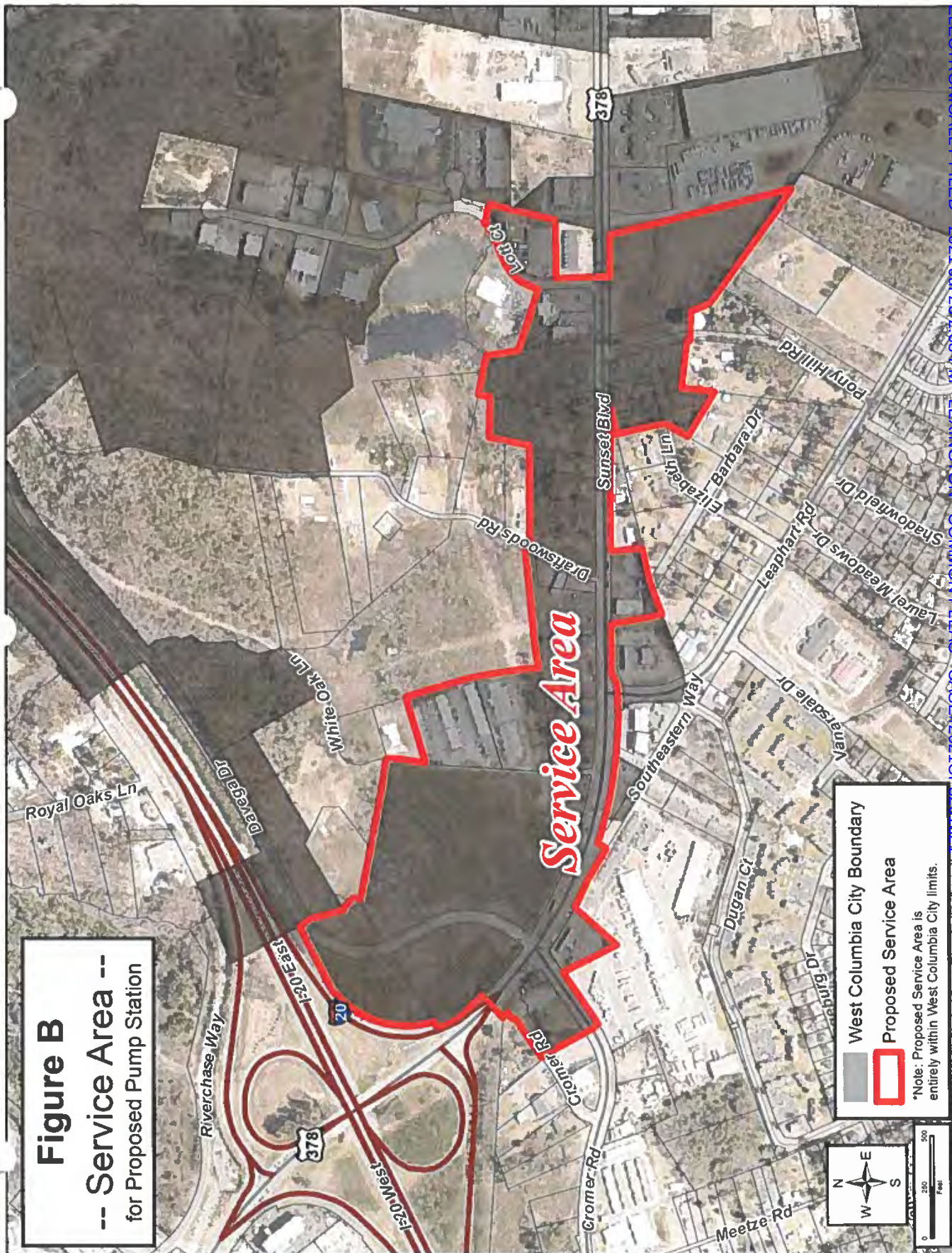
----- For Central Midlands COG Office Use only -----

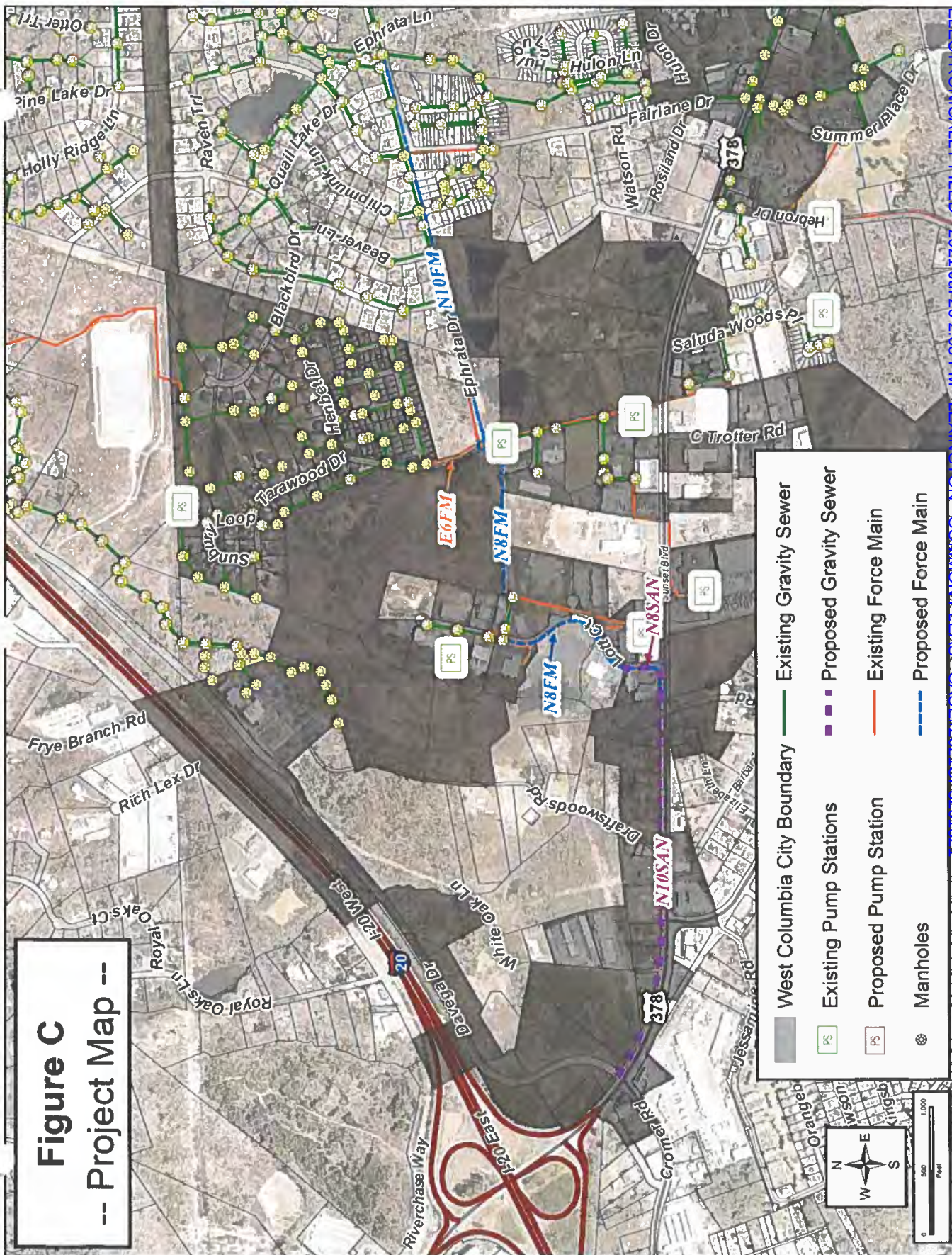
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Signature of Certifying Officer

3/22/21
Date







Gregory Sprouse <gsprouse@centralmidlands.org>

RE: 208 conformance

1 message

Britt Poole <bpoole@lexsc.com>

Mon, Mar 22, 2021 at 1:19 PM

To: Gregory Sprouse <gsprouse@centralmidlands.org>

Gregory,

I don't have any questions or comments, thanks for sending it over.

Thanks

Britt

Sincerely,

D. Britt Poole
Town Administrator
Town of Lexington
111 Maiden Lane
Lexington, SC 29072
803-951-1665
bpoole@lexsc.com



From: Gregory Sprouse <gsprouse@centralmidlands.org>

Sent: Monday, March 22, 2021 1:16 PM

To: Britt Poole <bpoole@lexsc.com>

Subject: Re: 208 conformance

Hi Britt,

I am following up from our conversation last week regarding the West Columbia 208 conformance request? Did you have any further questions or comments? I hope to finalize our review later today and issue the conformance to West Columbia sometime tomorrow. I am available anytime after 2:30 this afternoon or early tomorrow morning for a call if you want to discuss.

ELECTRONICALLY FILED - 2021 Jul 26 2:08 PM - LEXINGTON - COMMON PLEAS - CASE#2021CP3201321

Thanks so much for your help.

Best,

Gregory

--

Gregory Sprouse, AICP

Director of Research, Planning, and Development

Central Midlands Council of Governments

[236 Stoneridge Drive](#)

[Columbia, SC 29210](#)

803.744.5158

www.centralmidlands.org

On Thu, Mar 18, 2021 at 9:31 AM Gregory Sprouse <gsprouse@centralmidlands.org> wrote:

Hi Britt,

Per our conversation, the conformance request and maps are attached. My schedule is open on Monday so just let me know a time that works for you to follow up.

Best,

Gregory

--

Gregory Sprouse, AICP

Director of Research, Planning, and Development

Central Midlands Council of Governments

[236 Stoneridge Drive](#)

[Columbia, SC 29210](#)

803.744.5158

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Gregory Sprouse <gsprouse@centralmidlands.org>

West Columbia 208 Conformance Request

1 message

Gregory Sprouse <gsprouse@centralmidlands.org>

Wed, Mar 17, 2021 at 5:35 PM

To: "Poole, Britt" <bpoole@lexsc.com>

Hi Britt,

I hope you are doing well. I am touching base with you regarding a 208 conformance request we received from the City of West Columbia for review of a PER to construct new sewer collection infrastructure to provide service to the properties in their municipal limits along 378. Since the project is intended to serve the properties within their municipal limits we consider it to be in conformance with the 208 plan. But because it impacts multiple service and management areas, we want to make sure we are adequately communicating with all impacted parties as a part of our review.

Do you have any time tomorrow morning or early afternoon for a call to discuss?

Best,

Gregory

--

Gregory Sprouse, AICP
Director of Research, Planning, and Development
Central Midlands Council of Governments
236 Stoneridge Drive
Columbia, SC 29210
803.744.5158
www.centralmidlands.org

ELECTRONICALLY FILED - 2021 Jul 26 2:08 PM - LEXINGTON - COMMON PLEAS - CASE#2021CP3201321

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Town of Lexington, South Carolina,

Plaintiff,

vs.

City of West Columbia, South Carolina and
Central Midlands Council of Governments,

Defendants.

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

Civil Action Number 2021-CP-32-01321

**ANSWER ON BEHALF OF CENTRAL
MIDLANDS COUNCIL OF
GOVERNMENTS**

NOW COMES, Defendant, Central Midlands Council of Governments (“CMCOG”),
answering Plaintiff Town of Lexington’s (“Town” or “Plaintiff”) Amended Complaint as follows:

FOR A FIRST DEFENSE
(Denial)

PARTIES, JURISDICTION AND VENUE

1. Each and every allegation of the Amended Complaint not hereinafter expressly admitted is denied.
2. CMCOG admits the allegations of paragraphs 1 and 2 of the Amended Complaint.
3. With regard to paragraph 3 of the Amended Complaint, for a description of CMCOG’s creation and members, Defendant craves reference to S.C. Code Ann. §§ 6-7-10- 6-7-130 *et seq.*, its bylaws and other organizing documents for the terms and conditions thereof. With regard to CMCOG’s duties with regard to its status as a Designated Planning Agency under Section 208 of the Clean Water Act, CMCOG craves reference to pp.32-33 of the 208 Plan.¹

¹ Citations to the 1997 208 plan refer to the actual page number of the Plan itself as opposed to the page number of the PDF attachment of the Plan to Plaintiff’s Complaint.

4. Paragraph 4 sets forth legal conclusions for which no response is required.

5. As to Paragraph 5, CMCOG lacks information sufficient to form a belief as to the nature of the dispute between Town and the City of West Columbia ("City").

6. CMCOG admits the allegations of Paragraph 6.

STATEMENT OF FACTS

7. CMCOG realleges and re-avers the foregoing as fully as if repeated verbatim.

8. The allegations of Paragraphs 7, 8, 9, and 10 of the Amended Complaint are legal conclusions which require no response.

9. CMCOG admits the allegations of Paragraph 11 of the Amended Complaint.

10. CMCOG admits the allegations of Paragraph 12 of the Amended Complaint.

11. Answering the allegations of Paragraphs 13-31 of the Amended Complaint, CMCOG craves reference to the designated 208 Plan for the terms and conditions thereof, and denies any allegations that are or may be inconsistent therewith.

12. CMCOG admits the allegations of Paragraph 32 of the Amended Complaint.

13. Answering the allegations of Paragraph 33 of the Amended Complaint, CMCOG craves reference to the City's September 26, 2018, request and denies any allegations that are or may be inconsistent therewith.

14. Answering the allegations of Paragraph 34 of the Amended Complaint, CMCOG only admits that at the time of City's request the area that was the subject of the City's September 26, 2018, request was within the area where Town was the 208 designated management agency and denies any allegations that are or may be inconsistent therewith.

15. Answering the allegations of Paragraph 35 through 37 of the Amended Complaint, CMCOG craves reference to the City's March 13, 2019, request and denies any allegations that are or may be inconsistent therewith.

16. As to Paragraph 38 of the Amended Complaint, CMCOG lacks information sufficient to form a belief as to the appearance alleged.

17. As to Paragraph 39 of the Amended Complaint, CMCOG only admits that City withdrew the March 13, 2019 request. CMCOG lacks information sufficient to form a belief as to City's motivations.

18. CMCOG admits the allegations of Paragraph 40 of the Amended Complaint.

19. As to Paragraph 41 of the Amended Complaint, CMCOG only admits that City filed a conformance request on February 8, 2021 for the annexed area.

20. Answering the allegations of Paragraph 42 of the Amended Complaint, CMCOG only admits that City did not request a 208 Plan amendment in 2021. CMCOG specifically denies any allegation that an amendment was required following City's annexation.

21. Answering the allegations of Paragraph 43 of the Amended Complaint, CMCOG only admits that it issued the documents attached to the Amended Complaint as Exhibit B. CMCOG craves reference to Exhibit A of City's Motion to Dismiss Amended Complaint for a complete copy of the documents relevant to its conformance review process.

22. CMCOG denies the allegations of Paragraph 44 of the Amended Complaint.

23. Answering Paragraph 45 of the Amended Complaint, to the extent that it recites the terms of the Plan, CMCOG craves reference to the 208 Plan. The remainder of the Paragraph contains legal conclusions that require no answer.

