

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

DEC 16 2016

Roger E. Henderson, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2016-001604
Circuit Court Case No. 2015-CP-13-00379

Town of McBee Appellant,

v.

Alligator Rural Water & Sewer Company, Inc., Alligator
Rural Water Company, Inc. Defendants,

and

A.O. Smith Corporation Intervenor-
Defendant,

of whom

Alligator Rural Water & Sewer Company, Inc. and
Alligator Rural Water Company, Inc. are the Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)
Town of McBee,)
Plaintiff,)
v.)
Alligator Rural Water & Sewer Company, Inc.,)
Alligator Rural Water Company, Inc.,)
Defendants.)

FOURTH JUDICIAL CIRCUIT
CIVIL ACTION NUMBER: 2015-CP-13-379

**CONSENT ORDER PROHIBITING
DEFENDANTS FROM PROVIDING
WATER SERVICES TO A. O. SMITH WHILE
LITIGATION IS PENDING**

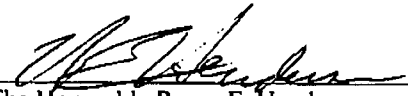
2015 JUL 31 PM 4
FAYE L. SCLEERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

This matter came before the Court on the motion of the Town of McBee ("McBee") to prohibit Defendants Alligator Rural Water & Sewer Company, Inc., Alligator Rural Water Company, Inc. ("Defendants") from providing water services to the A. O. Smith Corporation's manufacturing plant located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina 29101 ("A. O. Smith") until a final resolution of the current pending litigation. It having been made to appear to the Court that the Defendants have consented to such prohibition,

NOW, THEREFORE, IT IS HEREBY **ORDERED** as follows:

Defendants and/or any person or entity acting in concert or participation with the defendants are prohibited from providing water service and/or attempting to provide water service to A. O. Smith and any other area or areas included in the water service area of McBee until a full and final resolution of the present litigation. This prohibition includes the further construction of any pipelines or facilities intended to connect to A. O. Smith, contacting A. O. Smith regarding transferring water services to Alligator, entering into any contracts with A. O. Smith for the provision of water services, and/or the activation of any water pipelines owned by Defendants already connected to any pipes owned by or located on property owned by A. O. Smith until a full and final resolution of the present litigation.

AND IT IS SO ORDERED.


The Honorable Roger E. Henderson
Fourth Judicial Circuit

Chesterfield, South Carolina.

July 31, 2015

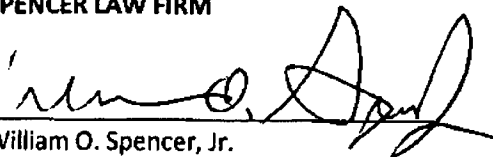
WE SO MOVE:

SWEENEY, WINGATE & BARROW, P.A.

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Richard E. McLawhorn, Jr.
115 Cargill Way
Suite B
Hartsville, South Carolina, 29550
(843) 878-0390
ATTORNEYS FOR TOWN OF MCBEE

WE CONSENT:

SPENCER LAW FIRM


William O. Spencer, Jr.
301 West Main Street
Post Office Box 190
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(843) 623-2144
ATTORNEY FOR DEFENDANTS

AND IT IS SO ORDERED.

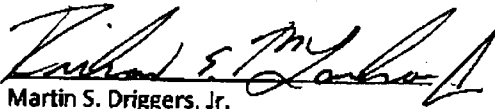
The Honorable Roger E. Henderson
Fourth Judicial Circuit

_____, South Carolina.

_____, 2014

WE SO MOVE:

SWEENEY, WINGATE & BARROW, P.A.



Martin S. Driggers, Jr.
Richard E. McLawhorn, Jr.

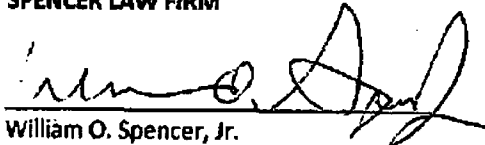
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WE CONSENT:

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STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Town of McBee,

Case No 2015-CP-13-379

Plaintiff,

ORDER

vs.

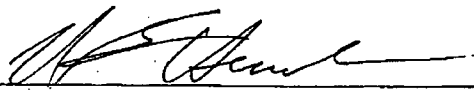
Alligator Rural Water & Sewer Company, Inc.,
Alligator Rural Water Company, Inc.,

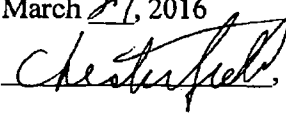
Defendants.

This matter came before the Court on the Motion of A.O. Smith Corporation ("A.O. Smith") to Intervene in this case. Having heard oral argument, and without objection from the parties, this Court grants the motion of A.O. Smith to intervene in this case, pursuant to Rules 24(a) and (b), SCRPC.

A.O. Smith is directed to file its Answer and Counterclaims, in a form substantially similar to Exhibit A to the instant motion, without five (5) business days of the date of this Order. Thereafter, the South Carolina Rules of Civil Procedure will govern the responses, if any, to such pleading.

AND IT IS SO ORDERED.


Honorable Henderson Roger E. Henderson
Circuit Court Judge

March 29, 2016
 South Carolina

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD) FOURTH JUDICIAL CIRCUIT

Town of McBee,

Plaintiff,

versus

Alligator Rural Water & Sewer Company,
Inc., Alligator Rural Water Company, Inc.,

Defendants.

2015-CP-13-379

ORDER PROHIBITING PLAINTIFF FROM
SELLING WATER PUMPED FROM ITS WELLS
WHILE LITIGATION IS PENDING

A True Copy. Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

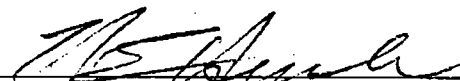
This matter came before the Court for a hearing on March 23, 2016 on the motion of Defendant, Alligator Rural Water & Sewer Company, Inc. ("Alligator") to prohibit Plaintiff from selling any water obtained from Town of McBee wells to any customer until a final resolution of the current pending litigation. Present at the hearing were William O. Spencer, Jr., attorney for Defendant and Belton T. Zeigler, attorney for Plaintiff. Also present was Marguerite S. Willis, attorney for A.O. Smith Corporation, seeking to intervene in this action as a party defendant.

Based upon the verified pleadings, the arguments of counsel, and the affidavits of Glenn C. Odom and John Campolong, I find that Defendant's motion for temporary restraining order should be granted. I find that Plaintiff has purchased all of its potable water from Alligator since 1999 and I further find that Alligator will suffer immediate and irreparable injury, loss, and/or damages unless Plaintiff is restrained from taking actions to obtain water from any source other than continuing to purchase the same from Alligator until a full and final resolution of the present litigation.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

Plaintiff and/or any person or entity acting in concert or participation with the Plaintiff are prohibited from providing water service and /or attempting to provide water service to any of its customers with water obtained from any source other than purchasing the same from Alligator until a full and final resolution of the present litigation.

AND IT IS SO ORDERED.


The Honorable Roger E. Henderson
Fourth Judicial Circuit

Chesterfield South Carolina.
April 7, 2016.

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD) FOURTH JUDICIAL CIRCUIT

Town of McBee,

Plaintiff,

versus

2015-CP-13-379

ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
JUDGMENT

Alligator Rural Water & Sewer Company, Inc., Alligator Rural Water Company, Inc.,

Defendants.

And

A.O. Smith Corporation,

Intervenor-Defendant.

True Copy, Attest
Jay S. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

2016 JUL 12 PM 2 03
FAVEL SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

This matter came before the Court for a hearing on May 24, 2016 on the Plaintiff's motion for an order amending or vacating this Court's order entered April 12, 2016 enjoining the Town of McBee from providing water to its customers from any source other than purchased from Alligator Rural Water & Sewer Company, Inc. Present at the hearing were William O. Spencer, Jr., attorney for Defendant and Belton T. Zeigler and Martin S. Driggers, Jr., attorneys for Plaintiff. Also present was Marguerite S. Willis, attorney for Defendant, A.O. Smith Corporation.

After considering Plaintiff's and Defendant's arguments, the Court denies Plaintiff's motion.

The purpose of the equitable remedy of a temporary injunction is to maintain the status quo. *County of Richland v Simpkins* 560 S.E. 2d. 902, 348 S.C. 664 (SC Ct. App. 2002). By the issuance of the temporary injunction in this case, it is this Court's intention to maintain what has

been the status quo between these parties since 1999 until such time as this case may be heard on the merits. I find that Plaintiff has purchased all of its potable water from Alligator since 1999 pursuant to a 40 year Water Purchase Agreement that is pledged to the United States of America, acting through the United States Department of Agriculture as part of security for a loan to the Purchaser (Town of McBee) and Seller (Alligator) from USDA, Rural Development.

While an injunction is a drastic remedy, it is necessary in this case to preserve the status quo and avoid possible irreparable injury to the Defendant pending a full hearing on the merits. South Carolina's courts have found that an injunction may issue where the requesting party meets three elements: (1) it will suffer an "irreparable harm" in the absence of an injunction, (2) it is likely to succeed on the merits of the case; and (3) there is an inadequate remedy at law."

Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.e.2d 905, 908 (2004).

I find that Alligator is likely to succeed on the merits of the case. Alligator is a not-for-profit corporation financed in whole or in part by federal or state loans. The Town of McBee has purchased all of its water from Alligator since 1999 pursuant to a 40 year water purchase agreement that was required by USDA, Rural Development. The Town of McBee has not operated its own wells since 1999. Prior to 1999, the Town of McBee had serious problems with its water system and was not in compliance with DHEC sanitary water standards. In order to remedy the problem, Alligator agreed, at the Town's request, to provide the Town with all of the water that it needed to service its customers and the Town would no longer operate its wells. In order to accomplish this, Alligator had to install wells, run lines to connect McBee to Alligator's system, install booster pumps and a pump station. Both Alligator and the Town made loan

applications to Rural Development seeking the necessary funds for this expensive project. The approximate cost of Alligator's portion of the project was \$1,100,000.00. After deducting grants, Alligator borrowed \$674,500.00 from Rural Development. Alligator's payment on this project is \$3,522.00 per month for a 40 year term. The revenue from the Town would allow Alligator to meet its monthly obligation to Rural Development. The Water Purchase Agreement between the Town and Alligator was a loan requirement and was pledged as security for the loan. Item 9 of the Agreement states "This Agreement is pledged to the United States of America, acting through the United States Department of Agriculture as part of security for a loan to the Purchaser and the Seller from USDA, Rural Development." Based upon this longstanding contractual relationship with the Town of McBee to supply its potable water and based upon the fact that this contract was a requirement for Alligator's Rural Development loan for this project, I find that Alligator is likely to succeed on the merits of the case.

Alligator asserts protection under Title 7 Section 1926(b) of the United States Code which provides "The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan". "All of the courts that have reviewed §1926(b) acknowledge that its provisions should be given a liberal interpretation that protects water associations indebted to the [Farmers Home Administration] from municipal encroachment." *Bluefield Water Ass'n v. City of Starkville, Minn.*, 577 F3d 250 (5th Cir., 2009) citing *Bell Arthur Water Corp. v Greenville Util. Comm'n*, 972 F. Supp. 951, 959 (E.D.N.N.C.1997). "The statute unambiguously prohibits any curtailment or limitation of an

FMHA-indebted water association's services resulting from municipal annexation or inclusion. This language indicates a congressional mandate that local governments not encroach upon the services provided by such associations, be that encroachment in the form of competing franchises, new or additional permit requirements, or similar means." *City of Madison, Miss v. Bear Creek Water Ass'n, Inc.* 816 F.2d 1057 (C.A.5 (Miss.), 1987.

Plaintiff argues that Alligator is not likely to prevail at trial, relying on a 7th Cir. case, *CSL Utilities, Inc. v. Jennings Water, Inc.*, 16 F.3d 130, (7th Cir. 1993), *as modified on denial of reh'g* (Feb. 25, 1994) and further arguing that nothing in the water purchase contract restricts McBee from producing its own water during the term of the contract. The Court in *Jennings* held that 7 U.S.C.A. §1926(b) did not apply to improvement by a wholesale customer of its own facilities so as to reduce the amount of water it must purchase at wholesale, but would only apply to curtailments resulting from the "granting of any private franchise for similar service." While the *Jennings* case does appear to have similar facts, I find that the distinguishing fact is that in the present case, Rural Development loaned Alligator significant funds for the sole purpose of providing Plaintiff with the water necessary to supply all of its customers. Further, the water purchase agreement was pledged as security for the loan. It seems clear that the intention at the time of the contract was that Alligator would provide the Town with all of its required potable water for the term of the contract which coincides with the term of the USDA loan. In light of the RD loan for this specific purpose, I find that Plaintiff's operation of its own wells to provide water to its existing water customers is a curtailment of the services provided by Alligator and is likely a violation of §1926(b). I find that there is a substantial likelihood that Alligator's claim under the water purchase contract and §1926(b) will prevail.

I further find that Alligator will suffer immediate and irreparable injury, loss, and/or damages unless Plaintiff is restrained from taking actions to obtain water from any source other than continuing to purchase the same from Alligator until a full and final resolution of the present litigation. I find that the irreparable harm to Alligator is the loss of revenue and the ability to service its debt to USDA Rural Development. Given the long service by Alligator to the Town of McBee of all of its potable water since 1999, I find that the harm suffered between the time of suit and the time of ultimate decision in this case would seriously prejudice Alligator's opportunity for full recovery. Without this injunction, Plaintiff would be able to stop purchasing water from Alligator immediately. This action would inevitably cause Alligator to default on its Rural Development loan that would, in turn, jeopardize Alligator's ability to continue operating its entire water system and would ultimately impact Alligator's remaining customers.

I further find that there is no adequate remedy at law for Alligator. Plaintiff argues that Alligator asserted a counterclaim for money damages (Ans. & Countercls. Of Alligator Defendants ¶¶55-69). However, this counterclaim is not related to Alligator's lost revenue resulting from the Town's use of its own wells, but rather appears to be damages sought by virtue of Plaintiff's failure to pay Alligator's current water rates.

Plaintiff argues that any potential harm that Alligator may suffer by allowing the Plaintiff to operate its own wells would be "reparable" through a monetary award. I disagree. Given the progression of this case thus far, a monetary award at the conclusion of the case is not an adequate remedy. This case was filed over a year ago; however, Plaintiff just recently amended its complaint alleging causes of action in tort against two new parties. Given the slow pace of

this case, an injunction is absolutely necessary to maintain the status quo among these parties until this case may be resolved. Should an injunction not issue, Plaintiff could continue to prolong this case and the harm to Alligator caused by the default on its Rural Development loan could no longer be remedied with an award of money damages. Alligator could potentially lose its entire water system in foreclosure before an ultimate decision is made in this case. I therefore find that a preliminary injunction is necessary in this matter to preserve the status quo.

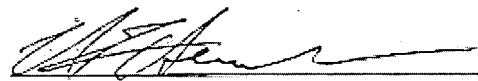
Regarding the issue of the posting of a bond by Alligator, the Court finds that Alligator is not required to post a bond pursuant to Rule 65(c), SCRPC, "No such security shall be required of the State or of an officer or agency thereof." I find that the Defendant is a Not-for-Profit corporation organized pursuant to §33-36-10 et.seq., South Carolina Code of Laws, as amended. In accordance with the provisions of Chapter 36 of Title 33, Alligator is to be treated as a Special Purpose District authorized to provide the governmental function of water service. These not-for-profit corporations exist for a public purpose. Corporations not-for profit, like Alligator, participate in the State Retirement System, the State Health Insurance System, and are protected by the South Carolina Tort Claims Act. By implication, I find that Alligator is also to be treated as a state entity for purposes of Rule 65(c) and is therefore not required to post bond before a temporary injunction may be issued in this matter.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

Plaintiff's motion is denied and the Court's Order entered April 12, 2016 is hereby supplemented with the above findings of fact and conclusions of law.

AND IT IS SO ORDERED.

Chesterfield, South Carolina.
July 12, 2016.


The Honorable Roger E. Henderson
Fourth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Town of McBee,

Plaintiff,

v.

Alligator Rural Water & Sewer Company, Inc.,

Alligator Rural Water Company, Inc., and

Defendants.

FOURTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER:

20 15 - CP-13 319

SUMMONS

2015 JUN 17 AM 11 04
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint ("Complaint") in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said Complaint upon the subscribers at 115 Cargill Way, Suite B, Hartsville, South Carolina 29550, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

SWEENEY, WINGATE & BARROW, P.A.



Martin S. Driggers, Jr.

Richard E. McLawhorn, Jr.

115 Cargill Way

Suite B

Hartsville, South Carolina, 29550

(843) 878-0390

ATTORNEYS FOR TOWN OF MCBEE

Hartsville, South Carolina

June 16, 2015

A True Copy Attest:
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Town of McBee,

Plaintiff,

v.

Alligator Rural Water & Sewer Company, Inc.,

Alligator Rural Water Company, Inc., and

Defendants.

FOURTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER:

20 15 - CP-13 3179

VERIFIED COMPLAINT

CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2015 JUN 17 AM 11 04

FAVE L. SELLERS

Plaintiff, Town of McBee ("McBee"), states for its Complaint against defendants as follows:

NATURE OF THE ACTION

1. This action is based on violations of South Carolina law and 7 U.S.C.A. § 1926(b) of the Consolidated Farm and Rural Development Act of 1961 (7 U.S.C.A. §§ 1921 et seq.). 7 U.S.C.A. § 1926(b) prohibits any public or private body from providing water service within the boundaries of any area already serviced by a rural water association indebted to the United States Department of Agriculture/Rural Development, (formerly the Rural Economic and Community Development Service ("RECDs")) during the term of such indebtedness. In this action, McBee seeks to enforce its rights and the protections granted pursuant to South Carolina law and 7 U.S.C.A. § 1926(b) by declaratory judgment and injunctive relief.

PARTIES, JURISDICTION, AND VENUE

2. McBee, is a municipal corporation organized and existing under the laws of the State of South Carolina. McBee provides water service in its city limits and areas adjacent and contiguous to the Town of McBee, including a manufacturing facility owned and operated by A. O. Smith Corporation ("A. O. Smith") located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina 29101.

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

3. Alligator Rural Water & Sewer Company, Inc. and Alligator Rural Water Company, Inc. ("Alligator Defendants" or "Alligator") are South Carolina corporations and have their principal place of business at 378 W. Pine Avenue, McBee, Chesterfield County, South Carolina, 29101.

4. This court has jurisdiction to hear the claims.

5. Venue is proper because McBee is located in Chesterfield County, A. O. Smith owns and operates a manufacturing facility in Chesterfield County, Alligator Defendants' principal place of business is in Chesterfield County, and the subject service area and subject water facilities exist in Chesterfield County.

FACTUAL ALLEGATIONS

6. McBee currently provides water services to areas within the town's municipal limits, and areas outside its municipal limits, including A. O. Smith.

7. McBee has provided water to A. O. Smith since A. O. Smith's opening.

8. A. O. Smith's business currently accounts for approximately 70% of McBee's water system revenue.

9. McBee is an obligor to the United States of America, Department of Agriculture, Rural Development (here referred to as the "USDA/RD"), on certain indebtedness made pursuant to and authorized by the Consolidated Farm and Rural Development Act of 1961, 7 U.S.C.A. §§ 1921 et seq.

10. On or about February 10, 2005 McBee became indebted to the USDA/RD. This indebtedness arises by virtue of USDA/RD's purchase of \$1,456,800 in Water Bond Series 2005A bonds issued by McBee at a 4.50% interest rate. The bonds range in maturity from 2006 to 2045. Additionally, on or about February 10, 2005, McBee became further indebted to the USDA/RD through the USDA/RD's purchase of \$172,200 in Water Bond Series 2005B bonds issued by McBee at 4.375%. The bonds range in maturity dates from 2006 to 2045. Finally, on or about August 24, 2006, McBee became further indebted to the USDA/RD through the USDA/RD's purchase of \$75,000 Water Bond Series 2006

bonds issued by McBee at 4.50%. The bonds range in maturity dates from 2007 to 2046. To secure these debts, McBee has pledged its water service revenues. This indebtedness remains in full force and effect.

11. McBee operates a water distribution system in Chesterfield County, South Carolina. This water distribution system extends to an area of land fronting U.S. 1 and located adjacent to A. O. Smith.

12. McBee currently owns and operates water lines that provide water service to A. O. Smith.

13. On June 14, 2015, McBee learned that Alligator intended to provide water service to A. O. Smith. McBee is informed and believes, and on the basis of such information and belief alleges, that Alligator claim the right to service this territory based on the existence of a right of way to A. O. Smith that fronts along U.S. 1.

14. As alleged in more detail below, the proposed water supply from Alligator will curtail or limit the service and supply of water to customers and areas served by McBee in violation of 7 U.S.C.A. § 1926(b).

15. In the alternative, the proposed water supply to A. O. Smith is in violation of South Carolina law.

FIRST CLAIM FOR RELIEF
Violation of 7 U.S.C.A. § 1926(b)

16. McBee incorporates by reference each and every allegation in paragraphs 1 through 15, above, as though set forth in full here.

17. Alligator has manifested its intent to limit and encroach upon areas served by McBee.

18. Alligator's actions are in violation of 7 U.S.C.A. § 1926(b).

19. 7 U.S.C.A. § 1926(b) protects rural water associations from encroachment by any other entity seeking to provide service in areas already being serviced. 7 U.S.C.A. § 1926(b) provides as follows:

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of such event be the basis of requiring such association to secure the franchise, license, or permit as a condition to continuing to serve the area by the association at the time of the occurrence of such event.

Thus, 7 U.S.C.A. § 1926(b) prohibits other entities from curtailing or limiting water service provided by or made available by any rural water association indebted to USDA/RD (formerly the Rural Economic and Community Development Service ("RECDs") and formerly Farmers Home Administration ("FmHA")), during the term of such indebtedness.

20. McBee is an "association" within the meaning of 7 U.S.C.A. § 1926(b), is indebted to USDA/RD, and, at all times material, has provided, and is able to make available, water service to A. O. Smith.

21. Accordingly, McBee is entitled to the rights, privileges, and protections granted by 7 U.S.C.A. § 1926(b).

22. Alligator's actions and intended and proposed action to provide water service to A. O. Smith will curtail or limit the service and supply of water to customers and areas served by McBee and make it impossible for McBee to repay the loan to USDA/RD in violation of 7 U.S.C.A. § 1926(b).

23. McBee is entitled to declaratory judgment pursuant to 28 U.S.C.A. §§ 2201 and 2202. There exists a dispute and actual controversy between the parties that cannot be resolved absent declaratory relief by this court. McBee is entitled to a declaratory judgment, declaring the rights and legal relations of the parties as follows:

(a) That McBee is an "association" within the meaning of 7 U.S.C.A. § 1926(b), is currently indebted to the USDA/RD, and, at all times material, has provided and made available water service to A. O. Smith in the County of Chesterfield;

(b) That McBee is entitled to the rights, privileges, and protections granted under 7 U.S.C.A. § 1926(b) during the term of the USDA/RD indebtedness;

(c) That A. O. Smith is contained within areas already serviced by McBee; and

(d) That the actions of Alligator and all those acting in concert with Alligator in providing water service or attempting to provide water service to A. O. Smith and any other areas included in the area served by McBee will unlawfully curtail or limit McBee's service in violation of 7 U.S.C.A. § 1926(b).

SECOND CLAIM FOR RELIEF
(Violation of S.C. Code Ann. § 33-26-270)

24. McBee incorporates by reference each and every allegation in paragraphs 1 through 23, above, as though set forth in full here.

25. Alligator is a nonprofit corporation created pursuant to S. C. Code Ann. § 33-36-210 et seq.

26. S.C. Code Ann. § 33-36-270(A) empowers nonprofit corporations to engage in the business of supplying water or sewage disposal.

27. S.C. Code Ann. § 33-26-270(B) requires that prior to providing water services, the nonprofit corporation must

notify the governing body of the county or municipality in which the service is to be provided of its intention and the nature of the service. The governing body shall have a period of ninety days from the date of the notification to approve the request to provide the services or inform the person requesting permission to provide the service that the governing body intends to provide for the service as a public function of government. The notification of intent by the governing body must include a detailed description of the area to be served, the services to be provided, and the time schedule under which the service will be available from the county or municipality.

28. Alligator has manifested its intent to provide service to an area contained within areas McBee is already providing water service.

29. Upon information and belief, no notice has been provided either to the Town of McBee or to Chesterfield County regarding Alligator's desire to provide water services to A. O. Smith Corporation.

30. Alligator, therefore, has not complied with S.C. Code Ann. § 33-26-270(B)'s requirements.

31. McBee is entitled to declaratory judgment pursuant to S.C. Code Ann. § 33-26-270(B). There exists a dispute and actual controversy between the parties that cannot be resolved absent declaratory relief by this court. McBee is entitled to a declaratory judgment, declaring the rights and legal relations of the parties as follows:

(a) That McBee provides water services to A. O. Smith;

(b) That McBee has the paramount and exclusive right to provide water service to A. O. Smith; and

(c) That the action of Alligator and all those acting in concert with Alligator, in providing water service or attempting to provide water service to A. O. Smith and any other area or areas included in the area served by McBee is in violation of S.C. Code Ann. § 33-26-270(B).

THIRD CLAIM FOR RELIEF

32. McBee incorporates by reference each and every allegation in paragraphs 1 through 31, above, as though set forth in full here.

33. McBee has demonstrated a strong likelihood of success on the merits in this case.

34. Should Alligator continue its unlawful actions in violation of 7 U.S.C.A. § 1926(b) and/or S.C. Code Ann. § 33-26-270(B), McBee will suffer irreparable harm through the loss of 70% of its water system revenue.

35. McBee has no adequate remedy at law.

36. The issuance of a preliminary and permanent injunction will not cause substantial harm to Alligator or those acting in concert with Alligator.

37. McBee is entitled to preliminary and permanent injunctive relief as follows:

(a) Enjoining Alligator, and all those in active concert with Alligator, from taking any further action to supply water or attempt to supply water to A. O. Smith or any other area or areas included in the area served by McBee in violation of 7 U.S.C.A. § 1926(b) and/or S.C. Code Ann. § 33-26-270(B);

(b) Enjoining Alligator, and all those in active concert with Alligator, from taking any further action that will serve to curtail or limit water service provided by McBee in violation of 7 U.S.C.A. § 1926(b) and/or S.C. Code Ann. § 33-26-270(B); and

(c) Enjoining Alligator, and all those in active concert with Alligator, from taking any further action in violation of the declaratory judgments granted in this action.

WHEREFORE, McBee demands the following relief:

1. Judgment in favor of McBee on all claims for relief asserted in this complaint;
2. Declaratory judgment in favor of McBee pursuant to 28 U.S.C.A. §§ 2201 and 2202 as follows:

(a) That McBee is an "association" within the meaning of 7 U.S.C.A. § 1926(b), is currently indebted to the USDA/RD, and, at all times material, has provided or made available water service to A. O. Smith;

(b) That McBee is entitled to the rights, privileges, and protection granted under 7 U.S.C.A. § 1926(b) during the term of McBee's USDA/RD indebtedness;

(c) That McBee is currently providing water services to A. O. Smith; and

(d) That the actions of Alligator, and all those acting in concert with Alligator, in providing water service or attempting to provide water service to A. O. Smith or any other area

or areas included in the water service area of McBee will unlawfully curtail or limit McBee's service in violation of 7 U.S.C.A. § 1926(b).

3. In the alternative, a declaratory judgment in favor of McBee pursuant to 28 U.S.C.A. §§ 2201 and 2202 as follows:

(a) That McBee provides water services to A. O. Smith;

(b) That McBee has the paramount and exclusive right to provide water service to A. O. Smith; and

(c) That the actions of Alligator, and all those acting in concert with Alligator, in providing water service or attempting to provide water service to A. O. Smith and any other area or areas served by McBee is in violation of S. C. Code Ann. §33-26-270(B).

4. Preliminary and permanent injunctive relief in favor of McBee as follows:

(a) Enjoining Alligator, and all those in active concert with Alligator, from taking any further action to supply water or to attempt to supply water to A. O. Smith in violation of 7 U.S.C.A. § 1926(b) and/or S.C. Code Ann. § 33-26-270(B);

(b) Enjoining Alligator, and all those in active concert with Alligator, from taking any further action that will serve to curtail or limit water service provided by McBee to A. O. Smith or any other areas already served by McBee, in violation of 7 U.S.C.A. § 1926(b) and/or S.C. Code Ann. § 33-26-270(B); and

(c) Enjoining Alligator, and all those in active concern with Alligator, from taking any further action in violation of the declaratory judgment granted in this action.

5. An award to McBee of its costs and reasonable attorney's fees; and

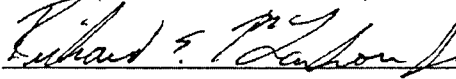
6. Granting McBee such other and further relief as the court deems just and proper.

[SIGNATURE PAGE FOLLOWING]

This 16th day of June, 2015.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Martin S. Driggers, Jr.

Richard E. McLawhorn, Jr.

115 Cargill Way, Suite B.

P.O. Box 68

Hartsville, SC 29551

P: (843) 878-0390

ATTORNEYS FOR TOWN OF MCBEE

[VERIFICATION FOLLOWING]

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

Town of McBee,

Plaintiff,

versus

Alligator Rural Water & Sewer Company,
Inc., Alligator Rural Water Company, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

2015-CP-13-379

ANSWER AND COUNTERCLAIM
(JURY TRIAL DEMANDED)

CLERK OF COURT C.P. & G.
CHESTERFIELD COUNTY, S.C.

True Copy Attest
Jaye D. Miller

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

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The Defendants answering the Plaintiff's Complaint would allege and show the following:

FOR A FIRST DEFENSE:

1. That the Defendants deny each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted, explained or qualified and demands strict proof thereof.
2. As to the allegations of Paragraph 1, the Defendants crave reference to the statutes referenced in said paragraph and assert that the statutes speak for themselves. Further answering, to the extent the allegations set forth in this paragraph attempt to establish any liability or violations on the part of the defendants or claim any rights or protections on the part of the plaintiff, the allegations are denied and defendants demand strict proof thereof.
3. That the Defendants admit so much of the allegations of Paragraph 2 of the

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Complaint as allege that McBee is a municipal corporation organized and existing under the laws of the State of South Carolina and would further admit that A.O. Smith Corporation located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina 29101 is currently purchasing water from McBee. The Defendants deny all remaining allegations of said paragraph and demand strict proof thereof.

4. That the Defendants admit so much of the allegations of Paragraph 3 as allege that Alligator Rural Water & Sewer Company, Inc. is a South Carolina corporation and has its principal place of business at 378 W. Pine Avenue, McBee, Chesterfield County, South Carolina, 29101. Further answering said paragraph, Alligator Rural Water Company, Inc. was originally incorporated in 1987 and subsequently changed its name to Alligator Rural Water & Sewer Company, Inc. in 1998.

5. That the Defendants admit the allegations contained in Paragraphs 4 and 5 of the Complaint.

6. That the Defendants deny the allegations contained in Paragraph 6 and demand strict proof thereof. Further answering said Paragraph, the Defendants allege that McBee is a water customer of Alligator who currently supplies all of McBee's water.

7. As to the allegations contained in Paragraphs 7, 8, 9, and 10 of the Complaint, the Defendants lack sufficient information or knowledge upon which to form a belief as to the veracity of those allegations and therefore deny the same demand strict proof thereof.

8. That the Defendants deny the allegations contained in Paragraphs 11 and 12 of the Complaint and demand strict proof thereof.

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9. That the Defendants admit so much of the allegations of Paragraph 13 as allege that Alligator claims the right to service the geographical area in which A.O. Smith is situate as this is Alligator's existing service territory. Further answering said paragraph, Defendants allege that A.O. Smith has requested water service from Alligator.

10. That the Defendants deny the allegations contained in Paragraph 14 and demand strict proof thereof.

11. As to the allegations of Paragraph 15, Defendants assets that said allegations attempt to establish a legal conclusion and therefore Defendants deny the same and demand strict proof thereof.

12. As to Paragraph 16 of the Complaint, Defendants reassert and re-allege all allegations and defenses contained herein, as though set forth in full.

13. That the Defendants deny the allegations contained in Paragraphs 17 and 18 of the Complaint and demand strict proof thereof.

14. As to the allegations of Paragraph 19, the Defendants crave reference to the statute referenced therein and assert that the statute speak for itself. Further answering, to the extent the allegations set forth in this paragraph attempt to establish any liability or violations on the part of the defendants or claim any rights or protections on the part of the plaintiff, the allegations are denied and defendants demand strict proof thereof.

15. That the Defendants deny the allegations contained in Paragraphs 20, 21, 22, and 23 of the Complaint and demand strict proof thereof.

16. As to Paragraph 24 of the Complaint, Defendants reassert and re-allege all

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allegations and defenses contained herein, as though set forth in full.

17. That the Defendants admit so much of the allegations of Paragraph 25 as allege that it was created pursuant to S.C. Code Ann. §33-36-210 et seq. but would further allege that it is a corporation not-for-profit financed by federal or state loans.

18. That the Defendants admit the allegations contained in Paragraph 26 of the Complaint.

19. As to the allegations of Paragraph 27 of the Complaint, the Defendants crave reference to the statute referenced therein and assert that the statute speak for itself.

20. That the Defendants deny the allegations contained in Paragraphs 28 and 29 of the Complaint and demand strict proof thereof. Further answering said paragraphs, Defendants allege that A.O. Smith is in Alligator's existing service territory and therefore no notice would be required prior to providing service to said entity.

21. That the Defendants deny the allegations contained in Paragraph 30 and 31 of the Complaint and demand strict proof thereof.

22. As to Paragraph 32 of the Complaint, Defendants reassert and re-allege all allegations and defenses contained herein, as though set forth in full.

23. That the Defendants deny the allegations contained in Paragraphs 33, 34, 35, 36, and 37 of the Complaint and demand strict proof thereof.

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FOR A SECOND DEFENSE AND BY WAY OF AFFIRMATIVE DEFENSE

(Failure to state a claim upon which relief can be granted)

24. The Defendants reaffirm and reiterate all of the paragraphs contained in this Answer and Counterclaim herein as fully as if repeated verbatim.

25. On information and belief, the Complaint fails to state a claim upon which relief can be granted as to the defendants.

FOR A THIRD DEFENSE AND BY WAY OF AFFIRMATIVE DEFENSE

(Failure to Join an Indispensable Party)

26. The Defendants reaffirm and reiterate all of the paragraphs contained in this Answer and Counterclaim herein as fully as if repeated verbatim.

27. A.O. Smith's manufacturing facility is located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina 29101 which is situate in Alligator's water service territory.

28. A.O. Smith is currently purchasing water from McBee, but has no written contract and now desires to purchase water from Alligator.

29. A.O. Smith has requested that Alligator provide its water services.

30. Alligator is indebted to the USDA/RD as evidenced by numerous promissory notes, real estate mortgages and security agreements.

31. Defendants are informed and believe that by accepting loans from Rural Development, Defendants are required to provide adequate service to customers within its service area.

32. Alligator is capable of providing adequate water service to A.O. Smith, who is a

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customer within Alligator's service area.

33. A.O. Smith is an indispensable party to this action in that A.O. Smith claims an interest relating to the subject of the action and is so situated that the disposition of the action in its absence may, as a practical matter, impair or impede its ability to protect that interest or leave the present Defendants subject to a substantial risk of incurring inconsistent obligations by reason of A.O. Smith's claimed interest.

FOR A FOURTH DEFENSE AND BY WAY OF A FIRST COUNTERCLAIM

34. The Defendants reaffirm and reiterate all of the paragraphs contained in this Answer and Counterclaim herein as fully as if repeated verbatim.

35. Alligator is a corporation not-for-profit organized and existing under the laws of the State of South Carolina with its principal office in the County of Chesterfield, State of South Carolina. Alligator provides water service in its geographical service area which includes all of the rural McBee area in Chesterfield County and outside of the McBee city limits.

36. McBee is a municipal corporation organized and existing under the laws of the State of South Carolina.

37. That S.C. Code Ann. §5-31-1910 authorizes a town to furnish water and electric current beyond corporate limits.

38. That S.C. Code Ann. §5-31-1910 provides:

Any city or town in this State owning a water or light plant may through the proper officials of such city or town, enter into a contract with any person without the corporate limits of such city or town but contiguous thereto to furnish such person electric current or water from such water or light plant of such city or town and may furnish such water or light upon such terms, rates and charges as may be fixed by the contract or agreement between the parties in this behalf, either for lighting or for manufacturing purposes, when in the judgment of the city or town council it is for the best interest of the municipality so to do. No such contract

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shall be for a longer period than two years but any such contract may be renewed from time to time for a like period.

39. The manufacturing facility owned and operated by A.O. Smith Corporation (A.O. Smith) located at 25589 U.S. 1, McBee, Chesterfield, South Carolina is outside the corporate limits of McBee and is noncontiguous thereto. A.O. Smith is situate in Alligator's water service territory.

40. Defendants are informed and believe that McBee is currently providing water services to A.O. Smith without a written contract.

41. McBee is serving A.O. Smith, which is not contiguous to the corporate limits of McBee and is in Alligator's water service territory, in violation of South Carolina law.

42. A.O. Smith has expressed its interest in purchasing water from Alligator.

43. Alligator is capable of providing the services desired by A.O. Smith.

44. Alligator is entitled to declaratory judgment in this matter. There exists a dispute and actual controversy between the parties that cannot be resolved absent declaratory relief by this court. Alligator is entitled to a declaratory judgment, declaring that rights and legal relations of the parties as follows:

(a) That A.O. Smith is situate in Alligator's water service territory;

(b) That Alligator has the paramount and exclusive right to provide water service to A.O. Smith; and

(c) That the actions of McBee in providing water service to a customer not contiguous to the corporate limits of the town and in the absence of a contract is in violation of S.C. Code Ann. §5-31-1910.

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FOR A FIFTH DEFENSE AND BY WAY OF A SECOND COUNTERCLAIM

45. The Defendants reaffirm and reiterate all of the paragraphs contained in this Answer and Counterclaim herein as fully as if repeated verbatim.

46. Alligator is an obligor to the United States of America, Department of Agriculture, Rural Development (referred to as "RD"), on certain indebtedness made pursuant to and authorized by the Consolidated Farm and Rural Development Act of 1961, 7 U.S.C.A. §1921 et seq.

47. Alligator is currently indebted to RD in the approximate amount of \$23,000,000.00, as evidenced by numerous promissory notes, real estate mortgages and security agreements. This indebtedness remains in full force and effect.

48. Alligator provides water services in the service territory described in its original Articles of Incorporation filed with the South Carolina Secretary of State in 1987 and all amendments thereto that have been subsequently filed.

49. McBee is presently providing water to A.O. Smith which is within the existing service area of Alligator.

50. McBee's actions are in violation of 7 U.S.C.A. §1926(b).

51. Alligator is informed and believes that it is protected by 7 U.S.C.A. §1926(b) which protects rural water associations, such as Alligator, which have received loans from the United States government by providing that the service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the

happening of such event be the basis of requiring such association to secure the franchise, license, or permit as a condition to continuing to serve the area by the association at the time of the occurrence of such event.

52. Accordingly, Alligator is entitled to the rights, privileges, and protections granted by 7 U.S.C.A. §1926(b).

53. McBee's actions of continuing to sell water to A.O. Smith has curtailed and limited the service and supply of water of Alligator in its existing territory which makes it more difficult for Alligator to repay its loans to RD in violation of 7 U.S.C.A. §1926(b).

54. Alligator is entitled to declaratory judgment pursuant to 28 U.S.C.A. §§ 2201 and 2202. There exists a dispute and actual controversy between the parties that cannot be resolved absent declaratory relief by this Court. Alligator is entitled to a declaratory judgment, declaring the rights and legal relations of the parties as follows:

- (a) That Alligator is a rural water association and currently indebted to RD and therefore entitled to the rights, privileges, and protections granted under 7 U.S.C.A. §1926(b) during the term of the RD indebtedness.
- (b) That A.O. Smith is contained within Alligator's water service territory; and
- (c) That McBee's continued water service to A.O. Smith will unlawfully curtail or limit Alligator's service in violation of 7 U.S.C.A. §1926(b).

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BY WAY OF A THIRD COUNTERCLAIM

55. The Defendants reaffirm and reiterate all of the paragraphs contained in this Answer and Counterclaim herein as fully as if repeated verbatim.

56. The Defendant, Alligator Rural Water & Sewer Company, Inc. is a corporation not-for-profit organized and existing under the laws of the State of South Carolina with its principal office in the County of Chesterfield, State of South Carolina.

57. The Plaintiff, Town of McBee, is a municipal corporation and political subdivision of the State of South Carolina and therefore a governmental entity located within the County of Chesterfield, State of South Carolina.

58. On December 28, 1999, Plaintiff and Defendant entered into a Water Purchase Agreement, hereinafter referred to as "Agreement", a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

59. Pursuant to the Agreement, the Defendant would provide Plaintiff with water at the rate of \$0.95 per thousand gallons.

60. Pursuant to the Agreement, the schedule of rates paid by Plaintiff, as Purchaser, is subject to review and modification each year on or about the first day of May, 2001. Modifications of rates, if adopted by Defendant, as Seller, will be based on actual increases in costs of production, not including capital expenditures (sic) and/or improvements, presented to Purchaser for its review at least thirty (30) days prior to the effective date of any increase. Copies of rate calculation, and pertinent record substantiating same, will be available to Purchaser for inspection during the review period. (NOTE: A copy of Seller's audit report for the preceding year, upon which any modification

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may be made, will be available to Purchaser upon request to Seller.)

61. An actual controversy has arisen and now exists between plaintiff and defendant regarding their respective rights and duties under the contract.

62. Plaintiff is currently only paying \$1.25 per 1000 gallons of water. This rate increase became effective on July 1, 2003.

63. Since July 2003, Defendant has increased rates, as contemplated by the Agreement, and in accordance with said Agreement, four additional times and notified Plaintiff of the same, the first of such increases to be effective in 2006. The plaintiff has willfully refused to pay the defendant's current rates and has been paying only \$1.25 per 1000 gallons for the past twelve years.

64. In accordance with the said Agreement, Defendant last notified Plaintiff of a rate increase by letter dated April 25, 2013. The new rate in the amount of \$1.92 per 1000 gallons went into effect on June 1, 2013.

65. Defendants are informed and believe that because of Defendant's rate increase, McBee raised the water rates of its customers by Ordinance effective October 16, 2013. According to the Ordinance, a water rate increase was necessary because "the waterworks system has experienced a rate increase of 54% per 1,000 gallons of purchased water".

66. Even though McBee increased the rates of its customers, McBee has continued to pay Defendants only \$1.25 per 1,000 gallons of purchased water.

67. Plaintiff has failed to pay in full the invoices and statements for water and other services supplied since June 2013 and Plaintiff currently owes the Defendant the principal amount of \$125,576.76. That each month this amount will continue to increase as Plaintiff refuses to pay

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the monthly invoices in full.

68. The Defendant has demanded payment from the Plaintiff for the water and other services and the Plaintiff has failed and refused to make such payment.

69. McBee has breached the terms of the agreement by its failure to pay in full the invoices and statements for water and other services supplied since June 2013 and Alligator is entitled to judgment in the amount currently owing from McBee in the amount of \$125,576.76 together with all additional amounts continuing to accrue with each monthly billing hereafter, with interest thereon.

BY WAY OF A FOURTH COUNTERCLAIM

70. The Defendants reaffirm and reiterate all of the paragraphs contained in this Answer and Counterclaim herein as fully as if repeated verbatim.

71. Defendants are informed and believe that for an extended period of time prior to 1999, Plaintiff had continued DHEC compliance issues regarding its water system and requested assistance from Alligator in operating its system.

72. In 1999, in an effort to provide the citizens of McBee with safe drinking water, and to protect Plaintiff from severe DHEC penalties, Alligator agreed to begin operating Plaintiff's water system and selling water to McBee.

73. In order to provide these services to McBee, it was necessary for Alligator to borrow significant sums of money from the United States of America, Department of Agriculture, Rural Development (hereafter "RD") to provide the water that McBee needed each month to meet the

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needs of its existing customers.

74. In order to secure the loan, RD required McBee and Alligator to enter into a Water Purchase Agreement, a copy of which is attached hereto as Exhibit "A". This Water Purchase Agreement is pledged as security for all of Alligator's RD loans since 1999.

75. Since 1999 McBee has not had a DHEC permit to operate its water system and has purchased all of its water from Alligator pursuant to the above referenced agreement.

76. McBee is Alligator's second largest water customer and is a significant source of Alligator's revenue each month.

77. Alligator has learned that McBee intends to begin operating its own system and stop purchasing water from Alligator all together.

78. Alligator is providing water service within the corporate limits of the Town of McBee and to all McBee customers outside of the corporate limits pursuant to the said water purchase agreement.

79. McBee has manifested its intent to limit Alligator's service and supply of water in areas already served by Alligator in violation of 7 U.S.C.A. §1926(b). This section prohibits municipal corporations or other public bodies from curtailing or limiting water service provided by or made available by any rural water association indebted to RD (formerly the Rural Economic and Community Development Service and formerly Farmers Home Administration, during the term of such indebtedness.

80. McBee's actions and intended and proposed actions to operate its own system and stop purchasing water from Alligator will curtail or limit the service and supply of water to

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customers and areas served by Alligator and make it impossible for Alligator to repay its loans to RD in violation of 7 U.S.C.A. §1926(b).

81. Alligator is entitled to declaratory judgment pursuant to 28 U.S.C.A. §§ 2201 and 2202. There exists a dispute and actual controversy between the parties that cannot be resolved absent declaratory relief by this Court. Alligator is entitled to a declaratory judgment, declaring the rights and legal relations of the parties as follows:

(a) That Alligator is a rural water association and currently indebted to RD and therefore entitled to the rights, privileges, and protections granted under 7 U.S.C.A. §1926(b) during the term of the RD indebtedness.

