



FOR IMMEDIATE RELEASE

CONTACT: Rick Jackson
PR Manager/Spokesman
Birmingham Water Works
(205) 244-4221
rick.jackson@bwwb.org

Birmingham Water Works Responds to Pending Litigation

The Utility comments on Watershed Protection

BIRMINGHAM, AL (April 13, 2022)- Although the Water Works Board does not comment on pending litigation, as reflected in the public court filings in this case, the Settlement Agreement at issue in this lawsuit was the result of a settlement between the Attorney General and the Water Works Board in 2001 in a prior lawsuit, *Kincaid v. Council of the City of Birmingham*, involving numerous claims between the City, the Mayor and the Water Works Board regarding the water and sewer systems in which the Attorney General intervened and sought to void the 1998 transfer of the water and sewer systems from the Water Works Board to the City, along with approximately \$275 million in damages to be paid by the City to the Water Works Board.

The Attorney General agreed to dismiss these claims in exchange for the Water Works Board's agreement to certain conditions. Part of the consideration for the Settlement was that the Attorney General wanted to ensure certain watershed protections on the Water Works Board's property surrounding Lake Purdy for the proper utilization of the water system assets against any development that could be harmful to the water system. The parties to the Settlement recognized that the Board, as a water provider, already had existing duties to maintain and operate its water system for the benefit of its ratepayers and was uniquely experienced in maintaining, operating, and controlling its water system, which included its watershed lands. In light of these facts, the Attorney General intended that the watershed protections on the Property would remain under the administration, operation and control of the Board.

The Attorney General and the Water Works Board believed that this intent could be carried out through the mechanism of a conservation easement being placed on the Lake Purdy property, with the Board holding the easement, and the Attorney General having a right of enforcement. However, in this current litigation, the Alabama Supreme Court ruled that the owner of property upon which a conservation easement is placed cannot also be the "holder" of the easement.

Because of this holding, the Water Works Board and the Attorney General are now asking the court to reform the Settlement Agreement to reflect the intent that the watershed protections on the Lake Purdy property remain under the administration and operation of the Water Works Board by striking the requirement in the Settlement that a conservation easement be placed on the property and replace it with the requirement that a Watershed Protection Agreement be entered into between the Attorney General and the Water Works Board which would contain the same requirements as the conservation

easement but would allow the intent of the Settlement to be preserved. None of the other provisions of the Settlement would change. The Water Works Board has always protected its watershed lands for the benefit of its customers and its water system and will continue to do so.

ABOUT BIRMINGHAM WATER WORKS BOARD: Founded in 1951, the Birmingham Water Works Board serves 770,000 people in Jefferson, Shelby, Blount, St. Clair, and Walker counties. The BWWB operates four filtration plants, a certified testing laboratory, and has more than 4,000 miles of pipe in its distribution network. For more information about the Birmingham Water Works Board, media inquiries, or tours of our museum, please call 205-244-4225 or visit www.bwwb.org.

MEDIA CONTACT: Birmingham Water Works PR Team | 205.244.4225 | publicrelations@bwwb.org

#