24. CMCOG denies the allegations of Paragraph 46 of the Amended Complaint.

25. Paragraph 47 of the Amended Complaint contains legal conclusions that require no answer, are legal conclusions with which CMCOG disagrees, and which are at the heart of the legal dispute in this case.

26. CMCOG lacks information sufficient to form a belief as to the factual allegations of Paragraphs 48 through 51 of the Amended Complaint,

AS TO THE FIRST CAUSE OF ACTION
(Declaratory Judgment Against City and CMCOG)

27. CMCOG realleges and re-avers the foregoing as fully as if repeated verbatim.

28. The first three sentences of Paragraph 53 of the Amended Complaint contain legal conclusions that do not require a response from CMCOG. Furthermore, the while the heading of this paragraph mentions CMCOG, paragraph 53 requests no relief against CMCOG. To the extent necessary, CMCOG denies the allegations of subsections (a) through (f) of Paragraph 53 as Town is entitled to no relief.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND FOR A SECOND DEFENSE
(Failure to State a Claim, Rule 12(b)(6))

29. Plaintiff fails to set forth sufficient facts to constitute a cause of action against CMCOG and, therefore, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Plaintiff's claims are barred.

FOR A THIRD DEFENSE
(Waiver)

30. In Exhibit B to its Amended Complaint Plaintiff filed an incomplete copy of the documentation associated with the conformity determination. Exhibit A to City's Motion to Dismiss contains an additional three pages relevant to the conformance review process in which CMCOG staff contacted the Town Administrator and offered it an opportunity to comment. The

Town specifically stated it did not have any questions or comments. Plaintiff thereby waived its right to challenge the conformance determination.

FOR A FOURTH DEFENSE
(Failure to Exhaust Administrative Remedy)

31. CMCOG pleads failure to exhaust administrative remedies as a complete defense to Plaintiff's claims. In contacting the Town Administrator CMCOG offered it notice and an opportunity to be heard as part of its conformance review process. Town declined to take advantage of this opportunity, and so now may not challenge the determination.

FOR A FIFTH DEFENSE
(Authorization in Law)

32. CMCOG pleads authorization in law as a complete defense to Plaintiff's claims. Specifically, in its role as area-wide planning agency, those actions CMCOG has taken are entirely authorized by law. The very terms of the 208 Plan provide that "...the City of West Columbia is the management agency for the City of West Columbia..." The area in question is within the City of West Columbia by virtue of City's annexation. Plaintiff correctly notes that p.56 of the Plan states "[w]here a municipality annexes lands into another designated management agency's area, the municipality has the right to provide service to that area, provided no existing service is reasonably available and is shown to be the cost effective means of providing service." However, this does not mean that CMCOG is required to undertake a Plan Amendment following every annexation. Neither is CMCOG staff required to make any finding of "availability" or "cost effectiveness" as a precondition to issuing a conformity determination for a municipality to provide new service to areas that are now within its limits. The 208 Plan is stated to be a planning document, and must be implemented in compliance with the Constitution and State statutes. S.C. Const. Art. VIII, § 15 provides that municipalities are in control over who provides utilities within

their jurisdictions. S.C. Code Ann § 5-7-60 and S.C. Code Ann. §§ 5-31-2010 *et seq.*, 5-31-2030 also specify that municipalities have the right to control the provision of wastewater utility service within their municipal limits.

FOR A SIXTH DEFENSE
(Estoppel)

33. CMCOG pleads estoppel as a defense to Plaintiff's claims.

FOR AN SEVENTH DEFENSE
(No Justiciable Controversy)

34. Plaintiff's Amended Complaint fails to identify any justiciable controversy with regard to Defendant CMCOG.

FOR A EIGHTH DEFENSE
(No Attorney's Fees Claim)

35. Plaintiff is not entitled to an award of costs on any alleged claims and, therefore, Plaintiff should be barred from any such recovery in this action.

FOR A NINTH DEFENSE
(Incorporation of Defenses Raised by Other Defendant)

36. CMCOG hereby incorporates the defenses of any other defendant as they may be applicable to it, and joins in the City's Motion to Dismiss on the Lack of Jurisdiction, Failure to Exhaust, and Failure to State a Claim grounds.

FOR A TENTH DEFENSE
(Right To Add Additional Defenses)

37. CMCOG reserves the right to amend this Answer to include additional affirmative defenses that may become apparent throughout the course of further investigation and/or discovery.

WHEREFORE, having fully answered the Amended Complaint herein, Defendant Central Midlands Council of Governments prays that the Amended Complaint be dismissed against it with prejudice and judgment be entered on its behalf, with costs and expenses that arise in defending this action, including reasonable attorneys' fees, including an award under S.C. Code Ann. § 15-77-300, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Alexander Shissias

Alexander G. Shissias, SC Bar #11610

Alex@shissiaslawfirm.com

THE SHISSIAS LAW FIRM, LLC

1727 Hampton Street

Columbia, South Carolina 29201

803.540-3090

Attorney for Defendant

Central Midlands Council of Governments

August 19, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Town of Lexington, South Carolina,	)	Civil Action No. 2021-CP-32-1321
	)	
Plaintiff,	)	
	)	
vs.	)	<u>MEMORANDUM IN SUPPORT OF</u>
	)	<u>WEST COLUMBIA'S MOTION TO</u>
City of West Columbia, South Carolina,	)	<u>DISMISS</u>
and The Central Midlands Council of	)	
Governments,	)	
	)	
Defendants.	)	
	)	

In this case, the Town of Lexington asks the Court to declare that it is entitled over West Columbia's objections to extend its wastewater service into areas that have been annexed by West Columbia. This request directly conflicts with the Home Rule rights that the South Carolina Constitution guarantees to cities and towns to provide water and sewer service to their citizens. In addition, the Town failed to raise any of the issues presented here before the agency whose decision it asks the Court to review. The Court should dismiss this case accordingly.

BACKGROUND

As alleged in the Amended Complaint, Lexington and West Columbia are members of the Central Midlands Council of Governments, which is an affiliation of several counties and municipalities that assists with infrastructure planning and support for its members. Among Central Midland's responsibilities is to serve as the planning agency—as designated by DHEC—for development and implementation of a plan for wastewater management. (Am. Compl. ¶¶ 7–11.)

Under South Carolina's statutory scheme for regulating sewer systems, a sewer provider must obtain a permit from DHEC under South Carolina Code § 48-1-110 before constructing sewer

lines. To obtain such a permit, the applicant must demonstrate conformity with the regional the wastewater plan. DHEC has delegated the authority, in certain areas, to conduct the initial conformity review to local planning councils like Central Midlands. But DHEC retains the ultimate authority to review all applications for conformity with the applicable regional plan. S.C. Code Ann. Regs. 61-67.10(E)(1), (8).

In 2020, West Columbia requested a conformity determination for a sewer line it intends to build to serve its citizens and customers in an area along the Highway 378/I-20 corridor within the boundaries of West Columbia. (Am. Compl. ¶¶ 40–41.) On March 17, 2021, Central Midlands contacted Lexington requesting comments on the request and providing an opportunity to object to it. (Ex. A, Central Midlands Section 208 Plan Conformance Review Form and attachments).¹ On March 18, 2021, Central Midlands forwarded the maps and other documents supporting the request to Lexington’s town manager and scheduled a call to discuss it. *Id.* On March 22, 2021, the Town manager wrote that the Town “had no comments.” *Id.* That same day, Central Midlands issued its determination that West Columbia’s proposed construction conformed to the existing Section 208 plan because the expansion is “within the municipal limits of the City of West Columbia.” (*Id.*; *see also* Amended Complaint at ¶ 43 and Exhibit A.)

Two months after Central Midlands issued its written determination, Lexington filed this suit, claiming that there is “uncertainty” about whether Lexington can provide sewer service within West Columbia’s territory, and asked the Court to declare that “Lexington is entitled to provide wastewater service or determinate an appropriate wastewater service delivery system to the US

¹ The Central Midlands conformity determination and supporting documents was previously filed as Exhibit A to the Motion to Dismiss. Two pages of the conformity determination issued by Central Midlands were attached as Exhibit B to the Amended Complaint. The pages of the determination package demonstrating Lexington’s lack of comments or objections to the determination were omitted from Exhibit B to the Amended Complaint.

378/I-20 area annexed by West Columbia.” (*Id.* ¶ 53(f).) In the interim, DHEC accepted Central Midlands’ conformity determination and issued the requested construction permit, which has been final and unappealable since October of last year. The DHEC construction permit is attached as Exhibit B to this memorandum.²

This is a frivolous lawsuit that is readily resolved by reference to the municipal Home Rule provisions of the South Carolina Constitution, which vests cities and towns with the unquestionable right to extend water and other utility services to their citizens and to prevent other cities and towns from expanding within their borders against their wishes. Dismissal is appropriate, as discussed below.

ARGUMENT

I. The South Carolina Constitution, the South Carolina Code of Laws, and an unbroken line of case law from the South Carolina Supreme Court protect West Columbia from Lexington’s attempt to hijack sewer service within West Columbia’s boundaries.

The South Carolina Constitution jealously guards municipalities from encroachment and overreach by their neighbors. It provides that no law “shall be passed” that allows for the construction or operation of streets, rails, telephone infrastructure, electrical lines, water lines, sewer lines, gas lines, or other “mains for any purpose” “without first obtaining the consent of the governing body of the municipality in control of the streets or public places proposed to be occupied for any such or like purpose.” S.C. Const. art. VIII, § 15.

² The Court may take judicial notice of this agency decision. *See* Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are “not subject to reasonable dispute”); *id.* 201(f) (“Judicial notice may be taken at any stage of the proceeding”). In addition, when reviewing a motion to dismiss under Rule 12(b)(1), which is West Columbia Argument II herein, the Court can consider evidence beyond the pleadings without converting the motion into one for summary judgment. *See, e.g., Baird v. Charleston County*, 333 S.C 519, 529, 511 S.E.2d 69, 74 (1999) (holding that “the presentation of such evidence [outside the pleadings] does not convert the motion to dismiss [for lack of jurisdiction] into one for summary judgment”).

The Supreme Court has consistently construed this constitutional protection to be a municipality's "right of consent" to any unauthorized infrastructure encroaching on its territory. *See, e.g., Berkeley Elec. Coop., Inc. v. S.C. PSC*, 304 S.C. 15, 19, 402 S.E.2d 674, 677 (1991) ("The basic premise upon which [two additional Supreme Court decisions] rest is a municipality's right of consent under S.C. Const. art. VIII, § 15."); *see also Williamsburg Rural Water & Sewer Co. v. Williamsburg County Water & Sewer Auth.*, 357 S.C. 251, 260–61, 593 S.E.2d 154, 159 (Ct. App. 2003) (referring to Article VIII, Section 15 as providing local governments with a "veto power" and a "constitutional shield" against "intrusion" into their areas by other providers), *rev'd in unrelated part by* 367 S.C. 566, 627 S.E.2d 690 (2006).

This constitutional protection extends into annexed areas. *See, e.g., City of Aiken v. Aiken Elec. Coop.*, 305 S.C. 466, 468, 409 S.E.2d 403, 404 (1991) (describing Article VIII, Section 15 as providing municipalities with "constitutional autonomy" for the provisions of services, and concluding that "the City was within its constitutional authority to designate an electric service supplier for new customers in the annexed area"); *cf. City of Rock Hill v. S.C. PSC*, 308 S.C. 175, 178–79, 417 S.E.2d 562, 564–65 (1992) (holding that Rock Hill did not have a constitutional right to provide electric service to a commercial customer because "[t]he area in question has not been annexed," and remanding the matter "to provide for a reasonable time for the City to either annex the area" or to consent to the provision of electricity by a different provider).

The General Assembly has further animated this constitutional protection through legislation that requires residents within a municipality to use the municipality's sewer system if the municipality so chooses, S.C. Code Ann. § 5-31-2030(3), and that requires a municipality to seek permission from another before providing "any of its services" in the territory of the other municipality, *id.* § 5-7-60.

Local government and Home Rule could not function otherwise. A municipality must be able to count on providing its own infrastructure and services to residents without outsiders poaching potential customers or interfering with the municipality's ability to manage affairs within its own boundaries. But by the express allegations of the Amended Complaint, that is precisely what Lexington is attempting to do.

Lexington admits that West Columbia annexed the area in dispute more than two years ago. (Am. Compl. ¶ 40.) Central Midlands recognizes that West Columbia is simply expanding sewer services to customers within the municipality itself. (*Id.* at Exhibit A). Nevertheless, Lexington asks the Court to declare that Lexington "is entitled to provide wastewater service" within West Columbia over West Columbia's objection. (*Id.* ¶ 53(f)). An unbroken line of South Carolina constitutional, statutory, and judicial authority directly rejects Lexington's position.

Because Lexington's argument fails on its face, this case should be dismissed pursuant to Rule 12(b)(6), SCRCP. And because the law on this issue could not be clearer and more settled—Lexington's position is squarely contrary to the State Constitution, the State Code of Laws, and numerous decisions from the State Supreme Court—West Columbia specifically reserves the right to seek its fees and costs for defending this litigation pursuant to South Carolina Code § 15-77-300.

II. Lexington's position is waived and procedurally barred as a matter of law.

Even if the Court believes Lexington's claim that it is "entitled" to provide sewer service within West Columbia, over West Columbia's objection, is somehow viable, dismissal remains proper because Lexington has waived its arguments and failed to engage the requisite administrative procedures at every turn.

As detailed in Exhibit A, Central Midlands sought input from Lexington prior to issuing its determination that West Columbia's requested expansion of sewer service to the annexed area conformed to the existing Section 208 plan. Lexington offered no objections, as reported in the memo accompanying Central Midlands's decision:

With the intention of promoting cooperation and coordination among management agencies and service providers, CMOG staff makes all reasonable efforts to communicate with all parties when reviewing 208 conformance requests that may impact multiple management agencies or service providers. During the review of this conformance request, CMOG communicated the preliminary determination of conformance with the Town of Lexington prior to issuing approval. The Town of Lexington did not object to CMOG's determination that the project was in conformance with the 208 plan. CMOG issued a certification of conformance on March 22,

(Am. Compl. at Exhibit B.) In fact, Lexington affirmatively stated that it did not have "any questions or comments" regarding Central Midlands's proposed decision. (Exhibit. A).

Standing alone, Lexington's failure to object when invited to do so by Central Midlands operates as a waiver of any argument before this Court. *See generally State v. Burnett*, 226 S.C. 421, 425, 85 S.E.2d 744, 746 (1954) ("Where a party has the option to object or not, as he sees fit, the failure to exercise the option when the opportunity therefor presents itself must, in fairness to the court and to the adverse party, be held either to constitute a waiver of the right to object, or to raise an estoppel against the subsequent exercise thereof." (quoting 3 Am. Jur. 25, *Appeal and Error* § 246)).