(b) That Alligator is providing water service within the corporate limits of the Town of McBee and to all McBee customers outside of the corporate limits pursuant to the said water purchase agreement; and

(c) That McBee's actions and all those acting in concert with McBee in attempting to obtain a DHEC permit and operate its water system so as to discontinue purchasing water from Alligator at its current usage pursuant to the Water Purchase Agreement attached hereto, will unlawfully curtail or limit Alligator's service in violation of 7 U.S.C.A. §1926(b).

BY WAY OF A FIFTH COUNTERCLAIM

82. The Defendants reaffirm and reiterate all of the paragraphs contained in this Answer and Counterclaim herein as fully as if repeated verbatim.

83. Alligator has demonstrated a strong likelihood of success on the merits in this case.

84. Should McBee continue its unlawful actions in violation of 7 U.S.C.A. §1926(b),

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Alligator will suffer irreparable harm through the loss of a significant water customer.

85. Alligator has no adequate remedy at law.

86. The issuance of a preliminary and permanent injunction will not cause substantial harm to McBee or those acting in concert with McBee.

87. Alligator is entitled to preliminary and permanent injunctive relief as follows:

(a) Enjoining McBee, and all those in active concert with McBee, from taking any further actions which would enable the Town to stop purchasing water from Alligator pursuant to the Water Purchase Agreement, in violation of 7 U.S.C.A. §1926(b); and

(b) Enjoining McBee, and all those in active concert with McBee, from taking any further action that will serve to curtail or limit water service provided by Alligator in violation of 7 U.S.C.A. §1926(b); and

(c) Enjoining McBee, and all those in active concert with McBee, from taking any further actions in violation of the declaratory judgments granted in this action.

88. That Defendants make demand for a trial by jury on all triable issues of fact contained in the pleadings.

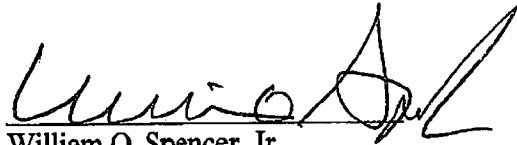
WHEREFORE, having fully answered the Complaint herein, the Defendants pray:

1. That the Complaint be dismissed;
2. That the Defendants have judgment against the Plaintiff on its counterclaims;
3. For a jury trial on all triable issues of fact contained in the pleadings;

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4. An award to Alligator of its costs and reasonable attorney's fees; and
5. Granting Alligator such other and further relief as this Court may deem just and proper.

SPENCER LAW FIRM



William O. Spencer, Jr.
Attorney for the Defendants
P. O. Box 190 - 301 West Main Street
Chesterfield, S.C. 29709
(843) 623-2144

Chesterfield, South Carolina.
August 17, 2015.

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Exhibit "A"

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

WATER PURCHASE AGREEMENT

THIS AGREEMENT FOR SALE AND PURCHASE OF POTABLE WATER, made and entered into this 28th day of Dec., 1999, by and between ALLIGATOR RURAL WATER AND SEWER COMPANY, INC., hereinafter referred to as SELLER, and THE TOWN OF MCBEE, hereinafter known as PURCHASER; made in four parts, all of which will be treated as an original;

(WITNESSETH)

WHEREAS, the SELLER is a corporation duly organized, pursuant to the laws of South Carolina and owns and operates a potable water supply production and distribution system with a capacity currently capable of serving its customers within its system with a remaining excess capacity available for sale, according to the records of both parties hereto and providing a basis for this Agreement; and

WHEREAS, the Board of Directors, governing body of SELLER, by Resolution approved on the 28th day of December, 1999, did adopt and approve the sale of water to PURCHASER, subject to the conditions and stipulations set forth herein, and which authorized the President and the Secretary-Treasurer, to execute this Agreement on behalf of SELLER; and

WHEREAS, the purchase of water from SELLER was approved by the Mayor and Town Council of the Town OF MCBEE on the 28th day of December, 1999, subject to the terms, conditions and stipulations enumerated herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained:

ARTICLE 1. THE SELLER HEREBY AGREES:

1. Quality and Quantity. To furnish PURCHASER at the point of delivery, during the term of this Agreement or any renewal or extension thereof, potable treated water meeting applicable purity standards of the South Carolina Department of Health and Environmental Control (SCDHEC) in such quantity as may be required by PURCHASER, subject to the following demands:
 - a. A maximum instantaneous demand of 350 gallons per minute.
 - b. A maximum daily demand of 500,000 gallons.
2. Point of Delivery and Pressure. (To be determined by engineers representing SELLER and engineers representing PURCHASER)
3. Billing Procedure. SELLER shall furnish PURCHASER an itemized statement of the gallons of water furnished PURCHASER during the preceding month, not later than the first day of each month.
4. Ownership. No laterals, transmission mains, or services shall be constructed by the SELLER downstream from the meter without the prior consent of the PURCHASER. SELLER shall be responsible for the repair and maintenance of all lateral transmission mains and/or lines of the PURCHASER. SELLER shall be responsible for repair and maintenance up to and not exceeding jobs at the value of \$5,000.00 with approval of PURCHASER. Anything above

\$5,000.00 the PURCHASER has the option to put the work out to bid.

5. Metering Equipment. SELLER agrees to install metering equipment, including all Appurtenances and required devices for properly measuring the quantity of water delivered and to test and calibrate said metering equipment annually. For the purpose of calibration, a meter which registers not more than two percent (2%) above or below the test results shall be accepted as by both parties.
6. Read Meters and deliver readings by 25th. SELLER will read meters owned by PURCHASER and will deliver readings to Town clerk by the 25th of each month.
7. Installing Meters. PURCHASER will install new meters with in 10 working days of notification. \$350.00 for in Town, \$450.00 for out of Town.
8. SELLER has the option to rehabilitate PURCHASER'S well or wells. SELLER will pay all cost and has the right to use said wells. After 10 years both parties will review and SELLER shall pay PURCHASER negotiated rate for whole sale water in the event usage is equal to or greater than the amount spent on the rehabilitation project.

SELLER will indemnify and hold PURCHASER harmless for any and all activity associated with the use of said well or wells during the term of this agreement to include operation, maintenance and rehabilitation of the said wells by its employees, assigns, agents and contractors. During this period the wells shall be considered the property of the PURCHASER but shall be the responsibility of the SELLER, and SELLER agrees to maintain the wells in such a condition as to keep them in proper working order and in compliance with all South Carolina Department of Health and Environmental Control regulations. Any material and capital improvements done to the wells shall be done at the risk of the SELLER and shall become the property of the PURCHASER. Any and all taxes due on the wells shall be paid by the SELLER during this initial ten (10) year agreement where SELLER will be able to use water produced from the wells.

9. PURCHASER will pay maintenance of elevated tanks (2).
10. Should any disagreement arise under this Agreement each of the parties hereto, its administrator, successors, or assigns agree to arbitrate the controversy and submit the matter to two disinterested arbitrators, one to be chosen by each of the parties, and in case they disagree, the two chosen shall elect a third disinterested arbitrator, and the decision of the two of the arbitrators shall be final. This Arbitration is non binding.

ARTICLE II THE PURCHASER HEREBY AGREES:

1. Rates and Payment Date. PURCHASER will pay in full for all water purchased, pursuant to this Agreement, not later than the tenth (10th) day of each month at the rate of \$0.95 per thousand gallons.

ARTICLE III. BOTH PARTIES MUTUALLY AGREE:

1. Term of Agreement. This agreement will extend for a period of forty (40) years from the date herein set forth in the initial paragraph.

2. Connect Fee. It is mutually agreed that SELLER will not require of PURCHASER a fee for connection to supply system of SELLER.
3. If any meter fails to register for any period, the amount of water furnished during that period will be deemed to be the amount delivered in the corresponding period immediately prior to the failure, unless otherwise agreed between SELLER and PURCHASER.
4. The metering equipment will be read on or about, the twenty-fifth (25th) day of each month and appropriate officials of PURCHASER and SELLER will have access to the meters at all reasonable times, for the purpose of verification.
5. Water for Testing. PURCHASER agrees to coordinate testing procedure requirements with SELLER so as not to cause difficulty in meeting PURCHASER'S demands.
6. Failure to Deliver. SELLER will operate and maintain its system at all times in an efficient manner and will take such action as may be necessary to furnish PURCHASER with the quantities of water as set forth in this Agreement. Temporary or partial failure to deliver water will be remedied as soon as possible.

Emergency failures of pressure of supply due to main supply breaks, power failure, flood, fire and use of water for fire fighting, earthquakes or other catastrophes, will excuse SELLER from performance for such reasonable period of time as may be necessary to restore service.

In the event of an extended shortage of water, or should the supply of water available to SELLER be diminished for an extended period of time, the supply of water to customers of PURCHASER will be reduced or diminished, in the same ratio or proportion as the supply to the customers of SELLER.

7. Modification of Agreement. The provisions of this Agreement, as they pertain to the schedule of rates paid by PURCHASER, will be subject to review and modifications each year on or about the first day of May, 2001. Modifications of rates, if adopted by SELLER, will be based on actual increases in costs of production, not including capital expenditures and/or improvements, presented to PURCHASER for its review at least thirty (30) days prior to the effective date of any increase. Copies of rate calculations, and pertinent record substantiating same, will be available to PURCHASER for inspection during the review period.

(NOTE: A copy of SELLER'S audit report for the preceding year, upon which any modifications may be made, will be made available to PURCHASER upon request to SELLER.)

8. Successor to PURCHASER and SELLER. In the event any occurrence renders PURCHASER incapable of performing its responsibilities required by this Agreement, its successor, whether the result of legal process, assignment or otherwise, will succeed to the rights and obligation of PURCHASER.

In the event any occurrence renders SELLER incapable of performing its responsibilities required by this Agreement, its successor, whether the result of legal process, assignment or otherwise, will succeed to the rights and obligation of SELLER.

9. Pledge to United States of America. This Agreement is pledged to the United States of America, acting through the United States Department of Agriculture as part of security for a

loan to the Purchaser and Seller from USDA, Rural Development.

IN WITNESS WHEREOF, the parties hereto, by authority duly given, have caused this Agreement to be duly executed in four counterparts as hereinabove set forth in the initial paragraph.

ATTEST:

Cornelia L. Carr

ALLIGATOR RURAL WATER AND
SEWER CO., INC.

by Harvey L. Griggs
President

Cornelia L. Carr
Secretary/Treasurer

TOWN OF MCBEE

by Sam MCB
Mayor

COUNCIL MEMBERS

Alvin S. McLeod

W. L.

George Seltin

William B. Edwards

APPROVAL:

USDA, RURAL DEVELOPMENT

ACCEPTED AS MEETING
RURAL DEVELOPMENT
ADMINISTRATIVE REQUIREMENTS

BY: Mike Hinch

TITLE: RBS/RUS Program Director

DATE: 6/29/00

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS

Town of McBee,

Case No. 2015-CP-13-379

Plaintiff,

vs.

Alligator Rural Water & Sewer Company, Inc.,
Alligator Rural Water Company, Inc.,

Defendants,

and

A.O. Smith Corporation,

Intervenor-Defendant.

**ANSWER AND
COUNTERCLAIMS OF
INTERVENOR/DEFENDANT
A. O. SMITH CORPORATION**

Intervenor/Defendant A. O. Smith Corporation ("A.O. Smith"), hereby answers the Complaint of the plaintiff, Town of McBee ("Town" or "Plaintiff"):

FOR A FIRST DEFENSE
(Allegations of the Complaint)

1. Each and every allegation of the Complaint not hereinafter specifically admitted is denied and strict proof thereof is demanded.

NATURE OF THE ACTION

2. Responding to Paragraph 1 of the Complaint, A.O. Smith craves reference to the statutes referenced in said paragraph and asserts that the statutes speak for themselves. Further responding, A.O. Smith denies that Plaintiff is entitled to the protections claimed and demands strict proof thereof.

PARTIES, JURISDICTION, AND VENUE

3. A.O. Smith admits only so much of the allegations contained in Paragraph 2 of the Complaint as alleges the Town is a municipal corporation organized under the laws of the State of South Carolina and that the Town currently sells water to the A.O. Smith facility located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina 29101 ("Chesterfield County Facility" or the "A.O. Smith Facility"). A.O. Smith denies all remaining allegations contained in Paragraph 2 and demands strict proof thereof. Further responding, A.O. Smith denies that the Town, by selling water to the A.O. Smith Facility, has provided or made service available to the A.O. Smith Facility as required for the protection of the A.O. Smith service area pursuant to 7 U.S.C. § 1926(b).

4. Upon information and belief, A.O. Smith admits only so much of the allegations contained in Paragraph 3 of the Complaint as allege that Alligator Rural Water & Sewer Company, Inc. ("Alligator") is a South Carolina corporation with its principal place of business at 378 W. Pine Avenue, McBee, Chesterfield County, South Carolina 29101. The remaining allegations of Paragraph 3 of the Complaint are denied.

5. Upon information and belief, A.O. Smith admits only that the Town asserts claims and seeks declaratory relief under federal statutes and that the issue of jurisdiction is a legal conclusion to which no answer or other response is required. The remaining allegations of Paragraph 4 of the Complaint are denied.

6. Upon information and belief, and subject to its response to Paragraph 4 of the Complaint, A.O. Smith admits the allegations contained in Paragraph 5 of the Complaint

FACTUAL ALLEGATIONS

7. Upon information and belief, A.O. Smith admits only so much of the allegations contained in Paragraph 6 of the Complaint as allege that the Town sells water to customers, including A.O. Smith, in areas within and outside of the municipal limits of the Town of McBee. The remaining allegations contained in Paragraph 6 of the Complaint are denied. Further responding, A.O. Smith denies that the Town by selling water to the A.O. Smith Facility has provided or made service available to the A.O. Smith Facility as required for the protection of the A.O. Smith service area pursuant to 7 U.S.C. § 1926(b).

8. A.O. Smith admits only so much of the allegations contained in Paragraph 7 of the Complaint as allege that A.O. Smith has been provided water through the Town since A.O. Smith purchased the Facility. The remaining allegations contained in Paragraph 7 of the Complaint are denied. Further responding, A.O. Smith denies that the Town by selling water to the A.O. Smith Facility that it received from Alligator, has provided or made service available to the A.O. Smith Facility as required for the protection of the A.O. Smith service area pursuant to 7 U.S.C. § 1926(b).

9. A.O. Smith lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore denies them.

10. A.O. Smith lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint and therefore denies them.

11. A.O. Smith lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint and therefore denies them.

12. A.O. Smith admits only so much of the allegations contained in Paragraph 11 of the Complaint as allege that the Town operates water lines and water storage facilities within and

outside the municipal limits of the Town. The remaining allegations contained in Paragraph 11 of the Complaint are denied. Further responding, A.O. Smith denies that the Town has provided or made service available to the A.O. Smith Facility as required for the protection of the A.O. Smith service area pursuant to 7 U.S.C. § 1926(b).

13. A.O. Smith admits only so much of the allegations contained in Paragraph 12 of the Complaint as allege that the Town operates water lines and water storage facilities which currently transmit water to the A.O. Smith Facility. The remaining allegations contained in Paragraph 11 of the Complaint are denied. Further responding, A.O. Smith denies that the Town has provided or made service available to the A.O. Smith Facility as required for the protection of the A.O. Smith service area pursuant to 7 U.S.C. § 1926(b).

14. A.O. Smith admits only so much of the allegations contained in Paragraph 13 of the Complaint as allege that Alligator claims the right to service the A.O. Smith Facility which is in Alligator's existing service area. The remaining allegations contained in Paragraph 13 of the Complaint are denied. Further responding, A.O. Smith alleges that A.O. Smith is an at-will water customer of the Town and has requested that Alligator provide water service to the A.O. Smith Facility. A.O. Smith further alleges that Alligator has provided and made service available to the A.O. Smith Facility which is in the Alligator service area protected under 7 U.S.C. § 1926(b).

15. A.O. Smith denies the allegations contained in Paragraph 14 of the Complaint and demands strict proof thereof.

16. A.O. Smith denies the allegations contained in Paragraph 15 of the Complaint and demands strict proof thereof.

PLAINTIFF'S FIRST CLAIM FOR RELIEF
(Violation of 7 U.S.C. § 1926(b))

17. Responding to Paragraph 16 of the Complaint, A.O. Smith incorporates by reference its responses to Paragraphs 1 through 15 of the Complaint as though fully set forth herein.

18. A.O. Smith denies the allegations contained in Paragraph 17 of the Complaint and demands strict proof thereof.

19. A.O. Smith denies the allegations contained in Paragraph 18 of the Complaint and demands strict proof thereof.

20. Responding to Paragraph 19 of the Complaint, A.O. Smith craves reference to the statute referenced in said paragraph and asserts that the statute speaks for itself. Further responding, to the extent that the Town asserts that the allegations contained in Paragraph 19 establish a claim by the Town to the protections of 7 U.S.C. § 1926(b) as a service area which includes the A.O. Smith Facility, A.O. Smith denies the allegations contained in Paragraph 19 and demands strict proof thereof.

21. A.O. Smith denies the allegations contained in Paragraph 20 of the Complaint and demands strict proof thereof.

22. A.O. Smith denies the allegations contained in Paragraph 21 of the Complaint and demands strict proof thereof.

23. A.O. Smith denies the allegations contained in Paragraph 22 of the Complaint and demands strict proof thereof.

24. A.O. Smith denies the allegations contained in Paragraph 23 of the Complaint and demands strict proof thereof.

PLAINTIFF'S SECOND CLAIM FOR RELIEF
(Violation of S.C. Code Ann. § 33-36-270)

25. Responding to Paragraph 24 of the Complaint, A.O. Smith incorporates by reference its responses to Paragraphs 1 through 41 of the Complaint as though fully set forth herein.

26. Upon information and belief, A.O. Smith admits the allegations contained in Paragraph 25 of the Complaint.

27. Responding to the allegations contained in Paragraph 26 of the Complaint, A.O. Smith craves reference to the statute referenced therein and asserts that the statute speaks for itself.

28. Responding to the allegations contained in Paragraph 27 of the Complaint, A.O. Smith craves reference to the statute referenced therein and asserts that the statute speaks for itself.

29. A.O. Smith denies the allegations contained in Paragraph 28 of the Complaint and demands strict proof thereof. Further responding, A.O. Smith alleges that the A.O. Smith Facility is in the existing service territory of Alligator.

30. A.O. Smith denies the allegations contained in Paragraph 29 of the Complaint and demands strict proof thereof. Further responding, A.O. Smith alleges that no notice was required prior to Alligator providing service to the A.O. Smith Facility as the A.O. Smith Facility is within the existing service territory of Alligator

31. A.O. Smith denies the allegations contained in Paragraph 30 of the Complaint and demands strict proof thereof.

32. A.O. Smith denies the allegations contained in Paragraph 31 of the Complaint and demands strict proof thereof.

PLAINTIFF'S THIRD CLAIM FOR RELIEF

33. Responding to Paragraph 32 of the Complaint, A.O. Smith incorporates by reference its responses to Paragraphs 1 through 31 of the Complaint as though fully set forth herein.

34. A.O. Smith denies the allegations contained in Paragraph 33 of the Complaint and demands strict proof thereof.

35. A.O. Smith denies the allegations contained in Paragraph 34 of the Complaint and demands strict proof thereof.

36. A.O. Smith denies the allegations contained in Paragraph 35 of the Complaint and demands strict proof thereof.

37. A.O. Smith denies the allegations contained in Paragraph 36 of the Complaint and demands strict proof thereof.

38. A.O. Smith denies the allegations contained in Paragraph 37 of the Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE

39. The Complaint fails to state a claim upon which relief can be granted.

COUNTERCLAIMS OF INTERVENOR/DEFENDANT
A.O. SMITH AGAINST PLAINTIFF TOWN OF McBEE

INTRODUCTORY FACTS

1. A.O. Smith owns and operates a manufacturing facility (the "Chesterfield County facility") in an unincorporated area of Chesterfield County, South Carolina. A.O. Smith manufactures water heaters and boilers at the Chesterfield County facility, which also includes

an engineering division that designs and tests company products. The Chesterfield County facility has been in operation since 1980 and employs more than 500 persons.

2. The A.O. Smith facility currently operates five days per week with two shifts of eight hours each. During operating hours, the facility's manufacturing, testing, and domestic water requirements are 161 gallons per minute ("gpm") on an average day and 239 gpm on a peak use day. Additionally, A.O. Smith's fire protection system requires a heightened, minimum instantaneous flow for not less than two hours.

3. In 1979, A.O. Smith and the Town entered a 30-year "non-annexation" agreement under which the Town agreed to supply water to the Chesterfield County facility. Since that time, A.O. Smith has purchased water service from the Town, which is a municipal corporation organized and existing under the laws of the State of South Carolina. The 1979 contract, however, expired in 2009 and there is no current contract between A.O. Smith and the Town.

4. The A.O. Smith facility is situated beyond, and is not contiguous to, the Town's corporate limits. The facility, however, is located within the service area of Alligator, which operates a public water supply and distribution system throughout a large area of Chesterfield County.

5. Prior to 1999, the Town supplied water to A.O. Smith from Town wells. In 1999, the Town shut down its wells and entered an agreement with Alligator, under which Alligator became the sole water supplier to the Town. As of today, Alligator is still the sole water source for the Town and, in turn, the Town's retail customers, including A. O. Smith. Stated differently, since 1999, all of the water that A.O. Smith has purchased from the Town, and used at its facility, has actually been supplied by Alligator.

6. Presently, the Town's public water supply distribution system (the "Town System") is generally comprised of two (2) elevated tanks, a wholesale connection to the Alligator system, and water distribution lines of differing sizes. The Town's water lines are primarily small in diameter, with a larger 12-inch line extending along U.S. Highway 1 between the A.O. Smith facility and the town limits near the intersection of US Highway 1 and Juniper Avenue. One of the two elevated tanks is located in the Town near the intersection of US Highway 1 and Juniper Avenue and has a capacity of 75,000 gallons. The other is located adjacent to the A.O. Smith facility and has a capacity of 250,000 gallons. The two tanks are connected by the 12-inch water main described above.

7. In comparison to the Town's total water storage capacity of 325,000 gallons, the Alligator system has 3,500,000 gallons of storage capacity within two miles of the A.O. Smith facility. Additionally, Alligator has a 24-inch water line which runs along U.S. Highway No. 1 adjacent to the facility.

8. In 2011, A.O. Smith advised the Town that the Chesterfield County facility would require an instantaneous demand of 2,000 gpm at a minimum of 98 psi for its fire protection system and an additional 500 gpm for a proposed expansion of the facility. When the Town failed to address A.O. Smith's concerns, the company entered into discussions with Alligator regarding water service for its Chesterfield County facility. Alligator advised A.O. Smith that it had 8,000,000 gallon per day in excess capacity and could provide up to 4,000 gpm to the Chesterfield County facility and sustain that flow on a continuous basis.

9. By letter dated October 10, 2013, the Town informed A.O. Smith that it intended to place its two existing water supply wells back into operation. Upon information and belief, as alleged above, these wells were previously taken out of service at the direction of DHEC in the

early 2000s when contaminants were detected in the water from the wells. The Town further advised A.O. Smith that these two wells would meet all of the water source requirements for the Town System.

10. A.O. Smith must have an adequate and reliable source of water service. Upon information and belief, the two water wells, operating without a backup source from Alligator, will not be sufficient to meet A.O. Smith's demand, including the instantaneous fire flow demands of the A.O. Smith facility. Upon information and belief, the capacity of these wells does not meet the redundancy requirements of Section 61-58.2(B)(1) of the State Primary Drinking Water Regulation. S.C. REG. ANN. § 61-58.2(B)(1).

11. In recent months, the Town's service to A.O. Smith has been interrupted and inadequate to meet its water needs on certain occasions. For example, on June 19, 2015, A.O. Smith lost water pressure at the Chesterfield County plant to the point that all essential water uses were curtailed. Moreover, on certain occasions, the Town has failed to maintain storage capacity needed to ensure adequate pressure for A.O. Smith's fire protection system.

12. In addition to issues with regard to adequacy and reliability with the Town System, A.O. Smith believes that the Town may have been overbilling its retail customers, including A.O. Smith, for water service in recent years. In 2013, Alligator increased its wholesale water rate to \$1.92/thousand gallons. In October 2013, the Town increased the water rate charged to its customers, assertedly based on this increase by Alligator. However, upon information and belief, the Town has continued to pay Alligator at a rate of \$1.25/thousand gallons.

13. Based on A.O. Smith's water use through August 2015, the difference between pre-October 2013 rate and current rate charged to the Town's commercial customers results in overbilling to A.O. Smith of more than \$60,000.

14. The current dispute between the Town and Alligator is not good for A.O. Smith, and it is not good for community. The Town's attempt to prevent Alligator from serving A.O. Smith deprives the company of the adequate and reliable water service necessary to support its current operations and presents a major obstacle for any future expansions of the Chesterfield County facility.

15. The Town's efforts are also contrary to the best interests of A.O. Smith and other existing and potential industrial facilities in the area. The availability of basic utilities is a fundamental consideration for any new industrial development. The Town's claim that it is entitled to protected service areas outside of its municipal limits, without complying with S.C. CODE ANN. § 5-31-1910, could have the undesirable effect of discouraging the siting of any new industrial development in that area which requires process water for its operation. The Town does not have adequate capacity to serve A.O. Smith, and therefore, could not supply any additional industry.

FIRST COUNTERCLAIM OF INTERVENOR/DEFENDANT A.O. SMITH
**(Declaratory Judgment under S.C. Code Ann. §§ 15-53-20, *et seq.* or, alternatively,
under 28 U.S.C. §§ 2201, 2202)**

16. A.O. Smith reaffirms and reiterates Paragraphs 1 through 15 contained in the Counterclaims herein as fully as if repeated verbatim.

17. Pursuant to S.C. CODE ANN. §§ 15-53-20, *et seq.*, or alternatively 28 U.S.C. §§ 2201, 2202, A. O. Smith prays for a declaration, as follows:

- a. That it does not have a contract with the Town of McBee for the provision of water, that it is an "at-will" customer and it is entitled to terminate water service with the Town.
- b. That under S.C. CODE ANN. § 5-31-1910, the Town cannot contract with A.O. Smith because, although it is outside the corporate limits of the Town, its facility is not contiguous with those corporate limits.
- c. That the A.O. Smith facility is not located within the service area of the Town and, therefore, the Town is not entitled to the protection of that service area under 7 U.S.C. §1926(b).
- d. That the A.O. Smith facility is located within the service area of Alligator and, therefore, Alligator is entitled to the protection of that service area under 7 U.S.C. § 1926(b).

18. Pursuant to S.C. CODE ANN. § 15-53-100, A. O. Smith also prays this Court to award costs, including attorney fees, as it may seem equitable and just.

SECOND COUNTERCLAIM
(Accounting)

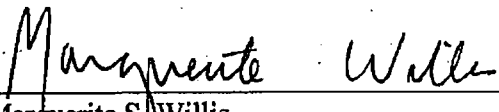
19. A.O. Smith reaffirms and reiterates Paragraphs 1 through 18 contained in the Counterclaims herein as fully as if repeated verbatim.

20. A.O. Smith prays for an accounting from the Town of McBee as to the operation of the Town System since 2006 to the present date.

21. In specific, A.O. Smith prays that this Court order the Town to account for (a) the monies it paid to Alligator for water is resold to A.O. Smith and its other water customers, (b) the monies it collected from such customers for water service, and (c) all expenditures related to the Town System or water service to A.O. Smith and other water customers.

WHEREFORE, A.O. Smith Does Pray:

1. That the Complaint be dismissed;
2. That A.O. Smith have judgment on its counterclaims;
3. That the Town be enjoined from interfering with A.O. Smith's efforts to secure an alternative source of water from Alligator;
4. For a jury trial on all triable issues of fact contained in the pleadings;
5. For reasonable attorney's fees under S.C. CODE ANN. § 15-77-300; and
6. For such other and further relief as the Court may find just and proper.



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Joan W. Hartley
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803.771.8900

Attorney for Intervenor/Defendant
A. O. Smith Corporation

April 9, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

Town of McBee,

Plaintiff,

v.

Alligator Rural Water & Sewer Company, Inc.,
Alligator Rural Water Company, Inc., A.O.
Smith Corporation, Odom and Associates, Inc.,
and Glenn Odom, Individually.

Defendants.

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 2015-CP-13-379

**PLAINTIFF'S AMENDED COMPLAINT
AGAINST ALLIGATOR RURAL
WATER & SEWER COMPANY, INC.,
ALLIGATOR RURAL WATER
COMPANY, INC.,
A.O. SMITH CORPORATION,
ODOM AND ASSOCIATES, INC. AND
GLENN ODOM, INDIVIDUALLY.**

JURY TRIAL DEMANDED

MAY 4 PM 2
FILED
CLERK OF COURT
CHESTERFIELD COUNTY, SC

Plaintiff, Town of McBee ("McBee"), states for its Complaint against Defendants as follows:

NATURE OF THE ACTION

1. This action is based on violations of South Carolina law and 7 U.S.C.A. § 1926(b) of the Consolidated Farm and Rural Development Act of 1961 (7 U.S.C.A. §§ 1921 *et seq.*). Section 1926(b) prohibits any public or private body from providing water service within the boundaries of any area already serviced by a rural water association indebted to the United States Department of Agriculture/Rural Development (formerly the Rural Economic and Community Development Service ("USDA/RD")) during the term of such indebtedness. In this action, McBee seeks to enforce its rights and the protections granted pursuant to South Carolina law and 7 U.S.C.A. § 1926(b) by declaratory judgment and injunctive relief.

2. This action is also based on violations of South Carolina common and statutory law for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et*

A True Copy, Attest

Laye S. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

REC 059

seq.; and sabotage and misrepresentation related to a public water system, S.C. Code Ann. § 44-55-80. McBee seeks an award for actual damages, consequential damages, general damages, exemplary damages, special damages, punitive damages, treble damages, attorneys' fees, costs of this action, equitable relief, injunctive relief, prejudgment and post-judgment interest.

PARTIES, JURISDICTION, AND VENUE

3. McBee is a municipal corporation organized and existing under the laws of the State of South Carolina. McBee provides water service in its city limits and areas adjacent and contiguous to the Town of McBee, including a manufacturing facility owned and operated by A.O. Smith Corporation ("A.O. Smith").

4. Odom and Associates, Inc. is a South Carolina corporation that has its principal place of business at 378 W. Pine Avenue, McBee, Chesterfield County, South Carolina, 29101.

5. On information and belief, Glenn Odom, individually, is a resident of Chesterfield County, South Carolina.

6. Alligator Rural Water & Sewer Company, Inc. and Alligator Rural Water Company, Inc. ("Alligator Defendants" or "Alligator") are South Carolina corporations and have their principal place of business at 378 W. Pine Avenue, McBee, Chesterfield County, South Carolina, 29101.

7. A.O. Smith is a corporation headquartered in Wisconsin with a manufacturing facility located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina, 29101.

8. This Court has jurisdiction to hear the claims.

9. Venue is proper because McBee is located in Chesterfield County, A.O. Smith owns and operates a manufacturing facility in Chesterfield County, Odom and Associates, Inc.'s principal place of business is in Chesterfield County, Glenn Odom is a resident of Chesterfield

County, Alligator Defendants' principal place of business is in Chesterfield County, and the subject service area and subject water facilities exist in Chesterfield County.

FACTUAL ALLEGATIONS REGARDING 7 U.S.C.A. § 1926(b) CLAIM

10. McBee currently provides water services to areas within the Town's municipal limits and areas outside its municipal limits, including A.O. Smith.

11. McBee has provided water service to A.O. Smith since A.O. Smith's opening more than 30 years ago.

12. McBee was serving water to A.O. Smith before Alligator was founded.

13. McBee is an obligor to the USDA on certain indebtedness made pursuant to and authorized by the Consolidated Farm and Rural Development Act of 1961, 7 U.S.C.A. §§ 1921 *et seq.* totaling in excess of \$4 million.

14. The funds required to repay these loans are provided in large part through revenue from service to A.O. Smith.

15. Repaying the loans requires approximately 25% of McBee's water revenues.

16. A.O. Smith's business currently accounts for approximately 60% of McBee's water revenues.

17. On June 14, 2015, McBee learned that Alligator intended to provide water service to A.O. Smith when construction crews were observed in the field installing a line to bypass McBee's system and connect A.O. Smith directly with Alligator's system.

18. A.O. Smith's taking water from Alligator will curtail or limit the service and supply of water to customers and areas served by McBee in violation of 7 U.S.C.A. § 1926(b).

19. In the alternative, the proposed water supply to A.O. Smith is in violation of South Carolina law.

FACTUAL ALLEGATIONS REGARDING ALLIGATOR, ODOM, AND ODOM AND ASSOCIATES GENERALLY

20. Alligator operates as a rural water corporation organized under S.C. Code Ann. §§ 33-31-101 *et seq.* and is a tax-exempt public benefit corporation. As a rural water corporation, Alligator is unregulated and unaccountable for its finances and commercial activities to any public body.

21. Odom has served as the President and/or General Manager of Alligator since its organization, continuously controlling the policy, operation and management of the company from its beginning through the present time.

22. Additionally, Odom served as mayor of the Town from 2000 to 2002.

23. In 2002, Odom organized a for-profit services company, Odom and Associates, Inc. ("Odom and Associates"). Odom and Associates has a contractual right to payment from Alligator allowing Odom, through his company, to personally benefit from Alligator's finances and operations.

24. In 2002, Odom resigned to become the local magistrate, and Will Edwards became mayor of the Town, serving from 2002 to 2004. Will Edwards is long-term management employee of Alligator and Odom and Associates.

FACTUAL ALLEGATIONS REGARDING TORT CLAIMS

Background of Water Service in McBee

25. Prior to 1999, before Odom became mayor, McBee operated its own water system, providing water to the residents of the Town and A.O. Smith.

26. In the fall of 1999, at Alligator's instigation, McBee Town Council instructed Town representatives to enter into negotiations with Alligator for an agreement to turn day-to-

day operations of McBee's water system over to Alligator and for McBee to begin buying bulk water service from Alligator.

27. At a special called meeting, at which half of the McBee Town Council members present and voting were Alligator employees, McBee voted to enter the agreement with Alligator and turn over day-to-day operations of its water system over to Alligator.

28. Alligator justified this action by the assertion that McBee could not supply its need for water because its sources of water were contaminated.

29. Upon information and belief, this assertion was untrue and was made in a deliberate attempt to deceive McBee into allowing Alligator to take control of its water system.

30. This assertion was among the first in a series of unfair and deceptive acts by Alligator acting through Odom and other Alligator employees in an effort to monopolize water and sewer service in the McBee area.

31. Even after the take-over of McBee's water system operations, Alligator continued to provide water to McBee through the Town's own sources of supply in contradiction of the previous allegations that those sources were unsuitable for use.

32. During Odom's tenure as mayor, while also serving as Alligator's executive director, he diverted an \$850,000 grant awarded to McBee to Alligator for projects that did not directly benefit the Town.

33. After diverting this \$850,000 grant to Alligator, Odom caused the Town to borrow \$4.5 million from USDA/RD to refurbish its water system, a loan that could have been substantially reduced by the grant.

34. Upon information and belief, Alligator maintains and controls the as-built plans of the refurbished water system. Alligator has refused to provide McBee with a set of as-built plans, despite numerous requests since 2008.

35. During Odom's tenure as mayor, he returned to DHEC the permits that the Town had maintained to operate its water system and wells, falsely stating that the Town had merged its system into Alligator's.

36. Odom was succeeded as mayor by Mr. Edwards, another Alligator official.

37. During his tenure as mayor, Edwards stated that he intended to bankrupt the Town, which would prevent it from reclaiming its water system.

38. During Odom's and Edward's tenures as mayor, the Town's financial reserves were depleted from over \$400,000 to a negative balance of over \$100,000, during years when the Town received well in excess of \$500,000 income each year, more than enough to cover reasonable expenses.

39. McBee has continuous financial records going back to the 1960s, except for the period when Odom and Edwards were mayors and two years following their tenure. Those records have disappeared from Town Hall.

40. Town employees and other individuals report that Odom ordered those records to be removed and destroyed.

41. Upon information and belief, Alligator's long-term goal in 1999 was to eliminate McBee as competitor for water supply services in Chesterfield County; that remains Alligator's long-term goal today.

42. Odom's and Odom and Associates' goal has been to benefit from Alligator's corrupt business model for Odom's personal enrichment.

43. Alligator, and its officers and agents Odom and Associates and Odom, have pursued this goal through a pattern of deception and misrepresentation concerning McBee's ability to provide service to its customers, abuse of political position and authority by Odom and other agents of Alligator, as well as using the resources of Alligator and its related companies to bully opponents in the political and business community.

44. With reference to other customers, competitors and transactions, Alligator and its officers and agents, Odom and Associates and Odom, have deployed a pattern of deception, misrepresentation and bullying similar to that which has been employed with McBee. These actions have been and are capable of repetition.

45. In 2008, the people of McBee elected Mr. John Campolong to be Mayor. Mayor Campolong is still the mayor today.

46. The preeminent issue in the 2008 campaign was the dissatisfaction of the citizens of McBee with Alligator, its abuse of power, breach of fiduciary duties by its officers and employees while serving as elected official of the Town, and its unaccountable and financially irresponsible dealings.

A.O. Smith, McBee and Alligator

47. Consistent with commitments made during that campaign, in 2008, McBee began the process of taking back its water distribution system operations from Alligator.

48. In 2014, in furtherance of its plan to maintain control of McBee's system, Alligator began secret negotiations with A.O. Smith to displace McBee as A.O. Smith's supplier and take from McBee a customer representing approximately 60% of McBee's revenue.

49. On December 19, 2014, Alligator offered A.O. Smith water service at a rate that was less than half of Alligator's publically advertised rates to its other customers.

50. Alligator offered to repay A.O. Smith for the cost of constructing a line to Alligator through further rate reductions.

51. In reliance on its undertaking with Alligator, A.O. Smith invested as much as approximately \$90,000 in lines, meters and related assets to by-pass the McBee system and connect to Alligator.

52. In reliance on this offer of below-market rates, A.O. Smith entered a joint undertaking with Alligator, described below, which ultimately resulted in A.O. Smith joining with Alligator in its plan to continue its domination of McBee's water system by poisoning McBee's relations with regulators and the public, misrepresenting McBee's ability to supply the needs of its customers, and filing spurious documents with governmental officials maligning McBee's system, service and capacity to serve customers.

Sabotage and False Reports

53. On June 17, 2015, the present action was filed to enjoin Alligator from serving A.O. Smith.

54. The following day, June 18, 2015, at approximately 5:00 in the afternoon, at the close of business hours, McBee personnel responded to a report of a line break in a sparsely populated area of the system.

55. A relatively new and otherwise perfectly functional 4" plastic water main had been punctured.

56. The puncture appeared to have been made by a standard piece of utility equipment, a ground probe, or some similar instrument.

57. There was no construction or other ground disturbing activity in the area.

58. The water main appeared to have been deliberately sabotaged.

59. When McBee personnel arrived at the scene, Odom was there taking photographs.

60. On information and belief, Alligator, through Odom and Odom and Associates, or those working on their behalf, caused the leak by puncturing a McBee water line with a ground probe or similar instrument.

61. Puncturing McBee's water lines would constitute a deliberate sabotaging of McBee's water system, disabling assets that were necessary to protect the health and welfare of McBee's citizens and customers.

62. As described above, at the time and continuing to this day, Alligator has in its possession the only copies of the plans for McBee's system, which was built under Alligator's supervision had been substantially rebuilt while Alligator operated it.

63. Those plans were necessary for locating valves needed to shut off the leak.

64. As former operator of the McBee system, Alligator had in its possession the inventory of spare parts required to fix leaks in the McBee system, including the part required to repair the leak on June 18th.

65. With those parts, the leak could have been repaired in short order.

66. Alligator refused to make either the spare parts or plans available to McBee when requested to do so on June 18, 2015.

67. Alligator personnel reported to McBee that Odom had threatened to fire any Alligator personnel who aided McBee in responding to the leak.

68. On the morning of June 19, 2015, McBee's contractors secured the required parts from a distributor in Columbia to repair the leak and repairs were about to be completed. At that time, Odom rescinded his orders preventing his employees from assisting in the repair, knowing that their assistance was not needed at that point.

69. The leak and Alligator's refusal to provide plans and spare parts to McBee when needed, as well as the subsequent acts described below, were acts committed as a part of Alligator's plan and pattern of deception and misrepresentation concerning McBee's ability to provide service to its customers.

70. This plan and pattern of deception and sabotage were executed by Alligator, Odom and Odom and Associates acting in concert for that purpose.

71. Emails exchanged between Alligator and A.O. Smith on Friday June 19, 2015, indicate that while McBee was attempting to repair the leak, Alligator and A.O. Smith employees were engaged in a joint effort to assemble information to capitalize on the event with regulators and the public.

72. On Friday, June 19, 2015, if not earlier, A.O. Smith entered into Alligator's plan and pattern of deception and misrepresentation and began to work with Alligator to create facts misrepresenting McBee's ability to serve customers reliably and efficiently.

73. Upon information and belief, A.O. Smith's goal in entering into the joint effort with Alligator was to protect its investment in the line to by-pass McBee, to secure its low-cost water supply contract with Alligator, to justify a decision by the courts and regulators to allow it to by-pass the McBee system in violation of 7 U.S.C.A. § 1926(b), and to justify A.O. Smith's actions taken to date to breach its 30-year plus relationship with McBee through secret negotiations with Alligator.

74. The amount of water discharged by the leak was significantly less than the amount McBee discharges in its routine flushing of fire hydrants.

75. However, on Friday June 19, 2015, after the leak was repaired, A.O. Smith phoned McBee Town Hall to falsely report that it had lost water service.

76. On information and belief, A.O. Smith made a similar phone call to DHEC.
77. At this time, McBee received all its bulk water supply from Alligator.
78. Alligator directly controlled the pressure on McBee's water system through its control of its pump, valves and other pressure control devices.
79. McBee personnel verified that the report of loss of pressure was false by immediately checking the water pressure on the McBee system and verifying that the valve between Alligator and the Town was open and fully adequate supplies of water were flowing through the meter.
80. The valve and meter between Alligator and McBee is located near the A.O. Smith site.
81. Driving out to the meter site minutes after A.O. Smith made its false reports to McBee and DHEC, McBee personnel saw Odom and A.O. Smith's plant personnel standing together outside of the A.O. Smith plant near its water meter.
82. Based on the false reports made by A.O. Smith on June 19, 2015, McBee was forced to issue an unnecessary boil water notice for the entire town.
83. Copies of this notice were made on a rushed basis, publicized in the media to the embarrassment of the town, and distributed by hand to Town residents at McBee's expense.
84. Local citizens' lives were greatly disrupted for a day until the unnecessary boil water notice expired.
85. Local industries were forced to buy bottled water for their workforce until the boil water notice was lifted.

Further False Reports

86. Since June 19, 2015, Alligator and A.O. Smith have continued to carry out their plan and pattern of deception and misrepresentation by unfairly and wrongfully stating to regulators, the courts and the public that the McBee water system lost water pressure during the June 18-19, 2015 event and that this purported loss of pressure demonstrated the unfitness of McBee to serve as A.O. Smith's water supplier or to operate its water system independently of Alligator.

87. These statements were knowingly false.

88. Since Alligator began supplying the Town with bulk water, Alligator has had direct and exclusive control over water pressure on McBee's system and monitors and regulates that pressure by the operations of its pumps and by raising and lowering the water levels in McBee's water tanks. Up until 2016, Alligator has monitored the levels in these tanks continuously through electronic metering.

89. Alligator and A.O. Smith knew that if any pressure malfunction was present at A.O. Smith, it was due to Alligator's mismanagement of the system.

90. As a sophisticated manufacturing company, with extensive engineering skills and expertise, and knowledge of the water system serving it, A.O. Smith knew that the reports and claims it and Alligator were making concerning McBee's water system were false and deceptive when they were made.

91. A.O. Smith has willingly and intentionally served as Alligator's conduit for publicizing these false and misleading reports and data.

92. The statements made by A.O. Smith and Alligator are the continuation of the plan and pattern of sabotage and deception begun on or before June 19, 2015 and a necessary part of it.

93. Alligator and A.O. Smith have sought to extend their plan and pattern of deception and misrepresentation against McBee by wrongfully stating to regulators, the courts and the public that the McBee water system lost water pressure in periods other than late June of 2015 and that McBee failed to fill its water tanks during these other periods, jeopardizing fire protection service to A.O. Smith knowing that these assertions were false, deceptive and misleading.

94. Over the past several years, neither Alligator nor A.O. Smith have ever notified the Town of any water pressure problems.

95. Allowing McBee's water tanks to run dry would constitute a deliberate sabotaging of McBee's water system by Alligator, which controlled the level of water in those tanks, disabling assets that are necessary to protect the health and welfare of McBee's citizens and customers.

96. McBee estimates that if A.O. Smith leaves its system, McBee will be required to increase rates by approximately 3.5 times their current rate.

FIRST CLAIM FOR RELIEF
Violation of 7 U.S.C.A. § 1926(b)
(As to Alligator Defendants)

97. McBee incorporates by reference each and every allegation in this Complaint, as though set forth in full herein.

98. Alligator has manifested its intent to limit and encroach upon areas served by McBee.

99. Alligator's actions are in violation of 7 U.S.C.A. § 1926(b).

100. 7 U.S.C.A. § 1926(b) protects rural water associations from encroachment by any other entity seeking to provide service in areas already being serviced. 7 U.S.C.A. § 1926(b) provides as follows:

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of such event be the basis of requiring such association to secure the franchise, license, or permit as a condition to continuing to serve the area by the association at the time of the occurrence of such event.

