

Old Business (OB1)

Addendum

Lower Cape Fear Water &
Sewer Authority

AGENDA ITEM

To: CHAIRMAN BLANCHARD AND BOARD MEMBERS

From: DON BETZ, EXECUTIVE DIRECTOR

Date: December 11, 2017

Re: Presentation of Capacity Allocation for 60-inch Parallel Line and Discussion

Staff has received a request from Brunswick County staff to include an additional item on the Authority's agenda under OLD BUSINESS 1: Presentation and Discussion of Capacity Allocation for 60-inch Parallel Line. Direction Williams would like the members to have the attached copy of "MEMORANDUM OF UNDERSTANDING – CAPACITY ALLOCATION" available for discussion only at the December 11, 2017 LCFWASA Board meeting. Please find it attached.

Staff is still developing a PowerPoint presentation to assist with the board's discussion and will forward that as complete as possible on Thursday, December 7th.

Thank you

Don Betz

From: John Nichols <John.Nichols@brunswickcountync.gov>
Sent: Tuesday, December 05, 2017 4:11 PM
To: Don Betz
Subject: MOU
Attachments: DraftMOU.pdf

Don,

As discussed, Brunswick County Chairman Frank Williams would like, if possible, for the enclosed MOU to be available **for discussion only** at the December 11, 2017 LCFWSA Board meeting. I appreciate your consideration.

Regards,

John Nichols, PE, CPESC
Director
Brunswick County Public Utilities
PO Box 249
Bolivia, NC 28422

Utility Operations Center
250 Grey Water Road NE
Supply, NC 28462

910-253-2653 phone
910-253-5776 fax

STATE OF NORTH CAROLINA

COUNTIES OF NEW HANOVER AND BRUNSWICK

MEMORANDUM OF UNDERSTANDING

CAPACITY ALLOCATION

THIS INTERLOCAL AGREEMENT (hereinafter, "Agreement"), entered into this the ____ day of _____, 2017, by and between, LOWER CAPE FEAR WATER & SEWER AUTHORITY (hereinafter "LCFWASA"), a water and sewer authority organized under North Carolina General Statute Chapter 162A, CAPE FEAR PUBLIC UTILITY AUTHORITY (hereinafter "CFPUA"), a water and sewer authority organized under North Carolina General Statute Chapter 162A; and BRUNSWICK COUNTY, a political subdivision of the State of North Carolina (hereinafter "Brunswick");

WITNESSETH:

WHEREAS, LCFWASA and CFPUA and Brunswick own existing raw water transmission mains and systems running from intake sites in Bladen County to New Hanover County, North Carolina; and

WHEREAS, CFPUA and Brunswick purchase raw water from LCFWASA; and

WHEREAS, all parties hereto agree that it is beneficial to have additional raw water capacity and redundancy to support regional growth and the wellbeing of Brunswick and CFPUA customers; and

WHEREAS, all parties hereto agree that continuing a regional approach to the management and provision of raw water resources is beneficial and cost-effective; and

WHEREAS, the parties entered into an agreement to fund design of a new raw water transmission main (Improvements) that would be constructed within the existing LCFWASA easement/right-of-way and that would generally extend 14 miles from the LCFWASA pump station at Kings Bluff to the LCFWASA ground tank in Brunswick County; and

WHEREAS, the parties have agreed to enter into a separate agreement that defines ownership of the main, and that design costs associated with the RWTM will be attributed to the parties based on capacity allocated in the expanded system; and

WHEREAS, the LCFWASA has passed a resolution directing the design team to proceed with a 60-inch main design; and

WHEREAS, implementation of water treatment options that may require additional raw water are under consideration; and

WHEREAS, the system capacity increase resulting from the system Improvements are anticipated to be 69 mgd based on a 60-inch pipeline;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. LCFWASA, CFPUA and Brunswick agree that the pipeline shall be a 60-inch pipe.
2. Additional capacity created by the 60-inch pipe shall be split as 56.8 % Brunswick and 44.2 % CFPUA.
3. Actual cost per gallon shall be calculated as the total project cost for design and construction, divided by the additional capacity created by the Improvements.
4. Actual project costs shall be proportionally shared by Brunswick and CFPUA, each entity shall pay the same dollar per gallon rate for allocated capacity based on the allocation table below.