In addition to waiving any potential argument, Lexington failed to timely seek appellate review of the Central Midlands's decision through a petition for a writ of certiorari from this Court. *See, e.g., League of Women Voters v. Litchfield-by-the-Sea*, 305 S.C. 424, 427, 409 S.E.2d 378, 380 (1991) (holding that when an administrative decision may not be subject to the Administrative Procedures Act, it remains reviewable through "an action for writ of certiorari"), *rev'd in unrelated part by Brown v. S.C. DHEC*, 348 S.C. 507, 560 S.E.2d 410 (2002). Lexington has still never

sought such a writ despite conceding in its pleadings that, under the Section 208 plan, any decision by Central Midlands is “considered final.” (Am. Compl. ¶ 29.)³

In addition, Lexington slept on its rights a second time, and did not contest the DHEC construction permit based on the conformity determination issued by Central Midlands. Once Central Midlands completed its work, it transmitted its determination to DHEC for a decision as to whether to issue West Columbia a permit for construction of the desired wastewater facilities. (*Id.*) DHEC did issue just such a permit in October 2021. *See* Exhibit B.

DHEC’s permit decision is subject to a detailed review process. First, agency staff must consider the permit application and all materials, exhibits, and comments it received in response to the application. S.C. Code Ann. § 44-1-60(D). Lexington provided no comments or objections.

Once the staff reach a decision, the agency provides notice of that decision “to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified.” *Id.* § 44-1-60(E)(1). Lexington never requested such notification.

From there, “[t]he staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person.” *Id.* § 44-1-60(E)(2). Lexington never requested further review of the permitting decision.

³ If the Court determines that Central Midlands’s decision was a “final” agency decision subject to the Administrative Procedures Act, Lexington would have had thirty days to appeal the conformance determination, but did not do so. S.C. Code Ann. § 1-23-380; *see Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (“Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.”).

Further appellate procedures depend upon a timely appeal of the DHEC staff's decision, which did not happen. Accordingly, Lexington failed to avail itself of any administrative procedures, and its time for doing so has long expired. The Court should therefore dismiss this matter for failure to exhaust administrative remedies and for lack of appellate jurisdiction pursuant to Rule 12(b)(1), SCRCF, and South Carolina Code § 1-23-380, which requires a party to "exhaust[] all administrative remedies available within the agency" before seeking judicial intervention.⁴

CONCLUSION

This case fails as a matter of settled law at every turn. Lexington indicated that it had no objection when Central Midlands made its determination that West Columbia could provide sewer services to an area within West Columbia's own boundaries. And Lexington's failure to object or to invoke any conceivable administrative remedy is no surprise; the South Carolina Constitution, state statutes, and controlling decisions of the Supreme Court make clear that West Columbia alone can provide service to its residents unless West Columbia decides otherwise. This case is frivolous and should be dismissed accordingly.

⁴ Lexington's failure to make any administrative appeal of Central Midlands's determination or DHEC's permitting determination also precludes Lexington from collaterally attacking those decisions through the doctrines of issue and claim preclusion. *See, e.g., Perry v. SLED*, 310 S.C. 558, 562, 426 S.E.2d 334, 336 (Ct. App. 1992) ("It is well settled that under the doctrines of res judicata and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of issues addressed by that tribunal in a collateral action. . . . Perry cannot raise in this civil suit under a separate cause of action the same issues that the Grievance Committee decided.").

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ Belton Zeigler

Belton T. Zeigler

S.C. Bar No. 5754

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(803) 454-6504

Attorneys for the City of West Columbia

June 14, 2022

Columbia, South Carolina

Exhibit A to West Columbia's Motion to
Dismiss Amended Complaint

Central Midlands Section 208 Plan
Conformance Review Form and
Attachments



MEMORANDUM

TO: Project File
FROM: Gregory Sprouse, Director Research, Planning, and Development
DATE: March 22, 2021
SUBJECT: 208 Certification – West Columbia US 378 PER

In February of 2021 the City of West Columbia submitted a 208 conformance request for a preliminary engineering report to evaluate the construction of wastewater infrastructure along the US Highway 378/I-20 corridor. The purpose of the project is to provide the infrastructure necessary to provide wastewater service to the properties in this area within the City's municipal limits. The area in question is primarily within the Town of Lexington's designated 208 management/service area, however, it is also located within the City of West Columbia's municipal limits as the City has annexed into this area over the last decade. Because the project as proposed in the PER is within the municipal limits of West Columbia, CMCOG considers the project to be in conformance with the 208 plan even though it is within the Town of Lexington's designated management area. This determination is supported by Section 2 of the Management Agency Policy in the 208 plan (p.56) which states "Where a municipality annexes lands into another designated management agency's area, the municipality has the right to provide service to that area, provided no existing service is reasonably available and is shown to be the cost-effective means of providing service." This determination is also supported by Sections 5-31-2030 and 5-7-60 of the South Carolina Code of Laws which allows a municipality to require a resident to make use of their sewer system and prohibits a municipality from providing service within another municipality unless permission is approved by that governing body (thus making it difficult for the Town of Lexington to provide service within the City of West Columbia's boundaries unless permission is given).

With the intention of promoting cooperation and coordination among management agencies and service providers, CMCOG staff makes all reasonable efforts to communicate with all parties when reviewing 208 conformance requests that may impact multiple management agencies or service providers. During the review of this conformance request, CMCOG communicated the preliminary determination of conformance with the Town of Lexington prior to issuing approval. The Town of Lexington did not object to CMCOG's determination that the project was in conformance with the 208 plan. CMCOG issued a certification of conformance on March 22, 2021. The conformance included comments stating that approval was only for service to properties within the municipal limits of West Columbia, and that future projects to provide service to properties in the study area outside of their municipal limits but within the Town of Lexington's 208 Management Area, will require a separate 208 conformance review to include approval from the Town of Lexington.



208/201 PLAN CONFORMANCE REVIEW FORM

1. Date: 2/8/2021
2. Project Name: US Highway 378 Collection System Extension
3. County: Lexington
4. General Location: (A General Location map must be provided with this form)
5. Type of Action for Review: PER
6. Type of Project: Pump Station
7. Type of Waste: Domestic
8. Volume (GPD): 550
9. Service Provider: City of West Columbia
10. Location of Treatment: Columbia Metro WWTP

Engineer Contact Info

Name: Andrew J. Zaengle, P.E.
Company: City of West Columbia
Address: 200 N. 12th Street, West Columbia, SC 29169
Phone: (803) 939-8625
Email: azaengle@westcolumbiasc.gov

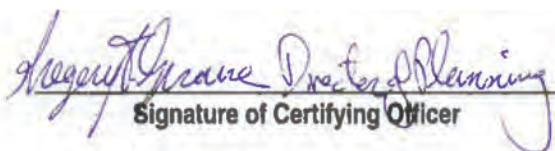
Service Provider Contact Info

Name: Andrew J. Zaengle, P.E.
Service Provider: City of West Columbia
Address: 200 N. 12th Street, West Columbia, SC 29169
Phone: (803) 939-8625
Email: azaengle@westcolumbiasc.gov

----- For Central Midlands COG Office Use only -----

Determination: This project (IS) IS NOT in conformance with the 208 plan.

Comments: The 208 certification is for the collection system extension to provide sewer service to properties located within the municipal limits of the City of West Columbia. Any projects to provide sewer service to properties in the PER study area that are not within the municipal limits of the City of West Columbia and are within the Town of Lexington's 208 Designated Management Area (DMA), will require a separate 208 conformance review and certification to include approval from the Town of Lexington.


Signature of Certifying Officer

3/22/21
Date

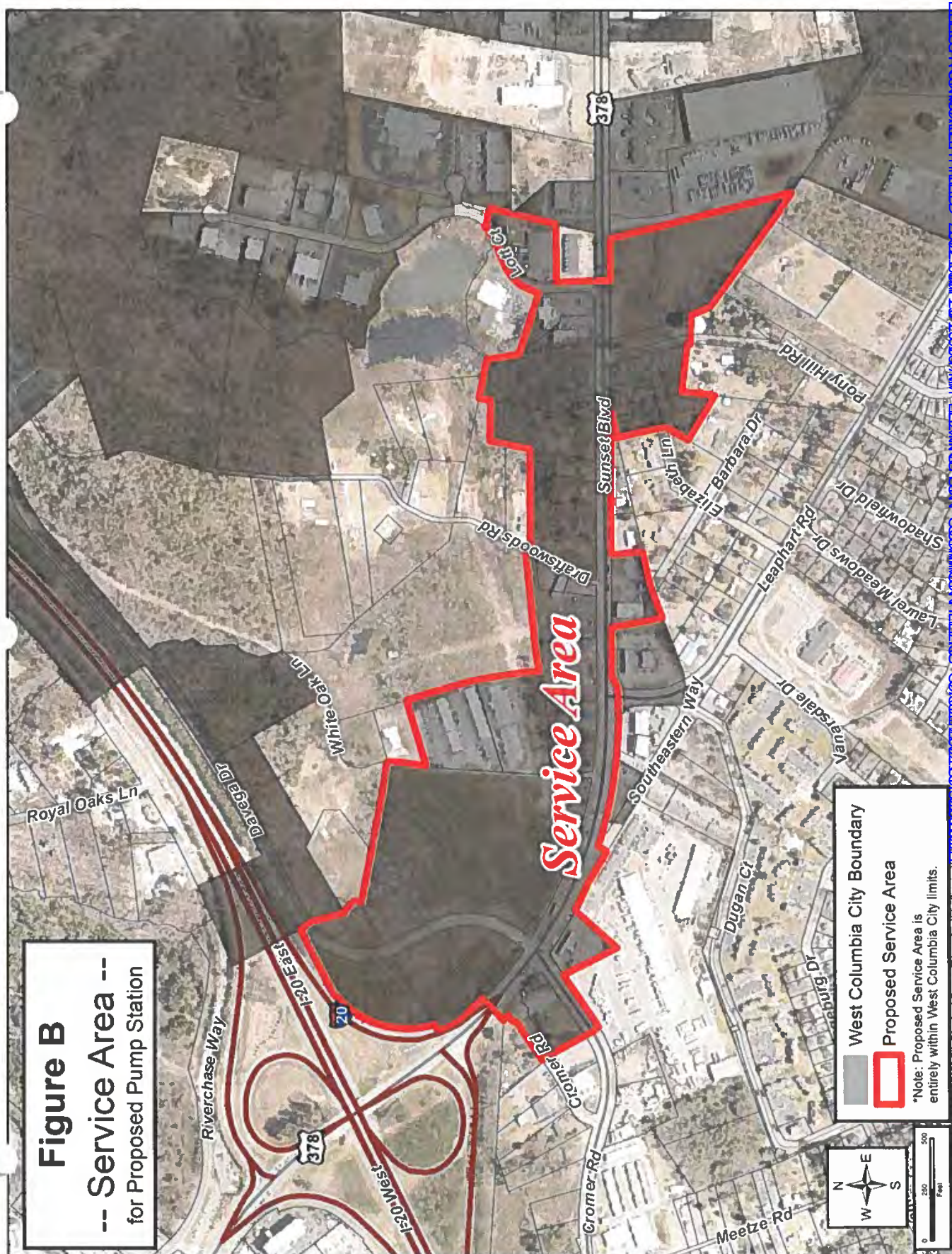
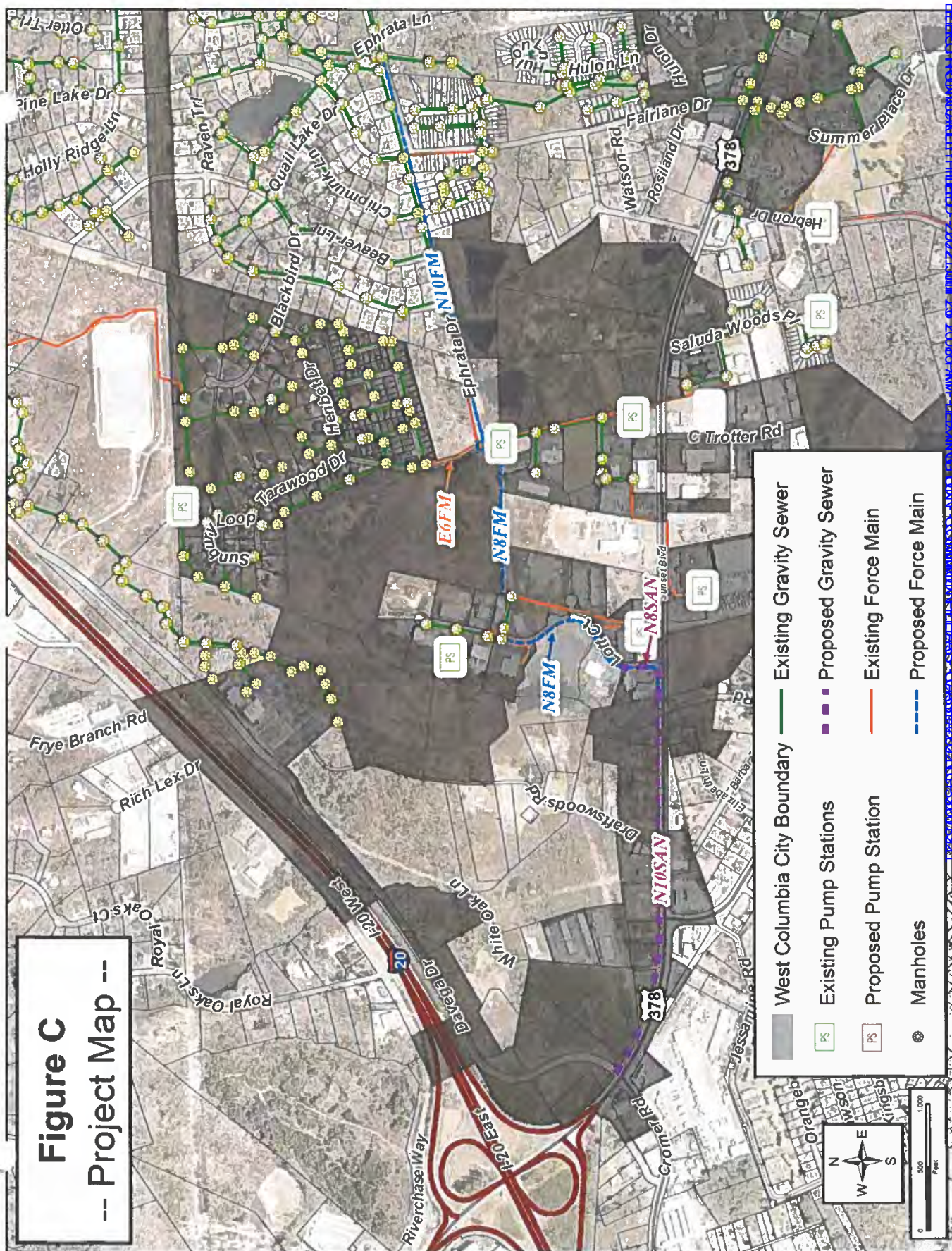


Figure C
-- Project Map --





Gregory Sprouse <gsprouse@centralmidlands.org>

RE: 208 conformance

1 message

Britt Poole <bpoole@lexsc.com>
To: Gregory Sprouse <gsprouse@centralmidlands.org>

Mon, Mar 22, 2021 at 1:19 PM

Gregory,

I don't have any questions or comments, thanks for sending it over.