Thus, 7 U.S.C.A. § 1926(b) prohibits other entities from curtailing or limiting water service provided by or made available by any rural water association indebted to USDA/RD (formerly the Rural Economic and Community Development Service ("RECDS") and formerly Farmers Home Administration ("Fm HA")), during the term of such indebtedness.

101. McBee is an "association" within the meaning of 7 U.S.C.A. § 1926(b), is indebted to USDA/RD, and, at all times material, has provided, and is able to make available, water service to A.O. Smith.

102. Accordingly, McBee is entitled to the rights, privileges, and protections granted by 7 U.S.C.A. § 1926(b).

103. Alligator's actions and intended and proposed action to provide water service to A.O. Smith will curtail or limit the service and supply of water to customers and areas served by McBee and make it impossible for McBee to repay the loan to USDA/RD in violation of 7 U.S.C.A. § 1926(b).

104. McBee is entitled to a declaratory judgment pursuant to 28 U.S.C.A. §§ 2201 and 2202. There exists a dispute and actual controversy between the parties that cannot be resolved

absent declaratory relief by this court. McBee is entitled to a declaratory judgment, declaring the rights and legal relations of the parties as follows:

- (a) That McBee is an "association" within the meaning of 7 U.S.C.A. § 1926(b), is currently indebted to the USDA/RD, and, at all times material, has provided and made available water service to A.O. Smith in the County of Chesterfield;
- (b) That McBee is entitled to the rights, privileges, and protections granted under 7 U.S.C.A. § 1926(b) during the term of the USDA/RD indebtedness;
- (c) That A.O. Smith is contained within areas already serviced by McBee; and
- (d) That the actions of Alligator and all those acting in concert with Alligator in providing water service or attempting to provide water service to A.O. Smith and any other areas included in the area served by McBee will unlawfully curtail or limit McBee's service in violation of 7 U.S.C.A. § 1926(b).

SECOND CLAIM FOR RELIEF
Injunctive Relief
(As to Alligator Defendants)

105. McBee incorporates by reference each and every allegation in this Complaint, as though set forth in full herein.

106. McBee has demonstrated a strong likelihood of success on the merits in this case.

107. Should Alligator continue its unlawful actions in violation of 7 U.S.C.A. § 1926(b) and/or S.C. Code Ann. § 33-36-270(B), McBee will suffer irreparable harm through the loss of 60% of its water system revenue.

108. McBee has no adequate remedy at law.

109. The issuance of a preliminary and permanent injunction will not cause substantial harm to Alligator or those acting in concert with Alligator.

110. McBee is entitled to preliminary and permanent injunctive relief as follows:

- (a) Enjoining Alligator, and all those in active concert with Alligator, from taking any further action to supply water or attempt to supply water to A.O. Smith or any other area or areas included in the area served by McBee in violation of 7 U.S.C.A. § 1926(b) and/or S.C. Code Ann. § 33-36-270(B);
- (b) Enjoining Alligator, and all those in active concert with Alligator, from taking any further action that will serve to curtail or limit water service provided by McBee in violation of 7 U.S.C.A. § 1926(b) and/or S.C. Code Ann. § 33-36-270(B); and
- (c) Enjoining Alligator, and all those in active concert with Alligator, from taking any further action in violation of the declaratory judgments granted in this action.

THIRD CLAIM FOR RELIEF

Violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.*

(As to Alligator Defendants, A.O. Smith, and Odom and Associates)

111. McBee incorporates by reference each and every allegation of this Complaint, as though set forth in full herein.

112. A.O. Smith is engaged in trade or commerce within the scope of the South Carolina Unfair Trade Practices Act.

113. Alligator is engaged in trade or commerce within the scope of the South Carolina Unfair Trade Practices Act.

114. Odom and Associates is engaged in trade or commerce within the scope of the South Carolina Unfair Trade Practices Act.

115. As detailed above, Alligator has engaged in deceptive and unfair acts while engaged in trade or commerce, including

- (a) by diverting an \$850,000 grant given to the Town by the Department of Commerce to Alligator;
- (b) by ordering the destruction of Town records;
- (c) by depleting the Town's financial resources,
- (d) by sabotaging McBee's water system on June 18, 2015 in an effort to create a false and deceptive belief in the minds of McBee's citizens, customers, regulators and the public that McBee was unable to operate its system reliably and was unfit to provide water service;
- (e) by inducing A.O. Smith to make false reports to McBee and DHEC concerning a loss of water pressure on June 19, 2015;
- (f) by manipulating water pressures and tank levels on McBee's water systems to create false and deceptive information and data concerning McBee's ability to meet water demands;
- (g) by sharing false and deceptive information about McBee's water system with A.O. Smith;
- (h) by inducing A.O. Smith to share this false and deceptive information with regulators and other parties,
- (i) by inducing A.O. Smith to make other reports of false and deceptive data and information to regulators, the public and others including false and deceptive data and information wrongfully generated and provided by Alligator;
- (j) by making reports of false and deceptive data and information concerning McBee to regulators and the public itself; and

(k) by engaging in other unfair and deceptive acts or practices as otherwise set forth herein.

116. All of these acts were done by Alligator and Odom and Associates as part of an attempt by Alligator and Odom and Associates to destroy McBee as a competitor, to take A.O. Smith as a customer from McBee and in an attempt to monopolize water service in the McBee area.

117. A.O. Smith, in concert with Alligator, has engaged in deceptive and unfair acts while engaged in trade or commerce, including

(a) by knowingly making false reports to McBee and DHEC concerning a loss of water pressure on June 19, 2015, and

(b) by knowingly serving as Alligator's conduit for disseminating false and deceptive data and information to regulators, the public and others including false and deceptive data and information wrongfully generated by Alligator concerning McBee and its fitness to serve as a water supplier.

118. All this was done in an effort to assist Alligator in impugning McBee's fitness to supply water so that A.O. Smith could obtain water service from Alligator at discounted rates and recover its investment in by-pass facilities, all in violation of 7 U.S.C.A. § 1926(b)

119. As detailed above, Odom and Associates has also committed deceptive and unfair acts while engaged in trade or commerce, including

(a) by sabotaging McBee's water system;

(b) by impeding the repair of a tampered-with pipe,

(c) by threatening anyone who aided McBee with termination of employment;

(d) by abusing the operations of McBee's tanks to generate false and deceptive data;

(e) by coordinating and executing the plan of deception and unfairness discussed above;

(f) and by maintaining an overall corrupt business model.

120. A.O. Smith, Alligator, and Odom and Associates willfully and knowingly engaged in these deceptive and unfair acts.

121. These acts are harmful to the public, as they directly and adversely affect the Town of McBee's water system, which provides public water to the residents of the Town of McBee.

122. Additionally, these acts affect the public interest because they have undermined the confidence of the public in public water supply, resulted in unnecessary boil water notices due to false representations to DHEC, apparently have resulted in a depletion of water tanks jeopardizing fire protection and public safety, and have raised McBee's cost of water service to the public through unnecessary administrative, legal and regulatory costs.

123. These deceptive and unfair acts are capable of repetition and in fact have already been repeated by Alligator and Odom and Associates, in that Alligator and Odom and Associates have engaged in a decades-long practice of disparaging the ability or willingness of adjacent and competing utilities to provide service in an attempt to extend its service and sabotage to the Town.

124. These actions are likely to continue unabated unless stopped through this lawsuit or other means.

125. McBee has suffered actual damages as a result of A.O. Smith's, Alligator's, and Odom and Associates' unfair and deceptive conduct, including but not limited to loss of grant monies, loss of other municipal reserves, loss of financial records, the cost of reinstating permits

to operate its system, monies associated with having to respond to meritless accusations, having to issue and distribute unnecessary boil water notices, having to repair broken pipes, damage to the Town's business reputation, and delays in McBee's ability to operate its water system for which DHEC has already issued permits.

126. McBee is thus entitled to and requests an award of actual and treble damages against A.O. Smith, Alligator, and Odom and Associates, as well as its reasonable attorneys' fees and costs, along with any other relief that the Court deems necessary or proper.

FOURTH CLAIM FOR RELIEF

Negligence

(As to Alligator Defendants, A.O. Smith, Odom and Associates, and Odom)

127. McBee incorporates by reference each and every allegation in this Complaint, as though set forth in full herein.

128. South Carolina law imposes on all persons a duty of care not to "render a public water system, or part or portion of a public water system, inoperable or unusable by means of contamination, vandalism, sabotage, or assault upon or detention of employees of the system or to misrepresent any fact related to the operation of a public water system." S.C. Code Ann. § 44-55-80.

129. Alligator, A.O. Smith, Odom and Associates, and Odom willfully, wantonly and recklessly violated this duty of care by the actions set forth above including sabotaging of McBee's water system, making false reports to DHEC concerning loss of water pressure on June 19, 2015, depleting the levels of water in McBee's water tanks, and making and publicizing other false reports concerning the operations of McBee's water system or the ability of McBee's water system to reliably serve customers.

130. McBee has suffered damages related to the repair of its water system, the issuance of unnecessary boil-water notices, having to respond to false and reports to its regulators, and damage to McBee's reputation with customers and regulators.

131. McBee is entitled to and requests an award of actual, consequential, and punitive damages against Alligator, A.O. Smith, Odom and Associates, and Odom for their breach of this duty.

132. McBee also seeks for Alligator to provide all documents in its possession relating to the replacement of McBee's water lines, including but not limited to, as-built plans, written and electronic financial records, correspondence, engineering notes, and drafts, whether held in electronic or other form.

PRAYER FOR RELIEF

WHEREFORE, McBee demands the following relief:

1. Judgment in favor of McBee on all claims for relief asserted in this Complaint;
2. Declaratory judgment in favor of McBee pursuant to 28 U.S.C.A. §§ 2201 and 2202 as follows:

- (a) That McBee is an "association" within the meaning of 7 U.S.C.A. § 1926(b), is currently indebted to the USDA/RD, and, at all times material, has provided or made available water service to A.O. Smith;
- (b) That McBee is entitled to the rights, privileges, and protection granted under 7 U.S.C.A. § 1926(b) during the term of McBee's USDA/RD indebtedness;
- (c) That McBee is currently providing water services to A.O. Smith; and
- (d) That the actions of Alligator, and all those acting in concert with Alligator, in providing water service or attempting to provide water service to A.O. Smith or any other

area or areas included in the water service area of McBee will unlawfully curtail or limit McBee's service in violation of 7 U.S.C.A. § 1926(b).

3. In the alternative, a declaratory judgment in favor of McBee pursuant to S.C. Code Ann. 15-53-10 *et seq.* as follows:

- (a) That McBee provides water services to A.O. Smith;
- (b) That McBee has the paramount and exclusive right to provide water service to A.O. Smith; and
- (c) That the actions of Alligator, and all those acting in concert with Alligator, in providing water service or attempting to provide water service to A.O. Smith and any other area or areas served by McBee is in violation of S. C. Code Ann. §33-36-270(B).

4. Preliminary and permanent injunctive relief in favor of McBee as follows:

- (a) Enjoining Alligator, and all those in active concert with Alligator, from taking any further action to supply water or to attempt to supply water to A.O. Smith in violation of 7 U.S.C.A. § 1926(b) and/or S.C. Code Ann. § 33-36-270(B);
- (b) Enjoining Alligator, and all those in active concert with Alligator, from taking any further action that will serve to curtail or limit water service provided by McBee to A.O. Smith or any other areas already served by McBee, in violation of 7 U.S.C.A. § 1926(b) and/or S.C. Code Ann. § 33-36-270(B); and
- (c) Enjoining Alligator, and all those in active concern with Alligator, from taking any further action in violation of the declaratory judgment granted in this action.

5. An injunction in favor of the Town of McBee against A.O. Smith, the Alligator Defendants, Odom and Associates, and Odom against further unfair and deceptive acts,

violations of S.C. Code Ann. §§ 44-55-80, and defamatory statements concerning the Town of McBee's water system.

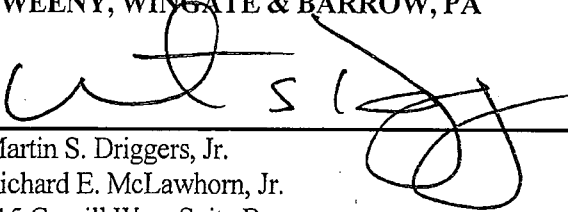
6. An award in favor of the Town of McBee against A.O. Smith, the Alligator Defendants, Odom and Associates, and Odom for actual damages, consequential damages, general damages, exemplary damages, special damages, punitive damages, treble damages, attorneys' fees, costs of this action, equitable relief, injunctive relief, prejudgment and post-judgment interest;

7. Alligator to provide all documents in its possession relating to the replacement of McBee's water lines, including but not limited to, as-built plans, written and electronic financial records, correspondence, engineering notes, and drafts, whether held in electronic or other form; and

8. Granting all other and further relief that the Court deems appropriate.

Respectfully submitted,

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Attorneys for Plaintiff

May 4, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

Town of McBee,

Plaintiff,

versus

Alligator Rural Water & Sewer Company,
Inc., Alligator Rural Water Company, Inc.,
A.O. Smith Corporation, Odom and
Associates, Inc., and Glenn Odom,
Individually,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

2015-CP-13-379

ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIM,
(JURY TRIAL DEMANDED)

MAY 24 AM 10 05
FAYEL L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

A True Copy, Attest
Jaye S. Sellers

Not waiving and specifically reserving its right to move to strike and dismiss Plaintiff's Amended Complaint under Rule 12(b)(6) and Rule 15, South Carolina Rules of Civil Procedure, the Defendant, Alligator Rural Water & Sewer Company, Inc., formerly known as Alligator Rural Water Company, Inc., (hereinafter referred to as "Alligator"), answering the Plaintiff's Amended Complaint would allege and show the following:

FOR A FIRST DEFENSE:

1. That Alligator denies each and every allegation contained in the Plaintiff's Amended Complaint not hereinafter specifically admitted, explained or qualified and demands strict proof thereof.
2. As to the allegations of Paragraphs 1 and 2, Alligator craves reference to the statutes

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referenced in said paragraphs and asserts that the statutes speak for themselves. Further answering, to the extent the allegations set forth in these paragraphs attempt to establish any liability or violations on the part of Alligator or claim any rights or protections on the part of the plaintiff, the allegations are denied and Alligator demands strict proof thereof.

3. That Alligator admits so much of the allegations of Paragraph 3 of the Amended Complaint as allege that McBee is a municipal corporation organized and existing under the laws of the State of South Carolina and would further admit that A.O. Smith Corporation located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina 29101 is currently purchasing water from McBee. Alligator denies all remaining allegations of said paragraph and demands strict proof thereof.

4. That the allegations of Paragraph 4 do not pertain to this Defendant and Alligator is informed and believes that a response to this paragraph is not necessary, to the extent a response is required, Alligator denies the same and demands strict proof thereof.

5. That the allegations of Paragraph 5 do not pertain to this Defendant but, upon information and belief, Alligator admits the same.

6. That Alligator admits so much of the allegations of Paragraph 6 as allege that Alligator Rural Water & Sewer Company, Inc. is a South Carolina corporation and has its principal place of business at 378 W. Pine Avenue, McBee, Chesterfield County, South Carolina, 29101. Further answering said paragraph, Alligator Rural Water Company, Inc. was originally incorporated in 1987 and subsequently changed its name to Alligator Rural Water & Sewer Company, Inc. in 1998.

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7. That Alligator, upon information and belief, admits the allegations contained in Paragraph 7.

8. That Alligator admits the allegations contained in Paragraphs 8 and 9 of the Amended Complaint.

9. That Alligator denies the allegations contained in Paragraph 10 and demands strict proof thereof. Further answering said Paragraph, Alligator alleges that McBee is a water customer of Alligator who currently supplies all of McBee's water.

10. As to the allegations contained in Paragraphs 11,12,13,14,15, and 16 of the Complaint, Alligator lacks sufficient information or knowledge upon which to form a belief as to the veracity of those allegations and therefore denies the same and demands strict proof thereof.

11. That Alligator admits so much of the allegations of Paragraph 17 as allege that Alligator claims the right to service the geographical area in which A.O. Smith is situate as this is Alligator's existing service territory. Further answering said paragraph, Alligator alleges that A.O. Smith has requested water service from Alligator. Alligator denies the remaining allegations of said paragraph and demands strict proof thereof.

12. That Alligator denies the allegations of Paragraphs 18 and 19 and demands strict proof thereof.

13. That Alligator denies the allegations of Paragraph 20 and demands strict proof thereof. Further answering said paragraph, Alligator alleges that it is a corporation organized under S.C. Code Ann §§ 33-36-10 et seq. and is a corporation-not-for-profit financed by federal or state loans.

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14. That Alligator denies the allegations of Paragraph 21 and demands strict proof thereof.
15. That upon information and belief, Alligator admits the allegations of Paragraph 22.
16. That Alligator denies the allegations of Paragraph 23 and demands strict proof thereof.
17. That, upon information and belief, Alligator admits so much of the allegations of Paragraph 24 as allege that in 2002, Odom resigned to become the local magistrate and Will Edwards became mayor of the Town, serving from 2002 to 2004 and would further admit that Will Edwards is an employee of Odom and Associates. Alligator denies the remaining allegations and demands strict proof thereof.
18. That Alligator admits the allegations of Paragraph 25.
19. That Alligator denies the allegations contained in Paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 demands strict proof thereof.
20. That Alligator admits so much of the allegations of Paragraph 36 as allege that Odom was succeeded as mayor by Mr. Edwards, but would deny the remaining allegations and demands strict proof thereof.
21. That Alligator lacks sufficient information or knowledge upon which to form a belief as to the veracity of the allegations of Paragraphs 36, 37, 38, 39, and 40 and therefore denies the same and demands strict proof thereof.
22. That Alligator denies the allegations contained in Paragraph 41 and demands strict proof thereof.

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23. That Alligator denies the allegations of Paragraphs 42, 43 and 44 and demands strict proof thereof.
24. That Alligator admits the allegations of Paragraph 45.
25. That Alligator denies the allegations of Paragraph 46 and demands strict proof thereof.
26. That Alligator lacks sufficient information or knowledge upon which to form a belief as to the veracity of the allegations of Paragraph 47 and therefore deny the same and demands strict proof thereof.
27. That Alligator denies the allegations of Paragraphs 48, 49, 50, 51, and 52 and demands strict proof thereof.
28. That Alligator admits the allegations of Paragraph 53 that the present action was filed on June 17, 2015.
29. That Alligator lacks sufficient information or knowledge to admit or deny the allegations of Paragraph 54 and therefore denies the same and demands strict proof thereof.
30. That Alligator denies the allegations of Paragraphs 55, 56, 57, 58, 59 and 60 and demands strict proof thereof.
31. That the allegations of Paragraph 61 do not purport to state claims or allegations against Alligator and/or constitute legal conclusions such that no response is required. To the extent a response is required, Alligator denies the same and demands strict proof thereof.
32. That Alligator denies the allegations of Paragraph 62 and 63 and demands strict proof thereof.

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33. That Alligator admits so much of the allegations of Paragraph 64 as allege that Alligator did have 4" pipe in stock on June 18th but would deny the remaining allegations of said paragraph and demands strict proof thereof. Further answering said paragraph, Alligator is informed and believes and therefore alleges that 4" pipe is standard and anyone in the water business should have 4" pipe in stock.

34. That Alligator lacks sufficient information or knowledge upon which to form a belief as to the veracity of the allegations of Paragraph 65 and therefore denies the same and demands strict proof thereof.

35. That Alligator, upon information and belief, denies the allegations of Paragraphs 66 and 68 and demands strict proof thereof.

36. That Alligator denies the allegations of Paragraphs 69 and 70 and demands strict proof thereof.

37. That Alligator admits so much of the allegations of Paragraph 71 as allege that Alligator and AO Smith exchanged emails but would deny the remaining allegations and demands strict proof thereof.

38. That Alligator denies the allegations of Paragraph 72 and demands strict proof thereof.

39. That the allegations of Paragraph 73 do not purport to state claims or allegations against Alligator such that no response is required. To the extent these allegations do pertain to Alligator, the same are denied.

40. That Alligator denies the allegations of Paragraph 74 and demands strict proof thereof.

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thereof.

41. That the allegations of Paragraphs 75 and 76 do not purport to state claims or allegations against Alligator such that no response is required. To the extent these allegations do pertain to Alligator, the same are denied.

42. That Alligator admits the allegations of Paragraph 77.

43. That Alligator denies the allegations of Paragraph 78 and 79 and demands strict proof thereof.

44. That Alligator admits the allegations of Paragraph 80.

45. That Alligator denies the allegations of Paragraph 81 and demands strict proof thereof.

46. That Alligator lacks sufficient information or knowledge upon which to form a belief as to the veracity of the allegations of Paragraphs 82, 83, 84, and 85 and therefore denies the same and demands strict proof thereof.

47. That Alligator denies the allegations of Paragraph 86 and 87 and demands strict proof thereof.

48. That Alligator denies the allegations of Paragraphs 88 and 89 and demands strict proof thereof. Further answering said paragraphs, Alligator would allege that when a pipe blows out there is no way to control the pressure.

49. That the allegations of Paragraphs 90 and 91 do not purport to state claims or allegations against Alligator such that no response is required. To the extent these allegations do pertain to Alligator, the same are denied.

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50. That Alligator denies the allegations of Paragraphs 92 and 93 and demands strict proof thereof.

51. That answering the allegations of Paragraph 94, Alligator would have had no reason to notify the Town of a water pressure problem over the past several years.

52. That Alligator denies the allegations of Paragraph 95 and demands strict proof thereof.

53. That Alligator lacks sufficient information or knowledge upon which to form a belief as to the veracity of the allegations of Paragraph 96 and therefore denies the same and demands strict proof thereof.

54. That responding to Paragraph 97, Alligator re-asserts the preceding paragraphs as if fully set forth herein.

55. That Alligator denies the allegations contained in Paragraphs 98 and 99 and demands strict proof thereof.

56. As to the allegations of Paragraph 100, Alligator craves reference to the statute referenced therein and asserts that the statute speak for itself. Further answering, to the extent the allegations set forth in this paragraph attempt to establish any liability or violations on the part of Alligator or claim any rights or protections on the part of the plaintiff, the allegations are denied and Alligator demands strict proof thereof.

57. That Alligator denies the allegations contained in Paragraphs 101, 102, 103, and 104 and demands strict proof thereof.

58. As to Paragraph 105, Alligator re-asserts and re-alleges all allegations and defenses

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contained herein, as though set forth in full.

59. That Alligator denies the allegations contained in Paragraphs 106, 107, 108, 109, and 110 and demands strict proof thereof.

60. As to Paragraph 111, Alligator re-asserts and re-alleges all allegations and defenses contained herein, as though set forth in full.

61. That the allegations of Paragraph 112 do not purport to state claims or allegations against Alligator such that no response is required. To the extent these allegations do pertain to Alligator, the same are denied.

62. That Alligator denies the allegations of Paragraph 113 and demands strict proof thereof.

63. That the allegations of Paragraph 114 do not purport to state claims or allegations against Alligator such that no response is required. To the extent these allegations do pertain to Alligator, the same are denied.

64. That Alligator denies the allegations of Paragraphs 115 and 116 and demands strict proof thereof.

65. That the allegations of Paragraphs 117, 118, and 119 do not purport to state claims or allegations against Alligator such that no response is required. To the extent these allegations do pertain to Alligator, the same are denied.

66. That Alligator denies the allegations of Paragraphs 120, 121, 122, 123, 124, 125, and 126 and demands strict proof thereof.

67. As to Paragraph 127, Alligator re-asserts and re-alleges all allegations and defenses

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contained herein, as though set forth in full.

68. As to the allegations of Paragraph 128, Alligator craves reference to the statute referenced therein and asserts that the statute speak for itself. Further answering, to the extent the allegations set forth in this paragraph attempt to establish any liability or violations on the part of Alligator, the allegations are denied and Alligator demands strict proof thereof.

69. That Alligator denies the allegations of Paragraphs 129, 130, 131, and 132 and demands strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF AFFIRMATIVE DEFENSE

(Failure to state a claim upon which relief can be granted)

70. Alligator reaffirms and reiterates all of the paragraphs contained in this Answer to Amended Complaint and Counterclaim herein as fully as if repeated verbatim.

71. On information and belief, the Amended Complaint fails to state a claim upon which relief can be granted as to Alligator.

FOR A THIRD DEFENSE AND BY WAY OF AFFIRMATIVE DEFENSE

(Statute of Limitations)

72. That Alligator re-affirms and reiterates all of the paragraphs contained in this Answer to Amended Complaint and Counterclaim herein as fully as if repeated verbatim.

73. Alligator is informed and believes that Plaintiff's Third Claim for Relief as to Alligator is barred by the applicable statute of limitations.

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FOR A FOURTH DEFENSE AND BY WAY OF AFFIRMATIVE DEFENSE

(Laches, Waiver and/or Estoppel)

74. That Alligator re-affirms and reiterates all of the paragraphs contained in this Answer to Amended Complaint and Counterclaim herein as fully as if repeated verbatim.

75. Alligator is informed and believes that Plaintiffs' Third Claim for Relief as to Alligator is barred by the doctrines of laches, waiver, and/or estoppel.

FOR A FIFTH DEFENSE AND BY WAY OF AFFIRMATIVE DEFENSE

(Protections of Tort Claims Act)

76. That Alligator re-affirms and reiterates all of the paragraphs contained in this Answer to Amended Complaint and Counterclaim herein as fully as if repeated verbatim.

77. That Alligator is a corporation not-for-profit organized pursuant to §33-36-10 et.seq., South Carolina Code of Laws, as amended and must be treated like a special purpose district of the state for purposes of Chapter 78 of Title 15.

78. That Alligator is afforded all of the protections, limitations upon liability and damages and exemptions from liability and damages contained in §15-78-10 et.seq. South Carolina Code of Laws, as amended.

79. That any claims for punitive damages against Alligator are barred.

FOR A SIXTH DEFENSE AND BY WAY OF A FIRST COUNTERCLAIM

80. That Alligator reaffirms and reiterates all of the paragraphs contained in this Answer to Amended Complaint and Counterclaim herein as fully as if repeated verbatim.

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81. That Alligator is a corporation not-for-profit organized and existing under the laws of the State of South Carolina with its principal office in the County of Chesterfield, State of South Carolina. Alligator provides water service in its geographical service area which includes all of the rural McBee area in Chesterfield County and outside of the McBee city limits.

82. That McBee is a municipal corporation organized and existing under the laws of the State of South Carolina.

83. That S.C. Code Ann. §5-31-1910 authorizes a town to furnish water and electric current beyond corporate limits.

84. That S.C. Code Ann. §5-31-1910 provides:

Any city or town in this State owning a water or light plant may through the proper officials of such city or town, enter into a contract with any person without the corporate limits of such city or town but contiguous thereto to furnish such person electric current or water from such water or light plant of such city or town and may furnish such water or light upon such terms, rates and charges as may be fixed by the contract or agreement between the parties in this behalf, either for lighting or for manufacturing purposes, when in the judgment of the city or town council it is for the best interest of the municipality so to do. No such contract shall be for a longer period than two years but any such contract may be renewed from time to time for a like period.

85. That the manufacturing facility owned and operated by A.O. Smith Corporation (A.O. Smith) located at 25589 U.S. 1, McBee, Chesterfield, South Carolina is outside the corporate limits of McBee and is noncontiguous thereto. A.O. Smith is situate in Alligator's water service territory.

86. That Defendants are informed and believe that McBee is currently providing water services to A.O. Smith without a written contract.

87. That McBee is serving A.O. Smith, which is not contiguous to the corporate limits

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of McBee and is in Alligator's water service territory, in violation of South Carolina law.

88. That A.O. Smith has expressed its interest in purchasing water from Alligator.

89. That Alligator is capable of providing the services desired by A.O. Smith.

90. That Alligator is entitled to declaratory judgment in this matter. There exists a dispute and actual controversy between the parties that cannot be resolved absent declaratory relief by this court. Alligator is entitled to a declaratory judgment, declaring that rights and legal relations of the parties as follows:

(a) That A.O. Smith is situate in Alligator's water service territory;

(b) That Alligator has the paramount and exclusive right to provide water service to A.O. Smith; and

(c) That the actions of McBee in providing water service to a customer not contiguous to the corporate limits of the town and in the absence of a contract is in violation of S.C. Code Ann. §5-31-1910.

FOR A SEVENTH DEFENSE AND BY WAY OF A SECOND COUNTERCLAIM

91. That Alligator reaffirms and reiterates all of the paragraphs contained in this Answer to Amended Complaint and Counterclaim herein as fully as if repeated verbatim.

92. That Alligator is an obligor to the United States of America, Department of Agriculture, Rural Development (referred to as "RD"), on certain indebtedness made pursuant to and authorized by the Consolidated Farm and Rural Development Act of 1961, 7 U.S.C.A. §1921 et seq.

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93. That Alligator is currently indebted to RD in the approximate amount of \$23,000,000.00, as evidenced by numerous promissory notes, real estate mortgages and security agreements. This indebtedness remains in full force and effect.

94. That Alligator provides water services in the service territory described in its original Articles of Incorporation filed with the South Carolina Secretary of State in 1987 and all amendments thereto that have been subsequently filed.

95. That McBee is presently providing water to A.O. Smith which is within the existing service area of Alligator.

96. That McBee's actions are in violation of 7 U.S.C.A. §1926(b).

97. That Alligator is informed and believes that it is protected by 7 U.S.C.A. §1926(b) which protects rural water associations, such as Alligator, which have received loans from the United States government by providing that the service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of such event be the basis of requiring such association to secure the franchise, license, or permit as a condition to continuing to serve the area by the association at the time of the occurrence of such event.

98. Accordingly, Alligator is entitled to the rights, privileges, and protections granted by 7 U.S.C.A. §1926(b).

99. That McBee's actions of continuing to sell water to A.O. Smith has curtailed and

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limited the service and supply of water of Alligator in its existing territory which makes it more difficult for Alligator to repay its loans to RD in violation of 7 U.S.C.A. §1926(b).

100. That Alligator is entitled to declaratory judgment pursuant to 28 U.S.C.A. §§ 2201 and 2202. There exists a dispute and actual controversy between the parties that cannot be resolved absent declaratory relief by this Court. Alligator is entitled to a declaratory judgment, declaring the rights and legal relations of the parties as follows:

(a) That Alligator is a rural water association and currently indebted to RD and therefore entitled to the rights, privileges, and protections granted under 7 U.S.C.A. §1926(b) during the term of the RD indebtedness.

(b) That A.O. Smith is contained within Alligator's water service territory; and

(c) That McBee's continued water service to A.O. Smith will unlawfully curtail or limit Alligator's service in violation of 7 U.S.C.A. §1926(b).

BY WAY OF A THIRD COUNTERCLAIM

101. That Alligator reaffirms and reiterates all of the paragraphs contained in this Answer to Amended Complaint and Counterclaim herein as fully as if repeated verbatim.

102. That Alligator Rural Water & Sewer Company, Inc. is a corporation not-for-profit organized and existing under the laws of the State of South Carolina with its principal office in the County of Chesterfield, State of South Carolina.

103. That Plaintiff, Town of McBee, is a municipal corporation and political subdivision of the State of South Carolina and therefore a governmental entity located within the County of Chesterfield, State of South Carolina.

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104. On December 28, 1999, Plaintiff and Alligator entered into a Water Purchase Agreement, hereinafter referred to as "Agreement", a copy of which was attached as Exhibit "A" to Alligator's original Answer and Counterclaim.

105. That pursuant to the Agreement, Alligator would provide Plaintiff with water at the rate of \$0.95 per thousand gallons.

106. That pursuant to the Agreement, the schedule of rates paid by Plaintiff, as Purchaser, is subject to review and modification each year on or about the first day of May, 2001. Modifications of rates, if adopted by Alligator, as Seller, will be based on actual increases in costs of production, not including capital expenditures (sic) and/or improvements, presented to Purchaser for its review at least thirty (30) days prior to the effective date of any increase. Copies of rate calculation, and pertinent record substantiating same, will be available to Purchaser for inspection during the review period. (NOTE: A copy of Seller's audit report for the preceding year, upon which any modification may be made, will be available to Purchaser upon request to Seller.)

107. That an actual controversy has arisen and now exists between plaintiff and Alligator regarding their respective rights and duties under the contract.

108. That Plaintiff is currently only paying \$1.25 per 1000 gallons of water. This rate increase became effective on July 1, 2003.

109. That since July 2003, Alligator has increased rates, as contemplated by the Agreement, and in accordance with said Agreement, four additional times and notified Plaintiff of the same, the first of such increases to be effective in 2006. The plaintiff has willfully refused to pay the defendant's current rates and has been paying only \$1.25 per 1000 gallons for the past twelve

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years.

110. That in accordance with the said Agreement, Alligator last notified Plaintiff of a rate increase by letter dated April 25, 2013. The new rate in the amount of \$1.92 per 1000 gallons went into effect on June 1, 2013.

111. That Alligator is informed and believes that because of Alligator's rate increase, McBee raised the water rates of its customers by Ordinance effective October 16, 2013. According to the Ordinance, a water rate increase was necessary because "the waterworks system has experienced a rate increase of 54% per 1,000 gallons of purchased water".

112. That even though McBee increased the rates of its customers, McBee has continued to pay Defendants only \$1.25 per 1,000 gallons of purchased water.

113. That Plaintiff has failed to pay in full the invoices and statements for water and other services supplied since June 2013 and Plaintiff currently owes the Defendant the principal amount of \$125,576.76. That each month this amount will continue to increase as Plaintiff refuses to pay the monthly invoices in full.

114. That Alligator has demanded payment from the Plaintiff for the water and other services and the Plaintiff has failed and refused to make such payment.

115. That McBee has breached the terms of the agreement by its failure to pay in full the invoices and statements for water and other services supplied since June 2013 and Alligator is entitled to judgment in the amount currently owing from McBee, which amount was \$125,576.76 as of the date of the filing of Alligator's original Answer and Counterclaim, together with all additional amounts continuing to accrue since that date, with interest thereon.

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BY WAY OF A FOURTH COUNTERCLAIM

116. That Alligator reaffirms and reiterates all of the paragraphs contained in this Answer to Amended Complaint and Counterclaim herein as fully as if repeated verbatim.

117. Alligator is informed and believes that for an extended period of time prior to 1999, Plaintiff had continued DHEC compliance issues regarding its water system and requested assistance from Alligator in operating its system.

118. In 1999, in an effort to provide the citizens of McBee with safe drinking water, and to protect Plaintiff from severe DHEC penalties, Alligator agreed to begin operating Plaintiff's water system and selling water to McBee.

119. In order to provide these services to McBee, it was necessary for Alligator to borrow significant sums of money from the United States of America, Department of Agriculture, Rural Development (hereafter "RD") to provide the water that McBee needed each month to meet the needs of its existing customers.

120. In order to secure the loan, RD required McBee and Alligator to enter into a Water Purchase Agreement, a copy of which is attached hereto as Exhibit "A". This Water Purchase Agreement is pledged as security for all of Alligator's RD loans since 1999.

121. Since 1999 McBee has not had a DHEC permit to operate its water system and has purchased all of its water from Alligator pursuant to the above referenced agreement.

122. McBee is Alligator's second largest water customer and is a significant source of Alligator's revenue each month.

123. Alligator has learned that McBee intends to begin operating its own system and stop

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purchasing water from Alligator all together.

124. Alligator is providing water service within the corporate limits of the Town of McBee and to all McBee customers outside of the corporate limits pursuant to the said water purchase agreement.

125. McBee has manifested its intent to limit Alligator's service and supply of water in areas already served by Alligator in violation of 7 U.S.C.A. §1926(b). This section prohibits municipal corporations or other public bodies from curtailing or limiting water service provided by or made available by any rural water association indebted to RD (formerly the Rural Economic and Community Development Service and formerly Farmers Home Administration, during the term of such indebtedness.

126. McBee's actions and intended and proposed actions to operate its own system and stop purchasing water from Alligator will curtail or limit the service and supply of water to customers and areas served by Alligator and make it impossible for Alligator to repay its loans to RD in violation of 7 U.S.C.A. §1926(b).

127. Alligator is entitled to declaratory judgment pursuant to 28 U.S.C.A. §§ 2201 and 2202. There exists a dispute and actual controversy between the parties that cannot be resolved absent declaratory relief by this Court. Alligator is entitled to a declaratory judgment, declaring the rights and legal relations of the parties as follows:

(a) That Alligator is a rural water association and currently indebted to RD and therefore entitled to the rights, privileges, and protections granted under 7 U.S.C.A. §1926(b) during the term of the RD indebtedness.

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(b) That Alligator is providing water service within the corporate limits of the Town of McBee and to all McBee customers outside of the corporate limits pursuant to the said water purchase agreement; and

(c) That McBee's actions and all those acting in concert with McBee in attempting to obtain a DHEC permit and operate its water system so as to discontinue purchasing water from Alligator at its current usage pursuant to the Water Purchase Agreement attached hereto, will unlawfully curtail or limit Alligator's service in violation of 7 U.S.C.A. §1926(b).

BY WAY OF A FIFTH COUNTERCLAIM

128. That Alligator reaffirms and reiterates all of the paragraphs contained in this Answer to Amended Complaint and Counterclaim herein as fully as if repeated verbatim.

129. That Alligator has demonstrated a strong likelihood of success on the merits in this case.

130. That should McBee continue its unlawful actions in violation of 7 U.S.C.A. §1926(b), Alligator will suffer irreparable harm through the loss of a significant water customer.

131. That Alligator has no adequate remedy at law.

132. That the issuance of a preliminary and permanent injunction will not cause substantial harm to McBee or those acting in concert with McBee.

133. That Alligator is entitled to preliminary and permanent injunctive relief as follows:

(a) Enjoining McBee, and all those in active concert with McBee, from taking any further actions which would enable the Town to stop purchasing water from Alligator pursuant to the Water Purchase Agreement, in violation of 7 U.S.C.A. §1926(b); and

(b) Enjoining McBee, and all those in active concert with McBee, from taking any further action that will serve to curtail or limit water service provided by Alligator in violation of 7 U.S.C.A. §1926(b); and

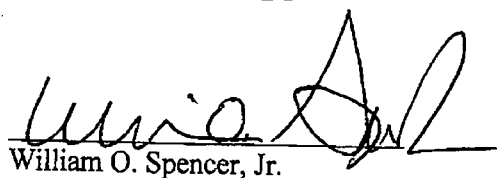
(c) Enjoining McBee, and all those in active concert with McBee, from taking any further actions in violation of the declaratory judgments granted in this action.

134. That Alligator makes demand for a trial by jury on all triable issues of fact contained in the pleadings.

WHEREFORE, having fully answered the Amended Complaint herein, Alligator prays:

1. That the Amended Complaint be stricken and/or dismissed;
2. That Alligator have judgment against the Plaintiff on its counterclaims;
3. For a jury trial on all triable issues of fact contained in the pleadings;
4. For an award to Alligator of its costs and reasonable attorney's fees; and
5. For such other and further relief as this Court may deem just and proper.

SPENCER LAW FIRM



William O. Spencer, Jr.
Attorney for Alligator
301 West Main Street
P.O. Box 190
Chesterfield, S.C. 29709
(843) 623-2144

Chesterfield, South Carolina.
May 23, 2016.

#21

State of South Carolina) In the Court of Common Pleas
County of Chesterfield) Fourth Judicial Circuit
2015-CP-13-00379

Town of McBee,)
Plaintiff,)
vs.) Transcript of Record
Alligator Rural Water and)
Sewer Company, Inc.,)
Alligator Rural Water)
Company, Inc.)
Defendants.)
_____)

Darlington, South Carolina
March 23, 2016

B E F O R E:

The Honorable Roger E. Henderson

A P P E A R A N C E S:

Mr. Belton Zeigler, Esquire
Attorney for Plaintiff

Mr. William O. Spencer, Jr., Esquire
Attorney for Defendant,
Alligator Rural Water and Sewer, Company

LISA S. CARTER
CIRCUIT COURT REPORTER

I N D E X

WITNESSES

PAGE

(NO WITNESSES CALLED DURING HEARING)

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EXHIBITSNO.DESCRIPTIONEV.

(NO EXHIBITS INTRODUCED DURING HEARING)

1 THE COURT: The next matter on the docket is the Town of
2 McBee versus Alligator Rural Water and Sewer Company. I
3 understand we have some motions, Mr. Spencer, is that
4 correct?

5 MR. SPENCER: Yes, Your Honor.

6 THE COURT: If you would identify the matter for the
7 record then and tell us what relief you seek and the caption
8 of the case.

9 MR. SPENCER: The case is the Town of McBee, plaintiff
10 versus Alligator Rural Water and Sewer Company, Inc., as
11 defendant. This action historically was commenced by the
12 Town of McBee back in June of 2015 by the filing of a summons
13 and complaint against Alligator. Subsequently, I have passed
14 up Alligator's answer and counterclaim which is verified.
15 And, simultaneously, with filing the answer and counterclaim
16 Alligator also filed its motion for a Temporary Restraining
17 Order and that's the motion that's being heard before you
18 today. That motion was also filed on August 17, 2015. At
19 the time the Town of McBee filed its summons and complaint
20 against Alligator, it also filed a motion for a temporary
21 injunction and I consented to that injunction. This motion
22 came before you December 14th at the non-jury, jury/-non-jury
23 term. On December 14th we had non-jury cases and I have a
24 copy of that docket and this case was on that docket December
25 14, 2015 in Chesterfield. I was the only person that

1 appeared. No counsel for the Town of McBee appeared that
2 day. And I reported to the Court that it was my
3 understanding that the motion had been resolved. I had
4 consented to their temporary injunction and I had done it in
5 writing on their order because they had filed a motion
6 enjoining Alligator from providing water service to A.O.
7 Smith in McBee. The lawsuit itself is brought by the town
8 enjoining Alligator from providing water service to A.O.
9 Smith and they also filed a temporary injunction because at
10 the time A.O. Smith was constructing a connection to
11 Alligator so that Alligator could provide water to A.O.
12 Smith. They raised in their summons and complaint that
13 Alligator was not able to serve A.O. Smith because under 7-
14 19-26 (b) of the United States Code, which I have a copy of,
15 any entity that interferes or curtails the ability of an
16 association that borrowed money from the Farmers Home
17 Administration which they became Rural Development, was
18 prohibited from taking its territory of customers. And so
19 their theory of their suit was we cannot serve Alligator
20 because, I mean, we could not serve A.O. Smith because A.O.
21 Smith was served by the Town of McBee. The Town of McBee
22 serves A.O. Smith but A.O. Smith is not in the town.
23 Alligator did not exist at the time A.O. Smith came to the
24 McBee area and A.O. Smith is not contiguous to the town. So
25 A.O. Smith believed that it could choose whoever it wanted

1 sense it didn't have no written contract with the Town of
2 McBee was not contiguous to the town and they have not been
3 added.

4 My motion sought since I agreed on behalf of Alligator
5 that we would not provide temporarily, during the pendency of
6 this action, any water services to A.O. Smith during this
7 litigation. I consented to that. My understanding was when
8 I file my motion my motion was that the Town of McBee who is
9 our second largest customer would not seize purchasing water
10 from Alligator and selling water to its customers through its
11 own wells. And our justification was the same as the Town of
12 McBee's that 7 U.S. Code § 1926 (b) it would also curtail our
13 ability because we were given a forty year loan from Rural
14 Development to put in a system that connected our system to
15 the Town of McBee. So since 1999, we have provided all the
16 water to the Town of McBee under a water services agreement
17 that was pledged to the United States government and is
18 attached to my answer and counterclaim.

19 I sent you a proposed order and Mr. Martin Driggers said
20 that was not his understanding, that his client did agree to
21 such temporary injunction which I had purported to you that
22 we had an agreement and so you did not sign the order based
23 on Mr. Driggers writing you and asking you not to sign it.
24 And so everything was going fine because the town was not
25 providing water services and then last week began operating

1 its own system because we notice no water was going through
2 our meter to the town. And so if you have Mr. Glenn Odom's
3 affidavit, whose the manager of Alligator, it explains how
4 large a customer the Town of McBee is and that we would not
5 be able to make our payment where we would be impaired if we
6 lost the Town of McBee as a customer under our forty year
7 loan. And so all we were asking was for the same relief that
8 I consented to. And so I feel kind of, you know, I consented
9 to theirs but they didn't consent to mine and so when they
10 started up their system last week I contacted you, along with
11 opposing counsel, and Mr. Belton Ziegler is here for the Town
12 of McBee and so I asked that this be expedited because I
13 filed a motion back in August, it was before the court
14 December 14th on the non-jury. And so when they started
15 operating water, I asked if you would set this time for me to
16 be heard on this motion. But Mr. Odom's affidavit and my
17 verified answer and counterclaim are the basis for it. In
18 addition, since all of this has transpired, the Town of
19 McBee only sued Alligator. Did not sue A.O. Smith. A.O.
20 Smith, this is Ms. Marguerite Willis of Nexsen-Pruet, and she
21 on behalf of A.O. Smith has filed a motion to intervene as a
22 party. And she can speak on behalf of the merits of her
23 motion but she is tagging along today because the case is
24 frozen at this point and we won't have a non-jury term again
25 until May 23rd, the week of May 23rd, so no discovery is going

1 on, no depositions, no nothing, because it would be premature
2 with A.O. Smith not being a part of the lawsuit at this
3 juncture. And so that's why I would ask that the Court to
4 sign the proposed order which I sent, restraining the town
5 from selling any water, other than Alligator water, during
6 the pendency of this hearing as it would impair our ability
7 to pay back our Rural Development loan.

