

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

City of Seneca, South Carolina,
City of Westminster, South Carolina, and
County of Oconee, South Carolina

Plaintiffs,

vs.

Pioneer Rural Water District of Oconee and
Anderson Counties,

Defendant.


CASE NO.: 2017-CP-37-00187

**AFFIDAVIT
OF JOSH FOWLER**

Personally appeared before me the undersigned, who, first being duly sworn, deposes and states the following:

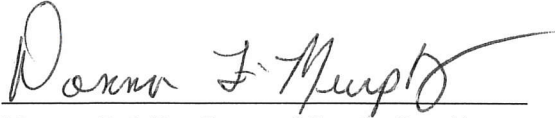
1. My name is Josh Fowler. I am over eighteen (18) years of age and otherwise competent to make this affidavit. Except as expressly indicated otherwise, this affidavit is based on my personal knowledge, as well as my experience and training related to water systems.
2. I prepared a report dated August 3, 2017 in this case. A true and correct copy of my report is attached hereto as Exhibit A.
3. The factual statements I made in my report are true and correct, to the best of my knowledge and belief, and the opinions I present in the report are my opinions.
4. By this affidavit, I adopt the entire content of my report, including the factual statements and opinions contained therein, as my sworn testimony as part of this case.

FURTHER AFFIANT SAYETH NOT.



Josh Fowler

SWORN TO AND SUBSCRIBED before
me this 8th day of AUGUST, 2017



Notary Public, State of South Carolina

My Commission Expires: _____

**My Commission Expires
July 20, 2026**

EXHIBIT A

REPORT OF JOSH FOWLER

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**REPORT OF
JOSH FOWLER
AUGUST 3, 2017**

I. Introduction.

I have been retained by Pioneer Rural Water District of Oconee and Anderson Counties (“Pioneer”) to render my expert opinion on certain matters related to this lawsuit. As I understand it, this lawsuit involves a challenge to whether Pioneer has the authority to construct the water treatment facility (the “Facility”) that it is currently in the process of building. The opinions expressed by me herein are based on information available to me as of this date. Should new information become available, I will consider that information and, if necessary, update my opinions accordingly. While I refer to the law, including statutes and regulations herein, I am not purporting to give opinions on the law. Rather, I am basing my opinions completely on my experience as an engineer in the fields of water treatment, distribution, and transfer, and my knowledge of industry customs and practice in these fields.

II. Qualifications.

I am the Director of Water and Wastewater Services at SynTerra Corporation in Greenville, South Carolina. I have provided engineering consulting services to municipal and special purpose district clients in the Southeast. I have over twenty years of experience working in the utility industry. My clients have included municipalities, county governments, and special purpose districts including rural water districts, all but one of which were in the State of South Carolina. For twelve years I was a Professional Engineer with Design South Professionals, Inc. (“Design South”), where I was primarily focused on water and wastewater utilities and worked on over \$100 million of water and wastewater capital projects. During my time at Design South, I performed consultation and preliminary engineering work for the Pioneer Water Treatment Plant. This work took place from approximately 2007 to 2010, when I left Design South to pursue other

opportunities. My previous work for Pioneer and the work associated with the Water Treatment Plant project have no influence on the opinions offered herein.

I have a bachelors' degree in Civil Engineering from the Georgia Institute of Technology, and an MBA from Clemson University. I have been a licensed Professional Engineer since 2002, and I am currently licensed in South Carolina, North Carolina, and Georgia. I have been a member of the American Water Works Association and the Water Environment Federation for over a decade. I am a member of the National Society of Professional Engineers and a former board member and President of the Educational Foundation of the National Society of Professional Engineers – South Carolina Chapter. I was the South Carolina Young Engineer of the Year in 2004 and the Piedmont Chapter Engineer of the Year in 2013. I was the design engineer for a project in Anderson County that won the 2007 National Tank of the Year Award.

III. Compensation.

My employer, SynTerra, is being compensated for my time for this engagement at the hourly rate of \$250 per hour. Professional fees charged by Synterra are not contingent on the outcome of this matter.

IV. Opinions

1. The purpose of rural water districts is to provide water to underserved rural areas that would not otherwise have a stable, reliable, safe source of clean drinking water. Typically, the statute creating a rural water district will define a service area for the district; the primary purpose of the district is service to that service area. It is my understanding that Pioneer was founded for such a purpose. In my judgment, it would make little sense to create a rural water district for this purpose but to deprive it of the ability to treat water, which is a core part of the function of providing safe and reliable water.
2. There are many other special purpose, rural water districts in South Carolina that have constructed and/or operate water treatment facilities to treat the water that is distributed to their service areas. Those known to me include the following:
 - a. **Beech Island Rural Community Water and Sewer District** (“BIWD”) is a South Carolina Special Purpose District established in 1965 to provide water service to the community of Beech Island as well as outlying areas of both Jackson and Warrentonville. That same year, the district obtained a federal grant to construct a “water works system” which included a treatment facility. In 2008, a \$6,971,200.00 loan was approved by USDA Rural Development for the extension and upgrade of their system, including construction of a new water tank and treatment facility for the district.
 - b. **Easley Central Water District** is a South Carolina Special Purpose District, which operates its own water treatment plant as part of its waterworks system

to treat water drawn from Twelve Mile Creek. The district also purchases water wholesale from Easley Combined Utilities to provide to some of its customers.