Thanks

Britt

Sincerely,

D. Britt Poole
Town Administrator
Town of Lexington
111 Maiden Lane
Lexington, SC 29072
803-951-1665
bpoole@lexsc.com



From: Gregory Sprouse <gsprouse@centralmidlands.org>
Sent: Monday, March 22, 2021 1:16 PM
To: Britt Poole <bpoole@lexsc.com>
Subject: Re: 208 conformance

Hi Britt,

I am following up from our conversation last week regarding the West Columbia 208 conformance request? Did you have any further questions or comments? I hope to finalize our review later today and issue the conformance to West Columbia sometime tomorrow. I am available anytime after 2:30 this afternoon or early tomorrow morning for a call if you want to discuss.

Thanks so much for your help.

Best,

Gregory

--

Gregory Sprouse, AICP

Director of Research, Planning, and Development

Central Midlands Council of Governments

[236 Stoneridge Drive](#)

[Columbia, SC 29210](#)

803.744.5158

www.centralmidlands.org

On Thu, Mar 18, 2021 at 9:31 AM Gregory Sprouse <gsprouse@centralmidlands.org> wrote:

Hi Britt,

Per our conversation, the conformance request and maps are attached. My schedule is open on Monday so just let me know a time that works for you to follow up.

Best,

Gregory

--

Gregory Sprouse, AICP

Director of Research, Planning, and Development

Central Midlands Council of Governments

[236 Stoneridge Drive](#)

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Gregory Sprouse <gsprouse@centralmidlands.org>

West Columbia 208 Conformance Request

1 message

Gregory Sprouse <gsprouse@centralmidlands.org>
To: "Poole, Britt" <bpoole@lexsc.com>

Wed, Mar 17, 2021 at 5:35 PM

Hi Britt,

I hope you are doing well. I am touching base with you regarding a 208 conformance request we received from the City of West Columbia for review of a PER to construct new sewer collection infrastructure to provide service to the properties in their municipal limits along 378. Since the project is intended to serve the properties within their municipal limits we consider it to be in conformance with the 208 plan. But because it impacts multiple service and management areas, we want to make sure we are adequately communicating with all impacted parties as a part of our review.

Do you have any time tomorrow morning or early afternoon for a call to discuss?

Best,

Gregory

--

Gregory Sprouse, AICP
Director of Research, Planning, and Development
Central Midlands Council of Governments
236 Stoneridge Drive
Columbia, SC 29210
803.744.5158
www.centralmidlands.org

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Exhibit B to West Columbia's Motion to
Dismiss Amended Complaint

DHEC Wastewater Construction Permit
(October 8, 2021)

Wastewater Construction Permit

Bureau of Water



ELECTRONICALLY FILED - 2022 Jun 15 10:16 AM - LEXINGTON - COMMON PLEAS - CASE#2021CP3201321

PROJECT NAME: Highway 378 Wastewater Extension

COUNTY: Lexington

LOCATION:

PERMISSION IS HEREBY GRANTED TO: City of West Columbia
200 N. 12th Street
West Columbia, SC 29169

For the construction of a sanitary sewer system in accordance with the construction plans, specifications, design calculations and the Construction Permit Application signed by Nathan Ward, AECOM, Registered Professional Engineer, S.C Registration Number: 23915.

Project Description: Installing a 320 gpm pump station, approximately 3700 LF of 8" force main, 3300 LF of 12" force main, 2700 LF of 10" gravity sewer, 1000 LF of 8" gravity sewer, valve fittings, and appurtenances to expand/upgrade West Columbia's existing sewer network.

TREATMENT FACILITY: The wastewater will be discharged to the COLUMBIA METRO PLANT - SC0020940 at a design flow rate of 35000 GPD.

STANDARD CONDITION:

NOTE: In accepting this permit, the owner agrees to the admission of properly authorized persons at all reasonable hours for the purpose of sampling and inspection. This is a permit for construction only and does not constitute DHEC approval, temporary or otherwise, to place the system in operation. An Approval to Place in Operation is required and can be obtained following the completion of construction by contacting the Midlands EA Columbia at 803-896-0620. Additional permits may be required prior to construction (e.g., Stormwater).

SPECIAL CONDITIONS:

- All construction/materials for this project must conform to the Standard Specifications for URS CORPORATION.

PERMIT NUMBER:	WW043625
ISSUANCE DATE:	October 8, 2021
EXPIRATION DATES:	Construction must be completed and the Approval to Place in Operation granted prior to October 8, 2024 or this permit will expire.

Douglas B. Kinard, P.E., Director
Drinking Water and Recreational
Waters Protection Division

GBA

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Town of Lexington, South Carolina,
Plaintiff,

Case No. 2021-CP-32-01321

vs.

City of West Columbia, South Carolina, and
The Central Midlands Council of Governments,
Defendants.

**PLAINTIFF TOWN OF LEXINGTON,
SOUTH CAROLINA'S MOTION TO
ALTER OR AMEND AND FOR
RECONSIDERATION**

Plaintiffs, Town of Lexington, South Carolina (hereinafter, collectively "Plaintiffs"), by and through their undersigned counsel, respectfully moves the Court, pursuant to Rule 59(e), SCRPC, to reconsider, alter or amend its judgment entered on August 17, 2022, granting Defendants' Motion to Dismiss under Rule 12(b)(6) SCRPC, and Denying the Motion to Dismiss Under Rule 12(b)(1) (the "Order"). Plaintiff bases this Motion on the following grounds.

1. The Court's finding that Home Rule provides a municipality with "veto" power over the provision of wastewater service by any other entity renders the CMCOG's 208 Plan, which is authorized by the federal Clean Water Act, a nullity with respect to the designation of geographic service areas, and inherently conflicts with federal law. Section 208 of the Clean Water Act provided for the development of area-wide management plans to address the provision of wastewater service and the protection of water quality, and the 208 Plan itself enumerates specific goals and policies within the umbrella of the Clean Water Act's authority, including the provision of a "cost effective local wastewater management system." The Plan further states that an annexing municipality "has the right to provide service to [the annexed] area, *provided no existing service*

is reasonably available and is shown to be the cost effective means of providing service.” (208 Plan at 56, emphasis added).

Full discovery and presentation of evidence would have demonstrated the financial outlays already undertaken by the Town related to this matter, and allowed a full determination as to whether there was existing service reasonably available which is the cost effective alternative. In its current posture, the record in this case is devoid of any basis for such a determination, and the Order of Dismissal effectively moots this provision of the 208 Plan in its entirety by interpreting Home Rule to give an annexing municipality total authority over wastewater service in the area, regardless of efforts already underway by designated management agencies otherwise assigned to serve the area to establish reasonably available service to the vicinity.¹ This directly conflicts with the goal of orderly development of sewer infrastructure set forth in Section 208 of the Clean Water Act. The Court’s determination regarding the application of the Supremacy Clause to this case was therefore in error, and constitutes cause to reconsider this matter.

2. While not ruling explicitly on the issues of waiver and exhaustion of administrative remedies, the Court made findings - without discovery - that the Town failed to object to the CMCOG’s conformance decision in this matter, and the Court failed to rule on the Town’s argument that there is no procedure to challenge the CMCOG decision which satisfies Article I, Section 22 of the South Carolina Constitution. The electronic mail communications relied upon by the City in its waiver argument was far from the only communication between the Town and the CMCOG related to the underlying decision, but in the context of a Motion under Rule 12(b)(6) the Town was not in a position to present evidence demonstrating that its course of communication

¹ The Order of Dismissal appears to view the language “existing service is reasonably available” as equivalent to existing customers already being served. Certainly the drafters of the 208 Plan could have drafted the annexation provision in this fashion, but chose not to, so “reasonably available” service must mean something less than this arbitrary bright line.

did not waive any rights. Nor could the Court, without discovery and the presentation of testimony, determine the degree of reliance placed on the CMCOG's decision by DHEC in making subsequent permitting decisions.

As argued in opposition to the City and CMCOG's motion to dismiss, there is no path clearly delineated either in the 208 Plan or elsewhere in state law that allows for any review of CMCOG conformance reviews, let alone a path that satisfies the requirements of judicial review set forth in Article I, Section 22 of the South Carolina Constitution. The Courts determination that the DHEC permitting process provides the appropriate venue for such a challenge, made at the pleading stage of this litigation, is without evidentiary basis and constitutes cause for reconsideration of the motion to dismiss.

Based on the foregoing, Defendants respectfully submit the Court erred in its determination that the Defendant's Motion pursuant to Rule 12(b)(6) should be granted. Counsel for Defendants certifies pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that consultation with counsel for Plaintiff would serve no useful purpose.

/s/ J. David Black

J. David Black, SC Bar No. 68499
 Michael S. Traynham, SC Bar No. 75117
 NEXSEN PRUET, LLC
 1230 Main Street, Suite 700 (29201)
 Post Office Drawer 2426
 Columbia, South Carolina 29202
 T: 803.771.8900
 dblack@nexsenpruet.com
 mtraynham@nexsenpruet.com

Attorneys for Town of Lexington, South Carolina

August 26, 2022

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Town of Lexington, South Carolina,

Plaintiff,

vs.

City of West Columbia, South Carolina, and
The Central Midlands Council of Governments,

Defendants.

Case No. 2021-CP-32-01321

**PLAINTIFF TOWN OF LEXINGTON,
SOUTH CAROLINA'S MEMORANDUM
IN SUPPORT OF MOTION TO ALTER
OR AMEND AND FOR
RECONSIDERATION**

Plaintiff, Town of Lexington, South Carolina or ("Lexington"), by and through its undersigned counsel and pursuant to this Court's Order entered September 26, 2022, respectfully submits this Memorandum in Support of its Motion to Alter or Amend and for Reconsideration of the portion of the Court's Order, entered on August 17, 2022, granting Defendant City of West Columbia's ("West Columbia") Motion to Dismiss under Rule 12(b)(6), SCRCPP (the "Order"). For the following reasons, *in addition to those set forth in Lexington's Motion*, the Court should alter, amend, and/or reconsider its Order.

LEGAL STANDARD

The decision to grant or deny a Rule 59(e) motion lies within the sound discretion of the trial court. *See Pollard v. City of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994). Courts have generally recognized four basic grounds upon which a motion under Rule 59(e) may be granted: (1) where the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; (2) where newly discovered or previously unavailable evidence comes to light after the judgment; (3) where the motion is necessary to prevent manifest injustice

to the moving party; or (4) where there is an intervening change in the controlling law. 11 Charles A. Wright *et al.*, *Federal Practice and Procedure* § 2810.1, at 124-27 (2d ed. 1995).

Rule 59(e) also allows parties to move for “reconsideration of issues and arguments,” and “a motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). “When an issue or argument has been raised to but not ruled upon by the circuit court, a party must file a Rule 59(e) motion in order to preserve it for appellate review.” *Rodriguez v. Gutierrez*, 391 S.C. 323, 330, 705 S.E.2d 94, 98 (Ct. App. 2011) (citing *Elam*, 361 S.C. at 24, 602 S.E.2d at 780). “Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented ... There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” *Elam*, 361 S.C. at 21–22, 602 S.E.2d at 778–79. Courts should “freely allow[] a motion for reconsideration” because it provides the Court with “the opportunity promptly to correct their own alleged errors.” *Id.* at 22, 602 S.E.2d at 779 (quoting *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 837 (7th Cir. 1999)).

ARGUMENT

I. S.C. Const. art. VIII, § 15 and Home Rule Are Not Applicable.

By its plain terms, Article 8, Section 15 of the South Carolina Constitution only applies to laws passed by the General Assembly. See S.C. Const. art. VIII, § 15 (“No law shall be passed by the General Assembly granting....”) The legislative intent behind home rule also supports this conclusion because its fundamental purpose was to transfer from the General Assembly to county governing bodies the necessary powers to handle the normal day-to-day affairs of local

government. *See Knight v. Salisbury*, 262 S.C. 565, 571, 206 S.E.2d 875, 877 (1974) (explaining the drafters of Article VIII of the South Carolina Constitution “clearly intended that home rule be given to the counties and that county government should function in the county seats rather than at the State Capitol.”) The Court appears to concede in its Order that there is no act of the General Assembly at issue in this case, yet nonetheless holds that this Constitutional provision applies and prevents Lexington from providing wastewater services within its service area under the 208 Plan. Order at 5 n.2. This was error. The Court reasons that Article 8 Section 15 applies because “there are a number of cases where local governments have sued concerning regulations and procedures implemented by State agencies,” and DHEC is a state agency which operates under statutes and regulations adopted by the General Assembly. Order at 5. However, it is not disputed that the statutes and regulations adopted by the General Assembly pertaining to the operation of DHEC are not at issue here. Article 8 Section 5 applies to the powers of the State versus the powers of local governments. The Court’s application of this Constitutional provision to decide the issues in this case stretches too far.

Notwithstanding that Article 8 Section 5 of the South Carolina Constitution is not determinative here, to the extent it is relevant at all, it is merely as a backdrop as having paved the way for South Carolina’s home rule laws. In its Order, the Court relies upon two South Carolina statutes enacted as part of South Carolina’s so-called Home Rule Act, but neither provides authority for the Court’s ruling. The first, Section 5-31-2030, merely provides that municipalities may adopt ordinances with respect to the discharge of sewage and the use of any sewer system operated by the municipality. S.C. Code Ann. § 5-31-2030(3). It is uncontroversial that a municipality may regulate the “discharge of sewage” and require “*the use of*” sewage facilities within the municipality. *Id.* (emphasis added.) However, the statute does not speak to *the right to*

provide such services. Indeed, to the extent it mentions the municipality's operation of a sewer system at all, it is expressly qualified by "from time to time." Not only is this this provision limited to the *operation* of sewage facilities, but, by its plain terms, it does not envision (much less require) that the municipality will necessarily or always be the operator of such facilities. The Court's interpretation of this statute as granting an exclusive right to municipalities to own and provide wastewater services with their municipal limits was error.

The second statute relied upon by the Court, Section 5-7-60, merely provides that a municipality may provide services outside of its corporate limits by contract, "except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities." S.C. Code Ann. § 5-7-60. Section 5-7-60 does not apply under the facts of this case because it provides the circumstances under which a municipality may furnish services outside their municipal boundaries. The area at issue here was annexed by West Columbia and is not outside its municipal boundaries, such that the statute, by its very terms, is not applicable as to any right West Columbia may have to provide wastewater services in the disputed area. Nor is the statute applicable as to any right Lexington may have to provide sewer services thereto because the right alleged by Lexington is pursuant to the 208 Plan and its capacity as the Designated Management Agency ("DMA") for the annexed area. On this, the statute is silent. Because Lexington does not claim to possess such right by virtue of being a municipality, but rather as a DMA under the terms of the 208 Plan, Section 5-7-60 is not controlling.