8 THE COURT: Mr. Ziegler?

9 MR. ZIEGLER: Thank you, Your Honor.

10 THE COURT: And what I'll let you do is argue your
11 motion separately and then he can respond to it - - -

12 MS. WILLIS: Yes, sir.

13 THE COURT: - - - both parties.

14 MR. ZIEGLER: Let me respond to the factual
15 circumstances. Our client never authorized us to consent to
16 an injunction and no consent was ever given. That caused
17 some confusion and we're sorry about that but that is always
18 been the town's position. The town spent about \$250,000 in
19 six years of permitting to get its wells in the situation to
20 where they can turn them on again, the town has done so. The
21 town is, calculates that it will cost them something on the
22 order of \$75,000 a year in extra expenses if it's required to
23 continue taking service from Alligator. There is an
24 affidavit that was submitted in record. The affidavit was
25 received by Mr. Driggers and myself yesterday but under Rule

1 6, that is not timely service of the affidavit. We are
2 preparing a counter affidavit to respond to that and there
3 are number of points in that affidavit that we think we can
4 show our inaccurate. The situation is this, the town - - -

5 THE COURT: Are you referring to Mr. Odom's affidavit?

6 MR. ZIEGLER: Mr. Odom's affidavit, yes, sir. The
7 town's service is not a large part of Alligators annual
8 revenue. By our calculation it's about 3%. They may not
9 have a bigger customer than that but I think they say there
10 is one other bigger customer but it's only 3% of their
11 revenue. It's not a reliance share as you might believe
12 reading Mr. Odom's affidavit. There is no reason those wells
13 should not be turned off. The town has always had the
14 service territory that it's serving now which is the town
15 itself and the customers it serves. They're not taking any
16 service territory away from Alligator. Alligator is trying
17 to do something that § 1926(b) does not allow. They're
18 trying to use it as a sword, not a shield. It's a shield for
19 the territory you're serving. It's not a sword to say that
20 someone has to take service that they haven't agreed to. If
21 you look at the agreement that was entered into in 1999, that
22 agreement does not require the town to seize operating its
23 wells. It doesn't require the town to take all of its
24 service from Alligator. It allows Alligator to provide
25 services to the town and continue to provide service. That

1 was the agreement that was presented to USDA when Alligator
2 did any financing they did. That's the agreement that USDA
3 felt was acceptable. Alligator is now trying to amend the
4 agreement through § 1926(b) to create terms of the agreement
5 never has had, under § 19-26(b) the language is very clear on
6 that. So we think that Alligator does not have a likelihood
7 of success on the merits in this case and we believe that can
8 be shown clearly.

9 There are two other requirements for an injunction. One
10 of them is showing irreparable harm. There is no irreparable
11 harm here to anyone. The town has a capable system that has
12 been permitted by DHEC, and DHEC has just completed the
13 permitting process. The staff has very unequivocally said
14 that the system is fully adequate to provide service. The
15 contract with Alligator still is in place so if there is a
16 problem we can take, the town can legally take service from
17 Alligator at any point. There's seven years left on that
18 contract. And the - - I will say this, that there has been
19 an appeal by A.O. Smith of the permit to turn the wells back
20 on and so we're staying down at the DHEC level while DHEC
21 decides what to do with that. DHEC's staff has said that
22 appeal is over a year too late. That the decisions were made
23 as to the permit as to the capacity of the quality of the
24 water well over a year ago. All that's happened now is the
25 town has gotten to the point where it can turn the wells back

1 on. It's shown DHEC that all to satisfy the permit
2 conditions has been done and it's too late for that appeal.
3 And the staff also says there's no basis for this appeals,
4 these wells are perfectly capable of providing the service,
5 the water quality is perfectly what it should be. In fact,
6 it's one of the things we'll respond to in the affidavit. We
7 have never been able to find any indication that the wells
8 that the town has had violated the water quality standards.
9 That's just not part of any information we've seen and we've
10 got information that we're putting forward to show the exact
11 opposite, that the testing shows that these wells were always
12 functional. Is important to know, when the wells were shut
13 off Mr. Odom, was the mayor of McBee and operating as the
14 executive director, excuse me, of the Alligator Rural Water
15 System. It's important to note that when the agreement was
16 agreed to for Alligator to take over the system, two
17 employees were sitting as council members and voted and sign
18 that agreement. So what we've got is a very odd situation,
19 if you will, in figuring out what the truth is as to what's
20 transpired here. We will be very diligent as this case goes
21 forward in bringing forth the truth of what actually
22 happened. It's very different from what a lot of people have
23 heard and what a lot of people have seen. The town believes
24 there is no irreparable harm from their continuing to
25 operate their wells, once that's possible again, once the

1 appeal is resolved, in supplying some of their own water, in
2 addition, to whatever water they need to take from Alligator.
3 We would suggest if the Court is inclined to grant an
4 injunction, there has to be a posting of a bond and the bond,
5 we believe, we can show would have to be in excess of a
6 \$100,000, probably about \$150,000. It's about a \$75,000
7 additional expense to the town per year for taking water from
8 Alligator. And so if this case were to last for as long as
9 two years, that's \$150,000 so we believe that's an important
10 part of it. But this is a situation, Your Honor, where this
11 town has been trying to recover the right to control the
12 fundamental utility service that's critical to the health and
13 safety of these people from a group that they no longer have
14 confidence in and do not believe it can support the public
15 interest. The town has had the right of the government
16 unity. It has that right under its contracts and that's what
17 the case is about and we do not believe that enjoining the
18 town from exercising its police powers and its governmental
19 powers to own its own and operate its own water system. It's
20 an inappropriate thing for the Court to do at this point. We
21 would like the opportunity to file affidavits in response to
22 Mr. Odom's affidavit and to substantiate the matters that I
23 have put before you here in court.

24 THE COURT: How long will it take you to get those
25 affidavits to the Court?

1 MR. ZIEGLER: Your Honor, we can have them by the end of
2 the week.

3 THE COURT: Any response, Mr. Spencer?

4 MR. SPENCER: Your Honor, when I sent the order, they've
5 had notice since August 17th of this motion. I had a verified
6 answer and counterclaim. I didn't need an affidavit. I had
7 a verified complaint and that was with my motion and this
8 matter was set December 14th. I spoke with, not Mr. Ziegler
9 before that date but this was on the calendar, I spoke with
10 Mr. McLawhorn and with Mr. Driggers and they called and said
11 what about the hearing, I said I've got to be there anyway
12 December 14th and I will report to the Court that we've, you
13 have agreed to my motion and I asserted to the Court in open
14 court in Chesterfield on December 14th and no one attended
15 from the Town of McBee and I know that two lawyers knew about
16 it because they asked me to cover for them and tell them that
17 we had settled the motion. And so I want to withdraw my
18 consent from their motion. Okay. I consented to a motion
19 that Alligator be prohibited to sell water to A.O. Smith.
20 Okay. And if that's not how it's going to be then, I want an
21 opportunity to get affidavits and since § 1926(b) is not
22 important for Alligator maybe it's not important to the Town
23 of McBee because how can they have it one suit and not in the
24 other. We've made the same claim under the same fellow
25 statue because they would be impaired if we served A.O.

1 Smith, we're impaired if they drop us as a customer. We have
2 a meter to them that measures every gallon of water that goes
3 through there and that's what makes our USDA loan. And so I
4 don't know what other affidavit they can have but we've got
5 meter records and we can produce the actual amount of gallons
6 that goes through the thing. So I would like to have another
7 shot at my motion so that I would just like to move to
8 withdraw my consent from their motion that we be prohibited
9 from serving A.O. Smith.

10 THE COURT: How about that Mr. Ziegler?

11 MR. SPENCER: I just don't know how they get a bite at
12 the apple today when the case ended December 14th.

13 MR. ZIEGLER: Your Honor, all I can say is that it was
14 reported to me that by Mr. Driggers, Mr. Driggers has been
15 handling this. Unfortunately, he had a medical procedure
16 done yesterday and was not able to come. He thought it would
17 not be as impairing as it was but it apparently was. He had
18 to have something removed by the dermatologist on his face.

19 In any case, what was reported to me was that there was
20 a conversation because Mr. Driggers wasn't able to attend I
21 believe the hearing, the decision was made simply to defer
22 the matter, but again it was never my client's intent. I was
23 never authorized and I believe Mr. Driggers was never
24 authorized to consent to an injunction at this point. There
25 is a valid injunction that is signed by the Court. There was

1 no chance of anything that was done to misrepresent the
2 positions of the parties, or otherwise, cause the Court to
3 have any reason to take away the injunction that was already
4 agreed to. We think that is a completely separate matter.
5 I understand Mr. Driggers, excuse me, that Alligator maybe
6 disappointed that we're not going to agree to an injunction
7 on their side of the case but we're not. § 1926(b) again as
8 I said, it's not a sword, it's a shield. The town has always
9 had the right to operate it's wells. It's always had the
10 territory that it's serving today and 26(b) deals with the
11 territories, the service territories. Nothing has changed in
12 that regard. USDA has seen the contract that was entered
13 into between the town and Alligator. USDA did not come back
14 and say we won't give you financing unless you put an
15 exclusive service right agreement in to this contract. In
16 fact, our understanding is and the affidavits will show this
17 that the town's wells are what supplies water to the town
18 through most of the time that Alligator has been, "serving
19 the town" from 1999 to 2009. The water the town used was the
20 water that the town produced through its wells with Alligator
21 operating those wells. So we think it's a very different
22 situation between the two claims, the claim with A.O. Smith
23 which is a territory claim and the claim of town which is
24 not. We believe the town has every right to turn its wells
25 on and to take advantage of the quarter of a million dollars

1 it's invested in putting itself in a position where he can
2 supply all but part of it's needs to it's wells.

3 THE COURT: Was A.O. Smith in the service territory in
4 the Town of McBee before the contract - - -

5 MR. ZIEGLER: A.O. Smith - - towns do not per se have a
6 service territory - - -

7 THE COURT: That's why asked the question.

8 MR. ZIEGLER: It's an interesting situation in South
9 Carolina. Private water systems are run by the public - -
10 are certificated by the public service commission. You can
11 go and pull territorial map that the public service
12 commission maintains. People like - - companies like
13 Alligator don't have a map like that and towns don't have a
14 map like that. The town serves everyone within the town and
15 then like most towns, it extend its service out to customers
16 who ask for that service and A.O. Smith was one. When A.O.
17 Smith was locating in the town some forty years plus ago
18 maybe longer than that, the mayor will be able to tell me,
19 the town invested infrastructure, built the wells, built
20 elevated tanks for fire protecting service adjacent to A.O.
21 Smith, closely located near the A.O. Smith plant, and served
22 A.O. Smith for many decades out of that system. There is a
23 written contract between the town and A.O. Smith. That
24 contract has been enforced for some time. It has not been,
25 to the best of our knowledge, nobody sent letters saying we

1 going terminated on this contract. You know, our position
2 would be that the contract is meant to be there as long as
3 A.O. Smith is operating in that plant. But, in any event,
4 the territories are not delineated in a way that you might
5 expect. But the statute states that a town can serve any
6 customer that ask for that service and, in effect, to the
7 point that the town serves that customer this town's
8 territory expands to include that customer.

9 THE COURT: What if the customer doesn't want service
10 anymore?

11 MR. ZIEGLER: Well, that's an interesting question. It
12 rarely comes up but, in this case, we believe that because of
13 the § 1926(b) provision, the territory once established can't
14 be overcome and that's what § 1926(b) says, once you
15 establish the territory you can't subsequently take it away
16 from somebody who has a new USDA loan. Our position is,
17 that's the case with A.O. Smith they're a customer within the
18 town of service territory. Of course, that issue is not
19 before you today but as far as Alligator is concerned they
20 never had a service territory including the customers in the
21 town. They just had a wholesale contract with the town which
22 allowed the town to run its wells if it wanted to.

23 THE COURT: Does that not create a service territory
24 when you enter into a contract, start providing services to
25 somebody?

1 MR. ZIEGLER: Not when somebody else already has that
2 service territory. You can have two people with the same
3 service territory. The town is always had its own service
4 territory.

5 THE COURT: Yeah, but the town wasn't producing its own
6 water.

7 MR. ZIEGLER: There was a period of time the town was
8 not producing its own water - - -

9 THE COURT: So at that point, they became the service
10 territory, would they not?

11 MR. ZIEGLER: But it had the right to produce it's own
12 water anytime it wanted under that contract.

13 THE COURT: I understand that, but they weren't.

14 MR. ZIEGLER: That's true.

15 THE COURT: So if you're not doing it, aren't you
16 becoming a customer and you're then someone's service
17 territory?

18 MR. ZIEGLER: That is not the position we would take.
19 We believe the service territory is something where you would
20 have an use customer alone, who is connected to and taking
21 service from an entity. And it's certainly not able to
22 overcome the fact that the contract the town negotiated do
23 not give Alligator the right as it's asserting which is the
24 right to say, no you can't turn your wells on. That is not
25 part of the contract. Nowhere it's stated to that effect.

1 It's a contract that says that Alligator will make available
2 a certain amount of water to the town but it does not require
3 the town to take all of its service from Alligator and that's
4 the critical distinction, I believe.

5 THE COURT: Let me make sure I'm straight. Alligator
6 was providing the water to McBee and then McBee in turn, was
7 giving it to A.O. Smith or was Alligator doing it directly to
8 A.O. Smith?

9 MR. SPENCER: No, sir. You're correct.

10 THE COURT: But had Alligator not provided water they
11 would've been probably giving them, been giving A.O. Smith
12 substandard water.

13 MR. ZIEGLER: No, sir, Your Honor. The water - - -

14 MR. SPENCER: The wells of the Town of McBee were closed
15 for some period of time. One well has been closed since
16 before we even entered into this contract, this forty year
17 contract we're talking about.

18 THE COURT: I mean, they had to use - - didn't I
19 understand you to say they had to bring those wells back up
20 to speed, though, before DHEC would authorize them to use
21 them?

22 MR. ZIEGLER: Correct, Your Honor. Once the wells had
23 been shut in for a period of time, they had to be re-
24 permitted to be re-operated - - -

25 THE COURT: All right.

1 MR. ZIEGLER: - - - and prior - - -

2 THE COURT: But thus my comment about it would be
3 substandard water if they went ahead and did it without
4 getting some sort of approval.

5 MR. ZIEGLER: Well, then, obviously, would have to have
6 DHEC approval, yeah, I agree with you completely. I see your
7 point. The point is, that those wells have always been
8 providing good quality of water. We have gone back and all
9 the information we see says that shutting those wells off
10 were never necessary, they were never necessary other than to
11 create a customer for Alligator. That's the only basis we
12 can see for cutting them off at that time.

13 THE COURT: How long were those wells shut down? How
14 many years?

15 MR. ZIEGLER: The wells were shut down in 2005, I
16 believe it wasn't it - - no, 2009 is when the wells were shut
17 down and the town began re-permitting at that point.
18 Alligator has gone out and tried to raise concerns about
19 those wells with DHEC to try to keep DHEC from permitting
20 them. We don't believe and DHEC doesn't believe that the
21 things that Alligator has said about those wells are true
22 because Alligator has, I mean, DHEC has granted the permits.
23 So the wells are perfectly fine. And, you know, you can't -
24 - -

25 THE COURT: Well, did the town have to do anything

1 before DHEC permitted them?

2 MR. ZIEGLER: The had to - - the town agreed to put in

3 - - -

4 THE COURT: Didn't you say something about \$250,000
5 being spent or something?

6 MR. ZIEGLER: There was a lot of permitting money
7 because the town was contesting permitting process. The town
8 had to retest and refurbish some parts of the wells. DHEC,
9 even though there was never a violation of any drinking water
10 standard, because of the issues that were being raised out of
11 this conflict, DHEC said let's reassure public by putting a
12 carbon filtration system on the wells so they'll never be any
13 reason for anyone to be concerned about the quality of the
14 water out of those wells. But that in the town's eyes, is an
15 expense they're willing to pay but there have been no,
16 there's no scientific reason to have those filtration systems
17 on them. The water coming out of the wells are perfectly
18 fine without it. But again, when you have people trying to
19 stop you from trying to raise permit issues in that kind of
20 context sometimes the best thing to do is to pay the money
21 and move forward rather than have the fight out there. The
22 mayor reminds me, DHEC never forced the wells to be taken out
23 of service. That was done by Alligator - - -

24 THE COURT: I understand. I'm just addressing the fact
25 that there out of service.

1 MR. ZEIGLER: They were out of service.

2 THE COURT: I don't believe I would want to drink water
3 out of the well that's been sitting for seven years that
4 hadn't been re-approved. I doubt you would either.

5 MR. ZIEGLER: That's why you have to go through the
6 refurbishing.

7 THE COURT: That's right. Well, when they actually -
8 - when the town actually gave up it's right to serve - - I
9 won't say, right to serve because they were still giving them
10 water through Alligator but they abandon those wells - -
11 didn't abandon them but they agree to stop using them. I am
12 thinking out loud as I talk.

13 MR. ZIEGLER: Okay. Alligator use those wells to
14 provide the water to the town from 1999 until 2009,
15 approximately. And then at the point, the town said we want
16 to take our system back and that's when Alligator closed the
17 wells and was that's the first time that we were aware of
18 anyone saying that there was a drinking water problem with
19 each of these wells. Now, the town has since gone through
20 six years of testing on those wells, never found any
21 suggestion of drinking water problem coming out of those
22 wells. The town has spent a good deal of money to putting
23 this carbon filtration system but the water on one side of
24 the filtration system is just as drinkable that's on the
25 other side of the filtration system.

1 THE COURT: Don't sit down yet because I'm going to come
2 right back to. Mr. Spencer, you stated that they had noticed
3 because you filed a verified complaint which was attached to
4 your motion originally, does that verified complaint address
5 everything that you can address today or does it mirror
6 something that's in the affidavit of Mr. Odom - - -

7 MR. SPENCER: Your Honor, I sent - - -

8 THE COURT: - - - or could you go forward without Mr.
9 Odom's affidavit today?

10 MR. SPENCER: Yes, sir.

11 THE COURT: Is that what you want me to do? That way -
12 - I mean, wouldn't you agree you've had ample notice if
13 that's all they're going forward on if they abandon Mr.
14 Odom's affidavit. You don't need to file any kind of - -
15 because you had noticed back in December we were having
16 hearing.

17 MR. ZIEGLER: Well, that's - - that - - Your Honor, our
18 understanding was that December hearing was continued by
19 agreement - - this is my understanding I was not directly
20 involved. But my understanding was there was a scheduling
21 problem with the two attorneys - - -

22 THE COURT: I was informed that there was an order
23 forthcoming at that hearing.

24 MR. ZIEGLER: We all - - I wish Mr. Driggers was here,
25 he could speak to that, I can't.

1 THE COURT: But you had that verified complaint and
2 motion long before December.

3 MR. SPENCER: Yeah. August 17th.

4 THE COURT: In August. So what more notice would you
5 need?

6 MR. ZIEGLER: Well, just the notice of the material
7 that's in Mr. Odom's affidavit - - -

8 THE COURT: I mean, if they're saying they'll withdraw
9 it because I haven't looked at it. I haven't read Mr. - - -

10 MR. ZIEGLER: Right. I understand.

11 THE COURT: I haven't read it yet so.

12 MR. ZIEGLER: Those are the issues that we want to
13 respond to. We, obviously, want to respond to the complaint
14 with our answer.

15 THE COURT I mean, it's your call if you want to keep
16 that for me to review, I'll do it.

17 MR. SPENCER: I'm willing to go forward without the
18 affidavit of Mr. Odom.

19 THE COURT: So are you withdrawing that?

20 MR. SPENCER: I'll withdraw it.

21 MR. ZIEGLER: In that case, Your Honor, I would take the
22 position there's been no showing of irreparable harm and it
23 definitely would justify the issue of an injunction at this
24 point.

25 MR. SPENCER: It's alleged in my answer and

1 counterclaim.

2 THE COURT: Just one other thing, Mr. Ziegler?

3 MR. ZIEGLER: Yes, sir.

4 THE COURT: Mr. Spencer, as we've been here this morning
5 or this afternoon, made a motion to withdraw his consent to
6 the other restraining order. I realize you weren't put on
7 any notice with regards to that.

8 MR. ZIEGLER: Yes, sir.

9 THE COURT: So you take the position that he's got to
10 file a formal motion and have that heard?

11 MR. ZIEGLER: We would certainly want to be in the
12 position to put affidavits and other information before the
13 Court, but I'm not in the position to argue that today.

14 MR. SPENCER: And I agree, Your Honor, and it would only
15 be appropriate if A.O. Smith was a party.

16 THE COURT: Yeah. That's the reason I've raised this
17 because, obviously, it's a short notice, very short notice.
18 You had no notice.

19 MR. ZIEGLER: That's right. Your Honor, I wasn't
20 planning on arguing this morning until I heard from Mr.
21 Driggers he had a reaction to what they did to yesterday.

22 THE COURT: Has anybody considered submitting this to
23 the federal court and let them resolve this issue?

24 MR. SPENCER: The plaintiff, McBee, chose state court.
25 We had thirty days to move it to federal court. We didn't.

1 And my understanding is, the state court will decide the
2 federal cause of action.

3 THE COURT: When I was practicing I had some experience
4 with the federal court with this issue and they didn't waste
5 any time ruling. It's gonna take a lot longer for it to be
6 resolved in the state court than it would've been in federal
7 court. Thank you, Mr. Ziegler.

8 MR. ZIEGLER: Your welcome.

9 THE COURT: Ms. Willis?

10 MS. WILLIS: Good afternoon, Your Honor. Marguerite
11 Willis of Nexsen/Pruet on behalf of A.O. Smith. I'm hoping
12 that my motion is a relatively uncontroversial one. A.O.
13 Smith has moved - - -

14 THE COURT: I wouldn't count on it but go ahead.

15 MS. WILLIS: Well, I'm just hopeful, Your Honor. A.O.
16 Smith has moved to intervene in this case under Rule 26,
17 those as a matter of right and a matter of permission.
18 Alligator has, in fact, alleged in their answer that we're an
19 indispensable party. We, obviously, asked that the Town of
20 McBee to consent to this motion and we never heard back from
21 them. So we're hopeful since we represent 70% of their water
22 sales and because they mentioned our name twenty-six times in
23 their complaint that they will agree that my client has a
24 state in the outcome of this litigation. In deed, fairly
25 stated in the complaint and the answer involve only one

1 thing.

2 THE COURT: All right. Hang on. Let's get everybody
3 situated and settled here so I can hear good. Go ahead, Ms.
4 Willis.

5 MS. WILLIS: I said, I think fairly stated in the
6 complaint and answer counterclaim in this case only involve
7 one thing, who gets A.O. Smith? We have serious and
8 substantial concerns about our current water supply. I
9 understand that I came in today and this motion was not
10 noticed today but I remain hopeful that the city will
11 appreciate the fact that we have been a long time customer of
12 the city for water supply and that we wish to have our
13 position heard in this matter. For example, and not to
14 criticize Mr. Ziegler, unnecessarily, but he said there was
15 a contract between the city and my client. That contract
16 expired in 2009. We are not within the city limits. We do
17 not have any kind of written agreement at this point. We're
18 an appetible customer. Those are the kinds of facts and
19 corrections that perhaps we need to be involved in the case
20 to point out to the Court. In addition, we believe because
21 we have our own engineering advisors that the city wells as
22 they are currently operating or perhaps as of right now
23 enjoined by DHEC, that are not adequate to supply A.O. Smith
24 needs both for its fire protection and for expansion. So we
25 have some very legitimate serious business concerns. We're

1 the biggest employer in Chesterfield County. We have five
2 hundred folks who work at our facility and we don't believe
3 there's any doubt under the Rules of Civil Procedure that we
4 have a real apparent serious interest in the outcome of this
5 litigation. Hence, I come here today to sort of tagalong on
6 what was going on because this does affect us. We filed our
7 motion in February. It wouldn't be heard until May. I
8 understand that Mr. Ziegler opposes this motion and wishes to
9 submit a brief and argument and he has every right to do
10 that, but as we come here today the town has never opposed
11 the motion.

12 THE COURT: Mr. Ziegler?

13 MR. ZIEGLER: Your Honor, the town does not want to be
14 in the position of inviting A.O. Smith into this particular
15 fight, so we have taken or the town takes the position to
16 either opposing or supporting that motion and I don't plan to
17 argue one way or the other, it's up to the Court.

18 THE COURT: Mr. Spencer?

19 MR. SPENCER: We agree that A.O. Smith is a subject of
20 the lawsuit. The only reason we're in it is because they
21 asked would we provide them service that the Town of McBee
22 couldn't provide. We said if it's legally possible we will
23 do it. When the largest industry comes and says, "Will you
24 help us?" Mr. Odom said, "We will, if we can." And this
25 lawsuit is to determine if we can.

1 THE COURT: It appears the Town of McBee takes no
2 position one way or the other. I understand your position so
3 I'm going to grant your motion, Ms. Willis. If you'll
4 prepare me an order I'd appreciate it.

5 MS. WILLIS: Yes, sir. Thank you, Your Honor.

6 THE COURT: All right. I'm going to tell you what I'm
7 going to do, with regards to the motion and with regards to
8 the affidavit of Mr. Odom, I have not looked at it but it may
9 contain something, Mr. Spencer, that you may want me to see
10 in addition to your verified complaint. So what I will do,
11 I mean, if you want to withdraw it, obviously, I can't stop
12 you from withdrawing something but I'm inclined to take it
13 and review it and give you until the end of the week. You
14 said - - today's Wednesday, can you get me something by
15 Friday?

16 MR. ZIEGLER: Yes, sir..

17 THE COURT: I mean, this thing needs to be ruled on
18 pretty quickly.

19 MR. ZIEGLER: I'll have it to you by Friday. What
20 electronic service be all right in that case?

21 THE COURT: I don't like it, but I'll take it. No,
22 that's fine you can do it by electronically.

23 MR. ZIEGLER: We'll send a courier over by Friday.

24 THE COURT: No, you don't have to do that and I do it
25 electronically - - -

1 MR. ZIEGLER: We'll send it to you both ways.

2 THE COURT: Okay. Send it to my clerk and me too, if
3 you would please.

4 MR. ZIEGLER: All right.

5 THE COURT: That way I can look at it over the weekend.

6 MR. ZIEGLER: Right.

7 THE COURT: I'm in Chester next week but I can still let
8 you hear from me somehow.

9 MR. SPENCER: Okay.

10 THE COURT: Anything else anybody has they want to
11 present?

12 THE COURT: Okay.

13 MR. ZEIGLER: Thank you, Your Honor.

14 THE COURT: I'll await your reply.

15 MR. SPENCER: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 (CONCLUSION OF HEARING HELD ON MARCH 23, 2016)

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22

23

24

25

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Twelfth Circuit Court for Florence County, South Carolina, on the 23rd day of March, 2016.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Lisa S. Carter

Lisa Carter

Circuit Court Reporter

June 7, 2016

Colloquy

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD) 1015-CP-13-00379

) TOWN OF MCBEE, SOUTH
CAROLINA

PLAINTIFF

vs.

)
) TRANSCRIPT OF RECORD
)

) ALLIGATOR RURAL WATER &
SEWER COMPANY, ET AL.

DEFENDANT)

May 24, 2016
Chesterfield, South Carolina

B E F O R E:

THE HONORABLE ROGER E. HENDERSON, JUDGE.

A P P E A R A N C E S:

MARTIN S. DRIGGERS, JR., ESQUIRE
Attorney for the Plaintiff

BELTON T. ZEIGLER, ESQUIRE
Attorney for the Plaintiff

MARGUERITE S. WILLIS, ESQUIRE
Attorney for the Plaintiff

Colloquy

WILLIAM O. SPENCER, JR., ESQUIRE
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

Colloquy

I N D E X

{TR:2}{P4}{S .}Colloquy

{TR:2}{P19}{S .}Certificate of Reporter

Colloquy

EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

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COLLOQUY

THE COURT: All right. This is your motion if I'm not mistaken.

MR. ZEIGLER: May it please the Court. It will be brief. This is a motion asking the Court to reconsider an injunction that was issued on the 20th -- excuse me, on the 12th of April. There are two grounds for the motion. They're simple.

First ground is that the order does not provide for any provision for a bond to support the injunction. We filed with the Court back on the 29th of March an affidavit of Mayor Campalong of the Town of McBee, and the Mayor indicated that the Town will be paying approximately \$68,000 a year extra in fees to continue to take the water from Alligator if it was required to do so for -- based on the record such as it is.

As the Court is aware the Town invested something on the order of \$480,000 in a refurbished well system and carbon filtration system most of which -- a good part of that was paid for by grants, but \$250,000 is actually in loans that the Town has taken out. Those assets are sitting idle and can't use them while this order is in place.

They shouldn't have to purchase water from Alligator. If the Town is correct that the -- that it

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should be allowed to turn on those pumps and some treatment system it really does not have any good way, that we can see at this point, to get the money back from Alligator. It would have to buy Alligator Water. Alligator would have to produce the water. There is a valid contract, we believe, for that to happen. I understand. There is nothing wrong there, we just are not sure how we would recover for the losses we would have unless we were allowed to recover the cost.

The affidavit is clear about the amount. It is an amount that relates to such things as electricity, cost of actual pumping the water, chemicals. There is a small amount, but there are chemicals involved. And you would have to -- those would be the costs that the Town would save by not using Alligator Water.

But we think that the -- that by imposing the injunction is unfair to the Town. There needs to be a bond to cover approximately \$150,000. That would cover a couple of years of litigation if it takes that long.

Now, of course, at the end of the day we would expect that if we do end up winning, and we have to go back and collect on the bond; we provide all the receipts and County documentation that explains the actual amounts lost, the bond secures that. That's the first point, but we do need the bond.

I think the rules and the Supreme Court opinion is very clear that there has to be a bond set in an injunction and it has to be more than a nominal amount. The only evidence before the Court on the amount on the costs of those is what has been identified by Mayor Campalong in his affidavit.

The second point goes to the substance of the case. As the Court is well aware in order to issue an injunction -- for an injunction to withstand scrutiny the party seeking the injunction has to show a likelihood of success on the merits.

We argued this extensively a while back in Darlington since that time we have gone back and addressed some of the Court's concerns as they were raised there in Darlington. The specific concern is how is the Town of McBee not bound to continue to pay for water from Alligator under 1926(b).

As the Court pointed out McBee believes that it confused 1926(b), but 1926(b) says Alligator can't come and take a customer if that customer is A.O. Smith. We believe that's very significant. The Court said, "how is it any different -- well, how can McBee remove itself from taking service from Alligator."

The case we cited for you answers that question very directly; is CSM Utilities, Inc. It's a 1993 case. It's

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the Seventh Circuit, U.S. Court of Appeals. So one step below the Supreme Court. It is the controlling federal precedent on this point. And what that case says is that, "An entity that is subject to 1926(b) that is a wholesale customer of another entity can put in its own well and treatment system into operation and that doesn't implicate 1926(b). The exact, same situation we have here.

There CSL had been a wholesale customer of Jennings Water Service for a number of years. CSL decided that it wanted to put its own water treatment system in to production to displace all or part of the Jennings' Water System service. Jennings went to them and said, "No. You can't do this under 1926(b)." The Court looked at it and said, "No, 1926(b) does not stop someone from supplying their own need for water with their own wells or with their own supplies."

The Court analogized the situation of a customer, a barber who might have taken water from a 1926(b) utility, you decide to put your own well in to supply part of this farms with water needs from his own well. That's not prohibited. So the Court I think is in this CSL case was very clear that the situation that we're in now, a wholesale customer that wants to supply all or part of their needs for water from their own resources, is not

Colloquy

limited in doing so due to 1926.

That being said I think that Alligator really doesn't have a claim on the merits here that they are -- and cannot show a likelihood of success on the merits. As a result an injunction is effective because there is no possibility of that happening. We would argue that on those two bases the Court should reconsider the order it issued back in April and should reverse itself.

THE COURT: Thank you, sir.

MR. SPENCER: Please the Court, Your Honor. First, as it relates to the issue of bond, in a memorandum filed with the motion by Mr. Zeigler he refers to Rule 65. Under Rule 65, Subsection C, Security, down in the middle of the paragraph it says, "No such security shall be required of the State or of an officer or agency therefore." You go to the organization to Chapter -- I guess you call it Title 33, Chapter 36, the preamble of general provisions, Alligator is a corporation. Not hyphen for hyphen profit hyphen financed for federal or state loans.

The General Assembly finds that corporations not for profit, with hyphens, established pursuant to this chapter have been authorized to provide the local governmental functions of water service or sewage

Colloquy

treatment or a combination of both, fire protection service, ambulance service and medical facilities. Corporations not hyphen for hyphen profit exists for a public purpose, and the General Assembly declares that corporations not for profit must be treated like a special purpose district for purposes of Chapter 78 of Title 15, which is the governmental Tort Claims Act.

Chapter 56 of Title 12, Sections 56-378 and 58-31-30, Subsection 23 of the Code, it has the power to condemn the statement. Corporations not for profit may participate under the same conditions as afforded special purpose districts in this -- in the State retirement system, the health insurance system, the State purchasing program and then it cites on more sections that gives the same power as a governmental entity.

Under the Tort Claims Act governmental entities means the State. Under that it defines the public subdivision, and it says, "And special purpose districts of the State." Of the state. Not county. Not municipality of the State. Of the State, and the statute says we have the same power as a special purpose district of the State. We are covered by everything that the State is covered by. We are covered in this lawsuit by the governmental Tort Claims Act. We are the State of South Carolina, and we don't have to post a bond.

And that takes care of the bond issue. We the \$150,000 come from? I don't know. They haven't lost anything. Since 1999 he says there must be an irreparable injury. Since 1999 we have sold every gallon of water that the Town of McBee has used. The status quo ought to be continued. Okay. This is not a drastic remedy. They have gotten our water since 1999. You brought that out the last hearing, Your Honor, when you issued the order. There is nothing drastic happening. Let the status quo remain.

Also he says that they went on 7 USC 1926(b); that we've got to prove that we can win on the merits. He quotes a case from the Seventh Circuit. There are 11 federal circuits in the United States of America. We're in the Fourth. Okay. There has been a ton of litigation involving 7 USC 1926(b) over a period of about 40 years. There is a massive body of law.

What we have here though is the United States government says that this contract in which we provide them water is collateral for a U.S.D.A. Rural Development Loan for Alligator and a U.S.D.A. Rural Development Loan for the Town of McBee. This contract where we provide them water a lien is on it by the United States government, the United States Department of Agriculture. This is a complex case. Won't hurt a soul, since 1999, if we keep

Colloquy

selling them water during this litigation.

Also since all this was filed the Court has permitted A.O. Smith to become a party. They're now a party and they have a dog in the fight. In the meantime the Town of McBee has attempted to amend its answer. I mean its complaint adding two parties and more causes of action against Alligator. And causes of action against A.O. Smith.

This is not the time to be doing away with an injunction. Your Honor, we're just now in the beginning. We're just now getting that this is a complex case. And so we're not required to put up a bond. There is no reparable injury, and nobody knows what the merits of the case are going to go because it's federal law, and it's a large body of federal law. That's all I have.

THE COURT: Thank you Mr. Spencer. Yes, sir, Mr. Zeigler.

MR. ZEIGLER: Thank you, Your Honor. It's sounds like the pile of federal law as Mr. Spencer indicated I've gone through it in some detail. There simply is no other case on this point. This is a considered case by U.S. Federal Circuit Court. It is four square on this issue. If there were some other cases you would certainly be hearing about it today.

The other thing that I would say in that regard is

Colloquy

that the reason there is not another case is because this case has been followed across the country. Everyone understands that this is the law and nobody is trying to change it by raising those questions again.

It's been settled law since 1993, and it remains settled law today. So that is the law that we faithfully have to apply. The law is preeminent in this matter. Under the statute the federal interpretation is clear as day. This is the law that applies.

Let me speak to the question of Alligator's status. Alligator is not a part of the State government. There is a statute which Mr. Spencer quoted which says, "In certain limited cases Alligator can do some of the things -- enjoy some of the benefits of a governmental entity." There is nothing in that list that he read about any of the rules of civil procedure. Alligator is not generally a governmental entity. It's a private corporation that gets to do some of the things that governments do.

The private for profit water companies have condemnation rights that private for profit companies that have the right to provide important public services. There is nothing unusual about that across State government. There is a bright line distinction between what the governmental body can do, what services they can

Colloquy

provide and what a private one can't.

Alligator is a private for profit corporation. As such it is required to post a bond if it wants to get an injunction. That's what the rules require. That's what the rules clearly state. Nothing what Mr. Spencer gave you said anything about Alligator being treated as a governmental entity for purposes of the rules of civil procedure as enunciated by the Supreme Court of this State and adopted by.

I think they failed on this point, but the case, I think, is going to be a very complicated one. It's a complicated case because it's a complicated case of facts. The question about 1926(b) are not complicated. 1926(b) applies. If you have a retail customer that's been connected to supplier as the U.S.D.A. loan, and that is the case of AO Smith and with McBee. McBee has a U.S.D.A. loan. AO Smith has been a customer for over 30 years.

What we know now from CSL Utilities is that a wholesale customer of an entity financed by U.S.D.A. can put its own water treatment supply systems in operations, and that this does not in any way implicate 1926(b) or the matters relating to it. So I would suggest to you that nothing here changes what I said when I began. 1926(b) does not allow Alligator to show, like on success

Colloquy

of the merits, and under Rule 65 Alligator has to post a bond.

There is no evidence that contradicts Mayor Campalong's affidavit as to a bonding fee in the order of \$68,000. The status quo today is that the Town of McBee has spent \$480,000. Borrowed \$250,000 of that money to put in place water assets and has every right to want to benefit from it. And the Town of McBee needs to do that. If not it's going to lose money due duplicative investments they can not recover. And if this case drags on the Town of McBee needs a source of funds to recover what it lost because it was prevented from putting its own assets in service at this time. Thank you, Your Honor.

THE COURT: All right.

MS. WILLIS: Your Honor, may I speak if I can?

THE COURT: Yes, ma'am.

MS. WILLIS: Good afternoon. Marguerite Willis on behalf of AO Smith, the intervening defendant. The Court may recall that last time we were together in Darlington I stood up and I said that my client is the biggest employer in the County. 500 employees. We're good citizens, and all we wanted was a safe, reliable, dependable, and adequate water supply.

We felt like our interests weren't being adequately

Colloquy

represented then. Your Honor grants the motion to intervene. I simply report today that following that we filed our answer and our counterclaim, and our counterclaim just asks for a declaration that we are an at will customer; that we weren't bound as it were to the City of McBee, and we also asked for an account. We didn't ask for any money. We just asked to be part of the process. Well, to our surprise what we received in response was a brand new amended complaint that adds two parties without motion under Rule 19.

It added additional claims against us and against Alligator without reference to Rule 15. And so I drafted a motion to strike, and I filed that today. I only say that because I spoke to Mr. Spencer who has a really good motion to strike under Rule 15. The pleadings enclosed with regard to his claim for six month before this amended complaint comes in over the transom.

And I said, "Billy, why did you in addition to filing a motion to strike, why did you file an answer?" And Billy said, "Cause I'm afraid, Marguerite, under circumstances of (inaudible)." And so I just want to put on the record that today I did ask Mr. Zeigler, I said, "I filed a motion to strike. Are you going to try to default AO Smith?" And he said, and he can correct me if I'm wrong, "No. He will let me know if he thinks that

Colloquy

I need to file an answer."

I want that clearly on the record here because otherwise even though the motion to strike, I believe, comes off the basis is Rule 15, the failure to seek permission of this Court or even yours truly before filing a claim. The failure under Rule 19 to move the Court to add Mr. Irvin and his company as branding parties. And most importantly to my client the violation we say of Rule 19 where the new complaint says, "All we wanted was to tell the Court what our needs and demands were for our plant." Now says that, "We, AO Smith, wantonly and recklessly sabotaged McBee's water system, made false reports to D.H.E.C, depleted the level of water in McBee's water tank, and made and publicized other false reports." Those statements are simply false.

We are going to talk to counsel for McBee about that. We would prefer to have the chance to talk to them in context of a motion to amend which we believe they should have filed under Rule 15, but I feel that for today that motion is not ripe before Your Honor but I have the commitment of counsel for the Town that they will not default my client.

MR. ZEIGLER: Your Honor, if I may. Ms. Willis is correct. She and I discussed that point and I made that commitment to her and I plan to stand by it. I'm not sure

Colloquy

why it needed to be put on the record. I think that my word would be of some value here.

But let me, since we're assuming to want to argue the motion -- the question of amended complaint, it is our right when someone files a counterclaim ---

THE COURT: It's really not before the Court. He made reference to it, but we're not arguing that today.

MR. ZEIGLER: Well, that's good cause I just want to be sure. We seem to have gone a long way into arguing that so far. This isn't the time. Document was filed this morning, and ---

THE COURT: And I said we are not arguing that. I'm not going to rule on that.

MR. ZEIGLER: --- continue today ---

THE COURT: It's not before the Court.

MR. ZEIGLER: I'll save that for when the time comes, Your Honor. This isn't the time. We certainly and we believe that there is a reason for procedural default visa vee the need to answer the complaint before this motion to strike is heard and will raise that with counsel for the Defendants and we will deal with it professionally.

THE COURT: Anything else?

MR. SPENCER: One thing I failed to mention, Your Honor. Alligator's right to sell water to customers out

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of some wells has not completely been resolved. It is pending in the Administrative Law Court under 16-AOJ-07-0082-6C, McBee's right to sell some of its own wells, the AO Smith got an adverse ruling and Nexsen Pruet has filed a petition for reconsideration in the Administrative Law Court. So the litigation as to whether their permit is proper has not been fully litigated in the court system.

THE COURT: All right. Okay. All right. Counsel, I will need to take this matter under advisement. I need to review the CSL case again that Mr. Zeigler eluded to and consider your arguments. You'll hear from me next week or so.

MR. SPENCER: Thank you, Your Honor.

MR. ZEIGLER: Thank you, Your Honor.

MS. WILLIS: Thank you, Your Honor.

END OF TRANSCRIPT OF RECORD

Colloquy

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the 4th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Chesterfield County, South Carolina, on the 24th day of May, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 31, 2016

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Town of McBee,

Plaintiff,

v.

Alligator Rural Water & Sewer Company, Inc.,

Alligator Rural Water Company, Inc.,

Defendants.

FOURTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER:

MOTION FOR TEMPORARY
RESTRAINING ORDER

IMMEDIATE HEARING REQUESTED

20 15 - CP-13 379

2015 JUN 17 AM 11:04
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

YOU WILL PLEASE TAKE NOTICE THAT the undersigned, as attorney for the Town of McBee ("McBee"), hereby moves this Court for a temporary injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure. Movant further requests an **IMMEDIATE HEARING**.

McBee moves the court, pursuant to Rule 65(b) of the South Carolina Rules of Civil Procedure, to enter a temporary restraining order prohibiting the defendants, or any person or entity acting in concert or participation with the defendant, from constructing water pipelines to A. O. Smith Corporation's facility located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina 29101, entering into any contracts to provide water and/or sewer service to A. O. Smith Corporation's facility, and from further contact with A. O. Smith Corporation representatives, employees, or agents regarding transferring Smith Corporation's water service to defendants. In support of the motion, the plaintiff shows the following to the court:

1. Immediate and irreparable injury, loss, and/or damages will result to the plaintiff unless the defendant is restrained from constructing water and/or sewer pipelines to A. O. Smith Corporation's facility located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina 29101 and from further contact with A. O. Smith Corporation representatives, employees, or agents regarding transferring A. O. Smith Corporation's water service to defendants;

A True Copy Attest
Faye L. Sellers
CLERK OF COURT
CHESTERFIELD COUNTY, SC

2. Such immediate and irreparable injury will result to the plaintiff because A. O. Smith Corporation currently accounts for approximately 70% of McBee's water revenue. Upon information and belief, it will only take several days for the pipeline from A. O. Smith's property to be connected to Defendants' water system. If A. O. Smith transfers its water services to Defendants, it is highly likely that McBee's water system will be unable to continue operation;

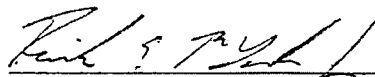
3. McBee notified the defendants of the motion and the request for hearing by letter, a copy of which is attached as Exhibit A, and by a Notice of Hearing, a copy of which is attached as Exhibit B.

WHEREFORE, McBee requests that the court enter a temporary restraining order prohibiting the defendant, or any person or entity acting in concert or participation with the defendant, from constructing water pipelines to A. O. Smith Corporation's facility located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina 29101, entering into any contracts to provide water and/or sewer service to A. O. Smith Corporation's facility located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina 29101, and from further contact with A. O. Smith Corporation representatives, employees, or agents regarding transferring A. O. Smith Corporation's water service to defendants and for such other and further relief in favor of the plaintiff as the court deems just and appropriate.

This 17th day of June, 2015.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Martin S. Driggers, Jr.
Richard E. McLawhorn, Jr.
115 Cargill Way, Suite B.
P.O. Box 68
Hartsville, SC 29551
P: (843) 878-0390

ATTORNEYS FOR TOWN OF MCBEE



SWEENY WINGATE & BARROW P.A.

June 16, 2015

Reply to: Pee Dee Office

Richard E. McLawhorn, Jr.
(843) 878-0390
rem@swblaw.com

Glenn Odom
547 Sandy Point Lane
Hartsville, SC 29550
VIA Hand Delivery

Glenn Odom
378 W Pine Ave
McBee, SC 29101
VIA Hand Delivery

RE: Town of McBee - AO Smith Water Matter
Our File: 4565-9843

Dear Mr. Odom:

Please find attached a copy of the Town of McBee's Summons and Verified Complaint along with a Motion for Temporary Restraining Order and Notice of Hearing.