- c. **Gaston Rural Community Water District** is a South Carolina Special Purpose District which draws its water supply from wells and treats the water in its waterworks system before distribution within its service area.
- d. **Georgetown County Water and Sewer District** is a South Carolina Special Purpose District, which operates two water treatment facilities as part of its waterworks system.
- e. **Gilbert-Summit Rural Water District** is a South Carolina Special Purpose District, which operates its own water treatment plant as part of its waterworks system.
- f. **Grand Strand Water and Sewer Authority** is a South Carolina Special Purpose District, which operates two water treatment plants within its waterworks system.
- g. **Lancaster County Water and Sewer District** is a South Carolina Special Purpose District, which operates its own water treatment plant as part of its waterworks system.
- h. **Laurens County Water and Sewer Commission ("LCWSC")** is a South Carolina Special Purpose District, which currently purchases water from the City of Laurens Commission of Public Works ("CPW") and the City of Clinton. For several years, LCWSC has been working to upgrade its waterworks system by building a water treatment facility on Lake Greenwood. The final design and construction of the facility has been estimated at \$30 million. Once operational, Laurens anticipates that it will no longer purchase water from CPW or the City of Clinton.
- i. **Startex-Jackson-Wellford-Duncan Water District** is a South Carolina Special Purpose District, which operates its own water treatment facility as part of its waterworks system to treat water from the Middle Tyger River and the North Tyger River before distribution to its customers in western Spartanburg County.
- j. **Saluda County Water and Sewer Authority ("SCWSA")** is a South Carolina Special Purpose District. SCWSA is in the process of upgrading its waterworks system by constructing a water treatment facility with funds from United States Department of Agriculture Rural Development to source water from Lake Murray and treat it before distribution to its customers.

- k. **Talatha Rural Community Water District** is a South Carolina Special Purpose District established in 1967 for the purpose of providing a “waterworks system.” The district sources its water from three wells in the Tuscaloosa Aquifer, which it then treats before distribution to its customers.
 - l. **Woodruff-Roebuck Water District** is a South Carolina Special Purpose District, which operates its own water treatment plant as part of its waterworks system. In 2000, a study was conducted and found that the district could improve security and efficiency by building its own water treatment facility and reservoir, and the district completed its water treatment plant in June 2013. Prior to construction of its own water treatment plant, the district purchased all of its water supply wholesale from Spartanburg Water. According to its website, the completion of the plant was the result of “a decades-long process to secure alternative water sources for the region.”
3. It is my understanding that each of the above twelve special purpose rural water districts derives its authority to construct and operate water treatment facilities, or “waterworks,” pursuant to S.C. Code § 6-13-10, which reads:

It shall be the purpose and function of any district created under the provisions of this article to acquire, construct and operate a waterworks system, utilizing therefor water from available sources, by purchase or otherwise, at such convenient points as the district shall select, to provide a flow of water through pipes for domestic, commercial or industrial users who can be conveniently and economically served within or without the service area as may be created. To this end the district shall perform the functions prescribed by this article, and shall be vested with the powers herein granted and all other powers that may be necessary or incidental in carrying out the functions herein prescribed and exercising the powers herein granted. The water mains, distribution facilities, tanks, their several component parts, and all apparatus, equipment and property incident thereto or used or useful in the operation thereof and all additions, improvements, extensions and enlargements to any of them shall be referred to in this article as the system.

S.C. Code § 6-13-10 (emphasis added).

4. I have read Pioneer’s enabling legislation in comparison to the above statute. From my perspective as a water engineer, the two statutes do not differ in terms of their technical specifications concerning what Pioneer and these other special purpose districts are authorized to do. To the best of my knowledge, none of these twelve special purpose districts has any particular additional language that expressly gives the authority to treat water. Pioneer, like the twelve districts noted above, is authorized to acquire, construct, and operate a waterworks system which, as I indicate below, necessarily includes water treatment facilities to treat the water Pioneer is to provide to the domestic, commercial, and industrial users it serves. The Facility that

is currently under construction by Pioneer and is the subject of this litigation is, in my opinion based on my experience and knowledge of the industry, a part of a waterworks system.