However, even if the statute did speak to this issue (which it does not), the Court must nonetheless find Lexington has successfully stated a claim on which relief can be granted because, pursuant to the 208 Plan in effect, Lexington has a written agreement with West Columbia concerning the provision of wastewater services to the at-issue-area. Indeed, the Court recognizes

the existence of such an agreement. *See* Order at 8 (stating the governments at issue entered into a “pact” with the CMCOG, the designated planning agency for this geographical area, for purposes of the 208 Plan.) Moreover, the 208 Plan constitutes approval by West Columbia that Lexington would be the DMA to provide wastewater services in the disputed area. Such approval further authorizes Lexington to provide wastewater services in the disputed area because the provisions of Section 5-7-60 state that “the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned.” S.C. Code Ann. § 5-7-60.

Thus, even if Section 5-7-60 applies (which it does not), it is not a bar to Lexington’s claims because the 208 Plan constitutes a contract between the parties expressly authorizing Lexington to provide services in the disputed area, and grants West Columbia’s approval for the same. A determination as to whether West Columbia may revoke its contract and authorization, and whether Lexington reasonably relied on such contract and authorization, requires a developed record with full discovery, and is not proper for determination on a 12(b)(6) motion.

II. Lexington Has Stated a Claim Upon Which Relief Can Be Granted.

In ruling on a motion to dismiss under Rule 12(b)(6), the Court must base its ruling solely on the allegations set forth on the fact of the complaint. *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007). The Court must also construe the Complaint in the light most favorable to the plaintiff, including all reasonable inferences deducible therefrom, and accept all well-pled facts in the complaint as true. *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 714 S.E.2d 537 (2011). Here, the Court’s ruling does not properly apply this standard, and instead resolves West Columbia’s Motion

on the merits, without the opportunity for discovery and looking beyond the four corners of the Complaint to make factual determinations on disputed issues.

Even if the Constitutional and statutory authorities relied upon by the Court apply, Lexington may nonetheless be authorized to provide sewer services in the disputed area by contract or agreement. The Court acknowledged the existence of a “pact” between the parties pursuant to the 208 Plan establishing Lexington as the DMA for the disputed area—as such, Lexington has stated a plausible claim for relief. The Court’s ruling that “annexation changed the evaluation,” Order at 9, directly contradicts the 208 Plan, which contains express provisions governing the effect on service areas as a result of municipal annexation. *See* 1997 208 Plan at 56. Specifically, that when a municipality annexes lands into another DMA’s area, the municipality does not have the right to provide service to that area where “existing service is reasonably available and is shown to be the cost effective means of providing service.” *Id.* Lexington has alleged that wastewater service is reasonably available which is the cost effective alternative. Am. Compl. ¶¶ 48-50, 53. The Court is required to accept such allegations as true, but did not. Instead, it attempted to resolve “[t]he issue of determining whether Lexington’s current infrastructure constitutes ‘existing service’ that is ‘reasonably available and is show to be the cost effective means of providing service.’” Order at 6. Without the benefit of a developed record or any discovery, the Court summarily holds “[i]t is the court’s understanding that no Lexington infrastructure is located in the area annexed by West Columbia.” Order at 6. Full discovery would allow Lexington to demonstrate the financial outlays it has already undertaken related to the disputed area. Only then will the Court be in a position to determine whether there was existing service reasonably available which is the cost effective alternative.

The Court further concludes that “[t]he only indication is that CMCOG and, ultimately, DHEC are the entities to make that determination,” Order at 10, and apparently takes such determination as *prima facie* evidence that existing service was not reasonably available which is the cost effective alternative. However, there is no evidence that CMCOG or DHEC in fact considered whether wastewater was already reasonably available or the cost effective means of providing service, much less that such determination was correct. Rather, the evidence is simply that CMCOG determined West Columbia’s permit application complied with the 208 Plan, despite its recognition (post-annexation) that Lexington is the DMA for the disputed area. Without discovery, the Court cannot determine the factors considered by CMCOG in reaching its decision, nor the degree of reliance placed on CMCOG’s decision by DHEC in making subsequent permitting decisions.

The Court appears to further infer that a correct determination must have been made because Lexington “was notified about what was being proposed and elected not to challenge it, except through this lawsuit filed after the determination was made.” Order at 10. Once again, this fails to construe Lexington’s Complaint, and the reasonable inferences therefrom, in the light most favorable to Lexington and improperly resolves disputed factual issues without the benefit of any discovery. This is particularly troublesome in light of the Court’s recognition that there are issues “concerning the methodology that is available to assert rights under the [208] Plan and to contest [CMCOG’s and DHEC’s] actions taken that allowed West Columbia to obtain a construction permit within the area designated to Lexington.” Order at 12. Lexington is entitled to discovery on this issue, and to present evidence of the full extent of its communications with CMCOG related to the underlying decision.

At bottom, Lexington has stated a valid claim against West Columbia under the 208 Plan which is neither barred by, nor resolved by reference to, the Constitutional and statutory provisions relied upon by the Court (assuming *arguendo* that they apply, which they do not). The purpose of a Rule 12(b)(6) motion is to test the sufficiency of the complaint—it is not a ruling on the merits and does not resolve contested factual issues. See, e.g., *Johnson v. Fields*, 616 Fed. Appx. 599, 600 (4th Cir. 2015) (“The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint; importantly, a Rule 12(b)(6) motion does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.”) (citation omitted). The Court’s ruling is thus improper under the Rule 12(b)(6) standard, and is effectively an improper and premature grant of summary judgment. The record before the Court is devoid of any basis from which the Court might resolve the disputed factual issues in this case, and Lexington is entitled to full and fair discovery on those issues.

CONCLUSION

For the foregoing reasons, as well as those set forth in Lexington’s Motion to Alter or Amend and for Reconsideration and any others the Court may deem just and proper, the Court should reconsider, alter, or amend its Order entered August 17, 2022, to the extent it grants West Columbia’s Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP.

Respectfully submitted,

s/ J. David Black

J. David Black, SC Bar No. 68499

Michael S. Traynham, SC Bar No. 75117

Alexandra H. Austin, SC Bar No. 102646

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Attorneys for Plaintiff

Town of Lexington, South Carolina

October 7, 2022

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Town of Lexington, South Carolina,	)	Civil Action No. 2021-CP-32-1321
	)	
Plaintiff,	)	
	)	
vs.	)	<u>JOINT</u>
	)	<u>RESPONSE IN OPPOSITION TO</u>
	)	<u>MOTION TO RECONSIDER</u>
City of West Columbia, South Carolina,	)	
and The Central Midlands Council of	)	
Governments,	)	
	)	
Defendants.	)	
	)	

This case is frivolous, and the Court rightly dismissed it as a matter of constitutional law. The Town of Lexington is not authorized to provide sewer services within the City of West Columbia without West Columbia's consent, and there is no reason to revisit that unimpeachable ruling.

There is no dispute that the South Carolina Constitution guards municipalities from encroachment and overreach by their neighbors. It provides that no law "shall be passed" that allows for the construction or operation of streets, rails, telephone infrastructure, electrical lines, water lines, sewer lines, gas lines, or other "mains for any purpose" "without first obtaining the consent of the governing body of the municipality in control of the streets or public places proposed to be occupied for any such or like purpose." S.C. Const. art. VIII, § 15.

To bypass the plain language of the Constitution, Lexington stunningly argues that the South Carolina Constitution's unambiguous protections against territorial encroachment by other political subdivisions do not apply because there is no "law" at issue. Instead, Lexington argues that a private agreement among a collection of counties and municipalities somehow overrides the South Carolina Constitution. This is not so, for several reasons:

State law governs. A Section 208 Plan is not governed by federal law, as Lexington argues, but instead must adhere to state law, just as the Court recognized in its dismissal order. *See, e.g., N. Colo. Water Conservancy Dist. v. Bd. of County Comm'rs*, 482 F. Supp. 1115, 1118–19 (D. Colo. 1980) (holding that “[t]he Clean Water Act provides for designation of planning agencies, but the planning process and the powers that are exercised there in are matters of state law”). Accordingly, the State Constitution’s protections for West Columbia control.

A municipality cannot contract around the State Constitution. Political subdivisions only have the authority vested in them by state law. They cannot agree among themselves to override the State Constitution. *See, e.g., O’Brien v. S.C. ORBIT*, 380 S.C. 38, 43–45, 668 S.E.2d 396, 398–400 (2008) (striking a city’s attempt to invest retirement funds in equity securities in violation of the Constitution); *see generally* S.C. Code Ann. § 5-7-30 (authorizing municipalities to “enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State”). Lexington’s new suggestion that members of the Central Midlands COG were able to contract around the Constitution through the 208 Plan fails as a matter of law.

Moreover, Lexington previously disclaimed the notion that the 208 Plan is a contract, specifically saying that it was no such thing but instead was a “guidance document.” (Lexington’s Opposition to Dismissal at 3.) Lexington’s new argument that it has any contract rights under the 208 Plan—contract rights it argues can somehow supersede state constitutional law—appears for the first time in Lexington’s Rule 59 motion, procedural posturing that is prohibited as a matter of law. *See generally Gartside v. Gartside*, 383 S.C. 35, 43, 677 S.E.2d 621, 625 (Ct. App. 2009) (holding that “a party cannot use a Rule 59(e) motion to present to the [lower] court an issue the party could have raised prior to judgment but did not”).

State laws are at issue, and would be violated by Lexington's proposal. Lexington argues that the Constitution is inapplicable here because there is not an associated state statute in play. (Lexington's Mem. at 2–3.) Assuming *arguendo* this could ever be a valid construction of the Constitution, it is incorrect here.

South Carolina Code § 5-7-60 specifically forbids one municipality from encroaching into another's territory for providing certain services, including sewer services, unless "permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned." And the statute says that the provision of such services is "subject always to the general law and Constitution of this State regarding such matters." *Id.*

Even though this statute is entirely consistent with the South Carolina Constitution's territorial protections, Lexington asks the Court to disregard it because, in its view, "the statute is silent" as to the impact of a 208 Plan. (Lexington's Mem. at 4.) But the statute is not "silent"; it forbids unauthorized encroachment, period. The statute incorporates by reference the Constitution's protections, and it expressly states that the only time one municipality can encroach on another's service territory is by permission, which has not happened here—precisely as the Court held in its order dismissing this case. (*See* Order at 8 (recognizing that Lexington seeks a declaration that it may provide services in West Columbia "over West Columbia's objection," which would be "contrary to municipality control" under South Carolina law).)

The Supreme Court and Court of Appeals have both rejected Lexington's same arguments. In its dismissal order, the Court identified a series of cases from the South Carolina Supreme Court and Court of Appeals that stand for the proposition that the Constitution protects municipalities from encroachment of others with respect to providing basic services, even in annexed areas. (Order at 6 (collecting cases).) Lexington does not address, much less even attempt

to distinguish, those controlling decisions that make clear that West Columbia holds a “veto power” and a “constitutional shield” against Lexington’s attempt to provide sewer services within West Columbia’s municipal boundaries. Lexington’s silence in the face of this crush of case law confirms that dismissal was proper.

No “discovery” is needed. The question presented in this case is one of law, and the Court rightly resolved that question by dismissing Lexington’s claim to be able to provide sewer services within West Columbia in violation of the South Carolina Constitution. As a last-ditch effort to avoid dismissal, Lexington generically argues that it wants to conduct discovery on the question.

But no discovery could possibly change the analysis. The territory in dispute is indisputably within West Columbia’s corporate boundary. The South Carolina Constitution and the South Carolina Code of Laws indisputably give West Columbia sole discretion as to whether it wants to allow Lexington to provide services within West Columbia’s territory. And West Columbia has indisputably refused to give that consent and intends to provide those services itself.

Moreover, assuming *arguendo* there was ever a time that Lexington should have presented the arguments it is now pitching through a Rule 59 motion, that time has long passed. Under the governing regulatory process, the COG made a recommendation of compliance with the 208 Plan to DHEC, and DHEC had the authority to examine the request and decide whether to issue a wastewater permit to West Columbia. *See generally* S.C. Code Ann. § 44-1-60 (setting forth the administrative review process for DHEC to issue permits).

As the Court recognized in its dismissal order, Lexington could have—but did not—requested notice of DHEC’s proceedings regarding West Columbia’s permit application, and it could have—but did not—request administrative review after DHEC issued the permit, at which

point it could have raised the arguments it raises here. (Order at 12–13 nn. 6–6.)¹ But it did not make any objections, and the time for doing so has now closed. S.C. Code Ann. § 44-1-60(E)(2).

Accordingly, Lexington’s generic request for “discovery” regarding the COG’s and DHEC’s administrative review process is far too late and is barred as a matter of law. *See, e.g., Perry v. SLED*, 310 S.C. 558, 562, 426 S.E.2d 334, 336 (Ct. App. 1992) (“It is well settled that under the doctrines of res judicata and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of issues addressed by that tribunal in a collateral action. . . . Perry cannot raise in this civil suit under a separate cause of action the same issues that the Grievance Committee decided.”).

* * * * *

The Court’s dismissal order accurately stated and applied the law governing the constitutional protections afforded to municipalities to provide services to their own constituents within their own corporate boundaries. Lexington’s attempts to ignore the South Carolina Constitution, the South Carolina Code of Laws, and several controlling appellate decisions should be denied.

Signature Page Attached

¹ Though Lexington failed to engage in the administrative process with the COG’s 208 Plan recommendation by appealing DHEC’s wastewater permit, it now recognizes the proper way to involve itself in DHEC matters. *See* Ex. A (September 8, 2022 request from Lexington to DHEC to be notified of a forthcoming wastewater permitting decision involving nearby parcels that were also annexed into West Columbia). The fact that Lexington has engaged in the administrative process in other instances confirms the inescapable point that it is not entitled to any relief in this forum. If Lexington was entitled to sue in this Court over a COG recommendation and also seek relief from a DHEC decision before the administrative law court, the case before this Court would necessarily fail pursuant to, at a minimum, Rule 12(b)(8), SCRPC.