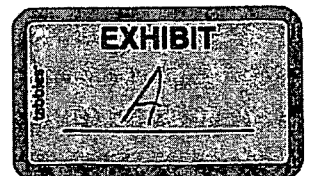
Please be advised that a hearing on the Motion for Ex Parte Temporary Restraining Order is scheduled for 11:00 A.M. on Thursday, June 18, 2015 on the 5th floor of the Darlington County Courthouse, located at 1 Public Square, Darlington County, South Carolina 29522.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Richard E. McLawhorn, Jr.

REM/joa
Enclosure



9:15 JUN 17 AM 11 04
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy Attest
Jared S. Ballero
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Town of McBee,

Plaintiff,

v.

Alligator Rural Water & Sewer Company, Inc.,

Alligator Rural Water Company, Inc.,

Defendants.

FOURTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER:

20 15 - CP-13

NOTICE OF HEARING

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

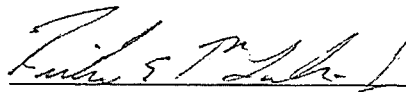
2015 JUN 17 AM 11 04

YOU WILL PLEASE TAKE NOTICE that on June 18, 2015 at 11:00 a.m. at the Darlington County Courthouse, 1 Public Square, Darlington, South Carolina 29532 on the 5th Floor, a hearing will be held on McBee's Motion for a Temporary Restraining Order.

This 17th day of June, 2015.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Martin S. Driggers, Jr.
Richard E. McLawhorn, Jr.
115 Cargill Way, Suite B.
P.O. Box 68
Hartsville, SC 29551
P: (843) 878-0390
ATTORNEYS FOR TOWN OF MCBEE

A True Copy Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



THE STATE OF SOUTH CAROLINA)

COUNTY OF CHESTERFIELD)

Town of McBee,)

Plaintiff,)

versus)

Alligator Rural Water & Sewer Company,)
Inc., Alligator Rural Water Company, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

2015-CP-13-379

NOTICE OF MOTION AND MOTION
FOR TEMPORARY RESTRAINING ORDER

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Faye L. Sellers
True Copy Attest

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

AUG 17 PM 4 13

TO: TOWN OF MCBEE AND RICHARD E. MCLAWHORN, JR., ATTORNEY FOR
THE DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants, will ten (10) days from the service of this Notice of Motion or as soon thereafter as counsel may be heard, move before a judge of the Court of Common Pleas of the Fourth Judicial Circuit pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, to enter a temporary restraining order prohibiting the plaintiff, or any person or entity acting in concert or participation with the plaintiff, from taking any further actions to obtain a DHEC permit and begin operating its water system so as to discontinue purchasing water from Alligator at its current usage pursuant to the Water Purchase Agreement attached to Defendants' Answer and Counterclaim.

In support of the motion, the defendants shows the following to the court:

1. Immediate and irreparable injury, loss, and/or damages will result to the defendants unless the plaintiff is restrained from taking actions to secure water from any source other than purchasing the same from Alligator pursuant to the Water Purchase Agreement;

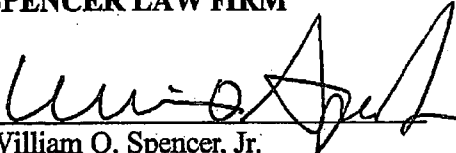
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#1

2. Such immediate and irreparable injury will result to the defendant because McBee is Alligator's 2nd largest customer accounting for significant revenue each month. Upon information and belief, it may only take a short period of time for McBee to obtain the necessary permits and begin operating its own wells. If McBee begins pumping water from its wells, it is highly likely that it will stop buying water from Alligator and Alligator's service will be curtailed or limited in violation of 7 U.S.C.A. §1926(b).;

WHEREFORE, Alligator request that the court enter a temporary restraining order prohibiting the plaintiff, or any person or entity acting in concert or participation with the plaintiff, from taking any actions to secure water from any source other than purchasing the same from Alligator pursuant to the Water Purchase Agreement; and for such other and further relief in favor of the defendants as the court deems just and appropriate.

This 17th day of August, 2015.

SPENCER LAW FIRM



William O. Spencer, Jr.
Attorneys for the Plaintiff
PO Box 190
Chesterfield, SC 29709
(843)623-2144

Chesterfield, South Carolina.

August 17, 2015.

#2

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Town of McBee,

Plaintiff,

vs.

Alligator Rural Water & Sewer Company, Inc.,
Alligator Rural Water Company, Inc.,

Defendants.

Case No 2015-CP-13-379

**A.O. SMITH CORPORATION'S
NOTICE OF MOTION AND MOTION
TO INTERVENE**

2016 FEB 2 AM 11
FILED
CLERK OF
CHESTERFIELD COUNTY

TO: PLAINTIFF, TOWN OF MCBEE AND ITS ATTORNEYS MARTIN S. DRIGGERS, JR., ESQUIRE; RICHARD E. MCLAWHORN, JR., ESQUIRE; AND BELTON T. ZEIGLER, ESQUIRE; and DEFENDANTS ALLIGATOR RURAL WATER & SEWER COMPANY, INC. AND ALLIGATOR RURAL WATER COMPANY, INC., AND THEIR ATTORNEY WILLIAM O. SPENCER, JR., ESQUIRE:

YOU WILL PLEASE take notice that A.O. Smith Corporation ("A.O. Smith"), pursuant to Rule 24(a), SCRCP, respectfully moves this Court for an Order permitting A.O. Smith to intervene in this proceeding as a matter of right, inasmuch as it has a paramount interest in the water supply at issue in this litigation and the disposition of this matter may, as a practical matter, impair its ability to protect that interest.

In the alternative, A.O. Smith, pursuant to Rule 24(b), SCRCP, respectfully moves this Court for an Order allowing its permissive intervention in this proceeding, inasmuch as its claims have questions of law and fact in common with the main action. Given the status of this proceeding, the intervention of A.O. Smith will not unduly delay or prejudice the adjudication of the rights of the original parties.

REC 161

A True Copy, Attest
Louise S. Salter
CLERK OF COURT C.P. & O.C.
CHESTERFIELD COUNTY, SC

The grounds for this Motion are more fully detailed in A.O. Smith's Memorandum of Law in Support of Motion to Intervene, filed simultaneously herewith.

The undersigned hereby certifies and affirms, in accordance with Rule 11 of the South Carolina Rules of Civil Procedure, that she has consulted with counsel for the parties regarding the subject matter of this Motion. Counsel for Defendants consent to this Motion; counsel for the Plaintiff were unwilling to consent.



Marguerite S. Willis
Joan W. Hartley
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1230 Main Street, Suite 700 (29201)
Post Office Box 2426
Columbia, SC 29202
803.771.8900

Attorneys for A.O. Smith Corporation

February 2, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Town of McBee,

Plaintiff,

vs.

Alligator Rural Water & Sewer Company, Inc.,
Alligator Rural Water Company, Inc.,

Defendants.

Case No 2015-CP-13-379

**A. O. SMITH CORPORATION'S
MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
INTERVENE**

FILED
CLERK OF COURT
FEB 2 AM 11:27
CHESTERFIELD COUNTY, SC

A. O. Smith Corporation ("A.O. Smith" or "Proposed Intervenor") respectfully submits this memorandum of law in support of its Motion to Intervene, filed simultaneously herewith. A.O. Smith is caught in a high stakes "tug of war" between the Town of McBee ("Town") and Defendant Alligator Rural Water & Sewer Company, Inc. ("Alligator"), both of whom claim the exclusive right to provide water service to A.O. Smith's Chesterfield County facility. A.O. Smith moves to intervene in this proceeding, as the ultimate determination will directly impact A.O. Smith's ability to obtain water service that is adequate and reliable for the efficient and safe operation of its Chesterfield County facility, as well as sufficient to support future expansions of those operations.

FACTUAL BACKGROUND

A.O. Smith owns and operates a facility (the "Chesterfield County facility") in an unincorporated area of Chesterfield County, South Carolina, where it manufactures water heaters and boilers. The facility also includes an engineering division which designs and tests company

REC 163

A True Copy, Attest
Loyce S. Salter
CLERK OF COURT C.P. & O.S.
CHESTERFIELD COUNTY, SC

products. The Chesterfield County facility has been in operation since 1980 and currently employs more than 500 persons.

A.O. Smith has critical needs for an adequate, dependable water supply for its facility, including water for its manufacturing and testing operations, fire protection, and domestic uses. The facility currently operates five days per week with two shifts of eight hours each. During operating hours, the facility's manufacturing, testing, and domestic water requirements are 161 gallons per minute ("gpm") on an average day and 239 gpm on a peak use day. Additionally, A.O. Smith's fire protection system requires an additional minimum instantaneous flow for not less than two hours.

In 1979, A.O. Smith entered a 30 year "non-annexation agreement" with the Town, under which the Town agreed to supply A.O. Smith with water. That agreement ended in 2009. Although A.O. Smith has continued to buy water services from the Town, A.O. Smith is not located within the corporate limits of, or contiguous to, the Town and there is no contract between them for water service. *See* S.C. CODE ANN. § 5-31-1910. Accordingly, A.O. Smith is simply an "at-will" customer of the Town.

Alligator operates a public water supply and distribution system throughout a large area of Chesterfield County, including the area where the A.O. Smith facility is located. In 1999, the Town entered a 40 year water supply agreement with Alligator ("1999 Agreement").¹ Since that time, and until today, Alligator has been the sole source of the Town's water supply. In other words, although A.O. Smith pays the Town, the water used at the Chesterfield County facility has come from Alligator since 1999.

¹ The Town knew that Alligator was pledging the 1999 Agreement as security for a United States Department of Agriculture, Rural Development ("RD") loan to Alligator, arguably making the Town a customer of Alligator for purposes of the RD loan, and thus, with Alligator's service area under 7 U.S.C. § 1926(b).

Currently, the Town's public water supply distribution system ("Town System") is generally comprised of two (2) elevated tanks, a wholesale connection to the Alligator system ("Alligator System"), and water distribution lines of differing sizes. The Town's water lines are primarily small in diameter, with a larger 12-inch line extending along U.S. Highway 1 between the A.O. Smith facility and the town limits near the intersection of US Highway 1 and Juniper Avenue. One of the two elevated tanks is located in the Town near the intersection of US Highway 1 and Juniper Avenue and has a capacity of 75,000 gallons. The other is located adjacent to the A.O. Smith facility and has a capacity of 250,000 gallons. The two tanks are connected by the 12-inch water main described above.

In comparison to the Town's total water storage capacity of 325,000 gallons, the Alligator system has 3,500,000 gallons of storage capacity within two miles of the A.O. Smith facility. Additionally, Alligator has a 24-inch water line which runs along U.S. Highway No. 1 adjacent to the facility.

In 2011, A.O. Smith advised the Town that the Chesterfield County facility would require an instantaneous demand of 2,000 gpm at a minimum of 98 psi for its fire protection system and an additional 500 gpm for a proposed expansion. When the Town failed to address A.O. Smith's concerns, the company entered into discussions with Alligator. Alligator advised A.O. Smith that it had 8,000,000 gallon per day in excess capacity and could provide up to 4,000 gpm to the Chesterfield County facility and sustain that flow on a continuous basis.

By letter dated October 10, 2013, the Town advised A.O. Smith that it intended to place its two existing water supply wells back into operation. The Town's wells had been closed in the early 2000s when contaminants were detected in the wells. The Town further advised A.O. Smith that these two wells would meet all of the water source requirements for the Town

System, including service to and for the Chesterfield County facility. As a reseller of Alligator's water, the Town's water service responsibilities are essentially ministerial in nature.

Upon information and belief, the two water wells will not be sufficient to meet A.O. Smith's demands, including its instantaneous fire flow demands for its Chesterfield County facility. A.O. Smith also has reason to believe that the capacity of these Town wells does not meet the redundancy requirements of Section 61-58.2(B)(1) of the State Primary Drinking Water Regulation. S.C. REG. ANN. § 61-58.2(B)(1). The Town is thus incapable of meeting its regulatory obligations without Alligator's water supply, leaving A.O. Smith's Chesterfield facility at the mercy of an often-contentious relationship between the Town and Alligator that has been frequently marred by lawsuits, including the present one before the Court.

In recent months, the Town's service to A.O. Smith has been interrupted and inadequate to meet its water needs on certain occasions. For example, on June 19, 2015, A.O. Smith lost water pressure at the Chesterfield County plant to the point that all non-essential water uses were curtailed. Moreover, the Town has failed to maintain storage capacity needed to ensure adequate pressure for A.O. Smith's fire protection system on several occasions, and has failed to advise A.O. Smith so that it could take appropriate fire protection steps and alert its fire insurance carrier.

In addition to issues relating to adequacy and reliability of water supply from the Town, A.O. Smith has reason to believe that the Town may be overbilling its customers, including A.O. Smith, for its water. From time to time, since 1999, Alligator has implemented increases in its wholesale water rate. In October, 2013, Alligator increased the rate to \$1.92/thousand gallons. Thereafter, the Town increased the water rate charged to its customers, assertedly based on this increase by Alligator. However, upon information and

information and belief, the Town has continued to pay Alligator at a rate of \$1.25/thousand \$1.25/thousand gallons. Based on A.O. Smith's water use through August 2015, the difference difference between pre-2013 rate and increase rate charged to Town's commercial customers has customers has resulted in overbilling to A.O. Smith of more than \$60,000.

A.O. Smith requires reliable, adequate water service to operate its Chesterfield County facility and to meet its fire protection needs. The Town has been unable to provide that service on a consistent basis, and A.O. Smith is entitled to terminate the water service currently provided by the Town and obtain those services from Alligator. Accordingly, in 2015, Alligator began construction of approximately 925 linear feet of 12-inch water line to connect its 24-inch line to the A.O. Smith facility water system.

Shortly thereafter, the Town filed this lawsuit, claiming the legal and exclusive right to provide water service to A.O. Smith under federal law. Alligator countersued, also claiming the legal right to the Town of McBee and, in turn A.O. Smith, as a customer under federal law. For the present, both parties have agreed to maintain the status quo. The status quo, however, means that A.O. Smith is unable to connect directly to the Alligator system, contrary to its legitimate business needs.

ARGUMENT AND CITATION OF AUTHORITY

Rule 24 of the South Carolina Rules of Civil Procedure provides for intervention as a matter of right under subsection (a) and permissive intervention under subsection (b). S.C. R. Civ. P. 24(a) and (b). "Intervention is a procedural device whereby a third party who is not a named party in an existing lawsuit, but who has an interest in its outcome, may become a party to the action." *In re Horry County State Bank*, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App.

2004) (citing BLACK'S LAW DICTIONARY 826 (7th ed.1999)). Rule 24(a) provides for intervention as of right and states that a party has a right to intervene:

- (1) when a statute confers an unconditional right to intervene; or
- (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

S.C. R. Civ. P. 24(a). In order to intervene pursuant to Rule 24(a)(2), a party must: "1) establish timely application; 2) assert an interest relating to the property or transaction which is the subject of the action; 3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and 4) demonstrate that its interest is inadequately represented by other parties." *Ex parte Reichlyn*, 310 S.C. 495, 498, 427 S.E.2d 661, 663 (1993) (citation omitted). The South Carolina Supreme Court has held that the standard for intervention by right under Rule 24(a)(2) should be interpreted "to permit liberal intervention particularly where as here, judicial economy will be promoted by the declaration of the rights of all parties who may be affected." *Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 713 (1990). Alternatively, Rule 24(b) provides for permissive intervention and provides in relevant part that a party may intervene : "(1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common." S.C. R. Civ. P. 24(b). "To warrant intervention under Rule 24(b) an applicant should ordinarily show he is charged with a public duty requiring him to intervene, or he has a claim or defense involving a question of law or fact in common with the main action. A mere general interest in the subject matter of the litigation is not sufficient." *South Carolina Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 262, 368 S.E.2d 72, 75 (Ct. App. 1988) (citing 3B J. Moore, MOORE'S FEDERAL PRACTICE SECTION

24.10[2] (2d ed. 1987). As discussed more fully below, A.O. Smith has a right to intervene under Rule 24(a) and also satisfies the requirements for permissive intervention under Rule 24(b).

I. A.O. SMITH SATISFIES THE FOUR-PRONG TEST FOR INTERVENTION BY RIGHT UNDER RULE 24(A)(2).

A.O. Smith must have reliable water service which is adequate to meet its needs for operations, fire protection, and domestic uses at the Chesterfield County facility. The Town and Alligator both claim that A.O. Smith is in its service area and therefore protected from curtailment under 7 U.S.C. § 1926(b). As such, the Court will be required to decide which water utility will serve A.O. Smith. As discussed above, the Town System is inadequate to meet A.O. Smith's water needs and therefore a ruling in favor of the Town would substantially impair A.O. Smith's current and future operations. Therefore, A.O. Smith unquestionably has an interest in the outcome of this litigation.² "A party moving to intervene under Rule 24(a)(2), SCRPC, must: 1) establish timely application; 2) assert an interest relating to the property or transaction which is the subject of the action; 3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and 4) demonstrate that its interest is inadequately represented by other parties." *Ex parte Reichlyn*, 310 S.C. 495, 498, 427 S.E.2d 661, 663 (1993) (citation omitted). A.O. Smith satisfies the requirements of this test and is, therefore, entitled to intervention as matter of right under Rule 24(a)(2).

A. A.O. Smith's motion to intervene is timely.

A.O. Smith moves to intervene during the pleading stage of this litigation, and therefore, its motion is timely. The Supreme Court of South Carolina has held that the following factors

² Alligator alleges that A.O. Smith is an indispensable party to this action. (Answer and Counterclaim, ¶¶ 26-33).

must be considered in determining the timeliness of a motion to intervene: "1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention." *Davis v. Jennings*, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991). As to the first three factors, there has been no undue delay in A.O. Smith's filing to intervene in this action. The Town filed its summons and complaint in this action on June 17, 2015. On August 17, 2015, the defendants filed their answer and counterclaim. Thereafter, the Town filed its answer to the defendants' counterclaim. As such, this action has barely progressed beyond the pleading stage.

With respect to the fourth factor, A.O. Smith's intervention would not in any manner prejudice the original parties since the action is in this preliminary stage. In contrast, A.O. Smith would unquestionably be prejudiced if intervention is denied since this action will determine which of the original parties will have the exclusive right to provide water service to A.O. Smith. Moreover, the South Carolina Supreme Court has held that "[i]t is necessary to ask *why* a would be intervenor seeks to participate, for if the desired intervention relates to an ancillary issue and will not disrupt the resolution of the underlying merits, untimely intervention is much less likely to prejudice the parties." *Davis v. Jennings*, 304 at 505, 405 S.E.2d at 603 (quoting *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 786 (1st Cir. 1988)). Accordingly, even if A.O. Smith's motion to intervene were untimely, which it is not, A.O. Smith's interest in the outcome of this litigation is and the company's intervention will not disrupt the resolution of the case. As such, there is no prejudice to the original parties. A.O. Smith's motion to intervene is, therefore, timely.

B. A.O. Smith unquestionably has an interest in the subject matter of this case.

The Town alleges that the loss of A.O. Smith as a customer would result in a loss of 70 percent of the Town's water system revenue. (Verified Complaint, ¶¶ 8 and 34). As discussed above, the issue before this Court is whether the Town or Alligator is entitled to the protection of 7 U.S.C. § 1926(b). As such, the outcome of this litigation will determine which water utility serves A.O. Smith's future water service needs. A determination that the Town has the exclusive right to provide that service would be detrimental to A.O. Smith's operations at the Chesterfield County facility. This interest clearly entitles A.O. Smith to intervene in this matter. The South Carolina Supreme Court has described the interest required for intervention as follows:

Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties. *Berkeley Elec. Coop.*, 302 S.C. at 189, 394 S.E.2d at 714. Accordingly, the Court should consider the practical implications of a decision denying or allowing intervention. *Id.* However, a party must have standing to intervene in an action pursuant to Rule 24, SCRCP. *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994). A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a "real party in interest." *Id.* "A real party in interest . . . is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." *Id.* (citations omitted).

Ex parte Gov't Employee's Ins. Co., 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007). Again, there is no doubt that A.O. Smith "has a personal stake in the subject matter of the lawsuit" and has a "real, actual, material [and] substantial interest in the subject matter of the action." As such, A.O. Smith satisfies this prong of the test for intervention under Rule 24(a)(2).

C. This Court's ruling on the claims in this case would not only impair A.O. Smith's ability to protect its interest in this action, but could effectively prevent A.O. Smith from obtaining the water service necessary to support the operation of its Chesterfield County facility.

For all the reasons stated above, A.O. Smith can only protect its interest to reliable, adequate water service by intervening in this case. With respect to this third prong of the test for intervention under Rules 24(a)(2), the South Carolina Supreme Court has held:

The *Sagebrush* test further requires that the prospective intervenor demonstrate that without its intervention, the disposition of the case may impair or impede its ability to protect its interest. To meet that requirement, a party need not prove that it would be bound in a *res judicata* sense by the judgment, only that it would have difficulty adequately protecting its interests if not allowed to intervene. *Spring Construction Co., Inc. v. Harris*, 614 F.2d 374 (4th Cir.1980).

Berkeley Elec. Co-op., 302 S.C. at 190-91, 394 S.E.2d at 715. If this Court rules that the Town is entitled to protection of the A.O. Smith water service area under 7 U.S.C. § 1926(b), A.O. Smith would be unable to obtain services from Alligator, even though, upon information and belief, the Town's services are unreliable and inadequate to meet the company's needs. Moreover, as an at-will customer of the Town, A.O. Smith has no legal obligation to continue to obtain water service through the Town. Without A.O. Smith's intervention, this Court's ruling would impair and impede the company's ability to protect those interests. A.O. Smith therefore satisfies the third prong of the test for intervention under Rule 24(a)(2).

D. A.O. Smith interests will not be adequately represented by Alligator.

Alligator cannot adequately represent the interest of A.O. Smith in this action.

Regarding the fourth prong of the test, the South Carolina Supreme Court has held:

The burden of demonstrating inadequacy of representation is on the applicant. *S.C. Tax Commission v. Union County Treasurer*, *supra*. This burden is **minimal** and the applicant need only show that the representation of his interests "may be" inadequate. *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972).

Berkeley Elec. Coop., 302 S.C.at 191, 394 S.E.2d at 715 (emphasis added). Although A.O. Smith and Alligator both seek the same ruling in this case, A.O. Smith's interests in that ruling are not the same as those of Alligator. Alligator's interests in this litigation involve the protection of its service area. A.O. Smith's interest is the need to obtain reliable and adequate water service to support its operations at the Chesterfield County facility. A.O. Smith clearly views the potential outcome of this litigation from a different perspective than Alligator. Moreover, A.O. Smith would present additional arguments in support of its position that the company is entitled to terminate service with the Town and obtain water service from Alligator. Accordingly, A.O. Smith satisfies all four prongs of the test and is therefore entitled to intervention by right in this case pursuant to Rule 24(a)(2).

II. ADDITIONALLY, OR IN THE ALTERNATIVE, A.O. SMITH IS ENTITLED TO PERMISSIVE INTERVENTION PURSUANT TO RULE 24 (B).

In addition to A.O. Smith's right to intervene under Rule 24(a), A.O. Smith satisfies the requirement for permissive intervention under Rule 24(b). Rule 24(b) provides for permissive intervention and provides in relevant part that a party may intervene : "(2) when an applicant's claim or defense and the main action have a question of law or fact in common." S.C. R. Civ. P. 24(b). "Like permissive joinder, Rule 24(b) intervention is premised upon the theory that when claims or defenses have a question of law or fact common to each other, sound administrative procedures encourage the disposition of all of the claims or defenses in one action rather than a multiplicity of actions." *South Carolina Tax Comm'n*, 295 S.C. at 263, 368 S.E.2d at 75. "To warrant intervention under Rule 24(b) an applicant should ordinarily show he is charged with a public duty requiring him to intervene, or he has a claim or defense involving a question of law or fact in common with the main action. A mere general interest in the subject matter of the litigation is not sufficient." *Id.* at 262, 368 S.E.2d at 75. Again, as an at-will customer of the

Town, A.O. Smith has a right to terminate that service and obtain reliable, adequate service from Alligator. For all of the reasons stated above, A.O. Smith unquestionably has more than a "mere general interest in the subject matter of the litigation." The outcome of this litigation will impact A.O. Smith's ability to obtain the level of water service needed to properly operate its Chesterfield County facility. As such, if the Court does not grant intervention of right, A.O. Smith is entitled to permission intervention pursuant to Rule 24(b).

CONCLUSION

A.O. Smith has been a good citizen of Chesterfield County for over 35 years. It simply asks this Court to allow it to participate in this proceeding to protect its interests in running its plant efficiently and safely. Accordingly, for the reasons stated above, A.O. Smith moves the Court for an order permitting the company to intervene in this action, and to allow it to file its Answer and Counterclaims, a copy of which is attached hereto as Exhibit A.



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Joan W. Hartley
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803.771.8900

Attorneys for Movant/Proposed Intervenor
A. O. Smith Corporation

February 2, 2016
Columbia, South Carolina

EXHIBIT A

2016 FEB 2 AM 11 27
FAYE L. STULTZ
CLERK OF COURT
CHESTERFIELD COUNTY, SC

A True Copy, Attest

Faye L. Stultz

REC 175 CLERK OF COURT S.P. & S.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS

Town of McBee,

Case No. 2015-CP-13-379

Plaintiff,

vs.

Alligator Rural Water & Sewer Company, Inc.,
Alligator Rural Water Company, Inc.,

**ANSWER AND
COUNTERCLAIMS OF
INTERVENOR/DEFENDANT
A. O. SMITH CORPORATION**

Defendants,

and

A.O. Smith Corporation,

Intervenor-Defendant.

2016 FEB 2 AM 11:27
FILED
CLERK
CHESTERFIELD COUNTY, SC

Intervenor/Defendant A. O. Smith Corporation ("A.O. Smith"), hereby answers the Complaint of the plaintiff, Town of McBee ("Town" or "Plaintiff"):

FOR A FIRST DEFENSE
(Allegations of the Complaint)

1. Each and every allegation of the Complaint not hereinafter specifically admitted is denied and strict proof thereof is demanded.

NATURE OF THE ACTION

2. Responding to Paragraph 1 of the Complaint, A.O. Smith craves reference to the statutes referenced in said paragraph and asserts that the statutes speak for themselves. Further responding, A.O. Smith denies that Plaintiff is entitled to the protections claimed and demands strict proof thereof.

A True Copy, Attest

Loyle S. Sellers

CLERK OF COURT C.P. & O.S.
CHESTERFIELD COUNTY, SC

PARTIES, JURISDICTION, AND VENUE

3. A.O. Smith admits only so much of the allegations contained in Paragraph 2 of the Complaint as alleges the Town is a municipal corporation organized under the laws of the State of South Carolina and that the Town currently sells water to the A.O. Smith facility located at 25589 U.S. 1, McBee, Chesterfield County, South Carolina 29101 ("Chesterfield County Facility" or the "A.O. Smith Facility"). A.O. Smith denies all remaining allegations contained in Paragraph 2 and demands strict proof thereof. Further responding, A.O. Smith denies that the Town, by selling water to the A.O. Smith Facility, has provided or made service available to the A.O. Smith Facility as required for the protection of the A.O. Smith service area pursuant to 7 U.S.C. § 1926(b).

4. Upon information and belief, A.O. Smith admits only so much of the allegations contained in Paragraph 3 of the Complaint as allege that Alligator Rural Water & Sewer Company, Inc. ("Alligator") is a South Carolina corporation with its principal place of business at 378 W. Pine Avenue, McBee, Chesterfield County, South Carolina 29101. The remaining allegations of Paragraph 3 of the Complaint are denied.

5. Upon information and belief, A.O. Smith admits only that the Town asserts claims and seeks declaratory relief under federal statutes and that the issue of jurisdiction is a legal conclusion to which no answer or other response is required. The remaining allegations of Paragraph 4 of the Complaint are denied.

6. Upon information and belief, and subject to its response to Paragraph 4 of the Complaint, A.O. Smith admits the allegations contained in Paragraph 5 of the Complaint

FACTUAL ALLEGATIONS

7. Upon information and belief, A.O. Smith admits only so much of the allegations contained in Paragraph 6 of the Complaint as allege that the Town sells water to customers, including A.O. Smith, in areas within and outside of the municipal limits of the Town of McBee. The remaining allegations contained in Paragraph 6 of the Complaint are denied. Further responding, A.O. Smith denies that the Town by selling water to the A.O. Smith Facility has provided or made service available to the A.O. Smith Facility as required for the protection of the A.O. Smith service area pursuant to 7 U.S.C. § 1926(b).

8. A.O. Smith admits only so much of the allegations contained in Paragraph 7 of the Complaint as allege that A.O. Smith has been provided water through the Town since A.O. Smith purchased the Facility. The remaining allegations contained in Paragraph 7 of the Complaint are denied. Further responding, A.O. Smith denies that the Town by selling water to the A.O. Smith Facility that it received from Alligator, has provided or made service available to the A.O. Smith Facility as required for the protection of the A.O. Smith service area pursuant to 7 U.S.C. § 1926(b).

9. A.O. Smith lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and therefore denies them.

10. A.O. Smith lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint and therefore denies them.

11. A.O. Smith lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint and therefore denies them.

12. A.O. Smith admits only so much of the allegations contained in Paragraph 11 of the Complaint as allege that the Town operates water lines and water storage facilities within and

outside the municipal limits of the Town. The remaining allegations contained in Paragraph 11 of the Complaint are denied. Further responding, A.O. Smith denies that the Town has provided or made service available to the A.O. Smith Facility as required for the protection of the A.O. Smith service area pursuant to 7 U.S.C. § 1926(b).

13. A.O. Smith admits only so much of the allegations contained in Paragraph 12 of the Complaint as allege that the Town operates water lines and water storage facilities which currently transmit water to the A.O. Smith Facility. The remaining allegations contained in Paragraph 11 of the Complaint are denied. Further responding, A.O. Smith denies that the Town has provided or made service available to the A.O. Smith Facility as required for the protection of the A.O. Smith service area pursuant to 7 U.S.C. § 1926(b).

14. A.O. Smith admits only so much of the allegations contained in Paragraph 13 of the Complaint as allege that Alligator claims the right to service the A.O. Smith Facility which is in Alligator's existing service area. The remaining allegations contained in Paragraph 13 of the Complaint are denied. Further responding, A.O. Smith alleges that A.O. Smith is an at-will water customer of the Town and has requested that Alligator provide water service to the A.O. Smith Facility. A.O. Smith further alleges that Alligator has provided and made service available to the A.O. Smith Facility which is in the Alligator service area protected under 7 U.S.C. § 1926(b).

15. A.O. Smith denies the allegations contained in Paragraph 14 of the Complaint and demands strict proof thereof.

16. A.O. Smith denies the allegations contained in Paragraph 15 of the Complaint and demands strict proof thereof.

PLAINTIFF'S FIRST CLAIM FOR RELIEF
(Violation of 7 U.S.C. § 1926(b))

17. Responding to Paragraph 16 of the Complaint, A.O. Smith incorporates by reference its responses to Paragraphs 1 through 15 of the Complaint as though fully set forth herein.

18. A.O. Smith denies the allegations contained in Paragraph 17 of the Complaint and demands strict proof thereof.

19. A.O. Smith denies the allegations contained in Paragraph 18 of the Complaint and demands strict proof thereof.

20. Responding to Paragraph 19 of the Complaint, A.O. Smith craves reference to the statute referenced in said paragraph and asserts that the statute speaks for itself. Further responding, to the extent that the Town asserts that the allegations contained in Paragraph 19 establish a claim by the Town to the protections of 7 U.S.C. § 1926(b) as a service area which includes the A.O. Smith Facility, A.O. Smith denies the allegations contained in Paragraph 19 and demands strict proof thereof.

21. A.O. Smith denies the allegations contained in Paragraph 20 of the Complaint and demands strict proof thereof.

22. A.O. Smith denies the allegations contained in Paragraph 21 of the Complaint and demands strict proof thereof.

23. A.O. Smith denies the allegations contained in Paragraph 22 of the Complaint and demands strict proof thereof.

24. A.O. Smith denies the allegations contained in Paragraph 23 of the Complaint and demands strict proof thereof.

PLAINTIFF'S SECOND CLAIM FOR RELIEF
(Violation of S.C. Code Ann. § 33-36-270)

25. Responding to Paragraph 24 of the Complaint, A.O. Smith incorporates by reference its responses to Paragraphs 1 through 41 of the Complaint as though fully set forth herein.

26. Upon information and belief, A.O. Smith admits the allegations contained in Paragraph 25 of the Complaint.

27. Responding to the allegations contained in Paragraph 26 of the Complaint, A.O. Smith craves reference to the statute referenced therein and asserts that the statute speaks for itself.

28. Responding to the allegations contained in Paragraph 27 of the Complaint, A.O. Smith craves reference to the statute referenced therein and asserts that the statute speaks for itself.

29. A.O. Smith denies the allegations contained in Paragraph 28 of the Complaint and demands strict proof thereof. Further responding, A.O. Smith alleges that the A.O. Smith Facility is in the existing service territory of Alligator.

30. A.O. Smith denies the allegations contained in Paragraph 29 of the Complaint and demands strict proof thereof. Further responding, A.O. Smith alleges that no notice was required prior to Alligator providing service to the A.O. Smith Facility as the A.O. Smith Facility is within the existing service territory of Alligator

31. A.O. Smith denies the allegations contained in Paragraph 30 of the Complaint and demands strict proof thereof.

32. A.O. Smith denies the allegations contained in Paragraph 31 of the Complaint and demands strict proof thereof.

PLAINTIFF'S THIRD CLAIM FOR RELIEF

33. Responding to Paragraph 32 of the Complaint, A.O. Smith incorporates by reference its responses to Paragraphs 1 through 31 of the Complaint as though fully set forth herein.

34. A.O. Smith denies the allegations contained in Paragraph 33 of the Complaint and demands strict proof thereof.

35. A.O. Smith denies the allegations contained in Paragraph 34 of the Complaint and demands strict proof thereof.

36. A.O. Smith denies the allegations contained in Paragraph 35 of the Complaint and demands strict proof thereof.

37. A.O. Smith denies the allegations contained in Paragraph 36 of the Complaint and demands strict proof thereof.

38. A.O. Smith denies the allegations contained in Paragraph 37 of the Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE

39. The Complaint fails to state a claim upon which relief can be granted.

COUNTERCLAIMS OF INTERVENOR/DEFENDANT A.O. SMITH AGAINST PLAINTIFF TOWN OF McBEE

INTRODUCTORY FACTS

1. A.O. Smith owns and operates a manufacturing facility (the "Chesterfield County facility") in an unincorporated area of Chesterfield County, South Carolina. A.O. Smith manufactures water heaters and boilers at the Chesterfield County facility, which also includes

an engineering division that designs and tests company products. The Chesterfield County facility has been in operation since 1980 and employs more than 500 persons.

2. The A.O. Smith facility currently operates five days per week with two shifts of eight hours each. During operating hours, the facility's manufacturing, testing, and domestic water requirements are 161 gallons per minute ("gpm") on an average day and 239 gpm on a peak use day. Additionally, A.O. Smith's fire protection system requires a heightened, minimum instantaneous flow for not less than two hours.

3. In 1979, A.O. Smith and the Town entered a 30-year "non-annexation" agreement under which the Town agreed to supply water to the Chesterfield County facility. Since that time, A.O. Smith has purchased water service from the Town, which is a municipal corporation organized and existing under the laws of the State of South Carolina. The 1979 contract, however, expired in 2009 and there is no current contract between A.O. Smith and the Town.

4. The A.O. Smith facility is situated beyond, and is not contiguous to, the Town's corporate limits. The facility, however, is located within the service area of Alligator, which operates a public water supply and distribution system throughout a large area of Chesterfield County.

5. Prior to 1999, the Town supplied water to A.O. Smith from Town wells. In 1999, the Town shut down its wells and entered an agreement with Alligator, under which Alligator became the sole water supplier to the Town. As of today, Alligator is still the sole water source for the Town and, in turn, the Town's retail customers, including A. O. Smith. Stated differently, since 1999, all of the water that A.O. Smith has purchased from the Town, and used at its facility, has actually been supplied by Alligator.

6. Presently, the Town's public water supply distribution system (the "Town System") is generally comprised of two (2) elevated tanks, a wholesale connection to the Alligator system, and water distribution lines of differing sizes. The Town's water lines are primarily small in diameter, with a larger 12-inch line extending along U.S. Highway 1 between the A.O. Smith facility and the town limits near the intersection of US Highway 1 and Juniper Avenue. One of the two elevated tanks is located in the Town near the intersection of US Highway 1 and Juniper Avenue and has a capacity of 75,000 gallons. The other is located adjacent to the A.O. Smith facility and has a capacity of 250,000 gallons. The two tanks are connected by the 12-inch water main described above.

7. In comparison to the Town's total water storage capacity of 325,000 gallons, the Alligator system has 3,500,000 gallons of storage capacity within two miles of the A.O. Smith facility. Additionally, Alligator has a 24-inch water line which runs along U.S. Highway No. 1 adjacent to the facility.

8. In 2011, A.O. Smith advised the Town that the Chesterfield County facility would require an instantaneous demand of 2,000 gpm at a minimum of 98 psi for its fire protection system and an additional 500 gpm for a proposed expansion of the facility. When the Town failed to address A.O. Smith's concerns, the company entered into discussions with Alligator regarding water service for its Chesterfield County facility. Alligator advised A.O. Smith that it had 8,000,000 gallon per day in excess capacity and could provide up to 4,000 gpm to the Chesterfield County facility and sustain that flow on a continuous basis.

9. By letter dated October 10, 2013, the Town informed A.O. Smith that it intended to place its two existing water supply wells back into operation. Upon information and belief, as alleged above, these wells were previously taken out of service at the direction of DHEC in the

early 2000s when contaminants were detected in the water from the wells. The Town further advised A.O. Smith that these two wells would meet all of the water source requirements for the Town System.

10. A.O. Smith must have an adequate and reliable source of water service. Upon information and belief, the two water wells, operating without a backup source from Alligator, will not be sufficient to meet A.O. Smith's demand, including the instantaneous fire flow demands of the A.O. Smith facility. Upon information and belief, the capacity of these wells does not meet the redundancy requirements of Section 61-58.2(B)(1) of the State Primary Drinking Water Regulation. S.C. REG. ANN. § 61-58.2(B)(1).

11. In recent months, the Town's service to A.O. Smith has been interrupted and inadequate to meet its water needs on certain occasions. For example, on June 19, 2015, A.O. Smith lost water pressure at the Chesterfield County plant to the point that all essential water uses were curtailed. Moreover, on certain occasions, the Town has failed to maintain storage capacity needed to ensure adequate pressure for A.O. Smith's fire protection system.

12. In addition to issues with regard to adequacy and reliability with the Town System, A.O. Smith believes that the Town may have been overbilling its retail customers, including A.O. Smith, for water service in recent years. In 2013, Alligator increased its wholesale water rate to \$1.92/thousand gallons. In October 2013, the Town increased the water rate charged to its customers, assertedly based on this increase by Alligator. However, upon information and belief, the Town has continued to pay Alligator at a rate of \$1.25/thousand gallons.

13. Based on A.O. Smith's water use through August 2015, the difference between pre-October 2013 rate and current rate charged to the Town's commercial customers results in overbilling to A.O. Smith of more than \$60,000.

14. The current dispute between the Town and Alligator is not good for A.O. Smith, and it is not good for community. The Town's attempt to prevent Alligator from serving A.O. Smith deprives the company of the adequate and reliable water service necessary to support its current operations and presents a major obstacle for any future expansions of the Chesterfield County facility.

15. The Town's efforts are also contrary to the best interests of A.O. Smith and other existing and potential industrial facilities in the area. The availability of basic utilities is a fundamental consideration for any new industrial development. The Town's claim that it is entitled to protected service areas outside of its municipal limits, without complying with S.C. CODE ANN. § 5-31-1910, could have the undesirable effect of discouraging the siting of any new industrial development in that area which requires process water for its operation. The Town does not have adequate capacity to serve A.O. Smith, and therefore, could not supply any additional industry.

FIRST COUNTERCLAIM OF INTERVENOR/DEFENDANT A.O. SMITH
(Declaratory Judgment under S.C. Code Ann. §§ 15-53-20, *et seq.* or, alternatively,
under 28 U.S.C. §§ 2201, 2202)

16. A.O. Smith reaffirms and reiterates Paragraphs 1 through 15 contained in the Counterclaims herein as fully as if repeated verbatim.

17. Pursuant to S.C. CODE ANN. §§ 15-53-20, *et seq.*, or alternatively 28 U.S.C. §§ 2201, 2002, A. O. Smith prays for a declaration, as follows:

- a. That it does not have a contract with the Town of McBee for the provision of water, that it is an "at-will" customer and it is entitled to terminate water service with the Town.
- b. That under S.C. CODE ANN. § 5-31-1910, the Town cannot contract with A.O. Smith because, although it is outside the corporate limits of the Town, its facility is not contiguous with those corporate limits.
- c. That the A.O. Smith facility is not located within the service area of the Town and, therefore, the Town is not entitled to the protection of that service area under 7 U.S.C. §1926(b).
- d. That the A.O. Smith facility is located within the service area of Alligator and, therefore, Alligator is entitled to the protection of that service area under 7 U.S.C. § 1926(b).

18. Pursuant to S.C. CODE ANN. § 15-53-100, A. O. Smith also prays this Court to award costs, including attorney fees, as it may seem equitable and just.

SECOND COUNTERCLAIM
(Accounting)

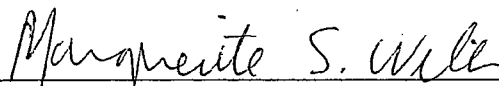
19. A.O. Smith reaffirms and reiterates Paragraphs 1 through 18 contained in the Counterclaims herein as fully as if repeated verbatim.

20. A.O. Smith prays for an accounting from the Town of McBee as to the operation of the Town System since 2006 to the present date.

21. In specific, A.O. Smith prays that this Court order the Town to account for (a) the monies it paid to Alligator for water is resold to A.O. Smith and its other water customers, (b) the monies it collected from such customers for water service, and (c) all expenditures related to the Town System or water service to A.O. Smith and other water customers.

WHEREFORE, A.O. Smith Does Pray:

1. That the Complaint be dismissed;
2. That A.O. Smith have judgment on its counterclaims;
3. That the Town be enjoined from interfering with A.O. Smith's efforts to secure an alternative source of water from Alligator;
4. For a jury trial on all triable issues of fact contained in the pleadings;
5. For reasonable attorney's fees under S.C. CODE ANN. § 15-77-300; and
6. For such other and further relief as the Court may find just and proper.



Marguerite S. Willis
Joan W. Hartley
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Box 2426
Columbia, SC 29202
803.771.8900

Attorney for Intervenor/Defendant
A. O. Smith Corporation

February 2, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	
	)	2015-CP-13-379
Town of McBee,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF
versus	)	GLENN C. ODOM
	)	
Alligator Rural Water & Sewer Company,	)	
Inc., Alligator Rural Water Company, Inc.,	)	
	)	
Defendants.	)	

Personally appeared before me, Glenn C. Odom, who being first duly sworn states he is of age and is a citizen and resident of the County of Chesterfield, State of South Carolina.

Deponent further states that he is the general manager of Alligator Rural Water and Sewer Company, Inc.

Deponent further states that in 1999, the Town of McBee through its elected officials, asked Alligator to take over, operate and maintain its water system. At that time, the Town was not in compliance with DHEC's sanitary water standards and had not been in compliance for the past approximately twelve years. In 1999, DHEC advised the Town of McBee that if its system was not brought into compliance, the Town would begin incurring substantial monthly fines. At that point, the Town of McBee and Alligator began developing a plan that would address the Town's issues with DHEC.

In 1999, the Town only had one operational well, which was a DHEC violation. In order for Alligator to give McBee the water supply that it needed to adequately supply its customers, Alligator had to install more wells, run lines to connect McBee to Alligator's system, install booster pumps and a pump

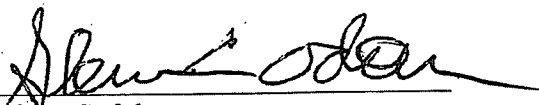
station. Both Alligator and the Town made loan applications to Rural Development seeking the necessary funds to complete this very expensive project.

In 1999, the Town and Alligator entered into a Water Purchase Agreement so that the Town could begin purchasing all of its water from Alligator. The Town's attorney drafted the forty years contract which required Rural Development's approval. In 2001, Alligator made application to DHEC to construct water lines and connections to McBee, 2 deep wells, and a 300,000 gallon water storage tank to adequately supply the Town with water service. The approximate cost of this portion of Alligator's project was \$1,100,000.00. After deducting grants, Alligator borrowed \$674,500.00 from Rural Development to complete the project. Alligator's payment on this project is \$3,522.00 per month for a 40 year term. The Water Purchase Agreement between the Town and Alligator was a loan requirement and was pledged as security for the loan. Item 9 of the Agreement states "This Agreement is pledged to the United States of America, acting through the United States Department of Agriculture as part of security for a loan to the Purchaser and Seller from USDA, Rural Development." This Water Purchase Contract has also been pledged as security for every RD loan that Alligator has acquired since 1999.

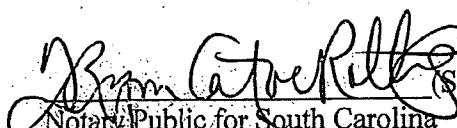
The Town of McBee has purchased all of its potable water from Alligator since 1999 pursuant to the Water Purchase Agreement. At present, the Town of McBee is Alligator's second largest water customer accounting for monthly revenue in the amount of approximately \$6,000.00. Since 1999, Alligator has provided water service within the corporate limits of the Town of McBee and to all McBee customers outside of the corporate limits pursuant to the said water purchase agreement and has been satisfactory on every annual DHEC sanitary survey. Without this revenue stream, Alligator will be unable to pay its obligation to Rural Development in connection with this project. On or about Monday, March 14, 2016, at 9:00 a.m. the Town of McBee began operating its own water system and continued to operate it until 2:00 p.m. During this time, the Town purchased no water from Alligator. This action on behalf of

the Town evidences its intent to begin operating its water system at which time it would no longer purchase water from Alligator which would curtail and limit Alligator's service in violation of 7 U.S.C.A. §1926(b) and cause immediate and irreparable injury to Alligator.

