

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM BARNWELL COUNTY
COURT OF COMMON PLEAS

S.C. SUPREME COURT

The Honorable R. Markley Dennis, Jr.

Appellate Case No. 2016-000428

JAMES JEFFERSON JOWERS, SR., ANDREW J. ANASTOS,
BEN WILLIAMSON, MELANIE RUHLMAN, AND
ANTHONY RUHLMAN, APPELLANTS,

v.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL, RESPONDENT.

**MOTION BY CONGAREE RIVERKEEPER, INC. FOR LEAVE TO FILE
BRIEF OF *AMICUS CURIAE***

Pursuant to Rule 213, SCACR, Congaree Riverkeeper, Inc. requests leave to file a brief of *amicus curiae* in this matter. Rule 213 provides that a brief of *amicus curiae* “may be filed only by leave of the appellate court granted on motion, or at the request of the appellate court” and “a motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an *amicus curiae* is desirable.”

STATEMENT OF INTEREST OF THE APPLICANT

Congaree Riverkeeper, Inc. ("CRK") is a South Carolina non-profit corporation affiliated with the Waterkeeper Alliance, a network of grassroots waterkeeper organizations working to protect and advocate for rivers and other waterways worldwide. Founded in 2009, CRK's mission is to advocate for clean, healthy rivers within the Midlands. Geographically, Congaree Riverkeeper's advocacy efforts covers the Broad River from the Parr Reservoir running downstream approximately 27 miles to where the Broad meets the Saluda River in Columbia; an 11-mile stretch of the Saluda River from Lake Murray Dam, downstream to its confluence with the Broad River in Columbia to form the Congaree River; and the entire Congaree River, which flows 53 miles from Columbia to the confluence with the Wateree River, near Lake Marion.

CRK works to protect water quality and water quantity of the Congaree, Lower Broad and Lower Saluda Rivers through several means. CRK monitors water quality by sampling strategic locations on the Congaree, Lower Broad and Lower Saluda Rivers and their tributaries to determine if certain common pollutants exceed limits found within South Carolina water quality classifications and permit limits of entities who discharge wastewater into our rivers and streams. We are engaged in the federal licensing process for hydropower facilities on the Lower Broad and Lower Saluda Rivers to ensure sufficient stream flow releases downstream to support healthy fisheries and habitat for aquatic life, water quality, navigation, and human recreation. CRK works to improve stream flow policy through various regulatory processes including advocating for South Carolina to adopt minimum instream flow standards as part of the State's water quality standards under the S.C. Pollution Control Act. CRK actively participates in a regional working group of river and water advocacy organizations to work on stream flow protection issues,

meeting regularly with the Environmental Protection Agency to advocate for improvements to stream flow policy. CRK works to educate local and state leaders and the public about river conservation issues. CRK advocates at the South Carolina General Assembly for laws that conserve and protect water resources. If warranted, CRK engages in litigation to protect our rivers from misuse.

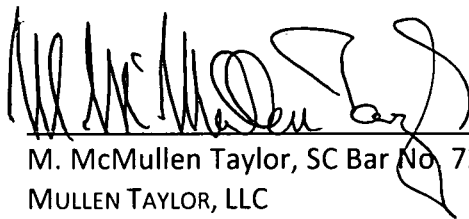
Within the Lower Saluda, Lower Broad and Congaree River basins, there are twenty-nine (29) surface water withdrawals governed by the South Carolina Surface Water Withdrawal, Permitting, Use and Reporting Act of 2010, including twelve (12) agricultural withdrawals. Working to ensure that our rivers retain water flows sufficient to support aquatic life, provide recreation, and dilute pollution is critical to CRK's goal of clean water and healthy rivers.

A BRIEF OF AN AMICUS CURIAE IS DESIRABLE

The Appellants have challenged the agricultural registration provisions of the S.C. Surface Water Withdrawal, Permitting, Use and Reporting Act pursuant to the Takings Clause, the Due Process Clause and the Public Trust Doctrine of South Carolina. CRK's Amicus Brief does not intend to weigh in solely in favor of the Appellants or Respondent. We support Appellants' position that they possess riparian property interests sufficient to bring their constitutional claims. Further, the lower court erred in dismissing Appellants' public trust claim for failing to meet this Court's "public importance" exception to the State's standing requirements. Simply for the purpose of brevity, *Amici* takes no position on Appellants' procedural Due Process claim. However, with all due respect to the parties, the Appellants' remaining takings theory lacks merit, and the Respondent misstates riparian common law and the Public Trust Doctrine. Properly analyzed, Appellants have brought a viable claim that the Act violates the Public Trust Doctrine.

The Brief, which is conditionally filed along with this Motion, aims to shed light on the often confusing issues and arguments raised in this appeal in order to assist this Court in reaching sound conclusions.

For the reasons stated above, Congaree Riverkeeper, Inc. respectfully requests that this Court grant this Motion and accept the attached conditional Brief of *amici curiae* for filing.



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Nov. 14, 2016

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CERTIFICATE OF SERVICE

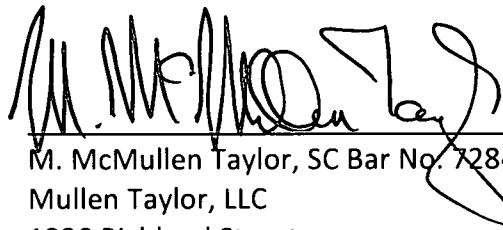
I certify that I have served upon the Parties' counsel Congaree Riverkeeper's Motion for Leave to File a Brief of *Amicus Curiae* with Brief conditionally attached, and Motion to Admit John D. Echeverria *Pro Hac Vice* as co-counsel for Congaree Riverkeeper, by depositing a copy of it in the United States Mail, postage prepaid, and by electronic mail, on this the 14 day of November, 2016, addressed to counsel of record, as follows:

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