Respectfully submitted,

The Shissias Law Firm, LLC By: <u>/s/ Alexander Shissias</u> Alexander G. Shissias S.C. Bar No. 11610 Alex@shissiaslawfirm.com 1727 Hampton Street Columbia, South Carolina 29201 (803) 540-3090 <i>Attorney for Central Midlands Council of Governments</i>	WOMBLE BOND DICKINSON (US) LLP By: <u>/s/ Belton Zeigler</u> Belton T. Zeigler S.C. Bar No. 5754 Belton.Zeigler@wbd-us.com M. Todd Carroll S.C. Bar No. 74000 Todd.Carroll@wbd-us.com Bryant S. Caldwell S.C. Bar No. 102206 Bryant.Caldwell@wbd-us.com 1221 Main Street, Suite 1600 Columbia, South Carolina 29201 (803) 454-6504 <i>Attorneys for the City of West Columbia</i>

October 19, 2022
Columbia, South Carolina

EXHIBIT A

From: [Clarke, Shawn](#)
To: [Clarke, Bridget](#)
Cc: mtraynham@nexsenpruet.com; [Martinez, Sara](#)
Subject: FW: Request to be notified - Leaphart Road Apartment complex
Date: Thursday, September 8, 2022 11:57:38 AM
Attachments: [208-2022-07-15 CMCOG - 208 Conformance Review - Leaphart Road Multifamily \(003\).PDF](#)
[DHEC FOIA Request - Leaphart Road.pdf](#)

Bridget,

Please find the attached FOI and CMCOG conformance review for the Leaphart Rd Apartment complex. Thanks,

Shawn

From: Traynham, Michael S. <MTraynham@nexsenpruet.com>
Sent: Thursday, September 8, 2022 11:36 AM
To: Clarke, Shawn <CLARKESM@dhec.sc.gov>; Information, Freedom <foi@dhec.sc.gov>
Cc: Black, David <DBlack@nexsenpruet.com>; Katherine Indovino <KIndovino@nexsenpruet.com>
Subject: Request to be notified - Leaphart Road Apartment complex

*** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Shawn,

I hope you are well.

We are filing a request to be notified of any permitting decisions associated with a proposed Leaphart Road apartment complex connected with the attached 208 Conformance Review memo from the CMCOG. I have also attached a FOIA form connected with this request to be notified, and have copied the FOIA office on this request. If it would be helpful to provide a copy of this email and these attachments to anyone else within the Department, or if you need anything else to process our request, please let me know.

If any permitting decisions have already been issued on this project, please let me know as soon as possible.

Kindest Regards,

Michael S. Traynham
 Special Counsel
 Nexsen Pruet, LLC
 1230 Main Street, Suite 700
 Columbia, SC 29201
 Post Office Box 2426 (29202)
 T: (803)540-2164, F: (803)753-5483
 C: (803)730-1780
MTraynham@nexsenpruet.com

www.nexsenpruet.com



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208/201 PLAN CONFORMANCE REVIEW FORM

1. **Date:** 6/30/2022
2. **Project Name:** Leaphart Road multifamily
3. **County:** Lexington
4. **General Location:** (A General Location map must be provided with this form)
5. **Type of Action for Review:** Construction Permit Request
6. **Type of Project:** Force Main
7. **Type of Waste:** Domestic
8. **Volume (GPD):** 60,750
9. **Service Provider:** City of West Columbia
10. **Location of Treatment:** City of Columbia WWTP 0020940

Engineer Contact Info

Name: Darren K Holcombe, P.E.
Company: Cox and Dinkins, Inc.
Address: 724 Beltline Blvd. Columbia, SC 29205
Phone: (803) 764-6250
Email: dholcombe@coxanddinkins.com

Service Provider Contact Info

Name: Andy Zaengle
Service Provider: City of West Columbia
Address: 200 N. 12th Street, West Columbia, SC 29169
Phone: (803) 939-3183
Email: azaengle@westcolumbiasc.gov

----- **For Central Midlands COG Office Use only** -----

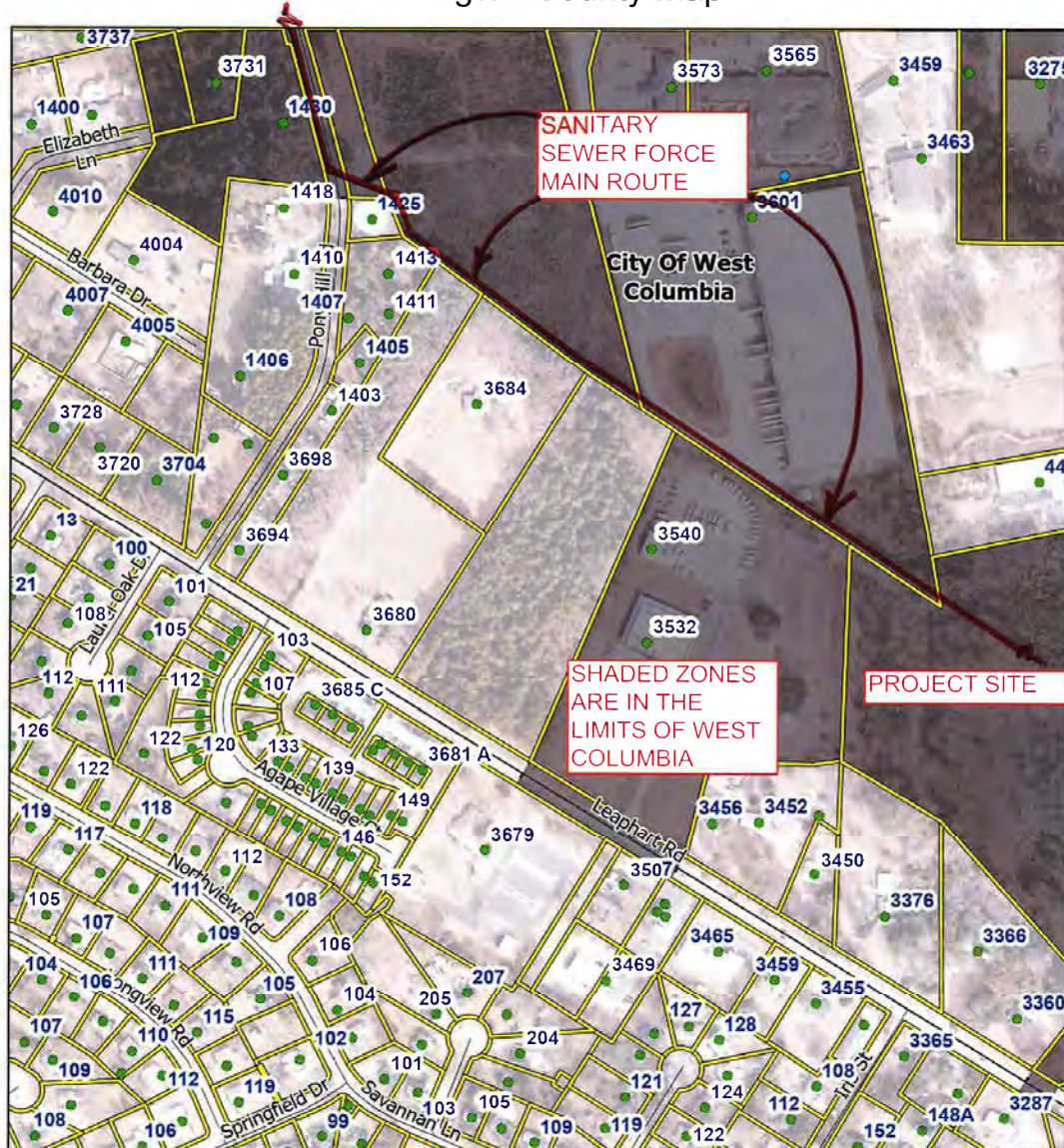
Determination: Central Midlands staff recommend that DHEC staff conclude that this project does not conflict with the 208 Water Quality Management Plan.

Comments: The subject property is located entirely within the municipal limits of West Columbia and there is no existing service to the property. The project is a cost-effective means of providing service. Additionally, with regard to the planned force main route, which is also entirely within the municipal limits of West Columbia, we understand that this force main will enable several nearby properties currently served by septic systems to connect to sewer. This is also consistent with the goals of the 208 Plan.

Signature of Certifying Officer

Date

Lexington County Map



6/30/2022, 11:37:04 AM

Address Points
Existing
To Be Placed
Roads
Arterial
Local
Parcels
County Boundaries
Municipalities
Municipalities
Unincorporated

1:4,000
0 0.03 0.07 0.13 mi
0 0.05 0.1 0.2 km

**LEAPHART ROAD
APARTMENTS SANITARY
SEWER FORCE MAIN ROUTE
WITHIN CITY LIMITS OF WEST
COLUMBIA**

Printed from Lexington County One Map. Lexington County makes no warranty, representation or guaranty... View the full data disclaimer at <https://lex-co.sc.gov/departments/planning-gis/gis->



Freedom of Information Request Form
Customer Service: (803) 898-3882

Date: 09/08/2022

Internal request number: _____

Contact information

Name: Michael S. Traynham Company/Organization: Nexsen Pruet
Street address: 1230 Main Street, Ste. 700 City: Columbia State: SC Zip Code: 29201
Phone number: (803) 540-2164 Email address: mtraynham@nexsenpruet.com

Request information

I'm requesting: ☒ **Specific documents** ☐ **File review**

Facility or project name: Leaphart Road Apartment Complex

Facility address: _____

County: Lexington County

DHEC file custodian/staff contact if known: Shawn Clarke

Description of documents or files requested:

Please provide notice of any Department decision on construction permits or other wastewater authorizations connected to the (attached) CMCOG 208 Conformance Review document and the proposed Leaphart Road apartment complex project connected thereto.

For purposes of S.C. Code Ann. Section 44-1-60, please consider this FOIA request a formal written request to be notified by an affected party,

Family Privacy Protection Act statement

The Family Privacy Protection Act, SC Code Section 30-2-50, prohibits any person or private entity from knowingly obtaining or using any personal information obtained from our agency for commercial solicitation directed to any person in the State. Violation of this law is a crime.

I have read and understand this statement. I am not requesting personal information for the purposes of commercial solicitation or in violation of law.

Signed: _____

Submit requests: Email: foi@dhec.sc.gov • Fax: (803) 898-3816 • Mail: FOI Office, 2600 Bull St., Columbia, S.C. 29201

Office Use Only: Date completed: _____

Billing info: Research: Time: _____ Cost: _____

Description: _____

Services: ☐ Scan #: _____ ☐ WebX documents #: _____ ☐ Hard copies #: _____ ☐ CD duplication #: _____

☐ Other: _____

Delivery options: ☐ Pick up ☐ Emailed ☐ Mailed ☐ Other: _____ **Total charge:** _____

Instructions for Completing DHEC Form 2295

Purpose: This form is used to obtain records under of the SC Freedom of Information Act

Who completes the form: Any person seeking review or copies of public records of the Department.

Instructions:

1. Fill out the top portion of the form by providing complete contact information. We may contact you to obtain additional information necessary to fulfill your request. Please provide a telephone number where you can be reached between 8:30 a.m. to 5 p.m., Monday through Friday.
2. Provide as much information about the desired documents as possible.
3. Read and sign the Family Privacy Protection Act statement.

Submit the form: E-mail (foi@dhec.sc.gov), fax (803-898-3816) or mail (FOI, 2600 Bull Street, Columbia, SC 29201) completed form to the FOI Office.

Contact Information

For additional information, contact the:
Freedom of Information Center
South Carolina Department of Health and Environmental Control (DHEC)
2600 Bull Street
Columbia, SC 29201
(803) 898-3882

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2021-CP-32-01321
COUNTY OF LEXINGTON	)	
	)	
	)	
TOWN OF LEXINGTON, SOUTH	)	
CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
CITY OF WEST COLUMBIA,	)	
SOUTH CAROLINA, AND THE	)	
CENTRAL MIDLANDS COUNCIL OF	)	
GOVERNMENTS,	)	
DEFENDANTS.	)	
_____	)	

June 16, 2022
Via Web Conferencing

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE

A P P E A R A N C E S:

CRESTON WILLIAM BROWN, ESQ.
Attorney for the Plaintiff

BELTON TOWNSEND ZEIGLER, ESQ.
Attorney for City of West Columbia

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Transcribed by:
CHERYL A. SMITH
Circuit Court Reporter
from WebEx recording

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There were no witnesses called.

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>

There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 9:31 a.m.)

THE COURT: We're on the record on 2021-CP-32-01321, Town of Lexington, South Carolina vs. The City of West Columbia, South Carolina and others. The date is June 16, 2022. The time is 9:31 a.m.

This hearing's been scheduled using the WebEx virtual courtroom. The procedures of the South Carolina Supreme Court do not assign court reporters for these types of hearings. The WebEx platform is recording the proceeding, and if a transcript is needed, one will be prepared by a transcriptionist using the WebEx recording.

The orders from the Supreme Court included one issued in August of 2021, require the consent of all parties in order to proceed in this fashion. So for the plaintiff, I have Mr. Creston, C-R-E-S-T-O-N, William Brown. Mr. Brown, do you consent?

MR. BROWN: Yes, Your Honor.

THE COURT: And for the City of West Columbia, I have Mr. Belton Townsend Zeigler, Z-E-I-G-L-E-R. Do you consent, Mr. Zeigler?

MR. ZEIGLER: Yes, Your Honor. I consent on behalf of the town.

THE COURT: And for Central Midlands Council of Governments, I have Mr. Alexander George Shissias,

1 S-H-I-S-S-I-A-S. Do you consent, Mr. Shissias?

2 MR. SHISSIAS: Yes, Your Honor.

3 THE COURT: Thank you.

4 I'm requested to ask that you please not talk over
5 each other, that you speak clearly so we have an accurate
6 record, and since there is no court reporter taking down
7 who is speaking, at any given time, you're asked to say
8 your name before you start speaking.

9 All right. I read the file. And it's the City of
10 West Columbia's motion to dismiss. So I guess we're to
11 you, Mr. Zeigler.

12 MR. ZEIGLER: Thank you, Your Honor. Belton Zeigler
13 representing the City of West Columbia.

14 This case arises out of the annexation of certain
15 properties on Highway 78, Sunset Boulevard in West
16 Columbia. As is often the case as the practice with the
17 city, it often extends water service to areas outside of
18 the town with the understanding that when those areas are
19 ready to be developed, the town will annex them in and
20 provide sewer service. So under that aegis, under that
21 structure, the town annexed these properties in the 378
22 area and applied to DHEC for sewer permits to construct
23 the sewer lines to serve these folks.

24 Part of the DHEC sewer permitting process is a
25 conformity letter that is provided by the Regional Council

1 of Governments, in this case the Central Midlands Regional
2 Council of Governments, which we refer to as Central
3 Midlands. The Central Midlands maintains a planning
4 document that deals with sewer service and issues
5 decisions to DHEC issues where the advisory letters to
6 DHEC saying we believe this particular application for a
7 sewer line extension conforms with the 208 plan or it
8 doesn't. That's the planning document. It's called a 208
9 plan.

10 The conformity decision for this line was issued on
11 March 22nd of 2021. It was issued after extensive email
12 correspondence between Central Midlands and Lexington, the
13 Town of Lexington. In that correspondence, the town
14 indicated it had no objection and was provided, we
15 believe, with the documents indicating that Central
16 Midlands found that, because these properties had been
17 annexed into the city, they were properties that the town
18 -- or the City of West Columbia had the right to serve.
19 In spite of there being no objection at Central Midlands,
20 the Town of Lexington has raised objections to this
21 conformity letter for the first time in the pleadings
22 before this court.