Deponent further saith not.


Glenn C. Odom

Sworn to before me this 15th
day of March, 2016.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 1-9-2018

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

Town of McBee, South Carolina

Plaintiff,

versus

Alligator Rural Water & Sewer Company,
Inc., Alligator Rural Water Company, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2015-CP-13-00379

AFFIDAVIT OF
JOHN CAMPOLONG
MAYOR OF TOWN OF MCBEE

MAR 29 AM 10 22
FAVE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Personally appeared before me the undersigned, John Campolong, who being duly sworn states as follows:

1. I am John Campolong, Mayor of the Town of McBee, South Carolina (the "Town"). I was elected Mayor in October 2008 and am currently serving my second term as Mayor.
2. I have operated in textile manufacturing in McBee for 55 years. I understand the importance of reliable water service.
3. On December 28, 1999, Town Council voted in special session to approve a forty year agreement ("Water Purchase Agreement") to turn water service to the Town over to Alligator Rural Water & Sewer Company, Inc. ("Alligator").
4. The Water Purchase Agreement is not an 'all requirements' contract. It does not contain terms that give Alligator the exclusive right to provide water service to the Town. In fact, during the period from 1999 to 2009, Alligator provided water service to the Town using the Town's own wells.
5. In 1999, the members on Town Council that signed the agreement with Alligator were Alan G. McLeod, Charles Sutton, George Tiller, and William B. Edwards. A copy of this Water Purchase Agreement is attached as *Exhibit A* to this affidavit.

A True Copy, Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

6. Two of the four members on Town Council who signed the Water Purchase Agreement, George Tiller and William B. Edwards, were also employees of Alligator at that time.
7. In 2005, the Town paid to rebuild its water system. The Town took out a forty year \$4.5 million USDA Loan to pay for the project. The amount that the Town invested equaled slightly more than \$10,000 per customer. Repaying that debt requires approximately 25% of the Town's current water revenues.
8. Alligator managed that reconstruction project as the Town's agent. The executive director of Alligator, Mr. Glenn Odom, was mayor of the Town during this period.
9. As part of the 2005 project, the Town reconstructed its primary well to ensure that it could continue to provide reliable and high-volume water service. Alligator used that well to provide service to the Town until recently.
10. I had not been involved in politics before 2006. I agreed to run for mayor in 2008 specifically out of concern for how the then-current council was managing the Town and its close relationship with Alligator since some council members were also Alligator employees. I was convinced to run for mayor by many key business and civic leaders in the McBee area who shared my concerns about this arrangement. Voters questioned why the Town was paying Alligator to provide water from the Town's own wells. Voters questioned why they were told that the Town's wells were contaminated, but Alligator continued to use them to supply water to the Town after the takeover of the Town's system.
11. In an affidavit dated March 15, 2016, Mr. Glenn Odom, the Executive Director of Alligator, states that "[a]t that time [1999], the Town was not in compliance with

DHEC's sanitary water standards and has not been in compliance for approximately twelve years."

12. This statement is not true. Attached as *Exhibit B* to this affidavit is a Water Quality Report dated October 1, 1999. This was the last report before the Town's results were consolidated with Alligator's. The 1999 report indicates that the Town's water system contained no elevated levels of contaminants and was in compliance with DHEC standards with two wells in operation.
13. During the period 2009 to 2016, the Town tested its well water repeatedly. Over this six year period, there has never been a test result showing any violation of drinking water standards or any concentration of a potential contaminant that approached levels of concern.
14. During the period 1999 to 2009, Alligator operated the Town's wells and supplied water to the Town through them. This is inconsistent with Mr. Odom's assertion that the Town's water is contaminated during this period.
15. On September 11, 2009, Alligator stopped using the Town's wells as a water source for the Town and switched to a source of water provided by Alligator itself.
16. Alligator is a private non-profit rural water company. Alligator is not accountable to elected officials and is not regulated by the South Carolina Public Service Commission.
17. Alligator is governed by a board of directors elected by the individuals listed as members of Alligator on the voting rolls kept by Alligator. The current leadership of Alligator closely controls the election process and membership lists. Only persons who support the current leadership of Alligator have been elected or reelected to the board. Others have encountered stiff resistance.

18. Alligator has no employees. Instead, it pays a for-profit services company, Odom and Associates, for personnel and operating services.
19. The Town has sincere and well-justified concerns about leaving the future of its water service remaining in the hands of such an entity.
20. My understanding is that the principal of Odom and Associates is Mr. Glenn Odom, executive director of Alligator.
21. I have attached to this affidavit as *Exhibit C* a report by the accounting firm of Sheheen, Hancock and Godwin, LLP of Camden, South Carolina concerning Alligator's finances.
22. Exhibit 9 to that report is a copy of the 2002 management contract between Odom and Associates and Alligator. It indicates that Odom and Associates is paid a flat rate of \$720,000 per year for operating Alligator, plus certain office expenses and overheads. In addition, Odom and Associates receives 40% of all revenues generated by water sales that exceed 600 million gallons per year and 40% of all water revenues that are generated by rate increases that are imposed after 2002.
23. If Alligator were a public firm, this would be an illegal kick-back.
24. Because this compensation is paid as a flat fee, Odom and Associates is not accountable to Alligator for how these funds are spent.
25. In its 2014 financial reports, Alligator lists an outstanding debt to Odom and Associates of \$1.3 million.
26. Alligator is characterized by persistent financial mismanagement. The financial data indicate that Alligator has operated at a net loss in every year for which data is available since 2004. The total loss during that period was more than \$8 million. Alligator's 2014 loss was \$936,142. Its unrestricted net assets (book value) was negative \$1.7 million and

its cash balance was \$18,364. Alligator paid Odom and Associates more than \$8 million since 2004.

27. Although it is a small, rural water provider, Alligator has outstanding debt to the USDA of \$23.3 million.

28. Long-term, the Town does not consider Alligator to be a viable utility either from a financial, ethical or managerial basis.

29. It is for that reason that the Town has decided to reopen its wells and place itself in a position where it is no longer dependent on Alligator. As a public official, I believe it is my duty to ensure that the health and welfare of the people of McBee are protected by replacing Alligator as the source of the Town's water. Alligator is unaccountable, unregulated, unethical and financially mismanaged. The people of my town deserve better. That is why I was elected to be their mayor.

30. In the summer of 2013, the Town received a letter from Alligator imposing a 56% wholesale water rate increase.

31. The Town also requested that Alligator provide the backup financial data necessary to support the increase as our contract provides.

32. The Town informed Alligator that it will not begin paying Alligator's new rates until Alligator provides the required financial backup.

33. Alligator alleges that without the revenue stream from the Town, Alligator will be unable to pay its obligator to Rural Development. In 2014, the Town purchased water from Alligator in an amount of \$106,923.50 for the year. The documentation supporting this number is attached as *Exhibit D*. Alligator's revenues, per audited financial statements,

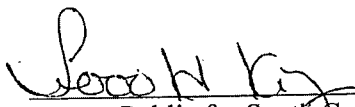
for 2014 were \$3,486,342. Therefore, the Town only provides approximately 3% of Alligator's revenue.

34. The Town has spent approximately \$250,000 to put its wells back in service. Should the Town not be able to operate them, it will incur an additional expense of approximately \$78,000 per year compared to operating its system itself.

FURTHER AFFIANT SAITH NOT.


JOHN CAMPOLONG

SWORN to BEFORE me the 24 day of March, 2016.


Notary Public for South Carolina
My Commission Expires: 4-28-2018

2016 MAR 29 AM 10 22
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

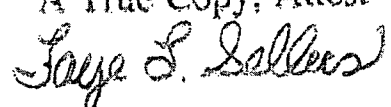
A True Copy, Attest

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Exhibit A - Water Purchase Agreement

2016 MAR 29 AM 10 22
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy, Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

WATER PURCHASE AGREEMENT

THIS AGREEMENT FOR SALE AND PURCHASE OF POTABLE WATER, made and entered into this 28th day of Dec, 1999, by and between ALLIGATOR RURAL WATER AND SEWER COMPANY, INC., hereinafter referred to as SELLER, and THE TOWN OF MCBEE, hereinafter known as PURCHASER; made in four parts, all of which will be treated as an original;

(WITNESSETH)

WHEREAS, the SELLER is a corporation duly organized, pursuant to the laws of South Carolina and owns and operates a potable water supply production and distribution system with a capacity currently capable of serving its customers within its system with a remaining excess capacity available for sale, according to the records of both parties hereto and providing a basis for this Agreement; and

WHEREAS, the Board of Directors, governing body of SELLER, by Resolution approved on the 28th day of December, 1999, did adopt and approve the sale of water to PURCHASER, subject to the conditions and stipulations set forth herein, and which authorized the President and the Secretary-Treasurer, to execute this Agreement on behalf of SELLER; and

WHEREAS, the purchase of water from SELLER was approved by the Mayor and Town Council of the Town OF MCBEE on the 28th day of December, 1999, subject to the terms, conditions and stipulations enumerated herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained.

ARTICLE 1. THE SELLER HEREBY AGREES:

1. Quality and Quantity. To furnish PURCHASER at the point of delivery, during the term of this Agreement or any renewal or extension thereof, potable treated water meeting applicable purity standards of the South Carolina Department of Health and Environmental Control (SCDHEC) in such quantity as may be required by PURCHASER, subject to the following demands:
 - a. A maximum instantaneous demand of 350 gallons per minute.
 - b. A maximum daily demand of 500,000 gallons.
2. Point of Delivery and Pressure. (To be determined by engineers representing SELLER and engineers representing PURCHASER)
3. Billing Procedure. SELLER shall furnish PURCHASER an itemized statement of the gallons of water furnished PURCHASER during the preceding month, not later than the first day of each month.
4. Ownership. No laterals, transmission mains, or services shall be constructed by the SELLER downstream from the meter without the prior consent of the PURCHASER. SELLER shall be responsible for the repair and maintenance of all lateral transmission mains and/or lines of the PURCHASER, SELLER shall be responsible for repair and maintenance up to and not exceeding jobs at the value of \$5,000.00 with approval of PURCHASER. Anything above

A True Copy, Attest

Larry S. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

McBee Manufacturing

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843-335-8236

REC 196

p.1

\$5,000.00 the PURCHASER has the option to put the work out to bid.

5. Metering Equipment. SELLER agrees to install metering equipment, including all Appurtenances and required devices for properly measuring the quantity of water delivered and to test and calibrate said metering equipment annually. For the purpose of calibration, a meter which registers not more than two percent (2%) above or below the test results shall be accepted as by both parties.

6. Read Meters and deliver readings by 25th. SELLER will read meters owned by PURCHASER and will deliver readings to Town clerk by the 25th of each month.

7. Installing Meters. PURCHASER will install new meters within 10 working days of notification. \$330.00 for in Town, \$450.00 for out of Town.

8. SELLER has the option to rehabilitate PURCHASER'S well or wells. SELLER will pay all cost and has the right to use said wells. After 10 years both parties will review and SELLER shall pay PURCHASER negotiated rate for whole sale water in the event usage is equal to or greater than the amount spent on the rehabilitation project.

SELLER will indemnify and hold PURCHASER harmless for any and all activity associated with the use of said well or wells during the term of this agreement to include operation, maintenance and rehabilitation of the said wells by its employees, assigns, agents and contractors. During this period the wells shall be considered the property of the PURCHASER but shall be the responsibility of the SELLER, and SELLER agrees to maintain the wells in such a condition as to keep them in proper working order and in compliance with all South Carolina Department of Health and Environmental Control regulations. Any material and capital improvements done to the wells shall be done at the risk of the SELLER and shall become the property of the PURCHASER. Any and all taxes due on the wells shall be paid by the SELLER during this initial ten (10) year agreement where SELLER will be able to use water produced from the wells.

9. PURCHASER will pay maintenance of elevated tanks (2).

10. Should any disagreement arise under this Agreement each of the parties hereto, its administrator, successors, or assigns agree to arbitrate the controversy and submit the matter to two disinterested arbitrators, one to be chosen by each of the parties, and in case they disagree, the two chosen shall elect a third disinterested arbitrator, and the decision of the two of the arbitrators shall be final. This Arbitration is non binding.

ARTICLE II THE PURCHASER HEREBY AGREES:

1. Rates and Payment Date. PURCHASER will pay in full for all water purchased, pursuant to this Agreement, not later than the tenth (10th) day of each month at the rate of 50.95 per thousand gallons.

ARTICLE III. BOTH PARTIES MUTUALLY AGREE:

1. Term of Agreement. This agreement will extend for a period of forty (40) years from the date herein set forth in the initial paragraph.

2. Connect Fee. It is mutually agreed that SELLER will not require of PURCHASER a fee for connection to supply system of SELLER.
3. If any meter fails to register for any period, the amount of water furnished during that period will be deemed to be the amount delivered in the corresponding period immediately prior to the failure, unless otherwise agreed between SELLER and PURCHASER.
4. The metering equipment will be read on or about, the twenty-fifth (25th) day of each month and appropriate officials of PURCHASER and SELLER will have access to the meters at all reasonable times, for the purpose of verification.
5. Water for Testing. PURCHASER agrees to coordinate testing procedure requirements with SELLER so as not to cause difficulty in meeting PURCHASER'S demands.
6. Failure to Deliver. SELLER will operate and maintain its system at all times in an efficient manner and will take such action as may be necessary to furnish PURCHASER with the quantities of water as set forth in this Agreement. Temporary or partial failure to deliver water will be remedied as soon as possible.

Emergency failures of pressure of supply due to main supply breaks, power failure, flood, fire and use of water for fire fighting, earthquakes or other catastrophes, will excuse SELLER from performance for such reasonable period of time as may be necessary to restore service.

In the event of an extended shortage of water, or should the supply of water available to SELLER be diminished for an extended period of time, the supply of water to customers of PURCHASER will be reduced or diminished, in the same ratio or proportion as the supply to the customers of SELLER.

7. Modification of Agreement. The provisions of this Agreement, as they pertain to the schedule of rates paid by PURCHASER, will be subject to review and modifications each year on or about the first day of May, 2001. Modifications of rates, if adopted by SELLER, will be based on actual increases in costs of production, not including capital expenditures and/or improvements, presented to PURCHASER for its review at least thirty (30) days prior to the effective date of any increase. Copies of rate calculations, and pertinent record substantiating same, will be available to PURCHASER for inspection during the review period.

(NOTE: A copy of SELLER'S audit report for the preceding year, upon which any modifications may be made, will be made available to PURCHASER upon request to SELLER.)

8. Successor to PURCHASER and SELLER. In the event any occurrence renders PURCHASER incapable of performing its responsibilities required by this Agreement, its successor, whether the result of legal process, assignment or otherwise, will succeed to the rights and obligation of PURCHASER.

In the event any occurrence renders SELLER incapable of performing its responsibilities required by this Agreement, its successor, whether the result of legal process, assignment or otherwise, will succeed to the rights and obligation of SELLER.

9. Pledge to United States of America. This Agreement is pledged to the United States of America, acting through the United States Department of Agriculture as part of security for a

loan to the Purchaser and Seller from USDA, Rural Development.

IN WITNESS WHEREOF, the parties hereto, by authority duly given, have caused this Agreement to be duly executed in four counterparts as hereinabove set forth in the initial paragraph.

ATTEST:

Cornelia L. Carr

ALLIGATOR RURAL WATER AND
SEWER CO., INC.

by Harvey L. Griggs
President

Cornelia L. Carr
Secretary/Treasurer

TOWN OF MCBEE

by Tom MCB
Mayor

COUNCIL MEMBERS

Ang S. McLeod

W. L. Lee

George Seltzer

William B. Edwards

APPROVAL:

USDA, RURAL DEVELOPMENT

ACCEPTED AS MEETING
RURAL DEVELOPMENT
ADMINISTRATIVE REQUIREMENTS

BY: Mike Hoch

TITLE: RBS/RUS Program Director

DATE: 6/29/00

Exhibit B – 1999 Water Quality Report

2016 MAR 29 AM 10 22
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

REC 203

A True Copy, Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Annual Drinking Water Quality Report
TOWN OF MCBEE

2016 MAR 29 AM 10 22 OCTOBER 1, 1999

FAYE L. SELLERS

We're pleased to present to you this year's Annual Quality Water Report. This report is designed to inform you about the quality water and services we deliver to you every day. Our constant goal is to provide you with a safe and dependable supply of drinking water. We want you to understand the efforts we make to continually improve the water treatment process and protect our water resources. We are committed to ensuring the quality of your water. Our water source is **THE MIDDENDORF AQUIFER. WE HAVE TWO WELLS THAT WE USE TO PUMP WATER FROM THE AQUIFER.**

I'm pleased to report that our drinking water is safe and meets federal and state requirements.

This report shows our water quality and what it means.

If you have any questions about this report or concerning your water utility, please contact **THE CLERK AT THE TOWN HALL AT 843-335-8474 OR ALAN MCLEOD AT 335-6457**. We want our valued customers to be informed about their water utility. If you want to learn more, please attend any of our regularly scheduled meetings. They are held on **THE FIRST TUESDAY OF EVERY MONTH AT 7:30 P.M. AT THE TOWN HALL.**

THE TOWN OF MCBEE WATER SYSTEM routinely monitors for contaminants in your drinking water according to Federal and State laws. This table shows the results of our monitoring for the period of January 1st to December 31st, 1998. As water travels over the land or underground, it can pick up substances or contaminants such as microbes, inorganic and organic chemicals, and radioactive substances. All drinking water, including bottled drinking water, may be reasonably expected to contain at least small amounts of some contaminants. It's important to remember that the presence of these contaminants does not necessarily pose a health risk.

McBEE has it's water tested by DHEC labs, DHEC certified labs as well as DHEC'S routine sampling of all water systems.

In this table you will find many terms and abbreviations you might not be familiar with. To help you better understand these terms we've provided the following definitions:

Parts per million (ppm) or Milligrams per liter (mg/l) - one part per million corresponds to one minute in two years or a single penny in \$10,000.

Picocuries per liter (pCi/L) - picocuries per liter is a measure of the radioactivity in water.

Millirems per year (mrem/yr) - measure of radiation absorbed by the body.

Maximum Contaminant Level - (mandatory language) The "Maximum Allowed" (MCL) is the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

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CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Maximum Contaminant Level Goal - (mandatory language) The "Goal"(MCLG) is the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

TEST RESULTS						
Contaminant	Violation Y/N	Level Detected	Unit Measurement	MCLG	MCL	Likely Source of Contamination
Radioactive Contaminants						
4. Beta/photon emitters	no	1+- .4	pCi/l	0	4	Decay of natural and man-made deposits
5. Alpha emitters	no	1.6 +- .6	pCi/l	0	15	Erosion of natural deposits
Inorganic Contaminants						
14. Copper (1997)	no	.115	ppm	1.3	AL=1.3	Corrosion of household plumbing systems; erosion of natural deposits; leaching from wood preservatives
19. Nitrate (as nitrogen) well on 6 th street	no	3.8	ppm	10	10	Runoff from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits
20. Nitrate (as Nitrogen) well on hwy. 1 north	no	1.1	ppm	10	10	Runoff from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits

As you can see by the table, our system had no violations. We're proud that your drinking water meets or exceeds all Federal and State requirements. We have learned through our monitoring and testing that some constituents have been detected. The EPA has determined that your water IS SAFE at these levels.

All sources of drinking water are subject to potential contamination by substances that are naturally occurring or man-made. These substances can be microbes, inorganic or organic chemicals and radioactive substances. All drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that the water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline at 1-800-426-4791.

MCL'S are set at very stringent levels. To understand the possible health effects described for many regulated constituents, a person would have to drink 2 liters of water every day at the MCL level for a lifetime to have a one-in-a-million chance of having the described health effect.

Nitrates: As a precaution we always notify physicians and health care providers in this area if there is ever a higher than normal level of nitrates in the water supply.

In our continuing efforts to maintain a safe and dependable water supply it may be necessary to make improvements in your water system. The Town of McBee has decided to buy water from Alligator Rural Water System. We feel this will benefit the Town and believe we will be able to provide better service to water customers in replacing old hydrants and valves. We feel we can

also create loops in dead-end lines.

Thank you for allowing us to continue providing your family with clean, quality water this year.

Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by cryptosporidium and other microbiological contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

Please call our office if you have questions.

We at McBee Water System work around the clock to provide top quality water to every tap, said Alan McLeod. We ask that all our customers help us protect our water sources, which are the heart of our community, our way of life and our children's future.

Exhibit C - Sheheen Report

2016 MAR 29 AM 10 22
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy, Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

REC 207

SHEHEEN, HANCOCK & GODWIN, LLP
CERTIFIED PUBLIC ACCOUNTANTS

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August 25, 2015

Belton T. Zeigler, Esquire
Womble Carlyle Sandridge & Rice, LLP
1727 Hampton Street
Columbia, SC 29201

Dear Mr. Zeigler,

We were engaged by Womble Carlyle Sandridge & Rice, LLP to perform consulting services for its clients in relation to certain operational and financial documents involving Alligator Rural Water and Sewer Company, Inc. ("Alligator Water"). Our engagement was to assemble information and schedules in a format that is informative and understandable. We read the available audited financial statements, publically available Form 990s "Return of Organization Exempt from Income Tax", Data Collection Forms, loan agreements with the USDA, and other documents made available through Freedom of Information Act requests. This report is intended only for the information and use of Womble Carlyle Sandridge & Rice, LLP.

At the time of preparation of this report, certain financial and operation documents were not available for consideration as part of this engagement, and the management of Alligator Water was not made available for interview and inquiry. Audited financial statements were not available for the 2007 year. In addition, Form 990 tax returns were only available for 2004 through 2013. There were other documents that had been requested through the Freedom of Information Act that had not been received at the time of this report. If the management of Alligator Water and other documents were available, the considerations listed below may have changed or been presented in a different manner. This report is not intended for those who are not aware of these limitations.

Below is an executive summary and overview with a condensed version of key data. Following the Summary and Overview, we have expanded on the findings to provide additional factual information we obtained from our analysis of the documents made available to us.

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Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

REC 208

2016 MAR 29 AM 10 22
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

SUMMARY AND OVERVIEW

The following twelve disclosures are found in Alligator Water's reports. All numbers are as of December 31, 2014 unless otherwise noted. (Information for 2007 was unavailable and not included in the multi-year totals.)

1. In each of the years 2004-2006 and 2008-2014, Alligator Water reports a net loss. That loss is between (\$421,815) and (\$1.2 million).
2. For 2014, Alligator Water reports a net loss of (\$936,142).
3. For 2014, Alligator Water lists its unrestricted net assets (book value) as negative (\$1.7 million) and its cash balance as \$18,364. Alligator Water, therefore, has no unrestricted reserves.
4. For the years 2004-2006 and 2008-2014, Alligator Water reports that it paid Odom & Associates \$7.9 million.
5. For 2014, Alligator Water reports that it had an outstanding debt to Odom & Associates of \$1.3 million. Alligator Water does not disclose the terms of this debt to Odom & Associates.
6. In its 2013 federal tax filings, Alligator Water reported it had no transactions with companies in which its key employees were direct or indirect owners.
7. In its 2013 federal tax filings, Alligator Water also reported that none of its key employees received or accrued compensation from unrelated organizations for services rendered to Alligator.
8. For the years 2004-2006 and 2008-2014, Alligator Water lists having received over \$40.2 million in USDA grants and loans.
9. For 2014, Alligator Water lists its outstanding long-term debt as \$23.3 million.
10. Alligator Water reported that its principal and interest payments on long-term debt during 2015 will be \$2.0 million, or approximately 62% of historical annual revenue.
11. For the years 2008-2013, Alligator Water did not maintain debt service reserves required by USDA.
12. Alligator Water reports funding those reserves with a loan in 2014.

The following content is an expanded summary of the information we observed presented in a manner that we believe is meaningful to Womble Carlyle Sandridge & Rice, LLP and its client as it relates to Alligator Water and related entities. We would recommend further evaluation of these considerations as more information becomes available to present more thorough and conclusive results.

GENERAL BUSINESS CONSIDERATIONS

Based upon reading the audited financial statements, the following matters were considered:

1. From 2004 through 2014, Alligator Water has received over \$40.2 million in capital grants and loan proceeds from the United States Department of Agriculture (USDA), Rural Economic Community Development (RECD). The following is a schedule of the grants and loan proceeds for the years in which they occurred:

<i>USDA - Rural Economic Development</i>			
Year	Grant Proceeds	Loan Proceeds	Total
2004	\$ 1,301,059	\$ 1,917,580	\$ 3,218,639
2005	59,262	60,000	119,262
2006	29,500	3,318,354	3,347,854
2007	<i>Information not available</i>		-
2008	1,799,441	3,750,260	5,549,701
2009	734,705	933,135	1,667,840
2010	3,412,933	4,551,000	7,963,933
2011	10,600,442	5,300,000	15,900,442
2012	2,096,973	-	2,096,973
2013	369,032	-	369,032
2014	-	-	-
	<u>\$ 20,403,347</u>	<u>\$ 19,830,329</u>	<u>\$ 40,233,676</u>

2. As of December 31, 2014, (the most recent date audited financial statements are available), Alligator Water had outstanding long-term debt totaling \$23,333,166. Based on the audit report, long-term debt was comprised of 19 loans from the USDA-RECD totaling \$21,732,125 and 3 loans with a local financial institution totaling \$1,601,041. Of these loans, the amount of principal repayment required in 2015 is \$1,184,648.
3. In addition to the long-term debt summarized in Item #2 above, Alligator Water reported a note payable outstanding to Odom & Associates, a related party, totaling \$1,347,940 at December 31, 2014. The debt repayment terms as described in the audited financial statements are unclear regarding this related party debt because the terms do not disclose an interest rate, required monthly or annual payments of principal and/or interest, and the maturity date of the debt.

General Business Considerations (continued)

4. One of the loans included in the long-term debt summarized in Item #2 above is a real estate loan with a local bank that matures annually and is renewable at the bank's discretion. That real estate loan originated in 2007 and, based upon the 2007 through 2014 audited financial statements, the Company has made no principal payments on that debt since origination. The total debt outstanding on this loan is \$753,422 at December 31, 2014, and includes a variable annual interest rate.
5. At December 31, 2014, Alligator Water reported a cash balance of \$18,364.
6. The 2014 audited financial statements report that principal and interest repayments required on existing long-term debt would be \$2,010,709 during calendar year 2015. Alligator Water reported annual gross operating revenue totaling \$3,263,742 in calendar 2014. Therefore, debt service obligations (principal and interest payments) for 2015 are calculated to be approximately 62% of the Company's total gross operating revenue.
7. As of December 31, 2014, Alligator Water reported a *negative unrestricted net assets* (equity) totaling \$1,709,035 as listed in the Statement of Net Position. This negative amount of unrestricted net position indicates that the Company does not have any unrestricted financial reserves.
8. As of December 31, 2014, Alligator Water had a net operating loss, including interest expense, of \$936,142. Excluding grant income from the USDA for capital purchases, the Company has experienced re-occurring net losses at least 10 of the last 11 years. The accumulated net losses including interest expense from 2004 through 2014 total approximately \$8 million. The following schedule summarizes the annual operating and non-operating income and losses, along with capital grant revenue, of Alligator Water for 2004 through 2014.

Year	Operating Income/(Loss) (A)	Non-Operating Income/(Expense) (B)	Net Operating & Non-Operating Income/(Loss) (A + B)	USDA Capital Grant Revenue (C)	Change in Net Assets (A + B + C)
2004	\$ (275,847)	\$ (267,696)	\$ (543,543)	\$ 1,301,059	\$ 757,516
2005	(209,927)	(211,888)	(421,815)	59,262	(362,553)
2006	(269,767)	(324,746)	(594,513)	29,500	(565,013)
2007	<i>Information not available</i>				
2008	(248,453)	(689,437)	(937,890)	1,799,441	861,551
2009	106,479	(616,181)	(509,702)	734,705	225,003
2010	(330,124)	(728,113)	(1,058,237)	3,659,470	2,601,233
2011	(309,706)	(464,415)	(774,121)	10,715,880	9,941,759
2012	(475,973)	(672,367)	(1,148,340)	2,096,973	948,633
2013	(399,582)	(829,856)	(1,229,438)	509,032	(720,406)
2014	(133,120)	(803,022)	(936,142)	-	(936,142)
Total	\$ (2,546,020)	\$ (5,607,721)	\$ (8,153,741)	\$ 20,905,322	\$ 12,523,354

General Business Considerations (continued)

9. Alligator Water's management explains in its own Management's Discussion and Analysis from the 2012 audited financial statements that "non-operating revenues are revenues received for which services are not provided to clients or community partners". Based upon reading the MD&A, Management includes USDA Grant Revenue as non-operating revenue. Management also states that they "will continue to receive a significant amount of non-operating revenue in the future". The audited financial statements report that all grant revenue from the USDA to Alligator is issued under the Catalog of Federal Domestic Assistance ("CFDA") #10.760 "Water and Waste Disposal Systems for Rural Communities". See *Exhibit 1* for the grant program information obtained from the CFDA website. Exhibit 1 indicates that USDA Grant Revenue from CFDA #10.760 is designated for capital asset purchases, and is not available to support or supplement losses from normal operations of the Company, nor can it be used to pay for interest expense on loans which were used for capital asset purchases. Alligator Water's audited financial statements for 2013 and 2014 did not include the Management's Discussion and Analysis as would normally be required.

10. For the period 2004 through 2013 (excluding payments made in 2007 due to unavailable audited information), Odom and Associates, Inc. received over \$7.9 million for services rendered to Alligator Water. *Exhibit 9* is a copy of an executed Management Agreement between Odom & Associates, Inc. and Alligator Water dated November 19, 2002. The agreement calls for certain monthly fixed and variable payments from Alligator Water to Odom & Associates as compensation for services to be provided to Alligator Water by Odom & Associates, plus the reimbursement of certain out-of-pocket expenses. The variable portion of the monthly payments is based upon the volume of gallons of water and sewer handled by Odom & Associates. The base management fee to be paid by Alligator Water is \$60,000 per month and the term of the agreement is twenty years. We have not been made aware, or provided with copies of any amendments or addendums to this original agreement in 2002, although amendments or addendums may exist that may have changed the terms of the original agreement.

The following schedule has been prepared utilizing information from the audited financial statements and Form 990 information returns filed with the Internal Revenue Service, and lists the cash payments to Odom & Associates, Inc. from Alligator Water for the period described:

<i>Payments to Odom & Associates</i>										
2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
\$ 807,266	924,795	998,256	N/A	1,070,692	696,794	921,022	1,127,478	859,594	572,904	\$ 7,978,801

LOAN COMPLIANCE CONSIDERATIONS

After reading the audited financial statements, loan agreements, projected budgets and USDA letters, the following matters were considered:

1. The 2008 Loan Agreement between Alligator Water and the USDA requires Alligator Water to deposit 10% of the monthly debt payment each month into the **Debt Service Reserve** account until one annual payment is accumulated. In addition, Alligator Water is required to deposit \$777.75 monthly into a **Depreciation Reserve** account. There do not appear to be adequate Reserves reported in Alligator Water's audited financial statements until 2014. – *See Exhibit 2 for excerpts from the 2008 USDA Loan Agreement.*
2. The 2011 annual audited financial statements report a Debt Service Reserve cash account balance in the amount of \$66,384. However, there is not a Debt Service Reserve cash account shown on the 2012 annual audited financial statements. Also, Note E of the notes to the 2012 financial statements states that the Reserve Account balance is zero as of December 31, 2012. The nature of the use of the \$66,384 Reserve account between 2011 and 2012 could not be determined from the information available.
3. The USDA acknowledges in a letter dated February 16, 2012, that Alligator Water did not adequately budget the funding of the required Reserve Accounts. The letter states that as of December 31, 2012, Alligator Water should have a Reserve Account balance of \$572,133.97. The 2012 audited financial statements do not report the existence of a Reserve Account that is currently being funded and maintained for compliance with the loan agreements. – *see Exhibit 3 for the USDA letter dated February 16, 2012.*
4. The USDA also acknowledges in a letter dated February 5, 2014, that Alligator Water did not adequately fund the reserve accounts authorized by the withdrawal schedule. The letter states that as of December 31, 2012, Alligator Water's reserve balance was underfunded by \$568,433.48. The 2012 audited financial statements do not report a balance in any Reserve Account that is required to be funded and maintained for compliance with the loan agreements and it states that the Reserves were required to be \$125,937 for the Depreciation Reserve account and \$568,433 for the Debt Service Reserve account. – *see Exhibit 4*
5. Alligator Water's Independent Auditor, Timothy Cornelison, CPA, LLC, reported on the required Reserve Account loan compliance deficiency in the "Independent Auditors' Report On Internal Control Over Financial Reporting And On Compliance" dated January 5, 2014, and October 8, 2014, for the years ending December 31, 2012, and December 31, 2013, respectively.

Loan Compliance Considerations (continued)

The Auditor listed the underfunded Reserve Accounts in the "Schedule of Findings and Questioned Costs" and noted that this finding is a ***Material Weakness*** in internal control at Alligator whereby "There were no procedures in place to require management to maintain these funds.", referring to the required Reserve Accounts. In addition, the Auditor reports "the Company did not comply with requirement regarding CFDA #10.760 US Department of Agriculture Rural Water System" in the "Independent Auditors' Report on Compliance with Requirements That Could Have a Direct and Material Effect on Each Major Program and on Internal Control Over Compliance in Accordance with OMB Circular A-133" dated January 5, 2014.

6. A letter to Alligator Water from the USDA dated May 22, 2013, addresses the 2013 budgeting of the Reserve Accounts. The Depreciation Reserve account and the Debt Service Reserve account should have a balance of \$654,862.86, as of December 31, 2013, based upon the USDA letter. The letter also states that "It does not appear that the budget projects enough revenue to cover all operating and maintenance expenses, debt service and reserve account deposits". – *see Exhibit 5*
7. In March 2014, the Company appears to have provided some funding into the restricted cash account reserves with debt financing obtained from a local bank. The Company borrowed \$650,000 from a local bank for the purpose of providing funds into the required Reserve accounts. The 2014 audited financial statements do not specifically state the balance of the reserves allocated to each required reserve fund as mentioned above, however it reports the total balance of reserves as \$742,450 as of December 31, 2014. While the 2014 financial statements do not specifically indicate the required reserve balance, there does not appear to be a loan compliance deficiency reported by the auditor in the 2014 "Independent Auditors' Report On Internal Control Over Financial Reporting And On Compliance and Other Matters" dated June 2, 2015.

USDA GRANT PROGRAM CONSIDERATIONS

After reading the audited financial statements and grant documents, the following matters were considered:

1. The audited financial statements of Alligator Water report that all federal Grant awards received are from the USDA under CFDA #10.760 "Water and Waste Disposal Systems for Rural Communities". According to the grant program information obtained from the CFDA website, these capital grant funds are not eligible to be spent on interest expense on loans or operating or maintenance costs of the recipient organization. – *See Exhibit 1 for CFDA #10.760 Grant Program information.*
2. Alligator Water received \$10,600,442 from capital grants and \$5,300,000 from loan proceeds within the Water Fund for the year ending December 31, 2011. Alligator spent \$15,573,754 on capital assets based upon the 2011 audited financial statements. This leaves approximately \$362,638 of capital grant funds which could have been left and available to spend in 2012. As of December 31, 2011, the Company reported a cash balance in the Water Fund totaling \$362,638.
3. Alligator Water received \$2,096,973 in capital grants during the year ending December 31, 2012, and spent \$1,933,496 on capital assets during that same year according to the audited financial statements. This leaves a balance of \$163,477 of capital grant funds from 2012 which could have been available to be spent on capital asset purchases in 2013. When added with the unused portions of capital grant funds from 2011 as mentioned in Item #2 above, Alligator could have a balance of unused grant funds totaling \$526,115. As of December 31, 2012, the Company reported a negative cash balance of \$10,280 and zero restricted Reserve cash accounts.

FORM 990 TAX RETURN CONSIDERATIONS

After reading multiple years of the Company's Form 990 tax returns, amended tax returns, and audited financial statements, the following matters were considered:

1. Only 2 of the last 9 years of tax returns matches and agrees to the audit financial statements. The amounts reported as revenues, expenses and net assets per the tax returns do not agree with the corresponding audited financial statements. The following schedule has been prepared utilizing information from the audited financial statements and Form 990 information returns filed with the Internal Revenue Service, and lists the revenues, expenses and net assets for the period described:

Year	Revenues per audited financial statements	Revenues per 990 tax returns	Expenses per audited financial statements	Expenses per 990 tax returns	Net Assets per the audited financial statements	Net Assets per the 990 tax return
2004	\$ 2,749,613	\$ 2,772,219	\$ 1,992,097	\$ 2,014,701	\$ 7,126,582	\$ 7,126,585
2005	1,792,201	1,791,981	2,154,754	2,154,537	6,764,029	6,764,029
2006	1,910,483	1,909,836	2,475,496	2,455,223	6,199,016	6,218,642
2007	* N/A	4,227,506	* N/A	2,961,173	* N/A	7,465,349
2008	4,039,552	4,039,572	3,178,001	2,976,194	8,312,377	8,514,163
2009	3,048,639	3,048,639	2,823,636	2,823,636	8,537,380	8,537,380
2010	5,941,669	5,929,398	3,331,436	3,319,165	11,147,613	11,147,613
2011	13,172,846	13,151,060	3,231,087	3,404,824	21,089,372	20,917,249
2012	4,667,942	4,666,545	3,719,309	3,608,210	22,038,005	22,037,371
2013	3,484,792	3,484,792	4,205,198	4,205,198	21,289,370	21,289,370
2014	3,486,342	* N/A	4,422,464	* N/A	20,317,525	* N/A
Total	<u>\$ 44,294,079</u>	<u>\$ 45,021,548</u>	<u>\$ 31,533,478</u>	<u>\$ 29,922,861</u>	<u>\$ 132,821,269</u>	<u>\$ 120,017,751</u>

*N/A - 2007 audited financial statements were not available
- 2014 990 tax return was not available

Many of the Form 990 tax returns filed by Alligator Water include a reconciling prior period adjustment to net assets which aids in the reconciliation of the balance sheet.

2. The following presents certain facts and circumstances as they relate to Alligator Water and related entities with corresponding applicability to the filed Form 990 tax returns described in Item #3 below.
 - a) Alligator Rural Water and Sewer Company, Inc. is registered with the South Carolina Secretary of State's office as a nonprofit organization in good standing. The Secretary lists Glenn C. Odom of 547 Sandy Point Lane, Hartsville, SC 29550 as the Registered Agent.

Form 990 Tax Return Considerations (continued)

- b) The 2012 and 2013 Form 990 of Alligator Water lists the organization as nonprofit, tax exempt organization under 501(c)12 of the Internal Revenue Code.
- c) The 2012 and 2013 Form 990 of Alligator Water lists Glenn Odom as the principal officer on Page 1, Item F. It also lists Glenn Odom as the General Manager of the organization responsible for signing the Form 990 on behalf of Alligator Water for filing purposes on that same Page 1 of the tax return.
- d) The 2012 and 2013 Form 990, Part IV "Governance, Management, and Disclosure", Section C, Item #20 lists Glenn Odom, P.O. Box 810, McBee, SC as the "person who possesses the books and records of the organization".
- e) The 2012 and 2013 Form 990, Part VII, "Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors" Section A, Item #1A lists Glenn Odom, General Manager, as a "Key Employee" with annual reportable compensation from Alligator Water totaling \$12,079 and \$11,249, respectively.
- f) The 2013 audited financial statements of Alligator Water include a copy of the "Corrective Action Plan" letter dated October 8, 2014, as written to the USDA and submitted by Alligator Water. The letter was addressed by Glenn Odom, Chief Executive Officer.
- g) The South Carolina Secretary of State's website (www.sos.sc.gov) lists a for-profit organization named Odom & Associates, Inc. as an entity in good standing and incorporated on January 30, 1998. The Secretary lists Glenn Odom of 378 W. Pine Avenue, McBee, SC 29101 as the Registered Agent of Odom and Associates, Inc. The registered agent was changed from Peggy J. Odom to Glenn Odom on July 8, 2014.
- h) The 2013 Form 990, Part VII "Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors" Section B. "Independent Contractors", Item #1A lists Odom and Associates, Inc. of P.O. Box 810, McBee SC 29101 as the Management Company who received compensation totaling \$572,904 in 2013. (See Page 4, Item #10 of this report for a schedule of historical payments to Odom and Associates, Inc.)

Form 990 Tax Return Considerations (continued)

- i) The 2014 audited financial statements of Alligator Water describe a contract in Note E on Page 14 whereby Alligator Water "owes the management company \$1,347,940 as of December 31, 2014, compared to \$916,743 as of December 31, 2012". The note further describes the debt as "long-term" and that "Management expects it will be three years before substantial debt payments will be made". No other mention of the relationship between Odom and Associates, Inc. and Alligator Water is referenced in the audited financial statements.
3. The Form 990 "Return of Organization Exempt from Income Tax" for the year ended December 31, 2013, (and other previous tax years) as regulated by the Internal Revenue Service, require the filing organization to respond to various questions and present certain required schedules. The following presents certain questions and answers which should be further evaluated in coordination with the information present in Item #2 above:
- a) The 2013 Form 990 Part IV, Item #26 questions whether "a loan to or by a current or former officer, director, trustee, key employee, highest compensated employee, or disqualified person" was outstanding as of December 31, 2013. The answer reported by Alligator Water was "No". If the answer had been "Yes", Alligator Water would have been required to complete and present Schedule L, Part II. No Schedule L was presented in the 2013 Form 990.
 - b) The 2013 Form 990 Part IV, Item #28 is a multi-part questions which asks "Was the organization a party to a business transaction with one of the following parties":
 - i. "A current or former officer, director, trustee or key employee?"
 - ii. "A family member of a current or former officer, director, trustee, or key employee?"
 - iii. "An entity of which a current officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner?"The 2013 Form 990 was marked "No" for each of the above questions. If the answer had been "Yes", Alligator Water would have been required to complete and present Schedule L, Part IV. No Schedule L was presented in the 2013 Form 990.
 - c) The 2013 Form 990 Part IV, Item #34 questions whether the organization was "related to any tax-exempt or taxable entity?" The answer reported by Alligator Water was "No". If the answer had been "Yes", Alligator Water would have been required to complete and present Schedule R. No Schedule R was presented in the 2013 Form 990.

Form 990 Tax Return Considerations (continued)

- d) The 2013 Form 990 Part VI, Section A, Item #2 questions whether “any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee”. The answer reported by Alligator Water was “No”.
- e) The 2013 Form 990 Part VI, Section A, Item #3 questions “Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person?”. The answer reported by Alligator Water was “Yes”.
- f) The 2013 Form 990 Part VI, Section B, Item #12a questions “Did the organization have a written conflict of interest policy?”. The answer reported by Alligator Water was “No”.
- g) The 2013 Form 990, Part VII, “Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors” Section A, Item #1A lists Glenn Odom, General Manager, as a “Key Employee” with annual reportable compensation from Alligator Water totaling \$11,249. The same Part VII, Section A, Item #5 questions if “any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization?” The answer reported by Alligator Water was “No”. If the answer had been “Yes”, Alligator Water would have been required to complete and present Schedule J. No Schedule J was presented in the 2013 Form 990.
- h) The 2013 Form 990, Part V, Item #28 “Enter the number of employees reported on Form W-3, transmittal of wage and tax statements, filed for the calendar year ending” is answered with “9”. However, on the same Form 990 Part IX, “Statement of Functional Expenses”, no salary amounts are reported under Item #5, #6, or #7 for salaries expense. According to the management agreement, all salary expenses are to be incurred by Odom & Associates, Inc. – See *Exhibit 9*

FINANCIAL STATEMENT & REPORTING CONSIDERATIONS

After reading the available audited financial statements and data collection form reports, the following matters were considered:

1. The audited financial statements for the year ended December 31, 2012, was subject to the Single Audit Act (expenditures of \$500,000 or more of federal funds) and, therefore, were required to be completed nine months after year end (September 30, 2013), unless a longer period is agreed to in advance by the cognizant or oversight agency. The financial statements were not completed until January 5, 2014. The late completion of the audited financial statements has been an on-going issue for several years prior to 2012. The audited financial statements for the years ended December 31, 2013, and 2014, were not subject to the Single Audit Act and, therefore, were not subject to regulatory timing requirements. – *See Exhibit 6*
2. A Data Collection Form is required to be filed with the Federal Clearinghouse when a single audit is performed, and is also due nine months after year end unless a longer period is agreed to in advance by the cognizant or oversight agency. According to the Federal Clearinghouse website, the Data Collection Forms for Alligator Water are being filed late and there are no reports listed for either 2010 or 2011, even though Alligator Water expended over \$500,000 in federal awards in those years. If a Data Collection Form was not timely filed by Alligator Water for 2010 or 2011, then a non-compliance finding would be required to be reported in 2011 or 2012 audited financial statements according to the Single Audit Act. There were no findings reported in the audited financial statements in 2011 or 2012 related to the non-filing of Data Collection Forms. – *See Exhibit 7*
3. *Governmental Accounting Standards Board (GASB) Statement 34* outlines a number of elements *required* to be included in the Management Discussion and Analysis of a properly presented annual financial report. These required elements are presented in Exhibit 8 attached to this report. We could not locate or identify a number of the required elements within the Management Discussion and Analysis of the 2012 audited financial statements of Alligator Water. The audited financial statements for the years ended December 31, 2013 and 2014, did not include the Management Discussion and Analysis and the Auditor's Report did not appropriately address that the required supplemental information was not included. - *See Exhibit 8*
4. Under generally accepted accounting principles and governmental accounting standards, there are a multitude of financial and nonfinancial disclosure requirements which must be presented in the annual financial statements to avoid misleading the financial statement reader and misrepresenting the financial condition and operations of the reporting organization. Note disclosures are an integral part of the financial statements.