Allocations

	Current Allocation (mgd)	Additional Capacity (mgd) 60" Pipe with 56.8% / 44.2% Split	Total System Allocation (mgd)	Total System Allocation (%)
Brunswick County	24	38.5	62.5	50.403226%
CFPUA	23	30.5	53.5	43.145161%
LCFWSA	2	0	2	1.612903%
Pender	6	0	6	4.838710%
Total	55	69	124	100.000000%

5. System improvements included as part of the construction contract that do not add additional capacity will be paid by LCFWASA.
6. Either party may elect not to proceed with the project based on funding commitments prior to award of a construction contract.
7. Either Brunswick or CFPUA may elect to sell allocated capacity at no less than the actual cost per gallon rate resulting from the project.
8. Amendment. This Agreement may be amended or modified, including any extension, upon mutual agreement of the parties, provided that any such amendment shall be reduced to writing and signed by all parties.
9. Binding on Successors and Assigns. All covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
10. Non-Waiver of Rights. Any party's failure to insist upon the strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.
11. Immunity Not Waived. The Agreement is governmental in nature and for the benefit of the public and is not intended to be for private profit or gain. The parties hereto do not intend to waive their sovereign immunity by reason of this Agreement.
12. Continuing Obligation. The parties will make and execute all further instruments and documents required to complete the terms of this Agreement.
13. Reference. Use of the neuter includes feminine and masculine, singular includes plural, and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope or intent of this Agreement.

14. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties relating the project as described herein and supersedes all prior discussions and written and oral agreements with respect thereto.

15. Savings Clause. If any section, subsection, paragraph, sentence, clause phrase or portion of this is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable, and such holding shall not affect the validity of the remaining portions hereof.

16. Enforcement. It is recognized that the parties' remedies at law may not be adequate in the event of a breach of this Agreement. Accordingly, the parties agree that specific performance of this Agreement is a proper remedy in the event of a breach or default.

17. Multiple Counterparts. Multiple counterparts of this Agreement may be signed and delivered, each of which shall be considered an original and which together shall constitute but one Agreement.

18. Release and Indemnity. To the fullest extent permitted by law and regulation, the parties hereto shall indemnify, hold harmless, and defend one another, their officers, directors, members, partners, employees, agents, contractors and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, surveyors, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising director or indirectly out of the obligations herein undertaken or resulting from the operations conducted by the parties hereto or by any individual or entity directly or indirectly employed by any of them to perform any of the services or anyone for whose acts any of them may be liable.

IN WITNESS HEREOF, the parties hereto have caused the execution of this Agreement, in triplicate originals, under seal, and by authority duly given, this the ____ day of _____, 2017.

LOWER CAPE FEAR WATER & SEWER AUTHORITY

By: _____

Bill Saffo, Chairman

Attest:

C. Lawrence Sneed, Secretary

(CORPORATE SEAL)

Approved as to form:

John C. Wessell

Attorney for LCFWASA

This instrument has been pre-audited in the manner required by the Local Government Budget & Fiscal Control Act.

Financial Officer, LCFWASA

STATE OF NORTH CAROLINA,
COUNTY OF BRUNSWICK.

I, _____, a Notary Public of the state and county aforesaid, certify that C. Lawrence Sneed appeared before me and acknowledged that he is the Secretary of the Lower Cape Fear Water & Sewer Authority, and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by the Chairman, sealed with its corporate seal, and attested by himself as Secretary.

Witness my hand and notarial seal, this the _____ day of _____, 2017.

Notary Public

My Commission Expires: _____

(NOTARY SEAL)

CAPE FEAR PUBLIC UTILITY AUTHORITY

By: _____
Michael C. Brown, III, Chairman

Attest:

C. Lawrence Sneed, Secretary

(CORPORATE SEAL)

Approved as to form:

Linda A. Miles
Attorney for CFPUA

This instrument has been pre-audited in the manner required by the Local Government Budget & Fiscal Control Act.

John McLean, Financial Officer, CFPUA

STATE OF NORTH CAROLINA,
COUNTY OF NEW HANOVER.

I, _____, a Notary Public of the state and county aforesaid, certify that C. Lawrence Sneed appeared before me and acknowledged that he is the Secretary of the Cape Fear Public Utility Authority, and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by the Chairman, sealed with its corporate seal, and attested by himself as Secretary.

Witness my hand and notarial seal, this the _____ day of _____, 2017.

Notary Public

My Commission Expires: _____

(NOTARY SEAL)

BRUNSWICK COUNTY, NORTH CAROLINA

By: _____
Frank Williams Commissioner, Chairman

Attest:

Andrea White, Clerk

(COUNTY SEAL)

Approved as to form:

Brunswick County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget & Fiscal Control Act.

Financial Officer, Brunswick County, North Carolina

STATE OF NORTH CAROLINA,
COUNTY OF BRUNSWICK.

I, _____, a Notary Public of the state and county aforesaid, certify that Andrea White appeared before me and acknowledged that she is the Clerk to the Brunswick County Commissioners, and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by the Chairman, sealed with its corporate seal, and attested by herself as Clerk.

Witness my hand and notarial seal, this the _____ day of _____, 2017.

Notary Public

My Commission Expires: _____

(NOTARY SEAL)