23 As I indicated earlier, the DHEC permitting process
24 is more extensive than simply a conformity letter. DHEC
25 has to issue a construction permit, and the conformity

1 letter is considered by DHEC and either accepted or
2 rejected in that process.

3 The DHEC regulations make it clear that the
4 conformity letter is not binding on DHEC. DHEC can find
5 it to be improper and take action accordingly. However,
6 there was no objection to the conformity letter at DHEC.
7 There was no objection raised at DHEC. But on October 9,
8 and this is an attachment to the documents that we filed
9 in our motion -- excuse me -- the memo in support of the
10 motion, DHEC issued a construction permit for these lines,
11 and those lines have not been subject to any injunction or
12 any other constraint.

13 It's not within the specific record here, but just to
14 be transparent with the judge, the town has proceeded with
15 this matter. They have issued public requests for
16 proposals. They have awarded construction contracts.
17 Material is being fabricated, and a notice to proceed has
18 been issued for the construction of these lines. So
19 that's where we stand factually.

20 So our position is this case should never have been
21 filed. It should never have been filed for a very simple
22 reason. The Constitution of the State of South Carolina
23 since 1895 has granted municipalities the home-rule power
24 to decide who provides utility service within their
25 boundaries. There are substantial reasons for that.

1 Those reasons have been explained in about a dozen cases
2 that the Supreme Court has decided under Article 8,
3 Section 15 of the Constitution. Those cases all say the
4 same thing: the municipality has the power to decide who
5 extends service -- utility service within its boundaries.
6 The reasons for that I think are important to keep in
7 mind.

8 Without this municipal home-rule power, citizens will
9 not have the ability to, on an equal footing, access
10 utility services provided by their town. Without that
11 right, citizens lose the ability to go to their elected
12 leaders to complain about problems they may have with
13 utility service or to deal with any other issues as to
14 rates or service that they may have. They have to go to
15 another town's elected leaders for that purpose.

16 The revenues that are generated by these systems
17 don't go to support the town of which you're a citizen
18 unless this constitutional right is protected. And, of
19 course, most towns and cities charge higher rates outside
20 of their municipal boundaries to subsidize activities
21 within their towns. So if Lexington were to prevail here,
22 it would charge the citizens of West Columbia inflated
23 rates in order to benefit the citizens of the Town of
24 Lexington. For all those sorts of reasons, the
25 Constitution is clear that a town has the right to serve

1 within its boundaries the customers for utility systems
2 that it operates.

3 West Columbia has attempted to use the DHEC
4 permitting process as a way to prevent West Columbia from
5 serving its own customers. We don't believe that this is
6 a legitimate claim. We think it is completely and
7 definitively rejected by the Constitution.

8 And the other point we would make is that there has
9 not been a legitimate approach, a legitimate attempt to
10 raise these claims in the regulatory processes that the
11 Court's now being asked to overturn. There was no attempt
12 to raise these matters before the Council of Governments.
13 There was no appeal of the Council of Governments'
14 decisions through a writ of certiorari. There was, in
15 effect, quite the opposite, what looks like an intentional
16 waiver of any rights in the correspondence between the
17 Town of Lexington and the Council of Governments.

18 Furthermore, the appropriate approach to contesting
19 this application would have been in addition to
20 potentially a writ of certiorari, going into the DHEC
21 construction permitting process and challenging the
22 determination there. But as I indicated earlier, there
23 was no attempt to challenge the construction permits when
24 they were pending before DHEC. And those have now gone
25 into final form.

1 There's clear evidence, clear authority that once a
2 permit like that has gone final, the Court does not have
3 jurisdiction to investigate further the process by which
4 it was undertaken. It can only be reopened, it can only
5 be reviewed through a timely motion, timely practice at
6 DHEC to appeal that decision to the DHEC board and finally
7 through the AOJ process.

8 For all those reasons we believe that there is no
9 reason that the Town of West Columbia or the members of
10 the Council of Governments should be required to spend
11 additional time, resources, money defending this case. It
12 should be dismissed. And we have reserved the right to
13 seek attorney's fees given the nature of this proceeding.

14 Be happy to answer any questions the judge might have
15 for me at this point.

16 THE COURT: Thank you.

17 Mr. Brown?

18 MR. BROWN: Thank you, Your Honor. Creston Brown on
19 behalf of the Town of Lexington.

20 May it please the Court. Just to add a little bit
21 more background to what Mr. Zeigler said is, you know,
22 this whole case has to be looked under the backdrop of the
23 Clean Water Act which Congress passed and the president
24 signed into law in 1972. In Section 208, I'm sure you saw
25 that in the briefing and you heard Mr. Zeigler talk about

1 it earlier, Section 208 encouraged and facilitated the
2 development and implementation of a wastewater management
3 system because at the time, there really wasn't one in
4 this country, and our waters were becoming very polluted.
5 So the COG in this case was in charge back in the 90s of
6 creating this Section 208 plan, and it was finalized in
7 1997. And within this 208 plan, certain areas are named
8 designated management areas.

9 And so for the area here, the Town of Lexington is
10 the designated management area and is responsible for
11 maintaining the sewer system and providing wastewater
12 services. And the 208 plan provides that a municipality
13 such as West Columbia may annex their way into the Town of
14 Lexington's DMA provided that the Town of Lexington, the
15 DMA does not -- cannot readily provide services at a cost
16 effective manner. And, you know, the Town of Lexington's
17 position has always been it is ready, willing and able and
18 has shown that it's invested heavily in its sewer system
19 and can provide sewer to its DMA area.

20 So again, against this backdrop where you have, you
21 know, the Clean Water Act and the supremacy clause citing
22 to, I believe, Article 8, Section 15 and all the case law,
23 you know, again, that is preempted by the supremacy clause
24 and the fact that, again, we're working under the Clean
25 Water Act and Section 208.

1 And regarding an appeals process, I think the issue
2 is there has been no method -- or there is no method by
3 statute, regulation, rule or any provision of the 1997
4 2008 plan to appeal any decision by the COG. And I think
5 one of the reasons why that is is the plan is 25 years old
6 and hasn't been updated, and I'm sure when it's updated,
7 there will be avenues for appealing.

8 So Mr. Zeigler's position that the town should
9 appeal, again, there is no statute, there is no
10 regulation, there is no rule, there is no way for the town
11 to appeal this process. So what it did is it felt it had
12 to file this DJ action to protect its due process rights
13 which it believed were being violated.

14 And also, in the briefing, and Mr. Zeigler talked
15 about we should have filed a writ of certiorari, again,
16 there is nothing in any statute, regulation, law, rule
17 that says a writ of certiorari in this instance is the
18 only way. And in the briefing, the city cited several
19 cases where a writ of certiorari was found to be
20 acceptable but was not found to be the only method.

21 And I think it's very important to go to these emails
22 because I think the big premise of the City of West
23 Columbia is that the town waived its rights by not
24 responding to this email process. So notwithstanding the
25 fact that the emails between the COG and the Town of

1 Lexington is not a form of an administrative due process
2 realm, if you look at the emails, Mr. Sprouse from the COG
3 emailed the Town of Lexington at 1:16 p.m. and said,
4 basically, do you have any comments? I hope to finalize
5 our review later today and issue the conformance to West
6 Columbia sometime tomorrow. So essentially, in the next
7 four business hours, can you just provide some comments
8 because we're probably going to rubberstamp this anyway.

9 So, again, the Town of Lexington literally has no
10 avenue to appeal this decision which was clearly in
11 violation of Section 208 of the Clean Water Act. And,
12 again, I don't understand in the City of West Columbia's
13 memorandum in support, they spend the first half talking
14 about case law and state statutes regarding that a general
15 assembly should not grant access to create and construct
16 utilities. There is no act of the general assembly here.
17 So, again, the Town of Lexington felt that this was the
18 best quiver in its tool to attack this act by the COG,
19 which is clearly in violation of Section 208, and that's
20 why it filed this DJ action. So, again, on the merits,
21 that's why we did what we did.

22 And I think that goes along the line with the
23 attorney's fees, because it's asking us to pay attorney's
24 fees when we clearly had, you know, a reasonable right to
25 do this, would chill future actions of entities that are,

1 I guess, harmed by the COG's violation of the 208 plan.

2 So, Your Honor, that's our position about why we
3 don't believe there were any administrative remedies
4 waived because there are no administrative remedies. And
5 on the merits, again, if you look at the 208 plan, which
6 is part of the Clean Water Act, the COG in our position
7 clearly violated the plain language of the plan.

8 So that's our position, Your Honor. And we'd be
9 happy to answer any questions as well.

10 THE COURT: Thank you.

11 Mr. Shissias?

12 MR. SHISSIAS: Thank you, Your Honor. For the
13 defendant Central Midlands COG.

14 We joined in Mr. Zeigler's motion to dismiss.
15 Section 208 is a fairly obscure requirement of the Clean
16 Water Act and it does require that local governments in a
17 planning area get together and create a plan for provision
18 of sewer. But the statute doesn't specify how this is to
19 be done. It does impose a requirement that no sewer
20 permit can be issued unless the project is found to
21 conform to the 208 plan. And the COG here has accepted
22 the planning agency duty.

23 And in this particular case, the Central Midlands'
24 approach can be likened to sort of zoning for sewer.
25 That's the best way to think of it. Other areas the State

1 used different processes. But everywhere in the region
2 has a designated management area, and you find that these
3 management areas may not be coterminous with municipal
4 boundaries. The city can provide service outside its
5 corporate limits, the city can annex, and the COG staff
6 has to deal with all of these issues.

7 And so the question is what happens when two
8 providers want to serve the same area, which brings us to
9 our dispute. And these are two municipalities that have
10 been butting heads for years as they annex and they fight
11 to provide water and sewer service to this rapidly growing
12 area.

13 The area in question was within the town's management
14 area. It was not incorporated. And as the pleadings
15 indicate, initially, West Columbia wanted to serve it, but
16 at that point that would be inconsistent with the plan.
17 And when you want to change a management area, the plan
18 provides for plan amendments.

19 Now, that didn't work out. And Mr. Zeigler has
20 mentioned, you know, against this we've got the backdrop
21 of the Constitution, which, you know, he's mentioned at
22 length. And also, there's a specific section he mentions
23 in his brief, 5-31-2030, about municipalities having the
24 right to control provision of utilities within their
25 boundaries.

1 So initially, West Columbia sought a plan amendment,
2 and that apparently didn't pan out and they dropped it.
3 But then they annexed the area, and nobody doubts the
4 legality of the annexation.

5 So West Columbia annexes an unserved area that's
6 within the Town of Lexington's management area. Now,
7 there's plan content that says when a municipality annexes
8 into another agency's area, the municipality has the right
9 to provide service provided no existing service is
10 reasonably available and provided you're shown to be the
11 cost-effective means of providing service. There is no
12 plain language saying this requires a plan amendment. The
13 city filed their conformity request, we reviewed it, and
14 we determined that, as it stood following the annexation,
15 the request conformed.

16 So we made a recommendation to DHEC. DHEC made their
17 conclusion and issued the permit. In fact, our plan says
18 that the City of West Columbia is the management area for
19 the area within the municipality of the City of West
20 Columbia. By annexing, it conformed.

21 So now whatever someone might be able to argue about
22 reasonable availability of service and cost-effectiveness,
23 the problem is that the Constitution wins here. You know,
24 I'm not sure what would happen if the city had -- I'm
25 sorry -- the Town of West Columbia had said to our staff,

1 no, we're the ones who, you know, are more reasonably able
2 to provide service and demanding that the Court impose an
3 alien utility provider on the City of West Columbia within
4 its boundaries. And the language that West Columbia --
5 sorry -- that Lexington is trying to use as its hook is
6 actually what's found in the plan. And it's my
7 understanding that when that's at odds with the State
8 Constitution, the Constitution wins.

9 Now, I'm not going to belabor the issue about the
10 review, but one point I would like to make is that that
11 consistency determination that the COG makes is a
12 recommendation to DHEC. And under state regs,
13 specifically 61-67-100(E)(8), Mr. Zeigler's memo cites
14 DHEC has to make a consistency determination which is
15 appealable. So while we control the plan content and we
16 make recommendations, DHEC is the one who issues the
17 determination. They're required to do that. And there's
18 no reason to seek a 208 consistency determination other
19 than to get a DHEC permit.

20 And the fact that DHEC is the one who has to make the
21 final decision on the content of our plan, that is in line
22 with the Supreme Court's -- it's an unreported 2015 Court
23 of Appeals case in Granby's Development vs. DHEC.

24 Another issue I wanted to bring up is Mr. Zeigler's
25 point about certiorari. And it brings up a problem with

1 the standard of review here that I wanted to raise.

2 At common law, certiorari means a directive for the
3 lower tribunal to prepare and submit a record. By its
4 very nature, it's appellate. By proceeding under the DJ
5 statute, there's a couple of problems. First of all,
6 they're asking for de novo review to stand in the shoes of
7 the COG staff and remake their decision.

8 And the second problem is when Lexington said to our
9 staff we have no comments upon what you're proposing to
10 do, staff created no record for the Court to review. Had
11 they come in and said, look, we have a problem with this,
12 you know, you're required to make these particular
13 findings, that's something that staff could have
14 considered, could have made a part of the record and given
15 this court, if there is indeed a right for a writ of
16 certiorari, something to review. And that's the other --
17 that's a second problem.

18 However, at the end of the day, we believe that the
19 proper venue for Lexington to have taken had they had a
20 problem with this would have been to appeal the DHEC sewer
21 permit to the Administrative Law Court. They'd have a
22 clear route to appeal. However, by failing to do that,
23 the decision became final 15 days after mailing. And
24 that's a failure to exhaust.

25 Your Honor, I thank you for your time.

1 THE COURT: All right. Thank you, sir.

2 Mr. Zeigler?

3 MR. ZEIGLER: Yes, Your Honor. Just a couple of
4 points. I very much agree with what Mr. Shissias has
5 said.

6 There were two vehicles that the town of Lexington
7 theoretically could have used. Assuming there was no DHEC
8 component, and there is, then a writ of certiorari would
9 have been the proper way to review the decision of an
10 administrative agency that is not otherwise subject to the
11 APA. Not all agency decisions are contested case
12 decisions, and therefore, not all agency decisions are --
13 require a full creation of a contested case record and
14 trigger the contested case appeal provisions of that part
15 of the statute. Where the contested case provisions don't
16 apply, the writ of certiorari is the appropriate means of
17 reviewing a decision by an administrative agency. And
18 that just wasn't done here. And as Mr. Shissias says, as
19 a result, there's a defect in the record. The record that
20 would otherwise have gone up on appeal was not done, not
21 created.