Financial Statement & Reporting Considerations (continued)

While our report could provide a detailed listing of each of the required disclosures that we believe could be absent from the financial statements, it would not be prudent to list these details without further discussion with the auditor and management of Alligator Water. Certain note disclosures are required to be presented if determined to be quantitatively or qualitatively *material* to the overall financial statements. *Materiality* is a relative concept and sometimes based upon a reasonable user of the financial statements.

5. The 2012 and 2013 audited financial statements report federal Grant Revenues received from the USDA CFDA #10.760 as "Nonoperating Revenue" on the annual Statements of Revenues, Expenditures and Changes in Fund Net Assets on page 8. ***Governmental Accounting Standards Board (GASB) Statement 34***, paragraph 100, stipulates that resources restricted to the acquisition of capital assets should be reported as "Capital Contribution Revenue" after Nonoperating Revenue and Expenses. Presenting capital grant revenue as nonoperating revenue instead of capital contributions revenue could mislead the financial statement reader to believe that the grant revenue is available for use in general operations.

This report has been prepared in accordance with the Statement on Standards for Consulting Services promulgated by the American Institute of Certified Public Accountants. The terms and use of the report are limited to the information and use of Womble Carlyle Sandridge & Rice, LLP. Our firm is not obligated to update or amend this report based upon new information made available subsequent to the date of issuance of this report.

Sincerely,

Sheheen Hancock & Godwin L.L.P.

Sheheen Hancock & Godwin, L.L.P.
Camden, South Carolina

EXHIBIT 1**Water and Waste Disposal Systems for Rural Communities**

Number: 10.760

Agency: Department of Agriculture

Office: Rural Utilities Service

PROGRAM INFORMATION**Authorization (040):**

Consolidated Farm and Rural Development Act, as amended, Section 306, Public Law 92-419, 7 U.S.C. 1926.

Objectives (050):

To provide basic human amenities, alleviate health hazards and promote the orderly growth of the rural areas of the nation by meeting the need for new and improved rural water and waste disposal facilities.

Types of Assistance (060):

DIRECT LOANS; GUARANTEED/INSURED LOANS; PROJECT GRANTS

Uses and Use Restrictions (070):

Funds may be used for the installation, repair, improvement, or expansion of a rural water facility including distribution lines, well pumping facilities and costs related thereto, and the installation, repair, improvement, or expansion of a rural waste disposal facility including the collection, and treatment of sanitary, storm, and solid wastes. Grant funds may not be used to pay: interest on loans, operation and maintenance costs, or acquisition or refinancing of an existing system. No maximum loan amount is established by statute. The maximum term on all loans is 40 years. However, no repayment period will exceed any statutory limitation or the organization's borrowing authority or the useful life of the improvement or facility to be financed. There are currently three interest rates for direct loans: (1) a poverty rate that is 60 percent of the market rate, (2) an intermediate rate that is 80 percent of the market rate, and (3) a market rate. The poverty interest rate will not exceed 5 percent per year. The poverty rate may apply when the loan is required to meet health or sanitary standards and the median household income (MHI) of the service area is below the poverty line or 80 percent of the statewide nonmetropolitan MHI, whichever is greater. The intermediate rate applies when the MHI of the service area is not more than 100 percent of the statewide nonmetropolitan MHI, and the poverty rate does not apply. The market rate applies when neither the poverty rate nor intermediate rate is applicable. The interest rate on guaranteed loans is negotiable between the applicant and the lender.

Eligibility Requirements (080)**Applicant Eligibility (081):**

Municipalities, counties, other political subdivisions of a State such as districts and authorities, associations, cooperatives, corporations operated on a not-for-profit basis, Indian tribes on Federal and State reservations and other Federally recognized Indian tribes. The applicant must: (1) be unable to finance the proposed project from its own resources or through commercial credit at reasonable rates and terms; and (2) have the legal authority necessary for constructing, operating, and maintaining the proposed facility or service, and for obtaining, giving security for, and repaying the proposed loan. Assistance is authorized for eligible applicants in rural areas of the

United States, Puerto Rico, the Virgin Islands, Guam, Commonwealth of Northern Mariana Islands, American Samoa, and to the extent the Secretary determines feasible and appropriate, the Trust Territory of the Pacific Islands.

Beneficiary Eligibility (082):

Farmers, ranchers, rural residents, rural businesses and other users in eligible applicant areas.

Credentials/Documentation (083):

Evidence of legal capacity, economic feasibility and financial responsibility relative to the activity for which assistance is requested. OMB Circular No. A-87 applies to this program.

Application and Award Process (090)**Preapplication Coordination (091):**

Preapplication coordination is required. An environmental impact statement is required for this program. An environmental impact assessment is required for this program. This program is eligible for coverage under E.O. 12372, "Intergovernmental Review of Federal Programs." An applicant should consult the office or official designated as the single point of contact in his or her State for more information on the process the State requires to be followed in applying for assistance, if the State has selected the program for review.

Application Procedures (092):

OMB Circular No. A-102 applies to this program. OMB Circular No. A-110 applies to this program. USDA Rural Development (RD) offices administer the program on the local level. Application Form SF-424 is filed at the local RD Office from which assistance may be obtained. This program is subject to the provisions of OMB Circular No. A-110.

Award Procedure (093):

After the application has been reviewed at the local level, it is forwarded to the RD State Director for review and processing instructions. Following completion of application processing requirements and loan/grant approval, funds are made available to the applicant.

Deadlines (094):

Not Applicable.

Range of Approval/Disapproval Time (095):

From 60 to 90 days. From 30 to 90 days.

Appeals (096):

If an application is rejected, the reasons for rejection are fully stated. The applicant may request a review of this decision at the RD or RUS National level.

Renewals (097):

Not Applicable.

Assistance Consideration (100)**Formula and Matching Requirements (101):**

This program has no statutory formula.

This program has no matching requirements. This program has no statutory formula. This program has no matching requirements. This program has no statutory formula. Funds are allocated to States based upon rural population, number of households in poverty, and unemployment. This program has no matching requirements.

MOE requirements are not applicable to this program.

MOE requirements are not applicable to this program.

Length and Time Phasing of Assistance (102):

A time limitation is not specified for the use of RUS loan or grant funds. Funds will be awarded when all RUS requirements are met and the project can be completed on a timely basis. See the following for information on how assistance is awarded/released: Funds may be advanced on an as needed basis by the RUS to cover expenses for a 30-day period.

Post Assistance Requirements (110)**Reports (111):**

Program reports are not applicable. Cash reports are not applicable. Progress reports are not applicable. Expenditure reports are not applicable. Performance monitoring is not applicable.

Audits (112):

In accordance with the provisions of OMB Circular No. A-133 (Revised, June 27, 2003), "Audits of States, Local Governments, and Non-Profit Organizations," nonfederal entities that expend financial assistance of \$500,000 or more in Federal awards will have a single or a program-specific audit conducted for that year. Nonfederal entities that expend less than \$500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in Circular No. A-133. In accordance with the provisions of 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements, Subpart F, Audit Requirements (Revised, December 26, 2013) nonfederal entities that expend financial assistance of \$750,000 or more in Federal awards will have a single or a program-specific audit conducted for that year. Nonfederal entities that expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in Subpart F. Annual audit or Management Report

Records (113):

Records and accounts are required to reflect the operations of the facility.

Financial Information (120)**Account Identification (121):**

12-4155-0-3-452; 12-4218-0-3-452.

Obligations (122):

(Direct Loans) FY 13 \$0; FY 14 est \$0; and FY 15 est \$0. (Guaranteed/Insured Loans) FY 13 \$18,010,350; FY 14 est \$25,000,000; and FY 15 est \$25,000,000. (Project Grants) FY 13 \$0; FY 14 est \$0; and FY 15 est \$0

Range and Average of Financial Assistance (123):

(Direct Loans) \$314,724 to \$10,422,000; Average Loan: \$4,502,587.

Program Accomplishments (130):

Not Applicable.

Regulations, Guidelines, and Literature (140):

7 CFR 1780, Water and Waste Loans and Grants, 7 CFR 1779, Water and Waste Disposal Program Guaranteed Loans.

Information Contacts (150)**Regional or Local Office (151) :**

See Regional Agency Offices. Consult your local telephone directory for Rural Development local number. If no listing, get in touch with the appropriate Rural Development State Office listed in Appendix IV of the Catalog.

Headquarters Office (152):

Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, 1400 Independence Ave., SW, Stop 1548, Washington, District of Columbia 20250 Phone: (202) 690-2670.

Website Address (153):

http://www.rurdev.usda.gov/UWEP_HomePage.html

Related Programs (160):

11.300 Investments for Public Works and Economic Development Facilities; 14.218 Community Development Block Grants/Entitlement Grants

Examples of Funded Projects (170):

Not Applicable.

Criteria for Selecting Proposals (180):

In selecting applications for funding, the agency cooperates with appropriate State agencies. RUS assistance for water and waste disposal projects will be directed toward truly rural areas and rural communities. Considerations for available funds emphasize such criteria as: Population; low income unemployment; and health and sanitary problems. RUS financed facilities will not be inconsistent with any development plans of the State, multi-jurisdictional area, county, or municipality in which the proposed project is located.

Exhibit 2 - 2008 Loan Agreement

Kenneth R. Sox, President
Alligator Rural Water and Sewer Co., Inc.

5

expenses including but not limited to operation and maintenance, customer deposits, and depreciation of short-lived assets.

It has been determined as part of this funding proposal that you have sufficient funds to establish reserves for the following purposes and amounts:

Operation and Maintenance	\$80,004
Existing Debt Service Reserve	\$22,783
Depreciation Short-Lived Assets	\$ 9,333

As a part of this RD loan proposal you must establish and fund monthly a debt service reserve fund equal to 10% of the monthly payment each month over the life of the loan until you accumulate one annual installment. This reserve is required to establish an emergency fund for maintenance and repairs and debt repayment should the need arise. Ten percent of the proposed loan installment would equal \$3,621 per month.

In addition, you must fund a depreciation reserve for short-lived assets by depositing a sum of \$777.75 monthly in addition to that required for the debt service reserve.

7. Users - This letter of conditions is based upon you providing evidence or a certification that there will be at least 117 bona fide users on the proposed system when construction has been completed. The RD loan and grant commitment is based on providing service to 17 large volume users.

Before RD can agree to the project being advertised for construction bids, you must provide evidence or a certification that the total required number of bona fide users are currently using the system or signed up to use the system. You must provide evidence or a certification to show those users will actually be connected to the system when the project is completed and that the monthly water usage projected for each by the engineer is reasonable. In the event any of the large volume users discontinue the offered service, you must obtain enough additional revenue (i.e., increase in user rates, sign up of an adequate number of other users, reduction in project scope to reduce debt service and O&M, etc.) to make up the projected income that would be lost by not having those users on the system.

The usage of current and proposed large volume users will be re-evaluated based on information current at that time, before we concur with advertising for bids. Also the viability of the large volume users will be analyzed before bidding.

Mandatory Hookups: A certification attesting to the number of users will be required prior to advertisement for construction bids.

Sewer User Agreements: Evidence attesting to the number of users will be required prior to advertisement for construction bids will include the enclosed

Exhibit 3



United States Department of Agriculture
Rural Development
Florence Area Office
Florence, South Carolina

February 16, 2012

Alligator Rural Water & Sewer Co., Inc.
PO Box 810
McBee, SC 29101

Dear Glenn:

The review of your proposed budget for FY 2012 has been completed. It does not appear that the budget accounted for all of the required reserve account deposits. The amount shown in the "Reserve Account" on Schedule 2 was \$67,000, which was about the same amount shown on the 2010 balance sheet. That means that the required annual deposits weren't budgeted for FY 2012. The reserve account balance, as of 12/31/12, should be \$572,133.97. Please make sure that the required deposits are being made to the reserve account.

If you have any questions, please let me know.

Sincerely,

S. Stewart Hucks

S. Stewart Hucks
Area Specialist

215 Third Loop Road • Suite 100 • Florence, SC 29505
Phone: (843) 669-9686 • Fax: (843) 665-8284 • Web: <http://www.rurdev.usda.gov/sc>

Committed to the future of rural communities

USDA is an equal opportunity provider, employer and lender.
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326
Main Building, 14th and
Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5967
Voice or TDD

REC 227



Exhibit 4

United States Department of Agriculture
Rural Development
Florence Area Office
Florence, South Carolina

February 5, 2014

Alligator Rural Water & Sewer Co., Inc.
Attn.: Glenn Odom
PO Box 810
McBee, SC 29101

Dear Glenn:

The review of your audit for the period ending December 31, 2012 has been completed. The audit was prepared in accordance with GAAP, and the findings are as follows:

1. There was a positive cash flow for the year for both water & sewer.
2. The audit was not received on time, but we were informed about the delay.
3. The reserve account was not adequately funded, in accordance with the authorized withdrawal schedule. The account was underfunded by \$568,433.48. *Additional deposits must be made to the reserve account to bring it current.*
4. It was unclear whether the "Data Collection Form" was submitted. *Please let us know if the form was submitted as required.*
5. The balances reported for deposit accounts at financial institutions was zero. *The water company is required to maintain adequate cash flow to pay all operating & maintenance costs and debt service, in addition to funding the reserve accounts mentioned above. If current revenue is not sufficient to support operations, a rate increase could be necessary.*

If you have any questions, please call 843-669-9686, ext. 137.

Sincerely,

S. Stewart Hucks

S. Stewart Hucks
Area Specialist

215 Third Loop Road • Suite 100 • Florence, SC 29505
Phone: (843) 669-9686 • Fax: (855) 668-8789 • Web: <http://www.rurdev.usda.gov/sc>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.aser.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, N., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email program.intake@usda.gov.

REC 228

Exhibit 5



United States Department of Agriculture
Rural Development
Florence Area Office
Florence, South Carolina

May 22, 2013

Alligator Rural Water & Sewer Co., Inc.
PO Box 810
McBee, SC 29101

Dear Glenn:

The review of the FY 2013 budget has been completed. It does not appear that the budget projects enough revenue to cover all O&M expenses, debt service, and reserve account deposits. The reserve account balance as of 12/31/13 should be \$654,862.86, but it could not be determined what the projected balance would be based on the information submitted.

Please make the appropriate revisions to the budget and return a copy to me for review.

If you have any questions, please let me know.

Sincerely,

S. Stewart Hucks

S. Stewart Hucks
Area Specialist

215 Third Loop Road • Suite 100 • Florence, SC 29505
Phone: (843) 669-9688 • Fax: (843) 665-6284 • Web: <http://www.rurdev.usda.gov/sc>

Committed to the future of rural communities.

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REC 229

Exhibit 6

Circular No. A-133

Revised to show changes published in the *Federal Registers*
of June 27, 2003 and June 26, 2007

Audits of States, Local Governments, and Non-Profit Organizations

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of States, Local Governments, and Non-Profit Organizations

1. Purpose. This Circular is issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards.

2. Authority. Circular A-133 is issued under the authority of sections 503, 1111, and 7501 et seq. of title 31, United States Code, and Executive Orders 8248 and 11541.

3. Rescission and Supersession. This Circular rescinds Circular A-128, "Audits of State and Local Governments," issued April 12, 1985, and supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," issued April 22, 1996. For effective dates, see paragraph 10.

4. Policy. Except as provided herein, the standards set forth in this Circular shall be applied by all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the subsequent statute shall govern.

Federal agencies shall apply the provisions of the sections of this Circular to non-Federal entities, whether they are recipients expending Federal awards received directly from Federal awarding agencies, or are subrecipients expending Federal awards received from a pass-through entity (a recipient or another subrecipient).

This Circular does not apply to non-U.S. based entities expending Federal awards received either directly as a recipient or indirectly as a subrecipient.

5. Definitions. The definitions of key terms used in this Circular are contained in § ___.105 in the Attachment to this Circular.

6. Required Action. The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in the Attachment to this Circular. Federal agencies making awards to non-Federal entities, either directly or indirectly, shall adopt the language in the Circular in codified regulations as provided in Section 10 (below), unless different provisions are required by Federal statute or are approved by the Office of Management and Budget (OMB).

7. OMB Responsibilities. OMB will review Federal agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to ensure uniform, effective and efficient implementation.

8. Information Contact. Further information concerning Circular A-133 may be obtained by contacting the Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

the finding occurred was submitted to the Federal clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) Corrective action plan. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

§ .320 Report submission.

(a) General. The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) Data Collection. (1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

- (i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).
- (ii) Where applicable, a statement that significant deficiencies in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.
- (iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.
- (iv) Where applicable, a statement that significant deficiencies in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.
- (v) The type of report the auditor issued on compliance for major

Exhibit 7

Results from Query of Single Audit Database

The following is a key for the status field

P = The FAC is processing the audit.

W = The FAC is waiting for the auditee to send additional information. (see below)

W-1 = Missing Form.

W-2 = Missing Components/Form Errors.

W-3 = Missing Components.

W-4 = Form Errors.

W-5 = Form Errors - Audit package forwarded to Federal Agencies for follow-up.

W-6 = Pending Cognizant Agency Assessment.

C = The audit is complete.

Your search has produced 10 records

These results are based on the following search criteria:
Auditee Name: ALLIGATOR.

EIN	Auditee Name	Fiscal Year End Date	Status	Street 1	Street 2	City	State	Zip Code	Initial Date Received	Form Date Received	Component Date Received	FAC Accepted Date
591173103	ALLIGATOR POINT WATER RESOURCES DISTRICT	9/30/2001	C	PO BOX 155		PANACEA	FL	32346	01/30/2002	01/30/2002		01/30/2002
570878765	ALLIGATOR RURAL WATER & SEWER CO. INC.	12/31/2001	C	PO BOX 810		MCBEE	SC	29101	10/09/2002	10/09/2002		10/09/2002
570878765	ALLIGATOR RURAL WATER & SEWER CO. INC.	12/31/2006	C	PO BOX 810		MCBEE	SC	291010810	09/27/2007	09/27/2007	09/27/2007	09/27/2007
570878765	ALLIGATOR RURAL WATER & SEWER CO. INC.	12/31/2007	C	PO BOX 810		MCBEE	SC	291010810	12/18/2008	12/18/2008	12/18/2008	12/18/2008
570878765	ALLIGATOR RURAL WATER & SEWER COMPANY INC.	12/31/1998	C	PO BOX 810		MCBEE	SC	29101	10/28/1999	10/28/1999		10/28/1999
570878765	ALLIGATOR RURAL WATER & SEWER COMPANY INC.	12/31/2002	C	P.O. BOX 810		MCBEE	SC	29101	12/03/2003	09/02/2005		09/02/2005
570878765	ALLIGATOR RURAL WATER & SEWER COMPANY INC.	12/31/2003	C	PO BOX 810		MCBEE	SC	29101	01/20/2005	05/12/2005	01/20/2005	05/12/2005
431757115	ALLIGATOR RURAL WATER AND	12/31/2012	C	378 W PINE AVENUE		MCBEE	SC	29063	03/19/2014	03/11/2014		03/11/2014

	SEWER COMPANY											
570878765	ALLIGATOR RURAL WATER AND SEWER COMPANY, INC.	12/31/2004	C	PO BOX 810		MCBEE	SC	29101	02/15/2006	02/15/2006	02/15/2006	02/15/2006
570878765	ALLIGATOR RURAL WATER AND SEWER COMPANY, INC.	12/31/2009	C	378 WEST PINE AVENUE		MCBEE	SC	291019229	01/25/2012	01/25/2012		01/25/2012

[Return to Status Entity Search](#)

Exhibit 8

Management's Discussion and Analysis (MD&A)8. The basic financial statements should be preceded by MD&A, which is required supplementary information (RSI). MD&A should provide an objective and easily readable analysis of the government's financial activities based on currently known facts, decisions, or conditions. The financial managers of governments are knowledgeable about the transactions, events, and conditions that are reflected in the government's financial report and of the fiscal policies that govern its operations. MD&A provides financial managers with the opportunity to present both a short- and a long-term analysis of the government's activities. 7 9. MD&A should discuss the current-year results in comparison with the prior year, with emphasis on the current year. This fact-based analysis should discuss the positive and negative aspects of the comparison with the prior year. The use of charts, graphs, and tables is encouraged to enhance the understandability of the information. 10. MD&A should focus on the primary government. Comments in MD&A should distinguish between information pertaining to the primary government and that of its component units. Determining whether to discuss matters related to a component unit is a matter of professional judgment and should be based on the individual component unit's significance to the total of all discretely presented component units and that component unit's relationship with the primary government. When appropriate, the reporting entity's MD&A should refer readers to the component unit's separately issued financial statements. 11. MD&A requirements established by this Statement are general rather than specific to encourage financial managers to effectively report only the most relevant information and avoid "boilerplate" discussion. At a minimum, MD&A should include:

- a. A brief discussion of the basic financial statements, including the relationships of the statements to each other, and the significant differences in the information they provide. This discussion should include analyses that assist readers in understanding why measurements and results reported in fund financial statements either reinforce information in government-wide statements or provide additional information.
- b. Condensed financial information derived from government-wide financial statements comparing the current year to the prior year. At a minimum, governments should present the information needed to support their analysis of financial position and results of operations required in c, below, including these elements:

- (1) Total assets, distinguishing between capital and other assets
- (2) Total liabilities, distinguishing between long-term liabilities and other liabilities
- (3) Total net assets, distinguishing among amounts invested in capital assets, net of related debt; restricted amounts; and unrestricted amounts
- (4) Program revenues, by major source
- (5) General revenues, by major source
- (6) Total revenues
- (7) Program expenses, at a minimum by function
- (8) Total expenses
- (9) Excess (deficiency) before contributions to term and permanent endowments or permanent fund principal, special and extraordinary items, and transfers
- (10) Contributions
- (11) Special and extraordinary items
- (12) Transfers
- (13) Change in net assets
- (14) Ending net assets

- c. An analysis of the government's overall financial position and results of operations to assist users in assessing whether financial position has improved or deteriorated as a result of the year's operations. The analysis should address both governmental and business-type activities as reported in the government-wide financial statements and should include reasons for significant changes from the prior year, not simply the amounts or percentages of change. In addition, important economic factors, such as changes in the tax or employment bases, that significantly affected operating results for the year should be discussed.
- d. An analysis of balances and transactions of individual funds. The analysis should address the reasons for significant changes in

fund balances or fund net assets and whether restrictions, commitments, or other limitations significantly affect the availability of fund resources for future use. e. An analysis of significant variations between original and final budget amounts and between final budget amounts and actual budget results for the general fund (or its equivalent). The analysis should include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity. f. A description of significant capital asset and long-term debt activity during the year, including a discussion of commitments made for capital expenditures, changes in credit ratings, and debt limitations that may affect the financing of planned facilities or services. g. A discussion by governments that use the modified approach (paragraphs 23–25) to report some or all of their infrastructure assets including: (1) Significant changes in the assessed condition of eligible infrastructure assets from previous condition assessments (2) How the current assessed condition compares with the condition level the government has established (3) Any significant differences from the estimated annual amount to maintain/preserve eligible infrastructure assets compared with the actual amounts spent during the current period. h. A description of currently known facts, decisions, or conditions that are expected to have a significant effect on financial position (net assets) or results of operations (revenues, expenses, and other changes in net assets).

Document Header:

Checkpoint Contents

Accounting, Audit & Corporate Finance Library

Standards and Regulations

GASB

Original Pronouncements

Statements of the Governmental Accounting Standards Board (GASBS)

GASBS 34 — Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments

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Exhibit 9

MANAGEMENT AGREEMENT

BETWEEN

ODOM & ASSOCIATES, INC.

AND

ALLIGATOR RURAL WATER AND SEWER COMPANY, INC.

★ ★ ★ ★ ★

STATE OF SOUTH CAROLINA)
) MANAGEMENT AGREEMENT
COUNTY OF CHESTERFIELD)

AGREEMENT made and entered into this 19th day of November, 2002, by and between *Odom & Associates, Inc.*, a South Carolina corporation ("Odom & Associates"), and *Alligator Rural Water and Sewer Company, Inc.*, a South Carolina corporation (the "Water Company").

PREAMBLES :

Whereas, the Water Company owns facilities which furnish water and sewer service to the general public in certain counties in the Pee Dee area of South Carolina; and

Whereas, Odom & Associates have experience and expertise in the management and operation of facilities which provide water and sewer service to the general public; and

Whereas, the Water Company desires to avail itself of the services of Odom & Associates to manage and operate its water production and sewer facilities and Odom & Associates desires to provide such services to the Water Company; and

Whereas, both parties desire to reduce their agreement to writing;

Now, Therefore, in consideration of the premises and the consideration arising out of the mutual promises hereinafter set forth, the parties hereto agree as follows:

During the period of this agreement or any extension thereof, Odom & Associates shall perform the following services for and in behalf of the Water Company:

I - GENERAL MANAGEMENT

1. Compile the annual budget for the Board of Directors of the Water Company and Rural Development;

2. Plan and develop for future expansion and meet with Rural Development, engineers and other agencies to implement expansion plans;
3. Complete loan and grant applications from Rural Development, EDA or state resources;
4. Meet with local and state officials to promote development in the Water Company's service area;
5. Verify work completion and approve pay requests from contractors;
6. Act as legal agent in Magistrate's Court to prosecute fraudulent checks and meter tampering violations; and
7. Arrange for the annual budget retreat for the Board of Directors of the Water Company, including arranging for speakers and planning for meals and accommodations.

II - OFFICE MANAGEMENT

1. Provide a general manager, office manager, administrative assistant along with a properly equipped office necessary to carry out its functions under this agreement;
2. Service, bill and collect accounts for retail and wholesale water and sewer customers;
3. Maintain appropriate bank accounts for collections of water and sewer customers and for construction projects; reconcile bank accounts monthly; and provide financial information to the Water Company's Board of Directors and its accountant;
4. Assist the accounting firm for the Water Company by providing financial data and all available information relevant to the preparation of the Water Company's tax return; and
5. Complete the necessary reports required by Rural Development for construction loans and assist the attorneys and engineers involved with the loans and construction projects.

III - OPERATION AND MAINTENANCE

1. Employ six (6) water treatment plant operators, two (2) certified backflow testers and one (1) certified distribution operator;
2. Monitor and test water quality daily at nine (9) wells and nine (9) sewer pump stations;
3. Employ a trained operator for the SCADA system to monitor the wells;
4. Provide operators and maintenance personnel on call at all times for water and sewer emergency calls;
5. Service over 1700 residential water customers to include reading meters monthly, repairing minor leaks at tap sites and installing taps for new customers;
6. Repair water lines or coordinate with outside contractors if line work is too large (total estimated cost of repair in excess of \$1000.00) for in-house repairs; and
7. Cut grass and maintain all well, sewer and tank sites.

IV - COMPLIANCE WITH DHEC REGULATIONS

1. Perform monthly field bacteria tests and deliver to DHEC for analysis;
2. Perform annual lead and copper tests;
3. Maintain and perform annual tests on all valves and commercial backflow devices;
4. Meet with DHEC officials for annual inspection; and
5. Prepare an annual consumer confidence report and publish it to the public.

During the period of this agreement or any extension thereof, Odom & Associates and the Water Company agree upon the following additional terms of this agreement:

V - COMPENSATION

For all services hereunder Odom & Associates shall be paid the base sum of Sixty

Thousand Dollars (\$60,000.00) per month. This sum shall cover all costs incurred by Odom & Associates to operate the water and sewer facilities of the Water Company, except for the cost of major repairs. The level of compensation paid hereunder shall be adjusted based upon the volume of water and sewer handled by Odom & Associates above 600 million gallons per year in water sales and 40 million gallons per year of sewage. The base management fee will be increased by forty percent (40%) of sales revenue on water sales in excess of 600 million gallons per year. The base management fee will also be increased by twenty-five percent (25%) of revenues for transporting sewage in excess of forty (40) million gallons per year. The base management fee will also be increased by forty percent (40%) and twenty-five percent (25%), respectively, for increased sales revenues for the base amount of water and sewer which is generated by cost increases imposed by the Water Company on its customers.

The Water Company shall pay the expenses of any continuing education courses or seminars which the employees of Odom & Associates are required to attend by the Water Company's Board of Directors, plus travel reimbursement at the standard mileage rate allowable under U.S. Treasury Regulations for car expenses incurred in carrying on a trade or business and a per diem allowance for meals of twenty dollars (\$20.00) per day.

The Water Company shall pay for all telephone expense incurred by Odom & Associates which is directly related to Water Company business. All other office overhead expenses, including, but not limited to postage, stationery or account statements shall be paid for by Odom & Associates.

The Water Company shall pay all fidelity bond premiums for Odom & Associates employees in conformity with requirements of Rural Development.

VI - LENGTH OF AGREEMENT; AGREEMENT ASSIGNABLE

The term of this agreement shall be for a period of twenty (20) years from its

effective date. In the event of any breach of a covenant hereunder, this agreement may be terminated in writing at the option of the non-defaulting party. The duties of either party hereunder shall be assignable upon the approval of the Board of Directors of the other party, which approval shall not be unreasonably withheld.

VII - REMEDIES UPON DEFAULT

Upon an actual or threatened breach of any provision of this agreement, the injured party may not have an adequate remedy at law and may pursue injunction or specific performance or any other remedy at equity or at law.

VIII - GOVERNING LAW; AGREEMENT BINDING UPON SUCCESSORS AND ASSIGNS

This agreement shall be governed by and construed under the laws of the state of South Carolina and shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be subscribed by their duly authorized officers on the date first above written.

Witnesses:

Cornelia L. Carr
Kenneth R. Self

Cornelia L. Carr
Kenneth R. Self

Parties:

Odom & Associates, Inc.

By: Dean C. Odom

Its: President

Alligator Rural Water and Sewer
Company, Inc.

By: Harvey L. Gigg

Its: President

Exhibit D - McBee

Water Cost

2016 MAR 29 AM 10 22
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy, Attest

Faye L. Sellers

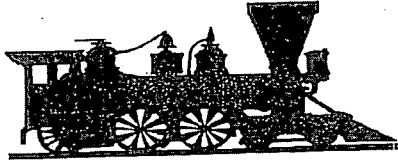
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

REC 242

TOWN OF McBEE

COUNCIL MEMBERS:

Mrs. Marilyn Fields
Mr. A. C. McLeod
Mr. Marion Stephens
Mr. Charlie Sutton



MAYOR:
Mr. John Campolong

ADMINISTRATOR:
Terri King

March 22, 2016

Total paid to Alligator Rural Water for water purchased for billing periods
July 1, 2008 through March 1, 2016:

Year	Amount Paid
2008 (July - Dec)	\$45,083.75
2009	\$82,864.26
2010	\$85,560.43
2011	\$97,970.83
2012	\$87,239.21
2013	\$91,534.25
2014	\$106,923.50
2015	\$97,837.72
2016 (Jan - Mar)	\$15,721.00

2016 MAR 29 AM 10 23
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Post Office Box 248, McBee, SC 29101
Phone: 843-335-8474 Fax: 843-335-5163

A True Copy, Attest

Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

REC 243

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT

Town of McBee,

) Civil Action No. 2015-CP-13-379
)

) Plaintiff,
)

) vs.
)

Alligator Rural Water & Sewer
Company, Inc., and Alligator Rural
Water Company, Inc.,

MOTION TO ALTER OR AMEND
JUDGMENT

) Defendants,
)

) and
)

A.O. Smith Corporation,

) Intervenor-Defendant.
)

2016 APR 27 APR 11 11:57
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

Pursuant to Rules 52, 59, 60, and 65, SCRCPP, the Town of McBee moves for an order amending or vacating the Court's order entered April 12, 2016, which improperly enjoined the Town from providing water to its own customers from any source other than purchased from the Alligator Defendants. The Town first received written notice of entry of this order on April 15, 2016. The order is replete with demonstrable errors that should be reconsidered.

I. The order fails to require the Alligator Defendants to post a bond, as required by Rule 65(c), SCRCPP.

Rule 65(c), SCRCPP, expressly requires the Alligator Defendants to post a bond as security for the injunction:

Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

A True Copy, Attest

Faye L. Sellers

REC 244

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

At the March 23, 2016 hearing, the Town argued that if the Court issued a temporary injunction favorable to the Alligator Defendants, then the Alligator Defendants should be required to post a bond of \$150,000. As described in the affidavit of Mayor John Campolong, the Town has already spent approximately \$250,000 to put its wells back in service, which the South Carolina Department of Health and Environmental Control have approved for operation. The Town will incur an additional expense of approximately \$78,000 per year to provide water to its customer if its now-approved and ready-to-operate wells are forced to remain inoperable during this litigation. Thus, the Town's request for a \$150,000 bond is a reasonable estimate of the damages that it will suffer over the course of this litigation due to an improperly-issued injunction. A bond is particularly important here in light of Alligator's precarious financial condition. *See generally* Aff. of John Campolong, Mayor of Town of McBee and accompanying exhibits (providing report of the accounting firm of Sheheen, Hancock and Godwin, LLP analyzing Alligator's finances).

Despite the requirements of Rule 65 and the Town's evidentiary presentation, the Court did not require the Alligator Defendants to post a bond as security for the injunction. Failing to require the posting of a bond to accompany an injunction is reversible error. *See, e.g., AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2009) ("[B]ecause Rule 65(c), SCRCP, requires the trial court to order Respondents to post a bond before issuing the temporary injunction, and no bond was ordered in this case, we remand this case for the trial court to amend the order of injunction to require execution of a sufficient bond."). So, too, is the imposition of a nominal bond. *See, e.g., Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007) ("the circuit court's order requiring only a nominal security bond does not satisfy Rule 65(c) because it erroneously assumes the injunction is proper instead of providing an

amount sufficient to protect appellants in the event the injunction is ultimately deemed improper.”).

Accordingly, the Court should reconsider its April 12th order and require the Alligator Defendants to post a bond of at least \$150,000 as security for this temporary injunction. However, because the injunction itself was improperly issued, the Court should further amend its order to dissolve the injunction, as discussed below.

II. The order does not properly account for any of the three elements required to issue a preliminary injunction.

In addition to violating the express requirements of Rule 65, the Court’s order does not account for the prerequisites to entering a preliminary injunction. An injunction is a “drastic” remedy that “ought to be applied with caution.” *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). This is especially so here, where the Court has enjoined the Town from operating wells that were constructed with DHEC’s approval and have been approved by DHEC on numerous occasions.¹

South Carolina’s courts have been clear that an injunction can only issue in the limited circumstance where the requesting party meets three elements: (1) it will suffer an “irreparable harm” in the absence of an injunction; (2) it is likely to succeed on the merits of the case; and (3) there is an “inadequate remedy at law.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

¹ On at least five occasions over nearly five years’ time, DHEC has approved of the Town’s actions. (Ex. A, Town of McBee’s Public Water System Operating Permit (issued June 14, 2011); Ex. B, Water Supply Construction Permit 28475-WS (issued November 13, 2012); Ex. C, Water Supply Construction Permit 29779-WS (issued June 30, 2014); Exs. D & E, Final Approvals to Place into Operation (issued January 12, 2016).) The Alligator Defendants have never objected to any of those agency actions.

Here, the Court has not provided any analysis of any of these three elements. First, the Alligator Defendants are not likely to win on the merits of this case because they have no right whatsoever to prevent the Town from operating its own wells to service its own water customers on its own pre-existing water lines. The Alligator Defendants have entirely misconstrued the reach of federal law on this point, which the Court presumably recognized when it omitted any such discussion from its order.

Title 7, Section § 1926(b) of the United States Code restricts the right of one supplier of water to take a customer from another supplier where that second supplier has outstanding USDA loans. For that reason, the courts have referred to 7 U.S.C. § 1926(b) as a shield that a USDA financed supplier can use to prevent third parties from taking its customers. “[T]he goal of the statute is only to protect territory already being served by a rural water association from municipal expansion into the rural water association’s area.” *Le-Ax Water Dist. v. City of Athens, Ohio*, 346 F.3d 701, 708 (6th Cir. 2003). It “can be used only as a shield to defend against invasion rather than a sword to wage one.” *Id.* at 707.

The courts have long ruled that 7 U.S.C. § 1926(b) cannot be used to curtail a wholesale customer’s decision to produce more of its water supply, and to purchase less from an entity asserting 7 U.S.C. § 1926(b) rights. That was the precise issue in *CSL Utilities, Inc. v. Jennings Water, Inc.*, 16 F.3d 130, 133-34 (7th Cir. 1993), *as modified on denial of reh’g* (Feb. 25, 1994). There the court observed: “CSL [the entity seeking to use its own water supply] concedes that construction of the water treatment facility will curtail the amount of water it purchases from Jennings [the rural water association analogous to Alligator here]. . . . The issue here is not so much the scope of the service area as it is the right of a wholesale customer serving at retail to

improve its own facilities to curtail or eliminate the need for wholesale supply.” Id. (emphasis added).

In considering this question, the court found that “the cases and fragments of legislative history available to us all seem to have in mind curtailment resulting from substitution of some *third party* as a water-supplier for Jennings [the rural water district]. *Id.* at 135 (emphasis added). “There is no fair implication by which it [7 U.S.C. § 1926(b)] can be said to reach improvement by a wholesale customer of its own facilities so as to reduce the amount of water it must purchase at wholesale.” *Id.* at 136. This is precisely the situation here. The settled law holds that Alligator cannot prevail on the merits.

In this case, there is no supplier competing against Alligator for McBee’s business, so there is no one against which Alligator can use the shield of 7 U.S.C. § 1926(b). Here McBee is the only customer and Alligator is the only supplier. McBee seeks to use its own wells to serve all or part of its own system’s demand for water. As a customer, McBee has the right to decide how much water, if any, to take from Alligator for use in its own system. Nothing in 7 U.S.C. § 1926(b) or McBee’s contract with Alligator restricts McBee’s right to make that decision. No third-party supplier is constructing a line to disconnect McBee from Alligator’s system and connect it to a competing system, as Alligator is trying to do in disconnecting A.O. Smith from McBee.

At the hearing, Alligator stated that USDA required it to submit its contract with McBee to USDA review during the consideration of certain USDA loans to Alligator. In reviewing that contract, USDA would have seen what is shown here, that nothing in that contract restricts McBee from producing its own water during the term of that contract or beyond. USDA can be presumed to have known what the court held in *CSL Utilities, Inc. v. Jennings Water, Inc.*, which

is that absent some contractual provision to the contrary, McBee had every right in the future to produce as much or a little of its own water as it wished. Had USDA felt the need to have this contract amended to protect its interest in the loans it was considering, it had every right to require Alligator to seek such an amendment as a condition of the loan. There is no evidence that this happened.

As to A. O. Smith, the situation is entirely different. According to A.O. Smith's own pleadings, the Town's water lines that are at issue have been in place since at least 1979, and have been used to supply A.O. Smith's facility with water since at least that time. (Ans. & Countercls. of A.O. Smith Corp. ¶¶ 2-6, at 8-9.) But the Alligator Defendants did not even exist when the Town first began supplying A.O. Smith with water. (See Ans. & Countercls. of Alligator Defendants ¶ 48, at 8 (explaining that the Alligator Defendants were first incorporated in 1987).) And the Alligator Defendants submitted an affidavit stating that they did not borrow money from Rural Development until 2001. (Aff. of Glenn C. Odom at 2.)

Because the Town's continuous water service to A.O. Smith predates the Alligator Defendants' (1) existence and (2) indebtedness to the federal government, the Alligator Defendants are not entitled to any protection under 7 U.S.C. § 1926(b) as a matter of law. See, e.g., *N. Ohio Rural Water v. Erie County Bd. of County Comm'rs*, 347 F. Supp. 2d 511, 515 (N.D. Ohio 2004) ("Plaintiff is not protected by 7 U.S.C. § 1926(b) because it was not indebted to the USDA until after Erie County installed lines, which is the determinative date for § 1926(b) protection.").²

² The *Erie* decision is grounded in the logic of the Sixth Circuit's decision in *Le-Ax Water District v. City of Athens*, 346 F.3d 701 (6th Cir. 2003). The Fourth Circuit expressly adopted the *Le-Ax* analysis as its own in *Chesapeake Ranch Water Co. v. Board of Commissioners of Calvert County*, 401 F.3d 274, 281 (4th Cir. 2005).

Accordingly, there is zero likelihood that the Alligator Defendants will win this matter on the merits, and the order's silence on this point in its order is telling. Because the Court's order fails to account for the likelihood-of-success prong of the preliminary injunction analysis, it should be reconsidered and vacated.

Second, even if the Town's analysis on the merits is somehow incorrect—which it is not—the Alligator Defendants still cannot meet the elements needed to sustain a preliminary injunction because they have an adequate remedy at law. The only supposed harm that they have asserted in support of their request for an injunction is allegedly lost revenue, but they have also asserted a counterclaim for money damages. (Ans. & Countercls. of Alligator Defendants ¶¶ 55–69.)

Recovery of money damages is a classic “adequate remedy at law” that precludes the issuance of an injunction. *See, e.g., Scratch Golf Co.*, 361 S.C. at 122, 603 S.E.2d at 908 (holding that a preliminary injunction was improper because the law provided a mechanism for the plaintiff to recover the damages it sought). The Court's order fails to discuss this factor, but under no analysis can the Alligator Defendants satisfy the “inadequate remedy at law” requirement for issuing a preliminary injunction.

By this same token, any potential harm that the Alligator Defendants may suffer by allowing the Town to operate its own wells to serve its own customers—actions which have been approved by DHEC without objection from the Alligator Defendants—would be “reparable” through a monetary award. The Court's order fails to account for this, or even explain what supposed “irreparable harm” the Alligator Defendants would suffer in the absence of a preliminary injunction.

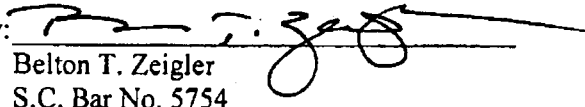
Accordingly, the Court should reconsider its prior order and vacate the injunction for failure to meet the elements necessary to issue a preliminary injunction.

CONCLUSION

For the reasons explained above, the Town of McBee respectfully moves for an order altering, amending, and vacating the Court's order of April 12, 2016, that enjoined the Town from serving its customers through a water system that DHEC has approved for operation without any objection from the Alligator Defendants.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 
Belton T. Zeigler
S.C. Bar No. 5754
M. Todd Carroll
S.C. Bar No. 74000
Kathryn Mansfield
S.C. Bar No. 101295
1727 Hampton Street
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for the Town of McBee

April 25, 2016
Columbia, South Carolina

2016 APR 27 AM 11 07
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Exhibit A

Town of McBee's Public Water System
Operating Permit (issued June 14, 2011)

REC 252

A True Copy, Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA

Public Water System OPERATING PERMIT

Issued in accordance with the provisions of the State Safe Drinking Water Act (SDWA) (S.C. Code Ann. § 44-53-10 et seq., 1976) and the State Primary Drinking Water Regulations (SPDWR) (R.61-58)

This Permit is Issued to: *TOWN OF MCBEE*
CONTACT: *JOHN CAMPOLONG, MAYOR*

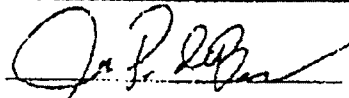
For the Operation of a Public Water System Serving: *TOWN OF MCBEE*

County: *Chesterfield*

Public Water System Name: *TOWN OF MCBEE*

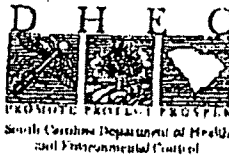
Permit Number: *1310004*

Date of Issuance: *June 14, 2011*

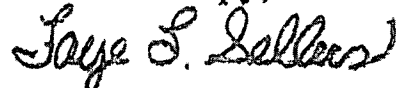


Jeffrey P. deHessonet, P.E., Director
Water Facilities Permitting Division

2016 APR 27 AM 11 07
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.



A True Copy, Attest



CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

I. DESCRIPTION OF WATER SYSTEM**A. System Type:** *Community***B. Distribution System Classification:** *Group III, Distribution Operator Grade "C", or as otherwise designated by the South Carolina Department of Labor, Licensing, and Regulation, Environmental Certification Board***C. Maximum Number of Allowable Taps:** *N/A***D. Reliable System Capacity:** *309,600 gallons per day, based upon the meter capacity***E. Surface Water Treatment Facilities:** *None***F. Groundwater Sources/Treatment Facilities:**

Plant Name	Plant ID	Total Capacity (MGD)	Treatments Applied
McBee Plant #1*	B13012	UNKNOWN	PH ADJ (LIME), GASEOUS CHLORINE

Treatment Facility Classification: Group II, Treatment Operator Grade D, or as otherwise designated by the South Carolina Department of Labor, Licensing, and Regulation, Environmental Certification Board

Well Name	Latitude/Longitude	Well ID	Yield (gpm)	Capacity (gpd)	Treatment
Juniper Ave & 6 th Street*	Lat 34.4673000 Lon -80.258056	G13177	600	576000	TREATMENT APPLIED AT PLANT

**Well and treatment plant are offline due to EDB detection, and not included in the reliable system capacity analysis*

G. Master Meter Connections:

Public Water System	DHEC System No.	Location	Reliable Capacity (mgd)
Alligator Rural Water and Sewer Company W13101	1320004	UNKNOWN	0.3096

H. Emergency Sources of Water: *See Section I.G***I. Distribution Treatment Facilities:** *N/A***J. Storage Capacity:**

Type of Storage	Total Capacity
Elevated (million gallons)	0.325
Ground (million gallons)	0
Pressure (thousand gallons)	0

II. SPECIAL CONDITIONS

A. Last Sanitary Survey Rating and Business Plan Requirements

- 1 The overall rating of the sanitary survey which was conducted by the Department as part of the Alligator Rural Water and Sewer Company, Inc. system on August 26, 2010, prior to the issuance of this operating permit was "Satisfactory". However, should the Town's water system receive an overall rating of "Unsatisfactory" on any future sanitary survey, the Permittee shall submit a business plan to the Department within two (2) months following the issuance of the unsatisfactory rating. Note that Alligator Rural Water and Sewer Company, Inc. was the operator of record during the year leading up to this survey, and the survey result reflects the level of service provided.
- 2 A business plan is defined in the SPDWR as a document consisting of three (3) sub-plans, a facilities plan, a management plan, and a financial plan which is intended to show how a water system will be self-sustaining and have the commitment and the financial, managerial and technical capability to consistently comply with the SDWA and the SPDWR.
- 3 The definitions of a facilities plan, a management plan, and a financial plan may be found in the SPDWR.
- 4 The business plan shall include a schedule for achieving compliance with the SDWA and the SPDWR. Once the compliance schedule is approved by the Department, it shall be considered a part of the Operating Permit.