5. I am aware that the enabling legislation for Pioneer lists some machinery, equipment, and components that are used in the construction and operation of a waterworks system, but that is not in any sense an exhaustive list of all that is needed for an operational waterworks system.
6. In addition, I note that Plaintiffs Westminster and Seneca also operate waterworks which include water treatment facilities. The statutory authority under which these cities operate their own water treatment facilities does not specifically reference water treatment. S.C. Code § 5-31-250 states:

The board of commissioners of public works of any city or town may purchase, build or contract for building any waterworks or electric light plant authorized under Article 7 of this chapter and may operate them and shall have full control and management of them. It may supply and furnish water to citizens of the city or town and also electric, gas or other light and may require payment of such rates, tolls and charges as it may establish for the use of water and light.

S.C. Code § 5-31-250 (emphasis added).

7. Just as in Pioneer's enabling legislation and S.C. Code § 6-13-10, the water district statute quoted above, the term "waterworks" is a broad, all-encompassing term that includes water treatment facilities, such as the ones operated by Plaintiffs Westminster and Seneca, the twelve rural water districts identified above, and the Facility under construction by Pioneer that Plaintiffs are challenging. I am not aware of any additional language that expressly gives the authority to treat water to Seneca or Westminster.
8. Based on my professional experience, education, and training, the term "waterworks" is commonly and consistently used in the water industry to include water treatment facilities. Importantly, no city, town, or water district in South Carolina may distribute raw water obtained from any water supply in South Carolina for use and consumption without first treating that water to ensure it meets certain strict standards for drinking water published by the South Carolina Department of Health and Environmental Control ("DHEC") and the U.S. Environmental Protection Agency ("EPA"). Those standards are designed to ensure that potable water delivered to end users does not exceed maximum contaminant levels dictated by the regulatory authorities. E.g., DHEC Regulation 61-58, State Primary Drinking Water Regulations; 42 U.S. Code §300f, *et seq.*, the Safe Drinking Water Act.
9. The American Water Works Association describes itself as "the largest nonprofit scientific and educational association dedicated to managing and treating water."

(<https://www.awwa.org/about-us.aspx>) (emphasis added). Dictionary definitions of “waterworks” consistently include the concept of the purification or treatment of water; in my judgment and experience this inclusion is correct and appropriate:

- a. “the system of reservoirs, channels, mains, and pumping **and purifying equipment** by which a water supply is obtained and distributed (as to a city).” *Merriam-Webster.com*, Merriam-Webster (accessed: April 28, 2017) (emphasis added);
 - b. “a system of building and pipes in which a public supply of water is stored **and cleaned** and from which it is sent out.” *Cambridge Academic Content Dictionary*, Cambridge University Press (accessed: April 28, 2017) (emphasis added);
 - c. “a complete system of reservoirs, pipelines, conduits, etc., by which water is **collected, purified**, stored, and pumped to urban users.... A pumping station or **a purifying station** of such a system.” *Dictionary.com Unabridged*. Random House, Inc. (accessed: April 28, 2017) (emphasis added);
10. During my tenure at Design South, I was involved in conducting a present net-worth analysis on behalf of Pioneer for the construction of the Facility to be added to the Pioneer waterworks system. This work was conducted as of 2010. I concluded at that time, based on the information available to Design South, that it would be more economical for Pioneer and its ratepayers to build the Facility than to continue to rely on the purchase of wholesale water from the cities of Seneca and Westminster.
 11. I have been informed that the Plaintiffs in this action have argued that the term “available sources” in Pioneer’s enabling act should be interpreted to mean that Pioneer, in serving its customers, may use only treated water that is ready for consumption. In my experience, I have never seen the term “available sources” used in that fashion in the realm of water engineering – either in the professional literature or in enabling acts. As it is understood in the industry, available sources of water simply refers to the various sources of water commonly drawn from by water utilities to provide potable water to their customers. Examples of available sources would be water purchased from another utility (whether already treated or not), wells, aquifers, dams, reservoirs, and surface water sources like springs, rivers, lakes, or ponds. Unless the water comes from a source that is already treated, then it will have to be treated by the utility or water district before delivery to customers.
 12. It is possible as an engineering matter to transport water over substantial distances, if one is willing to pay enough to do so. Water does not spoil, for instance, and so it can be trucked or piped over many miles. Therefore, while transportation costs could become quite high – and thus doing so would be a huge disservice to Pioneer’s customers and completely impractical – I cannot conceive of a circumstance in which it was technologically “impossible” for Pioneer (or any other rural water district in South Carolina) to purchase treated water from some source. It is therefore in my

opinion meaningless to say that Pioneer may operate a treatment facility only if it is "necessary."

13. I understand that, to the extent they relate to my field of expertise, I may be asked to provide comments and/or opinions concerning reports and opinions that may be presented by experts for the opposing parties in this case. If asked to do so, and once I have the opportunity to review such reports and/or opinions, I will supplement this report accordingly.

This concludes my report at this time.



Josh Fowler

8/3/2017

Date