22 But the larger issue is that it is the DHEC
23 construction permit that is the operative agency action
24 that is the culmination of all this, and the letter issued
25 by the COG is simply a recommendation that DHEC has to

1 review and look at as a piece of advice, as a piece of
2 information in its process. And no attempt was made to
3 raise a concern in the DHEC construction process. One of
4 the reasons why I think this whole issue just has -- these
5 are not legitimate claims. They were not legitimately
6 made in the proper venue.

7 And now the DHEC construction permit is final, the
8 agency -- excuse me -- the city has taken steps to award
9 contracts. Money is being spent. It's simply too late to
10 come in and say we're going to, through a declaratory
11 judgment action, try to overcome a final and irrevocable
12 DHEC construction permit. I think all of that makes
13 sense.

14 208 is a provision of the Clean Water Act. It is, as
15 Mr. Shissias says, a relatively obscure one. It did not
16 intend to federalize the process of determining who could
17 serve utility customers within the 50 states and the
18 territories of the United States. It was an attempt to
19 say planning has to be done. But beyond that planning, it
20 is an issue for the states, the State constitutional law
21 and state statutory law to determine who has service
22 rights. And in South Carolina, the state constitutional
23 law clearly establishes West Columbia as the entity that
24 can serve new customers within its boundaries.

25 Thank you, Your Honor.

1 MR. BROWN: Your Honor, may I add a few points?

2 THE COURT: Give me a second. It takes me a minute
3 to catch up with the note-taking.

4 All right, Mr. Brown. Go ahead.

5 MR. BROWN: Again, you know, we would just like to
6 reiterate that the area, the question here is part of
7 Lexington's DMA, the designated management area. I don't
8 really know if I agree with the assertion that Mr. Zeigler
9 is saying and Mr. Shissias is saying that 208 plan is
10 just, I guess, some, you know, superfluous, just maybe
11 follow it if you think so. My understanding is that
12 billions of dollars of government guarantees for loans are
13 provided, you know, every year as part of this Clean Water
14 Act, and it clearly provides under the Section 208 plan
15 which the COG wrote that if a municipality such as West
16 Columbia is going to come into Lexington's DMA, certain
17 requirements have to be met.

18 And, again, going back to this email exchange, you
19 know, our client, you know, had made its position, not in
20 email, verbally to the COG that it did not agree and felt
21 that, again, based on an email at 1 p.m. saying we're
22 going to rubberstamp this tomorrow, do you have any
23 comments, felt it was best to not write any comments and
24 pursue a DJ action.

25 And I have yet to see any case law that provides that

1 a writ of certiorari is the only avenue. And if you look
2 at the two cases cited in the City of West Columbia's
3 brief, you will see that the writ of certiorari, there is
4 no language saying that that is the only manner, and the
5 Town of Lexington felt that filing this DJ action was the
6 best way to guard against its due process violations by
7 the COG.

8 And I would just like to say as an aside I think a
9 lot of this can be fixed if the COG would actually rewrite
10 a plan that's 25 years old and has no mechanism for
11 appeal, no mechanism to guard the due process rights of
12 anybody subject to the 208 plan, which, again, is not
13 superfluous, which must be followed.

14 So, again, I think our claim is valid. I think that
15 the plan needs to be rewritten so we're not in these type
16 of circumstances again. And we would ask that this motion
17 to dismiss be denied and that the City of West Columbia be
18 forced to answer our amended complaint.

19 Thank you, Your Honor.

20 THE COURT: Mr. Brown, you said if the city is going
21 to come into the designated management area, certain
22 requirements have to be met. What do they require?

23 MR. BROWN: Yes, Your Honor. On page 56 of the 208
24 plan which I believe is attached to our amended -- our
25 amended complaint, it says that, again, if the City of

1 West Columbia is going to come in, that there must be no
2 -- I'll try to get the right language -- that there must
3 be no readily available sewer system, and the town of
4 Lexington, you know, is ready, willing and able to provide
5 sewer to this area. And the Town of Lexington, again,
6 invests significant funds and is, again, ready, willing
7 and able to provide sewer services.

8 But that language is on page 56 of the 208 plan which
9 is attached to our amended complaint.

10 THE COURT: So how would the COG make a determination
11 on that issue that there's no readily available sewer
12 system from the Town of Lexington if the Town of Lexington
13 didn't tell the COG that we're ready, willing and able to
14 provide sewer?

15 MR. BROWN: Your Honor, the town did tell the COG in
16 conversations, there's no record because, again, they were
17 verbal conversations, that it is totally ready, willing
18 and able. And the Town of Lexington really takes great
19 pride in its sewer system and desires to serve everybody
20 in its DMA.

21 So I think what's been presented to the Court is that
22 this -- or may have been perceived that this email string
23 is the only method of conversation, and that is certainly
24 not the case. The Town of Lexington repeatedly informed
25 the COG that it is ready, willing and able to perform

1 services, and also that the idea that the town would try
2 to bilk the City of West Columbia's customers with
3 increased rates I think is a little preposterous. Again,
4 the Town of Lexington likes the wastewater, serving in the
5 wastewater, and it is ready, willing and able to serve its
6 DMA.

7 THE COURT: Mr. Shissias?

8 MR. SHISSIAS: Your Honor.

9 THE COURT: You have anything else?

10 MR. SHISSIAS: Nothing further, Your Honor.

11 MR. ZEIGLER: Your Honor, may I make a couple of
12 points and clarification of some things that Mr. Creston
13 just said?

14 THE COURT: Yes.

15 MR. ZEIGLER: First of all, the Town of Lexington
16 does indeed charge a higher rate for out-of-town sewer
17 than it does in-town sewer. That's a known fact. The
18 word "bilk," I'm not sure where that came from. But it's
19 clear that municipalities charge higher rates to people
20 outside of their service territory in order to subsidize
21 their general revenues and the service to those inside the
22 service territory. That's standard practice in South
23 Carolina, and there are plenty of appeal court cases
24 upholding it as an acceptable practice.

25 Second of all, the e-mail chain is not a one-day

1 email chain. Actually, the first email in that chain
2 that's attached to the decision documents was from the
3 17th of March, and in each case asking for comments or
4 concerns. So you've got emails over a six-day period
5 asking the Town of Lexington to provide information. It
6 wasn't a four-hour matter as indicated.

7 As to readily available, it's clear that neither
8 party has sewer lines -- had sewer lines in 2000 along the
9 roads where this -- where this service was provided.
10 Someone had to build to it. So it wasn't a case where you
11 could simply go tap on to an existing service line. And
12 the COG logically said that should be the incumbent
13 utility -- excuse me -- the incumbent town and not a
14 foreign utility -- not a foreign town, foreign utility
15 coming in and serving those customers.

16 Those are my comments, Your Honor. Thank you.

17 THE COURT: All right. Mr. Brown, do you have
18 anything else?

19 MR. BROWN: No, Your Honor. Again, we just direct
20 the Court's attention to the 208 plan, which is attached
21 to our amended complaint, and also the language on page 56
22 that clearly provides what we believe that if the COG had
23 followed the 208 plan which they had written, that this
24 conformance review never would have been granted, and we
25 would not be in this situation. And because there is no

1 appellate process in that 200-plus page plan, Lexington
2 felt that this was the most appropriate way to guard
3 against the due process violations by the COG.

4 Thank you, Your Honor.

5 THE COURT: All right. Mr. Shissias, when was the
6 DHEC approval?

7 MR. SHISSIAS: Understanding that the DHEC permit was
8 issued -- issuance date October 8, 2021, I do not have a
9 date of mailing. The date for the appeal starts when it
10 was mailed. I assume it was mailed the same day it was
11 issued, October 8, 2021.

12 THE COURT: And the action was filed April the 22nd,
13 2022.

14 MR. SHISSIAS: Mr. Zeigler?

15 THE COURT: I've got the file up.

16 MR. ZEIGLER: The action itself was filed -- I have
17 the amended complaint in front of me so I don't have the
18 initial complaint.

19 MR. BROWN: The original summons and complaint was
20 filed April 22, 2021, so many, many months before the DHEC
21 approval.

22 MR. SHISSIAS: And, Your Honor, I mean, and the dates
23 show that they could have gotten into this.

24 And may I add that, you know, there isn't -- that
25 another attorney with Nexsen Pruet has run into this issue

1 in a case, the Town of McBee vs. A.O. Smith, about needing
2 to appeal drinking water permits and (audio interference).
3 And at least this is certainly something that they could
4 have gone after. They could have asked DHEC to notify
5 them of permit issuance, and they let it go.

6 MR. ZEIGLER: Your Honor, that's our point entirely.
7 The DHEC permit would have been the proper place to raise
8 these issues. There is a bright line, a superhighway of
9 appellate process that's there in the DHEC statutes, and
10 that would have been the approach to take. My guess is
11 there's not an approach in the 208 plan because people
12 understood that if you have a problem that you want to
13 take to the Courts, you have to go through the DHEC
14 process as DHEC is issuing the permit.

15 The Council of Governments does not issue any permit.
16 It merely issues an advisory letter to DHEC. And the
17 juridical part of that process is lodged in the DHEC
18 statutes and regulations.

19 MR. BROWN: And, Your Honor, again, I'd just like to
20 add, looking at the calendar of events, had a Circuit
21 Court action going on since April 22, 2021, which is
22 approximately six months prior to this DHEC approval. And
23 we felt that our Circuit Courts are capable of handling
24 these types of disputes.

25 Thank you, Your Honor.

1 THE COURT: Bear with me a moment, please.

2 All right. I don't want to belabor this too much
3 more. Mr. Zeigler, one of you all mentioned, I don't know
4 if you or Mr. Shissias, I'll have to look back through the
5 notes, about a contested process?

6 MR. ZEIGLER: Correct, Your Honor.

7 THE COURT: Okay. Mr. Zeigler, had the Town of
8 Lexington -- I apologize for my ignorance. Had the Town
9 of Lexington come in and pursued their issues through the
10 DHEC permitting process, would it then have become a
11 contested issue?

12 MR. ZEIGLER: It would have become what's referred to
13 in the Administrative Procedures Act, which is 1 -- 123
14 and I think 110 is the first statute, but I think that's
15 on regulation. But in any case, under the Administrative
16 Procedures Act, anytime you have an agency issuing an
17 opinion that rises to the level of a contested case, and
18 the sewer construction permit would be, you have to go
19 through a set of processes that allows for an evidentiary
20 hearing, live testimony, and a process before the ALJ to
21 adjudicate the matter.

22 And so what we believe the appropriate approach would
23 have been for the Town of Lexington would have been to
24 object to the 208 letter as being improvidently granted in
25 the DHEC proceeding, and then have DHEC staff make a

1 decision as to whether that letter was correct or not.
2 The staff decision would have been appealable to the board
3 of DHEC. That's the internal DHEC process. And at that
4 point, it could be appealed to the ALJ. And so the ALJ
5 would sit as a trial judge, and an evidentiary hearing
6 would have been held on that issue of whether the 208 plan
7 somehow trumps the Constitution. That ALJ opinion would
8 then be appealable through the appellate processes of the
9 Courts. And that's the structure.

10 I'll be happy to pull up the citation, if that
11 would ---

12 THE COURT: That's okay. I apologize. I must have
13 cut my video off for some reason when I was trying to open
14 these different files.

15 All right. Since I talked to Mr. Zeigler, do you
16 have anything else, Mr. Brown?

17 MR. BROWN: Again, you know, our position is there's
18 nothing by statute, regulation that says that that's the
19 Town of Lexington's only remedy. You know, hopefully,
20 when the 208 plan is amended, there's appropriate due
21 process protections, but because there were no due process
22 protections, the Town of Lexington felt that this was the
23 best way to protect its rights against this due process
24 violation.

25 Thank you, Your Honor.

1 THE COURT: Thank you, gentlemen.

2 I want proposed orders from both sides. But,
3 Mr. Shissias, can you and Mr. Zeigler get together and
4 agree on a proposed order?

5 MR. SHISSIAS: Yes, Your Honor.

6 THE COURT: Thank you.

7 How much time do you need, Mr. Zeigler?

8 MR. ZEIGLER: Ten days, Your Honor.

9 THE COURT: Mr. Shissias?

10 MR. SHISSIAS: Yes, Your Honor.

11 THE COURT: Mr. Brown?

12 MR. BROWN: That will work, Your Honor.

13 THE COURT: Let's say 20 days, okay?

14 When you send it, please send it by email as a Word
15 attachment to me and to my law clerk. And let me just
16 tell you all, the email addresses that they publish for us
17 now are our secretary's email addresses. I guess somebody
18 decided that they didn't want to be publishing the judge's
19 direct email, but it's pretty easy to figure it out
20 because it's just wkeesleyj instead of wkeesleysc. SC
21 stands for secretary, J stands for judge, and LC stands
22 for law clerk. So if you send it to my secretary,
23 sometimes there's a delay in me getting it, and that's my
24 problem. But make sure you send it, please, to my law
25 clerk and to me within 20 days. If you need more time,

1 let me know. I'm not weighed into that time frame, okay?

2 Thank you so much. You obviously know your stuff.

3 And going into this I'll be honest with you, I had one --
4 one way that I thought I was going to rule and now I'm not
5 sure at all. So I'll look forward to your proposed
6 orders.

7 Thank you. The hearing is concluded at 10:16 a.m.

8 Thank you.

9 (WHEREUPON, proceedings concluded at 10:16 a.m.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

I, CHERYL A. SMITH, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record, to the best of
my ability based on the audio provided of the digitally
recorded proceedings had through WebEx, and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of Common Pleas for Lexington County,
South Carolina, on the 16th day of June, 2022.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

June 23, 2022

Cheryl A. Smith

Cheryl A. Smith, CVR-M

Court Reporter

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Jan 27 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2021-CP-32-01321

Town of Lexington, South Carolina, ...Appellant,

v.

City of West Columbia, South Carolina, and The Central
Midlands Council of Governments, ... Respondents.

NOTICE OF APPEAL

The Town of Lexington, South Carolina ("Appellant") appeals the Order Granting Motion to Dismiss Under Rule 12(b)(6) SCRCPP, and Denying the Motion to Dismiss Under Rule 12(b)(1), dated August 17, 2022 and attached hereto as **Exhibit A**, and the Order Regarding The Town of Lexington's Motion to Alter or Amend, dated December 30, 2022 and attached hereto as **Exhibit B**.

Appellant received written notice of the entry of the latter Order, which denied Appellant's motion for reconsideration pursuant to Rule 59(e), SCRCPP, on December 30, 2022.

January 27, 2023
Columbia, South Carolina

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Jan 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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City of West Columbia, South Carolina, and The Central
Midlands Council of Governments, ... Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents City of West Columbia, South Carolina, and The Central Midlands Council of Governments by emailing a copy of the same, together with Exhibits A and B, to the following counsel of record for Respondents using the primary email address listed in the Attorney Information System:

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January 27, 2023

s/Kirsten E. Small

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jul 24 2023

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2023-000140

Town of Lexington, South Carolina, ...Appellant,

v.

City of West Columbia, South Carolina, and The Central
Midlands Council of Governments, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

July 24, 2023

s/ Kirsten E. Small