B. System Specific Conditions

The Town of McBee shall maintain its water system in compliance with all of the applicable requirements of the State Primary Drinking Water Regulations, 61-58. The operator of record for the treatment system and the distribution system must be of the appropriate grade.

The total developed groundwater source capacity shall equal or exceed the design maximum day demand without pumping more than sixteen (16) hours a day. With the largest producing well out of service, the capacity of the remaining well(s) pumping twenty-four (24) hours a day shall equal or exceed the design maximum daily demand, except those systems requiring only one well. The capacity from an additional source (Surface Water Plant or Meter Meter) will be included in the quantity analysis. However, emergency and stand-by wells will not be included in the quantity analysis. If the Town decides to operate and maintain their water systems either by themselves, or through a different contract operator, they can not violate either the water quantity or water quality portion of the SPDWR and the SDWA. Since Alligator's contract for operation and maintenance is linked to their supply of water, this means that prior to possible independent operation (as contemplated by the preliminary engineering report dated December 6, 2010), the Town must have at least two DHEC-approved sources of sufficient quantity and quality to ensure compliance.

In the event the Town does not meet the capacity requirements listed above, they are required to submit a Corrective Action Plan to the Department within two (2) months of being notified of the deficiency. The Corrective Action Plan shall include a schedule for achieving compliance with the SDWA and the SPDWR. Once the compliance schedule is approved by the Department, it shall be considered a part of the Operating Permit.

III. GENERAL REQUIREMENTS

A. Duty to Comply

The Permittee shall comply with all applicable portions of the State Safe Drinking Water Act (SDWA) and the State Primary Drinking Water Regulations (SPDWR) to include all conditions and requirements of this permit. Failure to comply with any portion of this permit constitutes a violation of the SDWA and is grounds for enforcement action.

B. Permit Revocation

In accordance with SC Code Ann. § 44-55-120 the Department may revoke this Operating Permit for failure to demonstrate the ability to continue to comply with the SDWA.

C. Maximum Allowable Taps

The number of taps served by the water system shall not exceed the maximum allowable taps specified in Section I of this Operating Permit.

D. Permit Modification

1. The Department may modify this Operating Permit at any time to include all newly promulgated requirements of the SDWA or the SPDWR which are applicable to the public water system, to address requirements necessary to ensure compliance with the SDWA and SPDWR, and to provide updated information as a result of any future permitted construction.
2. The Permittee may request a modification of the Operating Permit at any time with adequate justification.
3. Permit modification will be issued in accordance with R.61-58.1(O)(3).

E. Transfer of Operating Permit

This Operating Permit is non-transferable, except with prior approval of the Department. To obtain Department approval of the transfer of this Operating Permit, the Permittee shall submit written notification to the Department at least thirty (30) days in advance of the proposed transfer. This notification shall include an Operating Permit application form which has been completed by the proposed new owner of the water system. The Department may request that the proposed new owner submit a business plan which shows how the system will be managed to insure its long term viability. If the Department approves the transfer, a new Operating Permit will be issued to the new owner of the system in accordance with R.61-58.1(O)(3).

F. Annual Fee

1. The Permittee shall remit payment of the annual fee to the Department within thirty (30) days of the billing date.

2. The Department will not conduct compliance monitoring if the fee remains unpaid at the end of ninety (90) days after the billing date.

G. Construction Permits

An application for a Water Supply Construction Permit shall be made to, and a Water Supply Construction Permit obtained from, the Department before the system can be modified or expanded.

H. Operation and Maintenance

The Permittee shall comply with the operation and maintenance requirements of R.61-58.7.

I. Inspection and Entry

Duly authorized agents of the Department of Health and Environmental Control may enter upon any premises and into any buildings or institutions for the purposes of inspection as provided for or required by State laws or regulations of the Department pursuant to such laws, but the privacy of no person shall be violated. Any person who willfully interferes with or obstructs the officers of the Department in the discharge of any of their duties under this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned not more than thirty days.

J. Emergency Procedures

1. The Permittee shall prepare and maintain an up-to-date emergency preparedness plan in accordance with R.61-58.8(B).
2. The Permittee shall comply with the requirements of R.61-58.8(C) and (D) when operating under emergency conditions.

K. Monitoring and Reporting Requirements

The Permittee shall comply with the monitoring and reporting requirements of the SPDWR.

2016 APR 27 AM 11 07
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Exhibit B

Water Supply Construction Permit 28475-
WS (issued November 13, 2012)

A True Copy, Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Water Supply Construction Permit Bureau of Water



Permission is Hereby Granted To: **MCBEE TOWN OF**
PO BOX 248
MCBEE SC 29101

for the construction of a chemical feed in accordance with the construction plans, specifications, design calculations and the SC DHEC Construction Permit Application signed by Joseph McGougan, Registered Professional Engineer, S.C. Registration Number: .

Project Name: **MCBEE WATER SYSTEM WELL NO.2** County: **Chesterfield**
Location: **OFF HIGHWAY 1, MCBEE SC**

Project Description: Modifications to McBea Well #2, including new 200 gpm submersible pump (set at a depth of 228 ft.), sodium hypochlorite feed system (200 gal. HDLPE tank, two chemical feed pumps), associated piping and appurtenances.

Service By: The water will be provided by Mcbea Town Of (System Number: 1310004)

Special Conditions

1. Before an approval to "Place Into Operation" can be issued for the proposed construction, an operation and maintenance (O&M) manual must be developed. This must be a comprehensive O&M manual developed for all facility processes. The complete O&M manual must be available for review at the time of final inspection. Note that if an O&M manual already exists for a facility then only an addendum for the proposed work is required.
2. The chemical, physical and bacteriological quality of the well water must meet EPA primary and secondary standards or treatment may be required. The water must be evaluated for corrosivity to comply with the Lead and Copper Rule.
3. An operator with the appropriate certification for treatment must be provided.

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.

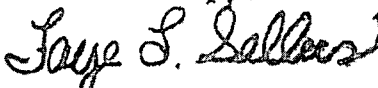
This is a permit for construction only and does not constitute State Department of Health and Environmental Control approval, temporary or otherwise, to place the system in operation. An Approval to Place in Operation is required and can be obtained following the completion of construction by contacting the FLORENCE EQC OFFICE at 843-661-4825. Additional permits may be required prior to construction (e.g., stormwater).

Permit Number: **28475-WS**
Date of Issue: **November 13, 2012**
Expiration Date: Construction must be completed prior to November 13, 2014 or this permit will expire.
WCB


Douglas B. Kinard, P.E., Director
Drinking Water Protection Division

Bureau of Water, DHEC, 2600 Bull Street, Columbia, SC 29201

A True Copy, Attest



CLERK OF COURT C.P. & G.S.
CHESREG1259UNTY, SC

WW-1672-09

2016 APR 27 AM 11 07
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Exhibit C

Water Supply Construction Permit 29779-
WS (issued June 30, 2014)

2016 APR 27 AM 11 07
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

REC 260

A True Copy, Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Water Supply Construction Permit Bureau of Water



Permission is Herety Granted To: **MCBEE TOWN OF**
PO BOX 248
MCBEE SC 29101

for the construction of a treatment system in accordance with the construction plans, specifications, design calculations and the SC DHEC Construction Permit Application signed by Joseph McGougan, Registered Professional Engineer, S.C. Registration Number: 12335.

Project Name: WELL NO 1 & 2 GAC CONTACTOR ADDITION **County:** Chesterfield
Location: OFF HIGHWAY 1, MCBEE, SC

Project Description: Construction of two (2) GAC contactors at Well #1 (366 cu ft) and Well #2 (241 cu ft) in the Town of McBee.

Service By: The water will be provided by McBee Town Of (System Number: 1310004)

Special Conditions

1. Before an approval to "Place into Operation" can be issued for the proposed construction, an operation and maintenance (O&M) manual must be developed. This must be a comprehensive O&M manual developed for all facility processes. The complete O&M manual must be available for review at the time of final inspection. Note that if an O&M manual already exists for a facility then only an addendum for the proposed work is required.

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 State Department of Health and Environmental Control 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 FLORENCE EQC OFFICE at 843-661-4825. Additional permits may be required prior to construction (e.g., stormwater).

Permit Number: 29-19-WS
Date of Issue: June 30, 2014
Expiration Date: Construction must be completed prior to June 30, 2017 or this permit will expire.
TLS

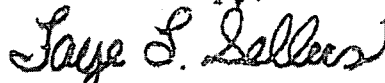

Douglas B. Kinard, P.E., Director
Drinking Water Protection Division

2016 APR 27 AM 11 07
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

WW-1731-08

Bureau of Water, DHEC, 2600 Bull Street, Columbia, SC 29201

A True Copy, Attest



CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

REC 261

Exhibit D

Final Approval to Place Wells No. 1 & 2
GAC Contactor Addition into Operation
(issued January 12, 2016)

2016 APR 27 AM 11 07
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy, Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
RECEIVED FIELD COUNTY, SC



Catherine E. Heigel, Director

DRINKING WATER

2016 APR 27 AM 11 07
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

FINAL APPROVAL TO PLACE INTO OPERATION

ISSUED TO: MCBEE TOWN OF
PO BOX 248
MCBEE SC 29101

for the operation of a potable water system permitted under Construction Permit No. 29779-WS, dated June 30, 2014, as described below:

PROJECT NAME: WELL NO 1 & 2 GAC CONTACTOR ADDITION
COUNTY: Chesterfield
PROJECT DESCRIPTION: Installation of two (2) GAC contactors - Well #1 366 cubic feet, Well #2 241 cubic feet and all necessary appurtenances.
WATER PROVIDED BY: McBee Town Of
SYSTEM NUMBER: 1310004

SPECIAL CONDITIONS:

This Final Approval to Operate is being conditionally approved. The Department has concerns about the water system's capacity if only Well No. 1 and Well No. 2 are the sole sources for water supply. The Town of McBee's Public Water System Operating Permit, Permit Number 1310004, contains the following language:

B. System Specific Conditions

The Town of McBee shall maintain its water system in compliance with all of the applicable requirements of the State Primary Drinking Water Regulations, 61-58. The operator of record for the treatment system and the distribution system must be of the appropriate grade.

The total developed groundwater source capacity shall equal or exceed the design maximum day demand without pumping more than sixteen (16) hours a day. With the largest producing well out of service, the capacity of the remaining well(s) pumping twenty-four (24) hours a day shall equal or exceed the design maximum daily demand, except those systems requiring only one well. The capacity from an additional source (Surface Water Plant or Master Meter) will be included in the quantity analysis. However, emergency and stand-by wells will not be included in the quantity analysis. If the Town decides to operate and maintain their water systems either by themselves, or through a different contract operator, they can not violate either the water quantity or water quality portion of the SPDWR and the SDWA. Since Alligator's contract for operation and maintenance is linked to their supply of water, this means that prior to possible independent operation (as contemplated by the preliminary engineering report dated December 6, 2010), the Town must have at least two DHEC-approved sources of sufficient quantity and quality to ensure compliance.

The Department recommends that the Town of McBee investigate this capacity issue to demonstrate that sufficient capacity exists before utilizing Well No. 1 and Well No. 2 as the primary supply for water.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENT
2800 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3132 • www.scdhec.gov

True Copy, Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

REC 263



Catherine E. Heigel, Director

Preventing disease, protecting the environment, promoting health

This approval is based on the engineer's letter of certification signed by Joseph McGougan, P.E., South Carolina Registration No. 12335.

Larry Ragsdale, Regional Engineer Associate
PEE DEE REGION BEHS FLORENCE

DATE ISSUED: January 12, 2016

cc: Bureau of Water Permitting File
Mcbee Town Of
Joseph McGougan, P.E.

2016 APR 27 AM 11 08
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

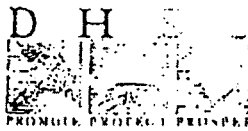
Exhibit E

Final Approval to Place McBee Water
System Well No. 2 into Operation (issued
January 12, 2016)

A True Copy, Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



Catherine E. Heigel, Director

DRINKING WATER

FINAL APPROVAL TO PLACE INTO OPERATION

ISSUED TO: MCBEE TOWN OF
PO BOX 248
MCBEE SC 29101

2016 APR 27 AM 11 08
FAVE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

for the operation of a potable water system permitted under Construction Permit No. 28475-WS, dated June 15, 2012, as described below:

PROJECT NAME: MCBEE WATER SYSTEM WELL NO.2
COUNTY: Chesterfield
PROJECT DESCRIPTION: Installation of a 200 GPM submersible pump (set at a depth of 228 feet), sodium hypochlorite feed system, 200 gallon HDLPE tank, two feed pumps and all associated appurtenances.
WATER PROVIDED BY: Mcbee Town Of
SYSTEM NUMBER: 1310004

SPECIAL CONDITIONS:

This Final Approval to Operate is being conditionally approved. The Department has concerns about the water system's capacity if only Well No.1 and Well No. 2 are the sole sources for water supply. The Town of McBee's Public Water System Operating Permit, Permit Number 1310004, contains the following language:

B. System Specific Conditions

The Town of McBee shall maintain its water system in compliance with all of the applicable requirements of the State Primary Drinking Water Regulations, 61-58. The operator of record for the treatment system and the distribution system must be of the appropriate grade.

The total developed groundwater source capacity shall equal or exceed the design maximum day demand without pumping more than sixteen (16) hours a day. With the largest producing well out of service, the capacity of the remaining well(s) pumping twenty-four (24) hours a day shall equal or exceed the design maximum daily demand, except those systems requiring only one well. The capacity from an additional source (Surface Water Plant or Master Meter) will be included in the quantity analysis. However, emergency and stand-by wells will not be included in the quantity analysis. If the Town decides to operate and maintain their water systems either by themselves, or through a different contract operator, they can not violate either the water quantity or water quality portion of the SPDWR and the SDWA. Since Alligator's contract for operation and maintenance is linked to their supply of water, this means that prior to possible independent operation (as contemplated by the preliminary engineering report dated December 6, 2010), the Town must have at least two DHEC-approved sources of sufficient quantity and quality to ensure compliance.

The Department recommends that the Town of McBee investigate this capacity issue to demonstrate that sufficient capacity exists before utilizing Well No.1 and Well No. 2 as the primary supply for water.

A True Copy, Attest

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



Catherine E. Heigel, Director

Protecting the health of the people of South Carolina

This approval is based on the engineer's letter of certification signed by Joseph McGougan, P.E., South Carolina Registration No. 12335.

Larry Ragsdale, Regional Engineer Associate
PDE DEE REGION BEHS FLORENCE

DATE ISSUED: January 12, 2016

cc: Bureau of Water Permitting File
Mcbee Town Of
Joseph McGougan, P.E.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Town of McBee,

Case No 2015-CP-13-379

Plaintiff,

vs.

**A.O. SMITH CORPORATION'S
NOTICE OF MOTION AND MOTION
TO STRIKE PLAINTIFF'S AMENDED
COMPLAINT IN ITS ENTIRETY**

Alligator Rural Water & Sewer Company, Inc.,
Alligator Rural Water Company, Inc.,

Defendants,

And

A.O. Smith Corporation,

Intervenor-Defendant.

2016 MAY 24 AM 11 23
FAVE L. J. JUDGE
CLERK
CHESTERFIELD

TO: PLAINTIFF, TOWN OF MCBEE AND ITS ATTORNEYS MARTIN S. DRIGGERS, JR., ESQUIRE; RICHARD E. MCLAWHORN, JR., ESQUIRE; AND BELTON T. ZEIGLER, ESQUIRE; and DEFENDANTS ALLIGATOR RURAL WATER & SEWER COMPANY, INC. AND ALLIGATOR RURAL WATER COMPANY, INC., AND THEIR ATTORNEY WILLIAM O. SPENCER, JR., ESQUIRE:

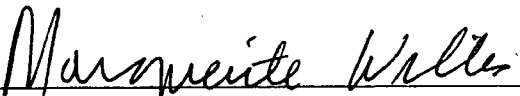
YOU WILL PLEASE take notice that undersigned counsel for Intervenor-Defendant A.O. Smith Corporation ("A.O. Smith") will move before this Court at such time and place as the Court may determine prior to the trial of this case, but not sooner than ten (10) days from the service of this Notice of Motion, for an Order striking Plaintiff's Amended Complaint in its entirety. The Amended Complaint was filed without leave of court, in violation of Rule 15, SCRCP, and purports to add new defendants, in violation of Rules 19 and 20, SCRCP, governing joinder of parties. The grounds for this Motion are set forth in A.O. Smith's Memorandum of Law, filed simultaneously herewith. The filing of this motion seeking to ~~strike the Amended~~

W. O. Spencer

CLERK OF COURT
CHESTERFIELD COUNTY, SC

Complaint in its entirety obviates any need for A.O. Smith to file an answer to the Amended Complaint at this time.

The undersigned hereby certifies and affirms, in accordance with Rule 11(a), SCRCP, that this motion is not one that requires consultation with opposing counsel prior to filing and, alternatively, that consultation with opposing counsel would serve no useful purpose.



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Attorneys for A.O. Smith Corporation

May 24, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Town of McBee,

Case No 2015-CP-13-379

Plaintiff,

vs.

**A.O. SMITH CORPORATION'S
MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE PLAINTIFF'S
AMENDED COMPLAINT**

Alligator Rural Water & Sewer Company, Inc.,
Alligator Rural Water Company, Inc.,

Defendants,

And

A.O. Smith Corporation,

Intervenor-Defendant.

2016 MAY 24 AM 11 23
FILED
CLERK
CHESTERFIELD COUNTY

Intervenor-Defendant A.O. Smith Corporation ("A.O. Smith") respectfully files this memorandum in support of its Motion to Strike Plaintiff's Amended Complaint, filed simultaneously herewith.¹

Plaintiff Town of McBee ("Town") filed its Amended Complaint without seeking leave of court, in violation of the South Carolina Rules of Civil Procedure. The parties are entitled to entry of an order striking the Amended Complaint in its entirety and requiring the Town to file a motion to amend. Requiring the Town to file a motion to amend is not simply an exercise in formalism. To the contrary, a motion to amend is necessary so that A.O. Smith and the other parties to this litigation can challenge the proposed amendment on procedural and substantive grounds, including under Rule 11, SCRPC.

¹ Because A.O. Smith seeks to have the Amended Complaint struck in its entirety, this motion "is comparable to a motion to dismiss under Rule 12(b)(6), SCRPC." *Robinson v. Code*, 384 S.C. 582, 585, 682 S.E.2d 495, 496 (Ct. App. 2009). Accordingly, A.O. Smith is not required to answer the Amended Complaint at this time.

CLERK OF COURT, C.P. & G.S.
CHESTERFIELD COUNTY, SC

PROCEDURAL HISTORY

The core dispute in this litigation is who—the Town or Alligator—allegedly has the right to provide water service to A.O. Smith’s facility in Chesterfield County. The Town filed its original complaint against Alligator on June 17, 2015, seeking a declaratory judgment that federal and state law entitled the Town to continue supplying water to A.O. Smith. Alligator subsequently answered and countersued, seeking a declaratory judgment that it, not the Town, possessed the legal right to provide water service to A.O. Smith. Alligator also seeks damages for the Town’s alleged violation of the water-supply agreement between the Town and Alligator. The Town replied to Alligator’s counterclaims on October 15, 2015.

In February 2016, A.O. Smith moved to intervene as a party defendant, attaching its proposed answer and counterclaims as “Exhibit A” to its Memorandum of Law in Support of Motion to Intervene. The Court granted A.O. Smith’s motion during a hearing on March 23, 2016.² Shortly thereafter—on April 4, 2016—A.O. Smith filed its Answer and Counterclaims. A.O. Smith’s first counterclaim sought a declaratory judgment under S.C. Code Ann. §§ 15-53-20, *et seq.*, or in the alternative under 28 U.S.C. §§ 2201, 2202, as follows:

- (a) that A.O. Smith does not have a contract with the Town for the provision of water but rather is an “at will” customer and, as such, it is entitled to terminate water service with the Town;
- (b) that S.C. Code Ann. § 5-31-1910 does not authorize the Town to provide water service to A.O. Smith because, although the Chesterfield County facility is outside the corporate limits of the Town, it is not contiguous thereto;
- (c) that the Chesterfield County facility is not located within the Town’s service area, and therefore the Town is not entitled to the protection of 7 U.S.C. § 1926(b); and

² The hearing concerned Alligator’s motion for an injunction preventing the Town from supplying water to its customers from its own wells. On April 7, 2016, the Court entered an Order prohibiting the Town from selling water obtained from its own wells to any customer until final resolution of this litigation. The Town has moved for reconsideration of that order.

- (d) that the Chesterfield County facility is within Alligator's service area, and therefore Alligator is entitled to the protection of § 1926(b).

A.O. Smith's second counterclaim sought an accounting of amounts paid by the Town for water purchased from Alligator, amounts collected by the Town for the resale of that water to A.O. Smith and other customers, and all of the Town's expenditures related to its water system or to the Town's provision of water service to A.O. Smith and other customers.

Pursuant to Rules 15(a) and 6(e), SCRCP, the Town's reply to A.O. Smith's counterclaims was due on or before May 9, 2016. Instead of filing a reply, however, the Town filed an Amended Complaint on May 4, 2015. The Amended Complaint adds two new defendants—Odom and Associates, Inc., and Glenn Odom, individually—makes extensive new factual allegations, and alleges new claims in tort. Among other things, the Amended Complaint alleges that A.O. Smith engaged in "secret negotiations" with Alligator and falsely reported water shortages at the Chesterfield County facility.³

Along with its Amended Complaint, the Town filed a Motion to Dismiss A.O. Smith's counterclaims, asserting that "these counterclaims are now moot. Plaintiff has amended its Complaint to include claims against A.O. Smith Corporation, and as a result, A.O. Smith Corporation will have to respond to these claims and resubmit its counterclaims." However, the Town's motion cites no authority for this proposition, nor has the Town filed a memorandum in support.

ARGUMENT

In filing its Amended Complaint without seeking the Court's permission, the Town presumably relied on Rule 15(a), SCRCP, which allows a party to "amend [its] pleading once as

³ The Amended Complaint also alleges that Alligator sabotaged one of the Town's water lines.

a matter of course at any time before or within 30 days after a responsive pleading is served.” Although filed within 30 days of A.O. Smith’s service of its Answer and Counterclaim, the Amended Complaint is nevertheless procedurally improper. Simply put, the Town violated both the letter and the spirit of the rules by filing what amounted to an entirely new case—including new defendants, new factual allegations, and new causes of action—nearly a year after the filing of the initial complaint. The Amended Complaint should be struck and the Town should be required to move for leave to amend, so that all defendants have the opportunity to respond by, *inter alia*, asserting Rule 11 concerns.⁴

A. The Town’s filing of the Amended Complaint is procedurally improper.

Rule 15(a), SCRCF, permits amendment of a pleading without leave of court “before or within 30 days after a responsive pleading is served.” This rule, similar to its counterpart under the federal rules, recognizes that because an amendment made in the early stages of litigation is highly unlikely to prejudice any party, there is little need to go through the formalities of obtaining the court’s permission to amend. *See* 6 Charles Alan Wright, *et al.*, Federal Practice & Procedure § 1479 (“*Wright & Miller*”) (“The theory behind the provision for amendments as of

⁴ The Town asserts that its filing of the Amended Complaint makes A.O. Smith’s counterclaims “moot,” such that they must be “resubmit[ted]” when A.O. Smith answers the Amended Complaint. A party that fails to “plead or otherwise defend as provided by” the South Carolina Rules of Civil Procedure, however, is in default. Rule 55, SCRCF; *see Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 508-09, 602 S.E.2d 99, 102 (Ct. App. 2004). In this case, A.O. Smith filed its Answer and Counterclaims on April 4, 2016. Therefore, under Rule 12(a), SCRCF, the Town was required to reply to the counterclaims within 30 days.

Instead of replying to A.O. Smith’s counterclaims, the Town filed the Amended Complaint. As explained in the body of this Memorandum, however, the Amended Complaint was not properly filed because the time for amending as of right has passed and Town did not file a motion to amend. “A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure.” *Stark Truss*, 360 S.C. at 509, 602 S.E.2d at 102. A.O. Smith reserves the right to move for entry of a default judgment based upon the Town’s failure to reply to, or otherwise defend against, A.O. Smith’s counterclaims.

course is that the court should not be bothered with passing on amendments to the pleadings at an early stage in the proceedings when the other parties probably will not be prejudiced by any modification.”).

This litigation, however, is no longer in its earliest stages. The Town filed its complaint almost a year ago, on June 17, 2015. Alligator answered and countersued on August 17, 2015, and the Town thereafter served its reply to Alligator’s counterclaims. At that point, the pleadings were closed and the Town had no right, absent a motion granted by this Court pursuant to Rule 15(a), SCRCF, to amend its complaint. Now, six months later, the Town has filed the Amended Complaint without moving to amend, as required by the plain language of Rule 15(a). Moreover, the changes are not minor. The Amended Complaint adds 75 numbered factual allegations, names two new defendants, and asserts three new claims for relief, two of which seek damages.

The Town is pretending that the 30-day clock for amendment as of right was reset by the filing of A.O. Smith’s intervention and filing of its answer and counterclaims. But this cannot be correct. There can be no question that, absent A.O. Smith’s intervention, the Town could not have filed the Amended Complaint without moving to amend under Rule 15(a) (and, as discussed below, moving to join new defendants under Rule 19 or Rule 20). There is absolutely no reason in logic or law why the circumstance of A.O. Smith’s intervention should suddenly give the Town *carte blanche* to completely rewrite its complaint. The addition of A.O. Smith to the case does not re-open the pleadings as to Alligator.

Just as the Amended Complaint is improper as to Alligator, it is improper as to A.O. Smith. It cannot be the case that the Town must seek leave to file the Amended Complaint as to Alligator, but it need not seek leave to file the identical document against A.O. Smith. To the contrary, there is a single period during which amendment as of right is permitted—not multiple

periods beginning anew throughout the litigation. *See, e.g., United States ex rel. Carter v. Halliburton Co.*, ___ F. Supp. 3d ___, 2015 WL 7012542, at *8 (E.D. Va. Nov. 12, 2015) (noting that the commentary to the federal rule provides that the periods for amendment as of right are not cumulative).

B. The Town cannot add new defendants simply by filing an amended complaint.

Even if 15(a) applied here, which we do not believe it does, it “only permits an existing plaintiff to add, modify, delete, or change claims against an *existing defendant*.” *Valentine v. Davis*, 319 S.C. 169, 172, 460 S.E.2d 218, 219 (Ct. App. 1995) (emphasis added). In violation of this rule, the Town’s Amended Complaint purports to allege claims against two new defendants, Odom and Associates, Inc., and Glenn Odom, individually. However, the proper procedure for adding new parties to litigation is a motion for joinder under Rule 19 or Rule 20, SCRCp. *See 6 Wright & Miller* § 1479 n.6 (citing cases). Each of these rules requires the movant to show why the new party should be added.

The Town’s sensationalistic allegations against Mr. Odom and his company, which are almost certainly time-barred, are entirely irrelevant to the dispute presently before the Court. The Town should not be permitted to sidestep its burden to show that joinder of Mr. Odom and his company is necessary to accord complete relief, as required for compulsory joinder under Rule 19, or that there are grounds for permissive joinder under Rule 20. By the same token, A.O. Smith should be given the opportunity to challenge the Town’s attempt to make the required showing.

- C. **The Town should be required to move for leave to amend so the parties can raise, and the Court can consider, whether the proposed Amended Complaint complies with Rule 11.**

The Amended Complaint should be struck, and the Town should be required to move for leave to re-file, so all of the putative defendants are given an opportunity to challenge the proposed amendment in its entirety. *Cf. Shah v. Richland Mem'l Hosp.*, 350 S.C. 139, 147, 564 S.E.2d 681, 685 (Ct. App. 2002) (holding that leave to amend a pleading may be denied for “proper reason, such as bad faith, undue delay, or prejudice”). In particular, A.O. Smith and the other defendants are entitled to have the Court determine whether the proposed Amended Complaint asserts claims for an improper purpose and whether there are grounds to support the allegations of the proposed Amended Complaint. *See Ex Parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008) (“Under Rule 11(a), SCRPC, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments ... [or] for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it.”).

In fact, and as A.O. Smith will show to the Court if given the opportunity, the Town's proposed Amended Complaint is filled with allegations that are facially incredible, driven by conspiracy theories with zero factual support, and are sanctionable.⁵

A.O. Smith has been a McBee neighbor and a good corporate citizen of Chesterfield County for nearly 36 years. During that time, it has been one of the largest employers in the area, providing thousands of employees with good, family-supporting jobs. Additionally, A.O. Smith

⁵ Not content simply to file the Amended Complaint, the Town issued a press release claiming—falsely—that “Alligator and A.O. Smith petitioned a Chesterfield County Judge to issue a temporary restraining order to prohibit the Town from using its own water system.” News Release, Town of McBee, *A.O. Smith Joins Alligator Water in Shutting Down the Town of McBee Water System* (May 20, 2016), available at http://www.townofmcbeesc.com/news-detail?item_id=259 (last visited May 22, 2016).

has generously donated more than \$300,000 to community-service organizations in McBee and throughout Chesterfield County. Most recently, A.O. Smith donated \$26,000 toward the construction of the McBee Sports Complex and Community Park.

A.O. Smith has been aware of the issues between the Town and Alligator related to supplying water to the Chesterfield County facility but has tried to avoid taking sides. At all times, A.O. Smith's primary concern has been ensuring its facility has a stable, reliable source of high-quality water for its operations and employees. After the Town filed this litigation in June 2015, A.O. Smith commissioned an independent engineer, at its own expense, to assess the Town's capability to independently provide enough water to meet the facility's requirements and comply with South Carolina law. That assessment determined that the Town's system could not independently provide enough water to serve A.O. Smith's facility while maintaining sufficient backup as required by state law, unless the system was supported by Alligator. Additionally, A.O. Smith is skeptical of the Town's ability to capably operate a water utility. Indeed, the Town's multiple violations of the South Carolina Department of Health and Environmental Control's ("DHEC") drinking water standards is what previously led DHEC to revoke the Town's operations permit in the 1990s.

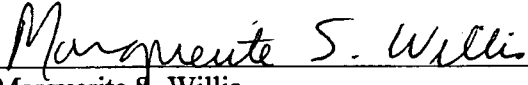
Based on those findings, A.O. Smith made its concerns known to DHEC. A.O. Smith also moved to intervene in this litigation because it had become clear that in this emotionally charged lawsuit between these two parties, only A.O. Smith could ensure that A.O. Smith's concerns were accurately presented and characterized.

A.O. Smith has previously told the Town's leadership and its attorneys about its concerns and why it is raising them. Accordingly, the Town and its attorneys know that the outlandish allegations against A.O. Smith in the Amended Complaint are demonstrably false. The Town's

allegations—accusing A.O. Smith of making multiple “false reports” and going so far as to suggest that Alligator sabotaged the Town’s water system and that A.O. Smith played a role—are so far beyond the pale that the only response they warrant is a motion to strike. A.O. Smith is frankly shocked that the Town’s attorneys, who have an ethical obligation to be truthful with the Court, would file a pleading based on a conjured-up conspiracy theory instead of facts. A.O. Smith intends to defend itself and its reputation, which has been slandered in the Amended Complaint, and to take all steps necessary to ensure the proper and protected operation of its facility.

CONCLUSION

For the reasons set forth herein, A.O. Smith respectfully asks the Court to enter an order striking the Town’s Amended Complaint for failure to comply with Rule 15, SCRCP.


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Attorneys for Movant/Proposed Intervenor
A. O. Smith Corporation

May 24, 2016
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Appellate Case No.
Circuit Court Case No. 2015-CP-13-379

RECEIVED
AUG 02 2016
SC Court of Appeals

Town of McBee, ...

Appellant,

v.

Alligator Rural Water & Sewer Company, Inc.; Alligator
Rural Water Company, Inc.; A.O. Smith Corporation;
Odom and Associates, Inc.; and Glenn Odom,
individually, ...

Defendants,

of whom

Alligator Rural Water & Sewer Company, Inc.; and
Alligator Rural Water Company, Inc.; are the

Respondents.

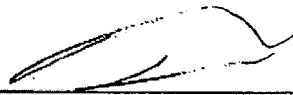
NOTICE OF APPEAL

Appellant Town of McBee appeals two related orders issued by the Honorable Roger E. Henderson, Circuit Court Judge. The first order, a preliminary injunction, was dated April 7, 2016; filed on April 12, 2016; and received by Appellant on April 15, 2016. The Town timely filed a Motion to Alter or Amend that ruling on April 25, 2016, which was denied by order that was dated July 12, 2016; filed on July 12, 2016; and received by Appellant on July 18, 2016. Copies of both orders are attached.

Signature Page Attached

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

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August 1, 2016
Columbia, South Carolina

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Counsel for A.O. Smith Corporation

Exhibit A

Order Prohibiting Plaintiff from Selling
Water Pumped from its Wells While
Litigation is Pending

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD) FOURTH JUDICIAL CIRCUIT

Town of McBee,)
Plaintiff,)
versus)
Alligator Rural Water & Sewer Company,)
Inc., Alligator Rural Water Company, Inc.,)
Defendants.)

2015-CP-13-379

ORDER PROHIBITING PLAINTIFF FROM
SELLING WATER PUMPED FROM ITS WELLS
WHILE LITIGATION IS PENDING

A True Copy, Attest

Faye L. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC.

RECEIVED

AUG 02 2016

SC Court of Appeals

This matter came before the Court for a hearing on March 23, 2016 on the motion of Defendant, Alligator Rural Water & Sewer Company, Inc. ("Alligator") to prohibit Plaintiff from selling any water obtained from Town of McBee wells to any customer until a final resolution of the current pending litigation. Present at the hearing were William O. Spencer, Jr., attorney for Defendant and Belton T. Zeigler, attorney for Plaintiff. Also present was Marguerite S. Willis, attorney for A.O. Smith Corporation, seeking to intervene in this action as a party defendant.

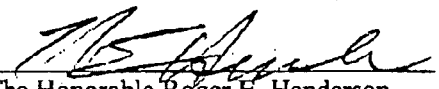
Based upon the verified pleadings, the arguments of counsel, and the affidavits of Glenn C. Odom and John Campolong, I find that Defendant's motion for temporary restraining order should be granted. I find that Plaintiff has purchased all of its potable water from Alligator since 1999 and I further find that Alligator will suffer immediate and irreparable injury, loss, and/or damages unless Plaintiff is restrained from taking actions to obtain water from any source other than continuing to purchase the same from Alligator until a full and final resolution of the present litigation.

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NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

Plaintiff and/or any person or entity acting in concert or participation with the Plaintiff are prohibited from providing water service and /or attempting to provide water service to any of its customers with water obtained from any source other than purchasing the same from Alligator until a full and final resolution of the present litigation.

AND IT IS SO ORDERED.


The Honorable Roger E. Henderson
Fourth Judicial Circuit

Chesterfield, South Carolina.
April 7, 2016.

#2

Exhibit B

Order Denying Plaintiff's Motion to Alter or
Amend Judgment

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD	)	FOURTH JUDICIAL CIRCUIT
Town of McBee,	)	2015-CP-13-379
Plaintiff,	)	
versus	)	ORDER DENYING PLAINTIFF'S
	)	MOTION TO ALTER OR AMEND
	)	JUDGMENT
Alligator Rural Water & Sewer Company, Inc.,	)	
Alligator Rural Water Company, Inc.,	)	
Defendants.	)	
And	)	
A.O. Smith Corporation,	)	
Intervenor-Defendant.	)	

RECEIVED

AUG 02 2016

SC Court of Appeals

This matter came before the Court for a hearing on May 24, 2016 on the Plaintiff's motion for an order amending or vacating this Court's order entered April 12, 2016 enjoining the Town of McBee from providing water to its customers from any source other than purchased from Alligator Rural Water & Sewer Company, Inc. Present at the hearing were William O. Spencer, Jr., attorney for Defendant and Belton T. Zeigler and Martin S. Driggers, Jr., attorneys for Plaintiff. Also present was Marguerite S. Willis, attorney for Defendant, A.O. Smith Corporation.

After considering Plaintiff's and Defendant's arguments, the Court denies Plaintiff's motion.

The purpose of the equitable remedy of a temporary injunction is to maintain the status quo. *County of Richland v Simpkins* 560 S.E. 2d. 902, 348 S.C. 664 (SC Ct. App. 2002). By the issuance of the temporary injunction in this case, it is this Court's intention to maintain what has

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#1

been the status quo between these parties since 1999 until such time as this case may be heard on the merits. I find that Plaintiff has purchased all of its potable water from Alligator since 1999 pursuant to a 40 year Water Purchase Agreement that is pledged to the United States of America, acting through the United States Department of Agriculture as part of security for a loan to the Purchaser (Town of McBee) and Seller (Alligator) from USDA, Rural Development.

While an injunction is a drastic remedy, it is necessary in this case to preserve the status quo and avoid possible irreparable injury to the Defendant pending a full hearing on the merits. South Carolina's courts have found that an injunction may issue where the requesting party meets three elements: (1) it will suffer an "irreparable harm" in the absence of an injunction, (2) it is likely to succeed on the merits of the case; and (3) there is an inadequate remedy at law."

Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.e.2d 905, 908 (2004).

I find that Alligator is likely to succeed on the merits of the case. Alligator is a not-for-profit corporation financed in whole or in part by federal or state loans. The Town of McBee has purchased all of its water from Alligator since 1999 pursuant to a 40 year water purchase agreement that was required by USDA, Rural Development. The Town of McBee has not operated its own wells since 1999. Prior to 1999, the Town of McBee had serious problems with its water system and was not in compliance with DHEC sanitary water standards. In order to remedy the problem, Alligator agreed, at the Town's request, to provide the Town with all of the water that it needed to service its customers and the Town would no longer operate its wells. In order to accomplish this, Alligator had to install wells, run lines to connect McBee to Alligator's system, install booster pumps and a pump station. Both Alligator and the Town made loan

applications to Rural Development seeking the necessary funds for this expensive project. The approximate cost of Alligator's portion of the project was \$1,100,000.00. After deducting grants, Alligator borrowed \$674,500.00 from Rural Development. Alligator's payment on this project is \$3,522.00 per month for a 40 year term. The revenue from the Town would allow Alligator to meet its monthly obligation to Rural Development. The Water Purchase Agreement between the Town and Alligator was a loan requirement and was pledged as security for the loan. Item 9 of the Agreement states "This Agreement is pledged to the United States of America, acting through the United States Department of Agriculture as part of security for a loan to the Purchaser and the Seller from USDA, Rural Development." Based upon this longstanding contractual relationship with the Town of McBee to supply its potable water and based upon the fact that this contract was a requirement for Alligator's Rural Development loan for this project, I find that Alligator is likely to succeed on the merits of the case.

Alligator asserts protection under Title 7 Section 1926(b) of the United States Code which provides "The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan". "All of the courts that have reviewed §1926(b) acknowledge that its provisions should be given a liberal interpretation that protects water associations indebted to the [Farmers Home Administration] from municipal encroachment." *Bluefield Water Ass'n v. City of Starkville, Minn.*, 577 F3d 250 (5th Cir., 2009) citing *Bell Arthur Water Corp. v Greenville Util. Comm'n*, 972 F. Supp. 951, 959 (E.D.N.C.1997). "The statute unambiguously prohibits any curtailment or limitation of an

FMHA-indebted water association's services resulting from municipal annexation or inclusion. This language indicates a congressional mandate that local governments not encroach upon the services provided by such associations, be that encroachment in the form of competing franchises, new or additional permit requirements, or similar means." *City of Madison, Miss v. Bear Creek Water Ass'n, Inc.* 816 F.2d 1057 (C.A.5 (Miss.), 1987.

Plaintiff argues that Alligator is not likely to prevail at trial, relying on a 7th Cir. case, *CSL Utilities, Inc. v. Jennings Water, Inc.*, 16 F.3d 130, (7th Cir. 1993), *as modified on denial of reh'g* (Feb. 25, 1994) and further arguing that nothing in the water purchase contract restricts McBee from producing its own water during the term of the contract. The Court in *Jennings* held that 7 U.S.C.A. §1926(b) did not apply to improvement by a wholesale customer of its own facilities so as to reduce the amount of water it must purchase at wholesale, but would only apply to curtailments resulting from the "granting of any private franchise for similar service." While the *Jennings* case does appear to have similar facts, I find that the distinguishing fact is that in the present case, Rural Development loaned Alligator significant funds for the sole purpose of providing Plaintiff with the water necessary to supply all of its customers. Further, the water purchase agreement was pledged as security for the loan. It seems clear that the intention at the time of the contract was that Alligator would provide the Town with all of its required potable water for the term of the contract which coincides with the term of the USDA loan. In light of the RD loan for this specific purpose, I find that Plaintiff's operation of its own wells to provide water to its existing water customers is a curtailment of the services provided by Alligator and is likely a violation of §1926(b). I find that there is a substantial likelihood that Alligator's claim under the water purchase contract and §1926(b) will prevail.

I further find that Alligator will suffer immediate and irreparable injury, loss, and/or damages unless Plaintiff is restrained from taking actions to obtain water from any source other than continuing to purchase the same from Alligator until a full and final resolution of the present litigation. I find that the irreparable harm to Alligator is the loss of revenue and the ability to service its debt to USDA Rural Development. Given the long service by Alligator to the Town of McBee of all of its potable water since 1999, I find that the harm suffered between the time of suit and the time of ultimate decision in this case would seriously prejudice Alligator's opportunity for full recovery. Without this injunction, Plaintiff would be able to stop purchasing water from Alligator immediately. This action would inevitably cause Alligator to default on its Rural Development loan that would, in turn, jeopardize Alligator's ability to continue operating its entire water system and would ultimately impact Alligator's remaining customers.

I further find that there is no adequate remedy at law for Alligator. Plaintiff argues that Alligator asserted a counterclaim for money damages (Ans. & Countercls. Of Alligator Defendants ¶¶55-69). However, this counterclaim is not related to Alligator's lost revenue resulting from the Town's use of its own wells, but rather appears to be damages sought by virtue of Plaintiff's failure to pay Alligator's current water rates.

Plaintiff argues that any potential harm that Alligator may suffer by allowing the Plaintiff to operate its own wells would be "reparable" through a monetary award. I disagree. Given the progression of this case thus far, a monetary award at the conclusion of the case is not an adequate remedy. This case was filed over a year ago; however, Plaintiff just recently amended its complaint alleging causes of action in tort against two new parties. Given the slow pace of

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this case, an injunction is absolutely necessary to maintain the status quo among these parties until this case may be resolved. Should an injunction not issue, Plaintiff could continue to prolong this case and the harm to Alligator caused by the default on its Rural Development loan could no longer be remedied with an award of money damages. Alligator could potentially lose its entire water system in foreclosure before an ultimate decision is made in this case. I therefore find that a preliminary injunction is necessary in this matter to preserve the status quo.

Regarding the issue of the posting of a bond by Alligator, the Court finds that Alligator is not required to post a bond pursuant to Rule 65(c), SCRCP, "No such security shall be required of the State or of an officer or agency thereof." I find that the Defendant is a Not-for-Profit corporation organized pursuant to §33-36-10 et.seq., South Carolina Code of Laws, as amended. In accordance with the provisions of Chapter 36 of Title 33, Alligator is to be treated as a Special Purpose District authorized to provide the governmental function of water service. These not-for-profit corporations exist for a public purpose. Corporations not-for profit, like Alligator, participate in the State Retirement System, the State Health Insurance System, and are protected by the South Carolina Tort Claims Act. By implication, I find that Alligator is also to be treated as a state entity for purposes of Rule 65(c) and is therefore not required to post bond before a temporary injunction may be issued in this matter.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

Plaintiff's motion is denied and the Court's Order entered April 12, 2016 is hereby supplemented with the above findings of fact and conclusions of law.

AND IT IS SO ORDERED.


The Honorable Roger E. Henderson
Fourth Judicial Circuit

Chertfield, South Carolina.
July 12, 2016.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2016-001604
Circuit Court Case No. 2015-CP-13-00379

Town of McBee Appellant,

v.

Alligator Rural Water & Sewer Company, Inc., Alligator
Rural Water Company, Inc. Defendants,

and

A.O. Smith Corporation Intervenor-
Defendant,

of whom

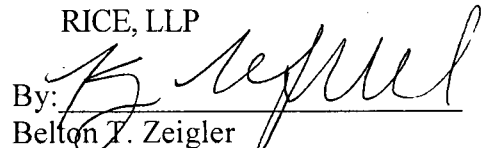
Alligator Rural Water & Sewer Company, Inc. and
Alligator Rural Water Company, Inc. are the Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

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December 16, 2016